



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, August 8, 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

- Introduction of new Fire Marshal, Matt Vierra
- Officer Luke Riddering, Recipient of Mothers Against Drunk Driving (MADD) Award for DUI Enforcement

CLOSED SESSION REPORT
MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS
CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS
PRESENTATIONS

- Monday Night Dinner Report (Linda Fidell)

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 FOR THE JUNE 13, 2017 CITY COUNCIL MEETING;
(ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 APPROVAL OF MINUTES FOR THE JUNE 27, 2017 CITY COUNCIL MEETING;
(ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-3 APPROVAL OF MINUTES FOR THE JULY 7, 2017 SPECIAL CLOSED SESSION CITY
COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-4 APPROVAL OF MINUTES FOR THE JULY 11, 2017 SPECIAL CITY COUNCIL
MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-5 APPROVAL OF MINUTES FOR THE JULY 11, 2017 CITY COUNCIL MEETING;
(ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-6 ADOPTION OF RESOLUTION NO. 43-17 APPROVING A REVISED AND RESTATED
AMENDMENT NO. 1 TO THE 2016-2017 MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF MORRO BAY AND THE MORRO BAY FIREFIGHTERS
ASSOCIATION, IAFF LOCAL 3725, INCORPORATING WORK SCHEDULE AND
LEAVE ACCUMULATIONS FOR THE FIRE MARSHAL POSITION;
(ADMINISTRATION)

RECOMMENDATION: Council adopt Resolution No. 43-17 approving a Revised and Restated Amendment No. 1 to the 2016-2017 Memorandum of Understanding Between the City of Morro Bay and the Morro Bay Firefighters Association, IAFF Local 3725.

A-7 APPROVAL OF LEASE AGREEMENTS WITH ESTERO BAY COMMUNITY RADIO
AND THE MORRO BAY HISTORICAL SOCIETY (695 HARBOR STREET); (DEPUTY
CITY MANAGER)

RECOMMENDATION: Council approve lease agreements with the Estero Bay Community Radio and the Morro Bay Historical Society.

A-8 ADOPTION OF RESOLUTION NO. 44-17, APPROVING AMENDMENT #3 TO THE
MASTER LEASE AT LEASE SITE 71-74/71W-74W, AND AMENDMENT #2 TO THE
MASTER LEASE AT LEASE SITE 75-77/75W-77W (BOTH WITH MORRO BAY
MARINA, INC., LOCATED AT 601 EMBARCADERO), REFORMATTING THE METHOD
BY WHICH THE LEASE RENT CPI ADJUSTMENT IS CALCULATED, AND
APPROVING LEASE OWNERSHIP CHANGE ON BOTH SITES FROM A GENERAL
PARTNERSHIP TO A LIMITED LIABILITY COMPANY; (HARBOR)

RECOMMENDATION: Council adopt Resolution No. 44-17, directing the Mayor to sign amendments to both Morro Bay Marina leases to reformat the manner in which CPI rent adjustments are calculated, and approving the ownership of the two leases from General Partnerships to Limited Liability Companies.

A-9 AWARD OF CONTRACT TO D.O.D. CONSTRUCTION, LTD. OF BAKERSFIELD, CA, FOR PROJECT NO. MB2017-ST02: SIDEWALK GAP CLOSURES & PEDESTRIAN ACCESSIBILITY PROJECT; (PUBLIC WORKS)

RECOMMENDATION: City Council (1) allocate \$18,440 from Transportation Impact funds in addition to the \$299,437 received from Community Development Block Grant for a total of \$317,877 to compensate the bid amount of \$302,740, plus \$15,137, a 5% contingency, (2) award an Indefinite Delivery, Indefinite Quantity (IDIQ) contract with an initial two-year term and two additional option periods of up to two years each to D.O.D. Construction, LTD and (3) authorize the Public Works Director to execute the final contract for the Initial Period.

B. PUBLIC HEARINGS - NONE

C. BUSINESS ITEMS

C-1 RECEIVE THE WATER RECLAMATION FACILITY PROGRAM UPDATE AND PROVIDE COMMENTS AND DIRECTION DEEMED APPROPRIATE; (PUBLIC WORKS)

RECOMMENDATION: Council receive and file the status report of the Water Reclamation Facility (WRF) program, specifically related to the City Council direction in the July 11, 2017, meeting.

C-2 RECEIVE WATER RECLAMATION FACILITY FISCAL YEAR 2016-17 3RD QUARTER PROGRAM BUDGET UPDATE AND PROVIDE COMMENTS AND DIRECTION AS DEEMED APPROPRIATE; (PUBLIC WORKS)

RECOMMENDATION: Council receive and file the Fiscal Year (FY) 2016-17 3rd Quarter budget status report of the Water Reclamation Facility (WRF) program and provide comments and direction as deemed appropriate.

C-3 REVIEW OF MARIJUANA COUNCIL SUBCOMMITTEE RECOMMENDATIONS AND CONSIDERATION OF AND DIRECTION FOR FUTURE LOCAL MARIJUANA REGULATIONS; (ADMINISTRATION)

RECOMMENDATION: Council provide input and direction to staff either to: 1) develop an ordinance to implement local regulations concerning Proposition 64 and marijuana uses (including commercial); or, 2) establish a moratorium to postpone implementation of such an ordinance until after January 1, 2018.

The Council sub-committee strongly recommends the Council provide direction addressing Proposition 64 on the following issues:

- 1) Public Marijuana Use / Smoking Regulations,
- 2) Personal Marijuana Cultivation (Indoor and Outdoor),
- 3) Commercial marijuana operations (medical and recreational) which include dispensaries, cultivation, testing, manufacturing and delivery, and
- 4) Possible taxes and fees (if City allows some commercial marijuana operations).

C-4 APPROVAL OF A COMMUNITY BENEFIT AGREEMENT BETWEEN THE CITY OF MORRO BAY AND TRIDENT WINDS, LLC; (ADMINISTRATION)

RECOMMENDATION: Council review the staff report, receive the presentation by staff and Trident Winds, LLC (Trident), and approve the attached Community Benefit Agreement (CBA) between the City of Morro Bay and Trident.

C-5 ADOPTION OF RESOLUTION NO. 45-17 AMENDING THE COUNCIL POLICIES AND PROCEDURES TO ELIMINATE THE 7:00PM START TIME FOR PUBLIC HEARINGS, AND CONSIDERATION OF A COUNCIL SUBCOMMITTEE TO REVIEW THE COUNCIL POLICIES AND PROCEDURES AND ADVISORY BOARD BY-LAWS; (MAYOR/CITY CLERK)

RECOMMENDATION: Council adopt Resolution 45-17 amending Section 1.2.7 of the Council Policies & Procedures to eliminate the 7:00 p.m. start time requirement for public hearings. Staff also recommends the Council consider establishing a subcommittee to work with staff to review the Council Policies & Procedures and Advisory Board Bylaws in their entirety, consider the possible revisions discussed below and any others deemed necessary, then return to Council with proposed revisions for consideration and adoption.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

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

PRESENT:	Jamie Irons	Mayor
	Robert Davis	Council Member
	John Heading	Council Member
	Matt Makowetski	Council Member
	Marlys McPherson	Council Member
STAFF:	Craig Schmollinger	Acting City Manager
	Joe Pannone	City Attorney
	Dana Swanson	City Clerk
	Ikani Taumoepeau	Deputy City Manager
	Rob Livick	Public Works Director
	Scot Graham	Community Development Director
	Greg Allen	Police Chief
	Eric Endersby	Harbor Director
	Sandy Martin	Budget and Accounting Manager

ESTABLISH QUORUM AND CALL TO ORDER

The meeting was called to order at 6:04 p.m., with all members present.

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

RECOGNITION - None

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

MAYOR AND COUNCIL MEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS CITY MANAGER REPORTS, ANNOUNCEMENTS & PRESENTATIONS

PRESENTATIONS – “State of the Bay” by Lexie Bell, Morro Bay National Estuary Program
<https://youtu.be/kpoG9f6bzdQ?t=17m57s>

PUBLIC COMMENT

<https://youtu.be/kpoG9f6bzdQ?t=29m40s>

Linda Fidell, Morro Bay, spoke regarding Monday night dinners. Since Jan 6, 2014, they have provided hot meals to 10,874 guests. She thanked local businesses for their ongoing support, including Sun-n-Buns Bakery (Karen and Adam Krouse), Rock Espresso Bar (Jason and Amanda Birdsong), On the Beach Bed & Breakfast in Cayucos (Maureen Handshy), and Cookie Crock. Dockside, Giovanni's and GAFCO have also generously donated food items.

Barbara Spagnola, Morro Bay, spoke representing the American Association of University Women (AAUW) and introduced three local students who were awarded scholarships to attend the Tech Trek program, a week-long camp designed to introduce middle school girls to STEM subjects and careers.

Meredith Bates, Morro Bay, appreciated the Mayor and Council's support on various environmental issues and expressed concern staff reports and meeting minutes do not reflect the exact nature of the Council motion.

Erica Crawford, Morro Bay Chamber of Commerce, announced upcoming events planned for the month of June.

Betty Winholtz, Morro Bay, thanked Morro Bay Beautiful for its contribution to help beautify the Morro Bay High School campus before graduation. She spoke regarding public policy and stated the people grant power to elected officials to make decisions and delegate to staff.

The public comment period was closed.

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

- A. CONSENT AGENDA
<https://youtu.be/kpoG9f6bzdQ?t=48m38s>

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

- A-1 APPROVAL OF REVISED MINUTES FOR THE APRIL 4, 2017 SPECIAL CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-2 APPROVAL OF MINUTES FOR THE MAY 9, 2017 CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-3 APPROVAL OF MINUTES FOR THE MAY 23, 2017 SPECIAL CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-4 APPROVAL OF MINUTES FOR THE MAY 23, 2017 CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-5 APPROVAL OF MINUTES FOR THE MAY 24, 2017 SPECIAL CLOSED SESSION CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-6 PROPOSED PARTNERSHIP AGREEMENT WITH PROJECT SURF CAMP; (DEPUTY CITY MANAGER)

RECOMMENDATION: Council authorize the City Manager to enter into a partnership agreement with Project Surf Camp.

- A-7 APPOINTMENT OF VOTING DELEGATE(S) TO THE CALIFORNIA JOINT POWERS INSURANCE AUTHORITY; (ADMINISTRATION)

RECOMMENDATION: Council appoint the Mayor as the official representative of the City of Morro Bay on the California Joint Powers Insurance Authority (CJPIA) Board of Directors. It is also recommended that the Risk Manager be appointed as first alternate, and the City Manager as second alternate.

A-8 ADOPTION OF RESOLUTION NO. 26-17 APPROVING COOPERATION AGREEMENT WITH THE URBAN COUNTY (CDBG PROGRAM) FOR FISCAL YEARS 2018-2020; (COMMUNITY DEVELOPMENT)

RECOMMENDATION: Council adopt Resolution No. 26-17, approving a Cooperation Agreement with the Urban County for Fiscal Years 2018-2020.

A-9 ADOPTION OF RESOLUTION NO. 27-17 AUTHORIZING SAN LUIS OBISPO COUNTY ASSESSOR TO ASSESS AMOUNTS DUE ON DELINQUENT SOLID WASTE COLLECTION ACCOUNTS AS TAX LIENS AGAINST THE PROPERTIES; (PUBLIC WORKS)

RECOMMENDATION: Council adopt Resolution No. 27-17.

A-10 APPROVAL OF LEASE AGREEMENT BETWEEN THE CITY OF MORRO BAY AND STATE OF CALIFORNIA DEPARTMENT OF FISH & WILDLIFE FOR EXCLUSIVE TIE-UP SPACE ON THE NORTH T-PIER FOR A PATROL VESSEL ACCOMMODATION DOCK; (HARBOR)

RECOMMENDATION: Council adopt Resolution No. 29-17 and two-year Lease Agreement with the State of California Department of Fish and Wildlife (DFW) for dedicated pier space on the North T-Pier for their patrol vessel BLUEFIN dock.

A-11 CITY RESPONSE TO CITIZENS FOR AFFORDABLE LIVING REGARDING ALLEGED BROWN ACT VIOLATION; (ADMINISTRATION)

RECOMMENDATION: Receive and file.

A-12 APPROVAL OF RECOMMITMENT LETTER REQUEST FOR PEOPLES' SELF-HELP HOUSING EXTENDING AFFORDABILITY OF SEQUOIA APARTMENTS (365 SEQUOIA ST) AND PACIFIC VIEW APARTMENTS (495/500 MAIN ST); (COMMUNITY DEVELOPMENT)

RECOMMENDATION: Authorize City Manager or his designee to provide a recommitment letter to Peoples Self-Help Housing for purposes of applying for Federal tax credit funding for the Sequoia Apartments and Pacific View Apartments.

A-13 WATER RECLAMATION FACILITY PROGRAM UPDATE – PEER REVIEW PROCESS; (PUBLIC WORKS)

RECOMMENDATION: Council receive and file the status report of the Water Reclamation Facility (WRF) program, specifically related to the peer review process.

Council Member McPherson pulled Item A-6 and A-13.

MOTION: Council Member Makowetski moved the Council approve all items on the Consent Agenda except Items A-6 and A-13. The motion was seconded by Council Member Heading.

The motion was rescinded to open public comment.

Council Member Makowetski recused himself from discussion regarding Item A-6 due to his involvement with Project Surf Camp, and left the dais.

A-6 PROPOSED PARTNERSHIP AGREEMENT WITH PROJECT SURF CAMP; (DEPUTY CITY MANAGER)
<https://youtu.be/kpoG9f6bzdQ?t=50m25s>

The public comment period for Item A-6 was opened.

Caleb Cole, Paso Robles, spoke in support of Project Surf Camp and thanked those who started the camp as well as the many volunteers for their continued support.

Cindy Price, Grover Beach, shared how important Project Surf Camp was for her son, Evan, and thanked the City for its support.

Bob Keller, Morro Bay, announced Project Surf Camp needs more volunteers and asked the Council to support Item A-6.

John Taylor, Morro Bay resident and Executive Director of Project Surf Camp, shared program history and the impact it has on campers, their families, counselors and volunteers. The City has always been supportive and he looks forward to having a formal partnership.

Tiffany Ferreira, Templeton, shared the importance of Project Surf Camp for her son and others who don't have the opportunity to attend other camps.

Hattie Taylor, Morro Bay, began volunteering at Project Surf Camp at 9 years old and appreciates the positive impact it has had on her life and the lives of other volunteers.

The public comment period for Item A-6 was closed.

The Council shared its support and appreciation for Project Surf Camp.

MOTION: Council Member McPherson moved the Council authorize the City Manager to enter into a partnership agreement with Project Surf Camp. The motion was seconded by Council Member Heading and passed 4-0-1 with Council Member Makowetski having recused himself due to a conflict of interest.

Council Member Makowetski rejoined the meeting at 7:00 p.m.

The public comment period was opened for other items on the Consent Agenda.

Jeff Heller, Morro Bay, expressed concern the City does not have an owner's representative to push back on costs related to the WRF project and urged the Council to hire someone to run the project.

Carole Truesdale, Morro Bay, asked for clarification on the table of dates provided in the WRF staff report and also whether citizens were involved in the peer review.

Barry Brannin, Morro Bay, spoke regarding the WRF project, shared his concern about the financial health of the City, and potential cost to residents.

Cynthia Hawley, Morro Bay Action Team, commented the City's response regarding actions taken by the Council at its April 25 meeting did not address the issues raised. She asked the Council to rescind the action and take it up again at a noticed meeting.

Tina Metzger, Morro Bay, requested the Council pull Item A-13 and recommended the Council reopen public comment following discussion to provide the public an opportunity to ask additional questions and assist with the process.

The public comment period for the consent agenda was closed.

Mayor Irons pulled Item A-11.

MOTION: Council Member Heading moved the Council approve all Items except Items A-11, A-13 and A-6 (which had already been approved) on the Consent Agenda. The motion was seconded by Council Member McPherson and carried unanimously, 5-0.

A-11 CITY RESPONSE TO CITIZENS FOR AFFORDABLE LIVING REGARDING ALLEGED BROWN ACT VIOLATION; (ADMINISTRATION)
<https://youtu.be/kpoG9f6bzdQ?t=1h24m33s>

Mayor Irons explained the City received a letter alleging a violation of the Brown Act had occurred at the April 25 City Council Meeting. The Council concluded no violation had occurred and have responded to the complainant. This item was placed on the consent agenda to inform the public.

MOTION: Council Member Heading moved the Council approve Item A-11. The motion was seconded by Council Member Davis and carried unanimously, 5-0.

A-13 WATER RECLAMATION FACILITY PROGRAM UPDATE – PEER REVIEW PROCESS; (PUBLIC WORKS)
<https://youtu.be/kpoG9f6bzdQ?t=1h28m56s>

Public Works Director Livick listed the local public works professionals who participated in the peer review process and described the process that took place. He is compiling information and will bring a report to the WRFAC on July 5. If desired, that report could be brought to the Council on July 11.

Mayor Irons asked that all staff reports regarding the WRF Project include language that provides latitude for the Council to have discussion and provide appropriate direction.

Council Member Davis clarified the proposed community workshop dates should be September 13 and 22, not August 22, as listed in the staff report.

MOTION: Council Member Davis moved for approval of Item A-13. The motion was seconded by Council Member Heading and carried unanimously, 5-0.

B. PUBLIC HEARINGS - NONE

C. BUSINESS ITEMS

C-1 ADOPTION OF RESOLUTION NO. 30-17 APPROVING THE FISCAL YEAR 2017/18 OPERATING AND CAPITAL BUDGETS; (FINANCE)
<https://youtu.be/kpoG9f6bzdQ?t=1h49m40s>

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

There was discussion regarding Council bequests and concurrence the Council had not set a cap of \$8,000. It was agreed the budget should be adjusted by reducing the surplus, to include bequests discussed and agreed to by the Council at the May 23 meeting.

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

The Council requested staff provide a report on potential use of government impact fees at mid-year budget review, for a detailed accounting of how the City Manager opportunity fund is used, and that organizations receiving community grant funds be required to provide a financial report of how those funds are used.

MOTION: Council Member Headding moved the Council adopt Resolution No. 30-17 authorizing the Fiscal Year 2017/18 budget documents, including the amendments that were made here this evening by the Council. The motion was seconded by Council Member McPherson and carried unanimously, 5-0.

The Council took a short recess at 8:46 p.m. The meeting reconvened at 9:04 p.m.

C-2 REVIEW AND CONSIDERATION OF THE 2016 ANNUAL WATER REPORT AND RECOMMENDATION FOR ALLOCATION OF WATER EQUIVALENCY UNITS (WEUS) FOR 2017 AND ADOPTION OF RESOLUTION NO. 28-17; (PUBLIC WORKS)
<https://youtu.be/kpoG9f6bzdQ?t=2h44m14s>

Public Works Director Livick presented the staff report and responded to Council inquiries.

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

Diane Playan, Morro Bay, requested information on the desal plant and its use.

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

MOTION: Council Member Headding moved the Council suspend the two-to-one off-set for WEUs due to the City receiving its full allocation of State Water supply and the Governor rescinding the emergency drought declaration, and reevaluate the off-set program after the OneWater plan reevaluates the City's water portfolio and WEU allocation program; additionally, allocate the 115 WEUs for 2017; and finally, modify water conservation requirements to "moderately restricted" from the current "severely restricted" supply conditions. The motion was seconded by Council Member McPherson.

Council Member Davis asked if it was necessary to include language adopting the resolution in the motion.

AMENDED MOTION: Council Member Headding amended the motion to include, "adopt Resolution No. 28-17." The amended motion was seconded by Council Member McPherson and carried unanimously, 5-0.

There was Council consensus to hear Item C-4 next.

C-4 DIRECTION REGARDING BROKER REPRESENTATION FOR MARKET PLAZA; (COMMUNITY DEVELOPMENT)
<https://youtu.be/kpoG9f6bzdQ?t=3h28m53s>

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

Council Member Davis explained that as the Council liaison to TBID, he mentioned the project during a conversation with Mr. Graves which led to this item coming before the Council.

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

Diane Playan, Morro Bay, asked that Market Plaza be defined.

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

Aaron Graves, California Hotel Brokers, provided an overview of his services and presented brochures to the Council of some recent campaigns.

Mr. Graves became interested in the project because of his involvement with the TBID Advisory Board. City Attorney Pannone stated for the record the TBID board would not have any involvement in recommendations or decisions related to this project, and therefore there is no conflict of interest or 1090 violation.

Council Member McPherson was not comfortable with a sole source contract without further vetting or giving others an opportunity to participate in the process. The Council understood those concerns but based on the time sensitivity and the quality of Mr. Graves' work, determined it best to move forward with the project.

MOTION: Council Member Headding moved the Council direct staff to move forward with broker concept and that we entertain a specific proposal that would be presented to staff, reviewed and then presented to Council for final approval as expeditiously as possible. The motion was seconded by Council Member Davis.

AMENDED MOTION: Council Member Headding amended his motion to specify a contract with California Hotel Brokers. The amended motion was seconded by Council Member Davis and carried 4-1 with Council Member McPherson opposed.

Mayor Irons left the dais at 10:37 p.m. and returned at 10:40 p.m. during the staff presentation on Item C-3.

C-3 REVIEW AND DISCUSSION OF FY18 ADVISORY BOARD WORK PLANS; (ALL)
<https://youtu.be/kpoG9f6bzdQ?t=4h18m19s>

Mr. Schmollinger presented the staff report and responded to Council inquiries.

The Council reviewed and commented on each of the work plans. There was concurrence to make the following revisions:

Planning Commission – no changes needed.

Citizens Finance Advisory Committee – Although not a work plan item, Mayor Irons requested staff purchase a public-sector finance book for Council & CFAC members.

Public Works Advisory Board –

- Council Member Davis proposed adding an item under 3.F. to work with the Cloisters Assessment District subcommittee to develop a maintenance plan that meets the needs of all parties and the public.
- Mayor Irons proposed the following additions: review annual capital improvement program and make recommendations for budget workshop, and evaluate rock parking lot trash receptacles and other public spaces and consider writing an ordinance to require public trash cans include closures.

Tourism Business Improvement District (TBID) Advisory Board –

- Council Member Davis requested the language regarding incorporating vacation rentals and RV Parks into the District be revised to clearly identify tasks to be performed, timeline and responsibility.
- Mayor Irons suggested the following addition: discuss and prepare TBID members for reduction in General Fund contribution.

Recreation & Parks Commission

- Add review and submit to Council capital improvement projects for budget study session.

Harbor Advisory Board

- Add review and submit to Council capital improvement projects for budget study session.
- Review on an annual basis, in segments, all waterfront lease sites for conformity to contractual agreements for building use, maintenance, signage, access, safety, with 100% of all lease sites to be reviewed in 3-year period.

MOTION: Mayor Irons moved the meeting go past 11:00 p.m. for the next 10 minutes. The motion was seconded by council Member Davis and carried unanimously, 5-0.

The revised work plans will be brought back to the next meeting for approval.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

<https://youtu.be/kpoG9f6bzdQ?t=4h43m36s>

Mayor Irons requested discussion of next steps and disposition of the Cerrito Peak property, including outreach to land conservancies. There was full support for this item.

Council Member McPherson requested discussion of the WRF schedule, including definition of robust outreach and interpretation of the intent of that outreach, at the June 27 meeting. There was full support for this item.

E. ADJOURNMENT

The meeting adjourned at 11:05 p.m. The next Regular Meeting will be held on Tuesday, June 27, 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
REGULAR MEETING – JUNE 27, 2017
VETERAN'S MEMORIAL HALL – 6:00 P.M.

AGENDA NO: A-2
MEETING DATE: August 8, 2017

PRESENT:	Jamie Irons	Mayor
	Robert Davis	Council Member
	John Headding	Council Member
	Matt Makowetski	Council Member
	Marlys McPherson	Council Member
STAFF:	Craig Schmollinger	Acting City Manager
	Joe Pannone	City Attorney
	Dana Swanson	City Clerk
	Ikani Taumoepeau	Deputy City Manager
	Rob Livick	Public Works Director
	Scot Graham	Community Development Director
	Greg Allen	Police 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 - None

CLOSED SESSION REPORT – No Closed Session Meeting was held.

MAYOR AND COUNCIL MEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS
CITY MANAGER REPORTS, ANNOUNCEMENTS & PRESENTATIONS

PRESENTATIONS - None

PUBLIC COMMENT

<https://youtu.be/-Pvp4UAr2c4?t=21m52s>

Meredith Bates, Morro Bay, commented on the WRF project and opportunities for resident input. She announced Congressman Salud Carbajal will host a town hall meeting on August 23 at 5:30 p.m. at St. Timothy's Hall.

Bob Keller, Morro Bay, announced a BBQ fundraiser benefitting Project Surf Camp will be held at San Luis Sports Therapy on Friday, June 30, from 12:30 to 4:00 p.m.

John Taylor, Morro Bay, followed up on Mr. Keller's comments, noting one-third of Project Surf Camp's budget comes from registration fees; the rest is from fundraisers, private donations and grants.

Erica Crawford, Morro Bay Chamber of Commerce, announced upcoming events and training opportunities. Please contact Erica at 772-4467 or erica@morrochamber.org for more information.

Susan Stewart, Morro Bay resident and business owner, commented on development of a new City logo and suggested signage is needed to direct people downtown. She also supports a limited number of marijuana business due to the potential economic benefit.

Paula Radke, Morro Bay, expressed concern about a roundabout at Main Street and Highway 41. She also commented citizens should have participated on the WRF peer review panel.

Anne Marie Schnetzler, Morro Bay, commented the WRF item is one that generates a lot of public interest but is often at the end of the agenda and heard late in the meeting.

The public comment period was closed.

The Council and staff responded to questions raised during the public comment period.

A. CONSENT AGENDA
<https://youtu.be/-Pvp4UAr2c4?t=38m10s>

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

A-1 APPROVAL OF MINUTES FOR THE JUNE 13, 2017 SPECIAL CLOSED SESSION CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 APPROVAL OF MINUTES FOR THE JUNE 14, 2017 SPECIAL CLOSED SESSION CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-3 APPROVAL OF MINUTES FOR THE JUNE 14, 2017 SPECIAL CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-4 APPROVAL OF MINUTES FOR THE JUNE 19 & 20, 2017 SPECIAL CLOSED SESSION CITY COUNCIL MEETINGS; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-5 APPROVAL OF FY 17/18 ADVISORY BOARD WORK PLANS; (CITY MANAGER)

RECOMMENDATION: Council review and approve the Advisory Board Work Plans for FY 17/18 which have been revised based on direction provided at the June 13, 2017, City Council meeting.

A-6 ADOPTION OF RESOLUTION NO. 37-17 TO REAFFIRM INVESTMENT OF MONIES IN THE LOCAL AGENCY INVESTMENT FUND (LAIF) AND DESIGNATE TRANSACTION OFFICERS; (FINANCE)

RECOMMENDATION: Council adopt Resolution No. 37-17.

A-7 APPROVAL OF VISITOR CENTER SERVICES CONTRACT AND LEASE AGREEMENT FOR CITY-OWNED PROPERTY LOCATED AT 695 HARBOR STREET; (DEPUTY CITY MANAGER)

RECOMMENDATION: Council approve agreements with the Morro Bay Chamber of Commerce (Chamber) for Visitor Center Services and the renewal of a property lease at 695 Harbor Street.

A-8 APPROVE CHANGES TO ADOPT-A-PARK/STREET AND MEMORIAL PROGRAMS AND ESTABLISH FEE STRUCTURE FOR MEMORIAL BENCHES AT THE ROCK PARKING LOT AND TARGET ROCK AREA; (PUBLIC WORKS)

RECOMMENDATION: Council review the Adopt-A-Park/Street and memorial programs and approve the staff and PWAB recommendations outlined in the staff report.

A-9 APPROVAL OF FISCAL YEAR 2017/18 COMBINED SALARY SCHEDULE AND JOB DESCRIPTIONS FOR RECREATION SERVICES DIVISION MANAGER, SENIOR PLANNER AND POLICE SUPPORT SERVICES MANAGER; (ADMINISTRATION)

RECOMMENDATION: Council formally approve the FY 2017/18 Combined Salary Schedule and job descriptions for those positions reclassified as part of the budget approval, including the Recreation Services Division Manager, Senior Planner and Police Support Services Manager.

A-10 AUTHORIZATION TO EXTEND THE LEASE AGREEMENT BETWEEN THE CITY AND SCOTT MEISTERLIN FOR 307 MORRO BAY BLVD AND APPROVAL OF AN AMENDMENT TO THE SUBLEASE AGREEMENT BETWEEN THE CITY AND GRANDMA'S FROZEN YOGURT AND WAFFLE SHOP (LENNY AND BEVERLY DURRER); (CITY MANAGER)

RECOMMENDATION: Council exercise its option to extend the master lease agreement between the City and Scott Meisterlin for 307 Morro Bay Blvd. for an additional five years in accordance with Section 1.02 of the current agreement, and approve an amendment to the current Sublease Agreement with Grandma's Frozen Yogurt and Waffle Shop (Lenny and Beverly Durrer) for three years, with the conditional option for the subtenant to extend it on an annual basis thereafter for two additional.

A-11 ADOPT OF RESOLUTION NOS. 33-17 AND 34-17 ESTABLISHING COMPENSATION AND BENEFITS FOR UNREPRESENTED MANAGEMENT EMPLOYEES AND CONFIDENTIAL EMPLOYEES OF THE CITY OF MORRO BAY; (ADMINISTRATION)

RECOMMENDATION: Council adopt Resolution No. 33-17 establishing compensation and benefits for the City's unrepresented Management designated employees for FY 2017/18, and adopt Resolution No. 34-17 establishing compensation and benefits for the City's unrepresented Confidential designated employees.

A-12 ADOPTION OF RESOLUTION NO. 35-17 APPROVING AMENDMENT NO. 1 TO THE 2016-2017 MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MORRO BAY AND THE MORRO BAY FIREFIGHTERS ASSOCIATION, IAFF LOCAL 3725, EXTENDING THE TERM FROM JULY 1, 2017 UNTIL JUNE 30, 2018 AND PROVIDING A 2% COST OF LIVING ADJUSTMENT; (ADMINISTRATION)

RECOMMENDATION: Council adopt Resolution No. 35-17 approving Amendment No. 1 to the 2016-2017 Memorandum of Understanding Between the City of Morro Bay and the Morro Bay Firefighters Association, IAFF Local 3725.

A-13 ADOPTION OF RESOLUTION NO. 36-17 APPROVING AMENDMENT NO. 1 TO THE 2016-2017 MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MORRO BAY AND THE MORRO BAY POLICE OFFICERS' ASSOCIATION, EXTENDING THE TERM FROM JULY 1, 2017 UNTIL JUNE 30, 2018 AND PROVIDING A 2% COST OF LIVING ADJUSTMENT; (ADMINISTRATION)

RECOMMENDATION: Council adopt Resolution No. 36-17 approving Amendment No. 1 to the 2016-2017 Memorandum of Understanding Between the City of Morro Bay and the Morro Bay Police Officers' Association.

A-14 ADOPTION OF RESOLUTION NO. 38-17 APPROVING AMENDMENT NO. 1 TO THE 2016-2017 MOU BETWEEN THE CITY OF MORRO BAY AND THE SERVICE EMPLOYEES INTERNATIONAL UNION (SEIU), LOCAL 620, EXTENDING THE TERM FROM JULY 1, 2017 UNTIL JUNE 30, 2018 AND PROVIDING A 2% COST OF LIVING ADJUSTMENT; (ADMINISTRATION)

RECOMMENDATION: Council adopt Resolution No. 38-17 approving Amendment No. 1 to the 2016-2017 Memorandum of Understanding Between the City of Morro Bay and the Service Employees International Union, Local 620.

The public comment period for the Consent Agenda was opened.

Susan Stewart, Morro Bay, offered support for Items A-7 and A-10, noting she favors the Chamber operating the Visitor Center and is pleased to have a restroom for visitors in the downtown area.

Betty Winholtz, Morro Bay, spoke to Item A-8, suggesting the document should also define the City's responsibility for memorials. She also expressed concern about providing employees a 2% increase given CalPERS issues.

The public comment period for the Consent Agenda was closed.

Mayor Irons pulled Items A-5, A-8, A-9 and A-10.

MOTION: Council Member Headding moved the Council approve Items A-1 through A-4, A-6, A-7, and A-11 through A-14 on the Consent Agenda. The motion was seconded by Council Member McPherson and carried unanimously, 5-0.

A-5 APPROVAL OF FY 17/18 ADVISORY BOARD WORK PLANS; (CITY MANAGER)
<https://youtu.be/-Pvp4UAr2c4?t=43m10s>

Mayor Irons restated his request to add frisbee golf to the list of future recreational opportunities.

Council Members Davis and Headding expressed concern about language in the TBID work plan regarding vacation rentals and RV Parks being brought into the Business Improvement District. It was suggested staff work with two Council Members to craft new language during the recess, then bring this item back later in the meeting.

A-8 APPROVE CHANGES TO ADOPT-A-PARK/STREET AND MEMORIAL PROGRAMS AND ESTABLISH FEE STRUCTURE FOR MEMORIAL BENCHES AT THE ROCK PARKING LOT AND TARGET ROCK AREA; (PUBLIC WORKS)
<https://youtu.be/-Pvp4UAr2c4?t=53m45s>

There was Council consensus to work with volunteer groups to develop clear procedures and expectations for volunteers and the City, to be reviewed by PWAB and possibly Recreation & Parks Commission, then return to Council for adoption by resolution.

MOTION: Council Member McPherson moved the Council continue Item A-8, as recommended. The motion was seconded by Council Member Headding and carried unanimously, 5-0.

- A-9 APPROVAL OF FISCAL YEAR 2017/18 COMBINED SALARY SCHEDULE AND JOB DESCRIPTIONS FOR RECREATION SERVICES DIVISION MANAGER, SENIOR PLANNER AND POLICE SUPPORT SERVICES MANAGER; (ADMINISTRATION)
<https://youtu.be/-Pvp4UAr2c4?t=1h3s>

Mayor Irons requested the combined salary schedule be revised to include the full job title for Police Support Services Manager (see page 58).

MOTION: Mayor Irons moved for approval of Item A-9, as amended. The motion was seconded by Council Member Heading and carried unanimously, 5-0.

- A-10 AUTHORIZATION TO EXTEND THE LEASE AGREEMENT BETWEEN THE CITY AND SCOTT MEISTERLIN FOR 307 MORRO BAY BLVD AND APPROVAL OF AN AMENDMENT TO THE SUBLEASE AGREEMENT BETWEEN THE CITY AND GRANDMA'S FROZEN YOGURT AND WAFFLE SHOP (LENNY AND BEVERLY DURRER); (CITY MANAGER)
<https://youtu.be/-Pvp4UAr2c4?t=1h2m2s>

Mr. Pannone requested the item be pulled to suggest the Council conditionally approve the extension of the sublease with Grandma's Yogurt. That entity's corporation status is currently suspended and the City cannot enter into an agreement with a non-existing entity. The owner is working to resolve the issue. Mayor Irons and Council Member Heading requested staff review signage requirements for the restroom and ensure it meets the contract requirements.

MOTION: Mayor Irons moved, based on the City Attorney's recommendation and specific language, the Council conditionally approve and authorize extension for the lease agreement between the City and Scott Meisterlin for 307 Morro Bay Blvd., and approval of an amendment to the sublease agreement between the City and Grandma's Frozen Yogurt and Waffle Shop; only the sublease is conditionally approved. The motion was seconded by Council Member McPherson and carried unanimously, 5-0.

Item A-5 was left open to allow staff to confer during the recess and bring the item back later in the meeting.

B. PUBLIC HEARINGS

- B-1 ADOPTION OF RESOLUTION NO. 31-17 DIRECTING THE LEVY OF THE ANNUAL ASSESSMENT FOR THE CLOISTERS LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT; (PUBLIC WORKS)
<https://youtu.be/-Pvp4UAr2c4?t=1h6m25s>

Public Works Director Livick presented the staff report and responded to Council inquiries.

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

Dawn Beattie, Morro Bay, stated the assessment was never intended to exclusively pay to maintain the assessment district, and proposed beginning with next year's budget, the City contribute an annual 2% COLA to help with maintenance of this publicly accessible property.

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

Staff agreed to provide the legal analysis on file regarding the formation of the assessment district in future staff reports.

MOTION: Council Member Headding moved the Council adopt Resolution No. 31-17 approving the levy of the annual assessment for the Cloisters Landscaping and Lighting Maintenance Assessment District for FY 2017/18. The motion was seconded by Council Member Davis and carried unanimously, 5-0.

B-2 APPROVAL OF RESOLUTION NO. 32-17 DIRECTING THE LEVY OF THE ANNUAL ASSESSMENT FOR THE NORTH POINT NATURAL AREA LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT; (PUBLIC WORKS)
<https://youtu.be/-Pvp4UAr2c4?t=1h26m44s>

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

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

Betty Winholtz, Morro Bay, expressed concern the engineer's report lacked sufficient detail, was pleased some reseeding would be done, and supports both assessment districts as they were a condition of coastal development approval.

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

Staff agreed to provide more detail in future engineering reports and to chronicle the work next year.

MOTION: Council Member Headding moved the Council adopt Resolution No. 32-17 approving the levy of the annual assessment for the North Point Natural Area Landscaping and Lighting Maintenance Assessment District. The motion was seconded by Council Member Davis and carried unanimously, 5-0.

The Council took a brief recess at 7:35 p.m. The meeting reconvened at 7:43 p.m.

C. BUSINESS ITEMS

C-1 PUBLIC EMPLOYEE CONDITIONAL APPOINTMENT AND CONDITIONAL APPROVAL OF EMPLOYMENT AGREEMENT BETWEEN THE CITY OF MORRO BAY AND MARTIN R. LOMELI FOR THE POSITION OF INTERIM CITY MANAGER; (CITY MANAGER)
<https://youtu.be/-Pvp4UAr2c4?t=1h35m6s>

Acting City Manager Schmollinger 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 for approval of the employment agreement between the City of Morro Bay and Martin R. Lomeli for position of Interim City Manager. The motion was seconded by Council Member McPherson and carried unanimously, 5-0.

C-2 WATER RECLAMATION FACILITY PROGRAM UPDATE – REVIEW PEER REVIEW PROCESS SCHEDULE AND PROVIDE DIRECTION DEEMED APPROPRIATE; (PUBLIC WORKS)
<https://youtu.be/-Pvp4UAr2c4?t=1h43m19s>

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

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

Tina Metzger, Morro Bay, asked for the names and qualifications of those who participated on the peer review committee, whether any were from the private sector or qualified Morro Bay citizens, and whether the project would continue to be called a water reclamation facility.

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

Mr. Livick responded to questions raised during public comment.

Following Council discussion, there was agreement to pursue the second proposed schedule presented, bring peer review back to Council on July 11, beyond that date conduct some other public outreach, then provide that feedback and alternatives at the August 8 Council meeting. There was consensus the dates beyond July 11 would be confirmed at that meeting.

MOTION: Mayor Irons moved the Council direct staff to conduct the peer review, that the peer review be completed June 7, the WRFAC review would be July 5, 2017, City Council meeting July 11, 2017, and beyond that options will be brought forth at the July 11 City Council meeting to include options for additional community outreach. The motion was seconded by Council Member Heading.

The Council discussed the proposed timeline and Mayor Irons restated his motion.

RESTATED MOTION: Mayor Irons moved the peer review be completed June 7, 2017, WRFAC review on July 5, 2017, City Council meeting will be conducted July 11, 2017 for the peer review, and then options for community outreach and the rate study will be brought to City Council on the July 11 Council meeting, as well as the rest of the listed items. The motion was seconded by Council Member Heading and carried unanimously, 5-0.

Mr. Schmollinger suggested the July 11 City Council agenda packet be published on Thursday, July 6, as a complete packet including input received from the WRFAC at the July 5 meeting.

The Mayor reopened Item A-5.

A-5 APPROVAL OF FY 17/18 ADVISORY BOARD WORK PLANS; (CITY MANAGER)
<https://youtu.be/-Pvp4UAr2c4?t=2h40m41s>

Council Member Davis and Mr. Taumoepeau conferred during the break to craft new language for the TBID work plan; Council Member Heading reviewed and confirmed it met his criteria. Mr. Taumoepeau read the revised language into the record.

Addition of Vacation Rentals/Recreational Vehicle (RV) Parks to Business Improvement District (BID) - With the VR/RV Sub-committee, meet and layout plan for proper business outreach to all affected lodging industries from September to December. Business outreach will be implemented by the sub-committee and staff. The Council procedural process and public hearings will take place March to June. Desired outcome will be agreed upon by the lodging industries and the City as to the proper structure.

Business Improvement District Law: 1989 Law vs. 1994 Law: Business Improvement District Law: 1989 Law vs. 1994 Law - MBTBID will consider formalizing under the 1989 or 1994 BID

Law from September to November. Business outreach to affected lodging will be implemented by TBID and staff, October to January. The Council procedural process and public hearings will take place March to June. Desired outcome will be agreed upon by the lodging industries and the City as to the proper structure.

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

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS
<https://youtu.be/-Pvp4UAr2c4?t=2h44m36s>

Council Member Davis requested draft marijuana ordinances be brought to Council sooner rather than later. Following discussion, it was agreed staff and the marijuana subcommittee will prepare a report that lays out options for proceeding with marijuana ordinances for Council consideration as soon as possible, given other work priorities. Mr. Schmollinger noted the soonest was likely August 8.

Council Member McPherson requested discussion of vacation rental urgency ordinance to consider solutions for over concentration in certain areas of the City. There was Council consensus to address this issue through the General Plan update.

E. ADJOURNMENT

The meeting adjourned at 9:13 p.m. The next Regular Meeting will be held on Tuesday, July 11, 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 –
JULY 7, 2017
CITY HALL CONFERENCE ROOM–4:00 P.M.

AGENDA NO: A-3
MEETING DATE: August 8, 2017

PRESENT:	Jamie Irons Robert Davis John Headding Matt Makowetski Marlys McPherson	Mayor Council Member Council Member Council Member Council Member
STAFF PRESENT:	Martin Lomeli Laurie Goforth	Interim City Manager Personnel Specialist
CONSULTANT:	Greg Nelson	Robert Andersen & Associates

ESTABLISH QUORUM AND CALL TO ORDER – A quorum was established and the meeting was called to order at 4:05 p.m., with all members present.

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

CLOSED SESSION PUBLIC COMMENT - Mayor 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 items:

CS-1 PUBLIC EMPLOYEE APPOINTMENT

Title: Interim City Manager

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 4:43 p.m.

Recorded by:

Lori M. Kudzma
Deputy City Clerk

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MINUTES - MORRO BAY CITY COUNCIL
SPECIAL MEETING – JULY 11, 2017
VETERANS MEMORIAL HALL
209 SURF STREET – 3:30 P.M.

AGENDA NO: A-4
MEETING DATE: August 8, 2017

PRESENT:	Jamie Irons	Mayor
	Robert Davis	Council Member
	John Headding	Council Member
	Matt Makowetski	Council Member
	Marlys McPherson	Council Member
STAFF:	Martin Lomeli	Interim City Manager
	Joe Pannone	City Attorney
	Dana Swanson	City Clerk
	Craig Schmollinger	Finance Director
	Scot Graham	Community Development Director
	Cindy Jacinth	Senior Planner

ESTABLISH QUORUM AND CALL TO ORDER

The meeting was called to order at 3:30 p.m. with all members present.

PUBLIC COMMENT RE: ITEMS ON THE AGENDA

Larry Truesdale, Morro Bay, raised concerns regarding zoning of 3300 Panorama and potential traffic impacts resulting from development of a 10-acre parcel on Main Street.

The public comment period was closed.

Staff responded to issues raised during public comment.

SPECIAL MEETING AGENDA ITEM:

- I. PROVIDE DIRECTION TO STAFF ON THE DISPOSITION OF REAL PROPERTY IDENTIFIED AS 1 JORDAN TERRACE (CERRITO PEAK); APN: 066-221-001
<https://youtu.be/8SSDhNnZc7U?t=7m57s>

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

There was consensus on a 3-year timeline to sell the property to any entity that would preserve it as open space available to the public. Staff will bring opportunities that might facilitate the sale for preservation to Council, and provide a status report every six months on the Consent Agenda.

The Mayor re-opened public comment.

Glenn Silloway, Chair of Morro Bay Open Space Alliance, stated the group is interested in the project and will seek contributions and grant funding. They are doing research, developing marketing information, and reaching out to other non-profits, including Save the Park. A kickoff event is tentatively planned for September 16 to introduce people to the project.

The public comment period was closed.

No further action was taken by the Council.

II. REVIEW OF PREFERRED LAND USE ALTERNATIVES FOR THE GENERAL PLAN/LOCAL COASTAL PROGRAM UPDATE AND PROVIDE FEEDBACK DEEMED APPROPRIATE

Mr. Graham and Senior Planner Jacinth provided the staff report and responded to Council inquiries (click [here](#) for PowerPoint presentation).

Land Use Alternatives Sites A through E were reviewed at a joint meeting of the City Council and Planning Commission held March 28, 2017.

Site F – Tri-W Site

No land use changes are proposed. The Planning Commission recommended Measure H boundaries be better defined. It was noted any change in land use would require a vote of the people.

Site G – State Route 41 Gateway

The Council supported changes in land use designation, as proposed:

- Redesignate the parcels where the mobile home park is located from Visitor-Serving Commercial to Medium Density Residential.
- Redesignate the area adjacent to Highway 41 on the north side closest to Highway 1 from Mixed Use to Visitor Serving Commercial.

Site H – Measure D Area

Except for minor changes to make land use and zoning consistent on this site, no changes to land use are proposed. Clarification of Measure D could be considered during the zoning code update. The Planning Commission recommended the area north of Coleman Drive be changed to Open Space/Recreation.

Site I – Morro Bay Boulevard Gateway

Mayor Irons announced he and Council Member Heading would recuse themselves from discussion of Site I as they are property owners in that area. With Council consent, he turned the meeting over to Council Member Makowetski and they left the dais.

It is recommended the far western end of the block containing City Park be changed from District Commercial to Open Space/Recreation to create a future opportunity to expand park space. The Planning Commission recommended pulling the area closest to the roundabout into Site J, and that areas northwest of the park on Harbor Street be designated for commercial oriented uses that focus on families and entertainment. The Council supported the recommended changes.

Council Member Makowetski opened public comment.

C. Randall Cook, Morro Bay, requested his property located on Piney Street between Morro Bay Blvd. and Pacific Street be rezoned from C-1 to R-4 to allow more flexibility and housing opportunities.

The public comment period was closed.

Mayor Irons and Council Member Heading rejoined the meeting at 5:06 p.m.

Site J – Quintana Road North of Roundabout

It is recommended the parcels at the shopping center be changed from mixed use to service commercial. The Planning Commission recommends changing the Community Center from High

Density Residential to Public Facility. There was Council support for these changes and consensus to leave the church property zoned residential.

Planning Area and Sphere of Influence

Study Area 1 – This area includes Chevron, McIlvaine and Righetti properties. Staff reviewed the GPAC preferred alternative as well as Planning Commission’s recommendation to expand the planning area to include two additional properties. The Council supported Planning Commission recommendation including Dynege property, as discussed.

Study Area 2 – There was Council support for the preferred alternative.

Study Area 3 – There was Council support for the preferred alternative.

Study Area 4 – There was Council support for the preferred alternative.

ADJOURNMENT

The meeting adjourned at 5:30 p.m.

Recorded by:

Dana Swanson
City Clerk

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MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JULY 11, 2017
VETERAN'S MEMORIAL HALL – 6:00 P.M.

AGENDA NO: A-5
MEETING DATE: August 8, 2017

PRESENT:	Jamie Irons	Mayor
	Robert Davis	Council Member
	John Headding	Council Member
	Matt Makowetski	Council Member
	Marlys McPherson	Council Member
STAFF:	Martin Lomeli	Interim 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
	Greg Allen	Police Chief
	Steve Knuckles	Fire Chief
	Eric Endersby	Harbor Director

ESTABLISH QUORUM AND CALL TO ORDER

The meeting was called to order at 6:00 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

<https://youtu.be/Sp1vsQH1djk?t=11m36s>

- Friends of the Fire Department Scholarship Presentation to 2 Firefighters
Mike Pond, Past Morro Bay Fire Chief and President of Friends of the Morro Bay Fire Department, presented scholarships to Mike Kelly and Mickey Sensenbach.

PUBLIC COMMENT

<https://youtu.be/Sp1vsQH1djk?t=15m13s>

Anthony Barket, owner of Harry's Upholstery, provided the business spot. Harry's Upholstery is located at 1312 Main Street and specializes in custom built and furniture restoration.

Caroline Lewis, Morro Bay, invited the community to attend National Night Out on Tuesday, August 1, at Cloisters Park from 5:00 to 7:00 p.m.

Richard Sadowski, Morro Bay, commented on the WRF project and suggested information in the draft facility master plan is not accurate.

Rigmor, Morro Bay, urged the Council to look closely at what was intended by the original Measure D language and to protect open space, particularly between Mother's Beach and the Rock.

Lori Putnam commented on various issues.

Betty Winholtz, Morro Bay, acknowledged two community members who recently passed, Barry Ross and Don Boatman.

Nancy Castle, Morro Bay, shared concerns regarding potential flooding if the WRF is built near the current WWTP site. She is willing to pay more to move the plant out of a flood zone.

Bob Keller, Morro Bay, thanked residents, businesses and volunteers for their support of Project Surf Camp. For more information or to make a donation, go to www.projectsurfcamp.com.

Adam Pinterits of Ethnobotanica, spoke on behalf of patients who need affordable medicine, urging the Council to move forward with marijuana ordinances.

Barbara Doerr, Morro Bay, opposed the Trident agreement being presented, and expressed concern regarding the recommendation for ad hoc committee work to clarify Measure D, as it would limit public involvement.

The public comment period was closed.

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

A. CONSENT AGENDA
<https://youtu.be/Sp1vsQH1djk?t=45m5s>

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

A-1 APPROVAL OF MINUTES FOR THE JUNE 28, 2017 SPECIAL CLOSED SESSION CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 DESIGNATION OF VOTING DELEGATE AND ALTERNATE AT LEAGUE OF CALIFORNIA CITIES 2017 ANNUAL CONFERENCE BUSINESS MEETING; (ADMINISTRATION)

RECOMMENDATION: Council select Mayor Irons, as the voting delegate, and Mayor Pro Tem Heading, as the alternate voting delegate, for the upcoming annual business meeting to be held at the League of California Cities Annual Conference.

A-3 ADOPT RESOLUTION NO. 39-17 ESTABLISHING THE ANNUAL PROPOSITION 4 APPROPRIATIONS LIMIT FOR THE FISCAL YEAR 2017/18; (FINANCE)

RECOMMENDATION: Council adopt Resolution No. 39-17, which sets the FY 17/18 appropriations limit at \$25,915,210.

A-4 RECEIVE AND FILE THE QUARTERLY STATUS REPORT ON PARKING IN-LIEU FEE WAIVERS AND TAKE ANY ACTION DEEMED APPROPRIATE; (COMMUNITY DEVELOPMENT)

RECOMMENDATION: Receive and file and take any action deemed appropriate.

A-5 AUTHORIZATION FOR PARTICIPATION IN THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY (CEDA) AS AN ASSOCIATE MEMBER AND AUTHORIZING CEDA, THROUGH FIGTREE FINANCING, TO OFFER THEIR PROGRAM AND LEVY ASSESSMENTS WITHIN THE CITY OF MORRO BAY; (PUBLIC WORKS)

RECOMMENDATION: Council adopt Resolution No. 40-17 joining the California Enterprise Development Authority (CEDA) as an Associate Member and authorizing CEDA, through Figtree Financing, to offer their program and levy assessments within the City of Morro Bay, California.

A-6 ADOPTION OF RESOLUTION NO. 41-17 APPROVING THE SUMMARY VACATION (ABANDONMENT) OF A PORTION OF THE SEWER EASEMENT AT NORTHEAST PORTION OF PROPERTY AT 110 ORCAS STREET, USING THE AUTHORITY ESTABLISHED BY STREETS AND HIGHWAYS SECTION 8333 *ET SEQ.*; (COMMUNITY DEVELOPMENT)

RECOMMENDATION: Adopt City Council Resolution No. 41-17, finding the summary vacation of the public utility easement is consistent with the requirements established by the California Streets and Highways Code (SHC), section 8333 et seq.

A-7 UPDATE ON FY 16/17 PMP: PROJECT NO. MB2017-ST01: PAVEMENT PRESERVATION PROJECT; (PUBLIC WORKS)

RECOMMENDATION: Council receive and file this report.

A-8 ADOPTION OF RESOLUTION NO. 42-17, APPROVING TRANSFER OF 51.02% MEMBERSHIP INTEREST OF MORRO BAY OYSTER COMPANY, LLC, FROM DWIGHT K. MALONEY TO MORRO BAY OYSTER COMPANY, LLC, AND CONDITIONALLY AUTHORIZING THE MAYOR TO EXECUTE DOCUMENTS NECESSARY FOR A NEW LOAN FOR THE LEASE AGREEMENT AT LEASE SITE 144/144W AND ACCEPTING A DEED OF TRUST RELATED THERETO (MORRO BAY OYSTER COMPANY, 1287 EMBARCADERO); (HARBOR)

RECOMMENDATION: Council adopt Resolution No. 42-17 authorizing the Mayor to approve the transfer of membership interest of Morro Bay Oyster Company, LLC (MBOC) for Lease Site 144/144W from Dwight K. Maloney to MBOC, authorizing the Mayor to execute documents necessary for a new loan regarding the leasehold interest at 144/144W, subject to approval of the City Attorney and accepting a deed of trust related thereto.

A-9 APPROVAL OF REVISED SENIOR CIVIL ENGINEER JOB DESCRIPTION AND REVISED FY 17/18 COMBINED SALARY SCHEDULE; (ADMINISTRATION)

RECOMMENDATION: Council review and approve the revised Senior Civil Engineer Job Description and approve the Combined Salary Schedule which has been revised to include this position.

A-10 RECEIVE AND FILE UPDATE ON THE ONGOING PERMANENT CITY MANAGER RECRUITMENT PROCESS; (ADMINISTRATION)

RECOMMENDATION: Council receive and file an update on the ongoing permanent City Manager recruitment process and provide direction as deemed appropriate.

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

Council Member McPherson pulled Item A-7. Council Member Makowetski pulled Item A-5.

MOTION: Council Member Heading moved the Council approve all Items on the Consent Agenda with the exception of Items A-5 and A-7. The motion was seconded by Council Member McPherson and carried unanimously, 5-0.

A-5 AUTHORIZATION FOR PARTICIPATION IN THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY (CEDA) AS AN ASSOCIATE MEMBER AND AUTHORIZING CEDA, THROUGH FIGTREE FINANCING, TO OFFER THEIR PROGRAM AND LEVY ASSESSMENTS WITHIN THE CITY OF MORRO BAY; (PUBLIC WORKS)
<https://youtu.be/Sp1vsQH1djk?t=45m58s>

Council Member Makowetski asked staff to provide more information regarding the CEDA program.

A-7 UPDATE ON FY 16/17 PMP: PROJECT NO. MB2017-ST01: PAVEMENT PRESERVATION PROJECT; (PUBLIC WORKS)
<https://youtu.be/Sp1vsQH1djk?t=47m40s>

Council Member McPherson asked staff to review this year's street paving plan.

MOTION: Council Member Heading moved the Council approve Items A-5 and A-7 on the Consent Agenda. The motion was seconded by Council Member McPherson and carried unanimously, 5-0.

City Attorney Pannone announced staff met with Trident Winds representatives and is pulling Item C-3 from the agenda. A different agreement will be brought to Council at the first meeting in August.

B. PUBLIC HEARINGS - NONE

C. BUSINESS ITEMS

C-1 REVIEW OF THIS REPORT OF THE PUBLIC WORKS COST REVIEW WORKSHOP FOR THE WATER RECLAMATION FACILITY PROJECT AND PROVIDE COMMENTS AND DIRECTION AS DEEMED APPROPRIATE; (PUBLIC WORKS)
<https://youtu.be/Sp1vsQH1djk?t=50m53s>

Public Works Director Livick introduced John Rickenbach, WRF Deputy Program Manager, who presented the staff report.

Harvey Packard, Supervising Engineer for the Central Coast Regional Water Quality Control Board (RWQCB), conveyed the Board's role is to facilitate the process and to regulate the City and its waste discharges. He believes some progress can be made with the Coastal Commission (CCC) and is willing to assist. The Board expected the City to have a facility up and running in 2014 and although concerned about the process and timing, reluctantly agrees with staff recommendation to pause to explore alternatives that may reduce cost. He also urged the City to commit to water reclamation.

Dr. Jean-Pierre Wolff, Chair of the Central Coast RWQCB, appreciated the need for a certain amount of time to plan a new facility but to allow a particular plant to have extension sets a precedent that other permittees would look to so there is not a lot of leeway. The recycled water component is important as the City has a duty to consider water safety. The Board understands the cost is significant and is committed to helping find a solution that meets environmental

requirements and is financially sustainable. If the City were to consider staying with the current facility to avoid construction costs, the fines would be significant.

Staff responded to Council inquiries.

The Council took a brief recess at 8:47 p.m. The meeting reconvened at 8:56 p.m.

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

Rick Sauerwein, local resident, urged the Council to work with CCC to develop a Request for Proposal (RFP) for a design/build contract that would engage industry professionals to value engineer up to four or five sites with community goals in mind.

Jeff Heller, Morro Bay, agreed with Mr. Sauerwein's approach and urged the Council to put out an RFP.

Barbara Doerr, Morro Bay, stated the proposed project is unaffordable, suggested the Prop 218 forms include a ballot, and hoped the City would consider the Dynegy site.

Rob Kitzman, Morro Bay resident and owner of Culligan Water, explained the impact the current approved rates will have on his business and urged the Council to consider the economic impact on local businesses.

Charles Gardner, Half Moon Bay, has followed the project as a contractor for six years. He believes going back to CCC will lead to further delays and suggested the City issue an RFP for design/build constructability services.

Richard Sadowski, Morro Bay, spoke in support of a package plant at the Hanson Concrete site.

Bob Keller, Morro Bay, commented every site has issues and would like the Council to build the lowest cost plant without further delays.

David Nelson, Morro Bay, stated the proposed plant is unaffordable and supports going out to bid for a PERC plant.

Terry Simons, Morro Bay, supported good faith interaction between staff, CCC and RWQCB, believes water independence and recycling is necessary to get any traction, and hopes the Council will continue to protect citizens from astronomical water and sewer rates.

Diane Playan, Morro Bay, expressed concern about the potential impact increased rates would have on Culligan Water, Lemos and other business that use a lot of water. She hoped once Cayucos was off the sewer plant, potential fines would be reduced

Steve Stevens, suggested the City be more aggressive in terms of community outreach and put together something that would mitigate CCC concerns.

Alice Kolb, Morro Bay, supported the WWTP remaining near its current location and asked what the community can do to facilitate conversations with the CCC.

Jim Hayes, Morro Bay, commented that all potential sites have issues but supports going with the current plant site.

Linda Donnelly, Morro Bay, shared that while on vacation in Crescent City, she observed a wastewater treatment plant on the beach. She supports keeping the plant in its current location or at the Hanson site.

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

Following discussion, there was general support for the WRFCAC recommendation to take approximately two months to talk with CCC and RWQCB about the feasibility of a water reclamation project on the west side of Highway 1 as compared to Righetti or Giannini sites, to evaluate community outreach options and provide Council with regular updates for course correction, as needed.

MOTION: Council Member Headding moved the Council direct staff to immediately begin discussions with the California Coastal Commission and Regional Water Quality Control Board to determine the feasibility of constructing a wastewater treatment facility and WRF at or near the existing WWTP site. Additionally, and concurrently, staff should begin the process of evaluating costs associated with the Giannini and Righetti sites and bring back information within 60 days regarding the cost for building on those sites, including recycling, WWTP and WRF. Additionally, staff should begin the process of outreach to environmental agencies and should involve either Council and staff, as appropriate, to be involved with that outreach for purposes for beginning to explore the recommendation as to a site alternative. The motion was seconded by Council Member Davis.

Council Member Headding withdrew the motion. Council Member Davis withdrew the second.

MOTION: Council Member Headding moved the Council direct staff to immediately begin discussions with the California Coastal Commission and Regional Water Quality Control Board to determine the feasibility of constructing a wastewater treatment facility and WRF at or near the existing WWTP site. The motion was seconded by Council Member Davis.

Council Member McPherson requested an amendment to specify a site “west of Highway 1.”

AMENDED MOTION: Council Member Headding moved the Council direct staff to immediately begin discussions with the California Coastal Commission and Regional Water Quality Control Board to determine the feasibility of constructing a wastewater treatment facility and WRF west of Highway 1 at or near the existing WWTP site. The motion was seconded by Council Member Davis and carried unanimously, 5-0.

MOTION: Council Member Headding moved the Council direct staff within the next 60 days evaluate costs associated with constructing a WWTP/WRF at the Giannini and Righetti sites and bring that back to Council. The motion was seconded by Council Member McPherson.

Council Member McPherson requested an amendment to specify the information brought forward address the advantages and disadvantages of each site.

AMENDED MOTION: Council Member Headding moved the Council direct staff, within the next 60 days, evaluate cost and feasibility associated with constructing a WWTP/WRF at the Giannini and Righetti sites and bring that back to Council. The motion was seconded by Council Member McPherson and carried unanimously, 5-0.

MOTION: Council Member Headding moved that we direct staff to bring back a recommendation on the feasibility of moving forward with an RFP for a design/build project including a WWTP/WRF once a site is selected. The motion was seconded by Council Member Davis.

The Council asked for staff input regarding the suggested RFP process to evaluate the potential cost of all three sites. Mr. Nunley explained the plan has been to move forward with the preferred site and issue a Request for Qualifications (RFQ) for design/build, then review qualifications to develop a short list to work with during the RFP process. Mr. Pannone confirmed that approach is the safest legal approach as the statute clearly lays out the procurement process and everyone is working from the same goal and project so you get competitive prices. The Council agreed to strike “once a site is selected” from the motion.

AMENDED MOTION: Council Member Headding moved the Council direct staff to bring back a recommendation on the feasibility of moving forward with an RFP for a design/build project including a WWTP/WRF. The motion was seconded by Council Member Davis and carried unanimously, 5-0.

MOTION: Mayor Irons moved the Council direct staff to evaluate all outreach options and prepare for further discussions with the community on the results of the Council requested items and bring back to Council. The motion was seconded by Council Member McPherson and carried unanimously, 5-0.

C-2 DISCUSSION AND DIRECTION REGARDING HARBOR ADVISORY BOARD REQUEST TO RESOLVE AMBIGUITIES IN MEASURE D, AND RECOMMENDATION ON MORRO BAY “WORKING WATERFRONT” INITIATIVE; (HARBOR/COMMUNITY DEVELOPMENT)
<https://youtu.be/Sp1vsQH1djk?t=4h26m38s>

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

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

Betty Winholtz, Morro Bay, stated a working waterfront is about commercial fishing, not visitor serving, so to include everything from the Rock to State Park Marina is a misnomer. She does not believe Measure D has ambiguities and is concerned the intent is to redefine it without a vote of the people.

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

Following discussion, there was Council consensus to support staff recommendation for the Harbor Advisory Board (HAB) ad-hoc committee to continue working on Measure D and working waterfront language to provide input to the Planning Commission (PC) ad-hoc committee and vice-versa, the results would then be brought to a Joint PC/HAB meeting, then through the GPAC to Council for final review.

MOTION: Mayor Irons moved the meeting go five minutes past 11:00 p.m. The motion was seconded by Council Member McPherson and passed 4-1 with Council Member Davis opposed.

MOTION: Council Member Makowetski moved the Council follow staff recommendation that HAB ad-hoc members provide input to the PC ad-hoc members on Measure D and

working waterfront language, and vice versa; the results be brought to a joint HAB/PC meeting, with results brought into the GPAC process. The motion was seconded by Council Member Davis and carried unanimously, 5-0.

C-3 APPROVAL OF A COMMUNITY BENEFIT AGREEMENT BETWEEN THE CITY OF MORRO BAY AND TRIDENT WINDS, LLC; (ADMINISTRATION)

Staff requested this item be pulled from the agenda to prepare a revised agreement that will be brought to Council at the first meeting in August.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

<https://youtu.be/Sp1vsQH1djk?t=4h56m40s>

None

E. ADJOURNMENT

The meeting adjourned at 11:05 p.m. The next Regular Meeting will be held on Tuesday, May 23, 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



AGENDA NO: A-6
MEETING DATE: August 8, 2017

Staff Report

TO: Honorable Mayor and City Council **DATE:** July 19, 2017

FROM: Dana Swanson, City Clerk/Risk Manager

SUBJECT: Adoption of Resolution No. 43-17 Approving a Revised and Restated Amendment No. 1 to the 2016-2017 Memorandum of Understanding Between the City of Morro Bay and the Morro Bay Firefighters Association, IAFF Local 3725, incorporating Work Schedule and Leave Accumulations for the Fire Marshal Position

RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 43-17 approving a Revised and Restated Amendment No. 1 to the 2016-2017 Memorandum of Understanding Between the City of Morro Bay ("City") and the Morro Bay Firefighters Association, IAFF Local 3725 ("MBFFA").

FISCAL IMPACT

There is no fiscal impact associated with this action. Salary and benefits for the Fire Marshal position were included in the adopted FY 2017/18 budget.

BACKGROUND/DISCUSSION

The MBFFA is the sole exclusive bargaining agent for City fire fighting employees, for all matters concerning wages, hours and working conditions. On June 27, 2017, the Council adopted Resolution No. 35-17, which amended the MBFFA MOU 2016-17 to extend its term by 1 year until June 30, 2018. That amendment contained reopener language with respect to the work schedule, sick leave accrual rates and vacation leave accrual rates for the new position of Fire Marshal to incorporate language that reflects a 40-hour work week, rather than the 56-hour work week, into the MOU.

On July 14, staff provided MBFFA representatives with a proposed revised agreement and offered to meet and confer to discuss any concerns regarding the Fire Marshal work schedule and accruals, as well as the City's proposed 3-year contract. The members met and voted to accept the attached revised MOU amendment, as presented, and declined the City's offer to meet and discuss a 3-year contract.

ATTACHMENT

1. Resolution No. 43-17

Prepared By: DS Dept Review:
City Manager Review: MRL City Attorney Review: MCH

RESOLUTION NO. 43-17

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
ADOPTING REVISED AND RESTATED AMENDMENT NO. 1
TO THE MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF MORRO BAY
AND THE FIREFIGHTERS ASSOCIATION, IAFF LOCAL 3725,
FOR THE PERIOD OF JULY 1, 2016 THROUGH JUNE 30, 2017**

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

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

WHEREAS, the Memorandum of Understanding between the City and the MBFFA 2016-2017 (“MBFFA MOU 2016-2017”) was duly approved by the City Council on August 23, 2016; and

WHEREAS, prior to the expiration of the MBFFA MOU 2016-2017, the City labor relations representatives and MBFFA representatives successfully met and conferred to negotiate an amendment to the MBFFA MOU 2016-2017 (“First Amendment”), pursuant to both the Meyers-Milias-Brown Act (“MMBA”) (Gov’t Code Section 3500-3511) and the City’s Employer-Employee Relations Resolution No. 08-17; and

WHEREAS, on June 27, 2017, the City approved the First Amendment, which provided in part reopener language with respect to the work schedule, sick leave accrual rates, and vacation leave accrual rates for the new position of Fire Marshal; and

WHEREAS, the City labor relations representatives and MBFFA representatives have successfully negotiated the work schedule and leave accrual rates for the new position of Fire Marshal, and have jointly prepared and executed this Revised and Restated Amendment No. 1 to the MBFFA MOU 2016-2017 (“Revised First Amendment”), which was ratified by the MBFFA on July 15, 2017; and

WHEREAS, pursuant to Gov’t Code § 3505.1, the City Council must approve the terms of any memorandum of understanding or amendment thereto reflecting an agreement between the City and the MBFFA.

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

Section 1. The Revised and Restated Amendment No. 1 to the MBFFA MOU 2016-2017, attached hereto as Exhibit “A,” is hereby approved. The Revised and Restated Amendment No. 1 to the MBFFA MOU 2016-2017 revises and supersedes the Amendment No. 1 to the MBFFA MOU 2016-2017 approved by the City Council on June 27, 2017.

Section 2. Except as expressly provided in the Revised and Restated Amendment No. 1 to the MBFFA MOU 2016-2017, all other provisions of the MBFFA MOU 2016-2017 shall remain in full force and effect.

PASSED AND ADOPTED by the City Council, City of Morro Bay at a regular meeting thereof held on the 8th day of August 2017 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk

REVISED AND RESTATED AMENDMENT NO. 1 TO THE MEMORANDUM
OF UNDERSTANDING BETWEEN THE CITY OF MORRO BAY AND THE
MORRO BAY FIREFIGHTERS ASSOCIATION, IAFF LOCAL 3725, FOR THE
PERIOD OF JULY 1, 2016 THROUGH JUNE 30, 2017

WHEREAS, the City of Morro Bay (hereinafter the "City") has, and continues to, recognize the Morro Bay Firefighters Association, IAFF Local 3725 ("MBFFA") as the sole exclusive bargaining agent for those City fire fighting employees, for all matters concerning wages, hours and working conditions; and

WHEREAS, the Memorandum of Understanding between the City and the MBFFAA ("MBFFA MOU 2016-2017"), which was duly approved by the City Council on August 23, 2016, was scheduled to expire on June 30, 2017; and

WHEREAS, prior to the expiration of the MBFFA MOU 2016-2017, the City labor relations representatives and MBFFA representatives successfully met and conferred to negotiate an amendment to the MBFFA MOU 2016-2017, pursuant to both the Meyers-Milias-Brown Act ("MMBA") (Gov't Code Section 3500-3511) and the City's Employer-Employee Relations Resolution No. 08-17; and

WHEREAS, the City and MBFFA jointly prepared and executed an Amendment No. 1 to the MBFFA MOU 2016-2017 ("First Amendment"), which was ratified by the MBFFA on June 16, 2017 and approved by the City Council by Resolution No. 35-17 on June 27, 2017; and

WHEREAS, the First Amendment provided that during the term of the First Amendment, the parties agreed to retain the option to re-open discussion with respect to the work schedule, sick leave accrual rates, and vacation leave accrual rates for the new position of Fire Marshal only; and

WHEREAS, the parties have successfully met and conferred to negotiate the work schedule and leave accrual rates with respect to the Fire Marshal position, and now desire to prepare a Revised and Restated Amendment No. 1 to the MBFFA MOU 2016-2017 ("Revised First Amendment"); and

WHEREAS, the Revised First Amendment was ratified by the MBFFA on July 16, 2017; and

WHEREAS, the Revised First Amendment shall not be in full force and effect until adopted by resolution by the City Council of the City; and

WHEREAS, except as provided in this Revised First Amendment, all provisions of the MBFFA MOU 2016-2017 shall remain in full force and effect.

NOW, THEREFORE, it is hereby agreed that the MBFFA MOU 2016-2017 is amended in the following particulars only:

Section 1. Section 3.1 of the MBFFA MOU 2016-2017, which lists the classifications comprising the firefighting employees represented by the MBFFA, shall be

amended to add the position of "Fire Marshal" in alphabetical order to the list of represented classifications.

Section 2. Article 7 of the MBFFA MOU 2016-2017, entitled "Term," shall be amended to read in its entirety as follows:

"ARTICLE 7- TERM

Except as otherwise specifically provided herein, the term of this MOU shall be from July 1, 2016, through June 30, 2018."

Section 3. Section 14.2 of the MBFFA MOU 2016-2017, entitled "Health Insurance," shall be amended to read, in its entirety, as follows:

"14.2 HEALTH INSURANCE

14.2.1 MBFFA shall receive a cafeteria plan contribution, including the minimum contribution amount required by CalPERS, as follows:

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

Employee + family - up to \$1,421/month or cost of insurance, whichever is less"

Section 4. Section 14.3 of the MBFFA MOU 2016-2017, entitled "Dental/Life and Vision Insurance," shall be amended to read, in its entirety, as follows:

"14.3 DENTAL/LIFE AND VISION INSURANCE

Life Insurance is provided at \$50,000 per employee. The following rates were effective January 1, 2017:

	<u>Vision</u>	<u>Dental</u>	<u>Life</u>	<u>Totals</u>	<u>City pays</u>	<u>EE pays</u>
Employee only	\$ 8.86	\$ 55.47	\$8.15	\$ 72.48	\$ 69.50	\$ 2.93
Employee + 1	\$ 16.59	\$143.09	\$8.15	\$ 167.83	\$ 156.08	\$11.75
Employee + 2+	\$ 22.59	\$143.09	\$8.15	\$ 173.83	\$ 161.62	\$12.21

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

Section 5. A new section 14.4 shall be added to the MBFFA MOU 2016-2017, to read, in its entirety, as follows:

"14.4 The provisions of this ARTICLE shall be binding on the parties through the remainder of this MOU, and for the term of the MOU, which will be effective upon City Council approval. The parties agree herewith to retain the option to re-open discussion, with respect to this ARTICLE, for any changes to the 2018 health rates."

Section 6. Article 16 of the MBFFA MOU 2016-2017, entitled “Salaries,” shall be amended to read in its entirety as follows:

“ARTICLE 16 SALARIES

- 16.1 Effective July 1, 2017, the CITY shall provide a COLA increase to base salaries for all Unit classifications in the amount of two percent (2%).
- 16.2 Any and all education/ special pay incentives will be added to base salary.
- 16.3 Electronic Deposit. All employees hired after January 1, 2003, shall receive their pay by electronic methods. New hires must present account information for a checking or a savings account, with an ACH member financial institution.
- 16.4 CITY conducted a salary survey for informational purposes for successor negotiations as previously agreed in the MBFFA MOU 2016-2017. The salary surveys exchanged used the survey cities of Arroyo Grande, Atascadero, CDF, Cambria, Paso Robles, and San Luis Obispo.”

Section 7. A new Article 29 of the MBFFA MOU 2016-2017 is added, to read in its entirety, as follows:

“ARTICLE 29 WORK SCHEDULE AND LEAVE PROVISIONS SPECIFIC TO THE POSITION OF FIRE MARSHAL

The foregoing sections in this Article 29 shall apply only to the position of Fire Marshal. The Fire Marshal’s work schedule, and entitlement to overtime, compensatory time off, vacation leave, and holiday leave shall only be as provided in this Article 29.

29.1. Work Schedule.

29.1.1. Workday. The normal workday shall be eight hours of work in a 24-consecutive hour period, except in cases of emergencies. That work schedule may be altered to conduct inspections during special CITY events and is subject to call back for emergencies. In no case shall the Fire Marshal cover 24-hour shifts.

29.1.2. Work Shift. The Fire Marshal shall be scheduled to work on regular work shifts having regular starting and quitting times.

29.1.3. Work Week. The normal workweek shall be five workdays and two consecutive days of rest in a seven-day period, beginning Saturday, 12:00 a.m., and ending seven days later on Friday night at 11:59 p.m., except in cases of special CITY events or emergencies, or at the specific request of the Fire Marshal and approval of the fire chief.

29.1.4. Overtime Compensation. Overtime for the Fire Marshal is defined as all work required by the CITY, and actually performed beyond 40 hours worked in a workweek, as defined by FLSA,

and shall be compensated at one and one-half times the employee's regular rate of pay, as defined by FLSA. The Fire Marshal shall not be eligible for daily overtime. Vacation time and compensatory time off shall be treated as hours worked. The Fire Marshal shall not be entitled to a premium rate of pay for work on Saturdays, Sundays, holidays, or regular days of rest, provided he/she does not work beyond 40 hours in a workweek. (For example, if due to a special CITY event, the Fire Marshal works five, eight-hour work days from Wednesday through Sunday, he/she will not be entitled to any premium rate of pay.)

29.1.5 Compensatory Time. The Fire Marshal shall be eligible to elect for compensatory time off (CTO) in lieu of paid overtime, subject to the foregoing requirements and restrictions. Compensatory time off earned will accrue at one and one-half (1.5) times hours worked. CTO may be elected for overtime incurred due to professional training time only. Maximum CTO accrual will be 100 hours. All overtime earned after CTO is accrued to the 100-hour maximum will be paid in cash. Accrued CTO may be cashed out upon the request of the Fire Marshal and the approval of the department. CTO accrued at time of separation will be paid off. CTO may be taken off upon Fire Marshal request and department approval. CTO will not be approved if it will require overtime.

29.2. Vacation Leave. All leave time (vacation, sick leave, holiday, etc.) must be taken on an hour-for-hour basis, equaling actual time off, regardless of accumulation rates.

During the term of this AGREEMENT, paid vacation leave for the Fire Marshal position shall be earned at the following rate:

SERVICE YEARS	ENTITLEMENT IN DAYS
1 thru 2	10
3 thru 4	11
5 thru 6	12
7 thru 8	13
9 thru 10	14
11 thru 12	15
13 thru 14	16
15 thru 16	17
17 thru 18	18
19 thru 20	19
21 or more	20

The standard for vacation time is eight (8) hours equals one (1) day.

The Fire Marshal may exercise an option to convert into cash a maximum of forty (40) hours of accrued vacation leave each fiscal year. Such conversion shall be computed at the employee's current base hourly rate, on an hour-per-hour basis.

Unused vacation leave may be carried over, into the following year, to a maximum of two hundred twenty (220) hours. In the event the Fire Marshal exceeds the 220-hour maximum as of

the pay period containing November 1 of each year, he/she will have the following options related to the excess hours:

- a. Cash out;
- b. Convert hours to sick leave on an hour-for-hour basis; and/or
- c. Paid to deferred compensation.

The CITY shall take said action(s) with the pay period containing December 1 of each year. Payment shall be computed, based upon the employee's base hourly rate of pay as of June 30 of the same calendar year.

In the event of separation from the CITY, the Fire Marshal shall be entitled to pay for accumulated vacation, prior to separation, at his/her current base hourly rate of pay.

29.3. Holiday Leave. For the purpose of this AGREEMENT, the following days are the holidays for the employee in the Fire Marshal position:

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

Holidays falling on Saturday shall be observed on the preceding Friday and holidays falling on Sunday shall be observed on the following Monday. Such observed holidays shall be considered designated holidays for purposes of overtime.

One holiday equals eight (8) hours. It is agreed that when a holiday is proclaimed by the Mayor of the CITY, the Fire Marshal shall be granted time-off in the same number of equivalent work hours. Such time-off shall authorized by the Fire Chief.

The Fire Marshal may accumulate up to a maximum of forty-eight (48) hours of holiday time. Hours of holiday time, accumulated over 48 hours will be paid off. When the Fire Marshal terminates employment with the CITY, he/she shall receive pay for his/her current holiday balance, up to a maximum of 48 hours, at his/her current base hourly rate.

CITY's denial of requested holiday time off shall be neither arbitrary nor capricious.

The first payroll including July 1, the Fire Marshal's leave bank will be credited with 16 hours floating holiday."

29.4 One-year Review. The CITY and MBFFA agree to review the Fire Marshal position and job description in one year to ensure the positioning is functioning as expected.

Section 8. In order to reflect salary increases effective July 1, 2017, Attachment "A" to the MBFFA MOU 2016-2017 shall be amended and replaced with Attachment "A-1," attached hereto and incorporated herein by this reference.

Section 9. This Revised First Amendment replaces and supersedes in its entirety the First Amendment to the MBFFA MOU 2016-2017 approved by City Council on June 27, 2017. Except as expressly provided in this Revised First Amendment, all other provisions of the MBFFA MOU 2016-2017 shall remain in full force and effect.

Section 10. This Revised First Amendment shall not be in full force and effect until adopted by resolution by the City Council of the City.

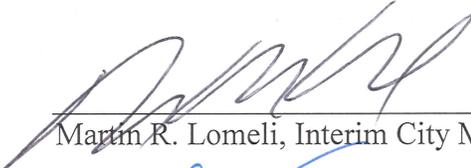
IT IS SO AGREED:

**MORRO BAY FIREFIGHTERS
ASS'N, IAFF LOCAL 3725**

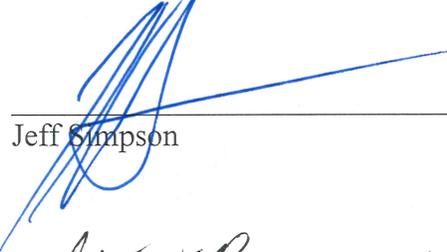
CITY OF MORRO BAY



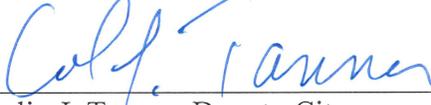
Michael Hoese



Martin R. Lomeli, Interim City Manager



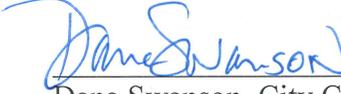
Jeff Simpson



Colin J. Tanner, Deputy City
Attorney/Labor Negotiator



Grant Brady



Dana Swanson, City Clerk



Laurie Goforth, Human Resources Analyst

EXHIBIT A-1

CITY OF MORRO BAY FY 17/18 MBFFA SALARY SCHEDULE

TITLE	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5
FIREFIGHTER	56,771	59,610	62,590	65,720	69,006
FIRE ENGINEER	62,066	65,169	68,428	71,849	75,442
FIRE CAPTAIN	71,345	74,912	78,658	82,591	86,720
FIRE MARSHAL	84,693	88,927	93,374	98,042	102,944



AGENDA NO: A-7

MEETING DATE: August 8, 2017

Staff Report

TO: Honorable Mayor and City Council

DATE: July 21, 2017

FROM: Ikani Taumoepeau, Deputy City Manager

SUBJECT: Approval of Lease Agreements with Estero Bay Community Radio and the Morro Bay Historical Society (695 Harbor Street)

RECOMMENDATION

Staff recommends Council approve lease agreements with the Estero Bay Community Radio and the Morro Bay Historical Society.

FISCAL IMPACT

The City will continue to receive monthly lease payments of \$100 from the Morro Bay Historical Society and \$75 from Estero Bay Community Radio.

BACKGROUND

The old fire house site at 695 Harbor Street is wholly owned by the City of Morro Bay. The City leased the building to the Chamber of Commerce in 2013, which sub-leased office space to certain businesses under the Morro Bay Chamber Incubator Program. When the Chamber lease expired in December 31, 2015, the City took over management of the facility from the Chamber and leased back to the Chamber the Visitor Center space and two offices.

During that transition, there were still tenants in the building that were part of the old incubator program; those were the Estero Bay Community Radio and the Morro Bay Historical Society, which had sub-leases with the Chamber. The City planned to enter into lease agreements with those organizations at a future time. Since the City resumed management of the facility, those lease agreements need to be updated between the City and those tenants.

DISCUSSION

The City desires to formalize lease agreements with the previous incubator tenants, as their previous leases became void once the Chamber lease expired in December 2015. The Morro Bay Historical Society entered the incubator program on July 1, 2015, with a three-year lease of \$100 per month. That organization would like to enter another three-year lease for the same rental rate.

The Estero Bay Community Radio entered the incubator program on April 1, 2014, with a three-year lease of \$75 per month. According to that incubator lease, the Radio Station paid a reduced rental rate due to their in-kind offer of \$250 per month for radio time of community and Chamber events. The Radio Station would like to continue the lease of \$75 per month for one year, but plans to work with the City to formalize a partnership agreement.

01181.0001/330874.3

Prepared By: IT

Dept Review: _____

City Manager Review: MRL

City Attorney Review: JWP

CONCLUSION

Staff recommends Council approve the 1-year lease for the Estero Bay Community Radio and the 3-year lease for the Morro Bay Historical Society.

ATTACHMENTS

1. Proposed Lease Agreement with Estero Bay Community Radio
2. Proposed Lease Agreement with Morro Bay Historical Society
3. Incubator Program Lease Agreement for Estero Bay Community Radio
4. Incubator Program Lease Agreement for Morro Bay Historical Society

Lease Agreement

AGREEMENT

This lease agreement (“this Lease”) is made and entered into this ____ day of _____, 2017 by and between the CITY OF MORRO BAY, a municipal Corporation hereinafter referred to as “LESSOR”, and THE ESTERO BAY COMMUNITY RADIO, a California non-profit corporation hereinafter referred to as “LESSEE”.

RECITALS

WHEREAS, LESSOR is the owner of certain real property located at 695 Harbor Street, Morro Bay CA (the “Premises”); and

WHEREAS, LESSEE is organized to provide a publicly accessible, diverse radio broadcasting for the entertainment, education and enjoyment of the community; and

WHEREAS, LESSOR and LESSEE have mutual interests in enhancing the quality of life and vitality of the community; and

WHEREAS, LESSOR and LESSEE desire to enter into a lease agreement for a portion of the Premises.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS;

1. LEASE: LESSOR hereby leases to LESSEE and LESSEE agrees to accept from LESSOR the lease of the portions of the Premises as described in Section 4., below.
2. RENT: During the term on this Lease, LESSEE agrees to pay the sum of \$75.00 per month.
3. TERM: The term of this Lease shall commence on August 9, 2017, and terminate without notice on August 8, 2018, unless sooner terminated as a herein provided term (the “Term”). Any holdover of possession of the Premises by LESSEE beyond the Term shall constitute a month-to-month tendency on the same terms and conditions of this Lease and LESSEE agrees to vacate the Premises upon thirty-days’ (30-days’) prior written notice from LESSOR.
4. PREMISES: The Premises for purpose of this Lease shall include only those portions of the Premises, as of the effective date of this Lease, that are used to house LESSEE’S broadcasting equipment and related supplies and materials. In addition, LESSEE shall have access to and use of, but not control of, common areas including both bathrooms, the conference room, hallways, entranceways and the kitchen.
5. USE OF PREMISES: LESSEE shall use the Premises solely for the purpose of the operation of Radio station 97.3 and directly related operations.

6. **FIXTURES AND ALTERATIONS:** LESSEE shall not make or cause to be made any alterations, additions or improvements, of a substantial nature or make any structural changes in the building (the "Improvements") without first notifying LESSOR and obtaining prior written approval from LESSOR for the Improvements. In the event the Improvements include any structural change, LESSEE shall supply to LESSOR plans and specifications for such work, and obtain prior written approval. LESSEE shall be responsible for all costs associated with any of the Improvements. All permits necessary for the Improvements, shall be at LESSEE'S expense and obtained prior to any work any of on the Improvements.
7. **ITEMS INSTALLED BY LESSEE:** All decorations and additions and any of the Improvements in the Premises, except for structural changes, made by LESSEE shall remain the property of LESSEE for the term of this Lease or any extension or renewal thereof. Upon expiration of this Lease, or any renewal term thereof, LESSEE shall remove all decorations and additions and those portions of the Improvements that are LESSEE property, and restore the Premises, ordinary wear and tear excepted, to its condition at the time of original occupancy, unless written approval is obtained by LESSOR to allow such decorations, additions or the Improvements to remain.
8. **SECURITY:** LESSOR agrees to provide locks on doors of the Premises to be used, except for the doors for access to the Common Area, exclusively by LESSEE for its use.
9. **MAINTENANCE:** LESSOR shall be responsible for the overall interior and exterior non-routine maintenance of the Premises, except that LESSOR shall have no duty, obligation, or liability whatever to care for or maintain or rebuild the Premises or surrounding grounds except at its sole discretion. LESSEE shall be responsible for routine janitorial and maintenance of the Premises and the Common Areas.
10. **SURRENDER OF PREMISES:** At the expiration of the tenancy hereby created, LESSEE shall surrender the Premises in the same condition as the Premises were upon delivery of possession thereto under this Lease, reasonable wear and tear excepted, and damage by unavoidable casualty not within the reasonable control of LESSEE excepted, and shall surrender all keys for the Premises to LESSOR. LESSEE shall thereupon remove all its fixtures, and any alterations or improvements as provided above before surrendering the Premises and shall repair any damage to the Premises caused thereby. LESSEE's obligation to observe or perform this covenant shall survive the expiration or other termination of the term of this lease.
11. **INSURANCE:** LESSEE shall, during the full term of this lease, keep in full force and effect an appropriate policy of liability and property damage insurance with respect to the Premises in the minimum amounts of \$1,000,000 each. The policies shall name LESSOR and its officers, employees and representatives as additional insureds and shall contain a clause the insurer will not cancel or change the insurance without first giving LESSOR 10-days' prior written notice. LESSEE shall exhibit to LESSOR, at any time upon

demand, a certificate of insurance, or other evidence of insurance, and shall keep such policies in effect during the full term of this Lease or any extensions thereof.

12. FIRE, EXTENDED COVERAGE: LESSEE agrees to purchase and maintain, during the full term of this Lease or any extensions thereof, a policy of fire, extended coverage, insurance, which policy shall not be less than 100% of the replacement value of the Premises. The cost of such insurance shall be at the sole cost of LESSEE.
13. INDEMNIFICATION: LESSEE agrees to indemnify, defend and hold harmless LESSOR, its officers, employees and agents, from and against any and all claims, actions, damages, liability, expenses, costs and reasonable attorney's fees resulting or related to any loss of life, personal injury or damage to property, or any other liability, arising out of any occurrence related to the Premises or the occupancy or use by LESSEE or any of its agents, contractors, employees, servants, lessees or concessionaires of the Premises or any part thereof, occasioned wholly or in part by any act or omission of LESSEE or any of its agents, contractors, employees, servants, lessees or concessionaires, or for any act or omission by LESSOR in furtherance of the interests of LESSEE for any reason in connection with this Lease.
14. UTILITIES & TAXES: LESSEE shall not be responsible to pay for utilities used.
15. ASSIGNMENT AND SUB-LETTING: LESSEE will not assign this lease, in whole or in part, nor sub-let all or any part of the Premises.
16. GOVERNMENTAL REGULATIONS: LESSEE shall at LESSEE's sole cost and expense, comply with all of the requirements of all county, municipal, state, federal and other applicable government authorities, now in force, or which may hereafter be in force, pertaining to the Premises, and shall faithfully observe in the use of the Premises all municipal and county ordinances, and all state and federal statutes now, or which may hereafter be, in force.
17. DESTRUCTION OF PREMISES: If the Premises shall be damaged or destroyed by fire, the elements, unavoidable accidents or other casualty, then all insurance proceeds payable by reason thereof shall be applied to the repair, reconstruction and renovation of Premises.
18. CONDEMNATION: In the event any or all of the Premises are taken, in whole or in part, through the exercise of any power of eminent domain exercised by any state, federal or local municipality (including LESSOR) having the power thereof, any sums paid by such condemning authority shall be paid to LESSOR.
19. DEFAULT: In the event of any failure of LESSEE to perform any of the terms, conditions or covenants of this Lease to be observed or performed by LESSEE for more than 30 days after written notice of such default shall have been give to LESSEE, or if LESSEE shall abandon the Premises, then LESSOR, besides other rights or remedies it

may have, shall have the immediate right of reentry and may remove all persons and properties from the Premises without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby.

20. ENTIRE AGREEMENT: This Lease, and any exhibits attached hereto and forming a part hereof set forth all the covenants, promises, agreements, conditions and understanding between the parties concerning the Premises, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them, other than or herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this lease shall be binding upon either party unless reduced to writing and signed by both.
21. NOTICE: Any notice, demand, request or other instrument which may be required to be given under this lease shall be deemed delivered when sent by ordinary United States Mail, postage prepaid, addressed to LESSOR care of its City Manager, or LESSEE care of its then acting President.
22. PARTIAL INVALIDITY: If any term, covenant or condition of this lease, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this lease, or the application of such term, covenant or condition to persons or circumstances other than those to which it is held invalid, or unenforceable, shall not be affected thereby; and each term, covenant or condition of this lease shall be valid and be enforced to the fullest extent permitted by law. If the length, term or duration of this Lease, in any way is in violation of any statute, law or Constitution or is invalid for any reason whatsoever, then this Lease shall be deemed a lease from year to year, and all other provisions hereunder shall remain the same.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this ____ day of _____ 2017, at Morro Bay, California

CITY OF MORRO BAY

ESTERO BAY COMMUNITY RADIO

By: _____
MARTIN R LOMELLI
Interim City Manager

By: _____
HAL ABRAMS
Director

Attest:

By: _____

Its _____

DANA SWANSON
City Clerk

Approved As To Form:

JOSEPH W. PANNONE
City Attorney

Lease Agreement

AGREEMENT

This lease agreement (“this Lease”) is made and entered into this ____ day of _____, 2017 by and between the CITY OF MORRO BAY, a municipal Corporation hereinafter referred to as “LESSOR”, and THE MORRO BAY HISTORICAL SOCIETY, a California non-profit corporation hereinafter referred to as “LESSEE”.

RECITALS

WHEREAS, LESSOR is the owner of certain real property located at 695 Harbor Street, Morro Bay CA (the “Premises”); and

WHEREAS, LESSEE is organized to promote and sustain the history of LESSOR and the community for the education and enjoyment of the community; and

WHEREAS, LESSOR and LESSEE have mutual interests in enhancing the quality of life of the community; and

WHEREAS, LESSOR and LESSEE desire to enter into a lease agreement for a portion of the Premises.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS;

1. LEASE: LESSOR hereby leases to LESSEE and LESSEE agrees to accept from LESSOR the lease of the portions of the Premises as described in Section 4., below.
2. RENT: During the term on this Lease, LESSEE agrees to pay the sum of \$100.00 per month.
3. TERM: The term of this Lease shall commence on August 9, 2017 and terminate without notice on August 8, 2020, unless sooner terminated as herein provided term (the “Term”). Any holdover of possession of the Premises by LESSEE beyond the Term shall constitute a month-to-month tenancy on the same terms and conditions of this Lease and LESSEE agrees to vacate the Premises upon thirty-days’ (30-days’) prior written notice from LESSOR.
4. PREMISES: The Premises for purpose of this Lease shall include only those portions of Premises, as of the effective date of this Lease, occupied by LESSEE for operation of LESSEE’S functions. In addition, LESSEE shall have access to and use of, but not control of, common areas including both bathrooms, the conference room, hallways, entranceways and the kitchen.

5. **USE OF PREMISES:** LESSEE shall use the Leased Premises solely for the purpose of LESSEE'S non-profit operations.
6. **FIXTURES AND ALTERATIONS:** LESSEE shall not make or cause to be made any alterations, additions or improvements, of a substantial nature or make any structural changes in the building (the "Improvements") without first notifying LESSOR and obtaining prior written approval from LESSOR for the Improvements. In the event the Improvements include any structural change, LESSEE shall supply to LESSOR plans and specifications for such work, and obtain prior written approval. LESSEE shall be responsible for all costs associated with any of the Improvements. All permits necessary for the Improvements, shall be at LESSEE'S expense and obtained prior to any work any of on the Improvements.
7. **ITEMS INSTALLED BY LESSEE:** All decorations and additions and any of the Improvements in the Premises, except for structural changes, made by LESSEE shall remain the property of LESSEE for the term of this Lease or any extension or renewal thereof. Upon expiration of this Lease, or any renewal term thereof, LESSEE shall remove all decorations and additions and those portions of the Improvements that are LESSEE property, and restore the Premises, ordinary wear and tear excepted, to its condition at the time of original occupancy, unless written approval is obtained by LESSOR to allow such decorations, additions or the Improvements to remain.
8. **SECURITY:** LESSOR agrees to provide locks on doors of the Premises to be used, except for the doors for access to the Common Area, exclusively by LESSEE for its use.
9. **MAINTENANCE:** LESSOR shall be responsible for the overall interior and exterior non-routine maintenance of the Premises, except that LESSOR shall have no duty, obligation, or liability whatever to care for or maintain or rebuild the Premises or surrounding grounds except at its sole discretion. LESSEE shall be responsible for routine janitorial and maintenance of the Premises and the Common Areas.
10. **SURRENDER OF PREMISES:** At the expiration of the tenancy hereby created, LESSEE shall surrender the Premises in the same condition as the Premises were upon delivery of possession thereto under this Lease, reasonable wear and tear excepted, and damage by unavoidable casualty not within the reasonable control of LESSEE excepted, and shall surrender all keys for the Premises to LESSOR. LESSEE shall thereupon remove all its fixtures, and any alterations or improvements as provided above before surrendering the Premises and shall repair any damage to the Premises caused thereby. LESSEE'S obligation to observe or perform this covenant shall survive the expiration or other termination of the term of this lease.
11. **INSURANCE:** LESSEE shall, during the full term of this lease, keep in full force and effect an appropriate policy of liability and property damage insurance with respect to the Premises in the minimum amounts of \$1,000,000 each. The policies shall name LESSOR and its officers, employees and representatives as additional insureds and shall contain a

clause the insurer will not cancel or change the insurance without first giving LESSOR 10-days' prior written notice. LESSEE shall exhibit to LESSOR, at any time upon demand, a certificate of insurance, or other evidence of insurance, and shall keep such policies in effect during the full term of this Lease or any extensions thereof.

12. FIRE, EXTENDED COVERAGE: LESSEE agrees to purchase and maintain, during the full term of this Lease or any extensions thereof, a policy of fire, extended coverage, insurance, which policy shall not be less than 100% of the replacement value of the Leased Premises. The cost of such insurance shall be at the sole cost of LESSEE.
13. INDEMNIFICATION: LESSEE agrees to indemnify, defend and hold harmless LESSOR, its officers, employees and agents, from and against any and all claims, actions, damages, liability, expenses, costs and reasonable attorney's fees resulting or related to any loss of life, personal injury or damage to property, or any other liability, arising out of any occurrence related to the Premises or the occupancy or use by LESSEE or any of its agents, contractors, employees, servants, lessees or concessionaires, of the Premises or any part thereof, occasioned wholly or in part by any act or omission of LESSEE or any of its agents, contractors, employees, servants, lessees or concessionaires, or for any act or omission by LESSOR in furtherance of the interests of LESSEE for any reason in connection with this Lease.
14. UTILITIES & TAXES: LESSEE shall not be responsible to pay for utilities used.
15. ASSIGNMENT AND SUB-LETTING: LESSEE will not assign this lease, in whole or in part, nor sub-let all or any part of the Premises.
16. GOVERNMENTAL REGULATIONS: LESSEE shall at LESSEE's sole cost and expense, comply with all of the requirements of all county, municipal, state, federal and other applicable government authorities, now in force, or which may hereafter be in force, pertaining to the Premises, and shall faithfully observe in the use of the Premises all municipal and county ordinances, and all state and federal statutes now, or which may hereafter be, in force.
17. DESTRUCTION OF PREMISES: If the Premises shall be damaged or destroyed by fire, the elements, unavoidable accidents or other casualty, then all insurance proceeds payable by reason thereof shall be applied to the repair, reconstruction and renovation of Premises.
18. CONDEMNATION: In the event any or all of the Premises are taken, in whole or in part, through the exercise of any power of eminent domain exercised by any state, federal or local municipality (including LESSOR) having the power thereof, any sums paid by such condemning authority shall be paid to LESSOR.
19. DEFAULT: In the event of any failure of LESSEE to perform any of the terms, conditions or covenants of this Lease to be observed or performed by LESSEE for more

than 30 days after written notice of such default shall have been give to LESSEE, or if LESSEE shall abandon the Premises, then LESSOR, besides other rights or remedies it may have, shall have the immediate right of reentry and may remove all persons and properties from the Premises without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby.

20. ENTIRE AGREEMENT: This Lease, and any exhibits attached hereto and forming a part hereof set forth all the covenants, promises, agreements, conditions and understanding between the parties concerning the Premises, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them, other than or herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this lease shall be binding upon either party unless reduced to writing and signed by both.
21. NOTICE: Any notice, demand, request or other instrument which may be required to be given under this lease shall be deemed delivered when sent by ordinary United States Mail, postage prepaid, addressed to LESSOR care of its City Manager, or LESSEE care of its then acting President.
22. PARTIAL INVALIDITY: If any term, covenant or condition of this lease, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this lease, or the application of such term, covenant or condition to persons or circumstances other than those to which it is held invalid, or unenforceable, shall not be affected thereby; and each term, covenant or condition of this lease shall be valid and be enforced to the fullest extent permitted by law. If the length, term or duration or this Lease, in any way is in violation of any statute, law or Constitution or is invalid for any reason whatsoever, then this Lease shall be deemed a lease from year to year, and all other provisions hereunder shall remain the same.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this ____ day of _____ 2017, at Morro Bay, California

CITY OF MORRO BAY

MORRO BAY HISTORICAL SOCIETY

By: _____
MARTIN R LOMELLI
Interim City Manager

By: _____
GLENN SILLOWAY
Director

Attest:

By: _____

Its _____

DANA SWANSON
City Clerk

Approved As To Form:

JOSEPH W. PANNONE
City Attorney

MORRO BAY CHAMBER INCUBATOR PROGRAM

SPONSORED BY THE MORRO BAY CHAMBER OF COMMERCE

Incubator Contractual Agreement

The Morro Bay Chamber of Commerce Corporation (“Corporation”) is a non-profit 501c 6 corporation, which, promotes the community's economic vitality, quality of life and provides a united base for the community to advance and prosper. In addition the Chamber provides support services for programs such as: The Morro Bay Chamber Incubator Program and in conjunction with the Small Business Development Center (“SBDC”) is administering all the phases of the The Morro Bay Chamber Incubator Program.

- 1. Description of Services.** This Incubator Contractual Agreement (“Agreement”) between [Morro Bays Community Radio Station “97.3” \(“Radio Station”\)](#) and The Morro Bay Chamber of Commerce Corporation (Corporation) provides that the undersigned [Radio Station](#) will be provided office space and general facilities as outlined in the Incubator Policies and Contratural Agreements (“Policies”) overview., The Incubator Program provides [Radio Station](#) with support, mentoring, and other resources to launch their businesses. Corporation will provide [Radio Station](#) with access to the Premises and any Services as outlined in this agreement and may provide form time to time, other Services (collectively, the “Services”) as Corporation may seem fit at 695 Harbor st. Morro Bay, California (“Premises”)
- 2. Acceptance of Terms.** The Services are at all times subject to this Agreement and the Morro Bay Chamber Incubator Program (“Incubator Program”) it's Policies and Contractual Agreement. Corporation reserves the right to terminate any currently individual resource or service at any time.
- 3. Terms of Agreement.** The [Radio Station](#) shall be allowed to occupy a pre-arranged office space for the full 3yr contractual agreement beginning on April 1st 2014. (There initial launch date) and at that time have full access to said premises. The [Radio Station](#) will pay a reduced rental fee of \$75.00 per month with an in-kind value of \$ 250.00 per month. In exchange for this reduced rental fee, [Radio Station](#) will provide The Chamber with the following Radio time informing listeners about:
 - Chamber mixers and location
 - Chamber forums/important meetings
 - Chamber events
 - 15 minute Chamber Business Interviews (Monthly)
 - Circle of Excellence Business highlights
 - Chamber new member promo.

- Community events
- Municipal meeting coverage
- Emergency broadcast.

4. Access. Radio Station will have access 24 hours a day, 7 days a week.

5. Termination.

- Corporation reserves the right to terminate Radio Stations participation in and any use of Premises or Services if there is a material breach of any provision of the Agreement. Corporation shall first provide written notice to the Radio Station with at least 7 days notice with an opportunity to cure a potential breach of this Agreement. The Radio Stations Designee is responsible for engaging with the Chamber to cure the potential breach. If the Radio Station fails to cure within the time period, then the Agreement shall be terminated for the Radio Station and its employees.
- Corporation reserves the right to immediately and without notice terminate this Agreement with a Radio Station or any individual incubator member or members participation in any Services due to reasonable cause as determined solely by Corporation to protect personal safety of the Radio Station or others, or property and to insure the maintenance of order.
- Radio Station may also request to leave the program at any time and to terminate the Agreement.

6. Upon Termination or Expiration.

- Within 30 days of expiration or notice of termination the Radio Station shall be allowed to apply for an extension to their previously determined contractual agreement, which will then be reviewed and decided upon by the Corporation's executive committee. In the event the contract is extended all previous agreements will apply to the extended period. In the event the contract is not extended the Radio Station shall vacate the facility on the expiration or termination of the Agreement, whichever occurs first.
- When vacating the facility, Radio Station shall remove all personal property, leave the Corporation's work area in a clean and orderly condition, normal and reasonable wear and tear accepted, to avoid cleaning fees, and return keys as instructed to avoid re-keying charges. Radio Station or any employees of Radio Station vacating after the required date and time will be assessed a late charge and charged for recovery costs of related and appropriate expenses.
- Personal property left by the Radio Station after expiration or termination, or abandonment of this Agreement will be disposed of in accordance with applicable State law. The Corporation is hereby relieved of any liability for personal property left on the premises.

7. Insurance.

- Corporation carries Commercial General Liability insurance, Radio Station is not required to obtain an insurance policy. Corporation's insurance does not cover the personal and business assets of the Radio Station and or its employees. It is strongly suggested that Radio Station carry a Renters Insurance policy or similar policy to cover Radio Stations personal or business assets while it is being used and stored on the premises.

8. Business License.

- Radio Station may be required by the City of Morro Bay to obtain a business license for

activities **Radio Station** engages in within the Premises. The purpose of the City's business license regulations is to provide for necessary regulation of lawful businesses being conducted within the City in the interest of the public health, safety and welfare of the people of the City.

9. Severability.

- In the event that any provision or portion of this Agreement is determined to be invalid, illegal or unenforceable for any reason, in whole or in part, the remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect to the fullest extent permitted by applicable law.

10. Notices.

- Notices shall be given electronically to the **Radio Station** at the e-mail address stated herein, or in writing by any other reasonable means (such as by fax, personal delivery, recognized overnight delivery, or by certified mail, postage pre-paid and return receipt requested), and to Corporation at the e-mail address stated immediately below, or to such other address as shall be given by either party to the other in writing. All notices shall be deemed to have been given and received on the earlier of actual delivery (except that faxes and e-mails sent on a non-business day or after business hours will be deemed received on the next business day) or three days from the date of postmark.

To Corporation: jennifer.redman@edwardjones.com

And copies to: garychris1944@gmail.com

**Legal Counsel, Morro Bay Chamber of Commerce, 695 Harbor st
Morro Bay, 93442**

11. Fax-scanned signatures.

- The parties agree that this Agreement will be considered signed by an original signature when the signature of a party is delivered by facsimile transmission or scanned into an electronic file and transmitted by email or fax. Such facsimile signatures will be treated in all respects as having the same effect as an original signature.

12. Execution.

- This Agreement may be executed by the parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

I hereby acknowledge that I have read and understand all of the conditions contained in the Corporation Incubator Program Agreement and agree to abide by all the terms and conditions related to my participation with the Morro Bay Chamber of Commerce Corporation's Incubator Program. I represent and warrant that I am over 18yrs of age and that I have all requisite legal power and authority to enter into and abide by the terms and conditions of this Agreement and no further authorization or approval is necessary.

Radio Station representative Printed Name _____
Representative's Signature **Date** **Email**

- **Acknowledged on behalf of Morro Bay Chamber of Commerce Inc.**

Jennifer Redman
Board President, MBCC Inc.

Date

Hal.

MORRO BAY CHAMBER INCUBATOR PROGRAM

SPONSORED BY THE MORRO BAY CHAMBER OF COMMERCE

INCUBATOR POLICIES AND CONTRACTURAL AGREEMENTS

January 1, 2014

Welcome to the Morro Bay Chamber of Commerce's Incubator program.

Since the Chamber offices will be accommodating numerous business ventures and their own official executive offices from which all occupants will be conducting their respective businesses, it is important that everyone understand the policies, contractual agreements and limitations respectively as they pertain to the occupation of the premises for the duration of their individual agreements.

These General Policies shall remain in effect for the duration of the individual contractual agreements, may be modified or changed as the conditions may dictate, and the Chamber shall expect all tenants to comply or risk termination of their contractual agreements with a 30 day written notice.

Sincerely,

The Morro Bay Chamber of Commerce

Note: Nothing within this document supersedes specific terms and conditions found in your individual Contractural Agreement.

Page 1

1. Tenants

The Morro Bay Chamber of Commerce (“Chamber”) provides varying access to the facility, resources, and services based on individual Contractual Agreements

- a. Incubator tenants (“Tenants”) who have signed and agreed to Contractual Agreements are assigned office space within the facility for a term not to exceed 3yrs, and will be provided with on-going mentorship, support, and infrastructure in accordance with their respectful agreements.
- b. All employees (whether paid or volunteers) and visitors will be expected to comply to all policies and procedures or risk termination of the related tenants agreement and said tenant given 30 day written notice to vacate the premises.

2. Contact Person

For general questions, as well as any concerns relating to maintenance and repairs, please contact:

A) Execitve Director

Kelly Wells
(805) 772 4467

kelly@morrobay.org OR

B) Chamber Board President

Jennifer Redman
(805) 772 7938

jennifer.redman@edwardjones.com

C) Chamber Board Treasurer

Chris Christensen
(805) 234 2549
garychris1944@gmail.com

3.Payment of Accounts

The payment of any monies due by any tenant is due the first business day of each month. Outstanding accounts will be charged a \$10.00 late fee per week. Mailed payments are recorded as received and Tenant is responsible if payments are lost, late, misdirected, mutilated or delayed. No checks are accepted for funds drawn from a non-US bank. Late fees and returned check fee will be charged.

4. Business Hours

Normal business hours are from Monday through Friday, from 8:00AM until 4:00PM and on Saturdays only if prearranged. (Normal Business Hours). A Morro Bay Chamber of Commerce staff member will be on duty during Normal Business Hours. The office is closed on all major holidays and on Sundays.

- a. Tenants and their employees whether paid or volunteer shall have access to the facilities 24 hours a day, seven days a week, during their ageed upon term.

5. Keys

A key to the main entrance will be provided to each tenant for which each tenant must sign.

- a. No duplicates may be made without the express permission of the Chamber of Commerce.

- b. Tenants will be charged \$100.00 to their account per key lost, in addition to any cost resulting in the need to replace the main entrance lock and the replacement keys for all main entrance key holders.
- c. Any loss of keys may require rekeying of the building locks and be the financial responsibility of the tenant.

6. Parking

All vehicles shall park in marked parking spots only, or on the city street parking areas.

7. Guests

Tenants will be responsible for ensuring their guests abide by these policies and covenants, and the inviting tenant will be responsible for their guests actions at all times. Tenants are absolutely accountable for and responsible for the conduct of their guests.

8. Board Room

Board room access and availability shall be determined by Contractual Agreement and pre-arranged reservations made through the Chamber staff. Please contact a staff or Board member of the Chamber for any such negotiations.

9. Mail

All mail received at the Chamber offices will be placed in the respective mail slot of each tenant located in the main hallway. The tenant is responsible for picking up the tenants mail from his or hers mail slot. The Chamber does not provide outgoing mail services.

10. Restrooms

All restrooms in the building will be unlocked 24/7 unless occupied.

11. Printing or Photocopying

Printing and photocopying is not at this time available and is the sole responsibility of the tenant. The Chamber may at some time in the future make available a printing and photocopying machine at a standard cost and fee structure per page.

12. Repairs

For any Chamber facility emergency and non-emergency maintenance problems or service needs occurring inside or outside the facility, please contact the Chamber Executive Director, Board President, or Board Treasurer respectfully at his or hers phone or email numbers or email address. Non-emergency maintenance may include nondestructive and non-invasive problems such as restrooms, leaky faucets, unclean common areas, lack of paper towels or toilet paper in restrooms, pest elimination problems, water puddles, replacement of light bulbs and any other such issues.

MORRO BAY CHAMBER INCUBATOR PROGRAM

SPONSORED BY THE MORRO BAY CHAMBER OF COMMERCE

Incubator Contractual Agreement

The Morro Bay Chamber of Commerce Corporation (“Corporation”) is a non-profit 501c 6 corporation, which, promotes the community's economic vitality, quality of life and provides a united base for the community to advance and prosper. In addition the Chamber provides support services for programs such as: The Morro Bay Chamber Incubator Program and in conjunction with the Small Business Development Center (“SBDC”) is administering all the phases of The Morro Bay Chamber Incubator Program.

1. **Description of Services.** This Incubator Contractual Agreement (“Agreement”) between The Historical Society of Morro Bay (Historical Society) and The Morro Bay Chamber of Commerce Corporation (Corporation) provides that the undersigned **Historical Society** will be provided office space and general facilities as outlined in the Incubator Policies and Contractual Agreements (“Policies”) overview., The Incubator Program provides **Historical Society** with support, mentoring, and other resources to launch their businesses. Corporation will provide **Historical Society** with access to the Premises and any Services as outlined in this agreement and may provide from time to time, other Services (collectively, the “Services”) as Corporation may seem fit at 695 Harbor St. Morro Bay, California (“Premises”)
2. **Acceptance of Terms.** The Services are at all times subject to this Agreement and the Morro Bay Chamber Incubator Program (“Incubator Program”) it's Policies and Contractual Agreement. Corporation reserves the right to terminate any currently individual resource or service at any time.
3. **Terms of Agreement.** The **Historical Society** shall be allowed to occupy a pre-arranged office space, and an agreed additional storage space for the full 3yr contractual agreement beginning on July 1st, 2015 and at that time have full access to said premises. The Historical Society will pay a reduced rental fee of \$100.00 per month.
4. **Access.** **Historical Society** will have access 24 hours a day, 7 days a week.
5. **Termination.** Corporation reserves the right to terminate **Historical Society's** participation in and any use of Premises or Services if there is a material breach of any provision of the Agreement. Corporation shall first provide written notice to the **Historical Society** with at least 7 days' notice with an opportunity to cure a potential breach of this Agreement. The **Historical Society** Designee is responsible for engaging with the Chamber to cure the potential breach. If the **Historical Society** fails to cure within the time period, then the Agreement shall be terminated for the **Historical Society** and it's employees.

- Corporation reserves the right to immediately and without notice terminate this Agreement with a **Historical Society** or any individual incubator member or members participation in any Services due to reasonable cause as determined solely by Corporation to protect personal safety of the **Historical Society** or others, or property and to insure the maintenance of order.
- **Historical Society** may also request to leave the program at any time and to terminate the Agreement.

6. Upon Termination or Expiration.

- Within 30 days of expiration or notice of termination the **Historical Society** shall be allowed to apply for an extension to their previously determined contractual agreement, which will then be reviewed and decided upon by the Corporation's executive committee. In the event the contract is extended all previous agreements will apply to the extended period. In the event the contract is not extended the **Historical Society** shall vacate the facility on the expiration or termination of the Agreement, whichever occurs first.
- When vacating the facility, **Historical Society** shall remove all personal property, leave the Corporation's work area in a clean and orderly condition, normal and reasonable wear and tear accepted, to avoid cleaning fees, and return keys as instructed to avoid re-keying charges. **Historical Society** or any employees of **Historical Society** vacating after the required date and time will be assessed a late charge and charged for recovery costs of related and appropriate expenses.
- Personal property left by the **Historical Society** after expiration or termination, or abandonment of this Agreement will be disposed of in accordance with applicable State law. The Corporation is hereby relieved of any liability for personal property left on the premises.

7. Insurance.

- Corporation carries Commercial General Liability insurance, **Historical Society** is not required to obtain an insurance policy. Corporation's insurance does not cover the personal and business assets of the **Historical Society** and or it's employees. It is strongly suggested that **Historical Society** carry a Renters Insurance policy or similar policy to cover **Historical Society** personal or business assets while it is being used and stored on the premises.

8. Business License.

- **Historical Society** may be required by the City of Morro Bay to obtain a business license for activities **Historical Society** engages in within the Premises. The purpose of the City's business license regulations is to provide for necessary regulation of lawful businesses being conducted within the City in the interest of the public health, safety and welfare of the people of the City.

9. Severability.

- In the event that any provision or portion of this Agreement is determined to be invalid, illegal or unenforceable for any reason, in whole or in part, the remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect to the fullest extent permitted by applicable law.

10. Notices.

- Notices shall be given electronically to the **Historical Society** at the e-mail address stated herein, or in writing by any other reasonable means (such as by fax, personal delivery, recognized

overnight delivery, or by certified mail, postage pre-paid and return receipt requested), and to Corporation at the e-mail address stated immediately below, or to such other address as shall be given by either party to the other in writing. All notices shall be deemed to have been given and received on the earlier of actual delivery (except that faxes and e-mails sent on a non-business day or after business hours will be deemed received on the next business day) or three days from the date of postmark.

To Corporation: jennifer.redman@edwardjones.com
And copies to: garychris1944@gmail.com
Legal Counsel, Morro Bay Chamber of Commerce, 695 Harbor st
Morro Bay, 93442

11. Fax-scanned signatures.

The parties agree that this Agreement will be considered signed by an original signature when the signature of a party is delivered by facsimile transmission or scanned into an electronic file and transmitted by email or fax. Such facsimile signatures will be treated in all respects as having the same effect as an original signature.

12. Execution.

This Agreement may be executed by the parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

I hereby acknowledge that I have read and understand all of the conditions contained in the Corporation Incubator Program Agreement and agree to abide by all the terms and conditions related to my participation with the Morro Bay Chamber of Commerce Corporation's Incubator Program. I represent and warrant that I am over 18yrs of age and that I have all requisite legal power and authority to enter into and abide by the terms and conditions of this Agreement and no further authorization or approval is necessary.

Historical Society's representative Printed Name Linda Estes
Representative's Signature Linda Estes Date June 29, 2015 Email MORROBAY HISTORICAL SOCIETY

Acknowledged on behalf of Morro Bay Chamber of Commerce Inc.

Jennifer Redman 6-29-15
Date

Chris Christensen
Board Treasurer



AGENDA NO: A-8

MEETING DATE: August 8, 2017

Staff Report

TO: Honorable Mayor and City Council

DATE: July 24, 2017

FROM: Eric Endersby, Harbor Director

SUBJECT: Adoption of Resolution No. 44-17, Approving Amendment #3 to the Master Lease at Lease Site 71-74/71W-74W, and Amendment #2 to the Master Lease at Lease Site 75-77/75W-77W (both with Morro Bay Marina, Inc., located at 601 Embarcadero), Reformatting the Method by Which the Lease Rent CPI Adjustment is Calculated, and Approving Lease Ownership Change on Both Sites from a General Partnership to a Limited Liability Company

RECOMMENDATION

Staff recommend the City Council adopt Resolution No. 44-17, directing the Mayor to sign amendments to both Morro Bay Marina leases to reformat the manner in which CPI rent adjustments are calculated, and approving the ownership of the two leases from General Partnerships to Limited Liability Companies.

ALTERNATIVES

Do not approve Resolution No. 44-17.

FISCAL IMPACT

There will be a positive fiscal impact, yet unknown, to the Harbor Fund when percent gross obligations for Windows on the Water restaurant, located on Lease Site 75-77/75W-77W, become effective one fiscal year earlier than provided for in the lease as it is currently.

BACKGROUND

The leases for Lease Sites 71-74/71W-74W and 75-77/75W-77W became effective in 1991 after a complete tear-down and redevelopment of an entire waterfront block. Both leases expire in 2041.

During the spring of 2015, while determining the annual CPI adjustments for all lease sites, it was discovered by staff the language for CPI adjustments for the subject lease sites was slightly different than the majority of waterfront leases. In most waterfront leases, a "base" CPI is reset every five years upon lease site reappraisal, but in the subject leases, the CPI by which every year is measured for annual rent adjustment is set against an unchanging CPI established at lease inauguration. The result being, when calculated according to the letter of the leases, the base rents jumped dramatically from the way the lease had been historically administered since inception in 1991. When presented with the new calculations, the lease owners protested, and a dispute arose.

Rather than enter a lengthy and potentially costly litigation, over the past ~18 months the City and lease owners negotiated a settlement of the dispute, based on input from the City Council.

DISCUSSION

Prepared By: EE

Dept Review: EE

City Manager Review: MRL

City Attorney Review: JWP

In the settlement, for the sake of consistency the parties agreed the CPI calculation language in the subject leases would be changed to that of the majority of waterfront leases, in exchange for the lease holders agreeing to apply percent gross calculation and payment obligations on Windows on the Waterfront restaurant, located on 75-77/75W-77W, starting with the 2016/2017 fiscal year, an obligation that, per the lease as currently written, would not come into effect until this (2017/2018) fiscal year.

In addition, the lease holders are changing their leasehold ownership from a General Partnership to a Limited Liability Company, with the same ownership makeup, and are requesting City approval of this change. This is a normal course of lease administration, and the City cannot unduly withhold its approval.

CONCLUSION

Approval of these lease amendments will result in settlement of a significant and lengthy dispute over the administration of these lease sites, with the City receiving additional revenue in the form of percent gross payments earlier than it previously would. Staff, therefore, recommend the Council approve Resolution No. 44-17, thereby amending the subject leases accordingly and settling the dispute between the City and tenant Morro Bay Marina.

ATTACHMENTS

1. Resolution No. 44-17
2. Amendment #3 to Lease Site 71-74/71W-74W
3. Amendment #2 to Lease Site 75-77/75W-77W

RESOLUTION NO. 44-17

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING AMENDMENT #3 TO THE LEASE AGREEMENT
FOR LEASE SITE 71-74/71W-74W,
LOCATED AT 601 EMBARCADERO ROAD, MORRO BAY,
AND AMENDMENT #2 TO THE LEASE AGREEMENT
FOR LEASE SITE 75-77/75W-77,
LOCATED AT 699 EMBARCADERO ROAD, MORRO BAY,
BOTH WITH MORRO BAY MARINA, INC.**

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

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

WHEREAS, since the early 1980's Morro Bay Marina, Inc. is the lessee of Lease Sites 71-74/71W-74W and 75-77/75W-77W, located at 610 and 699 Embarcadero Road, respectively; and

WHEREAS, in the late 1980's Morro Bay Marina embarked on a complete redevelopment project of both lease sites, which culminated in new 50-year lease agreements for the sites being approved in 1991; and

WHEREAS, a dispute arose between the City of Morro Bay and Morro Bay Marina over the calculation of CPI as it applies to the annual base rent in both lease agreements; and

WHEREAS, the City and Morro Bay Marina have settled that dispute by the enactment of amendments to both leases; and

WHEREAS, Morro Bay Marina is requesting approval of a transfer in the ownership of the lease sites from a General Partnership to a Limited Liability Company, with the same principal ownership interests; and

WHEREAS, Morro Bay Marina has satisfactorily submitted the necessary documents for processing the lease amendments and ownership transfers, and is a tenant in good standing.

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

1. The City Council approves Amendment #3 to Lease Site 71-74/71W-74W, as hereby attached.
2. The City Council approves Amendment #2 to Lease Site 75-77/75W-77W, as hereby attached.
3. The Mayor is hereby authorized to execute said Amendments, as approved by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 8th day of August, 2017 on the following vote:

AYES:

NOES:

ABSENT:

Jamie L. Irons, Mayor

ATTEST:

Dana Swanson, City Clerk

**AMENDMENT #3 TO THE LEASE AGREEMENT FOR
LEASE SITES 71-74/71W-74W, LOCATED AT 601 EMBARCADERO**

This Amendment #3 (“this Amendment”) is made and entered into as of this ____ day of August 2017, to the Lease Agreement for Lease Site 71-74/71W-74W (the “Lease”) dated June 26, 1991, by and between the City of Morro Bay, a municipal corporation of the State of California, hereinafter called “City,” and Morro Bay Marina LLC, a California limited liability company, after assignment of rights by general partners Robert Waterman and Carol Trapp to Stan Trapp, Carol Trapp and the Stan and Carol Trapp Trust, formerly, dba Marina Square (hereinafter “Tenant”).

WHEREAS, the Lease was amended by that certain Amendment #1, dated September 26, 1994, and that certain Amendment #2, dated June 26, 2000, and those amendments and the Lease are collectively referred to herein as the “Amended Lease;”

WHEREAS, Tenant previously notified City of the change in form of Tenant’s business operation from a general partnership to a limited liability company and this Amendment will approve that transfer;

WHEREAS, Tenant and City have a dispute as to the amount of rent due for Fiscal Year (FY) 2015/2016 and 2016/2017 in light of a disagreement on how CPI increases are calculated and through this Amendment desire to resolve that dispute in order to avoid any litigation and without either party having any liability as a result of that dispute; and

WHEREAS, City and Tenant wish to amend the Amended Lease for purposes of modifying the method in which CPI increases are calculated in recognition of the way City has calculated CPI increases in the past and Tenant’s agreement to amend the lease for lease sites 75-77/75W-77W to apply gross sales rent to one of Tenant’s sublessees sooner than the date required by that lease.

NOW THEREFORE, Tenants and City agree, as follows:

1. Unless expressly stated herein, words used in this Amendment shall have the same meaning as stated in the Amended Lease, except to the extent the context requires otherwise.
2. The change from Tenant as a general partnership to a limited liability company is hereby approved.
3. Subdivision 2.03 C. of the Amended Lease is hereby amended by adding a last sentence, thereto, to read as follows:

The base index shall be adjusted upon each calculation of new Minimum Rent, as set out in this Section, so that the base index for CPI adjustment shall be the CPI for January 1 of the year of the calculation of new Minimum Rent.

4. Within five days after the Effective Date (as defined below), Tenant shall:
 - a. Provide City the percent gross sales statement for the Lease Site 71/74 for July 1, 2015-June 30, 2016; and

- b. Pay those rents, if any, still outstanding as of the date first set forth above for FY 2015/2016 and 2016/2017 after taking into consideration the provisions of this Amendment.
- 5. Except as expressly stated herein, all provisions of the Amended Lease shall remain in full force and effect.
- 6. The effective date of this Amendment is the date this Amendment is approved by City's City Council (the "Effective Date").

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date written above.

CITY OF MORRO BAY

TENANT

By: _____
Jamie L. Irons, Mayor

By: _____
Carol Trapp, Managing Member

APPROVED AS TO FORM:

By: _____
Stan Trapp, Managing Member

Joseph W. Pannone, City Attorney

ATTEST:

Dana Swanson, City Clerk

**AMENDMENT #2 TO THE LEASE AGREEMENT FOR
LEASE SITES 75-77/75W-77W, EXT. 17N LOCATED AT 699 EMBARCADERO**

This Amendment #2 (“this Amendment”) is made and entered into as of this ____ day of August 2017, to the Lease Agreement for Lease Site 75-77/75W-77W, EXT. 17N (the “Lease”). dated June 26, 1991, by and between the City of Morro Bay, a municipal corporation of the State of California, hereinafter called “City,” and Morro Bay Marina LLC, a California limited liability company, after assignment of rights by general partners Robert Waterman and Carol Trapp to Stan Trapp, Carol Trapp and the Stan and Carol Trapp Trust, formerly, dba Marina Square (hereinafter “Tenant”).

WHEREAS, the Lease was amended by that certain Amendment #1, dated September 26, 1994, and that amendment and the Lease are collectively referred to herein as the “Amended Lease;”

WHEREAS, the Amended Lease was originally executed by three general partners, the two named above and Don Appling;

WHEREAS, Tenant previously notified City Don Appling is not longer a member of Tenant and Mr. Appling did not own more than 40 percent of Tenant and City and Tenant agree the Amended Lease does not require City’s approval of that transfer in partnership interest and this Amendment will memorialize that transfer;

WHEREAS, Tenant also previously notified City of the change in form of Tenant’s business operation from a general partnership to a limited liability company and this Amendment will approve that transfer;

WHEREAS, Tenant and City have a dispute as to the amount of rent due for Fiscal Year (FY) 2015/2015 and FY 2016/2017 in light of a disagreement on how CPI increases are calculated and through this Amendment desire to resolve that dispute to avoid any litigation and without either party having any liability as a result of that dispute; and

WHEREAS, City and Tenant wish to amend the Amended Lease for purposes of modifying the method in which CPI increases are calculated and to change the starting date gross sales rent will be due and payable based on Tenant’s subtenant Hoppe LLC, dba Windows on the Water, a California limited liability company (“Hoppe LLC”) gross sales.

NOW THEREFORE, Tenants and City agree, as follows:

1. The change from Tenant as a general partnership with two partners to a limited liability company is hereby approved.
2. Unless expressly stated herein, words used in this Amendment shall have the same meaning as stated in the Amended Lease, except to the extent the context requires otherwise.
3. Subdivision 2.04 A. of the Amended Lease is amended so that notwithstanding the July 1, 2018, date set forth in that subdivision, commencing on August 31, 2017, Tenant shall pay City percentage rent for gross sales based on the gross sales generated by Hoppe LLC; provided, that the first gross sales rent payment for Hoppe LLC shall be for the gross sales generated by Hoppe LLC for the period from July 1, 2016 through June 30, 2017 and the statement described

in Subdivision 2.04 E. shall be provided by Tenant on or before August 31, 2017. Thereafter gross sales rent for Hoppe LLC shall be due on July 1 of each subsequent year, based on the gross sales generated by Hoppe LLC for the period July 1 through June 30 immediately preceding the applicable July 1 and the required statement described in Subdivision E. filed with City on July 1 of each subsequent year.

4. Subdivision 2.03 C. of the Amended Lease is hereby amended by adding a last sentence, thereto, to read as follows:

The base index shall be adjusted upon each calculation of new Minimum Rent, as set out in this Section, so that the base index for CPI adjustment shall be the CPI for January 1 of the year of the calculation of new Minimum Rent.

5. Within five days after the Effective Date (as defined below), Tenant shall pay to City those unpaid rents, if any, still outstanding as of that date for FY 2015/2016 and 2016/2017 after taking into consideration the provisions of this Amendment.
6. Except as expressly stated herein, all provisions of the Amended Lease shall remain in full force and effect.
7. The effective date of this Amendment is the date this Amendment is approved by City's City Council (the "Effective Date").

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date written above.

CITY OF MORRO BAY

TENANT

By: _____
Jamie L. Irons, Mayor

By: _____
Carol Trapp, Managing Member

APPROVED AS TO FORM:

By: _____
Stan Trapp, Managing Member

Joseph W. Pannone, City Attorney

ATTEST:

Dana Swanson, City Clerk



AGENDA NO: A-9

MEETING DATE: August 8, 2017

Staff Report

TO: Honorable Mayor and City Council **DATE:** July 24, 2017

FROM: Rob Livick, PE/PLS – Public Works Director/City Engineer
Jarrod Whelan, PE, Associate Civil Engineer

SUBJECT: Award of Contract to D.O.D. CONSTRUCTION, LTD. of Bakersfield, CA, for Project No. MB2017-ST02: Sidewalk Gap Closures & Pedestrian Accessibility Project

RECOMMENDATION

Staff recommends the City Council (1) allocate \$18,440 from Transportation Impact funds in addition to the \$299,437 received from Community Development Block Grant for a total of \$317,877 to compensate the bid amount of \$302,740, plus \$15,137, a 5% contingency, (2) award an Indefinite Delivery, Indefinite Quantity (IDIQ) contract with an initial two-year term and two additional option periods of up to two years each to D.O.D. Construction, LTD and (3) authorize the Public Works Director to execute the final contract for the Initial Period.

ALTERNATIVES

1. Reject all bids and rebid the project in hope of receiving lower bids.
2. Direct staff to eliminate specific line items from the bid, in accordance to the Public Contract Code, to authorize work only funded by money received from Community Development Block Grant in the amount of \$299,437.

FISCAL IMPACT

Budget for this project is funded with federal aid from the Department of Housing and Urban Development (HUD), Community Development Block grant (CDBG) program. Per City Council Resolution Nos. 75-15 and 26-17, the City, as a sub-recipient to San Luis Obispo County, received funding and a loan for FY2018. In addition, a one-time \$18,440 transfer from Government (Transportation) Impact funds to the ADA Accessibility Improvements -CDBG SIDEWALKS, as noted in the FY17/18 Budget.

BACKGROUND and DISCUSSION

Since 2011, the City of Morro Bay (City) has participated with other cities and the County of San Luis Obispo as an "Urban County" for purposes of U.S. Department of Housing and Urban Development (HUD) entitlement funding of Community Development Block Grant (CDBG) funds. City Council Resolution No. 75-15 authorized execution of a three-way agreement between the Cities of Morro Bay, Atascadero, and San Luis Obispo County on October 14, 2016, which allowed for an advance of future years' allocation of CDBG funding.

This project entails furnishing and supplying labor, materials, tools, equipment, transportation, and construction services of sidewalks, curb and gutter, and accessible curb ramps in the City, in accordance with City's Standard Drawings and the California Building Code where no sidewalk or

Prepared By: JW

Dept Review: RL

City Manager Review: MRL

City Attorney Review: JWP

curb ramp currently exist, or is not compliant to today's Federal requirements.

The City will use CDBG funds specifically to install sidewalk, curb and gutters at the following locations identified below and as per the Project budget below:

1. Market Street between Beach & Dunes, east side, place approximately 455 square-feet of sidewalk and new driveway approach.
2. Main Street between Marina & Driftwood, west side, place approximately 730 square-feet of sidewalk, 385 lineal feet of curb and gutter, ADA curb ramp, and new driveway approach.
3. Main Street between Marina & Driftwood, east side, place approximately 1160 square-feet of sidewalk, 190 lineal feet of curb and gutter, 2 ADA curb ramps, and 2 new driveway approaches.
4. Marina Street between Main Street & Morro, south side, place approximately 635 square-feet of sidewalk and new driveway approach.
5. Napa Street between Dunes & Harbor, east side, place approximately 450 square-feet of sidewalk, 10 lineal feet of curb and gutter, 1 ADA curb ramp, and 1 new driveway approach.
6. Dunes Street between Napa & Shasta, south side, place approximately 1670 square-feet of sidewalk, 160 lineal feet of curb and gutter, 1 ADA curb ramp, and 1 new driveway approach.
7. Shasta Avenue between Dunes & Harbor, west side, place approximately 900 square-feet of sidewalk and 68 lineal feet of curb and gutter.
8. Dunes Street between Napa & Monterey, north side, place approximately 680 square-feet of sidewalk, 160 lineal feet of curb and gutter, 1 ADA curb ramp, and 1 new driveway approach.
9. Dunes Street between Napa & Monterey, south side, place approximately 660 square-feet of sidewalk, 1 ADA curb ramp, and 2 new driveway approaches.

CONCLUSION

Staff recommends the award of this first contract delivery order in the amount of \$317,877 to D.O.D. Construction, LTD. as the first delivery in a Multi-Year IDIQ contract. Use of the IDIQ contracting mechanism should insure a more consistent and efficient delivery of sidewalk projects for the next few years. Over the potential 6-year term of the recommended agreement, future work would be authorized by this agreement subject to funding received by the City and approved by the Council in the applicable budget or specific action of the Council.

ATTACHMENTS

- 1 Bid Summary
- 2 Sub recipient Agreement

City of Morro Bay

Public Works Department

Contract Name: **MB2017-ST02 Sidewalk Gap Closures**

	BID
DOD Construction	\$ 308,739.50
JJ Fisher	\$ 356,634.50
S. Chaves	\$ 514,621.68
R. Burke Corporation	\$ 565,007.00

**SUBRECIPIENT AGREEMENT FOR 2010, 2011, 2012, 2013, 2014 and 2016 CDBG
GRANT FUNDS BETWEEN THE COUNTY OF SAN LUIS OBISPO AND THE CITY
OF MORRO BAY**

THIS AGREEMENT is made and entered into this 19 day of JUNE, 2017, by and between the County of San Luis Obispo, a political subdivision of the State of California, hereinafter called the "Recipient," and the City of Morro Bay, a municipal corporation of the State of California, located in the County of San Luis Obispo, hereinafter called the "Subrecipient" (jointly referred to as the "Parties").

WITNESSETH

WHEREAS, on June 21, 2011, the Recipient and the Subrecipient entered into a Cooperative Agreement (herein the "Cooperative Agreement #1") to implement the Housing and Community Development Act of 1974, herein called the "Act." The Act is omnibus legislation relating to federal involvement in a wide range of housing and community development activities and is administered by the federal Department of Housing and Urban Development (herein "HUD"); and

WHEREAS, on July 15, 2014, the Recipient and the Subrecipient entered into a Cooperative Agreement (herein the "Cooperative Agreement #2") to implement the Housing and Community Development Act of 1974, herein called the "Act". Said Act is omnibus legislation relating to federal involvement in a wide range of housing and community development activities and is administered by HUD; and

WHEREAS, on April, 12, 2016, the San Luis Obispo County Board of Supervisors approved the County of San Luis Obispo Program Year 2016 Action Plan of the Consolidated Plan and projected use of funds pursuant to applicable federal regulations (24 C.F.R. Part 570) (hereinafter referred to as the "2016 Action Plan"); and

WHEREAS, on April 12, 2016, the San Luis Obispo County Board of Supervisors approved funding in the amount of \$63,017 from the County's 2016 Community Development Block Grant (hereinafter referred to as "CDBG") Program for the Subrecipient to implement the "ADA Pedestrian Accessibility Project," hereinafter referred to as the "Project," and \$5,514 of CDBG Program (as defined below) funds for general administration of the CDBG Program; and

WHEREAS, on July 12, 2016, the San Luis Obispo County Board of Supervisors approved the reallocation of \$236,420.47 in CDBG Program funds from the City of Atascadero to the Subrecipient by amending the 2010, 2011, 2012, 2013 and 2014 Action Plans for the "Pedestrian Accessibility Project" increasing CDBG Program Fund allocation to \$299,437.47; and

WHEREAS, on October 4, 2016, the Recipient, the Subrecipient and the City of Atascadero entered into an agreement for the reallocation of the 2010, 2011, 2012, 2013 and 2014 CDBG Program funds; and

WHEREAS, Subrecipient will use a total of \$299,437.47 of 2010, 2011, 2012, 2013, 2014 and 2016 CDBG Program Funds to administer and complete the improvements for the Project (as defined below); and

WHEREAS, the Parties' participation in the programs funded by the Act complies with all applicable federal laws, regulations and executive orders; and

WHEREAS, this Agreement shall remain in effect throughout the implementation of projects specified in the Urban County of San Luis Obispo's Program Year 2016 Action Plan of the 2015 Consolidated Plan and any amendments thereto; and

WHEREAS, the Subrecipient is a "Subrecipient" as defined in the Code of Federal Regulations at 24 CFR 570.500(c); and

WHEREAS, the Parties desire to enter into this Agreement to govern the use of the CDBG Program funds for the Project and for Program Administrative; and

NOW THEREFORE, pursuant to the provisions of Title 24, Chapter V, of the Code of Federal Regulations, the Parties agree as follows:

This Agreement sets forth the responsibilities of the Recipient and the Subrecipient in accomplishing the objectives of the CDBG Program (CFDA Title #14.218) as set forth in the Act, as amended.

Pursuant to 24 CFR 200, 24 CFR 570.500(c) and 24 CFR 570.501(b), the Recipient may provide CDBG Program funds to public or private nonprofit agencies, authorities or organizations, or for-profit entities authorized under 570.201(o) (referred to collectively and individually as "sub-recipients") to be used by the sub-recipients to provide certain eligible services in connection with the Recipient's desire to develop viable urban communities, through community development activities, as specified in 24 CFR 570.200 ("CDBG Program"); and

The Recipient agrees to fund the services of the Subrecipient, and the Subrecipient agrees to perform the services for the Recipient, hereinafter described in Exhibit A – Statement of Work, during the term, and otherwise subject to the covenants and conditions hereinafter set forth.

1. Statement of Work

A. Activity Description

The Subrecipient agrees to perform during the term of this Agreement, all tasks, obligations, and services set forth in the Statement of Work attached to this Agreement as Exhibit A and incorporated into this Agreement by this reference. The Subrecipient shall perform the CDBG-eligible activity described in Exhibit A.

The Statement of Work provides information for the Recipient to effectively monitor performance of all projects being completed under this Agreement. The 2016 Action Plan includes a project description and a budget for each project funded wholly, or in part, by CDBG Program funds. The Subrecipient may request modification of the

tasks, schedule or budget in writing to the Recipient. The Recipient shall review each request to modify tasks, schedule or budget on a case-by-case basis and will respond to the Subrecipient within 30 days of the request. The projects listed in the Statement of Work shall be implemented by the Subrecipient. The Statement of Work includes a concise description of each project (i.e., project location, project scale, and clientele to be served) as referred to in the 2016 Action Plan, specifically the Appendix entitled "Listing of 2016 Approved Project U.S. Department of Housing & Urban Development Community Planning Development Consolidated Plan."

B. National Objectives

All activities funded with CDBG Program funds must meet one of the CDBG Programs' National Objectives: (1) to primarily benefit low- and moderate-income persons; (2) to aid in the prevention or elimination of slums or blight; or (3) to meet community development needs having a particular urgency, as defined in 24 CFR 570.208.

C. Level of Accomplishment – Goals and Performance Measures

The Subrecipient certifies that the activities carried out under this Agreement will meet the CDBG program national objective of primarily benefitting low- and moderate-income persons. The grant is anticipated to serve up to 2,126 (estimated) disabled adults. Program effectiveness is measured through an on-going evaluation of the CDBG program. The Subrecipient agrees to provide the levels of program services according to the goals in Exhibit A.

D. Staffing

Any changes in key personnel assigned or their general responsibilities under this project as described in Exhibit A must be reported to the Recipient.

E. Performance Monitoring

The Recipient will monitor the Subrecipient's performance against goals and performance standards, as stated above. Substandard performance, as determined by the Recipient, will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the Recipient, then suspension or termination procedures of this Agreement may be initiated by the Recipient.

The Recipient will use the Subrecipient's performance reports to monitor the delivery of the Program requirements under this Agreement. In addition, the Recipient's representative may visit the Subrecipient's offices to inspect the records required by HUD to be maintained to document expenditures funded by this grant. These records include copies of the original source documentation demonstrating that

the program clients are eligible to receive HUD-funded services, and that funds were expended to deliver the services described in item 1.A., "Activity Description," above.

2. Payment for Services

The Recipient shall reimburse the Subrecipient for the services performed by the Subrecipient pursuant to the terms of this Agreement and in accordance with the terms set forth in the "Schedule of Compensation" attached hereto as Exhibit B. The compensation shall be paid at the time and manner set forth in Exhibit B. Further, the "Schedule of Compensation" shall be based on the Approved Line Item Budget as set forth in Exhibit B. The Reimbursement Amount shall constitute reimbursement only for allowable costs incurred as a result of the Project Services/Program Expenses. The Parties understand and agree such reimbursement, if any, shall be conditioned upon the Recipient's receipt of CDBG Program funds from the federal government or accumulation of CDBG Program Income, as set forth in Section 15 and as a result of this Agreement, and shall not be a charge on any other funds of the Recipient.

All requests for reimbursement shall be submitted as per Section 19 for costs incurred under this Agreement, along with one (1) set of copies of original source documentation supporting the expenditures by the Subrecipient for the Project identified in Exhibit A – Statement of Work, which shall be submitted to the Recipient in such form acceptable to the Recipient in its sole and absolute discretion. Such documentation shall be submitted prior to any payment, in whole or in part, by the Recipient of the Reimbursement Amount.

3. Availability of Funds/Modifications

The Recipient's provision of funding to the Subrecipient pursuant to this Agreement is contingent on the availability of CDBG Program funds and continued federal authorization for CDBG Program activities, and is subject to amendment or termination due to lack of funds or authorization. This Agreement is subject to written modification and termination as necessary by Recipient in accordance with requirements contained in any future Federal legislation, regulations or Recipient policy. All other modifications must be in written form and approved by both Parties.

4. Obligation of Funds

The Subrecipient shall not obligate any funds, incur any costs, or initiate identified project(s), which are the subject of this Agreement, until all environmental review has been completed and certified by Recipient's Department of Planning and Building and Recipient has issued a written "Authorization to Obligate Funds and Incur Costs."

5. Term of Agreement

The term of this Agreement shall commence on September 19, 2016, and terminate December 31, 2017, unless said work is completed prior to the date or unless sooner terminated as herein provided. Prior to the end of this Agreement, the Director of the Department of Planning and Building may extend the term 60 days upon

receiving and approving, in writing, a written request from the Subrecipient prior to the termination of this Agreement. The written request must include an explanation for the extension and remediation plan to resume the program activity(ies).

6. Time for Performance

The Subrecipient shall not perform any work under this Agreement until Recipient gives the Subrecipient a written approval (which shall serve as an Authorization to obligate funds and incur costs). All services required of the Subrecipient under this Agreement shall be completed on or before the end of the term of this Agreement.

7. Designated Representative

A. The Recipient's representative is as follows:

Name and Title:	Tony Navarro, Planner III
Address:	County of San Luis Obispo Department of Planning and Building 976 Osos Street, Rm. 300 San Luis Obispo, CA 93408
E-mail Address:	tnavarro@co.slo.ca.us
Telephone No.:	(805) 781-5787
Fax No.:	(805) 781-5624

B. The Subrecipient's representative who shall be responsible for job performance, negotiations, contractual matters, and coordination with the Recipient Representative is as follows:

Name and Title:	Cindy Jacinth, Associate Planner
Address:	City of Morro Bay Community Development Department 955 Shasta Ave. Morro Bay, CA 93442
E-mail Address:	cjacinth@morrobayca.gov
Telephone No.:	(805) 772-6577

8. Timely Completion and Expenditure

Timely completion of the Project is the highest priority of this Agreement. To ensure timely completion and expenditures, the Subrecipient will demonstrate reasonable progress in the implementation of the Project by completing and expending allocated CDBG Program funds by December 31, 2017.

Failure to meet established performance goals and standards and/or non-compliance with applicable rules and regulations shall constitute non-compliance with the terms of this Agreement.

This Agreement requires the Subrecipient to develop and submit a remediation plan to the Recipient for its review and approval. The purpose of the remediation plan is

to outline a detailed course of action to complete the Project and drawdown funds in compliance with applicable regulations.

Failure to comply with this Agreement and remediation plan will trigger administrative requirements in accordance with 2 CFR Part 200.338 and 2 CFR Part 200.305(b) (6).

9. Compensation and Method of Payment

For such performance of the Project description, County shall reimburse the Subrecipient an amount not to exceed \$299,437.47 ("Reimbursement Amount"), which shall constitute full and complete compensation hereunder for the Project. The Reimbursement Amount will only be paid if reimbursable from the federal government under the Housing and Community Development Act of 1974 for the amount indicated above, or from CDBG program income, as described in 24 CFR 570:500(a), and accumulated as a result of this Agreement. The Reimbursement Amount shall constitute reimbursement only for allowable costs incurred as a result of the Project.

The Parties understand and agree that such reimbursement, if any, shall be conditioned upon the County's receipt of CDBG program funds from the federal government or accumulation of CDBG program income, as set forth in Section 15 and as a result of this Agreement, and shall not be a charge on any other funds of the County. The Subrecipient shall use the Payment Request Form (Exhibit "A" of this Agreement) for reimbursement purposes.

All reimbursement requests shall be submitted via the Request for Payment Form supporting the invoice for costs incurred under this Agreement, along with one (1) set of copies of all original source documentation supporting the expenditures by the Subrecipient for the Project, which shall be submitted to the Recipient in such form acceptable to the Recipient in its sole and absolute discretion. Such supporting documentation shall be submitted prior to any payment, in whole or in part, by the Recipient of the Reimbursement Amount.

10. Compliance

The Subrecipient agrees that it undertakes hereby the same obligations to Recipient that Recipient has undertaken to HUD pursuant to Recipient's CDBG application and certifications. The obligations undertaken by the Subrecipient include, but are not limited to, the obligation to comply with all federal laws and regulations described in Subpart K of 24 CFR Part 570 and specifically with each of the following:

A. The Housing and Community Development Act of 1974 (Public Law 93-383) as amended, and legislative changes contained in the Housing and Urban-Rural Recovery Act of 1983; and the Housing and Community Development Act of 1987;

B. Final regulations of the Department of Housing and Urban Development relating to Community Development Block Grants (Title 24, Chapter V, Part 570 of the Code of Federal Regulations commencing with Section 570.1) dated September 6,

1988; and revisions to 24 CFR Part 570 at Subpart J entitled "Grant Administration" and dated March 11, 1988;

C. Regulations of the Department of Housing and Urban Development relating to environmental review procedures for the Community Block Grant program (Title 24, Subtitle A, Part 58 of the Code of Federal Regulations, commencing at Section 58.1) except that the Subrecipient does not assume Recipient's environmental responsibilities as described in 24 CFR Part 570.604;

D. Title VI of the Civil Rights Act of 1964 (Public Law 88-352) as amended; Title VIII of the Civil Rights Act of 1968 (Public Law 90-284) (affirmatively furthering fair housing) as amended; Section 104(b) and Section 109 of title I of the Housing and Community Development Act of 1974 as amended; Section 3 of the Housing and Urban Development Act of 1968 (employment priorities for new hires); Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11246 as amended by Executive Orders 11375 and 12086; Executive Order 11063 as amended by Executive Order 12259; and HUD regulations heretofore issued or to be issued to implement these authorities relating to civil rights and 24 CFR 570.904(d) and 2 CFR Part 200.321:

1. Contracting with Small and Women and Minority Owned Businesses (W/MBE). The Subrecipient will take all necessary affirmative steps to assure that minority owned and/or women owned businesses are used when possible. Such firms and businesses have 50% or more ownership by an ethnic minority person(s) and/or by woman/women. All construction projects receiving HUD funds and all contractors and subcontractors who receive \$10,000 or more in HUD funds shall fulfill these hiring requirements. Affirmative steps shall include the following:

- (a) Placing small businesses and minority owned and/or women owned businesses on solicitation lists;
- (b) Assuring that qualified small businesses and minority owned and/or women owned businesses are solicited whenever they are potential sources;
- (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small businesses and minority owned and/or women owned businesses;
- (d) Establishing delivery schedules, where the requirement permits, which encourage participation by small businesses and minority owned and/or women owned businesses;
- (e) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

- (f) Requiring subcontractors to take the five affirmative steps listed above.

2. Land Covenants. This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and 24 CFR 570.601 and 602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, the Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the County and the United States are beneficiaries of and entitled to enforce such covenants. The Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

E. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and regulations adopted to implement the Act in the Code of Federal Regulations, Title 24, Part 42;

F. Equal Employment Opportunity and (EEO/AA); The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer;

G. 2 CFR Part 200 entitled "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards";

H. The following laws and regulations relating to preservation of historic places: Public Law 89-665 the Archaeological and Historical Preservation Act of 1974 (Public Law 93-291), and Executive Order 11593 including the procedures prescribed by Advisory Council on Historic Preservations in 36 Code of Federal Regulations, Part 800;

I. The Labor Standards Regulations set forth in Section 570.603 of 24 CFR Part 570; and HUD Handbook 1344.1.

The Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours the Safety Standards Act, the Copeland "Anti-Kickback" Act (40 U.S.C. 276, 327-333) and all other applicable federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Subrecipient shall maintain documentation that demonstrates compliance with hour and wages requirements of this part. Such documentation shall be made available to the Recipient for review upon request.

The Subrecipient agrees that, except with respect to the rehabilitation of residential property designed for residential use for less than eight (8) households, all

contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair of any building or work financed in whole or in part with assistance provided under this Agreement, shall comply with federal requirements adopted by the County pertaining to such contract, and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR, Parts 3, 1, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journeymen; provided, that if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Subrecipient of its obligation, if any, to require payment of the higher wage. The Subrecipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph, for such contracts in excess of \$10,000.00.

J. The Architectural Barriers Act of 1968 (42 U.S.C. Section 4151 and the Americans with Disabilities Act of 1990 (ADA);

K. The Hatch Act relating to the conduct of political activities (Chapter 15 of Title 5, U.S.C.);

L. The Flood Disaster Protection Act of 1973 (Public Law 93-234 and the regulations adopted pursuant thereto) Section 202(a) and the regulations in 44 CFR parts 59 through 79;

M. The Clean Air Act (42 U.S.C. Chapter 85) and the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1251 et seq.) and the regulations adopted pursuant thereto;

N. Executive Order 12372, which requires State Clearinghouse review and comment of any CDBG project for the planning, construction, reconstruction, and/or installation of water or sewer facilities;

O. Section 401(b) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831 (b)); and

P. Provision of 24 CFR Part 570.609, and 24 CFR 5.105(c) for procurement activities regarding use of debarred, suspended, or ineligible contractors or subcontractors and 24 CFR Part 24 for non-procurement activities, regarding use of debarred, suspended, or ineligible contractors or subcontractors.

Contractors excluded, disqualified or otherwise ineligible (e.g., suspension, debarment, or limited denial of participation) for Federal procurement and non-procurement programs per 24 CFR 570.609 shall not be considered for contract award. This applies to any CDBG-assisted contracts for the procurement of goods and services, professional services, public services, and construction activities (prime and sub-prime contractors).

The Subrecipient shall work with the Recipient to verify eligibility for all contractors subject to procurement requirements prior to contract award by the Subrecipient. The Subrecipient shall not use a self-certification letter or form signed by the contractor as a substitute for evidence of their eligibility.

To verify and document a contractor's eligibility the Recipient shall check the General Services Administration System for Award Management site (<http://www.sam.gov/portal/SAM###1>) to assure the contractor's eligibility and shall submit the verification to the Subrecipient **prior** to the notification and award of the contract. The Recipient and the Subrecipient shall retain a copy of the verification(s) for their file to verify for each consultant/contractor.

The Subrecipient further agrees to comply with any environmental, procurement, construction, and other guidelines provided by the Recipient. All local code regulations must be recognized and services provided must conform to the said standards.

The Subrecipient also agrees to submit an annual performance and evaluation report no later than 30 days after the completion of the most recent program year showing the status of all activities as of the end of the program year. The purpose of the performance and evaluation report is to assist the Recipient in complying with its reporting obligations under 24 Code of Federal Regulations section 570.507(a) and under 24 Code of Federal Regulations Part 91. The Recipient shall specify the content and format of this report.

In the event that the Subrecipient violates any such regulations, laws and/or executive orders, and such violation(s) result in the Recipient incurring expenses and/or making payments to HUD attributable to some or all of the CDBG funds received by the Subrecipient, then the Subrecipient shall pay to Recipient, on the demand of Recipient, all of the said expenses incurred by Recipient and all of the payments made by Recipient as a result of the Subrecipient's said violation(s).

As required by Section 34, the Subrecipient shall obtain any necessary permits, licenses and certificates that may be necessary for its performance under this Agreement. Failure to meet established performance goals and standards and/or non-compliance with applicable rules and regulations shall constitute non-compliance with the terms of this Agreement. The Recipient is entitled to use one or more of the following remedies for non-compliance, temporarily withhold cash payments pending correction of deficiencies by the Subrecipient; disallow all or part of the cost of the activity or action not in compliance; wholly or partly suspend or terminate the current award for the Project; withhold further awards for the Project; and/or take other remedies that may be legally available.

11. Subcontracts

The Subrecipient shall incorporate the same or substantially equivalent requirements as are contained in this Agreement in all subcontracts which utilize any

CDBG funds and/or support any CDBG program(s) covered by this Agreement; when program(s) utilize(s) from CDBG funds and other funding sources, all funds shall be subject to CDBG regulations. The Subrecipient, by entering into any such subcontract for performance of any portion of its CDBG program, is not relieved of its responsibilities to Recipient as set forth in this Agreement.

12. Non-Discrimination/Religious Activities

No person with responsibilities in the operation of any project under this Agreement will discriminate because of race, creed, color, national origin, ancestry, religion, age, sex, political affiliation, sexual orientation, gender identity, disability, beliefs, marital or familial status or status.

The Subrecipient will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

The Subrecipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

The Subrecipient will ensure that every effort is made to provide equal opportunity to every potential minority and women's business vendor, contractor and subcontractor.

13. Standard of Conduct/Conflict of Interest and Lobbying

No member, officer or employee of the Subrecipient or its designee or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the process thereof, for work to be performed in connection with the program activities assisted under this Agreement.

No member, officer or agent of the Subrecipient shall participate in the selection of the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such

activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this Section, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Recipient, the Subrecipient, or any designated public agency.

By entering into this Agreement, the Subrecipient certifies:

A. No federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant loan, or cooperative agreement in accordance with the Department of Interior and Related Agencies Appropriations Act, known as the Byrd Amendments, and HUD'S 24 Code of Federal Regulations (CFR) 87.

B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, then the Subrecipient shall complete and submit Standard Form LL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and other federal disclosure forms as requested.

C. The Subrecipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

14. Fiscal Control

The Subrecipient shall be responsible for the internal control and monitoring of fiscal and programmatic/operational goals and procedures. The Subrecipient shall establish such fiscal controls and fund accounting procedures as required by Federal

regulations, or as may be deemed necessary by HUD and Recipient to ensure the proper disbursement of, and accounting for, funds paid to the Subrecipient under the CDBG programs.

Disbursement of Funds: CDBG funds shall generally be disbursed by Recipient to the Subrecipient on a reimbursement for actual expenses basis.

The Recipient agrees to pay the Subrecipient progress payments at the time and in the manner set forth in the Schedule of Compensation, Exhibit B. Payment by the Recipient is not to be construed as final in the event HUD disallows reimbursement for the Project or any portion thereof. Source documentation, as specified by the Recipient, supporting the invoice(s) shall be submitted by the Subrecipient with request for payment.

The Subrecipient shall be liable for all amounts which are determined to be due by HUD including, but not limited to, disallowed costs which are the result of the Subrecipient's or its contractor's conduct under this Agreement. The Subrecipient shall be notified in writing and shall be permitted to respond regarding any controversy or proceeding between the Recipient and HUD arising from this Agreement.

All financial transactions must be supported by complete and verifiable source documents. Records shall provide a clear audit trail and shall be maintained as specified in Section 21 of this Agreement.

15. Program Income

Program Income is defined in Subpart J of 24 CFR Part 570.504 and is described as gross income received by the Subrecipient and directly generated from the use of CDBG funds.

Program income includes, but is not limited to, the following:

- A. Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds;
- B. Proceeds from the disposition of equipment purchased with CDBG FUNDS;
- C. Gross income from the use or rental of real or personal property acquired by the Subrecipient with CDBG funds, less costs incidental to generation of the income;
- D. Gross income from the use or rental of real property owned by the Subrecipient that was constructed or improved with CDBG funds, less costs of the non-CDBG portion.
- E. Payment of principal and interest on loans made using CDBG funds except as provided in 24 CFR Part 570.500(a)(3);

F. Proceeds from the sale of loans or obligations secured by loans made with CDBG funds;

G. Interest earned on program income pending its disposition; and

H. Funds collected through special assessments made against properties owned and occupied by households not of low or moderate income where the assessments are used to recover all or part of the CDBG programs portion of a public improvement.

During the effective term of this Agreement, the Subrecipient shall report all program income as defined in 24 CFR 570.500(a), generated by activities carried out with CDBG funds under this Agreement. Program Income may be retained by the Subrecipient subject to the provisions of the Cooperative Agreement #1 and Cooperative Agreement #2, the Act, and its regulations. Any program income retained must only be used for eligible activities in accordance with all CDBG requirements.

It shall be the Subrecipient's responsibility to manage and use the program income in compliance with the standards and requirements set forth in section 570.504(a) & (b) (1) through (b)(3). The transfer of CDBG funds from the Recipient to the Subrecipient shall be adjusted to reflect any program income in accordance with the principles set forth in section 570.504(b) (2) (i) and (ii). In addition, all of the provisions of this Agreement shall apply to the management and use of the program income.

Recipient shall monitor the use of any program income, requiring appropriate record keeping and reporting by the Subrecipient as may be needed for this purpose, and shall report the use of such program income to HUD. In the event of close-out as defined in section 570.509 of the federal regulations or change of status of the Subrecipient, (i.e., from Subrecipient to entitlement), all program income on hand or received by the Subrecipient subsequent to the close-out or change of status shall be paid to the Recipient.

Program income attributable to projects funded under this Agreement and on hand with the Subrecipient when Agreement expires, is terminated with or without cause, or received after this Agreement expiration, shall be paid to the Recipient as required by 24 CFR Part 570.503(b) (8) when the Subrecipient ceases to be under continuous Agreement with the Recipient for the operation of CDBG programs. As long as there is no break in this Agreement period, program income shall be governed by the provisions of this Section.

16. Reversion of Assets

Upon expiration of this Agreement, the Subrecipient shall transfer to the Recipient any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Any real property under the Subrecipient's control that was acquired and/or improved in whole or in part with CDBG

funds (including CDBG funds provided to the Subrecipient in the form of a loan) in excess of \$25,000 shall be either:

A. Used to meet one of the national objectives in 24 CFR Part 570.208 until five (5) years after expiration of this Agreement, the length of time to be further prescribed by mutual agreement of the Parties and delineated in Section 15, of this Agreement.

B. Disposed of in such manner that the Recipient is reimbursed in the amount of the fair market value of the property at the time of disposition of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition and/or improvement of such property. The payment is Program Income to the recipient.

If the Subrecipient is a private non-profit organization, the Subrecipient further agrees to a voluntary lien on above-reference property as to any CDBG funds received and that such lien will be notarized and recorded in the Office of the County Recorder, will utilized form specified by the Recipient, and will be subject to provisions listed in Section 15 of this Agreement.

17. Procurement/Equipment

Equipment, which shall be defined as tangible, nonexpendable, personal property having a useful life of more than one (1) year and an acquisition cost of \$1,000 or more per unit, is eligible for purchase using CDBG funds only upon prior approval of the Recipient and subject to 24 CFR Part 570.207(b)(1). Such equipment shall be used by the Subrecipient in the Project for which it was acquired as long as needed, regardless of whether such project continues to be supported by Federal funds; at the time, equipment may be used in other activities currently or previously supported by a Federal agency. Use of such equipment is also subject to provisions of 2 CFR 200.313(c). The Subrecipient shall also establish procedures for managing equipment, which meet the requirements of 2 CFR 200.313(d)). Further, proceeds from disposition of such equipment shall be treated as program income as specified in Section 15 and 16 of this Agreement.

18. Records and Reports

The Subrecipient agrees to supply to the Recipient, on a quarterly basis, any progress reports and/or other documentation as may be required by the Recipient to audit performance of this Agreement and/or to enable the Recipient to analyze and evaluate Subrecipient's operation of the Project. The Subrecipient shall maintain separate accounting and financial records for each funding (revenue) source in support of the Project.

A. Payment Request Form: The Subrecipient shall submit a Payment Request Form (Exhibit "C") and copies of the original supporting documents for payment to the Recipient.

B. Progress Reports: Progress reports shall be made using the Quarterly Report Form (Exhibit D) and shall address project status and, if applicable, explanation of any problems/delays encountered and/or anticipated and measures to be taken to correct such problems; revised milestones including anticipated schedule for project completion; direct benefit statistics; and a summary of expenditures, obligations, program income, and drawdown to date. In addition, the Subrecipient shall provide as part of the progress report any citizen comments received during the reporting period relative to the Project, and responses to such comments, and additional project information, as needed. The Subrecipient shall submit such report quarterly within thirty (30) days of the close of report period including in the event that no expenditures occurred, which shall be documented in the quarterly report.

C. Completion Report: The Subrecipient shall prepare and submit to the Recipient a Completion Report within thirty (30) days of Project-completion. Said report shall consist of an overview and evaluation of the Project, a comparison of milestones' progress, total costs incurred, listing of files, listing of personnel, and other reasonable information requested by the Recipient. The Completion Report shall be made as part of the Quarterly Report Form.

D. HUD/Recipient Reports: The Subrecipient shall submit to the Recipient in a timely manner other reports as requested/required by HUD and/or the Recipient including, but not limited to the Certified Payroll Reports, and Wage Determination documentation, and provide, as requested by HUD and/or the Recipient, information necessary to prepare the Consolidated Annual Performance and Evaluation Report, and other such reports and/or plans.

E. Audit: The Subrecipient shall be responsible for conducting an annual audit of its CDBG program in compliance with Title CFR Part 200.500 – 200.520 issued pursuant to the Single Audit Act of 1984 and the Single Audit Amendments of 1996, P.L. 98-502, as applicable. A copy of said audit shall be forwarded to the Recipient upon completion. Any costs associated with the annual audit shall be the responsibility of and paid for by the Subrecipient.

19. Project Review Conference:

In the event that quarterly reports indicate funds will not be expended by December 31, 2017, or within the agreed upon schedule, the Subrecipient will notify the Recipient of the completion deficiencies and the Subrecipient will have 45 calendar days to provide its plan for meeting time and expenditure agreements. Failure to correct the deficiency within 45 calendar days will require the Recipient to schedule a Project Review Conference. The Subrecipient must also comply with the term extension requirement in Section 5 of this Agreement, if necessary.

Upon failure to develop a plan for meeting completion and expenditure requirements, the Recipient will schedule a Project Review Conference. The Project Review Conference will serve to identify reasons for delayed performances and

weaknesses in the Project implementation plan. Based on the Project Review Conference discussions, both the Recipient and the Subrecipient will generate a remedial plan that may include but is not limited to re-design of the Project, amendments to the Project, extending the term of the Project, or re-allocation of the funds to another eligible CDBG project.

20. Agreement Responsibility for Monitoring and Records

HUD, the Office of the Inspector General (OIG), and the designated representatives of the Subrecipient, and other appropriate officials shall have access to all personnel records, management information, and fiscal data of the Subrecipient and any agency or contractor with whom the Subrecipient executes a subcontract necessary to carry out any CDBG program(s) for monitoring purposes (2 CFR Part 200.328, 200.327 and 200.336). The Subrecipient shall respond in a timely manner to all identified corrective action needs as a result of HUD, Recipient, or other monitoring. The Subrecipient shall submit to Recipient all required reports and monitoring corrective action plans on a timely basis, as delineated by the Recipient. Records shall be maintained as follows:

A. The Subrecipient agrees to retain all pertinent records under CDBG program, including financial records, until advised by the Recipient that further retention is unnecessary. Generally, records shall be retained for a period for five (5) years from the end of the fiscal year in which the last project covered by the Recipient's annual agreement with HUD is completed. Records shall be open and available for inspection by auditors and/or other staff assigned by HUD and/or the Recipient during the normal business hours of the Subrecipient. If at the end of such five-year period, there is ongoing litigation, claims, negotiations, audit or other action involving the Subrecipient's or the Recipient's records, which has started before expiration of the five (5) year period, the Subrecipient will retain the records until the completion of the action and resolution of all issues which arise from it as stated in 2 CFR Part 200.333.

B. Consistent with applicable state and local laws regarding privacy and obligations of confidentiality, the Subrecipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts to the Recipient, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein. The Subrecipient also must provide citizens with reasonable access to records on the past use of CDBG funds (24 CFR 570.508).

C. Records for nonexpendable property shall be retained for a period of five (5) years after final disposition of the property, if applicable.

21. Inspection Rights

The Subrecipient agrees to allow the Recipient to inspect physical premises of any project(s) upon 24-hour advance notice.

22. Request for Technical Assistance

The Subrecipient shall refer to the Recipient any regulatory or procedural questions regarding operation of its CDBG program. All formal requests for technical assistance shall be submitted in writing. Requests should specify the problem area, particular assistance being requested and proposed solution if applicable. Informal questions regarding day-to-day program operation may be directed to the designated Recipient representative.

23. Hold Harmless and Indemnification

The Subrecipient shall hold the Recipient and the Recipient's officers, employees, agents and volunteers harmless and free from any and all claims, liabilities or expenses, including attorney's fees, arising out of or relating to any negligent act, negligent omission, or other wrongful conduct related in any way to the Subrecipient's performance of its services pursuant to this Agreement. In the event the Recipient and/or any of the Recipient's officers, employees, agents or volunteers are named in any lawsuit, or should any claim be made against it or any of them by lawsuit or otherwise arising out of or relating to such negligent act, negligent omission or other wrongful conduct, the Subrecipient shall indemnify them for any judgment rendered against them, any sums paid out in settlement or otherwise, and all costs incurred by them in their defense, including, but not limited to attorney's fees.

The Subrecipient also understands and agrees that it is being employed to perform the services provided for by this Agreement because of the Subrecipient's professed expertise and experience in performing the services provided for under this Agreement. In addition the Subrecipient understands and agrees that while the Recipient and the Recipient's officers or agents may elect to do so, they have no duty to review, inspect, or supervise the work performed by the Subrecipient pursuant to this Agreement, except as otherwise expressly provided for by this Agreement. As a consequence, the Subrecipient waives any right of contribution against the Recipient or any of the Recipient's officers, employees, agents and volunteers arising out of such failure to inspect, review, monitor or supervise the work performed by the Subrecipient pursuant to this Agreement.

24. Insurance

Subrecipient shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Subrecipient, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

- 1. Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis for bodily injury and property

damage, including products-completed operations, personal injury and advertising injury, with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability:** ISO Form Number CA 0001 covering, Code 1 (any auto), or if Subrecipient has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease. If Subrecipient will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage shall also include an Alternative Employer endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the County as the Alternate Employer and the endorsement form shall be modified to provide that County will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision. If applicable to Subrecipient's operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

If the Subrecipient maintains higher limits than the minimums shown above, then the County requires and shall be entitled to coverage for the higher limits maintained by the Subrecipient.

Professional Liability/Errors and Omissions

Insurance covering Subcontractor's liability arising from or related to this Contract, with limits of not less than \$1 Million per claim and \$2 Million aggregate. Further, Subrecipient understands and agrees it shall maintain such coverage for a period of not less than three (3) years following this Agreement's expiration, termination or cancellation.

Additional Insured Status

The County, its officers, officials, employees, and volunteers are to be covered as insureds on the auto policy with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Subrecipient; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Subrecipient including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Subrecipient's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the Subrecipient's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Subrecipient's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall state that **coverage shall not be canceled, except after thirty (30) days' prior written notice** (10 days for non-payment) has been given to the County.

Failure to Maintain Insurance

Subrecipient's failure to maintain or to provide acceptable evidence that it maintains the required insurance shall constitute a material breach of the Contract, upon which the County immediately may withhold payments due to Subrecipients, and/or suspend or terminate this Contract. The County, at its sole discretion, may obtain damages from Subrecipient resulting from said breach.

Waiver of Subrogation

Subrecipient hereby grants to County a waiver of any right to subrogation which any insurer of said Subrecipient may acquire against the County by virtue of the payment of any loss under such insurance. Subrecipient agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement for the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the County. The County may require the Subcontractor to provide proof of ability to pay losses and related investigation, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the County.

Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of the contract of work.**

3. If coverage is canceled or non-renewed, and not **replaced with another claims-made policy form with a Retroactive Date** prior to the contract effective date, the Subrecipient must purchase "extended reporting" coverage for a minimum of **five (5) years** after completion of contract work.

Separation of Insureds

All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitation.

Verification of Coverage

Subrecipient shall furnish the County with original certification and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Subrecipient's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Certificates and copies of any required endorsements shall be sent to:

San Luis Obispo County
Department of Planning and Building
Attention: Tony Navarro, Planner III
976 Osos Street, Rm. 300
San Luis Obispo, CA 93408

Subcontractors

Subrecipient shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

Special Risks or Circumstances

County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

25. Covenants and Conditions

Each term and each provision of this Agreement to be performed by the Subrecipient shall be construed to be both a covenant and a condition.

26. Use of Funds for Entertainment, Meals or Gifts

The Subrecipient represents and warrants that it will not use funds provided through this Agreement to pay for entertainment, meals or gifts.

27. Effect of Termination

A. Termination of Agreement for Convenience: In accordance with 24 CFR 570.509(e) and 2 CFR 200.339, this Agreement may be terminated for convenience by

either party before the completion of the grant-assisted activities. The terminating party must provide thirty (30) days written notice of intention to terminate, setting forth the reasons and the effective date of such termination, has been given to the other party, provided, however, that no notice of termination given by the Subrecipient shall be effective unless HUD has agreed to release Recipient from its obligations pursuant to the program activity(ies) in Exhibit A – Statement of Work. Alternatively, this Agreement will automatically terminate in the event that the United States Government terminates the CDBG programs or terminates the program activity(ies) which is the subject of this Agreement.

B. Termination of Agreement for Cause: In accordance with 24 CFR 570.509(f) and 2 CFR 200.339, the Parties hereto understand that pursuant to the Recipient's execution of the HUD application, the Recipient assumed responsibility as to the performance of the Project. If through any cause the Subrecipient fails to fulfill in a timely and proper manner its obligations under this Agreement to undertake, conduct or perform the Project identified in this Agreement, or if the Subrecipient violates any of the covenants, agreements, or stipulations of this Agreement, the Recipient shall thereupon have the right to terminate this Agreement by giving written notice of such termination and specifying the effective date thereof at least (5) days before the effective date of such termination. Notwithstanding the above, the Subrecipient shall not be relieved of liability to the Recipient for damages sustained by the Recipient by virtue of any payments to the Subrecipient for the purpose of set-off until such time as the exact amount of damages due the Recipient from the Subrecipient is determined.

C. Upon termination, as stated in subsections (a) or (b) above of this Agreement, the Recipient shall be liable to the Subrecipient only for work done by the Subrecipient up to and including the date of termination of this Agreement, unless the termination is for cause, in which event the Subrecipient need be compensated only to the extent required by law.

D. If this Agreement is terminated pursuant to this Section, the Subrecipient shall remain responsible for compliance with the requirements in 2 CFR 200.343 (Closeout) and 2 CFR 200.344 (Post-closeout adjustments and continuing responsibilities).

E. The Subrecipient hereby expressly waives any and all claims for damages for compensation arising under this Agreement except as set forth in this Section in the event of such termination.

28. Taxpayer Identification Number

The Subrecipient shall provide the Recipient with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. 2007), as issued by the Internal Revenue Service.

29. Modification of Agreement

Except as provided in Section 3, the tasks described in this Agreement and all other terms of this Agreement may be modified only upon mutual written consent of the Recipient and the Subrecipient.

30. Use of the term "Recipient"

Reference to "Recipient" in this Agreement includes the designated Recipient representative, or any authorized representative acting on behalf of the Recipient.

31. Assurances

The Subrecipient hereby assures and certifies that it has complied with the HCD Act, applicable regulations, policies, guidelines and requirements, 2 CFR Part 225, as amended and that it will comply with all applicable Federal, State and local laws and regulations as they relate to acceptance and use of Federal funds for this Federally-assisted program. Also, the Subrecipient represents and warrants with respect to the Statement of Work specified in Exhibit A of this Attachment, that it will comply with all of the provisions of 24 CFR Part 570, as applicable. The Subrecipient further represents and warrants that it will comply with any further amendments or changes to said required assurances and certifications that during the term of this Agreement it will maintain current copies of said assurances and certifications at the address specified below.

32. Notices

All notices given, or required to be given, pursuant to this Agreement shall be in writing and may be given by personal delivery or by mail as identified in Section 7. Notice sent by mail shall be addressed to each party's designated representative as set forth above. When addressed in accordance with this Section, such notice shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices shall be deemed given at the time of actual delivery. Changes may be made in the names or addresses of persons to whom notices are to be given by giving notice in the manner prescribed in this Section.

33. Permits and Licenses

The Subrecipient, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement.

34. Waiver

A waiver by the Recipient of any breach of any term, covenant, or condition contained in this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement whether of the same or different character.

35. Governing Law

The terms of this Agreement shall be interpreted according to the laws of the State of California. If litigation occurs, then venue shall be in the County of San Luis Obispo.

36. Entire Agreement

This agreement sets forth the full and entire understanding of the Parties regarding the matter set forth herein, and any other prior or existing understandings or agreements by the Parties, whether formal or informal, regarding such matters are hereby superseded or terminated in their entirety. No verbal agreement or implied covenant shall be held to vary the provisions of this Agreement. This Agreement shall bind and inure to the benefit of the Parties to this Agreement and any subsequent successors and assigns.

37. Patents & Royalties

A. The County will provide two HMIS licenses for the Subrecipient. Subrecipient shall provide and pay for all licenses and royalties necessary for the legal use and operation of any of the equipment or specialties used in the Project.

Certificates showing the payment of any such licenses or royalties, and permits for the use of any patented or copyrighted devices shall be secured and paid for by Subrecipient and delivered to the County upon completion of the Project, if required.

B. Subrecipient shall assume all costs arising from the use of patented materials, equipment, devices, or processes used in or incorporated in the Project and agrees to indemnify and hold harmless the County and its duly authorized representatives from all suits of law, or actions of every nature for or on account of the use of any patented materials, equipment, devices, or processes.

38. Copyright

Any reports, maps, documents or other materials produced in whole or part by the Subrecipient, its contractor or any subcontractor or person responsible to the Subrecipient under this Agreement shall be the property of the Recipient and none shall be subject to an application for copyright by or on behalf of the Subrecipient, contractor, subcontractors or any person responsible to the Subrecipient during performance of this Agreement.

NOW, THEREFORE, the Parties hereto have caused this Subrecipient Agreement to be executed and attested by their proper officer thereunder duly authorized, and their official seals to be hereunto affixed, all as of the day first above written.

(Signatures on following page)

City of Morro Bay

BY: 
Craig Schmollinger, Acting City Manager

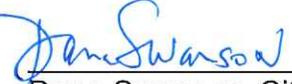
DATED: 6/8/17

APPROVED AS TO FORM:


Joseph W. Pannone, City Attorney

DATED: 6/7/17

ATTEST:


Dana Swanson, City Clerk

DATED: 6/8/17

COUNTY OF SAN LUIS OBISPO

BY: 
Robert Fitzroy
Deputy Director, Department of Planning and Building

DATED: 6/19/17

APPROVED AS TO FORM AND EFFECT:
RITA L. NEAL
County Counsel

BY: 
Deputy County Counsel

DATED: 6.13.17

EXHIBIT A

STATEMENT OF WORK

Community Development Block Grant Agreement between the Recipient and the Subrecipient for 2010, 2011, 2012, 2013, 2014 and 2016 Community Development Block Grant funds

As part of the County of San Luis Obispo 2010, 2011, 2012, 2013, 2014 and 2016 Action Plans, the County Board of Supervisors allocated \$299,437.47 to the Project as described below:

Program Year Summary of City of Morro Bay CDBG Allocations

<u>Program Year</u>	<u>Project</u>	<u>Allocation</u>
2010	Pedestrian Accessibility Project	\$ 9,545.48
2011	Pedestrian Accessibility Project	\$ 10,068.85
2012	Pedestrian Accessibility Project	\$103,062.80
2013	Pedestrian Accessibility Project	\$ 94,770.89
2014	Pedestrian Accessibility Project	\$ 18,972.45
2016	Pedestrian Accessibility Project	\$ 63,017.00
Sub-total		\$299,437.47
2016	CDBG Program Administration	\$ 5,514.00
Total		\$304,951.47

City of Morro Bay CDBG funded Pedestrian Accessibility Project	Budget
Pedestrian Accessibility Project, Phase IV – Barrier Removal (collective 2010, 2011, 2012, 2013 and 2014 CDBG funds)	\$236,420.47
2016 Pedestrian Accessibility Project, Phase IV – Barrier Removal	\$ 63,017.00
Total	\$299,437.47
2016 CDBG Program Administration – City of Morro Bay	\$ 5,514.00
Total	\$304,951.47

PEDESTRIAN ACCESSIBILITY PROJECT, PHASE IV DESCRIPTION

The City of Morro Bay will use CDBG funds specifically to install sidewalk, curb and gutters at the following locations identified below and as per the Project budget below.

The City of Morro Bay will construct sidewalk, curb and gutters, where none exist, and ADA ramps at the locations identified below, including but not limited to the necessary removal of existing concrete and related materials, place and compact subgrade materials, and to furnish and install new cast-in-place concrete site elements including curb and gutter, sidewalks and ADA ramps. Areas selected for gap closure and ADA curb ramps installation or upgrades include:

1. **Market St between Beach & Dunes, east side**, place approximately 455 square-feet of sidewalk and new driveway approach.
2. **Main St between Marina & Driftwood, west side**, place approximately 730 square-feet of sidewalk, 385 lineal feet of curb and gutter, ADA curb ramp, and new driveway approach.
3. **Main St between Marina & Driftwood, east side**, place approximately 1160 square-feet of sidewalk, 190 lineal feet of curb and gutter, 2 ADA curb ramp, and 2 new driveway approach.
4. **Marina St. between Main St & Morro, south side**, place approximately 635 square-feet of sidewalk and new driveway approach.
5. **Napa St. between Dunes & Harbor, east side**, place approximately 450 square-feet of sidewalk, 10 lineal feet of curb and gutter, 1 ADA curb ramp, and 1 new driveway approach.
6. **Dunes St. between Napa & Shasta, south side**, place approximately 1670 square-feet of sidewalk, 160 lineal feet of curb and gutter, 1 ADA curb ramp, and 1 new driveway approach.
7. **Shasta Avenue between Dunes & Harbor, west side**, place approximately 900 square-feet of sidewalk and 68 lineal feet of curb and gutter.
8. **Dunes St. between Napa & Monterey, north side**, place approximately 680 square-feet of sidewalk, 160 lineal feet of curb and gutter, 1 ADA curb ramp, and 1 new driveway approach.
9. **Dunes St. between Napa & Monterey, south side**, place approximately 660 square-feet of sidewalk, 1 ADA curb ramp, and 2 new driveway approach.

Project completion date

The Subrecipient agrees to comply with the following schedule of Project-completion. Should the Subrecipient be unable complete any portion of the Project pursuant to this schedule, the Subrecipient agrees to reimburse the Recipient the full amount of the CDBG funds that have been provided to the Project as of the date of the Recipient's determination of non-compliance.

The Subrecipient agrees that Recipient has sole discretion to determine whether the Subrecipient has complied with the following Project milestones and dates.

- | | |
|-----------------------------------|---------------------------|
| 1. Advertise Bid: | Sunday, June 4, 2017 |
| 2. Open Bids: | Thursday, June 22, 2017 |
| 3. Award Contract (City Council): | Tuesday, July 11, 2017 |
| 4. Notice to Proceed: | Monday, July 31, 2017 |
| 5. Notice of Completion: | Monday, October 30, 2017 |
| 6. Reimbursement Request | Monday, November 20, 2017 |

At the discretion of the County Director of Planning and Building, the Recipient may revise or grant a time extension to any portion of the above Project schedule. The Project Manager, on behalf of the Subrecipient, must submit a written request for a time extension prior to the specific schedule deadline for the extension. The Subrecipient and Recipient must maintain all Agreement amendment documentation as evidence and transparency of compliance with the conditions of this Agreement.

The City of Morro Bay will complete and expend all 2010, 2011, 2012, 20123, 2014, and 2016 CDBG funds allocated to the Pedestrian Accessibility Project, Phase IV (FY16/17) – Barrier Removal no later than December 31, 2017.

The infrastructure improvements to install wheelchair ramps and sidewalks to aid in the mobility of approximately 2,126 (estimated) disabled adults.

CDBG Program Administration by the City of Morro Bay

The City of Morro Bay will use \$5,514 in 2016 CDBG funds to administer its CDBG program.

Line Item Budget:

CDBG Program Administration by the City of Morro Bay	
Expenditures	
1. CDBG Program Administration by the City of Morro Bay	\$5,514
Total Expenditures	\$5,514

Project completion date

Final invoices and copies of the original source documentation for administrative expenses by the City of Morro Bay must be submitted to the County of San Luis Obispo no later than December 31, 2017 to assure the drawdown of funds prior to the end of the 2016-2017 Fiscal Year.

EXHIBIT B**City of Morro Bay
for Community Development Block Grant funds****SCHEDULE OF COMPENSATION**

1. AMOUNT OF COMPENSATION. For performing and completing all work and services described in Exhibit A, and for providing all materials required therefore, Recipient shall pay Subrecipient the total amount of:

Pedestrian Accessibility Project, Phase IV (FY16/17) – Barrier Removal by the City of Morro Bay Budget

The following CDBG funds shall be used for the Pedestrian Accessibility Project, Phase IV in the City of Morro Bay:

City of Morro Bay CDBG funded Projects	Budget
Pedestrian Accessibility Project, Phase IV (FY16/17) – Barrier Removal by the City of Morro Bay	\$299,437.47
Total	\$299,437.47

Prior to the award of the bid, actual costs per area identified in Exhibit A of this Agreement selected for ADA improvement are unknown. Therefore, the locations identified below with an asterisk (*) will be awarded as additive items based on actual bid prices:

1. Market St between Beach & Dunes (E) *
2. Main St between Marina & Driftwood (W)
3. Main St between Marina & Driftwood (E)
4. Marina St. between Main St & Morro (S) *
5. Napa St. between Dunes & Harbor (E) *
6. Dunes St. between Napa & Shasta (S)
7. Shasta Avenue between Dunes & Harbor (W)
8. Dunes St. between Napa & Monterey (N)
9. Dunes St. between Napa & Monterey (S)

CDBG Program Administration**Line Item Budget:**

CDBG Program Administration by the City of Morro Bay	
1. CDBG Program Administration by the City of Morro Bay	\$5,514
Total Expenditures	\$5,514

The above total amount listed shall include all out-of-pocket expenses incurred by Subrecipient in the performance of such services.

2. BILLING. At the end of each quarter in which the services are performed or expenses are incurred under this Agreement. Subrecipient shall submit an invoice and copies of all original supporting documentation to the Recipient at the following address:

County of San Luis Obispo
Department of Planning and Building
Attn: Soutsida Inpravongviengkham, Accountant
976 Osos Street, Room 300
San Luis Obispo, California 93408

In the event a quarterly report is not submitted on a timely basis, the reimbursement of a submitted invoice may be upheld until the Subrecipient complies with the terms stated in Section 19 of this Agreement.

3. METHOD OF PAYMENT. Payment to Subr

The Program Management team refined the intended goals for outreach efforts related to recent Council direction. Those goals include:

1. To inform the community and key regulatory agencies of where we are in the process, including, among other things, the only site Council has thus far authorized preparing a detailed Facility Master Plan for the South Bay Boulevard (SBB) site,
2. In an effort to reduce costs, the City is working to determine, whether sites other than SBB are potentially feasible,
3. To review what the potential cost differences might be compared to SBB, the City is developing cost estimates for different sites, and
4. To gather input regarding the other sites for which the City is developing cost estimates, especially related to the question of balancing costs and site location.

A key aspect of this is early outreach to the California Coastal Commission (CCC) and Regional Water Quality Control Board (RWQCB). Both agencies provided correspondence at the July 11 City Council meeting, and RWQCB staff provided oral testimony as well. Since then, City staff has reached out to CCC staff to set up a meeting to discuss concerns that agency might have in developing a project at or near the existing WWTP site. A meeting with CCC staff is preliminarily scheduled for the week of July 31. From City staff's perspective, the key goals of the meeting are to inform CCC staff about where the City is in the overall process (including the results of the recent peer review effort), and to determine whether or not it is possible for the CCC to support a project at a location at or near the existing WWTP site. If CCC staff feels that might be possible, then we will ask them to provide a "path" for the City to follow, which pro-actively addresses CCC concerns that may arise through project design. Those could include, but not be limited to, issues related to the timing of the project's water recycling component, methods to address coastal hazards, including sea level rise and tsunamis, and methods to address flood plain issues.

City staff recognizes input from CCC staff will not necessarily reflect on the ultimate position of the CCC itself. That will be one of the considerations in the City Council's upcoming decision regarding which site will be used to continue moving the project forward.

With respect to RWQCB, City staff had previously met with that agency's staff on July 5 and July 10 to discuss their key issues of concern. Those concerns are reflected in their letter to the City dated July 11, most notably that RWQCB will be most supportive if the project implements water recycling from the outset. City staff will continue to coordinate with RWQCB staff as we learn more from CCC staff, in order to make sure both agencies are informed of each other's concerns in moving the project forward.

City staff has also recently reached out to the Cayucos Sanitary District (CSD) to discuss common interests related to the City's possible pursuit of a WRF at or near the existing WWTP, since CSD and the City share joint ownership of the existing WWTP and the property on which it is located, as well as joint ownership of the existing ocean outfall. City staff will be meeting with CSD staff during the week of July 31.

In the coming weeks, staff will be reaching out to property owners of the key sites in question, as well as key community groups and individuals. The nature of those efforts is yet to be determined, but staff believes it is important to get a better read on the position of CCC staff and comparative cost estimates at the various sites before pursuing focused outreach efforts, such as stakeholder interviews and/or public workshops.

In the meantime, staff has updated the City's website to summarize recent actions related to this effort, and the next steps in the process.

Design Build Procurement

Based on City Council direction with respect to Item #2, the following briefly summarizes the design-build procurement process as it applies to the City of Morro Bay.

Rationale for Design-Build Process. Staff continues to recommend following a design-build construction approach, because combining the design and construction teams into one entity will expedite the project, since design does not have to be complete before construction can begin. Also, one entity will own the risk for both the design and construction, reducing the potential for change orders since that entity controls both design and construction.

Legal Basis and Requirements. The process will be completely vetted with input from the City Attorney to ensure all legal requirements and safeguards established by law and sound public works practices for design-build procurement are followed. We will include, to the extent applicable, best practices from the Design Build Institute of America, which is a professional society dedicated to proper application of that approach and familiar to the private sector, which has used the design-build approach for many, many years.

The City, as a general law city, must follow a mandated legal process for procurement. The applicable design-build process requires proposals and cost estimates to be based on preliminary engineering and master planning with some level of conceptual planning (as could be provided by the Facility Master Plan) to allow those interested design-build teams to compete on a fair, apples-to-apples basis. Additionally, there is significant legal precedent for following a best-value fixed-price selection process, where prospective contractors are provided preliminary design information that allows them to prepare a complete project cost, including design and construction within their proposals.

The applicable provisions of law that authorize the City to use the design-build approach are found at Public Contract Code section 22160, *et seq.*, which became effective January 1, 2015, for construction of a building or buildings and improvements directly related to the construction of a building or buildings with a cost in excess of \$1 Million. That relatively new law requires the City to engage in a two-step process to hire its design/construction team. It first must seek submittals, through a Request for Qualifications (RFQ) process, from potential design-build teams. Those submittals must then be reviewed based on objective criteria set forth in the RFQ. The California Department of Industrial Relations has developed a prequalification questionnaire, as one source for such criteria. Some or all of those teams the City determines meet those criteria would then be provided the opportunity to respond to a Request for Proposals (RFP). The RFP would then also include criteria for selecting the winning proposal. The only three legally required criteria are; price, technical design and construction expertise and life-cycle costs over 15 or more years.

As part of either the RFQ or RFP some cities have provided a stipend for those submitting responses to cover some of the significant costs those responding will incur, with no certainty as the result. That initial investment by the City can increase the chances of receiving several competitive proposals from readily recognized and qualified groups. That compensation has ranged from the lower tens of thousands to over \$1 Million, depending on the cost of the project. The City must also adopt a conflict of interest policy related to the design-build process. That policy is to ensure an entity or person that assists in the initial stages of planning or developing the project is not allowed to compete in the RFQ and RFP process, either alone or as part of a joint venture.

Recommended Approach for the City. The design-build procurement process will follow a two-stage “best value” selection process in accordance with best practices from the DBIA. The draft Request for Qualifications (RFQ) and Request for Proposals (RFP) will be reviewed by WRFCAC prior to advertisement and approved by the Council. WRFCAC members will also be asked to serve on the review committee for both processes.

The process is described below:

- Request Expression of Interest (EOI) from potential design-build proposers
- Prepare and facilitate a workshop for respondents to the EOI
- Prepare and advertise a Request for Qualifications for design-build procurement
- Develop a “short list” of no more than three of the most qualified consultant teams. Selection criteria will be reviewed by WRFCAC members and approved by the Council prior to advertising the RFQ.
- Prepare and advertise Request for Proposals for Design-Build Procurement. The RFP will require submittal of an indicative cost from the contractor, which will be developed into a Guaranteed Maximum Price (GMP) as part of the contract negotiation process.
- Coordinate and attend proprietary workshops with proposers to discuss design concepts
- Negotiate a final agreement and GMP with the selected proposer

It should be noted, for the GMP to serve its intended purpose, the City will need to limit its owner-requested changes to the project after the contract is signed. Such changes would likely provide a platform for the selected design-builder to seek increases in compensation. That is why is helpful for the RFP process to include some level of conceptual design and require a significant amount of detail from the design-build team so the City is sure it understands what the GMP will achieve.

Why Not Issue and RFP for Multiple Sites Right Now? As discussed in the Council meeting on July 11, it is recommended the City select a site for design of the facility prior to issuance of the RFQ and RFP so that adequate preliminary design criteria can be provided since the design-builders must compete with cost as one of the selection criteria. It is not cost-effective to prepare design-build RFPs for multiple sites since preliminary design information would be needed at each location. Selecting one site and establishing the project budget for one location will allow the proposers to assess the overall project budget and make a decision to pursue the project based on their ability to be competitive from both a cost and qualifications perspective. The City will also need to provide clear information about the project objectives, including expectations of plant performance, end uses of water, overall size and appearance of facility, and other requirements typically known as “performance criteria.” That will allow the City to receive proposals that meet the City’s expectations in order to assess all the proposers fairly and competitively.

Design-Build Process Timeline. The review and shortlist process for the RFQ will require 3 months from advertisement of the RFQ. That allows adequate time for teams to prepare their submittals and for the City’s selection committee, staff, and attorney to review submittals and contract documents, the latter of which would be included as part of the RFP.

The RFP circulation, review, and contract negotiation process will require 8 months from selection of the shortlist to presentation of a recommended contract to Council for approval. That period coincides with completion of the Environmental Impact Report to ensure any major permitting issues are considered by the designers to reduce potential for expensive change orders after the contract is signed. It also allows adequate time for preliminary design by the short-listed proposers

and for review by the City, selection committee, and attorney prior to bringing a recommendation to Council. That time is critical to allow City staff and the design-builder to ensure 1) any cost-saving alternatives are explored in detail, 2) the proposed contract amount is adequate for the work being proposed and 3) the design will meet the City's quality and lifecycle cost requirement.

Potential Risk of "Shortcutting" The Process. The process described above is recommended by the City staff, project manager and City Attorney. The process will balance risk, cost, and schedule to the City's benefit. If the City were to shortcut the process, then the following risks could arise:

- Beginning the process before a site is selected will require significant investment from the City to provide preliminary engineering information at multiple sites.
- Proposers will need to invest more money in developing their proposals. That could limit the number of proposers, since design-build efforts always require preliminary design effort for the proposers to develop their costs. Preparing proposals for multiple sites may reduce the number of proposers who are interested, since other concurrent projects with other agencies may require less proposal investment.
- Selecting a contractor for preconstruction services before they have submitted complete cost information will result in inflated costs, since the final construction agreement would not be signed until the contractor completed design work. There would be no competitive pressure to keep costs as low as possible.
- The City has already paid to perform preconstruction services (such as preliminary master planning, design, permitting, and budget estimating), using consultants who were competitively selected through a qualification-based process including Black & Veatch, ESA, and MKN. Black & Veatch performs design-build and their in-house construction estimators developed the Facility Master Plan cost opinions. Their unit costs and our program budget assumptions were reviewed and validated by an independent peer review team in June, as discussed at the previous meeting.

CONCLUSION

After the Program Management team meets with California Coastal Commission, an update will be provided to City Council.

Regardless of the final site selected by City Council, the design-build approach described above is recommended for project implementation because it meets regulatory requirements, follows industry standards, promotes competitive cost proposals through the entire selection process, and allows the City to have full cost information prior to signing an agreement with a design-builder.

ATTACHMENTS

None.

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AGENDA NO: C-2

MEETING DATE: August 8, 2017

Staff Report

TO: Honorable Mayor and City Council

DATE: July 25, 2017

FROM: Rob Livick, Public Works Director
Craig Schmollinger, Finance Director

SUBJECT: Receive Water Reclamation Facility Fiscal Year 2016-17 3rd Quarter Program Budget Update and Provide Comments and Direction as Deemed Appropriate

RECOMMENDATION

Staff recommends City Council receive and file the Fiscal Year (FY) 2016-17 3rd Quarter budget status report of the Water Reclamation Facility (WRF) program and provide comments and direction as deemed appropriate.

ALTERNATIVES

No alternatives are recommended.

FISCAL IMPACT

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

DISCUSSION

A budget update for the third quarter of fiscal year 2016/17 (3Q16/17) has been prepared. The delay in producing the report is a result of the City Council's direction to focus staff and consultant efforts on the peer review of project costs and pause any non-critical efforts.

As discussed in prior meetings, the Program Management Team 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 WRF expenses (including staff time with benefits, copies, and other office expenses) in addition to consultant contracts. The first page shows budget and expense figures for the quarter and the fiscal year, and the second contains the Project totals. The third 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 March 31, 2017.

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 of July through June of the following calendar year) 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.

Prepared By: ___ CS/RL ___	Dept Review: ___ CS/RL ___
City Manager Review: ___ MRL ___	City Attorney Review: ___ JWP ___

<u>Object Name (from Attachment 1)</u>	<u>Description</u>	<u>Comments</u>
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 3 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 (such as collections and treatment costs at the current sewer treatment plant). 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 2015 Rate Study) to increase the projected available revenue up to \$70.3M. 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, along with other capital needs within the current sewer system, 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 \$10.375M through loan proceeds to fund WRF expenses from FY 2014/15 through FY 2016/17, with \$4M budgeted through FY 15/16, \$6M budgeted for FY 2016/17, and 75% of the FY 2016/17 (\$3M) budgeted through 3Q16/17. Since the loan was approved in January 20, 2017, WRF expenditures have been paid from sewer revenues reserves.

Attachment 2 was provided at the City Council meeting on July 11, 2017, to provide more information on sewer revenue available for the WRF Project.

The City was awarded a \$10.375M 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 City was informed it was one of eleven agencies across the United States invited to apply for the Water Infrastructure Finance and Innovation Act (WIFIA) loan program from the Environmental Protection Agency (EPA). The WRF Project was selected from over 40 submittals. That low-interest loan program has a 35-year term with interest rates that are significantly lower than public bonds. The loan application will be due in June of 2018 and the City has had an initial conference call with the EPA staff managing the program.

ATTACHMENTS

1. Quarterly Budget Summary for 3Q2016/17
2. Sewer Rates and Financial Information

City of Morro Bay										
Water Reclamation Facility Advisory Committee (WRFAC) Quarterly Budget Review Summary 3Q16/17										
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. 2)	\$802,851	\$439,531	54.75%	\$363,320	\$3,211,405	\$928,205	28.90%	\$2,283,200	
6105	Water Rights Legal Support (See Note 2)	\$0	\$0	--	\$0	--	\$0	--	--	
6105	Rate Study	\$0	\$0	--	\$0	--	\$0	--	--	
	Subtotal	\$802,851	\$439,531	54.75%	\$363,320	\$3,211,405	\$928,205	28.90%	\$2,283,200	
599-8312	Labor (Fully Burdened)									
4910,4999	Labor and Benefits	\$15,000	\$16,779	111.86%	(\$1,779)	\$60,000	\$46,281	77.14%	\$13,719	
	Subtotal	\$15,000	\$16,779	111.86%	(\$1,779)	\$60,000	\$46,281	77.14%	\$13,719	
599-8312	Other Costs									
6105, 6162	Laboratory/Sampling	\$34,500	\$0	0.00%	\$34,500	\$138,000	\$11,845	8.58%	\$126,155	
5199,5305, 6106, 6105,6710	Printing and Advertising	\$0	\$294	--	(\$294)	--	\$10,256	--	--	
5199	Software license and fees	\$0	\$0	--	\$0	\$42,204	\$0	0.00%	\$42,204	
5199,7101	Property Acquisition	\$0	\$0	--	\$0	\$2,425,000	\$0	0.00%	\$2,425,000	
5199, 6106, 6750	Program office equipment	\$500	\$966	193.12%	(\$466)	\$2,000	\$3,117	--	--	
5199, 6514, 6510	Travel expense	\$0	\$450	--	(\$450)	--	\$450	--	--	
	Subtotal	\$35,000	\$1,710	4.88%	\$33,290	\$2,607,204	\$25,668	0.98%	\$2,581,536	
	TOTALS	\$852,851	\$458,020	53.70%	\$394,831	\$5,878,609	\$1,000,154	17.01%	\$4,878,455	
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	
	Subtotal	\$0	\$0	0.00%	\$0	\$0	\$0	--	\$0	
SWRCB	Supplemental Environmental Project									
	SEP from California Men's Colony	\$0	\$0	0.00%	\$0	\$0	\$0	#DIV/0!	\$0	
	Subtotal	\$0	\$0	0.00%	\$0	\$0	\$0	#DIV/0!	\$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	\$458,020	--	\$458,020	\$0	\$1,000,154	--	\$1,000,154	
	Subtotal	\$0	\$458,020	--	\$458,020	\$0	\$1,000,154	--	\$1,000,154	
	TOTALS	\$852,851	\$458,020	53.70%	(\$394,831)	\$5,878,609	\$1,000,154	17.01%	(\$4,878,455)	

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.

City of Morro Bay						
Water Reclamation Facility Advisory Committee (WRFCAC) Quarterly Budget Review Summary 3Q16/17						
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. 2)	\$4,653,067	\$2,374,267	\$2,278,800	51.03%	\$2,278,800
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	\$2,831,661	\$2,278,800	54.59%	\$2,355,824
599-8312	Labor (Fully Burdened)					
4910,4999	Labor and Benefits	\$400,000	\$259,293	--	64.82%	\$140,707
	Subtotal	\$400,000	\$259,293	--	64.82%	\$140,707
599-8312	Other Costs					
6105, 6162	Laboratory/Sampling	\$200,000	\$35,483	--	--	\$164,517
5199,5305, 6106, 6105,6710	Printing and Advertising	\$0	\$23,616	--	--	(\$23,616)
5199	Software license and fees	\$371,205	\$42,206	\$329,000	11.37%	\$329,000
5199,7101	Property Acquisition	\$2,425,000	\$30,500	--	--	\$2,394,500
5199, 6106, 6750	Program office equipment	\$2,000	\$7,368	--	--	(\$5,368)
5199, 6514, 6510	Travel expense	\$0	\$829	--	--	(\$829)
	Subtotal	\$2,998,205	\$140,001	\$329,000	4.67%	\$2,858,204
	TOTALS	\$8,585,690	\$3,230,955	\$2,607,800	37.63%	\$5,354,735
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	\$3,143,594		0.00%	\$3,143,594
	Subtotal	\$0	\$3,143,594		0.00%	\$0
	TOTALS	\$70,474,861	\$3,230,955		4.58%	(\$67,243,906)

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) Consultant Contract Summary (From Inception through 03-31-2017)

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	\$826,246.65	\$623,925.04	\$210,016.96	75%	99%	\$0.00	Black & Veatch
SC--002	CEQA/NEPA Documentation and Consulting	Approved	\$346,538.00	\$0.00	\$346,538.00	\$50,100.63	\$37,744.23	\$308,793.77	11%	14%	\$0.00	ESA
SC--003	Fatal Flaw Cultural Resources	Approved	\$18,260.87	\$40,056.56	\$58,317.43	\$45,959.60	\$41,559.60	\$16,757.83	71%	79%	\$0.00	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	88%	100%	\$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	80%	100%	\$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%	100%	\$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	82%	87%	\$0.00	Larry Walker Associates
SC--009	MacElvaine Property (SE) - Fatal Flaw - Geotech and Initial Hydrologic Fie	Approved	\$38,600.00	\$47,800.00	\$86,400.00	\$86,364.95	\$86,364.95	\$35.05	100%	100%	\$0.00	Fugro
SC--010	Grant and Loan Funding - Tracking and SRF Support	Approved	\$65,752.00	\$0.00	\$65,752.00	\$39,836.97	\$36,294.47	\$29,457.53	55%	61%	\$0.00	Kestrel
SC--011	2015 Program Management	Approved	\$920,808.00	\$1,248,766.00	\$2,169,574.00	\$956,023.77	\$813,307.44	\$1,356,266.56	37%	44%	\$0.00	MKN & Associates, Inc.
SC--012	Evaluate Alternative Concepts for Disposal of Treated Effluent	Approved	\$22,000.00	\$135,947.00	\$157,947.00	\$157,889.19	\$142,986.55	\$14,960.45	91%	100%	\$0.00	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%	100%	\$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	\$27,774.00	\$2,076.00	93%	93%	\$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	97%	97%	\$0.00	Yeh and Associates
SC--016	Rate Study Update - WRF Project Alternatives	Approved	\$36,800.00	\$0.00	\$36,800.00	\$0.00	\$0.00	\$36,800.00	0%	0%	\$0.00	Bartle Wells Associates
SC--017	Flow Monitoring Services	Approved	\$105,000.00	\$0.00	\$105,000.00	\$0.00	\$0.00	\$105,000.00	0%	0%	\$0.00	V&A
Total			\$2,460,402.87	\$1,633,468.56	\$4,093,871.43	\$2,374,266.53	\$1,990,996.55	\$2,102,874.88	49%	58%	\$0.00	

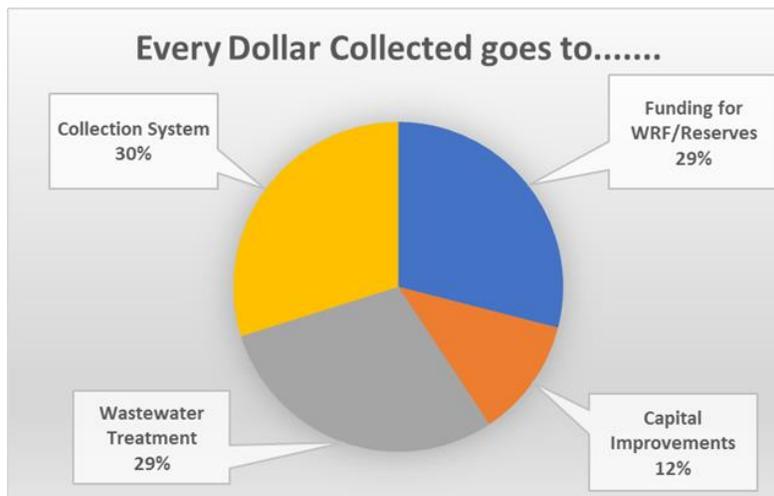
Notes: 1) Contract SC-004 was unused and was combined with Contract SC-003.
 2) Contracts SC--006 and SC--007 for JoAnn Head Land Survey are one amended contract with the City.
 3) Total Draw Requests are equivalent to Total Project Expenditures for Current Consultant Contracts on Page 2.

Sewer Rates and Financial Information (Printed July 11, 2017)

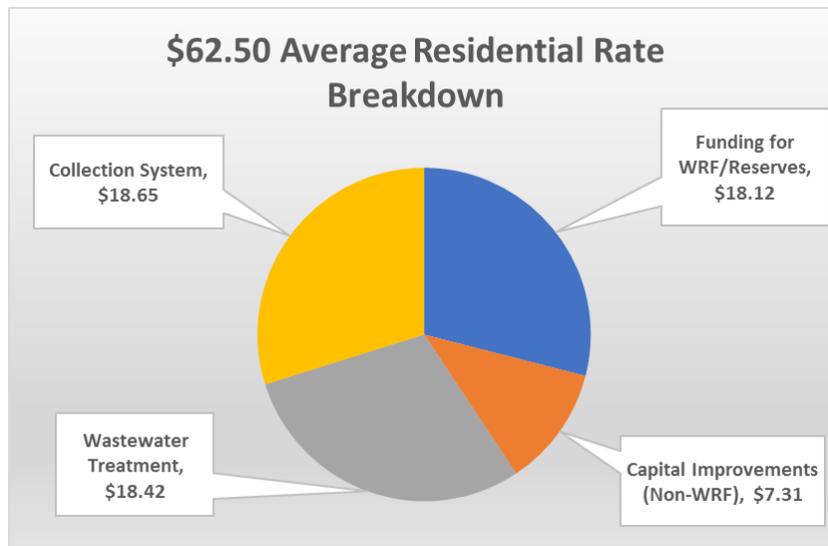
1. Breakdown of FY16/17 Average Residential Sewer Rates

Below is the FY2016/17 approved residential sewer rate breakdown of what the money was intended to fund per the 2015 sewer rate update.

Below is a breakdown of every dollar residents pay for sewer services to the City and the intended use of that dollar as a percentage. It is worth mentioning that these percentages will not fluctuate much with the already approved sewer rate increases planned for FY2017/18 through FY2019/20.



For each average residential monthly sewer and water bill paid to the City for sewer services (\$121), \$62.50 of that amount is for sewer services and is used as follows.



2. Fund Balance Figures and Accumulation Since 2015 Proposition 218 Vote

Below are charts reflecting the actual cash balances at the start and end of each fiscal year for both the Water and Sewer Accumulation funds (operating funds for both sewer and water intentionally do not carry a fund balance, as these amounts are swept into or from the accumulation funds to balance and provide greater transparency).

Sewer Accumulation Fund

	2013/14 Actual	2014/15 Actual	2015/16* Actual	2016/17 Projected	2017/18 Budgeted
Beginning Cash Balance	\$3,714,093	\$3,964,766	\$4,209,495	\$6,334,741	\$8,330,242
Ending Cash Balance	\$3,964,766	\$4,209,495	\$6,334,741	\$8,330,242	\$5,113,924
Source/(use of) Fund Balance	\$250,673	\$244,729	\$2,125,246	\$1,995,501	(\$3,216,318)

*First Year of Sewer Rate increases went into effect

Water Accumulation Fund

	2013/14 Actual	2014/15 Actual	2015/16* Actual	2016/17 Projected	2017/18 Budgeted
Beginning Cash Balance	\$4,146,391	\$2,366,571	\$2,023,701	\$2,775,364	\$3,264,925
Ending Cash Balance	\$2,366,571	\$2,023,701	\$2,775,364	\$3,264,925	\$3,218,918
Source/(use of) Fund Balance	(\$1,779,820)	(\$342,870)	\$751,663	\$489,561	(\$46,007)

*First Year of Water Rate increases went into effect

Worth noting is the currently approved sewer rate, and future year approved sewer rates, were never intended to build a \$75M sewer treatment plant, as the CSD was still a viable partner to pay roughly 25% or \$19M of that project cost. Additionally, current rates would not have “recouped” the \$56M in funding needed to pay Morro Bay’s share of the project for roughly 30 years. These “new” rates have only been in place for two full fiscal years (started with July 2015). Below is a chart of revenue received from sewer user rates. The bottom line reflects annual revenue received above and beyond FY2014/15 rates, as each year beyond that year reflects incremental increases based on the “new” rate increases. The bottom right figure reflects the cumulative sewer increase revenue combined for FY2015/16 through FY2017/18.

Sewer Rate Revenue

	2013/14 Actual	2014/15 Actual	2015/16* Actual	2016/17 Projected	2017/18 Budgeted	Cummulative Above FY2014/15 Base Year
Sewer User Fee Revenue	\$4,070,514	\$4,221,780	\$4,921,000	\$5,561,000	\$6,198,000	\$4,014,660
Sewer User Fee Increase Above FY2014/15 Base Year	N/A	N/A	\$699,220	\$1,339,220	\$1,976,220	

*First Year of Sewer Rate increases went into effect



AGENDA NO: C-3

MEETING DATE: August 8, 2017

Staff Report

TO: Honorable Mayor and City Council

DATE: July 20, 2017

FROM: Marijuana Sub-committee

SUBJECT: Review of Marijuana Council Subcommittee Recommendations and Consideration of and Direction for Future Local Marijuana Regulations

RECOMMENDATION

Council provide input and direction to staff either to: 1) develop an ordinance to implement local regulations concerning Proposition 64 and marijuana uses (including commercial); or, 2) establish a moratorium to postpone implementation of such an ordinance until after January 1, 2018.

The Council sub-committee strongly recommends the Council provide direction addressing Proposition 64 on the following issues:

- 1) Public Marijuana Use / Smoking Regulations,
- 2) Personal Marijuana Cultivation (Indoor and Outdoor),
- 3) Commercial marijuana operations (medical and recreational) which include dispensaries, cultivation, testing, manufacturing and delivery, and
- 4) Possible taxes and fees (if City allows some commercial marijuana operations).

FISCAL IMPACT

The fiscal impact of Proposition 64 on the City is uncertain. Proposition 64 imposes a new statewide excise tax of 15% on purchasers of marijuana as well as a statewide cultivation tax. The Legislative Analyst's Office estimates statewide revenue from a few hundred million dollars to \$1 Billion annually.

Cities are eligible for certain grants funded by the new state revenue "to assist with law enforcement, fire protection, or other local programs addressing public health and safety associated with the implementation of the Control, Regulate and Tax Adult Use of Marijuana Act." (Revenue & Taxation Code § 34019(f)(3)(c).) However, there will be no "grants to local governments which have banned the cultivation, including personal cultivation... or retail sale of marijuana or marijuana products..." (Revenue & Taxation Code § 34019(f)(3)(c).) A very rough estimate is the average city share would be within an approximate range from \$60,000 to \$125,000 - *if* that city does not ban cultivation or retail sale of marijuana. Those amounts, of course, could increase if greater revenues are generated, or could be less if revenues are not as high as predicted by the Legislative Analyst's Office.

Cities may also impose local voter approved taxes on commercial marijuana operations (both medical and recreational), and seek the execution of development agreements with operators. Depending on the direction from Council, there may be staff and legal costs expended to conduct

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Prepared By: IT

Dept Review:

City Manager Review: MRL

City Attorney Review: CFN

further public outreach and prepare the amendments to the Morro Bay Municipal Code. Fees may be imposed to recoup the regulatory and administrative costs associated with any permits required by the City.

Such fee recovery can also include the ongoing costs of regulating specific commercial marijuana operations. For example, the City may pass on the costs of mandatory regular financial audits of any commercial marijuana operations in the City; or, the City may require regular inspections of the operations for continuing compliance with health and safety regulations. The City can likewise recover the costs of those inspections from the business operators.

BACKGROUND

On January 24, 2017, staff presented a summary of Proposition 64 and City Council directed staff to host an educational session addressing the above topics, as well as general issues as they relate to development of appropriate municipal ordinances addressing both medicinal and recreational marijuana, including prospective community outreach and involvement in the discussion.

The Assistant City Attorney presented an educational workshop on Proposition 64 at the March 1st City Council Workshop. The Council sub-committee was formed at that meeting with Council Members Robert Davis and Marlys McPherson being appointed.

At the April 11, 2017, City Council meeting, the Council directed staff to hold a public workshop for community input.

On June 14, 2017, staff and Council reached out to the community through a public forum, allowing individuals the opportunity to express their opinion on Proposition 64. There were approximately 75 individuals who attended.

The Council sub-committee met with staff twice in July 2017 to discuss and prepare recommendations addressing Proposition 64 for Council consideration.

The sub-committee was assisted by the following staff:

- Martin Lomeli (Interim City Manager)
- Chris Neumeyer (Assistant City Attorney)
- Craig Schmollinger (Finance Director)
- Chief Greg Allen (Police Chief)
- Chief Steve Knuckles (Fire Chief)
- Commander Jody Cox (Police Commander)
- Scot Graham (Community Development Director)
- Ikani Taumoepeau (Deputy City Manager)

The Police Department has outlined specific concerns in the attached memo to help Council as it formulates its direction.

DISCUSSION

PERSONAL MARIJUANA USE

1. Public Marijuana Use / Smoking Regulations

Proposition 64 provides that the new laws permitting use and possession of marijuana shall not be interpreted to permit any person to smoke marijuana or marijuana products in public places or in any place where smoking tobacco is prohibited. (Health & Safety Code § 11362.3(a)(1-2).)

Chapter 9.24 (“Secondhand Smoking Regulations”) of the Morro Bay Municipal Code (“MBMC”) provides smoking in Morro Bay is generally prohibited in public places, including in places of employment, in public accommodations (e.g., hotels and restaurants), on public transit, and on City Beaches from Atascadero Road south down to the area abutting, but not including, the Rock Parking lot and including those portions of the Sand Spit governed by the City. MBMC § 9.24.060 provides some limited exceptions to the general prohibition, including private residential properties and certain designated “smoking areas.”

State parkland is located within the City, including Morro Bay State Park, and Morro Strand State Park which includes the beach area north of Atascadero Road. State Parks do allow smoking both in the State Park Campgrounds and on the State Beach, although Senate Bill 386, if passed in its current form, would prohibit smoking in Public Parks and on state beaches.

Sub-committee Recommendation: The City should maintain the current broad prohibitions on public smoking contained in MBMC Chapter 9.24, which now also apply to smoking marijuana. The City may want to reconsider some of the exemptions contained in MBMC § 9.24.060 for possibly tightening them up, especially the exemption applicable to “any unenclosed area in which no nonsmoker is present and, due to the time of day or other factors, it is not reasonable to expect another person to arrive.” (MBMC § 9.24.060(E).)

2. Personal Marijuana Cultivation: Indoor and Outdoor

Proposition 64 allows personal cultivation of up to six living marijuana plants “within a single private residence, or upon the grounds of that private residence, at one time.” (Health and Safety Code §§ 11362.2(a)(3).) A “private residence” is defined as “a house, an apartment unit, a mobile home, or similar dwelling.” (Health and Safety Code §§ 11362.2(b)(5).)

Cities may “enact and enforce reasonable regulations to reasonably regulate” indoor cultivation, which do not act to effectively prohibit indoor cultivation. (Health & Safety Code § 11362.2(b)(1).) Common types of regulation include odor control, security requirements, permits with a nominal fee, fire department inspections and electrical use regulations. Tenants in rental properties can be required to obtain written consent from their landlords.

Cities may ban personal cultivation “**outdoors** upon the grounds of a private residence” through an express prohibition. (Health and Safety Code §§ 11362.2(b)(3).) However, unless outdoor personal cultivation is expressly prohibited, then individuals under State law have the right to cultivate at his/her residence up to six plants outdoors.

Current MBMC § 9.06.040(B) already prohibits “marijuana cultivation by any person... in all zones throughout the city” with the exception of “personal individual cultivation by a primary caregiver or qualified patient for use of medical marijuana, as permitted by the Compassionate Use Act of 1996.” That current code acts to prohibit outdoor recreational marijuana cultivation. However, indoor cultivation (which cannot be banned), at present, is unregulated.

Sub-committee Recommendation: The City should maintain the current ban on personal outdoor cultivation due to public safety and enforcement concerns.

The City should reasonably regulate personal indoor cultivation and adopt reasonable health and safety measures, such as odor control, security requirements, and/or electrical use regulations.

A permit should be necessary for lawful indoor personal marijuana cultivation. Issuance of a permit would require payment of a nominal fee and a one-time inspection by City staff to confirm compliance with local regulations. Permits would be non-transferable, would be valid from the date of issuance, and would require the permit holder to maintain continuing compliance with the City's health and safety regulations. The City should also require that tenants receive property owner permission for the indoor personal cultivation of marijuana.

COMMERCIAL MARIJUANA USE

Both medical marijuana commercial operations and recreational marijuana commercial operations will be licensed by the State of California in 2018. Pursuant to recently passed SB 94 (the Medical and Adult Use Cannabis Regulation and Safety Act, or "MAUCRSA") which was signed by the Governor on June 27, there will be the same twenty different license types available for medical and recreational commercial operations, to be distinguished by either an "A" for adult-use or a "M" for medical use. (Business & Professions Code § 26050.)

To maintain local control, the City must expressly decide what will be the status of each different type of business operation. A failure to affirmatively address that may reasonably allow commercial operations to conduct business in the City pursuant to a valid state license, if the City doesn't expressly prohibit that license type.

1. Marijuana Dispensaries

The City currently bans medical marijuana dispensaries. (MBMC § 9.06.040(A).) However, unless the City takes action before state licenses for recreational marijuana commercial dispensaries begin being issued, then the issuance of a state license for a recreational marijuana dispensary could reasonably entitle the license holder to operate in the City.

When the State begins issuing recreational marijuana dispensary licenses in or before January 2018, the City must have a ban on recreational marijuana dispensaries to prohibit operations in the City. The City can prohibit recreational dispensaries, while separately allowing medical dispensaries.

The Council can impose local regulations for dispensaries in addition to what state law provides. Areas of local regulation the City may consider include those for record keeping requirements, use of security cameras, lighting, water usage, hours of operation, employee training, insurance requirements, alarm systems, guards, odor control, and indemnification of the City.

Concern has been expressed about minors or unsuspecting adults mistakenly consuming marijuana infused edible products that have the appearance of common items like cookies or candy bars. The Council can impose local requirements which govern the sale of marijuana edible products, including their packaging and appearance.

The Council can also seek that proposed medical marijuana dispensaries enter into a development agreement with the City. Development agreements are contracts negotiated between project proponents and public agencies that govern the land uses allowed in a particular project. The

Development Agreement Law (Government Code § 65864, *et seq.*) provides a mechanism whereby cities may impose additional financial, service and regulatory conditions upon a land use by the property owner (the dispensary applicant must be the legal or equitable property owner). In exchange, the City agrees (subject to the terms of the development agreement) to “freeze” certain rules, regulations, and policies (for a specified term) that are in place at the time of the execution of the development agreement.

Development agreements can provide for the generation of certain additional fees for the City. The amount of fees, as well as the rest of the development agreement, are subject to negotiations between the City and the applicant. Development agreements can take up to a year to negotiate and fully implement, thus delaying the opening of lawful medical marijuana dispensaries in the City. The use of development agreements for marijuana dispensaries is a new application of the Development Agreement Law which has not been tested yet in the courts.

Sub-committee Recommendation: The City should allow and regulate no more than **two** fixed location (not mobile) medical marijuana dispensaries vetted through a selection process, but completely ban recreational marijuana dispensaries.

The City should allow medical marijuana dispensaries only in C-1 (Central business) and C-2 (General commercial) districts.

The City should consider seeking that any proposed medical marijuana dispensary enter into a development agreement with the City.

The City should also regulate the packaging and appearance of edible marijuana products for sale to eliminate any possible confusion as to the nature of the product. For example, edible products should not have the appearance of candy which is attractive to minors, and all edible products should be clearly labeled as “medical marijuana.”

2. Commercial Marijuana Cultivation

The Council may restrict, regulate and prohibit all types of commercial cultivation operations, including, but not limited to, restricting those uses to certain zones and limiting their number. MBMC § 9.06.040(B) currently prohibits marijuana cultivation in all zones (with a limited exception for personal medical cultivation by a primary caregiver or a qualified patient).

Sub-committee Recommendation: The City should ban all commercial outdoor cultivation due to limited agricultural property, public safety and enforcement concerns. To ensure an effective ban the MBMC should be amended for consistency with the new state marijuana laws.

3. Manufacturing and Testing

The Council may specify types of manufacturing that may occur within the City, or may completely ban all manufacturing of marijuana products. Those manufacturing activities could include the manufacture of oils, pills or edible products.

Another type of commercial marijuana business activity that will be authorized statewide is the testing of marijuana for contaminants and conformance “to the labeled content of compounds” before retail sales are allowed. (Business & Professions Codes § 26100.) The City may allow or completely prohibit both medical and nonmedical commercial marijuana testing businesses.

Sub-committee Recommendation: The City should ban all commercial manufacturing and testing for both medical and recreational marijuana, due to limited (or nonexistent) suitable industrial/manufacturing property, public safety and enforcement concerns.

4. Marijuana Deliveries

The Council can ban or regulate deliveries of marijuana (both medical and recreational) into the City from outside of the City. Likewise, deliveries from a lawful dispensary in the City to a resident in the City can also be banned or regulated. The City cannot prohibit the use of its public streets by delivery services that pass through Morro Bay.

The City currently does not have an express ban on marijuana deliveries.

The City can distinguish between medical and recreational marijuana deliveries, and, for example, allow only medical marijuana deliveries and prohibit recreational marijuana deliveries. If deliveries are allowed, then local regulations can be imposed on delivery operations such as strict record keeping and licensing of delivery drivers. Recently passed SB 94 imposes certain state mandated requirements on marijuana deliveries, including “during delivery, the licensee shall maintain a physical copy of the delivery request and shall make it available upon request of the licensing authority and law enforcement officers” and a “customer requesting delivery shall maintain a physical or electronic copy of the delivery request and shall make it available upon request by the licensing authority and law enforcement officers.” (Business and Professions Code § 26090.)

Sub-committee Recommendation: The City should allow medical marijuana delivery services to operate within the City subject to a regulatory permit with requirements such as background checks on the drivers, insurance, proof of association with a lawful licensed dispensary (whether in Morro Bay or elsewhere) and strict record keeping.

The same as for dispensaries, the City should also regulate the packaging and appearance of edible marijuana products for sale by delivery, to eliminate any possible confusion as to the nature of the product. For example, edible products should not have the appearance of candy which is attractive to minors, and all edible products should be clearly labeled as “medical marijuana.”

TIMELINE

Looking ahead, the next step is to receive direction from City Council and set up a workshop for community input on a new comprehensive marijuana ordinance, which would address the new state marijuana laws. That workshop is suggested to take place at the end of August/early September.

The urgency is having something adopted before the date when the state will begin issuing licenses for both medical and recreational commercial operations, currently being January 1, 2018.

After that prospective workshop, the draft marijuana ordinance should be initiated and presented to City Council by late September/early October for the first reading of the ordinance. The second reading should take place no later than November 14, 2017, the first and only City Council meeting that month.

If the ordinance is not complete by the October 24, 2017 Council meeting (2nd Council meeting in

October), then the City should move forward on November 14, 2017 with an Urgency Ordinance or moratorium to prohibit the establishment of any marijuana based business within the City. The moratorium could be put in place for up to 24 months to allow for adequate time for the development and adoption of a well thought out ordinance.

CONCLUSION

Council is requested to provide input and direction to staff either to: 1) develop an ordinance to implement local regulations concerning Proposition 64 and marijuana uses (including commercial); or, 2) establish a moratorium to postpone implementation of such an ordinance until after January 1, 2018.

The following is a summary of recommendations from the sub-committee for marijuana regulations:

1. Public Use / Smoking Regulations:
 - a. Maintain current strict smoking prohibitions in City code, and
 - b. reconsider some of the exemptions to tighten them up.
2. Personal Cultivation (Outdoor) - *prohibit*.
3. Personal Cultivation (Indoor) - *regulate as follows*:
 - a. Adopt local health and safety regulations (e.g., odor control and security),
 - b. require issuance of a local permit,
 - c. non-transferable permit,
 - d. charge nominal fee for permit,
 - e. require property owner consent, and
 - f. one-time City inspection to ensure cultivation site compliant with local law.
3. Dispensaries (Medical) – *allow as follows*:
 - a. Allow two fixed location (not mobile) medical marijuana dispensaries in the City,
 - b. reasonable requirements such as odor control, security, insurance and records,
 - c. seek development agreements with operators, and
 - d. impose local regulations on marijuana edibles (packaging and appearance).
4. Dispensaries (Recreational) - *prohibit*.
5. Commercial Cultivation (Medical and Recreational) - *prohibit*.
6. Manufacturing and Testing (Medical and Recreational) - *prohibit*.
7. Deliveries (Medical) - *allow as follows*:
 - a. require issuance of a local permit, and
 - b. reasonable requirements such as insurance, background checks on drivers, and proof of association with lawful medical marijuana dispensary (either in City or elsewhere).
8. Deliveries (Recreational) - *prohibit*.

ATTACHMENTS

1. Neighboring Jurisdictions Regulations
2. Regional Survey of Local Regulations for Personal Marijuana Cultivation

NEIGHBORING JURISDICTIONS' REGULATIONS

Paso Robles

The City of Paso Robles allows personal indoor cultivation in separate accessory units and allows medical mobile dispensaries. The City bans all other cannabis-related commercial activities.

Atascadero

The City of Atascadero is currently developing their ordinance and expects to present it to City Council in September or October. Preliminary research suggests that City Council is leaning towards allowing personal outdoor cultivation.

Pismo Beach

The City of Pismo Beach bans all cannabis-related commercial activities, both medical and recreational.

City of Arroyo Grande

Arroyo Grande is allowing indoor personal cultivation for medical purposes, as well as for up to three delivery services to operate within the city. The City currently allows medical deliveries and may allow recreational deliveries as well. The City bans all other cannabis-related commercial activities.

City of Grover Beach

The City of Grover Beach has approved 86 acres of land to be zoned for commercial medical cannabis activities, including: cultivation, manufacturing, distribution, testing laboratories, and two dispensaries. Dispensaries are only allowed to be open between the hours of 9 am to 7 pm and requires odor control devices that prohibits odors from being detectable from the property boundary. Dispensaries are required to produce security plans, security systems and the City will check employee background for disqualifying criminal backgrounds. The City began accepting applications for cannabis permits on June 14th, 2017. The City will tax medical cannabis activities at 5% of gross receipts. There will be a separate tax on cultivation and nurseries of \$25 per square foot on the first 5,000 square feet and \$10 per square foot on the remainder.

County of San Luis Obispo

The County of San Luis Obispo is currently updating their cannabis ordinance and has removed the 100-permit limitation on cultivation. Permit applications will be accepted in phases, with registered cultivation sites the first to be eligible for a permit. The County removed the prohibition on volatile manufacturing and leaning towards allowing establishment of dispensaries both inland and in the coastal zone. The County is leaning towards eliminating the medical-only provision, revising setback from sensitive uses, allowing mobile deliveries, and prohibiting mobile dispensaries.

REGIONAL SURVEY OF LOCAL REGULATIONS FOR PERSONAL MARIJUANA CULTIVATION

A survey of approach regional cities are taking for regulation of personal marijuana cultivation (both outdoor and indoor) was conducted. The survey included a review of local ordinances and outreach to various city staff members. Below are the results for personal marijuana cultivation.

1. Paso Robles

- Prohibits marijuana cultivation outdoors.
- Requires a permit for indoor personal marijuana cultivation, allows Council to impose a fee for indoor cultivation permit, and limits indoor cultivation to accessory structures.
- City staff is currently developing administrative regulations to govern indoor cultivation. A fee has not yet been set for the indoor cultivation permit.

2. Atascadero

- Prohibits recreational marijuana cultivation outdoors.
- In April, 2017 the Atascadero City Council directed staff to develop an ordinance for consideration allowing recreational marijuana cultivation outdoors if screened from public view.
- Allows limited medical marijuana cultivation outdoors in residential zones if screened from public view.
- Allows limited medical marijuana cultivation indoors.
- City staff related that at present the City Council does not seem inclined to have a permit required for personal marijuana cultivation indoors.

3. Pismo Beach

- Prohibits marijuana cultivation outdoors.
- Defaults to state law for indoor personal marijuana cultivation. Does not regulate, nor require a permit for, indoor personal marijuana cultivation.

4. Grover Beach

- Prohibits marijuana cultivation outdoors.
- Defaults to state law for indoor personal marijuana cultivation. Does not regulate (other than prohibit nuisance activity such as offensive odors or intrusive lighting), nor require a permit for, indoor personal marijuana cultivation
- City staff indicated no plans to develop additional ordinances to regulate marijuana cultivation.



AGENDA NO: C-4 MEETING DATE: August 8, 2017
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Staff Report

TO: Honorable Mayor & City Council **DATE:** July 27, 2017

FROM: Craig Schmollinger, Finance Director

SUBJECT: Approval of Community Benefit Agreement between City of Morro Bay and Trident Winds, LLC.

RECOMMENDATION

Staff recommends the City Council review the staff report, receive the presentation by staff and Trident Winds, LLC (Trident), and approve the attached Community Benefit Agreement (CBA) between the City of Morro Bay and Trident.

ALTERNATIVES

- The Council could opt not to approve the CBA as proposed, and direct changes as deemed appropriate (would require re-negotiation with Trident)
- Council could provide direction to discontinue working collaboratively with Trident on a wind farm proposal, including no further consideration of a CBA or other similar instrument memorializing such a partnership
- The Council may direct staff to take a different approach, as deemed appropriate for this or similar potential wind farm proposals

FISCAL IMPACT

There is no direct measurable Fiscal Impact associated with the CBA; however, long-term financial benefits from a wind farm based off the coast of Morro Bay would likely be realized (local jobs for residents, potential job training, local office for operations, and/or license fees, etc.).

BACKGROUND

The former Morro Bay Power Plant (the “MBPP”) is an inoperable 650 MW gas and oil fired power operation owned by Dynegy Morro Bay, LLC, a Delaware limited liability company, a wholly-owned affiliate of the publicly traded independent power company known as Dynegy Inc. (“Dynegy”). Dynegy representatives have advised it is actively attempting to sell and otherwise dispose of its portfolio of California power plants, including the MBPP. The MBPP has been closed and rendered inoperable since January 2013. The City has experienced significant negative economic impacts as a result of expired MBPP operational agreements, including, but not limited to, because a vacant power plant on the City’s waterfront is a visual and economic detriment to the future growth and prosperity of the City. Since the closure of the MBPP, various parties have suggested site re-use concepts to the City.

Staff and Trident understand the necessity to evaluate and address potential impacts to the marine ecosystem, specifically, water quality and migratory and resident species of concern, as well as other issues, such as visual resources, recreational opportunities, navigable channels, cultural resources and the commercial fishing industry for any proposed re-use of the MBPP. It is also well known, California has a public policy to increase, significantly, the use of renewable power in the State and to decrease,

Prepared By: <u>CS</u>	Dept Review: <u>CS</u>
City Manager Review: <u>MRL</u>	City Attorney Review: <u>JWP</u>

significantly, the emission of carbon in the power, industrial and transportation sectors of the California economy. Additional local economic and power generation concerns may exist given the impending closure of the Diablo Canyon Nuclear Power Plant near Avila Beach, which may compound both issues absent additional mitigating measures.

Noting those issues/public policy considerations, the City Council, on October 5, 2015, approved entering into a Memorandum of Cooperation (MOC) between the City of Morro Bay and Trident (see Attachment A). The MOC was for both parties to cooperate regarding a possible wind turbine project located off-shore for the production of electricity with access to the existing distribution facilities at the former MBPP.

DISCUSSION

Trident is a company formed to obtain permits and build clean, renewable energy projects, and has advised the City it is engaged in the permitting of a utility scale, deep water, anchored wind project on the central coast of California in the general vicinity offshore Morro Bay. Part of that potential project would require a means of transmitting electricity created by the wind project. The City owns and controls the cooling water outfall structure formerly utilized by the MBPP, which structure may be effectively re-utilized by an offshore wind project to provide the means for transferring the electricity generated by the wind project to the PG&E electric substation located adjacent to the MBPP, and which substation provides for an interconnection to the high voltage transmission system operated by the California Independent System Operator located in Folsom, California.

Trident approached the City to explore the possibility cooperating with the potential permitting of wind project and use of the City-owned outfall facility, with the MOC being authorized by Council to provide the parties a path for that cooperative effort. The MOC does not commit the City to any reuse of its outfall structure of the MBPP or position on the project.

Following execution of the MOC, the City and Trident have collaboratively negotiated the attached CBA, that meets the MOC intent:

- (i) to explore a long-term commercial relationship for the use of the City's outfall structure in order to interconnect an offshore wind project to the PG&E substation;*
- (ii) to consider supporting Trident's Plan of Permitting with respect to the federal, state and local permits it will need to construct an offshore wind project, and,*
- (iii) to work with Trident on such other activities as the Parties may wish to jointly consider.*

In staff's opinion, the benefits to each party from moving forward with this CBA warrant execution of the CBA.

City benefits include:

- promoting local hiring of City-residents
- hiring and retaining local fishery businesses and other local businesses for specified wind farm project activities
- future funding for job training activities (or direct training offerings)
- measurable goals/plans to increase the broad range of tourism-related businesses that can benefit from the development and operation of such a wind farm projects
- Community public meetings/input on the proposed projects, including likely impacts (positive and negative)
- Future developer (Trident) funding of above outlined benefits

- The CBA strongly encourages and expects a formal agreement with the Morro Bay Commercial Fisherman's Organization to minimize/mitigate adverse impacts to Morro Bay's commercial fishing industry.
- Local positive economic impacts if/when wind farm project commences

The CBA not only benefits the City. The benefits to Trident are primarily related to the Bureau of Ocean Energy Management (BOEM) granting bonus points to Trident as the result of having a CBA with a local government entity. Additional benefits to Trident include:

- Collaborative approach with Morro Bay
- Indication of the City's willingness to negotiate with Trident for a non-transferable, long-term lease, for conditional use of outflow conduit that is under City's control
- Exclusivity of agreement with Trident during the BOEM process and longer if Trident is successful

CONCLUSION

Trident Winds has proactively approached the City and community of Morro Bay in an open, transparent and collaborative fashion to present its wind farm proposal and gain community support for it by working with the community. As such, staff recommend the Council approve the attached CBA with Trident, noting the numerous mutual benefits of the agreement, and approach Trident is taking with regard to its project and the community.

ATTACHMENTS

1. Community Benefit Agreement, City of Morro Bay and Trident Winds, LLC
2. Memorandum of Cooperation, City of Morro Bay and Trident Winds, LLC (October 5, 2015)

COMMUNITY BENEFITS AGREEMENT

TRIDENT WINDS MORRO BAY OFFSHORE WIND FARM PROJECT

This COMMUNITY BENEFIT AGREEMENT (this “Agreement”) is entered into as of August 8, 2017, by and between THE CITY OF MORRO BAY, a California municipal corporation, (the “City”) and TRIDENT WINDS, LLC, a State of Washington limited liability company, (the “Developer”). The City and the Developer are sometimes referred to below, individually as a “Party” or, collectively, as the “Parties.”

A. The Developer is in the process of developing an offshore wind project proximate to Morro Bay (the “Proposed Project”), which process shall include procuring various Federal, State and local permits, entitlements, and other approvals and entering into related commercial contracts, including the Lease Agreement defined below; and

B. In recognition of the Memorandum of Cooperation executed between the Parties on October 5, 2015 (the “Memorandum of Cooperation”), which is superseded in its entirety by this Agreement and no longer have any effect, the Developer desires to receive from the City an initial favorable acknowledgement of the Proposed Project (the “Acknowledgement”) in exchange for the Community Benefits described herein (the “Community Benefits”).

NOW, THEREFORE, the Parties have agreed to enter into this Agreement and to be bound by this Agreement’s terms and conditions set forth below.

Section 1. Purpose

The purpose of this Agreement is to formalize the Acknowledgement, the Community Benefits to the City and its residents and the exclusivity of this Agreement.

Section 2. Community Benefit Efforts

Among some of the Community Benefits the Developer shall actively assist the City with receiving are the following:

(a) Promotion of Local Economic Development: Commencing on the Effective Date (as defined below) and continuing for the term of this Agreement achieving, to the extent reasonably viable and available, local economic development related to the development and long-term operations and maintenance of the Proposed Project, including, but not limited to:

- (i) promoting local hiring of City-residents;
- (ii) hiring and retaining local fishery-related businesses and their vessels and other local businesses for such things as, environmental surveys, monitoring, logistics, supplies, equipment, maintenance and activities related to the analysis, approval, installation, operation and maintenance of the Proposed Project, as applicable; provided, that such businesses can satisfy the relevant technical, commercial, and certification requirements;

(iii) when insufficient resources exist within the City to provide the services described in (ii), above, promoting establishment, within the City of new businesses for such services;

(iv) funding, at a level reasonably necessary for job training for the each of the objectives described in subparts (i), (ii) and (iii), above, whether through direct funding or through the Developer's contracts with its vendors; and

(v) developing measureable goals and plans to increase the broad range of tourism-related businesses that can benefit from the development and operation of the Proposed Project.

(b) Community Communications: Commencing on the Effective Date and continuing for the term of this Agreement in order to promote (i) open communications and (ii) accountability with the City's community, including scheduling, as reasonably requested by the City, a series of public meetings with residents and certain interests groups, including local business concerns (such as commercial and sports fishing and the broad range of tourism) to discuss all aspects of the Proposed Project, including environmental concerns, the Developer shall develop and implement a community communications plan, reasonably acceptable to the City Manager.

(c) Funding: The funding obligations relating to Subsection 2(a) and (b) of this Agreement shall be structured as follows:

(i) Subsequent to the Effective Date (as defined below), but within sixty (60) days after formal written notice from the Bureau of Ocean Energy Management ("BOEM") to Developer of Developer's exclusive site control needed for the Proposed Project, the Parties shall negotiate, in good faith, certain mutually agreed funding structures and priorities, that will be legally enforceable against the Developer and its partners (if any) in the Proposed Project and any and all owners/operators of the Proposed Project, pursuant to which the Developer and its partners (if any) in the Proposed Project and any and all owners/operators of the Proposed Project shall provide periodic funding to fund the agreed activities directly and indirectly related to the matters related to Subsections 2(a) and (b); and

(ii) Prior to the commercial operation date of the Proposed Project, the Parties shall agree upon certain long-term funding commitments that will be tied to the duration of each power purchase agreement procured for the Proposed Project, pursuant to which the Developer and its partners (if any) in the Proposed Project and any and all owners/operators of the Proposed Project shall continue to be legally bound to fund certain objectives related to the matters related to Subsections 2(a) and (b), as mutually agreed to by the Parties.

(d) Fisherman Agreement: In addition, prior to the City leasing any property or improvements it controls for uses related to the Proposed Project, the Developer shall, in good faith, work with the Morro Bay Commercial Fisherman's Organization, a California Mutual Benefit Corporation, ("MBCFO") to develop methods and means to best minimize and mitigate adverse impacts to the area's commercial fishing industry. The goal of that collaboration is for

the Developer and MBCFO to agree, prior to the commencement of operation of the Proposed Project, to a formal memorialization of a plan to minimize and mitigate those adverse impacts.

(e) Progress Reports: At least every 90 days after the Effective Date, the Developer shall provide the City Manager a written report describing the progress the Developer has made regarding the Proposed Project and meeting the requirements of (a), (b) and (d), above.

Section 3. Term; Expiration

(a) This Agreement shall become effective on the date of the City Council's formal approval of this Agreement at a duly noticed public meeting (the "Effective Date") and shall expire on the earlier to occur of:

(i) when, as reasonably determined by the City Manager, the Developer no longer has a realistic opportunity to move forward with the Proposed Project or

(ii) the Developer's material nonperformance of any of the terms of this Agreement; provided, that the City has provided the Developer 30-days' written notice of the nonperformance and the Developer fails to commence correction of that nonperformance within that thirty-day period or after timely commencement fails to correct that nonperformance within 45 days after that 30-day period.

Section 4. Exclusive Nature of Agreement; Recordation of Memorandum of Agreement

The Parties acknowledge and agree during the term of this Agreement (i) this Agreement is exclusive as between the Parties relating to the subject matter hereof and (ii) without the prior written consent of the Developer, the City shall not enter into an agreement similar to this Agreement.

Section 5. Miscellaneous

(a) Advice of Legal Counsel. Each Party acknowledges it has reviewed this Agreement with its own legal counsel, and based upon the advice of that counsel, has freely entered into this Agreement.

(b) Assignment; Successors. This Agreement shall inure to the benefit of, be binding upon, and be enforceable by and against the Parties and their respective successors and permitted assigns. The Developer shall be permitted to assign this Agreement to an affiliate or subsidiary without the prior consent of the City.

(c) Authority of Signatories. The individuals executing this Agreement represent and warrant that they have the authority to sign on behalf of their respective Parties.

(d) Controlling Law. This Agreement shall be enforced in accordance with the laws of the State of California and the United States. If any provision of this Agreement is held by a court of law to be in conflict with law, then the applicable law shall prevail over the terms of this Agreement, and the conflicting provisions of this Agreement shall not be enforceable.

(e) Correspondence. All correspondence shall be in writing and shall be addressed to the affected Parties at the addresses set forth below. A Party may change its address by giving notice in compliance with this Section 6. The addresses of the Parties are:

If to the Developer:

Trident Winds, LLC
113 Cherry Street, #34912
Seattle, WA 98104-2205
Tel.: 206.300.7721
Facsimile: 425.988.1977
Attn: Alla Weinstein, Founder

Copy to:

Perkins Coie, LLP
10885 Fourth Street, Suite 700
Bellevue, WA 98004
Tel.: 425 635 1441
Facsimile: 425 635 2441
Attn.: John Pierce

If to the City:

City of Morro Bay
595 Harbor Street
Morro Bay, CA 93442
Tel.: 805.772.6205
Facsimile: 805.772.7329
Attn: City Manager

Copy to:

Joseph W. Pannone
Aleshire & Wynder, LLP
2361 Rosecrans Avenue, Suite
El Segundo, CA 90245-4916
Tel.: 310.527.6663
Facsimile: 310.532.7395

(f) Counterparts. This Agreement may be executed in two or more counterparts, each of which may be deemed an original, but all of which shall constitute one and the same document.

(g) Entire Agreement. The Agreement contains the entire agreement between the Parties and supersedes any prior agreements, discussions, or commitments, written or oral, between the Parties to this Agreement.

(h) Further Assurances. The Parties hereto agree to take such actions and execute such additional documents as are reasonably necessary to carry out the provisions of this Agreement.

(i) Modification. This Agreement may not be altered, amended or modified except by an instrument in writing signed by the Parties to this Agreement.

(j) Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall continue in full force and effect.

(k) Venue. Venue for all legal proceedings shall be in the Superior Court of California, County of San Luis Obispo or the Federal District Court for San Luis Obispo County, if the matter involves federal law.

(l) Waiver. A waiver by any Party of any breach of any term, covenant or condition herein contained or a waiver of any right or remedy of such party available hereunder at law or in equity shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained or of any continued or subsequent right to the same right or remedy. No Party shall be deemed to have made any such waiver unless it is in writing and signed by the Party so waiving.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

CITY OF MORRO BAY

By: _____
Jamie Irons., Mayor

ATTEST:

APPROVED AS TO FORM:

Dana Swanson., City Clerk

Joseph W. Pannone, City Attorney

TRIDENT WINDS, LLC

By: 
Alla Weinstein, Founder

OCTOBER 5, 2015

MEMORANDUM OF COOPERATION BY AND BETWEEN THE CITY OF MORRO BAY CALIFORNIA (the "City") AND TRIDENT WINDS LLC ("Trident"), AN OFFSHORE WIND DEVELOPMENT COMPANY ORGANIZED IN WASHINGTON STATE, collectively (the "Parties")

Whereas, The City of Morro Bay in San Luis Obispo County California is the location of an inoperable 650 MW gas and oil fired power plant (the "Plant") owned by Dynegy Morro Bay, LLC, a Delaware limited liability company, a wholly-owned affiliate of the publicly traded independent power company known as Dynegy Inc. ("Dynegy"), located in Houston Texas, that owns and operates a coal-fired dominated portfolio of power plants across the U.S.; and

Whereas, Dynegy representatives have advised the City Dynegy is actively attempting to sell and otherwise dispose of its portfolio of California power plants, including the Plant; and

Whereas, the Dynegy power plant located on the Morro Bay waterfront has been closed and rendered inoperable since January 2013, thereby producing significant negative economic impacts on the City's revenue streams as a result of expired plant operational agreements; and

Whereas, the Parties understand the necessity to evaluate and address potential impacts to the marine ecosystem, specifically, water quality and migratory and resident species of concern, as well as other issues, such as visual resources, recreational opportunities, navigable channels, cultural resources and the fishing industry; and

Whereas, a vacant power plant on the City's waterfront is a visual and economic detriment to the future growth and prosperity of a California coastal city; and

Whereas, since the Plant's closure, various parties have suggested Plant site re-use concepts to the City; and

Whereas, it is the public policy in the State of California to significantly increase the use of renewable power in the state and to significantly decrease the emission of carbon in the power, industrial and transportation sectors of the California economy; and

Whereas, Trident, an Offshore Wind Development ("OSD") company formed to permit clean, renewable energy projects, has advised the City that it is engaged in the permitting of a utility scale, deep water, anchored wind project on the central coast of California in the general vicinity of Morro Bay; and

Whereas, the City owns and controls the cooling water outfall structure formerly utilized by the closed and inoperable Plant which structure may be effectively re-utilized by an offshore wind project to electrically connect a wind project to the PG&E electric substation located adjacent to the Plant, and which substation provides for an interconnection to the high voltage transmission system operated by the California Independent System Operator located in Folsom, California; and

Whereas, the City may control or have influence over the use or re-use of other built infrastructure within its jurisdiction, that may be useful to facilitate the development of a renewable energy offshore wind project that could contribute to the economic prosperity and development opportunities for the City.

Now, in consideration of the mutual undertakings of the Parties set forth below, the Parties agree as follows:

1. Trident will, subject to any confidentiality agreements or applicable law and regulation, provide the City with progress reports concerning, among other matters:

- (i) its preparation of an application to the Bureau of Ocean Energy Management (“BOEM”) to lease certain areas of the ocean floor off the coast of central California;
- (ii) its engagement with environmental and other non-governmental organizations that may be parties in interest with respect to a proposed offshore wind project;
- (iii) its engagement with commercial and recreational fishing interests that may be affected by a proposed offshore wind project;
- (iv) its engagement with Native American interests that may be affected or that may participant in the development of an offshore wind project;
- (v) its engagement with the California Coastal and Lands Commissions;
- (vi) its engagement with the California Energy Commission;
- (vii) its engagement with the California Public Utilities Commission;
- (viii) its engagement with the California Air Resources Board;
- (ix) its engagement with the California Independent System Operator;
- (x) its engagement with other state and local elected officials, community at large and local businesses; and,
- (xi) its engagement with Dynegy and/or others with respect to Trident’s wind project development endeavors.

2, Trident will use its reasonable best efforts to help educate City representatives and the citizenry of Morro Bay about the technology of the proposed wind project, its various environmental impacts, its economic development attributes for the City and its ideas for the possible re-use of Plant facilities and property.

3. The City will, subject to its own rules and regulations and applicable law, and following significant public review and participation, cooperate with Trident to the extent it deems reasonable and in the public interest:

- (i) to explore a long-term commercial relationship for the use of the City's outfall structure in order to interconnect an offshore wind project to the PG&E substation;
- (ii) to consider supporting Trident's Plan of Permitting with respect to the federal, state and local permits it will need to construct an offshore wind project, and,
- (iii) to work with Trident on such other activities as the Parties may wish to jointly consider.

In witness thereto the below sign on behalf of their respective parties.

City of Morro Bay

Trident Winds LLC

By: Jamie L. Irons
Jamie Irons, Mayor

By: H. Weinstein
Its member

ATTEST:

Dana Swanson
Dana Swanson, City Clerk

APPROVED AS TO FORM:

Joseph W. Pannone
Joseph W. Pannone,
City Attorney

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AGENDA NO: C-5

MEETING DATE: August 8, 2017

Staff Report

TO: Honorable Mayor and City Council

DATE: July 21, 2017

FROM: Jamie L. Irons, Mayor
Dana Swanson, City Clerk

SUBJECT: Adoption of Resolution No. 45-17 Amending the Council Policies & Procedures to eliminate the 7:00 p.m. start time for Public Hearings, and consideration of a Council subcommittee to review the Council Policies & Procedures and Advisory Board By-Laws

RECOMMENDATION

Staff recommends the City Council adopt Resolution 45-17 amending Section 1.2.7 of the Council Policies & Procedures to eliminate the 7:00 p.m. start time requirement for public hearings. Staff also recommends the Council consider establishing a subcommittee to work with staff to review the Council Policies & Procedures and Advisory Board Bylaws in their entirety, consider the possible revisions discussed below and any others deemed necessary, then return to Council with proposed revisions for consideration and adoption.

ALTERNATIVES

The Council may choose not to establish a subcommittee and direct staff to review and bring back proposed revisions to these policies.

FISCAL IMPACT

There is no fiscal impact associated with this action.

BACKGROUND

At the February 14, 2017, City Council Meeting, Mayor Irons requested a future agenda item to discuss the Council Policies & Procedures, particularly related to advisory boards. Council Member McPherson asked the item include discussion of advisory board training. On May 9, 2017, Mayor Irons requested discussion of meeting structure regarding the 7:00 p.m. start time for public hearings. There was full Council support for these agenda items.

Mayor Irons and Clerk Swanson met and reviewed both documents and identified some areas and issues for Council review and discussion.

DISCUSSION

The Council Policies & Procedures and Advisory Board Bylaws were adopted in 2001 and 2002, respectively. While there have been several updates to both documents, a cover to cover review has not been conducted. Based on a brief review by the Mayor and City Clerk, the following areas have been identified as potential areas needing attention. Of those, the City's policy requiring public hearings to begin no earlier than 7:00 p.m. has caused considerable shuffling of agenda items at recent meetings, which can be confusing to the public. Resolution No. 45-17 would strike that language and allow the Council to move through the agenda with less interruption. The remaining

Prepared By: DS

Dept Review:

City Manager Review: MRL

City Attorney Review: JWP

items that have been identified require more review than can effectively be accomplished in a Council meeting. If the Council wishes to establish a subcommittee, then staff would work with the subcommittee to review and craft policy revisions to be brought back for consideration at a future meeting.

Council Policies & Procedures

1. Resolution 70-15. On November 10, 2015, the Council adopted a resolution pledging to follow best practices of civility and civil discourse in all of its meetings. It is suggested this standalone policy be incorporated into the Council Policies & Procedures.
2. Section 1.2.7 – Order of Business
 - a. Staff recommends striking the language that requires public hearings begin no earlier than 7:00 p.m.
 - b. The Council may also consider other changes to the Order of Business.
3. Section 1.3.7 – Public Comment

The current policy encourages citizens to present written comments at least one day prior to the meeting. It is suggested the Council review this section and consider any desired revisions.
4. Section 3.3 – Filling Council Vacancies

This section reflects language adopted by Measure “R” in 2006 and codified by Ordinance 527 as Morro Bay Municipal Code (MBMC) Section 2.06.030. Staff recommends this section be simplified to simply refer to MBMC Section 2.06.030, rather than re-state the language.
5. Section 4.2.7 – Correspondence

Staff recommends the Council consider possible revisions to this section to reflect current business practices.
6. Section 4.5 – Email

Staff recommends this section be reviewed by the City Attorney and City Clerk and updated, as necessary, to ensure consistency with current business practices, the City’s Record Retention Schedule, and State law.
7. Section 6.2.1 – Council Liaison Assignments

Staff recommends the Council review and discuss this section.
8. Section 6.2.2 – Other Council Subcommittees

Review and consider whether advisory board subcommittees should be formed by the Council, or by the Advisory Board.
9. Section 6.3.3.3 – Council Meetings (Advisory Board Reports)

Review and discuss process for advisory board reports to Council.
10. Section 6.6.2.4 – Terms (Advisory Board Terms)

Review and consider clarifications regarding serving on multiple advisory boards.
11. Section 6.6.3 – Process (Advisory Board Application Process)

Review and consider adding a section defining the process for accepting resignations.
12. Advisory Board Training – The Council may choose to direct staff to add a new section regarding training requirements.

Advisory Board Bylaws

1. Introduction (page 2)
 - a. Update with the City Mission Statement approved by Council in February 2017.
2. General Information (pages 4-7)
 - a. Review and consider language defining the role and responsibility of the advisory bodies.
 - b. Correction needed on the bottom of page 4—there are currently **six** standing advisory boards.
 - c. Qualifications for Service - Consider adding language regarding training requirements.

3. Background Information on City Government (page 8)
Consider adding a section defining the role of Advisory Boards.
4. Recreation & Parks Commission Meeting Schedule
The Recreation & Parks Commission has requested language regarding meeting frequency be revised as follows, "Regular meetings shall be held in odd numbered months on a regular schedule."
5. Mission Statements
All advisory boards include the City Mission Statement on their agendas. The Tourism Business Improvement District (TBID) Advisory Board also lists its mission statement, which is shown below. It is recommended the Council review, comment and/or revise, then formally approve the TBID Mission Statement as part of the Advisory Board Bylaws update.

Tourism Business Improvement District Purpose and Authority

The Morro Bay Tourism Business Improvement District (MBTBID) Advisory Board ("Board") advises the City Council on the administration and use of the MBTBID assessment funds. The Board recommends projects to the City of Morro Bay to promote tourism to directly benefit the City's lodging industry.

The primary purpose of the MBTBID is to increase occupancy and room nights across all lodging types (motel, hotels, bed and breakfast) that pay the business improvement assessment (BID) along with transient occupancy tax (TOT) within the City while placing particular emphasis on marketing that positively impacts the lodging.

The Citizens Finance Advisory Committee has a mission statement that has been adopted by the Council and is currently incorporated into its Bylaws, but not currently listed on its meeting agendas:

Citizens Finance Advisory Committee Mission Statement

The role of the Committee is to provide citizen input to the City Council and staff, regarding financial policy or process issues, including audits, financial budgets, contract expenditures and financial reports. In addition, the Committee's role is to help promote citizen participation with, and understanding of, governmental financial information and processes, such as the financial documents, audits, and budgets, as well as the financial condition of the City.

6. Number of Members on each Advisory Board
It is requested the Council discuss the number of members on each of the advisory boards and either affirm or amend the board makeup. The number of members on each board is as follows: Planning Commission (5), Harbor Advisory Board (7 plus two alternates for the commercial fishermen position), Public Works Advisory Board (PWAB) (7), Recreation & Parks Commission (7), Citizens Finance Advisory Committee (7), TBID Advisory Board (7), WRFCAC (7 appointees plus one Planning Commission representative and one PWAB representative), and GPAC (9).
7. Registered voter
The Council may wish to discuss a requirement that all advisory board members be registered voters in the City of Morro Bay. Note: This is not recommended for the TBID or Harbor Advisory Boards or desired youth members.
8. GPAC & WRFCAC
Special purpose, limited term advisory boards, such as the GPAC and WRFCAC, are not covered in the Advisory Board Bylaws. Those committees were formed by Resolution (Attachments 3 & 4) and the Council may wish to establish "purpose" statements for those

committees.

CONCLUSION

Staff recommends the Council adopt Resolution No. 45-17 amending the Council Policies & Procedures to eliminate the 7:00 p.m. start time for public hearings and establish a subcommittee to review that document as well as the Advisory Board Bylaws.

ATTACHMENTS

1. Resolution No. 45-17
2. Council Policies & Procedures
3. Advisory Board Bylaws
4. Resolution forming the Water Reclamation Facility Citizens Advisory Board (WRFCAC)
5. Resolution forming the General Plan Advisory Committee (GPAC)

RESOLUTION NO. 45-17

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AMENDING THE COUNCIL POLICIES AND PROCEDURES
SECTION 1.2.7 REGARDING ORDER OF BUSINESS**

**THE CITY COUNCIL
CITY OF MORRO BAY, CALIFORNIA**

WHEREAS, the Council Policies and Procedures Manual for the City of Morro Bay is a combination of City Council actions, policies, references, and information regarding the City Council; and

WHEREAS, to ensure all Councilmembers are familiar with and understand the City of Morro Bay's philosophies and policies regarding serving on the City Council, the City Council adopted its Council Policies and Procedures Manual, which have been amended on various occasions; and

WHEREAS, the City again desires to amend certain the Council Policies and Procedures Manual related to the Order of Business to eliminate the requirement that Public Hearings begin no earlier than 7:00 p.m.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Morro Bay does hereby amend Section 1.2.7 of the Council Policies and Procedures Manual to read, as follows:

1.2.7 ORDER OF BUSINESS shall be as follows:

- 1.2.7.1 Establish Quorum and Call to Order
- 1.2.7.2 Moment of Silence
- 1.2.7.3 Pledge of Allegiance
- 1.2.7.4 Recognition (Certificates of Appreciation or other forms of recognition for residents and staff)
- 1.2.7.5 Closed Session Report
- 1.2.7.6 Mayor and Council Members Reports, Announcements and Presentations
- 1.2.7.7 City Manager Reports, Announcements and Presentations (City Manager, Director and Advisory Board Reports)
- 1.2.7.8 Presentations (Proclamations and Public Presentations)
- 1.2.7.9 Public Comment
- 1.2.7.10 Consent Agenda
- 1.2.7.11 Public Hearings (~~shall start no sooner than 7:00 p.m.~~)
- 1.2.7.12 Business Items
- 1.2.7.13 Council Declaration of Future Agenda Items
- 1.2.7.14 Adjournment

PASSED AND ADOPTED by the City Council, City of Morro Bay at a regular meeting thereof held on the 8th day of August 2017 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk

City of Morro Bay

Council Policies and Procedures

SCOPE

This resolution shall establish the procedures for the conduct of all meetings of the City Council of the City of Morro Bay. The purpose of this resolution is to provide that the City Council's meeting procedures will be consistent with the Brown Act (Government Code Sections 54950 et seq.) establish procedures which will be convenient for the public and contribute to the orderly conduct of the City's business. The procedures herein are in addition to, and not in place of, Morro Bay Municipal Code (MBMC) 2.08 and any other applicable ordinances and statutes, and in the event of conflict between this resolution and applicable ordinances or statutes, the latter shall govern.

**RESOLUTION NO: 46-02
ADOPTED BY THE CITY COUNCIL OF
THE CITY OF MORRO BAY ON
AUGUST 12, 2002 APPROVING AND ADOPTING
THE COUNCIL POLICIES AND PROCEDURES MANUAL
AND RESCINDING RESOLUTION NO. 47-01**

**RESOLUTION NO: 54-03
ADOPTED BY THE CITY COUNCIL OF
THE CITY OF MORRO BAY ON
NOVEMBER 13, 2003 AMENDING COUNCIL
POLICIES AND PROCEDURES MANUAL
SECTIONS 1.2.2 AND 1.3.7.1.1**

**RESOLUTION NO: 37-04
ADOPTED BY THE CITY COUNCIL OF
THE CITY OF MORRO BAY ON
JUNE 24, 2004 AMENDING COUNCIL
POLICIES AND PROCEDURES MANUAL
SECTION 1.3.9.3.5**

**RESOLUTION NO: 42-05
ADOPTED BY THE CITY COUNCIL OF
THE CITY OF MORRO BAY ON
NOVEMBER 14, 2005 AMENDING COUNCIL
POLICIES AND PROCEDURES MANUAL
SECTION 4.5**

**RESOLUTION NO: 23-06
ADOPTED BY THE CITY COUNCIL OF
THE CITY OF MORRO BAY ON
MAY 22, 2006 AMENDING COUNCIL
POLICIES AND PROCEDURES MANUAL
REGARDING CANCELLATION OF MEETINGS**

**RESOLUTION NO. 24-07
ADOPTED BY THE CITY COUNCIL OF
THE CITY OF MORRO BAY ON
MAY 14, 2007 AMENDING COUNCIL
POLICIES AND PROCEDURES MANUAL
REGARDING EX PARTE COMMUNICATIONS**

**RESOLUTION NO. 50-07
ADOPTED BY THE CITY COUNCIL OF**

**THE CITY OF MORRO BAY ON
OCTOBER 8, 2007 ADDING TO AND AMENDING COUNCIL
POLICIES AND PROCEDURES MANUAL
REGARDING USE OF CITY LETTERHEAD AND
USE OF SPEAKER SLIPS AT CITY COUNCIL MEETINGS**

**RESOLUTION NO. 76-08
ADOPTED BY THE CITY COUNCIL OF
THE CITY OF MORRO BAY ON
NOVEMBER 10, 2008 AMENDING COUNCIL
POLICIES AND PROCEDURES MANUAL
REGARDING THE ORDER OF BUSINESS ON THE
CITY COUNCIL AGENDA, APPOINTMENT OF VICE MAYOR
AND FILLING COUNCIL VACANCIES**

**RESOLUTION NO. 11-10
ADOPTED BY THE CITY COUNCIL OF
THE CITY OF MORRO BAY ON
FEBRUARY 22, 2010 ADDING TO AND AMENDING COUNCIL
POLICIES AND PROCEDURES MANUAL
REGARDING EXPENSE REIMBURSEMENT POLICY FOR
ELECTED AND APPOINTED OFFICIALS, CITY LETTERHEAD
AND THE COUNCIL COMPENSATION COMMITTEE**

**RESOLUTION NO. 28-10
ADOPTED BY THE CITY COUNCIL OF
THE CITY OF MORRO BAY ON
JUNE 14, 2010 AMENDING COUNCIL POLICIES AND PROCEDURES
MANUAL REGARDING SECTION 2.2, RETIREMENT,
MEDICAL, DENTAL, VISION, AND LIFE INSURANCE**

**RESOLUTION NO. 46-10
ADOPTED BY THE CITY COUNCIL OF
THE CITY OF MORRO BAY ON SEPTEMBER 27, 2010
AMENDING THE COUNCIL POLICIES AND PROCEDURES
MANUAL IN REGARD TO CALLING CLOSED SESSION MEETINGS;
IN REGARD TO ALL REAL PROPERTY CONTRACTS GOING TO CLOSED
SESSION PRIOR TO OPEN SESSION; IN REGARD TO COUNCIL LIAISONS
TO ADVISORY BOARDS; AND, IN REGARD TO CITY COUNCIL INPUT ON
HIRING AND EVALUATION OF DEPARTMENT HEADS**

**RESOLUTION NO. 11-11
ADOPTED BY THE CITY COUNCIL OF
THE CITY OF MORRO BAY ON JANUARY 25, 2011
ADDING TO AND AMENDING THE COUNCIL POLICIES
AND PROCEDURES MANUAL REGARDING
REGULAR MEETING TIMES AND PLACING ITEMS ON THE AGENDA**

**RESOLUTION 64-12
ADOPTED BY THE CITY COUNCIL OF
THE CITY OF MORRO BAY ON DECEMBER 11, 2012
AMENDING THE COUNCIL POLICIES AND PROCEDURES MANUAL
REGARDING ELECTRONIC MAIL (EMAIL), THE PUBLIC RECORDS ACT
AND THE BROWN ACT**

**RESOLUTION 19-13
ADOPTED BY THE CITY COUNCIL OF
THE CITY OF MORRO BAY ON MARCH 12, 2013
AMENDING THE COUNCIL POLICIES AND PROCEDURES MANUAL
REGARDING STUDY SESSIONS, PLACING AN ITEM ON THE AGENDA,
RECONSIDERATION, ORDER OF BUSINESS AND PUBLIC COMMENT**

**RESOLUTION NO. 53-13
A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AMENDING SECTION 2.2 OF THE CITY COUNCIL POLICIES AND
PROCEDURES MANUAL REGARDING RETIREMENT, MEDICAL, DENTAL,
VISION, AND LIFE INSURANCE UNSPENT DOLLARS**

RESOLUTION NO. 36-14

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AMENDING VARIOUS SECTIONS OF THE CITY COUNCIL POLICIES AND
PROCEDURES MANUAL REGARDING MAYOR PRO TEM**

RESOLUTION NO. 58-15

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AMENDING VARIOUS SECTIONS OF THE CITY COUNCIL POLICIES AND
PROCEDURES MANUAL**

RESOLUTION NO. 74-15

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AMENDING COUNCIL POLICIES AND PROCEDURES MANUAL
REGARDING MEETING GUIDELINES & PROCEDURES**

RESOLUTION NO. 30-16

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AMENDING COUNCIL POLICIES AND PROCEDURES MANUAL
REGARDING MEETING GUIDELINES & PROCEDURES**

RESOLUTION NO. 01-17

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AMENDING THE COUNCIL POLICIES AND PROCEDURES MANUAL
REGARDING ADVISORY BOARD MEMBER QUALIFICATIONS**

RESOLUTION NO. 70-15

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
PLEDGING TO FOLLOW BEST PRACTICES OF CIVILITY AND CIVIL DISCOURSE
IN ALL OF ITS MEETINGS**

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

WHEREAS, we, the Mayor, City Council Members, Commissioners, Appointees, and Staff of the City of Morro Bay, in order to ensure **civility and civil discourse** in all of our meetings, pledge our commitment to the following **best practices of civility and civil discourse**; and,

WHEREAS, we pledge our commitment to **respect** the right of all people to hold different opinions in all our meetings; and

WHEREAS, we pledge our commitment to **avoid rhetoric intended to humiliate, malign, or question the motivation** of those whose opinions are different from ours in all our meetings; and

WHEREAS, we pledge our commitment to **strive to understand** differing perspectives in all our meetings; and,

WHEREAS, we pledge our commitment to **choose words carefully** in all our meetings; and

WHEREAS, we pledge our commitment to **speak truthfully** without accusation, and avoid distortion in all our meetings; and

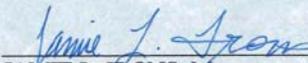
WHEREAS, we pledge our commitment **against violence and incivility** in all their forms whenever and wherever they occur in all our meetings; and

WHEREAS, we commit ourselves to build a civil political community in which each person is respected and spirited public and political debate is aimed at the betterment of the City of Morro Bay and its people and not the disparagement of those with whom we disagree.

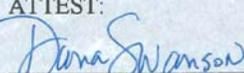
NOW, THEREFORE, BE IT RESOLVED, by the City Council, City of Morro Bay, California, that the Mayor, City Council Members, Commissioners, Appointees, and Staff of the City of Morro Bay shall promote the use of and adherence to the principles of **civility and civil discourse** in conducting business with appointed and elected officials, staff, and citizens.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 10th day of November, 2015 on the following vote:

AYES: Irons, Johnson, Smukler
NOES: None
ABSENT: Headding, Makowetski



JAMIE L. IRONS, Mayor

ATTEST:


DANA SWANSON, City Clerk

**CHAPTER ONE
MEETING GUIDELINES & PROCEDURES**

1.1 MEETING SCHEDULE

1.1.1 MEETINGS OF COUNCIL

The Council shall provide by ordinance the time and place of holding meetings and the manner in which special meetings may be called. Public interest and convenience shall be primary considerations when decisions are made as to time, location and frequency.

Except as otherwise provided by law, all meetings of the Council shall be open to the public.

1.1.2 REGULAR MEETINGS

- 1.1.2.1 Regular meetings shall be held the second and fourth Tuesday of each month beginning at 6:00 p.m. In the event that a regular meeting of the Council shall fall on a legal holiday, that regular meeting shall be held at the same place and time on the next succeeding working day. A regular meeting can only be cancelled after polling the majority of the Council in favor of the cancellation.
- 1.1.2.2 Regular meetings shall be held in the Veterans Memorial Building, 209 Surf Street, in the City of Morro Bay.
- 1.1.2.3 Regular meetings shall be between the hours of 6:00 p.m. - 11:00 p.m. It shall be the policy of the City Council to complete meetings by 11:00 p.m., unless a majority of the Council elects to continue past the adjournment hour. If at the hour of 11:00 p.m. the City Council has not extended the time to adjourn the meeting or concluded its business, then the Council will review the balance of the agenda and determine whether to extend the meeting beyond the hour of 11:00 p.m., continue any remaining items, or adjourn the meeting to another date and time.

1.1.3 STUDY SESSIONS (Open to the public)

- 1.1.3.1 The purpose of these meetings shall be for informal discussions between staff, advisory bodies or consultants, the public, and the City Council regarding specific programs, projects or policies. Council may provide direction, but no formal action will be taken during a Study Session. Study Sessions may be conducted in a variety of formats, including Public Workshops.
- 1.1.3.2 Study Sessions will be held at a time and place within the City limits and convenient to Council and advantageous for public participation.

1.1.4 SPECIAL MEETINGS

- 1.1.4.1 Special meetings may be called by the Mayor or three City Council Members. Written notice of each special meeting must be given not less than twenty-four (24) hours before such meeting to each Member of the City Council not joining the call. Special meetings may be cancelled only by consent of a majority of the members of the Council not less than 24 hours before the date of the special meeting. Notice of such cancellation shall be given to all Council Members and written notice shall be posted for the public not less than 24 hours before the meeting.
- 1.1.4.2 Written notice must be given to the City Council and to the media twenty-four hours prior to each meeting, when requested.
- 1.1.4.3 A supplemental telephone call shall be made if necessary to notify each Council Member.
- 1.1.4.4 No business other than that announced shall be discussed.
- 1.1.4.5 Any special meeting held at a place other than the Veterans Memorial Building shall be open to the public. Such meetings shall be held within the City limits. Notice requirements of the Brown Act shall be complied with for any such meetings; regular minutes shall be taken by the City Clerk and shall be available for public inspection.

1.1.5 DESIGNATION AND USE OF COUNCIL CHAMBERS

1.1.5.1 The Veterans Memorial Building shall be designated as the City's Council Chambers.

1.1.5.2 When a question arises regarding permission for any group to use the Council Chambers, the City Manager shall have authority to make the final decision. The following rules are established as a guide:

- a. Use of the Council Chamber for regular meetings by City commissions, committees, and other advisory bodies shall take precedence over any other group or agency. To the extent possible, special meetings will be scheduled around other regularly scheduled non-City uses. In the event of a conflict, the City will give priority to rescheduling or relocating any use displaced by a City-related use.
- b. Council chambers is available for other use on a first-come-first-serve basis, after City, City-affiliated and other regular uses are scheduled.
- c. With the approval of the City Manager, and within the provisions of existing video production agreements, other local governmental agencies may use the Council Chamber for the purpose of live or video cablecasting public hearings and/or public meetings during regular or non-business hours.

1.2 AGENDA

1.2.1 ESTABLISHING THE COUNCIL AGENDA

The purpose of the agenda is to provide a framework within which Council meetings can be conducted and to effectively implement the approved Council Goals, Financial Plan and Budget, and also work programs, objectives, and business of the City as established by the present or earlier City Councils. Agenda items also include recommendations to the City Council from advisory bodies, land use and zoning actions or appeals, bid and purchasing procedures, and mandates from other levels of government. Staff shall work within the policy context established by the Council and will not arbitrarily place matters on the agenda that are outside the scope of existing work programs of the City, except as approved by the Mayor or a majority of the Council, and to inform and advise the Council of matters necessary to the proper operation and well-being of the City.

- a. Tentative Council Meeting Agenda - Every effort will be made to provide it to the City Council and staff before the close of business on the second Friday prior to the Council meeting.
- b. The full agenda packet for regular meetings of the City Council and all City Advisory Boards will be published a minimum of 120 hours (or five calendar days) prior to the meeting. Agenda packets for special meetings will be published a minimum of 48 hours (or two calendar days) prior to the meeting.

The process for determining the format and order of the agenda is based primarily on the order of business adopted by the City Council (see Section 1.2.7). The process for establishing the order of specific business and public hearing items is a collaborative one determined largely by anticipated public attendance (those matters involving greater audience attendance are usually scheduled ahead of other items). The City Manager shall meet with department heads on a regular basis, individually and as a group to discuss issues and to review upcoming agenda items.

In addition, the City Manager shall review the agenda materials with the Mayor, or in the Mayor's absence, the Mayor Pro Tempore. The final agenda is set subject to the approval of the Mayor (or Mayor Pro Tempore), after consultation with the City Manager.

1.2.2 PLACING AN ITEM ON THE AGENDA (COUNCIL MEMBER)

Any Council Member may request an item be placed on a future agenda by submitting a request, orally or in writing, to consider the matter and by discussing the request during the "Declaration of Future Agenda Items" section of the regular agenda. If a majority of the Council approves including that matter on an upcoming agenda, then staff will prepare a staff report for the next available agenda, as determined by the City Manager, unless otherwise directed by the Council.

If only one other Council Member supports hearing the item, then an item will be listed on the next available agenda, as determined by the City Manager, unless otherwise directed by the Council. The Council Member who made the request for the agenda item shall be responsible for providing the Council report and the Council will take no action on the substance of the matter at that review, unless there is adequate public notice and information is provided for the Council to make an informed decision. If no other Council Member supports hearing the item, then the item will not be placed on the agenda.

Pursuant to Section 1.2, the Mayor is responsible for establishing the Agenda and may place an item on the agenda without Council support. In such a situation, the Mayor, or Council Member who the Mayor is accommodating, shall be responsible for providing a Mayor or Council Report.

Additionally, the Council may add an item to a posted agenda in accordance with the Brown Act.

1.2.3 PLACING AN ITEM ON THE AGENDA (ADVISORY BODIES)

Recommendations made by advisory bodies, as part of their normal scope of duties and responsibilities, shall be timely placed on the City Council agenda by staff, who shall comply with the City's approved Council Agenda Preparation Policy. In the event an advisory body desires to bring a matter of special consideration to the City Council (new ideas or concerns, for example), it may request an item be placed on a future agenda by submitting a written request to the Council approved by a majority of the advisory body members and signed by the Chair. During Declaration of Future Agenda Items, any member of the Council may ask for consideration of the request and upon a majority of Council, a staff report will be prepared and approved by the City Manager or his/her designee.

1.2.4 PLACING AN ITEM ON THE AGENDA (THE PUBLIC)

A member of the public may request an item be placed on a future agenda during the Public Comment period at the beginning of every Council meeting, or via other communication with Council Members. Any Member of the Council may ask for consideration of that request pursuant to those procedures set out in 1.2.2.

1.2.5 EMERGENCY ITEMS

Emergency items may be placed on the agenda only in accordance with the Brown Act. Generally, only those matters affecting public health or safety may be considered emergency in nature. A four-fifth's vote of Council is necessary to add an emergency item.

1.2.6 RECONSIDERATION

Reconsideration of issues previously acted upon is discouraged. However, in extraordinary situations, a request to reconsider an action taken by the City Council may be considered. The request must be presented by a Council Member who voted with the majority at the Council meeting at which the original vote was taken. The vote may be reconsidered during that meeting, but no later than the next Council meeting. Debate is limited to the question of whether there is a majority of the Council interested in reconsidering the matter. If a majority of the Council votes to reconsider an action, then the matter can be heard at that same meeting or placed on the next or future agenda, as directed by the Council. Notwithstanding the foregoing, as a governmental legislative body, the Council reserves the right to consider or reconsider any matter within its jurisdiction that a majority of the Council deems appropriate.

1.2.7 ORDER OF BUSINESS shall be as follows:

- 1.2.7.1 Establish Quorum and Call to Order
- 1.2.7.2 Moment of Silence
- 1.2.7.3 Pledge of Allegiance
- 1.2.7.4 Recognition (Certificates of Appreciation or other forms of recognition for residents and staff)
- 1.2.7.5 Closed Session Report
- 1.2.7.6 Mayor and Council Members Reports, Announcements and Presentations
- 1.2.7.7 City Manager Reports, Announcements and Presentations (City Manager, Director and Advisory Board Reports)
- 1.2.7.8 Presentations (Proclamations and Public Presentations)
- 1.2.7.9 Public Comment
- 1.2.7.10 Consent Agenda
- 1.2.7.11 Public Hearings (shall start no sooner than 7:00 p.m.)
- 1.2.7.12 Business Items
- 1.2.7.13 Council Declaration of Future Agenda Items
- 1.2.7.14 Adjournment

1.2.8 NOTIFICATION AND ADVERTISING

The City will advertise all matters of significant neighborhood or community public interest that appear on a City Council or Planning Commission agenda where advertising is required by law. Said advertisements shall include location maps, project descriptions and posting of property, if required, written in plain English in order to fully inform all interested individuals.

All advertising shall be accomplished in an economical manner. All affidavits of publication will be available to interested members of the public.

1.3 MEETING PROCEDURES

1.3.1 PRESIDING OFFICER

- 1.3.1.1 The Mayor is the Presiding Officer and acts as Chair at Council meetings.
- 1.3.1.2 In the absence or incapacity of the Mayor, the Mayor Pro Tempore will serve as Presiding Officer.
- 1.3.1.3 In the absence of both the Mayor and Mayor Pro Tempore, a majority of the quorum shall select one of the Council Members present to act as Chair for the meeting.
- 1.3.1.4 Seating arrangement of the Council:

The Mayor, with the approval of individual Council Members, shall establish seating arrangements for regular Council meetings.

1.3.1.5 Signing of City Documents:

The Mayor, unless unavailable, shall sign all ordinances, resolutions, contracts and other documents which have been adopted by the City Council and require an official signature, except where the City Manager, or other designee, has been authorized by Council to sign documents. In the event the Mayor is unavailable, the Mayor Pro Tempore's signature may be used.

1.3.2 QUORUM

A majority of the Council Members shall constitute a quorum for the transaction of business.

1.3.3 DISCUSSION RULES

1.3.3.1 Obtaining the floor:

1.3.3.1.1 A City Council Member or staff shall first address the Presiding Officer and gain recognition.

1.3.3.1.2 Comments and questions should be limited to the issue before Council.

1.3.3.1.3 Cross-exchange between Council Members and public should be avoided.

1.3.3.2 Questions to Staff:

A Council Member shall, after recognition by the Presiding Officer, address questions to the designated staff member. Council Members are encouraged to provide questions to staff prior to meetings.

1.3.3.3 Interruptions:

1.3.3.3.1 Once recognized, a Council Member shall not be interrupted while speaking except to make a point of order or personal privilege.

1.3.3.3.2 If a Council Member is called to order while speaking, then the individual shall cease speaking until the question of order is determined.

1.3.3.3.3 Upon being recognized by the Mayor, members of staff shall hold the floor until completion of their remarks or until recognition is withdrawn by the Presiding Officer.

1.3.3.4 Limitation on Discussion:

No Council Member shall speak more than once on a particular subject until every other Council Member has had the opportunity to speak. Council Members are encouraged to discuss items during the decision-making process.

1.3.3.5 Tabling Procedure:

The purpose of the Motion to Lay on the Table also known as a Motion to Table is to enable the City Council, by majority vote and without debate, to lay a pending question aside temporarily when something else of immediate urgency has arisen or when something else needs to be addressed before consideration of the pending question is resumed. The Motion shall not be used to cut off debate and shall only be used when it is necessary to suspend consideration of a main motion in order to deal with another matter that has come up unexpectedly and which must be dealt with before the pending motion can be properly addressed.

1.3.3.6 Right of Protest:

A Council Member is never required to state reasons for dissent.

1.3.3.7 Rules of Procedure:

The Council shall determine its own rules of procedure.

1.3.3.8 Council Minutes:

If a Council Member wishes a stated opinion to be entered in the minutes, then he/she should precede the statement with "for the record," or request the City Clerk to enter it into the record following the statement.

1.3.4 PARLIAMENTARY PROCEDURE

Those rules in effect according to the City Council policy (State law and Robert's Rules, to the extent applicable to a public legislative body). The following summarizes the most frequently used actions.

1.3.5 PROTOCOL

1.3.5.1 Council Members and staff shall:

1.3.5.1.1 Work earnestly to preserve appropriate order and decorum during all meetings.

1.3.5.1.2 Side conversations, disruptions, interruptions or delaying efforts are discouraged.

1.3.5.2 Persons demonstrating rude, boisterous, or profane behavior will be called to order by the Presiding Officer. If such conduct continues, then the Presiding Officer may call a recess, request the removal of such person(s) from the Council Chamber, adjourn the meeting, or take such other appropriate action as permitted by the Brown Act.

1.3.5.3 Only the City Council, staff, Designated Representatives, and those authorized by the Presiding Officer shall be permitted to sit at the Council or staff tables.

1.3.5.4 Enforcement of order:

1.3.5.4.1 The Police Chief or his/her designee shall act as the Sergeant-at-Arms.

1.3.5.4.2 Any Council Member may request the Presiding Officer to enforce the rules of protocol. Upon motion and majority vote, the Presiding Officer shall be required to do so.

1.3.6 VOTING PROCEDURES

1.3.6.1 When present, all Council Members shall vote. Failure of a seated Council Member to vote will be construed as an affirmative vote.

1.3.6.2 No ordinance, resolution or motion shall be passed or become effective without receiving the affirmative vote of at least three Council Members.

- 1.3.6.3 A conflict of interest shall be declared whenever appropriate and in compliance with State law and the Council Member will disclose the nature of the conflict of interest, step down and shall not make, participate in making, or influence the decision.
- 1.3.6.4 A vote may not be changed by a Council Member after the vote announcement by the Presiding Officer or City Clerk; provided, that with the consent of the City Council a correction of the vote may be made.
- 1.3.6.5 The City Clerk shall restate the motion prior to the vote or request the Presiding Officer to restate the motion, if required for Council or public clarification.
- 1.3.6.6 Voice voting is the preferred method for recording Council votes.
- 1.3.6.7 A roll call vote may be taken at the discretion of the Presiding Officer. The City Clerk will call the roll for the roll call vote in the following manner: 1) Maker of the motion; 2) Member who has seconded the motion; 3) Additional Council Members in alphabetical order by last name; and, 4) Mayor last. The City Clerk shall state for the record the name of any Council Member who is recused or has abstained.
- 1.3.6.8 General consent vote may be taken at the discretion of the Presiding Officer, if there are no negative votes or objections by Council Members.
- 1.3.6.9 Upon the request of any Council Member, the ayes and noes shall be taken and recorded on any vote.
- 1.3.6.10 The ayes and noes shall be taken upon the passage of all ordinances and resolutions and entered upon the journal of the proceedings of the Council.
- 1.3.6.11 Following the vote, the Presiding Officer shall announce whether the questions have been carried or defeated.
- 1.3.6.12 Tie votes: If a tie vote occurs, then the Council is required to continue the item by majority vote or make motions until an action receives three affirmative votes.
- 1.3.6.13 The Presiding Officer may publicly explain the effect of the vote for the audience or may direct a member of the staff to do so.

1.3.7 PUBLIC COMMENT

Members of the public may address the City Council in a variety of ways. Written comments on agenda items are encouraged. As a courtesy to the Council, citizens are encouraged to present written comments at least one day prior to the meeting. This provides the Council with a greater opportunity to review and consider issues and/or concerns expressed in written communications prior to a meeting. Written material distributed at the meeting will be made a part of the public record. If the material is too voluminous for Council to review during the meeting or is new material not previously considered, then Council may at its discretion continue the item to a future meeting. The following are guidelines for providing public comments:

- 1.3.7.1 During Public Comment period, at the beginning of every meeting, members of the public may address the City Council on items that are not on the printed agenda. For Consent Items, Public Hearing Items, and Business Items, the Presiding Officer will invite comments from the public in support of, or in opposition to each specific Agenda Item following the staff report and any questions from Council to Staff.
- 1.3.7.2 Individuals desiring to speak shall:
 - 1.3.7.2.1 Address the Council from the podium after giving name and City of residence. Speakers shall direct their comments to the Council, not the audience.
 - 1.3.7.2.2 Limit comments to three minutes or to the interval specified by the Presiding Officer. The Presiding Officer, with the majority of Council Members, may reopen the public comment period to hear additional public comment. Council Members may ask questions of anyone present without reopening the public comment period. A speaker may not yield their time to another speaker.
 - 1.3.7.2.3 Each person addressing the City Council shall do so in an orderly manner and the Council respectfully requests that speakers refrain from making repetitious, slanderous or irrelevant remarks, or engaging in any other disorderly conduct which disrupts, disturbs, or otherwise impedes the orderly conduct of the Council meeting. Any person who so disrupts the meeting may, at the discretion of the Presiding Officer or a majority of the City Council present, be subject to ejection from that meeting.

- 1.3.7.2.4 Persons addressing the Council shall address the Council as a whole and shall not engage in a dialogue with individual Council Members, City staff or members of the audience. No questions shall be asked of a Council Member or a member of City staff without first obtaining permission of the Presiding Officer. The Presiding Officer shall determine whether, or in what manner, an answer will be provided. Any person violating this rule while addressing the Council shall be called to order by the Presiding Officer.
- 1.3.7.3 Except as otherwise permitted by the Brown Act, action may not be taken on issues not listed on the agenda. Staff may be asked to follow-up on such items.
- 1.3.7.4 Applicants or Applicant Representatives or Appellants desiring to speak shall:
 - 1.3.7.4.1 Be permitted to speak first during the public comment portion of the applicable matter for not more than 10 minutes or the time allowed by the Presiding Officer.
 - 1.3.7.4.2 Address the Council from the podium after giving their name and/or the name of the applicant/appellant they are representing.
- 1.3.7.5 Council Members actions
 - 1.3.7.5.1 Council Members may question the person addressing the Council at the conclusion of the person's comments or upon expiration of the person's time to speak.
 - 1.3.7.5.2 Council Members shall not engage the person addressing the Council in a dialogue with the City Council or City staff, but shall confine communication to a question and answer format conducted through the Presiding Officer.
 - 1.3.7.5.3 If a member of the audience has addressed the Council on matters which are not on the agenda, then Council Members shall refrain from extended discussion of the matter. If a Council Member so wishes, then the Council Member may seek to have the City Manager place the matter on the next agenda in accordance with this policy.

- 1.3.7.6 After the public hearing is closed, no member of the public shall be permitted to address the Council or the staff from the audience, except at the discretion of the Presiding Officer or the majority of the Council.
- 1.3.7.7 Upon violation of the rules of order and decorum established in Section 1.3.2 – 1.3.7 of this manual, the procedure to enforce the rule shall be as follows:
- 1.3.7.7.1 Warning. The Presiding Officer shall request a person who is violating the rules of decorum cease such conduct. If, after receiving a warning from the Presiding Officer, the person persists in disturbing the meeting, the Mayor shall order the person to leave the City Council meeting. If the person does not leave the meeting, then the Presiding Officer may order any law enforcement officer who is on duty at the City Council meeting as sergeant-at-arms to remove the person from the City Council chambers.
- 1.3.7.7.2 Removal. Any law enforcement officer who is serving as sergeant-at-arms at the City Council meeting shall carry out the orders and instructions given by the Presiding Officer for the purpose of maintaining order and decorum. Upon instruction of the Presiding Officer, it shall be the duty of the sergeant-at-arms to remove from the City Council meeting any person who is disturbing the proceedings of the City Council.
- 1.3.7.7.3 Resisting Removal. Any person who resists removal by the sergeant-at-arms may be charged with a violation of the rules of order and decorum, as well as any other applicable ordinance or law.
- 1.3.7.7.4 Motion to Enforce. If the Presiding Officer fails to enforce the rules of order and decorum set forth in Section 1.3.2 – 1.3.7, then any Member of the City Council may move to require the Presiding Officer to do so, and an affirmative vote of a majority of the City Council shall require the Presiding Officer to do so. An affirmative vote of a majority of the Council may appeal to the entire Council the ruling of the Presiding Officer that a person be removed from the meeting, in which event the decision of the

Council majority shall govern and conclusively determine such question. If the Presiding Officer fails to carry out the will of the majority of the City Council, then the majority may designate another Member of the City Council to act as the Presiding Officer for the limited purpose of enforcing the rules of order and decorum established in Section 1.3.2 - 1.3.7.

- 1.3.7.7.5 Clearing the Room. If a meeting of the City Council is disturbed or disrupted in such a manner as to make infeasible or improbable the restoration of order, then the Presiding Officer or a majority of the City Council may exercise the authority granted in the California Government Code section 54957.9 by ordering the meeting room cleared and continuing in session in the manner authorized by Section 54957.9 of the Government Code.

1.3.8 CONSENT ITEMS

Consent items are the first items on the agenda. Only items that are routine, relate to implementation of approved budget items or to City operations, or are items to be later set for public hearing are to be placed on the Consent Agenda. Items of significant neighborhood or community public interest should be heard as a Public Hearing or Business item, and not placed on the Consent Agenda.

- 1.3.8.1 Minor Questions. A Council Member may ask questions on any item without it being pulled from the Consent Agenda. When a Council Member has a minor question for clarification concerning a consent item that will not involve extended discussion, the item may be pulled for clarification at the beginning of the meeting and the questions will be addressed along with the rest of the Consent Agenda. There should be no objections at this time. Council Members are encouraged to seek clarifications prior to the meeting (whenever possible).
- 1.3.8.2 No Vote. When a Council Member wishes to pull an item simply to register a dissenting vote, a request should be made the item be pulled for separate vote without discussion. Such items will also be handled at the beginning of the meeting along with the rest of the Consent Agenda.
- 1.3.8.3 Any item may be pulled by a Council Member for discussion. A member of the public may request the Council to pull an item for discussion, but the discretion to pull that item will remain with the Council.

- 1.3.8.4 Pulled items shall be heard at the close of the Consent Agenda, unless a majority of the Council chooses another time.

1.3.9 NOTICED PUBLIC HEARINGS

During the pendency of any Public Hearing that is a quasi-judicial proceeding, no Council Member or Planning Commissioner shall engage in an *ex parte* communication with any "Interested Party" who intends to influence the decision of the Council or Commission in a proceeding, unless the Council Member or Commissioner discloses the *ex parte* communication in the Council or Commission's record. "Interested Party" means any individual with an interest in the quasi-judicial proceeding that is greater than the general interest of the public as a whole. The term includes, but is not limited to, parties involved in the proceeding, parties that may be significantly affected by the decision, and nonprofit or public interest organizations and associations with a special interest in the matter regulated. A member of the public at large who expresses a casual or general opinion about a pending proceeding would not necessarily be an "Interested Party."

Matters which are required to be heard in a noticed Public Hearing shall be conducted in the following manner:

- 1.3.9.1 Time for Consideration. Matters noticed to be heard by the City Council shall commence no earlier than the time specified in the notice of hearing, or as soon thereafter as is reasonably possible, and shall continue until the same has been completed or until other disposition of the matter has been made.
- 1.3.9.2 Continuance of Hearing. Any hearing being held or noticed or ordered to be held by the City Council may, by order or notice of continuance, be continued or re-continued to any subsequent meeting.
- 1.3.9.3 Conduct of Hearings. When a matter for Public Hearing comes before the City Council, the Presiding Officer may:
 - 1.3.9.3.1 Call for a report on noticing from the City Clerk.
 - 1.3.9.3.2 Call for a report on written communications received by the City pertaining to the item being heard.
 - 1.3.9.3.3 Request that staff present the staff report and any other relevant evidence. Presentation of the staff report prior to the formal opening of the Public Hearing shall not prevent its consideration as

evidence. Any such evidence shall be made a part of the record of the Public Hearing.

The Presiding Officer shall then recognize the proponents or appellants in the cause, who shall be permitted 10 minutes to present evidence related to the matter under consideration.

The Presiding Officer shall then recognize members of the public. No person may speak without first being recognized by the Presiding Officer. City Council Members who wish to ask questions of the speakers or each other during the Public Hearing may do so. Council Members should be mindful the purpose of the Public Hearing is to obtain testimony, and not to debate the merits of the item under consideration. Council Members should avoid debate and expressions of personal opinion until after the close of the public testimony portion of the Public Hearing. The Presiding Officer shall conduct the hearing in such a manner as to afford due process to all affected persons. For Public Hearings, when 10 or more members of the public desire to speak, the Presiding Officer may request speaker slips to be completed and delivered to the Clerk before the item is considered. Comments shall then be allowed first by those submitting a slip and in the order received by the Presiding Officer. Comments from the public shall be limited to three minutes per speaker for Public Hearings, unless the City Council affirmatively decides otherwise. For Public Hearings that have the potential to be appealed to the California Coastal Commission, members of the public who desire to receive notice of any further proceedings shall write their name and address on the interested parties list at the back of the room.

The Presiding Officer shall then close the public testimony portion of the Public Hearing. Council Members may still, however, ask questions of staff or members of the public. Upon conclusion of Council deliberations and immediately prior to a motion, the Presiding Officer shall formally close the public hearing, which can be accomplished by the Presiding Officer declaring the matter is being brought back to the Council for discussion or other manner to clearly indicate the hearing portion of the matter has concluded. Upon formal closing of the public hearing, no additional public testimony shall be solicited or received without reopening the hearing.

- 1.3.9.4 Evidence. All persons interested in the matter being heard by the City Council shall be entitled to submit written evidence or remarks, as well as other graphic evidence. All such evidence

presented shall be retained by the City Clerk or appropriate City department, as part of the official record of the proceeding. Prior to declaring the public hearing open, the Presiding Officer may establish a time limit for the entire public hearing, and establish time limits for the presentation of each individual speaker.

1.3.10 CLOSED SESSION MEETINGS (closed to the public)

1.3.10.1 Closed Session Meetings may be called by the majority of the Council and are regulated pursuant to the Brown Act. The most common purpose of a closed session is to avoid revealing confidential information that may, in specified circumstances, prejudice the legal or negotiating position of the City or compromise the privacy interests of employees. Closed sessions should be conducted keeping those narrow purposes in mind.

1.3.10.2 No Council Member, employee of the City, or anyone else present shall disclose to any person the content or substance of any discussion which takes place in a closed session, unless authorized by a four-fifths vote of the Council.

1.4 MEETING COVERAGE

The purpose of cablecasting meetings of the Morro Bay City Council is to enhance the awareness and education of the general public regarding the actions and deliberations of the City Council.

1.4.1 Coverage of City Council meetings shall be gavel-to-gavel; whether presented to the public live or taped, Council coverage is not to be edited or subjected to editorial comment.

1.4.2 All City Council meetings shall be cablecast or taped for broadcast, except for meetings or portions of meetings which are closed to the public, or when the majority of the Council directs otherwise.

1.4.3 Cameras used for the gavel-to-gavel coverage shall be operated only by City employees, firms, or persons authorized by the City.

1.4.4 Cameras shall be operated so that they are primarily focused on the officially recognized speaker, and on any visually displayed information they may be showing.

1.4.5 “Reaction” shots will not be permitted.

- 1.4.6 The City Clerk's minutes shall remain the official record of Council proceedings.

CHAPTER TWO COUNCIL SALARY, BENEFITS AND REIMBURSEMENTS

Council salary, financial benefits and reimbursements are established by Council action and in conformance with State law. The MBMC and duly adopted and effective resolutions. Below is a description of the same, but may not include all that are applicable.

2.1 SALARIES FOR MAYOR AND COUNCIL MEMBERS

Compensation for services rendered by the Mayor and Council Member, in an official capacity, shall be provided in accordance with State law and the MBMC.

2.2 RETIREMENT, MEDICAL, DENTAL, VISION, AND LIFE INSURANCE

The Mayor and Council Members are required to participate in P.A.R.S. retirement. The City shall pay a contribution to P.A.R.S. equal to 1% of salary. The City shall pay, in full, the cost of the Mayor's and Council Members' participation in lowest cost medical plan (self-only), dental, vision, and life insurance.

2.3 PROFESSIONAL DEVELOPMENT

The Mayor and each Council Member shall be reimbursed for normal and customary business expenses as follows:

2.3.1 BUSINESS TRAVEL EXPENSE AND CONFERENCE REGISTRATION

The Mayor and each Council Member shall be reimbursed for normal and incidental expenses and for costs of professional development and educational conferences designed to improve understanding of and proficiency in municipal affairs. Such reimbursement shall be for out-of-county expenses only and shall be reimbursed in accordance with accepted City Travel Guidelines.

2.3.1.1 Authorized Expenses. City funds, equipment, supplies (including letter head), titles, and staff time must only be used for authorized City-business. Expenses incurred in connection with the following types of activities generally constitute authorized expenses, as long as the other requirements of this section are met:

- Communicating with representatives of regional, state and national government on City-adopted positions.
- Attending educational seminars designed to improve official's skill and information levels.

- Participating in regional, state and national organizations whose activities affect the City's interests.
- Recognizing service to the City (i.e. thanking a longtime employee with a retirement gift or celebration of nominal value and cost).
- Meetings such as those listed above for which a meeting stipend is expressly authorized under this section.

All other expenditures require prior approval by the City Council, including international and out-of-state travel.

2.3.1.2 Expenses Not Eligible for Reimbursement.

- The personal portion of any trip.
- Political or charitable contributions or events.
- Family expenses, including partner's expenses, when accompanying official on City-related business.
- Entertainment expenses, including theater, movies, sporting events (including gym, massage and/or golf related expenses) or other cultural events.
- Alcohol/personal bar expenses.
- Except as provided in 2.4.2 and .3, personal automobile expenses.
- Personal losses incurred while on City business

2.4 CITY BUSINESS AND MILEAGE REIMBURSEMENT

The Mayor and each Council Member shall be reimbursed as follows:

2.4.1 CITY BUSINESS

For costs incurred in connection with official City business, the Mayor and Council Members shall be reimbursed for in-county expenses, including meals, tickets, periodicals, dues, subscriptions, and similar miscellaneous expenses, if receipts for those expenses are provided.

2.4.2 MILEAGE

For official travel within the County of San Luis Obispo, reimbursement shall be made upon submittal of an official mileage expense form.

2.4.3 TRANSPORTATION

When attending conferences or meetings that are of such distances it is more economical to take commercial air fare, if an official drives his/her car to such meetings, then commercial air fare will be paid and not automobile mileage. Government and group rates must be used when available.

- 2.4.3.1 Airfares that are reasonable and economical shall be eligible for purposes of reimbursement.
- 2.4.3.2 Automobile mileage is reimbursed at IRS rates in effect at the time of travel. Those rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls which are also reimbursable.
- 2.4.3.3 Car Rental rates that are reasonable and economical shall be eligible for purposes of reimbursement.
- 2.4.3.4 Taxi and shuttle fares may be reimbursed, including a 15% gratuity per fare, when the cost of such fares is equal or less than the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.

2.4.4 LODGING

Lodging expenses will be reimbursed or paid for when travel on official City-business reasonably requires an overnight stay. If such lodging is in connection with a conference, then lodging expenses must not exceed the group rate published by the conference sponsor for the meeting in question if such rates are available at the time of booking. Travelers must request government rates, when available. If the group rate is not available, then reimbursement at the IRS rate in effect at the time of travel shall apply.

2.4.5 MEALS

Actual expenses shall be reimbursed subject to the maximum per diem for the mean as set by the IRS rate in effect at the time of travel. (Cal. Gov't. Code 53232.2) and Publication 1542 at www.irs.gov or [www.policyworks.gov/per diem](http://www.policyworks.gov/perdiem).) The City will not pay for alcohol/personal bar expenses.

2.4.6 MISCELLANEOUS EXPENSES

Officials will be reimbursed for actual telephone, fax, and parking expenses incurred for City-business. Telephone bills should identify which calls were made for City-business.

2.4.7 CASH ADVANCE POLICY

From time to time, it may be necessary for an official to request a cash advance to cover anticipated expenses while traveling or doing business on the City's behalf. Such request for an advance should be submitted to the City Manager ten working days prior to the need for the advance with the following information:

1. The purpose of the expenditures.
2. The benefits of such expenditures to the residents of the City.
3. The anticipated amount of the expenditures(s) (for example, hotel rates, meal costs, and transportation expenses).
4. The dates of the expenditure.

Any unused advance must be returned to the City within five working days after the official's return, along with an expense report and receipts documenting how the advance was used. In the event the City Manager is uncertain as to whether a request complies with this policy, the official must seek resolution from the City Council.

2.4.8 CREDIT CARD USE POLICY

The City issues credit cards to individual office holders for selected City expenses. City office holders may use the City's credit card for City-business-related purposes such as airline tickets, hotel reservations and meals by following the procedures for cash advances. Receipts documenting expenses incurred on the City credit card and compliance with this section must be submitted within ten working days after use. Credit cards may not be used for personal expenses, even if the official subsequently reimburses the City. The City encourages use of the City credit card for allowable expenses rather than seeking reimbursement for payments made for those expenses.

2.4.9 EXPENSE REPORT CONTENT AND SUBMISSION DEADLINES

All cash advance expenditures, credit card expenses and expense reimbursement requests must be submitted on an expense report form provided by the City. That form shall include the following advisory:

“All expenses reported on this form must comply with the City's policies relating to expenses and use of public resources. The information submitted on this form is a public record. Penalties for misusing public resources and violating the City's policies include loss of reimbursement privileges, restitution, civil and criminal penalties as well as additional income tax liability. “

Expense reports must document that the expense in question met the requirements of this Policy. Officials must submit their expense reports within 10 working days after an expense has been incurred, accompanied by receipts documenting

each expense. Restaurant receipts, in addition to any credit card receipts, are also part of the necessary documentation.

Inability to provide such documentation within 10 calendar days after travel may result in the expense being borne by the official.

In the event the official does not attend the trip and non-refundable expenses have been incurred for registration, lodging or travel, the non-attending official shall submit a written explanation of the reasons for non-attendance to the City Manager. The City Manager shall determine if the public funds advanced must be reimbursed to the City. Any decision of the City Manager may be appealed to the City Council.

2.4.10 REPORTS TO CITY COUNCIL

At the next regular City Council meeting, the Mayor and City Council shall briefly report on the meetings attended by that person at City-expense. If multiple officials attended, then a joint report may be made.

2.4.11 COMPLIANCE WITH LAWS; VIOLATION

City officials should keep in mind some expenditures may be subject to reporting under the Political Reform Act and other laws. All City expenditures are public records subject to disclosure under the Public Reports Act and other applicable laws. Use of public resources or falsifying expense reports is a violation of this Policy and may result in any or all of the following: 1) loss of reimbursement privileges, 2) a demand for restitution to the City, 3) the City's reporting the expenses as income to the elected official to state and federal tax authorities, 4) civil penalties of up to \$1,000 per day and three times the value of the resources used, and 5) prosecution for misuse of public resources.

2.5 GENERAL PROCEDURES AND LIMITATIONS

Appropriate budgetary practices and accounting controls shall be established to ensure expenditures and reimbursements are in compliance with approved budget allocations. The Mayor and each Council Member is expected to plan business activities so as to stay within budget. When exceptional circumstances require additional amounts be allocated to accounts, formal Council action shall be required.

2.5.1 ACCOUNTING

An account shall be established in the name of the Mayor and each Council Member with all expenditures charged to the individuals. Receipts shall be submitted within the fiscal year.

2.5.2 REIMBURSEMENT LIMITATION

The City's adopted Travel Guidelines shall govern all expenditures for non-local professional development and conferences. Those guidelines include all non-local official meals, tuition or fees, transportation to meeting sites, materials and telephone usage.

2.5.3 SPECIAL EXPENSES

For occasions when the Mayor or a Council Member is designated by the City Council to represent the City at special meetings, reimbursement shall be made from the appropriate Travel Expense Account.

2.5.4 HONORARIUM

If the Mayor or a Council Member receives an honorarium as a result of his/her participation in a meeting or conference, then the amount of the honorarium shall be deducted from the amount normally provided by the City for that meeting or conference if the City paid for the Mayor or Council Member's attendance at such meeting or conference.

2.5.5 OTHER GUIDELINES

Any other travel-related issue not specifically governed in this resolution shall be adjudicated in accordance with the City of Morro Bay Travel Expense Reimbursement Policy.

**CHAPTER THREE
COUNCIL POWERS & APPOINTMENTS**

3.1 MAYOR - POWER AND DUTIES

- 3.1.1 The Mayor shall preside at all meetings of the City Council and perform such other duties consistent with the office as may be imposed by the Council or by vote of the people. The Mayor shall be entitled to, and must vote when present, but shall possess no veto power.
- 3.1.2 The Mayor shall be recognized as the official head of the City for all ceremonial purposes.
- 3.1.3 The Mayor may order flags flown on City property to be lowered to half-staff in mourning for any member of the community designated to have made significant contributions to the City of Morro Bay, in accordance with recognized customs or practices not inconsistent with State and Federal law.
- 3.1.4 The Mayor is authorized to sign letters of appreciation to persons and organizations. Copies of those signed letters shall be provided to the Council Members, as soon as feasible.
- 3.1.5 The Mayor will, at times, receive written communications from recognized organizations or entities whose fundamental purpose is to support cities, such as the League of California Cities. Those communications may be seeking City support for a position the League is taking. Because of the often short time limits for submitting responses to those communications, the Mayor is authorized, at no cost to the City to submit the requested communication consistent with the subject entity's recommendation. A copy of that letter will be provided to the Council. Any Member of the Council can request an agenda item be placed on an upcoming agenda to discuss that communication. The Council can also determine whether to admonish the Mayor for not carrying out the intent of this provision.
- 3.1.6 When the Mayor is a member of another legislative body, he/she may take actions on matters before that other body as she/he determines appropriate, as long as she/he makes it clear his/her position is that of the Mayor and not the entire City or Council, unless, at a duly agendized public meeting, a majority of the Council has provided direction on the position the Mayor is to take on a matter
- 3.1.7 The Mayor shall exercise such other powers and perform such other duties as may be prescribed by law or ordinance or by resolution of the Council, except as limited by law.

3.2 APPOINTMENT OF MAYOR PRO TEMPORE

The appointment of the Mayor Pro Tempore shall be for a one-year term and shall be made at the first meeting in January. For appointment as Mayor Pro Tempore, a Council Member must be on the Council at least one year. Of those who have been on the Council for at least one year, the Council Member who has not yet held the position shall be appointed Mayor Pro Tempore. If there are two Council Members who have not yet held the position, then the Council Member receiving the highest number of votes in the most recent election shall be appointed Mayor Pro Tempore. If all have held the position, then the Council Member who has held it the least number of times shall be appointed Mayor Pro Tempore. If all Council Members have held it for the same number of years, then the Council Member for whom it has been the longest period of time since holding the position shall be appointed Mayor Pro Tempore.

3.3 FILLING COUNCIL VACANCIES

3.3.1 SPECIAL ELECTION

Measure “R” codified as Ordinance 527 requires the City Council to immediately call a special election to fill any vacant seat on the Council, including the Mayor’s seat. The special election shall be held on the next established election date, as specified in California Elections Code, which is not less than 114 days from the call of the special election. The City Council may appoint an elector who is a registered voter in the City of Morro Bay to fill such vacancy prior to the special election. The appointee shall hold office only until the date of said special election. (Reso. 76-08)

3.3.2 LIMITATION OF COUNCILMEMBER WHO RUNS FOR MAYOR BEFORE COMPLETING REGULAR TERM

A sitting Council Member is disqualified from nomination for election to the office of Mayor in the next election if the remainder of their Council term after the next election cannot be filled by a vote of the electors on or prior to that election date.

3.4 GENERAL POWERS OF THE COUNCIL

Subject to the provisions of law and the delegation of power to any person, officer, Board, or Commission, the Council shall have the power in the name of the City, to do and perform all acts and things appropriate to a municipal corporation and the general welfare of its inhabitants and that are not specifically forbidden by the Constitution and laws of the State of California.

3.5 ADMINISTERING OATHS: SUBPOENAS

Each Member of the Council shall have the power to administer oaths and affirmations in any investigation or proceeding pending before the Council. The Council shall have the power and authority to compel the attendance of witnesses, to examine them under oath and compel the production of evidence before it. Subpoenas may be issued in the name of the City and be attested by the City Clerk. Disobedience of such subpoena or the refusal to testify (upon other than constitutional grounds), shall be deemed contempt and shall be punishable as provided by the general laws of the State.

3.6 LIMITATIONS

No Member of the Council shall be appointed to or serve as a voting Member of any City Board, Committee, or Authority, whether composed of citizen volunteers, City employees, or a combination of both. This is not to be construed as prohibiting Members of the Council from serving on Committees or Subcommittees of the Council itself, or of agencies representing other local, state or federal government.

3.7 METHOD OF ACTION BY COUNCIL

All action by the Council shall be taken only by means of ordinance, resolution, or oral motion duly made and passed.

Ordinances shall become a part of the MBMC and so remain until amended or voided. All municipal laws relating to taxation or to possible criminal action against an offender shall be in the form of ordinances.

Resolutions shall be serially numbered and filed sequentially in the office of the City Clerk.

Oral motions shall be recorded only in the minutes of any regular or special meeting of the Council.

3.8 ORDINANCES

The consideration and adoption of ordinances shall be in accordance with relevant state law. Ordinances not legally required to have a public hearing shall be set for a public hearing if the subject matter is controversial or of a special nature. In addition, a majority of the City Council may direct the consideration of an ordinance will be set for public hearing.

No ordinance, resolution or motion shall be passed or become effective without receiving the affirmative vote of at least three Members of the Council.

3.9 ACCEPTANCE OF GRANTS OR DEEDS

The Mayor and Mayor Pro Tempore of the City of Morro Bay are hereby authorized to accept and consent to the recording of any deed or grant conveying any interest in or easement upon real property to the City of Morro Bay.

3.10 LEGISLATIVE ACTION PROGRAM

The City has a legislative program to strengthen local government, promote City goals, and defend the City against legislative actions by state and federal governments that would weaken local government or take away traditional revenue sources. In order to respond promptly and proactively to fast-paced legislative changes, City staff is authorized to take positions on legislation provided the positions are consistent with the Legislative Actions of the City Council, or resolutions or recommendations of the League of California Cities.

3.11 AMICUS CURIAE PARTICIPATION

The City is frequently requested to join as *amicus curiae* (friend of court) in cases of statewide significance to cities. Because of the often short time limits for filing *amicus curiae* briefs, the City Attorney may authorize the City's name being added to such briefs, at no cost to the City, if the Legal Advisory Committee of the League of California Cities has urged participation.

3.12 ACTIONS AS A MEMBER OF ANOTHER LEGISLATIVE BODY

When a Council Member is a member of another legislative body, he/she may take actions on matters before that other body as she/he determines appropriate, as long as she/he makes it clear his/her position is that of the individual Council Member and not the entire City or Council, unless, at a duly agendized public meeting, a majority of the Council has provided direction on the position that Member is to take on a matter.

CHAPTER FOUR THE BROWN ACT AND EMAIL

4.1 APPLICABILITY AND PENALTIES

The entire City organization conducts its business in compliance with the Ralph M. Brown Act, California Government Code sections 54950 *et seq.* The intent of the Act is to ensure deliberations and actions of local public agencies are conducted in open and public meetings. The law provides for misdemeanor penalties for any members of a legislative body who violates the Act. In addition, violations are subject to civil action. A current copy of the Act will be provided to all Council Members assuming office, but the provisions that most directly affect the Council are summarized in this Chapter.

4.2 MAJOR PROVISIONS

4.2.1 APPLICABILITY

The Act applies to Council, City staff and all bodies that advise Council.

4.2.2 MEETINGS

All meetings shall be open and public.

4.2.2.1 A meeting takes place whenever a quorum (three or more) Members are present and information about the business of the board is received; discussions qualify as a meeting.

4.2.2.2 Serial meetings take place when any Member of Council contacts more than one other Council Member for the purpose of deliberating or acting upon an item pending before the City Council (does not apply to the public or media).

4.2.2.3 Correspondence that merely takes a position on an issue is acceptable.

4.2.3 AGENDAS

Agendas for regular meetings must be posted 72 hours in advance of the meeting and must meet various requirements.

4.2.4 ACTIONS

No action shall be taken on any item not appearing on the posted agenda.
Exceptions:

- 4.2.4.1 An emergency situation exists, (determined by a majority of the Council).
- 4.2.4.2 The need to take action arose subsequent to the agenda being posted (determined by 4/5 of the Council or if less than 4/5 are present, then by unanimous vote) and that action must be taken before the next regular Council meeting or special meeting can be scheduled and properly noticed.
- 4.2.4.3 The item was continued to another meeting that was scheduled and posted within five days after the original agenda.

4.2.5 PUBLIC INPUT

The public has an opportunity to address the Council on any item of interest to the public that is within the jurisdiction of the Council. The City has the right to establish time limits on speakers and the total time allocated for a particular issue.

4.2.6 PUBLIC DISRUPTIONS

A portion or all of the public may be removed if willful disruption makes conducting the meeting "unfeasible;" the press may remain unless they participate in the disruption.

4.2.7 CORRESPONDENCE

All writings distributed for discussion or consideration at a public meeting are public records. If a member of the public desires written materials to be fully considered by the Mayor and City Council, then that member is encouraged to submit that written material regarding agenda items to the City Clerk a week prior to the Council meeting so that it may be included in the public packet. Written material distributed at the meeting will be made a part of the public record. If the material is too voluminous for the Mayor and Council to review during the meeting or is new material not previously considered, the Council may, at its discretion, continue the item to a future meeting.

4.2.8 CLOSED SESSIONS MAY BE HELD TO DISCUSS:

- 4.2.8.1 Real Property. The purchase, sale, exchange or lease of real property with the City's negotiator; the real property and the person(s) with whom the City may negotiate must be announced in open session prior to the closed session. All Real

Property transactions shall be held in closed session prior to final decision in open session and Council shall be provided with a copy of the draft real property agreement.

- 4.2.8.2 Litigation pending or a significant exposure to litigation, or the decision to initiate litigation; the litigation or title must be identified in open session prior to the closed session unless the Council states that to do so would jeopardize its ability to conclude existing settlement negotiation or effectuate service of process.
- 4.2.8.3 Compensation (salaries and benefits) of employees; to review its position and instruct designated representatives.
- 4.2.8.4 Personnel. The appointment, employment, evaluation of performance, or dismissal, of a public employee, or to hear complaint against the employee, unless the employee requests a public hearing.

4.3 SPECIAL MEETINGS

Special Meetings may be called by the Mayor or a majority of the Council, with strict notification requirements delivered to the media and Council 24 hours before the time of the meeting.

4.4 EMERGENCY MEETINGS

Emergency meetings may be called without the normal 24-hour notice and posting requirements if prompt action is required due to the disruption or threatened disruption of public facilities. Only work stoppages, crippling disasters or other activities that severely impair the public health and/or safety qualify for emergency meetings.

4.5 ELECTRONIC MAIL (EMAIL), THE PUBLIC RECORDS ACT AND THE BROWN ACT

City email is no less a part of “official city business” than any other written correspondence, and there is no expectation of privacy for City email messages. Good judgment and common sense should therefore prevail at all times regarding its appropriate use.

City email is subject to disclosure under the Public Records Act and is subject to the requirements of the Brown Act. While the Brown Act does not prohibit the use of email to make individual contacts between Members of the Council, or the public or staff, great care should be taken to avoid the use of email to contact a majority of the Council, either individually or serially, “in a connected plan to engage in collective deliberation on public business.”

City email should not be used in any case where a record of any event, occurrence or statement is required or intended to be retained by the City in the ordinary course of business. City emails are intended to fulfill the same general function as ordinary daily verbal communications among City Council and City staff and are considered “transitory” documents (work-in-progress), and therefore are not subject to records retention requirements. For file management and storage purposes, City email messages should only be retained for as long as needed. In most instances this means deleting messages as you have read them, and shortly after you have sent them.

If an email message, including any attachments thereto, is considered an official city record, then such emails should be printed as a hard copy and filed in accordance with the City’s records retention policy. Generally, the sender of the email should be the person responsible for printing and filing it accordingly, but persons responsible for a particular program or project file shall be responsible for retaining all e-mail they send or receive related to that program or project.

It is the responsibility of individual City Council Members, employees and their department heads to determine if email is an official City-record that must be retained in accordance with the City’s record retention policy. The City Attorney will assist in making such a determination. Preliminary drafts, notes or interagency or intra-agency memoranda that are not retained by the City in the ordinary course of business are generally not considered to be official City records subject to disclosure. City Council Members and employees are encouraged to delete documents that are not otherwise required to be kept by law or whose preservation is not necessary or convenient to the discharge of your duties or the conduct of the city’s business.

Periodically, the City receives requests for inspection or production of documents pursuant to the Public Records Act, as well as demands by subpoena or court order for such documents. In the event such a request or demand is made for e-mail, the City Council Members or employees having control over such e-mail, once they become aware of the request or demand, shall use their best efforts, by any reasonable means available, to temporarily preserve any e-mail that is in existence until it is determined whether such e-mail is subject to preservation, public inspection or disclosure. The City Clerk shall be contacted regarding any such emails within the City Council Member or employee’s control.

4.6 OTHER PROVISIONS

The Act provides many other restrictions and requirements; this chapter is intended merely as a Council summary and overview of the Act, and nothing in this Chapter supersedes the provisions of the Brown Act. Since State law constantly changes, it is important to ensure you have the latest information. Please check with the City Attorney and/or the City Clerk for more information.

**CHAPTER FIVE
COUNCIL/STAFF RELATIONSHIPS AND CONDUCT**

5.1 INTENT

The City Council as a whole retains full power to accept, reject, amend, influence, or otherwise guide and direct staff actions, decisions, recommendations, workloads and schedules, departmental priorities, and the conduct of City business.

This chapter addresses the relationship and conduct between the Mayor and Council Members and staff with the intent of the Mayor and Council to: 1) affirm governing shall be by will of the collective Council, and 2) establish guidelines for Mayor, Council and staff to ensure orderly, consistent and open City government.

5.2 GUIDELINES FOR COUNCIL MEMBERS

The Mayor and Council shall recognize the primary functions of staff are to execute Council policy and actions taken by the Council, and to keep the Mayor and Council informed.

5.2.1 REQUESTS FOR INFORMATION

The Mayor, individual Council Members, as well as the Council as a whole, shall be permitted complete freedom of access to any information requested of staff, and shall receive the full cooperation and candor of staff in being provided with any requested information, when the law allows that access.

The Mayor and Council Members shall make routine requests for information through the appropriate department head, who shall then advise the City Manager of such requests. Complex or comprehensive requests for information shall be made through the City Manager.

5.2.2 DIRECTION TO STAFF

The Mayor and Council Members shall make requests for work to be done by City staff through the City Manager. The Mayor and individual Council Members shall make no attempt to pressure or influence staff decisions, recommendations, workloads, schedules and departmental priorities, except as part of budgetary and goal setting priority sessions and with approval of the Council as a whole.

5.3 GUIDELINES FOR STAFF

Staff shall recognize its primary function is to execute Council policy and to keep the Mayor and Council informed. Staff shall present the Mayor and Council with all relevant information, as well as alternatives, in an objective, succinct manner. The City Manager and staff are committed to treating the Mayor and each Council Member equally.

5.3.1 TIMELY RESPONSE

City staff will make every effort to respond in a timely and professional manner to all requests made by the Mayor and individual Council Members for information or assistance; provided, that in the judgment of the City Manager the request is legally permitted (after consultation with the City Attorney) and not of a magnitude, either in terms of workload or policy, which would require that it more appropriately be assigned to staff through the collective direction of the City Council. In terms of making that judgment, the following guidelines should be considered: The request should be specific and limited in scope so staff can respond without altering other priorities and with only minimal delay to other assignments; the request should only impose a "one-time" work requirement, as opposed to an on-going work requirement; and the response to the request should not require a significant allocation of staff resources (generally defined as consisting of more than one staff person, or a single staff person working on the issue in excess of 1-2 hours).

5.3.2 DIRECTION FROM COUNCIL

Staff is obligated to take guidance and direction only from the Council as a whole or from the appropriate management superiors as may be the case. Staff is directed to reject any attempts by the Mayor or individual Council Members to unduly influence or otherwise pressure them into making, changing or otherwise suppressing staff decisions or recommendations, or changing departmental work schedules and priorities. Staff shall report such attempts to influence them in confidence to the City Manager, who may inform the Council as a whole of such attempts.

5.3.3 STAFF SUPPORT TO INDIVIDUAL COUNCIL MEMBERS

An exception to the above guidelines may be staff work required in support of a Council Member designated by the City Council to represent the City in an intergovernmental role (e.g., Membership on Joint Powers Authority), or relative to a special assignment (e.g., a special task force).

5.3.4 INFORMATION DISTRIBUTION

In cases where a staff response to the Mayor or an individual Council Member request involves written material, the City Manager will provide copies of the material to all other Council Members.

5.3.5 SIGNIFICANT INFORMATION

Any information, service-related needs, or policy positions perceived as necessary by the Mayor or individual Council Members, which cannot be fulfilled per the above guidelines, should be raised by the Mayor or individual Council Member under the "Declaration of Future Agenda Items" category of a regularly scheduled City Council meeting. If so directed by the collective action of the Council, then staff will proceed to complete the work within Council established deadlines.

5.4 USE OF CITY LETTERHEAD

Staff will not prepare correspondence representing the Mayor or a Councilmember's personal point of view or a dissenting point of view from an official City policy or Council position. If a Councilmember uses her/his title, position, or City letterhead to express a personal opinion, then the letter shall state "I am writing this letter on behalf of myself" and, the official City position must also be stated clearly so the audience understands the difference/relationship between the official City position and the viewpoint of the Mayor or that Councilmember. If a letter is written on behalf of the majority of the City Council, then the letter shall state "I am writing this letter on behalf of the City Council." A copy of any and all correspondence developed by or for the Mayor or a Councilmember on City letterhead shall be provided to the City Manager and the entire City Council.

**CHAPTER SIX
ADVISORY BOARD PROCEDURES**

6.1 COUNTY OR REGIONAL REPRESENTATION

Annually, the Mayor shall make appointments to a variety of County and/or regional committees and boards. One Member of the Council shall serve as a voting representative and one Member shall serve as alternate. (See 6.5 for appointment procedures). To the best of their ability, Voting Delegates shall reflect the majority view of the Council as a whole, rather than their own personal opinions.

6.2 OTHER COUNCIL REPRESENTATION, SUBCOMMITTEES

6.2.1 COUNCIL LIAISON ASSIGNMENTS

The City Council shall assign a Council liaison to each of the following advisory boards: Recreation & Parks Commission, Harbor Advisory Board, Public Works Advisory Board, and Tourism Business Improvement District Advisory Board.

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

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

6.2.2 OTHER COUNCIL SUBCOMMITTEES

Council may establish subcommittees of no more than two members to address areas of concern and study.

6.3 ROLE OF ADVISORY BOARD MEMBERS AT COUNCIL MEETINGS

6.3.1 INTENT

To honor advisory board deliberations, views and positions on issues before Council; enhance communications between Council and their advisory bodies; and allow participation and input by advisory board members.

6.3.2 COUNCIL AGENDA REPORTS

6.3.2.1 Recommendation Differences. For those rare occasions when the City Manager recommendation differs from an advisory board recommendation, the difference should be clearly noted.

6.3.3 COUNCIL MEETINGS

6.3.3.1 Members of an advisory board are free to appear and give testimony before Council using the public microphone, after identifying whether they are speaking as a representative of the advisory board or as a private citizen and if as a representative of the board, then whether that appearance had been requested by the board.

6.3.3.2 Reports to Council must be in written form.

6.3.3.3 Advisory boards will provide quarterly written or oral reports to the City Council on a rotating member basis.

6.4 ROLE OF CITY STAFF PERSONS

Staff support and assistance may be provided or made available, but advisory bodies do not have supervisory authority over City employees. While they may work closely with advisory bodies, staff members remain responsible to their immediate supervisors and ultimately to the City Manager, who is responsible to the Council. The members are responsible for the constructive participation with the advisory board and the chairperson is responsible for committee compliance with applicable policies and procedures.

Staff support includes preparation of a summary agenda in conjunction with the Chairperson, and preparation of agenda reports providing a brief background of the issue, a list of alternatives, recommendations, and appropriate backup material, if necessary. Members of advisory bodies are volunteers and should be treated with respect and courtesy. Advisory board members should have sufficient information to reach decisions based upon a clear explanation of the issues within their charge. Sometimes members of advisory bodies may request

information not related to their area of service. Staff members should, in that case, provide the same level of information and assistance as would be accorded any citizen. If in the judgment of staff the request goes beyond that standard, then the matter will be turned over to the City Manager. A staff person will be assigned to serve as Secretary, taking minutes as needed.

It is important advisory bodies wishing to communicate with the City Council do so through adopted or approved Council agenda procedures. Staff members shall assist the advising board to insure appropriate review and that City and State legislation is complied with.

6.5 APPOINTMENT PROCEDURES

The following procedures shall be the policy of the City Council in regard to appointment of volunteer citizens to the various advisory bodies of the City.

6.5.1 PURPOSE

The purpose of establishing these procedures shall be to insure well-qualified, responsible and willing citizens are given the opportunity to serve the City and participate in the governing of their community. These procedures will apply to all appointments and reappointments to standing advisory bodies.

6.6 PROCESS

6.6.1 QUALIFICATIONS

6.6.1.1 The applicant must be a resident and registered voter of the City at the time and during the entire term of appointment, unless excepted by State law or Council approved special requirements in advisory committee by-laws.

6.6.1.2.1 The applicant must be at least 18 years of age at the time of appointment; provided, that the Council may appoint one area high school student to an advisory board, if allowed by the Advisory Board By-Laws and they meet the other qualification requirements.

6.6.1.2.2 Elected Officials, Officers and Employees of the City of Morro Bay shall not be considered for appointment, unless otherwise approved unanimously by the City Council.

6.6.2 TERMS

- 6.6.2.1 The term of office for each appointee to an advisory board shall be a maximum of four years unless excepted by State law or Council approved special requirements in advisory committee by-laws. The terms are staggered so that in no event, will all terms on any committee expire in the same year. Incumbents may apply for subsequent terms of service. Terms of Office will expire on January 31, of the specified year.
- 6.6.2.2 Persons appointed to fill the remainder of a vacated office term may reapply to serve on the same advisory board.
- 6.6.2.3 Mid-term appointment to a vacant seat shall not preclude the appointee from serving additional terms.
- 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.

6.6.3 PROCESS

- 6.6.3.1 Applications are obtained and filed with the City Clerk's Office.
- 6.6.3.2 Prior to November 30, of each year, the City Clerk shall advise the City Council of the terms that are due to expire on each advisory board. The City Clerk shall also notify each advisory member whose term is due to expire. Each of these members shall be given the opportunity to apply for reappointment.
- 6.6.3.3 The City Clerk shall then place an advertisement in the local newspaper, inviting citizens to apply for consideration as an appointment to an advisory board, with instructions regarding the application process.
- 6.6.3.4 It is recommended that applicants attend at least one meeting of the advisory body applied for prior to the interview with the City Council.
- 6.6.3.5 The City Council shall, in a noticed public meeting, interview qualified applicants. In making appointments, the Council shall strive for a representative cross-section of both lay and

professional knowledge. The Council will act by separate motion on each appointment made.

- 6.6.3.6.1 Applicants not appointed will be advised and their applications held for up to one year for consideration in the event of a future vacancy.
- 6.6.3.6.2 Candidates not appearing for interview before the City Council will be considered for appointment only upon a finding of the City Council by motion the absence arose from excusable neglect or personal difficulties.

CITY OF MORRO BAY
ADVISORY BOARDS
HANDBOOK
AND
BY-LAWS

Date: January 10, 2017

Approved by Resolution 02-17

Mission Statement

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

INTRODUCTION

Welcome and thank you for your interest in serving on one of the City's Advisory Boards. By serving on one of Morro Bay's Advisory Boards, you can help plan and guide the City's future. It is important that members of the Advisory Boards understand the functions and responsibilities of a board member. We hope that you find serving on the City's advisory board personally satisfying, and in the process gain invaluable knowledge and experience.

The City of Morro Bay Municipal Code empowers the City Council to form boards and commissions to assist the City Council in legislating and managing the affairs of the City. From time to time citizen advisory committees are appointed to meet a specific topic and need. Their varied roles provide significant opportunities for formulating City policy and for creating public forums for meaningful community participation.

Consistent with the City's Mission Statement, advisory boards can help the City achieve its mission and purpose, which is to preserve and enhance the citizens of Morro Bay's quality of life. This Handbook shall serve as a guide to assist you in the sometimes-complex, but often rewarding, process of serving on one of the City's Advisory Boards. These advisory bodies assist the City Council in making better-informed decisions by formulating new ideas, information gathering, receiving public testimony and comments, analyzing complex issues, and making recommendations on specific projects and broad policy.

Advisory Boards advise the City Council and the City Manager on matters within their area of responsibility and interest; help focus attention on specific issues and problems within their scope of responsibilities, and recommend action and alternatives for Council consideration; act as channels of communication among City government, the general public, and interest groups; and balance community wants with municipal responsibility and resources.

At times, your role may be challenging and complex. Public opinion can be sharply divided, questions may overlap, and sometimes the province of one body may also be the territory of another. Therefore, we have created this handbook to assist you with some of the fundamental aspects of your new responsibility.

Much of the information in this handbook comes from City policy, such as the City's Municipal Code and the City Council Policies and Procedures Manual. In addition, State Law governs certain responsibilities of advisory body members. The material presented is intended to: (1) Give interested persons an understanding of why the City's advisory bodies have been established and how they function within the overall governmental framework and, (2) Summarize the roles, relationships and responsibilities of each advisory body member.

Each Advisory Board within the City has its own By-Laws. The By-Laws are included herein for your ease of reference. The sections of the Handbook are divided as follows:

1. General Information on Advisory Boards
2. FAQs
3. Background Information of City Government
4. The Brown Act
5. Political Reform Act of 1974 (Conflict of Interest)
6. Advisory Body Summary
7. Advisory Board By-Laws

We hope this handbook will answer many of your questions, get you off to a good start, and contribute to your satisfaction in serving the citizens of the City of Morro Bay.

1. General Information on Advisory Bodies

Advisory bodies are authorized by both the Morro Bay Municipal Code and the City Council.

Advisory boards provide an opportunity for interested residents to participate in the governing of their community under guidelines and procedures established by the Council. Advisory boards can improve the quality of City government by providing the Council with resources to make better-informed decisions. Because of the nature of various advisory boards, they can serve as the “eyes and ears” of the Council for issues and matters that otherwise might not receive attention. Other benefits of advisory boards include improvement in the lines of communication between the public and the Council, greater opportunities for discussion of public issues, and more citizen involvement in City government. There is considerable variety in the purpose or responsibility of these bodies. Advisory boards have been created by the City Council to serve the City of Morro Bay’s unique needs.

The authority of an advisory body will depend upon its specific purpose. Each has a specific focus and will make recommendations to the Council on issues related to that specific field. Decisions made by an advisory body may be appealed to the Council. The Council may not always accept the recommendation of an advisory body because of additional information available or a need to balance the recommendation with policy or community priorities.

Generally, advisory bodies are empowered only to make recommendations to the Council or to the City staff, unless specifically authorized by law or Council to do otherwise. There should be two-way communication so that commissions are aware of the long-term goals Council has adopted, and the advisory body is able to present new ideas to the Council. Advisory board members are encouraged to attend and/or watch Council meetings.

Members of the advisory boards are volunteers who are appointed by the City Council and serve at the pleasure of the City Council. There is no compensation or benefits for board members, except for Planning Commission, whose responsibilities are greater and meetings more frequent. All members are expected to attend scheduled advisory board meetings and all meetings shall be conducted in accordance with Robert’s Rules of Order, City Council Policies and Procedures Manual and State Law.

As used herein references to advisory board shall include commission and committee. Currently, the City of Morro Bay has seven advisory boards:

- Harbor Advisory Board
- Public Works Advisory Board
- Recreation and Parks Commission
- Tourism Business Improvement District Board
- Planning Commission
- Citizens Oversight Committee/Finance Committee

2. Frequently Asked Questions

A. HOW ARE ADVISORY BOARD MEMBERS CHOSEN?

◆ **APPLICATION AND SELECTION PROCESS**

- All recruitment for advisory board members is open and published in a local newspaper. The City accepts applications from interested persons throughout the year.
- Applicants will be sought from all segments of the community, representing various interests and groups.
- Appointment is made by the City Council. Each application is carefully reviewed by the City Council.
- Members serve at the pleasure of the City Council.
- Incumbents are considered for reappointment at the conclusion of their terms.
- Terms are four years, commencing on February 1st, and the terms are staggered.

◆ **HOW DO I GET AN APPLICATION?**

- Applications may be obtained from the City Clerk's office at City Hall. Information on vacancies and/or specific recruitment periods may be requested by phoning the City Clerk. An official application form must be completed for each position.

◆ **ARE THERE ANY TIPS TO IMPROVE MY CHANCES OF BEING APPOINTED?**

- Fill out a separate form for each advisory board in which you are interested. It is to your advantage to tailor each application to the specific board or commission for which you are applying. Emphasize different aspects of your background to match those needed for a particular advisory board.
- Emphasize your talents. Clearly indicate how your particular talents, skills, training, or experience will benefit the advisory board for which you wish to be considered.
- Become familiar with the appropriate advisory board. Attend meetings, talk with advisory board members, or read documents they have developed to acquaint yourself with their work. Talk with the department head responsible for staffing the specific advisory board in which you are interested.

B. QUALIFICATIONS FOR SERVICE

Advisory board members may be required to wear "different hats" at different times. The ability to suitably perform the varied roles requires specialized skills and knowledge. Qualification for service can be divided into four general areas:

◆ LONG-RANGE INTEREST IN THE COMMUNITY

The ability to conceive and be concerned with the impact of current decisions on future citizens is paramount. Advisory board members are required to analyze issues, to listen to public comment through formal hearings or informal discussion, to interpret and apply mandates of the General Plan, and to analyze all the pertinent data before arriving at objective decisions which will be in the best interest of the community as a whole.

◆ FAIRNESS, COMMON SENSE, HONESTY AND GOOD CHARACTER

Keeping the public interest in mind, a board member will be called upon to use every day good sense in balancing the need of public and private groups. Controversial issues do arise, and the ability to make decisions based on merit rather than personalities is a must. Other traits include imagination, flexibility and the ability to act in a judicial vs. legislative capacity.

◆ KNOWLEDGE OF THE COMMUNITY MARKETPLACE, PROCESS, OBJECTIVES, AND LAWS

A first-hand knowledge of economic systems, the general operation of government, and a basic understanding of the legal process is important. This knowledge will be of tremendous value when board members are required to conduct public hearings, analyze and receive testimony and make meaningful decisions.

◆ TIME TO SERVE IN APPOINTED CAPACITY

The amount of time an advisory board member devotes to his/her duties varies with each advisory board. Before making a personal commitment, a prospective applicant should honestly evaluate whether he/she has adequate free time to attend the meetings, to review and be familiar with meeting materials, and to communicate with the public as well as with department staff.

C. STATEMENTS OF ECONOMIC INTERESTS / CONFLICT OF INTEREST

Members of any advisory board are required to file Statements of Economic Interest. Additionally, advisory board members are required to refrain from participation in matters where they have the potential for conflict of interest. (See Section 5 for the City's policy on Conflict of Interest)

3. Background Information on City Government

The City of Morro Bay is a general law city and became incorporated in 1964 and operates under the laws of the State of California.

The City Council, City Manager, City Clerk and City Attorney are integral to the day-to-day operations of the City. As such, we have included a summary of the City government's main function for your information and reference.

a. City Council:

The City Council is elected by a majority vote by the citizens of Morro Bay. The City Council is the governing body of the City and is made up of the Mayor and four council members. The City Council is accountable to the citizens of Morro Bay. The decisions of the City Council are reached by a majority vote.

The City Council formulates policy, approves programs, appropriates funds and establishes local taxes and assessments. The City Council enacts local laws (ordinances) and regulations for governing of the City. The local ordinances adopted by the City Council are compiled in the City's Municipal Code.

b. City Manager:

The City Manager is the administrative head of the government of the City. The City Manager is appointed by the City Council, and serves at its pleasure. The City Manager's duties include implementation of policies and procedures initiated by the City Council. The City Manager also is responsible for all City personnel, except as to the City Attorney, and serves as a liaison to each board, unless otherwise noted in the Board By-Laws.

c. City Clerk:

The City Clerk's duties include, but are not limited to: recording, writing and maintaining Council proceedings, conducting municipal elections, publishing ordinances and resolutions and other official City documents, storing and indexing official documents and City records for retrieval, administering Conflict of Interest disclosures, and serving as the custodian of the seal of the City.

d. City Attorney:

The City Attorney is appointed by the City Council. The City Attorney advises the City Council and City Officers (in their official capacity) in legal matters, attends all Council meetings and some board meetings, represents the City in legal actions and proceedings, and retains, supervises and monitors outside legal counsel. The City Attorney also approves all bonds and contracts made by the City, prepares ordinances and resolutions as required by the Council and prosecutes violations of the City's Municipal Codes and Ordinances.

4. The Brown Act

This is a mere glimpse of the Brown Act. A more detailed Brown Act and Political Reform Act Booklet is available to the advisory board through the City Attorney's office.

a. The Brown Act.

The general purpose of the Brown Act is to aid in the conduct of the people's business. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not for the people to know. Therefore, it is the intent of this Act that the actions and deliberations of all local agencies be taken openly, including deliberations and collective discussion involving the examination, weighing and reflection on the reasons for or against a choice. It also includes the exchange of facts preliminary to the ultimate decision.

Generally all meetings of City boards, commissions, committees and groups are to be open and public and all persons are to be permitted to attend any meeting. Under certain *strict* circumstances, closed session meetings are permitted.

Brown Act Compliance is absolutely required. We encourage you to carefully review the Brown Act Booklet which is available through the City Attorney's Office which describes in detail the Brown Act.

5. Political Reform Act (Conflicts of Interest)

A. Background

The Political Reform Act (Government Code sections 81000, et seq.) was approved by the voters of the State of California and is intended to prevent conflicts of interest by requiring public officials to disclose certain personal financial interests which could foreseeably cause conflicts. In addition, a public official may be required to disqualify himself/herself from making, participating in, or attempting to influence any government decision which will affect any of his/her financial interests, not just those that are required to be disclosed. The City's Brown Act and Political Reform Act Booklet explains in more detail what a conflict of interest is, and when the law requires disqualification. In addition, the Fair Political Practices Commission is available for advice.

Under the Political Reform Act, no public official may make, participate in making, or in any way attempt to use his or her official position to influence a governmental decision if he or she knows or has reason to know that he or she has a financial interest. (Government Code Section 87100). A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on one or more of his or her economic interests. (Government Code Section 87103; 2 Cal. Code of Regs. Section 18700 (a)).

The term "financial interest" denotes a conclusion that a public official has a financial interest in a decision if it is concluded that it is reasonably foreseeable that the decision will have a material financial effect on his or her economic stake greater than that of other citizens. The term "economic interest" is a label applied to the particular types of stakes recognized by the Act as potential sources of a conflict of interest. There are specific types of economic interest recognized by the Act, as such, we direct you to carefully review the Brown Act and Political Reform Act Booklet which is available from the City Attorney's Office and/or visit the Fair Political Practices Commission Web page for more detailed information.

B. City Policy Regarding Conflicts of Interests

Because the City of Morro Bay is a small, closely knit community it is imperative that the citizens have trust and confidence in City government. Therefore, the City has adopted this public policy to prevent any possibility of conflict that may arise.

Generally stated, any elected or appointed official has a conflict of interest if he or she has a financial interest in a project before the City and/or when compensation is received from anyone seeking approvals from the City. There are some exceptions but, generally, elected or appointed officials are prohibited from voting on projects where a conflict exists. A conflict of interest also occurs when officials live within a certain distance from a project (usually 500 feet). Even if a legal conflict does not exist, it may be inappropriate to participate in a decision for personal reasons to avoid even the appearance of a conflict of interest. As an example, there

could be a conflict if your good friend has a matter before your board, and you do not feel that it would be appropriate for you to voice an opinion in your "City" capacity. While the latter case is not defined by the Fair Political Practices Commission as a conflict, it could be perceived as a conflict, and then stepping down is appropriate.

It is the policy of the City, in addition to strictly adhering to the FPPC rules, all elected and appointed officials conduct themselves in a manner that does not raise a reasonable perception or belief that there is a conflict of interest or an abuse of your position. All board and commission members should avoid the appearance of conflict at all costs.

If you step down from the dais and refrain from voting on an issue, then you are not precluded from speaking as an individual. Your presentation, however, must be made from the floor, at the microphone with the rest of the public. You should state for the record that you are speaking as an *individual*. Many times in the past, Council Members and advisory board members have stepped down from their official position at the dais when projects are presented in which there may be the potential for conflict of interest. That provides the opportunity to present your views as an *individual* on any matter before any City body.

6. ADVISORY BOARD BY-LAWS

The City Council has approved the rules and regulations (referred to herein as By-Laws) to set forth their purpose, procedures, and specific issues such as their functions, meeting dates, officers, vacancies and budgets.

All advisory board meetings will be conducted in strict compliance with Robert's Rules of Order, the City Council Policy and Procedures and State Law. For more detailed information, we suggest you review the City Council's Policies and Procedures Manual.

Attached hereto are the applicable By-Laws for all of the City of Morro Bay's Advisory Boards.

CITY OF MORRO BAY HARBOR ADVISORY BOARD BY-LAWS

PURPOSE AND AUTHORITY

The Harbor Advisory Board is established to review, advise and recommend to the City Council on items pertaining to the City Harbor. These include, but are not limited to:

- A. Use, control, promotion and operation of vessels and watercraft within the harbor, docks, piers, slips, utilities and publicly-owned facilities as a part of the City's Harbor, and water commerce, navigation, or fishery in the Harbor.
- B. Review and recommend rules and regulations pertaining to any of the matters listed in subsection A of this section.
- C. Review and recommend rates, tolls, fees, rents, charges or other payments to be made for use or operation of the Harbor.
- D. The Board shall make reports and recommendations to the various city boards, commissions or the City Council on matters relating to activities within the harbor. When requested to do so, will review items referred by other city boards, commissions or the City Council. Resulting reports and recommendations will be included in presentations before the City Council.

APPOINTMENT

The Harbor Advisory Board shall be comprised of seven voting members, four of which must be qualified electors of the City of Morro Bay. Appointments and the filling of vacancies shall be made by the City Council. Harbor Advisory Board members shall serve at the pleasure of the City Council. The City Council will attempt to select members from the following categories:

- Morro Bay Commercial Fishermen's Association
- Waterfront Leaseholders
- Marine Oriented Business
- Recreational Boating
- Representative of South Bay/Los Osos
- Two Members at Large

However, the City Council and Harbor Advisory Board recognize the importance of the Morro Bay Commercial Fisherman's Association (MBCFO) seat, and acknowledge that it is often difficult for commercial fishermen serving on the HAB to meet the attendance requirements due to the nature of their business. As such, up to two (2) Alternate MBCFO members to the Primary member may be appointed by the City Council in the same manner and fashion as regular appointments in order to stand-in for the Primary member in the event of the Primary member's absence.

TERMS OF OFFICE

Members shall serve, without compensation, for a period of four (4) years commencing February 1st in the year specified when members are appointed. Appointments shall be made in such a manner so as no more than three members' terms expire concurrently. Unanticipated vacancies shall be filled for the duration of the unexpired term only.

QUALIFICATIONS

Four of the seven members must be a resident and registered voter of the City during the term of appointment, unless excepted by State Law or Council approved special requirements; must be at least 18 years of age at the time of appointment; and, may not be an Elected Official, Officer, or Employee of the City of Morro Bay. (Council Policies and Procedures, Section 6.6.1)

ABSENCE FROM MEETINGS

Absence from three consecutive regular meetings or twenty-five (25) percent of the regular meetings during any 12-month period, without the formal consent of the City Council, shall constitute the resignation of such absent member and the position will be declared vacant. Requests for extended excused absences of three consecutive regular meetings or twenty-five (25) percent of the regular meetings during any 12-month period must be submitted to the City Council in writing prior to the extended absence to allow sufficient time for review and approval at a regular Council meeting.

ORGANIZATION

At the first regular meeting in each year wherein newly appointed Members are seated, the Members shall elect a Chairperson and Vice-Chairperson who shall hold office for a period of one year. The Chairperson shall preside over meetings, appoint appropriate sub-committees, and direct the affairs of the Committee. In the absence of the Chairperson, duties of the office shall be performed by the Vice-Chairperson. If both the Chair and Vice-Chair are absent, the remaining quorum shall appoint one member to preside at that meeting. The City of Morro Bay staff will maintain accurate minutes of the official activities of the Harbor Advisory Board.

PROCEDURE

Regular meetings shall be held monthly on a regular schedule. The meetings shall be open to the public. The date, time and location along with the meeting agenda shall be noticed in accordance with Government Code Sections 54970-54975. The Chair may close meetings to public comments, provided that the action is consistent with the Brown Act. Agendas, reports, meetings and any and all actions shall be governed by the requirements of the Brown Act, as amended.

These advisory board meetings will be conducted in strict compliance with the City Council Policies and Procedures Manual. Where used in the City Council Policies and Procedure Manual, the term "City Council" shall mean the "Harbor Advisory Board", the term "Mayor" shall mean "Chairperson" and the term "Council Member" shall mean "Harbor Advisory Board Member". In all matters and things not otherwise provided for in the by-laws or the Policies and Procedures of the City Council, proceedings shall be governed by "Robert's Rules of Order," revised edition. However, no ordinance, resolution, proceeding or other action of the City Council pertaining to the Harbor Advisory Board shall be invalidated or the legality thereof otherwise affected by the failure or omission to observe or follow "Robert's Rules of Order."

Communication between the Harbor Advisory Board Members and the Council shall be in accordance with the City Council Policies and Procedures as currently adopted.

QUORUM

A majority of voting members shall constitute a quorum.

CITY STAFF

The City Manager or the designee of the City Manager shall be responsible for preparing agendas, reports, and minutes pertaining to Harbor Advisory Board business and shall attend the Harbor Advisory Board meetings.

BY-LAW AMENDMENTS

All amendments to the By-Laws shall be approved by the City Council.

CITY OF MORRO BAY PUBLIC WORKS ADVISORY BOARD BY-LAWS

PURPOSE AND AUTHORITY

The Public Works Advisory Board is established to review, advise and recommend to the City Council on items pertaining to Water, Waste-water, Streets, Recycling, and Solid Waste, Cable Television, Telecommunications, Trees, Transportation and other issues related to Public Services Department responsibilities.

The Board shall make reports and recommendations to the various city boards, commissions or the City Council on the above matters. When requested to do so, will review items referred by other city boards, commissions or the City Council. Resulting reports and recommendations will be included in presentations before the City Council.

APPOINTMENT

The Public Works Advisory Board shall be comprised of seven voting members, all of which must be qualified electors of the City of Morro Bay. Appointments and the filling of vacancies shall be made by the City Council. The Public Works Advisory Board members shall serve at the pleasure of the City Council.

TERMS OF OFFICE

Members shall serve, without compensation, for a period of four years commencing February 1st in the year specified when members are appointed. Appointments shall be made in such a manner so as no more than three members' terms expire concurrently. Unanticipated vacancies shall be filled for the duration of the unexpired term only.

QUALIFICATIONS

A member must be a resident and registered voter of the City during the term of appointment, unless excepted by State Law or Council approved special requirements; must be at least 18 years of age at the time of appointment; and, may not be an Elected Official, Officer, or Employee of the City of Morro Bay. (Council Policies and Procedures, Section 6.6.1)

ABSENCE FROM MEETINGS

Absence from three consecutive regular meetings or twenty-five (25) percent of the regular meetings during any 12-month period, without the formal consent of the City Council, shall constitute the resignation of such absent member and the position will be declared vacant. Requests for extended excused absences of three consecutive regular meetings or twenty-five (25) percent of the regular meetings during any 12-month period must be submitted to the City Council in writing prior to the extended absence to allow sufficient time for review and approval at a regular Council meeting.

ORGANIZATION

At the first regular meeting in each year wherein newly appointed Members are seated, the Members shall elect a Chairperson and Vice-Chairperson who shall hold office for a period of one year. The Chairperson shall preside over meetings, appoint appropriate sub-committees, and direct the affairs of the Committee. In the absence of the Chairperson, duties of the office shall be performed by the Vice-Chairperson. If both the Chair and Vice-Chair are absent, the remaining quorum shall appoint one member to preside at that meeting. The City of Morro Bay staff will maintain accurate minutes of the official activities of the Advisory Board.

PROCEDURE

Regular meetings shall be held every month on a regular schedule. The meetings shall be open to the public. The date, time and location along with the meeting agenda shall be noticed in accordance with Government Code Sections 54970-54975. The Chair may close meetings to public comments, provided that the action is consistent with the Brown Act. Agendas, reports, meetings and any and all actions shall be governed by the requirements of the Brown Act, as amended.

These advisory board meetings will be conducted in strict compliance with the City Council Policies and Procedures Manual. Where used in the City Council Policies and Procedure Manual, the term "City Council" shall mean the "Board", the term "Mayor" shall mean "Chairperson" and the term "Council Member" shall mean "Public Works Advisory Board Member". In all matters and things not otherwise provided for in the by-laws or the Policies and Procedures of the City Council, proceedings shall be governed by "Robert's Rules of Order," revised edition. However, no ordinance, resolution, proceeding or other action of the City Council pertaining to the Public Works Advisory Board shall be invalidated or the legality thereof otherwise affected by the failure or omission to observe or follow "Robert's Rules of Order."

Communication between the Public Works Advisory Board members and the Council shall be in accordance with the City Council Policies and Procedures as currently adopted.

QUORUM

A majority of voting members shall constitute a quorum.

CITY STAFF

The City Manager or the designee of the City Manager shall be responsible for preparing agendas, reports, and minutes pertaining to the Public Works Advisory Board business and shall attend the Public Works Advisory Board meetings.

BY-LAW AMENDMENTS

All amendments to the By-Laws shall be approved by the City Council.

CITY OF MORRO BAY RECREATION AND PARKS COMMISSION BY-LAWS

PURPOSE AND AUTHORITY

The Recreation and Parks Commission is established to provide the following:

- A. Act in an advisory capacity to the City Council in all matters pertaining to parks and public recreation and to cooperate with other governmental agencies and civic groups in the advancement of sound recreation and parks planning and programming. The Board shall make reports and recommendations to the various city boards, commissions or the City Council on the above matters. When requested to do so, will review items referred by other city boards, commissions or the City Council. Resulting reports and recommendations will be included in presentations before the City Council.
- B. Formulate policies on recreation services, parks and open space for approval by the City Council.
- C. Recommend to the City Council the development of recreational areas, parks, facilities, open spaces, programs, and improved recreation services.
- D. Recommend to the City Council the adoption of rules, regulations and standards concerning recreation and parks in respect to organization, personnel, areas and facilities, program and financial support.
- E. Advise the Recreation and Parks Director in the preparation of the annual parks maintenance, park improvement and recreation budgets and long-range recreation and parks facilities improvements.
- F. Hold public hearings and meetings to conduct investigations and surveys for the purpose of securing facts and data concerning parks and public recreation.

APPOINTMENT

The Recreation and Parks Commission shall be comprised of seven voting members, five of which must be qualified electors of the City of Morro Bay. Appointments and the filling of vacancies shall be made by the City Council. Commissioners shall serve at the pleasure of the City Council.

TERMS OF OFFICE

Members shall serve, without compensation, for a period of four (4) years commencing February 1st in the year specified when members are appointed. Appointments shall be made in such a manner so as no more than three members' terms expire concurrently. Unanticipated vacancies shall be filled for the duration of the unexpired term only.

QUALIFICATIONS

Five of the seven members must be a resident and registered voter of the City during the term of appointment, unless excepted by State Law or Council approved special requirements. Unless otherwise approved in accordance with Council Policies and Procedures, section 6.6.1, each member must (i) be at least 18 years of age at the time of appointment and (ii) not be an Elected Official, Officer, or Employee of the City of Morro Bay. (See Council Policies and Procedures, Section 6.6.1.)

ABSENCE FROM MEETINGS

Absence from three consecutive regular meetings or twenty-five (25) percent of the regular meetings during any 12-month period, without the formal consent of the City Council, shall constitute the resignation of such absent member and the position will be declared vacant. Requests for extended excused absences of three consecutive regular meetings or twenty-five (25) percent of the regular meetings during any 12-month period must be submitted to the City Council in writing prior to the extended absence to allow sufficient time for review and approval at a regular Council meeting.

ORGANIZATION

At the first regular meeting in each year wherein newly appointed Members are seated, the Members shall elect a Chairperson and Vice-Chairperson who shall hold office for a period of one year. The Chairperson shall preside over meetings, appoint appropriate sub-committees, and direct the affairs of the Committee. In the absence of the Chairperson, duties of the office shall be performed by the Vice-Chairperson. If both the Chair and Vice-Chair are absent, the remaining quorum shall appoint one member to preside at that meeting. The City of Morro Bay staff will maintain accurate minutes of the official activities of the Commission.

PROCEDURE

Regular meetings shall be held every month, except the months of February, June, October and December, on a regular schedule. The meetings shall be open to the public. The date, time and location along with the meeting agenda shall be noticed in accordance with Government Code

Sections 54970-54975. The Chair may close meetings to public comments, provided that the action is consistent with the Brown Act. Agendas, reports, meetings and any and all actions shall be governed by the requirements of the Brown Act, as amended.

All Commission meetings will be conducted in strict compliance with the City Council Policies and Procedures Manual. Where used in the City Council Policies and Procedure Manual, the term "City Council" shall mean the "Commission", the term "Mayor" shall mean "Chairperson" and the term "Council Member" shall mean "Commissioner". In all matters and things not otherwise provided for in the by-laws or the Policies and Procedures of the City Council, proceedings shall be governed by "Robert's Rules of Order," revised edition. However, no ordinance, resolution, proceeding or other action of the City Council pertaining to the Commission shall be invalidated or the legality thereof otherwise affected by the failure or omission to observe or follow "Robert's Rules of Order."

Communication between the Commission members and the Council shall be in accordance with the City Council Policies and Procedures as currently adopted.

QUORUM

A majority of voting members shall constitute a quorum.

CITY STAFF

The City Manager or the designee of the City Manager shall be responsible for preparing agendas, reports, and minutes pertaining to Commission business and shall attend the Commission meetings.

BY-LAW AMENDMENTS

All amendments to the By-Laws shall be approved by the City Council.

CITY OF MORRO BAY TOURISM BUSINESS IMPROVEMENT DISTRICT ADVISORY BOARD BY-LAWS

PURPOSE AND AUTHORITY

The Morro Bay Tourism Business Improvement District (MTBID) Advisory Board (the “Board”) advises the City Council on the administration and use of the MTBID assessment funds. The Board recommends projects to the City of Morro Bay to promote tourism to directly benefit the City’s lodging industry.

The primary purpose of the MTBID is to increase occupancy and room nights across all lodging types (motel, hotels, bed and breakfast) that pay the business improvement assessment, along with transient occupancy tax (TOT) within the City while placing particular emphasis on marketing that positively impacts the lodging.

APPOINTMENT

The Board shall be comprised of seven voting members. Appointments and the filling of vacancies shall be made by the City Council. The Board members shall serve at the pleasure of the City Council. Because of the diversity among assessment district members represented by the Board including local, regional and national lodging industry interests, it is neither practical nor advisable to limit Board membership to City residents. Accordingly, membership on the Board shall be exempt from residency requirements otherwise applicable to other City advisory boards. In addition, a member of the Board may not sit on any other City advisory board.

TERMS OF OFFICE

Members of the Board shall serve, without compensation, for a period of four years. Appointments shall be made in such a manner such that no more than three members’ terms expire concurrently. Unanticipated vacancies shall be filled for the duration of the unexpired term only. If a vacancy is within the last 6 months of a term, then it will be held over to the normal interview process.

QUALIFICATIONS

The Board shall consist of five members from the Morro Bay lodging industry and two members from the community at large.

The five members from the lodging industry shall consist of three members representing hotels “at large” (no specific number of rooms), and two other positions shall give preference to a

member representing lodging rooms of less than 22 rooms and one member representing 50 or less rooms (single hotel or cumulative representation), respectively. If no preferential applicant from a small or large hotel – as defined above – apply, then the seat shall be made available to applicants at an “at large” hotelier representative basis.

The community “at large” members shall be residents and registered voters of the City during the term of appointment.

Each member must be at least 18 years of age at the time of appointment and may not be an Elected Official, Officer, or Employee of the City of Morro Bay. (Council Policies and Procedures, Section 6.6.1)

FUNCTIONS AND DUTIES

The functions and duties of the Board shall include, but not be limited to, the following:

1. Plan a comprehensive program to promote tourism to the City of Morro Bay and prepare an annual marketing program consistent with industry goals and objectives.
2. Develop advertising and promotional programs and projects to benefit the lodging industry in Morro Bay
3. Present an annual assessment report to the City Council regarding the implemented promotional programs and projects.
4. Perform any other lawful tasks as directed by the Council.

ABSENCE FROM MEETINGS

Absence from three consecutive regular meetings or twenty-five (25) percent of the regular meetings during any 12-month period, without the formal consent of the City Council, shall constitute the resignation of such absent member and the position will be declared vacant. Requests for extended excused absences of three consecutive regular meetings or twenty-five (25) percent of the regular meetings during any 12-month period must be submitted to the City Council in writing prior to the extended absence to allow sufficient time for review and approval at a regular Council meeting.

ORGANIZATION

At the first regular meeting in each year wherein newly appointed Members are seated, the Members shall elect a Chairperson and Vice-Chairperson who shall hold office for a period of one year. The Chair and Vice-Chair of the Board as well as any presiding officers shall be hoteliers. The Chairperson shall preside over meetings, appoint appropriate sub-committees, and direct the affairs of the Committee. In the absence of the Chairperson, the Vice-Chairperson shall perform duties of the office. If both the Chair and Vice-Chair are absent, the remaining

quorum shall appoint one member to preside at that meeting. The City of Morro Bay staff will maintain accurate minutes of the official activities of the Board.

PROCEDURE

Regular meetings shall be held monthly on a regular schedule. The meetings shall be open to the public. The date, time and location along with the meeting agenda shall be noticed in accordance with Government Code Sections 54970-54975. The Chair may close meetings to public comment, provided that the action is consistent with the Brown Act. Agendas, reports, meetings and any and all actions shall be governed by the requirements of the Brown Act, as amended.

These advisory board meetings will be conducted in strict compliance with the City Council Policies and Procedures Manual. Where used in the City Council Policies and Procedure Manual, the term "City Council" shall mean the "Board", the term "Mayor" shall mean "Chairperson" and the term "Council Member" shall mean "Board Member". In all matters and things not otherwise provided for in the Bylaws or the Policies and Procedures of the City Council, proceedings shall be governed by "Robert's Rules of Order," revised edition. However, no ordinance, resolution, proceeding or other action of the City Council pertaining to the advisory board shall be invalidated or the legality thereof otherwise affected by the failure or omission to observe or follow "Robert's Rules of Order."

Communication between the Board members, and the Council shall be in accordance with the City Council Policies and Procedures as currently adopted.

QUORUM

A majority of voting members shall constitute a quorum.

CITY STAFF

The City Manager or the designee of the City Manager shall be responsible for preparing agendas, reports, and minutes pertaining to the Board business and shall attend the Board meetings.

BY-LAW AMENDMENTS

All amendments to the By-Laws shall be approved by the City Council.

CITY OF MORRO BAY PLANNING COMMISSION BY-LAWS

PURPOSE AND AUTHORITY

The Planning Commission is established in accordance with the provisions of Government Code Sections 65100, *et seq.* The functions of the Planning Commission shall be as follows:

- A. To develop and periodically review, a general plan and recommend its adoption or any revisions to the city council;
- B. To maintain and implement the general plan after its adoption by the city council;
- C. To develop specific plans as may be necessary to implement the general plan;
- D. To periodically review the capital improvement program of the city for its consistency with the general plan, and forward recommendations to the city council;
- E. Consult and advise with public officials and agencies, public utility companies, civic, educational, professional, and other organizations, and citizens generally concerning implementation of the general plan.
- F. Endeavor to promote public interest in, comment on, and understanding of the general plan, and regulations relating to it;
- G. To perform such other functions as the city council may direct.

The Planning Commission shall:

- A. In addition to the duties and responsibilities set forth by state laws and local ordinances, the planning commission shall act in the public interest and serve in an advisory capacity to the city council on all matters pertaining to the planning function;
- B. Cooperate with other city boards and commissions, governmental agencies and civic groups in the advancement of sound planning, both within and without the city;
- C. Formulate policies on planning services for recommendation to the city council;
- D. Upon the request of the City Council, hold a joint meeting with the city council twice annually to discuss proposed policies, programs, goals and objectives, budgeting, future planning, or any other planning matter requiring joint deliberation. The city clerk shall in January of each year bring forth an agenda item to the city council to schedule the two joint meetings;
- E. Recommend to the city council the adoption of standards with respect to organization, personnel, facilities, programs and financial support of the planning commission;
- F. Disseminate to the public information concerning the policies and functions of the planning commission.

APPOINTMENT

The Planning Commission shall consist of five voting members and they shall be qualified electors and residents of the City. Appointments and the filling of vacancies shall be made by the City Council. Commissioners shall serve at the pleasure of the City Council.

TERMS OF OFFICE

Members of the Planning Commission shall be appointed by and serve at the pleasure of the City Council. Terms shall be for a period of four years; vacancies shall be filled for the unexpired term only. Two-year short terms may be established to stagger terms. Expiration dates of specific terms shall be established by resolution of the City Council.

QUALIFICATIONS

A member must be a resident and registered voter of the City during the term of appointment, unless excepted by State Law or Council approved special requirements; must be at least 18 years of age at the time of appointment; and, may not be an Elected Official, Officer, or Employee of the City of Morro Bay. (Council Policies and Procedures, Section 6.6.1)

ABSENCE FROM MEETINGS

Absence from three consecutive regular meetings or twenty-five (25) percent of the regular meetings during any 12-month period, without the formal consent of the City Council, shall constitute the resignation of such absent member and the position will be declared vacant. Requests for extended excused absences of three consecutive regular meetings or twenty-five (25) percent of the regular meetings during any 12-month period must be submitted to the City Council in writing prior to the extended absence to allow sufficient time for review and approval at a regular Council meeting.

ORGANIZATION

At the first regular meeting in each year wherein newly appointed Members are seated, the Members shall elect a Chairperson and Vice-Chairperson who shall hold office for a period of one year. The Chairperson shall preside over meetings, appoint appropriate sub-committees, and direct the affairs of the Committee. In the absence of the Chairperson, duties of the office shall be performed by the Vice-Chairperson. If both the Chair and Vice-Chair are absent, then the remaining quorum shall appoint one member to preside at that meeting. The City of Morro Bay staff will maintain accurate minutes of the official activities of the Commission.

PROCEDURE

Regular meetings shall be held twice a month on a regular schedule. The meetings shall be open to the public. The date, time and location along with the meeting agenda shall be noticed in accordance with Government Code Sections 54970-54975. The Chair may close meetings to public comment, provided that the action is consistent with the Brown Act. Agendas, reports, meetings and any and all actions shall be governed by the requirements of the Brown Act, as amended.

All Commission meetings will be conducted in strict compliance with the City Council Policies and Procedures Manual. Where used in the City Council Policies and Procedure Manual, the term "City Council" shall mean the "Commission", the term "Mayor" shall mean "Chairperson" and the term "Councilmember" shall mean "Commissioner." In all matters and things not otherwise provided for in the Bylaws or the Policies and Procedures of the City Council, proceedings shall be governed by "Robert's Rules of Order," revised edition. However, no ordinance, resolution, proceeding or other action of the City Council pertaining to the Commission shall be invalidated or the legality thereof otherwise affected by the failure or omission to observe or follow "Robert's Rules of Order."

Communication between the Commission members, and the Council shall be in accordance with the City Council Policies and Procedures as currently adopted.

QUORUM

A majority of voting members shall constitute a quorum.

CITY STAFF

The City Manager or the designee of the City Manager shall be responsible for preparing agendas, reports, and minutes pertaining to Commission business and shall attend the Commission meetings.

BY-LAW AMENDMENTS

All amendments to the By-Laws shall be approved by the City Council.

**CITY OF MORRO BAY
CITIZENS OVERSIGHT COMMITTEE
ACTING IN THE CAPACITY OF A CITIZENS FINANCE
COMMITTEE**

PURPOSE AND AUTHORITY

The Citizens Oversight Committee was established in accordance with the provisions of Morro Bay Municipal Code Section 3.22.120 as a result of Measure Q. The functions of the Citizens Oversight Committee shall be to semi-annually review revenues and expenditures from the collection of tax and present its findings and conclusions to the City Council no later than the last day of the sixth month following the end of each City fiscal year.

The purpose of the functions of the Citizens Oversight Committee acting in the capacity of a Citizens Finance Committee shall be an advisory body to the City Council. (Hereinafter when this policy refers to “the Committee” it shall be a reference to the Citizens Oversight Committee acting in the capacity of the Citizens Finance Committee. The Committee will review financial documents, and make recommendations, in general, regarding the review of financial information provided to them, concerning the annual budget and mid-year budget review.

MISSION STATEMENT

The role of the Committee is to provide citizen input to the City Council and staff, regarding financial policy or process issues, including audits, financial budgets, contract expenditures and financial reports. In addition, the Committee’s role is to help promote citizen participation with, and understanding of, governmental financial information and processes, such as the financial documents, audits, and budgets, as well as the financial condition of the City.

DUTIES

1. Annual review of independent financial audit, with recommendations, as appropriate.
2. Annual review of contract expenditures, with recommendations, as appropriate.
3. Review existing budget document to determine long-term financial sustainability, and make recommendations, as appropriate.
4. Review and provide comments on the mid-year budget reports prior to presentation to City Manager.
5. Review annual budget prior to presentation to the City Council, and make recommendations, as appropriate.
6. Special financial projects, as directed by the City Council, City Manager or City Treasurer.

7. Propose/recommend additional financial areas of study to the City Council.
8. All recommendations are to be provided to the City Council, in writing, unless otherwise requested, on no less than a semi-annual basis.
9. Submit an annual work program to the City Council review and approval.
10. The Citizens Oversight Committee shall review a semi-annual expense report of the City relative to activities funded with the additional general purpose local sales tax monies and present its findings and conclusions to the City Council for its review no later than December 31st each year.

APPOINTMENT AND TERMS OF OFFICE

The Committee shall have seven citizen-members appointed by the City Council for six year terms with initially three members serving three years, and four members serving six years. Appointees shall be residents of the City; however, no member of the Committee shall be an elected official. Unanticipated vacancies shall be filled for the duration of the unexpired term only.

QUALIFICATIONS

All Committee Members must be residents and registered voters of the City during the term of appointment, unless excepted by State Law or Council approved special requirements; must be at least 18 years of age at the time of appointment; and may not be an Elected Official, Officer, or Employee of the City of Morro Bay. (Council Policies and Procedures, Section 6.6.1)

ABSENCE FROM MEETINGS

Absence from three consecutive regular meetings or twenty-five (25) percent of the regular meetings during any 12-month period, without the formal consent of the City Council, shall constitute the resignation of such absent member and the position will be declared vacant. Requests for extended excused absences of three consecutive regular meetings or twenty-five (25) percent of the regular meetings during any 12-month period must be submitted to the City Council in writing prior to the extended absence to allow sufficient time for review and approval at a regular Council meeting.

ORGANIZATION

At the first regular meeting every two years wherein newly appointed members are seated, the members shall elect a Chairperson and Vice-Chairperson who shall hold office for a period of two years. The Chairperson shall preside over meetings, appoint appropriate sub-committees, and direct the affairs of the Committee. In the absence of the Chairperson, the Vice-Chairperson shall perform duties of the office. If both the Chair and Vice-Chair are absent, then the remaining quorum shall appoint one member to preside at that meeting. The City of Morro Bay staff will maintain accurate minutes of the official activities of the Committee.

PROCEDURE

Regular meetings shall be held monthly on a regular schedule. The meetings shall be open to the public. The date, time and location along with the meeting agenda shall be noticed in accordance with Government Code Sections 54970-54975. The Chair may close meetings to public comment, provided that the action is consistent with the Brown Act. Agendas, reports, meetings and any and all actions shall be governed by the requirements of the Brown Act, as amended.

All Committee meetings will be conducted in strict compliance with the City Council Policies and Procedures Manual. Where used in the City Council Policies and Procedure Manual, the term "City Council" shall mean the "Committee", the term "Mayor" shall mean "Chairperson" and the term "Council Member" shall mean "Committee Member". In all matters and things not otherwise provided for in the Bylaws or the Policies and Procedures of the City Council, proceedings shall be governed by "Robert's Rules of Order," revised edition. However, no ordinance, resolution, proceeding or other action of the City Council pertaining to the Committee shall be invalidated or the legality thereof otherwise affected by the failure or omission to observe or follow "Robert's Rules of Order."

Communication between the Committee members, and the Council shall be in accordance with the City Council Policies and Procedures as currently adopted.

QUORUM

A majority of voting members shall constitute a quorum.

CITY STAFF

The City Treasurer shall be responsible for preparing agendas, reports, and minutes pertaining to Committee business and shall attend the Committee meetings.

BY-LAW AMENDMENTS

All amendments to the By-Laws shall be approved by the City Council.

RESOLUTION NO. 53-14

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
MODIFYING THE MAKE UP OF THE WATER RECLAMATION FACILITY
CITIZEN'S ADVISORY COMMITTEE (WRFCAC)**

**The City Council
City of Morro Bay, California**

WHEREAS, it has been determined to be in the interest of the public to form a citizens advisory committee for the new Water Reclamation Facility; and

WHEREAS, on May 27, 2014, the City Council adopted Resolution 34-14 forming that advisory committee (now referred to as "WRFCAC") to be composed of one member from the Public Works Advisory Board and one member from the Planning Commission as appointed by those bodies and five members and two alternates to be selected from the community at-large; and

WHEREAS on July 7 and 8, 2014, the City Council conducted interviews of 16 applicants to fill vacancies on the newly formed WRFCAC and appointed five members and two alternates to that committee; and

WHEREAS, at the meeting of July 8, 2014, the City Council expressed its desire to eliminate WRFCAC alternates and appoint seven full members.

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

1. WRFCAC is to be composed of one sitting member from the Public Works Advisory Board and one sitting member from the Planning Commission, as appointed by those bodies, and seven members selected from the community at-large to be appointed by City Council.
2. The initial City Council appointments to WRFCAC are:
 - Planning Commissioner: Richard Sadowski
 - Public Works Advisory Board Member: Steven Shively
 - At large member: Barbara Spagnola
 - At large member: Bill Woodson
 - At large member: Dale Guerra
 - At large member: John Diodati
 - At large member: Mary (Ginny) Garelick
 - At large member: Paul Donnelly
 - At large member: Valerie Levulett

3. Changes in the above appointments to WRFCAC can be ratified or approved by motion of the City Council without the need for adoption of a new resolution.

PASSED AND ADOPTED by the Morro Bay City Council at a regular meeting thereof held on the 12th day of August, 2014 by the following vote:

AYES: Irons, C. Johnson, N. Johnson, Leage, Smukler
NOES: None
ABSTAIN: None



Jamie L. Irons, Mayor

ATTEST:



Jamie Boucher, City Clerk

RESOLUTION NO. 34-14

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
REGARDING THE SITING OF A NEW WATER RECLAMATION FACILITY
AND FORMATION OF A TECHNICAL REVIEW COMMITTEE**

THE CITY COUNCIL
City of Morro Bay, California

WHEREAS, the City of Morro Bay has an existing Wastewater Treatment Plant that requires replacement; and

WHEREAS, it has been determined to be in the best interest of Morro Bay to construct a new Water Reclamation Facility that complies with the California Coastal Commissions actions of January 8, 2013; and

WHEREAS, it is in the best financial interest of the community to minimize the major maintenance and repair costs at the existing wastewater treatment plant; and

WHEREAS, on February 25, 2014, City Council adopted Resolution 17-14 committing to have a new Water Reclamation Facility operational prior to the expiration of the discharge permit for the existing wastewater treatment plant, being five years more or less, and

WHEREAS, on May 13, 2014, the City Council received and reviewed the report from John F. Rickenbach Consulting regarding recommended Water Reclamation Facility (WRF) sites and reclamation.

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

SECTION 1: The City Council provides the following direction to City staff:

- A. Begin preliminary discussions with the “Rancho Colina” property owner and regulatory agencies regarding site of a WRF on that property; and bring back to City Council a draft Memorandum of Understanding with the property owner that addresses the goals of each party, a negotiation timeline and general non-financial terms of the property acquisition.
- B. Continue parallel path discussions with County and regulatory staff regarding a WRF at the California Men’s Colony site.
- C. Form a WRF Technical Review Committee (TRC) that will be composed of one member from the Public Works Advisory Board and one member from the Planning Commission as appointed by each body and five members and two alternates to be selected from the community at-large. Council will appoint the at-large and alternate members using the same procedures as it uses to appoint to its standing advisory boards.

D. The City Council has reviewed the report entitled *New Water Reclamation Facility Project Report on Reclamation and Council Recommended WRF Sites* dated May 8, 2014, and will rely on its conclusions and recommendations as this process moves forward, with the understanding changes to those, and that reliance, may need to happen along the way due to more definitive or different information that may become available.

PASSED, APPROVED, AND ADOPTED, by the City of Morro Bay City Council, at a regular meeting held on this 27th day of May, 2014 by the following vote:

AYES: Irons, C. Johnson, N. Johnson, Leage, Smukler
NOES: None
ABSENT: None



Jamie L. Irons, Mayor

ATTEST:



Jamie Boucher, City Clerk

RESOLUTION NO. 39-15

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
AUTHORIZING FORMATION OF A GENERAL PLAN/
LOCAL COASTAL PROGRAM ADVISORY COMMITTEE (GPAC)**

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

WHEREAS, the City of Morro Bay has both an outdated General Plan and Local Coastal Program; and

WHEREAS, the City Council has adopted the goal of updating and combining the General Plan and Local Coastal Program; and

WHEREAS, the City Council authorized preparation of a consultant prepared work plan for the update of General Plan/Local Coastal Program; and

WHEREAS, the City is in the process of preparing a Request for Proposal for consultant services to prepare an update of the General Plan/Local Coastal Program; and

WHEREAS, on April 14, 2015, the City Council moved to form a General Plan/Local Coastal Program Citizens Advisory Committee (GPAC), and directed staff begin recruitment for that committee to be selected and formed in May 2015; and

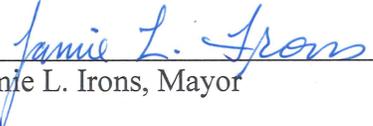
WHEREAS, following a broad outreach, the City Council held a special meeting on May 18, 2015 to conduct interviews and establish the committee.

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

- A. The GPAC is to be composed of nine members selected from the community at-large, with consideration also given to non-Morro Bay residents with established property or financial interests in the City, to be appointed by the City Council.
- B. The initial City Council appointments to GPAC are:
 - Rich Buquet
 - Robert Davis
 - Jan Goldman
 - Christine Rogers
 - Susan Schneider
 - Glenn Silloway
 - Melani Smith
 - Susan Stewart
 - Robert Tefft

PASSED AND ADOPTED, by the City of Morro Bay City Council, at a regular meeting held on this 9th day of June, 2015 by the following vote:

AYES: Irons, Headding, Johnson, Makowetski, Smukler
NOES: None
ABSENT: None



Jamie L. Irons, Mayor

ATTEST:



Dana Swanson, City Clerk

RESOLUTION NO. 18-15

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
COMMITTING TO UPDATING THE CITY'S GENERAL PLAN AND LOCAL
COASTAL PLAN BY DECEMBER 2017**

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

WHEREAS, the General Plan (GP) and Local Coastal Plan (LCP) are the blueprints for the City, they serve as the foundation for planning Morro Bay's future, they are the basis for the preparation of measures and the initiation of actions which guide proper development of the City; and

WHEREAS, the City's current GP was certified in 1988, and the City's current LCP was certified in 1982, both documents are sorely overdue for an update; and

WHEREAS, in 1997 the City embarked on updating both plans over the course of seven years, and on February 23, 2004 adopted an updated GP/LCP that was submitted to the California Coastal Commission (CCC) for their review and certification; and

WHEREAS, in 2008 a City Assessment performed by Management Partners made the number one recommendation to lobby the CCC for an expeditious approval of the City's GP/LCP, suggesting the City explain its grave financial position to the CCC and the need for certainty surrounding land use issues in order to attract investment to the community; and

WHEREAS, on February 28, 2011, the City received a letter from the CCC stating the City's 2004 GP/LCP application for certification was deemed withdrawn for lack of activity; and

WHEREAS, on April 23, 2013, City Council adopted a goal to update the City's GP/LCP; and

WHEREAS, on November 21, 2013, the City was awarded a \$250,000 grant from the Ocean Protection Council, and a \$147,000 grant from the CCC; and

WHEREAS, on February 24, 2015, the City Council reaffirmed the goal to update the City's GP/LCP including development and implementation of neighborhood design guidelines, by December 2017; and

WHEREAS, on March 24, 2015 a joint meeting between the City Council and Planning Commission reviewed the draft work plan performed by PMC consulting to update the GP/LCP, with an estimated cost to complete the update of between \$806,250 and \$1,590,800; and

WHEREAS, the work plan identifies Neighborhood Compatibility as a key issue in Morro Bay and calls for the formation of a citizens advisory committee to play a key role in the GP/LCP update including the development of Neighborhood Compatibility Standards; and

WHEREAS, the work plan lays out a timeline, cost, and the necessary steps to update the City's GP/LCP and it informs the public and City Council of the commitment required to achieve a updated GP/LCP; and

WHEREAS, the City Council understands in order to meet the City's goal of updating the GP/LCP by December of 2017 it must commit a minimum \$806,250, through all sources, including grants; and

WHEREAS, the City Council commits to working collaboratively with the CCC and all agencies to accomplish the update of the GP/LCP; and

WHEREAS, the City Council understands the negative effects an outdated GP/LCP has on the City and a new updated GP/LCP would address continued concerns regarding maintaining and improving the quality of life of residents and visitors for the future.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City Morro Bay affirms its desire to commit adequate resources to achieve meeting the City's goal of updating the City's General Plan and Local Coastal Plan by December 2017.

PASSED AND ADOPTED by the City Council of the City of Morro Bay, at a regular city council meeting thereof held on the 14th day of April 2015, by the following vote:

- AYES: Irons, Headding, Johnson, Makowetski, Smukler
- NOES: None
- ABSENT: None



 JAMIE L. IRONS, Mayor



 DANA SWANSON, City Clerk