



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, December 12, 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

- Recognition of Employee Service Pins

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

- Presentation of Award by Morro Bay in Bloom (Walter Heath)

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 SEPTEMBER 28-29, 2017 CITY COUNCIL CLOSED SESSION MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 APPROVAL OF MINUTES FOR THE OCTOBER 10, 2017 CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-3 APPROVAL OF MINUTES FOR THE OCTOBER 24, 2017 CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-4 CITY COUNCIL ANNUAL MEETING SCHEDULE FOR 2018; (ADMINISTRATION)

RECOMMENDATION: Council approve the 2018 schedule for regular meetings to be held the second and fourth Tuesdays of each month, with the exception of July, November and December.

A-5 APPOINTMENT OF REPRESENTATIVES ON DISCRETIONARY BOARDS, COUNCIL LIAISON ASSIGNMENTS AND COUNCIL SUB-COMMITTEES; (MAYOR)

RECOMMENDATION: Affirm the appointment of representatives to serve on the various County or Regional Discretionary Boards, Council Liaisons Assignments and Sub-Committees for calendar year 2018 as shown on the appointment list.

A-6 ADOPTION OF RESOLUTION NO. 62-17 RESCINDING RESOLUTION NO. 18-15 AND COMMITTING TO UPDATE THE CITY'S GENERAL PLAN AND LOCAL COASTAL PLAN BY SEPTEMBER 2018; (MAYOR)

RECOMMENDATION: Council adopt Resolution No. 62-17 rescinding Resolution No. 18-15 and committing to update the City's General Plan and Local Coastal Plan by September 2018.

A-7 ACCEPT JEFFERY HELLER'S VOLUNTARY RESIGNATION FROM THE GENERAL PLAN ADVISORY COMMITTEE (GPAC) AND ADOPT RESOLUTION NO. 64-17 REDUCING THE NUMBER OF GPAC COMMITTEE MEMBERS TO SEVEN; (CITY CLERK)

RECOMMENDATION: Council accept the resignation of General Plan Advisory Committee (GPAC) Member Jeffery Heller and consider adoption of Resolution No. 64-17 reducing the committee size from nine to seven.

A-8 AUTHORIZE THE CITY MANAGER TO EXECUTE AN AMENDMENT TO THE CITY'S CONTRACT WITH MENTAL MARKETING, INC FOR TOURISM MARKETING AND PUBLIC RELATIONS; (TOURISM MANAGER)

RECOMMENDATION: Council authorize the City Manager to execute an amendment, approved to form by the City Attorney, to the current contract with Mental Marketing, Inc., to cover tourism marketing and public relations for year two of the contract, as provided for in the Council approved budget for FY 2017/18.

- A-9 APPROVAL OF FINAL MAP FOR TRACT 2739 - BLACK HILLS VILLAS (485 & 495 SOUTH BAY BLVD); (PUBLIC WORKS)

RECOMMENDATION: Council adopt Resolution No. 63-17 approving the Final Map for Tract 2739 – Black Hills Villas.

- A-10 ADOPTION OF RESOLUTION NO. 66-17 AUTHORIZING A BUDGET ADJUSTMENT OF \$43,250 FOR AMERICAN WITH DISABILITIES ACT (ADA) TRANSITION PLAN IMPROVEMENTS; (PUBLIC WORKS)

RECOMMENDATION: Council authorize a budget adjustment of \$43,250 in Fund 915-8500, which is an on-going capital project for ADA implementation throughout the City.

- A-11 AUTHORIZATION TO ENTER INTO A CONTRACT WITH STAFFORD MCCARTY FOR REPRESENTATION RELATED TO THE SALE OR LEASE OF THE MARKET PLAZA PROPERTY; (COMMUNITY DEVELOPMENT)

RECOMMENDATION: Council review the staff report, and authorize the City Manager to enter into a contract with Stafford McCarty (Steve McCarty) for listing of the Market Plaza & Centennial Parkway project/properties.

- A-12 ADOPTION OF (I) RESOLUTION NO. 67-17 APPROVING THE NEW AMENDMENT #1 TO THE NEW LEASE AGREEMENT BETWEEN THE CITY OF MORRO BAY AND BOATYARD LLC FOR LEASE SITE 89/89W, LOCATED AT 845 EMBARCADERO, AND COMMONLY KNOWN AS THE BOATYARD, AND RESCINDING THE APPROVAL OF THE PREVIOUS AMENDMENT #1 AND (II) RESOLUTION NO. 68-17 APPROVING A NEW MASTER LEASE AGREEMENT BETWEEN THE CITY OF MORRO BAY AND BOATYARD LLC FOR LEASE SITE 90/90W, LOCATED AT 885 EMBARCADERO, AND COMMONLY KNOWN AS OTTER ROCK CAFÉ

RECOMMENDATION: Council adopt Resolution No. 67-17, approving the new Amendment #1, and rescinding the Amendment #1 previously approved by the City Council on August 22, 2017, to the new Lease Agreement for Lease Site 89/89W, as proposed. Staff further recommend the City Council adopt Resolution No. 68-17, approving a new Master Lease Agreement for Lease Site 90/90W, as proposed.

B. PUBLIC HEARINGS - NONE

C. BUSINESS ITEMS

- C-1 STATUS UPDATE AND EVALUATION OF CONDITIONAL CONSENT OF LANDOWNER PERFORMANCE PERTAINING TO REQUEST FOR PROPOSALS AWARD ON LEASE SITE 87-88/87W-88W LOCATED AT 833 EMBARCADERO (OFF THE HOOK) TO TLC FAMILY ENTERPRISES, AND COUNCIL DIRECTION, AS DEEMED APPROPRIATE; (HARBOR)

RECOMMENDATION: Council receive staff presentation and TLC Family Enterprises input, and consider whether TLC has performed adequately to continue with the redevelopment process of this lease site. It is staff's recommendation the Council deem TLC's submissions responsive to the COL requirements as discussed in this staff report.

- C-2 RECEIVE WATER RECLAMATION FACILITY FISCAL YEAR 2016-17 4TH QUARTER PROGRAM BUDGET UPDATE AND PROVIDE COMMENTS AND DIRECTION AS DEEMED APPROPRIATE; (PUBLIC WORKS)

RECOMMENDATION: City Council receive and file the budget status report of the WRF program and provide direction, as deemed appropriate.

- C-3 REVIEW OF COUNCIL SUBCOMMITTEE PROPOSED CHANGES TO THE COUNCIL POLICIES & PROCEDURES AND ADVISORY BOARD BYLAWS AND ADOPTION OF RESOLUTION NO. 65-17 AMENDING THE ADVISORY BOARD BY-LAWS REGARDING APPOINTMENT AND QUALIFICATIONS OF MEMBERS AND MEETING FREQUENCY FOR THE RECREATION AND PARKS COMMISSION; (CITY CLERK)

RECOMMENDATION: Council review the Council subcommittee list of proposed changes to the Council Policies & Procedures and Advisory Board Bylaws, and adopt Resolution No. 65-17 amending the Advisory Board By-Laws for the Recreation and Parks Commission (“RPC”) to reduce the number of Commissioners from seven to five and reduce the number of regular meetings from eight to six per year.

- D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

- E. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, January 9, 2018 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.

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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
	Rob Livick	Public Works Director
	Scot Graham	Community Development Director
	Cindy Jacinth	Senior Planner
	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 6:01 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

<https://youtu.be/GcbmzNKKMaY?t=3m7s>

CITY MANAGER REPORTS, ANNOUNCEMENTS & PRESENTATIONS – None

PRESENTATIONS

<https://youtu.be/GcbmzNKKMaY?t=12m19s>

- “Breast Cancer Awareness Month” Proclamation presented to Leslyn Keith and members of the SurviveOars Dragon Boat Team
- “Domestic Violence Awareness Month” Proclamation presented to Christine Johnson

PUBLIC COMMENT

<https://youtu.be/GcbmzNKKMaY?t=33m30s>

Nicholas Martinez of Harper's Bottle Liquor & Deli provided the business spot. They are located at 999 Main Street and open 6:00 a.m. to midnight Sunday – Thursday, and 6:00 a.m. to 1:00 a.m. Friday and Saturday. Bottle Liquor has been owned by the Harper family for 36 years and offers deli services along with a wide selection of spirits, cordials, wine and beer.

Ken Greene, Morro Bay, thanked Council Member Headding for providing information regarding the City's legal expenses during a recent town hall meeting and requested improved tracking of City expenses.

Jeff Bacon, Morro Bay, announced the 4th Annual Trick-or-Treat event to be held Tuesday, October 31, from 3:00 – 5:30 p.m.

Betty Winholtz, Morro Bay, spoke on behalf of Patrick Sparks, asking the Council to agendize a 15-minute presentation at its October 24 meeting to hear his proposal for upgrading the sewer plant. She also commented on Item C-1, noting it was a generous contract.

Cynthia Hawley spoke on behalf of the Morro Bay Action Team, requesting the Council consider amending Municipal Code Sections 2.08.020 and 2.08.025 to require a monthly financial report.

Anne Marie Schnitzer, Morro Bay, spoke in support of the request to agendize Mr. Sparks' presentation, requested City expenditures be reported to the Council and residents, and supports two medical marijuana businesses.

The public comment period was closed.

A. CONSENT AGENDA
<https://youtu.be/GcbmzNKKMaY?t=49m59s>

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 AUGUST 22, 2017 CITY COUNCIL MEETING;
(ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 APPROVAL OF MINUTES FOR THE SEPTEMBER 12, 2017 CITY COUNCIL MEETING;
(ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-3 APPROVAL OF MINUTES FOR THE SEPTEMBER 26, 2017 CITY COUNCIL SPECIAL
MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-4 APPROVAL OF PROCLAMATION DECLARING OCTOBER 15-21, 2017 AS "FREEDOM
FROM WORKPLACE BULLIES WEEK"; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-5 APPROVAL OF PROCLAMATION DECLARING OCTOBER 2017 AS "DOMESTIC
VIOLENCE AWARENESS MONTH"; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-6 APPROVAL OF PROCLAMATION DECLARING OCTOBER 2017 AS "BREAST
CANCER AWARENESS MONTH"; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-7 APPROVAL OF AMENDMENT NO. 1 TO PAVEMENT MANAGEMENT PROJECT
CONTRACT NO. MB-2017-ST01; (PUBLIC WORKS)

RECOMMENDATION: City Council:

1. Approve Amendment No. 1, in the amount of \$808,395.31, as an additional option

period to the City Council awarded Indefinite Delivery, Indefinite Quantity (IDIQ) contract with Pavement Coatings Co.;

2. Authorize a 5-percent contingency for the project in the amount of \$40,419.77 to be used to account for differences in material quantities; and

3. Authorize the Public Works Director to execute requisite contract documents

A-8 ADOPTION OF RESOLUTION NO. 57-17 APPROVING AMENDMENT NO. 2 TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MORRO BAY AND THE MORRO BAY POLICE OFFICERS' ASSOCIATION ESTABLISHING THE CITY'S CONTRIBUTION TO EMPLOYEE HEALTH BANKS FOR 2018; (ADMINISTRATION)

RECOMMENDATION: City Council adopt Resolution No. 57-17 approving Amendment No. 2 to the 2016-17 Memorandum of Understanding between the City of Morro Bay and the Morro Bay Police Officers' Association, providing a 1% increase in the City's contribution to employee health banks for 2018

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

Mayor Irons pulled Item A-7.

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

A-7 APPROVAL OF AMENDMENT NO. 1 TO PAVEMENT MANAGEMENT PROJECT CONTRACT NO. MB-2017-ST01; (PUBLIC WORKS)
<https://youtu.be/GcbmzNKKMaY?t=51m1s>

Mayor Irons requested discussion of allocating funds to repair crosswalks in the business district. Mr. Livick explained the sealing techniques that will be used are not appropriate for crosswalks with major divots. He recommended the Council consider a review at mid-year to reallocate funds for street repairs on the pedestrian path of travel. At Council Member McPherson's request, Mr. Livick reviewed the funding sources provided in the fiscal impact section of the staff report. Council Member Heading confirmed these funds could not be used to offset the City's CalPERS liability.

Following discussion, there was Counsel consensus to direct staff to come back at mid-year with paving options for pedestrian crosswalks in the business district using LTF funds.

MOTION: Council Member McPherson moved for approval of Item A-7. The motion was seconded by Council Member Heading and carried unanimously, 5-0.

B. PUBLIC HEARINGS

B-1 ADOPTION OF RESOLUTION NO. 56-17 APPROVING CONCEPT CONDITIONAL USE PERMIT NO. UP0-448 FOR 945 EMBARCADERO. PROJECT INCLUDES REMODEL OF EXISTING RESTAURANT, HARBORWALK PUBLIC ACCESS IMPROVEMENTS, AND IMPROVEMENTS TO ADJACENT ANCHOR PARK.; (COMMUNITY DEVELOPMENT)
<https://youtu.be/GcbmzNKKMaY?t=59m33s>

Senior Planner Jacinth presented the staff report and responded to Council inquiries.

Mayor Irons disclosed ex parte communications with the applicant, Stan VanBeurden.

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

Cathy Novak spoke on behalf of the applicant and described the proposed improvements. She requested the project be approved with the deletion of Planning Commission condition #14, which requires raising the Harborwalk decking to eliminate the ramp and provide a smooth transition to the lease site to the south. She asked the applicant not be burdened with constructing a new transition since he did not install the ramp and this project does not propose any modifications to the existing wharf. She respectfully requested the Council approve the project with the deletion of Planning Commission condition #14.

Ms. Novak and Mr. VanBeurden responded to questions posed by the Council.

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

Mayor Irons proposed removing the park improvements from the project and focus on Harborwalk improvements that address the transition in elevation. He suggested the City use impact fees to fund Anchor Park sidewalk improvements on the waterfront and land side. The Council concurred, and suggested park improvements be considered during the budget process.

Ms. Novak responded to the Council's request, stating the applicant is willing to entertain this idea and would have an architect review it in more detail.

MOTION: Council Member Headding moved Item B-1 be continued to a date certain November 14, at which time we will reconsider the input that will come back to us based upon the discussion that was had tonight. The motion as seconded by Council Member McPherson and carried unanimously, 5-0.

C. BUSINESS ITEMS

C-1 REVIEW AND APPROVAL OF EMPLOYMENT CONTRACT WITH SCOTT COLLINS TO SERVE AS THE CITY MANAGER; (ADMINISTRATION)
<https://youtu.be/GcbmzNKKMaY?t=1h50m16s>

Interim City Manager Lomeli presented the report and responded to Council inquiries.

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

Erica Crawford, Morro Bay Chamber of Commerce, spoke regarding the Chamber's involvement in the interview process and thanked the City for continuing to recognize the importance of having the business community at the table.

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

MOTION: Mayor Irons moved the Council approve Item C-1, the contract for Scott Collins as City Manager. The motion was seconded by Council Member Headding and carried unanimously, 5-0.

Mr. Collins was invited to make a brief comment.

The Council took a brief recess at 8:05 p.m. The meeting reconvened at 8:16 p.m. with all members present.

C-2 WATER RECLAMATION FACILITY PROJECT UPDATE; (PUBLIC WORKS)

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

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

Barry Branin, Morro Bay, expressed concern about the rate structure provided by the consultants and recommended project costs be determined before a rate discussion occurs. He commented running lines along Quintana Road would negatively impact the business community.

Cynthia Hawley suggested this item was not agendized properly to allow the Council to take action, and stated the City cannot move forward without an approved project.

John Maino, owner and operator of a cattle business on property adjacent to the South Bay Blvd. site, submitted a letter for the record regarding the importance of minimizing the footprint and keeping all nonessential operations off the property. He also expressed concerns about access from South Bay Blvd to the site.

Alice Kolb, Morro Bay, was disappointed by Council Member McPherson's letter to the Tribune and comments made by Council Member Heading regarding neighborhood opposition to the Righetti site.

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

Staff responded to questions raised during public comment. City Attorney Pannone clarified the posted agenda provided to the public includes all items being asked of the Council tonight.

There was Council support to move forward with the accelerated schedule, as proposed, noting it provides a more accurate cost estimate before the Proposition 218 process. The Council agreed the WRFCAC financial subcommittee was an important component and should remain active, and that it was it best to schedule regular WRFCAC meetings and cancel if no action was needed. The Council stressed the importance of staying on schedule and if critical decisions need to be made, then those decisions should come straight to the Council.

MOTION: Council Member Heading moved the Council direct staff to follow the accelerated implementation schedule described in Agenda Item C-2, as outlined by Mr. Livick, and also that we continue to schedule routine meetings of the WRFCAC subcommittee and that if there were issues that needed to come to Council in the event that a WRFCAC meeting could not be scheduled and/or convened prior that were critical issues, that those be brought to Council and dealt with at that level, hopefully mitigating some of the issues of concern. The motion was seconded by Council Member McPherson.

Mayor Irons asked for clarification the priority was to adhere to the accelerated schedule and items requiring Council action will not be delayed if a WRFCAC meeting cannot be convened. Council Member Heading agreed.

The motion carried unanimously, 5-0.

The Council discussed tasking the WRFCAC with work on informational flyers and 'fact checks' to keep residents informed of progress. There was Council consensus to request a meeting with the Cayucos Sanitary District to discuss the condition of the existing plant, project status, and future plans as each entity gets closer to having their own plant.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS
<https://youtu.be/GcbmzNKKMaY?t=3h33m5s>

Mayor Irons requested discussion to remove Richard Sadowski from advisory board positions on the Planning Commission and WRFAC at a special meeting on October 23 at 4:30 p.m. Council Members Heading and McPherson supported the request.

E. ADJOURNMENT

The meeting adjourned at 9:44 p.m. The next Regular Meeting will be held on Tuesday, October 24, 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 – OCTOBER 24, 2017
VETERAN'S MEMORIAL HALL – 6:00 P.M.

AGENDA NO: A-3
MEETING DATE: December 12, 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
	Chris Neumeyer	Assistant City Attorney
	Dana Swanson	City Clerk
	Rob Livick	Public Works Director
	Scot Graham	Community Development Director
	Jody Cox	Police Commander
	Steve Knuckles	Fire Chief
	Eric Endersby	Harbor Director

ESTABLISH QUORUM AND CALL TO ORDER

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

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

RECOGNITION

- Presentation of Certificate of Appreciation to Connor Bradley honoring the completion of his Boy Scout Eagle Project at Cloisters Park.
<https://youtu.be/8-XQOJKDpp4>
- Presentation of Proclamation Expressing Appreciation for the Dedication and Public Service of Martin ("Marty") R. Lomeli as Interim City Manager of the City of Morro Bay.
<https://youtu.be/8-XQOJKDpp4?t=8m2s>

CLOSED SESSION REPORT – No Closed Session Meeting was held.

MAYOR AND COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS

<https://youtu.be/8-XQOJKDpp4?t=12m34s>

CITY MANAGER REPORTS, ANNOUNCEMENTS & PRESENTATIONS

- Introduction of Jennifer Callaway Schrantz, Finance Director
<https://youtu.be/8-XQOJKDpp4?t=22m9s>

PRESENTATIONS - None

PUBLIC COMMENT

<https://youtu.be/8-XQOJKDpp4?t=24m24s>

Rafael Torres of Ariana Mexican Market & Deli provided the business spot. Ariana's recently opened a full kitchen and offers authentic Mexican food. They are located next to Chase Bank and open Monday thru Saturday, 8 a.m. to 8 p.m. Please call 771-0229 for more information.

Jeff Bacon, on behalf of Erica Crawford, Morro Bay Chamber of Commerce, announced 4th Annual Trick or Treat event to be held October 31, including a haunted house at the Morro Bay Police Department.

Patrick Sparks requested the Council agendaize a 10- to 15-minute presentation at its November 28 meeting to explain why he can save the City money by choosing none of the above.

Larry McNally, Morro Bay, suggested the time allowed for public comment be increased to five minutes and, if less time is needed, a person be allowed to give their extra time to someone else.

Walter Heath, Morro Bay, announced Morro Bay was named the best overall city in its population category for 3rd consecutive year by America in Bloom. He explained the evaluation process and asked that the evaluation be posted on the City website.

Rigmor, Morro Bay, requested members of the public respect the allotted comment time and avoid unnecessary outbursts.

Bill Woodson, Morro Bay, requested a WRF project timeline of milestones that must be met, established checks and balances, and frequent project updates including key near term plans and progress with dollars spent to date.

Ken Green, Morro Bay, reported the Monarch butterflies have returned on Cerrito Peak and cautioned the public to only provide California native milkweed for Monarchs. He requested the Council postpone Item C-2 to a future meeting.

Chuck Stoll, Morro Bay, thanked and recognized Walter and Jane Heath for their tireless work on Morro Bay in Bloom. He also thanked Ikani for being so helpful and wished him well.

The public comment period was closed.

A. CONSENT AGENDA
<https://youtu.be/8-XQOJKDpp4?t=44m22s>

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 SEPTEMBER 26, 2017 CITY COUNCIL MEETING;
(ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 ADOPTION OF RESOLUTION NO. 59-17 CONDITIONALLY AUTHORIZING THE MAYOR TO EXECUTE DOCUMENTS NECESSARY FOR A NEW LOAN FOR THE LEASE AGREEMENT AT LEASE SITE 71-74/71W-74W AND 75-77/75W-77W AND ACCEPTING A DEED OF TRUST RELATED THERETO (MORRO BAY MARINA, LLC, 601-699 EMBARCADERO); (HARBOR)

RECOMMENDATION: Council adopt Resolution No. 59-17, authorizing the Mayor to execute documents necessary for a new loan regarding the leasehold interest at Lease Sites 71-74/71W-74W and 75-77/75W-77W. subject to approval of the City Attorney and accepting a deed of trust related thereto.

A-3 APPROVAL OF FINAL MAP 2670 (1889 SUNSET AVENUE) BY ADOPTION OF RESOLUTION NO. 58-17; (PUBLIC WORKS)

RECOMMENDATION: Council adopt Resolution No. 58-17, approving the Final Map 2670.

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

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

B. PUBLIC HEARINGS - NONE

C. BUSINESS ITEMS

C-1 INTRODUCTION OF ORDINANCE NO. 612, WHICH ESTABLISHES A COMMERCIAL CANNABIS OPERATIONS REGULATORY PROGRAM TO PERMIT TWO MEDICAL CANNABIS DISPENSARIES, WHOLESALE MEDICAL CANNABIS DISTRIBUTION AND MEDICAL CANNABIS DELIVERIES, WHILE PROHIBITING ALL OTHER COMMERCIAL CANNABIS OPERATIONS; REGULATES AND PERMITS PERSONAL CANNABIS CULTIVATION AND, AMENDS CURRENT SECONDHAND SMOKE REGULATIONS; (ASSISTANT CITY ATTORNEY)
<https://youtu.be/8-XQOJKDpp4?t=44m58s>

Assistant City Attorney Neumeyer presented the staff report, responded to Council inquiries, and sought clarification on certain provisions of the ordinance.

The Council took a brief recess at 7:33 p.m. The meeting reconvened at 7:42 p.m. with all members present.

The public comment period for Item C-1 was opened

Adam Pinterits, Director of Government and Community Relations for Ethnobotanica, discussed cash handling processes and fees, and suggested the Council consider provisional temporary documentation to dual track state license applications, while working on local applications.

Nasseem Rouhani, County of San Luis Obispo Tobacco Control Program, appreciated the City's progress on a new marijuana ordinance and strengthening its secondhand smoke ordinance to expressively include marijuana and e-cigarettes. She recommended strengthening and expanding the outdoor smoking regulations.

Megan Souza, Megan's Organic Market and Medical Delivery Service, expressed concerns about the proposed cash handling fees, smoking in public regulations, and asked the Council to consider removing or reducing the setback requirement from churches and parks.

Eric Powers, Megan's Organic Market and Medical Delivery Service, opposed the proposed smoking in public regulations and setbacks from churches. Regarding the timeline, he asked that once buffers be established, they not be changed.

Trina Lee, Cayucos, shared she works with vacation rentals and was looking forward to increased tourism if adult use sales were allowed in Morro Bay. She suggested accepting applications on January 1.

Rick Morse, Medmar Clinic, supported the proposed ordinance.

Kelly Trabrizi, Los Osos resident, realtor and Morro Bay property owner, suggested the proposed buffers were too restrictive and requested churches be removed from the sensitive use designation. She urged the Council to consider accepting dispensary applications as soon as possible.

Habib Trabrizi, Los Osos resident and Morro Bay property owner, suggested a location less than 600 feet from a church not be excluded as a potential dispensary site and urged the Council to change the application date.

Barry Branin, Morro Bay, considering State Park Campgrounds surround the City, suggested the buffers include both City and State parks.

Cynthia Gonzalez spoke in support of medical dispensaries and deliveries, and provided information regarding State licensing and tax regulations.

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

Staff and Council responded to questions raised during public comment.

Following discussion, the Council agreed to remove churches from the buffer zone and establish a 100-ft. buffer for parks. Due to current staffing constraints, it was agreed to keep the July 1 application date.

MOTION: Council Member McPherson moved for introduce for first reading by title only, with further reading waived, Ordinance 612: An Ordinance of the City Council of the City of Morro Bay, California, adding Chapter 5.50 (Commercial Cannabis Operations Regulatory Program) to Title 5 of the Morro Bay Municipal Code to Permit Certain Medical Commercial Cannabis Uses (Retail Sales, Deliveries and (Wholesale) Distributor), to Prohibit All Other Medical Commercial Cannabis Uses, and to Prohibit All Adult-Use (Recreational) Commercial Cannabis Uses; Repealing Chapter 9.06 of Title 9 of the Morro Bay Municipal Code and Replacing it with a New Chapter 9.06 (Personal Cannabis Cultivation) to Regulate Personal Cannabis Cultivation; and, Amending Chapter 9.24 (Secondhand Smoking Regulations) of Title 9 of the Morro Bay Municipal Code to Strengthen Regulation of Secondhand Smoke and Expressly Include Cannabis and Electronic Smoking Devices. There are four changes to the Ordinance, as presented in the staff report: On page 35 of 189, Section 9.06.040 A.5., which refers to property site plans and floorplans, the word “scaled” is removed and at the end add “dimensioned hand sketch acceptable.” On page 59 of 189, “Location Restrictions” Section 5.50.120 C.2., will now read, “No retail (medical) operation shall locate within six hundred (600) feet of a school, day care center or youth center.” We’ll be removing religious institution, and removing “park” from that sentence, and will be adding another sentence which says, “No retail medical operation shall locate within one hundred (100) feet of a park.” That exact same change will be made on page 62 of 189 to section 5.50.130 C.2., which is an identical location restriction for wholesale distributor. The last change is on page 60 of 189 for Section 5.50.120 L. will now read, “No Recommendations On-site.

Retail (medical) operations shall not have a physician or any person licensed to recommend medical cannabis for medical use at the location of the commercial cannabis operation to provide a recommendation or physician's recommendation, for the use of medical cannabis." The motion was seconded by Council Member Davis and carried unanimously, 5-0.

The Council and revisited comments and questions from the general Public Comment period.
<https://youtu.be/8-XQOJKDpp4?t=2h23m46s>

C-2 APPROVAL OF UPDATED CITY LOGO AND TAG LINE; (COMMUNITY DEVELOPMENT/TOURISM)
<https://youtu.be/8-XQOJKDpp4?t=2h35m30s>

Community Development Director Graham presented the staff report and, along with Tourism Manager Jennifer Little, responded to Council inquiries.

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

There was full Council support for the Tourism Business Improvement District ("TBID") Advisory Boards recommendation regarding the logo, but some concern about the proposed tagline.

MOTION: Council Member Headding moved the Council approve the recommendation from TBID board and use of the preferred updated logo option and approve use of "Put Life on Coast" tag line. The motion was seconded by Council Member Davis and carried 4-1 with Council Member McPherson opposed.

C-3 STATUS AND CONSIDERATION OF WITHDRAWAL FROM THE MEMORANDUM OF AGREEMENT BETWEEN THE SAN LUIS OBISPO CITIES AND SAN LUIS OBISPO COUNTY FOR THE CONSTRUCTION AND FINANCING OF AN ANIMAL SERVICES SHELTER, AND PROVIDE DIRECTION DEEMED APPROPRIATE; (ADMINISTRATION)
<https://youtu.be/8-XQOJKDpp4?t=3h2m9s>

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

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

Betty Winholtz, Morro Bay, expressed concern about cost and what to do when you've negotiated with all the cities, then two cities pull out. She suggested giving authority to pull out, send letters to Paso Robles and Atascadero letting them know you're upset, and possibly San Luis Obispo as well.

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

The Council supported staff recommendation as well as sending letters co-authored by the Mayor and City Manager to Paso Robles and Atascadero. Mayor Irons suggested sending letters to Grover Beach and the other cities asking them to stay in; the Council concurred.

MOTION: Mayor Irons moved the Council authorize the City Manager to withdraw from the Memorandum of Agreement (MOA) for an animal services shelter if all three of the largest cities currently part of the MOA also do so by October 31, 2017, with the addition of the letters, as discussed, to Paso Robles and Atascadero, as well as to

the other cities stating we support staying in and would ask you to do the same. The motion was seconded by Council Member Heading and carried unanimously, 5-0.

The Council took a brief recess at 9:27 p.m. The meeting reconvened at 9:33 p.m. with all members present.

C-4 WATER RECLAMATION FACILITY (WRF) PROJECT GOAL, WITH CHANGES DEEMED APPROPRIATE, AND AUTHORIZATION TO ADVERTISE THE DESIGN-BUILD REQUEST FOR QUALIFICATIONS (RFQ); (PUBLIC WORKS)
<https://youtu.be/8-XQOJKDpp4?t=3h21m29s>

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

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

Betty Winholtz, Morro Bay, objected to the risks being taken with an accelerated schedule and the additional cost of housing auxiliary staff at the plant.

Barry Branin, Morro Bay, supported the RFQ process and stressed the importance of vetting the design before the RFP stage.

Homer Alexander, Morro Bay, stressed the importance of keeping waste water treatment plant and reclamation costs separate, noting it was critical the sewer rate increase be kept at a minimum to gain community support.

Bob Keller, Morro Bay, stated the primary concern is keeping costs as low as possible for a quality facility and stressed the importance of moving forward as soon as possible.

Cynthia Hawley, Morro Bay, expressed concern the Council was approving the design build of a specific reclamation project without public notice. If that is not the case, she asked when that decision would be made in public.

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

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

The Council reviewed the proposed revised WRF project goals and agreed on the following changes:

- Goal 1: All aspects of the WRF project shall be completed ensuring economic value with a special emphasis on minimizing rate payer and City expense.
- Goal 2: Communicate WRF project progress including general project status, milestones, and budget/cost information to our community members regularly.
- Goal 3: Produce tertiary, disinfected wastewater in accordance with Title 22 requirements for unrestricted urban irrigation.
- Goal 4: Design to produce reclaimed wastewater to augment the City's water supply, by either direct or indirect means, as described in a master water reclamation plan and to maximize funding opportunities.

- Goal 5: Include features in the WRF project that maximize the City's opportunities to secure funding and maximize efficiencies.
- Goal 6: Design to minimize the impacts from contaminants of emerging concern in the future.
- Goal 7: Ensure compatibility with neighboring land uses.
- MOTION: Mayor Irons moved the meeting go past 11:00 p.m. The motion was seconded by Council Member McPherson and carried 3-2 with Council Members Davis and Makowetski opposed.

- Mr. Livick read final WRF Council Subcommittee recommendations for the RFQ into the record:
- Authorize the WRF Subcommittee to review and confirm recommended changes to the RFQ have been made prior to publication.
 - Add the following to the Draft RFQ:
 - Add to Section VII C: The City encourages the submittal of alternative designs in as much as the alternate designs comply with all the goals of the City and Performance Specifications.
 - Add to the Criterion Matrix under "Past Performance on Similar Projects By Proposer": Identify from your past projects innovative technologies and functional features that in your opinion are most applicable to the proposed Morro Bay project.

Council Member Headding suggested the stipend be reduced to \$75,000. Mr. Livick agreed that would be fine.

- MOTION Mayor Irons moved the Council approve the RFQ with the recommended changes, and authorizing the WRF subcommittee to have final review prior to the release of the document, and to modify the goals, as discussed. The motion was seconded by Council Member Davis and carried unanimously, 5-0.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

None

<https://youtu.be/8-XQOJKDpp4?t=4h54m37s>

E. ADJOURNMENT

The meeting adjourned at 11:07 p.m. The next Regular Meeting will be held on Tuesday, November 14, 2017 at 6:00 p.m. at the Veteran's Memorial Hall located at 209 Surf Street, Morro Bay, California.

Recorded by:

Dana Swanson
City Clerk

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AGENDA NO: A-4

MEETING DATE: December 12, 2017

Staff Report

TO: Honorable Mayor and City Council

DATE: November 28, 2017

FROM: Scott Collins, City Manager

SUBJECT: City Council Annual Meeting Schedule for 2018

RECOMMENDATION

Staff recommends the City Council approve the 2018 schedule for regular meetings to be held the second and fourth Tuesdays of each month, with the exception of July, November and December.

ALTERNATIVES

The Council may alter the proposed meeting schedule.

FISCAL IMPACT

None

BACKGROUND AND DISCUSSION – 2018 Meeting Calendar

Consistent with recent years, the proposed schedule for regular City Council meetings held on the second and fourth Tuesdays of each month beginning at 6:00 p.m. with the following exceptions: July 24, November 27 and December 25 will be canceled.

In this example, meetings will be held on the following dates:

January 9	January 23
February 13	February 27
March 13	March 27
April 10	April 24
May 8	May 22
June 12	June 26
July 10	N/A
August 14	August 28
September 11	September 25
October 9	October 23
November 13	N/A
December 11	N/A

Staff is reviewing the Strategic Planning Framework Policy established by Resolution No. 72-15 and will return to Council at the January 9, 2018 Council meeting with a proposed goal setting, advisory board work plan and budget calendar.

Prepared By: DS

Dept Review: SJC

City Manager Review: SJC

City Attorney Review: _____

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AGENDA NO: A-5

MEETING DATE: December 12, 2017

Staff Report Addendum

TO: Honorable Mayor and City Council **DATE:** December 11, 2017
FROM: Dana Swanson, City Clerk
SUBJECT: Appointment of Representatives on Discretionary Boards, Council, Liaison Assignments and Council Sub-Committees

ADDENDUM

Please refer to the attached corrected list of City Council Discretionary Appointments for 2018.

Prepared By: ___DS___

Dept Review: ___

CITY COUNCIL DISCRETIONARY APPOINTMENTS (2018)

INTEGRATED WASTE MANAGEMENT AUTHORITY (meets the 2nd Wednesday of every other odd numbered month; 130pm; Board of Supervisors Chambers, SLO Government Center)

Red Davis	Designee
John Headding	Alternate

COUNTY WATER RESOURCES ADVISORY COMMITTEE (meets the 1st Wednesday of the month; 1:30-3:30pm; City County Library Room, 995 Palm, SLO)

Matt Makowetski	Delegate
City Manager (or their designee)	Alternate

SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY (SLORTA) &

SAN LUIS OBISPO AREA COORDINATING COUNCIL (SLOCOG) (RTA meets the 1st Wednesday of every ~~other~~ odd numbered month; 8:30am; ~~Board of Supervisors Chambers, SLO County Government Center~~) (SLOCOG meets the 1st Wednesday of every ~~other~~ ~~oddeven~~ numbered month; ~~at conclusion of RTA meeting~~; 8:30 a.m.; Board of Supervisors Chambers, SLO County Government Center)

John Headding	Delegate
Jamie Irons Red Davis	Alternate

CMC CITIZENS' ADVISORY COMMITTEE (1-year term) (meets the 3rd Friday of every other month; 1-2pm; at CMC)

Council to appoint Citizen	Member
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AIR POLLUTION CONTROL DISTRICT (meets the 4th Wednesday of every other odd numbered month; 9am; Board of Supervisors Chambers, SLO County Government Center)

John Headding	Member
Red Davis	Alternate

COMMUNITY ACTION PARTNERSHIP OF SAN LUIS OBISPO COUNTY, INC.

(formerly EOC) - (3-year term) (meets the 3rd Thursday of every month; 5pm; CAPSLO Board Room, 1030 Southwood, SLO). Morro Bay rotated off the Board in 2014. Los Osos CSD is the coastal city representative for 2017-19. The next opportunity to cycle back in, at CAPSLO's request, will be in 2020.

ECONOMIC VITALITY CORPORATION (meets the 3rd Wednesday of every month; 4-5:30pm; Cannon & Assoc, 1050 Southwood, SLO)

John Headding	Liaison
Red Davis	Alternate

NATIONAL ESTUARY PROGRAM (Executive Committee meets quarterly; 2nd Wednesday of the month in February, May, August and November; 4-6pm)

Matt Makowetski	Member
Red Davis	Alternate

CITY SELECTION COMMITTEE (as needed)

Jamie Irons (Mayor)	Member
Mayor Pro Tem	Alternate

LEGISLATIVE DELEGATE (as needed)

Jamie Irons (Mayor)	Member
Mayor Pro Tem	Alternate

SAN LUIS OBISPO COUNTY HOUSING TRUST FUND

City Manager or designee (Community Development) Member

HOMELESS SERVICES OVERSIGHT COMMITTEE (meets the 3rd Wednesday of odd numbered months; 1-3pm; SLO Vets Building Lounge Room, 801 Grand, SLO)

Marlys McPherson Member
Red Davis Alternate

The following City Council Liaison Assignments were made to City Committees and Boards:

PLANNING COMMISSION (meets 1st and 3rd Tuesday of every month; 6:00pm; Vets Hall)

Jamie Irons Liaison

HARBOR ADVISORY BOARD (meets the 1st Thursday of every month; 6:00pm; Vets Hall)

Matt Makowetski Liaison

RECREATION AND PARKS COMMISSION (meets the 3rd Thursday of the month; 6:00pm; Vets Hall)

Red Davis Liaison

PUBLIC WORKS ADVISORY BOARD (meets the 3rd Wednesday of the month; 5:30pm; Vets Hall)

Marlys McPherson Liaison

MORRO BAY TOURISM BUSINESS IMPROVEMENT DISTRICT BOARD (meets the 3rd Thursday of every month; 9:00am; Vets Hall) AND SAN LUIS OBISPO COUNTY TOURISM MARKETING DISTRICT ADVISORY COMMITTEE (meets semi-annually on the first Thursday of May and December at Embassy Suites, 333 Madonna Rd., SLO)

Red Davis Liaison

CITIZENS OVERSIGHT / FINANCE COMMITTEE (meets the 3rd Tuesday of every month; 3:30pm; Vets Hall)

John Heading Liaison

WATER RECLAMATION FACILITY CITIZEN ADVISORY COMMITTEE (meets the 1st Tuesday of every month at 3pm; Vets Hall)

Marlys McPherson Liaison

GENERAL PLAN ADVISORY BOARD COMMITTEE (meets the third Thursday of the month at 4pm; Vets Hall)

Red Davis Liaison

The following appointments were made on City Council Sub-Committees:

COUNCIL SUBCOMMITTEE ON EMPLOYEE GRIEVANCES (meets as needed)

John Heading Member
Marlys McPherson Member

WATER RECLAMATION FACILITY / JPA SUB-COMMITTEE

Jamie Irons Member
Marlys McPherson Member

MORRO BAY POWER PLANT

Jamie Irons Member
John Heading Member

AQUARIUM

Jamie Irons Member
John Headding Member

CHEVRON PROPERTY

Jamie Irons Member
~~John Headding~~ Red Davis Member

U.S. COAST GUARD

Jamie Irons Member
John Headding Member

ESTERO BAY ALLIANCE OF CARE ("EBAC")

Marlys McPherson Member
Red Davis Member

CANNABIS REGULATIONS

Red Davis Member
Marlys McPherson Member

REVIEW OF COUNCIL POLICIES & PROCEDURES / ADVISORY BOARD BY-LAWS

Jamie Irons Member
Marlys McPherson Member



AGENDA NO: A-5
MEETING DATE: December 12, 2017

Council Report

TO: City Council **DATE:** November 27, 2017
FROM: Jamie L. Irons, Mayor
SUBJECT: Appointment of Representatives on Discretionary Boards, Council Liaison Assignments and Council Sub-Committees

RECOMMENDATION

Affirm the appointment of representatives to serve on the various County or Regional Discretionary Boards, Council Liaison Assignments and Sub-Committees for calendar year 2018 as shown on the attached appointment list.

DISCUSSION

The City Council Policies and Procedures Section 6.1 states:

“Annually the Mayor shall make appointments to a variety of County and/or regional committees and boards (discretionary appointments). One member of the Council shall serve as a voting representative and one member shall serve as alternate. 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.”

Pursuant to Council Policies and Procedures Section 6.1, the Mayor can seek input from City Council regarding the appointment to County and/or Regional Boards, but ultimately, the Mayor is responsible for the appointment of these positions. Attached for your review is a list of the proposed City Council Discretionary Appointments.

The City Council Policies and Procedures Section 6.2.1 States:

“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.”

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

“Members should be sensitive to the fact that 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.”

Pursuant to City Council Policies and Procedures Section 6.2.1, the City Council shall assign Council Liaisons to the Advisory Bodies, including the Citizens Finance Committee, General Plan Advisory Committee, and Water Reclamation Facility Citizens Advisory Committee. Attached for your review is a list of the proposed City Council Liaisons.

The City Council Policies and Procedures Section 6.2.2 States:

“Council may establish several sub-committees of no more than two members to address areas of concern and/or study.”

Attached for your review is the list of board appointments, liaison assignments and previously established Council sub-committees. Thank you for the cooperative work on these board assignments.

ATTACHMENT

1. City Council Discretionary Appointments 2018

CITY COUNCIL DISCRETIONARY APPOINTMENTS (2018)

INTEGRATED WASTE MANAGEMENT AUTHORITY (meets the 2nd Wednesday of every other odd numbered month; 130pm; Board of Supervisors Chambers, SLO Government Center)

Red Davis	Designee
John Headding	Alternate

COUNTY WATER RESOURCES ADVISORY COMMITTEE (meets the 1st Wednesday of the month; 1:30-3:30pm; City County Library Room, 995 Palm, SLO)

Matt Makowetski	Delegate
City Manager (or their designee)	Alternate

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SAN LUIS OBISPO AREA COORDINATING COUNCIL (SLOCOG) (RTA meets the 1st Wednesday of every other odd numbered month; 8:30am; Board of Supervisors Chambers, SLO County Government Center) (COG meets the 1st Wednesday of every other odd numbered month; at conclusion of RTA meeting; Board of Supervisors Chambers, SLO County Government Center)

John Headding	Delegate
Jamie Irons	Alternate

CMC CITIZENS' ADVISORY COMMITTEE (1-year term) (meets the 3rd Friday of every other month; 1-2pm; at CMC)

Council to appoint Citizen	Member
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AIR POLLUTION CONTROL DISTRICT (meets the 4th Wednesday of every other odd numbered month; 9am; Board of Supervisors Chambers, SLO County Government Center)

John Headding	Member
Red Davis	Alternate

COMMUNITY ACTION PARTNERSHIP OF SAN LUIS OBISPO COUNTY, INC.

(formerly EOC) - (3-year term) (meets the 3rd Thursday of every month; 5pm; CAPSLO Board Room, 1030 Southwood, SLO). Morro Bay rotated off the Board in 2014. Los Osos CSD is the coastal city representative for 2017-19. The next opportunity to cycle back in, at CAPSLO's request, will be in 2020.

ECONOMIC VITALITY CORPORATION (meets the 3rd Wednesday of every month; 4-5:30pm; Cannon & Assoc, 1050 Southwood, SLO)

John Headding	Liaison
Red Davis	Alternate

NATIONAL ESTUARY PROGRAM (Executive Committee meets quarterly; 2nd Wednesday of the month in February, May, August and November; 4-6pm)

Matt Makowetski	Member
Red Davis	Alternate

CITY SELECTION COMMITTEE (as needed)

Jamie Irons (Mayor)	Member
Mayor Pro Tem	Alternate

LEGISLATIVE DELEGATE (as needed)

Jamie Irons (Mayor)	Member
Mayor Pro Tem	Alternate

SAN LUIS OBISPO COUNTY HOUSING TRUST FUND

City Manager or designee (Community Development) Member

HOMELESS SERVICES OVERSIGHT COMMITTEE (meets the 3rd Wednesday of odd numbered months; 1-3pm; SLO Vets Building Lounge Room, 801 Grand, SLO)

Marlys McPherson Member
Red Davis Alternate

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HARBOR ADVISORY BOARD (meets the 1st Thursday of every month; 6:00pm; Vets Hall)

Matt Makowetski Liaison

RECREATION AND PARKS COMMISSION (meets the 3rd Thursday of the month; 6:00pm; Vets Hall)

Red Davis Liaison

PUBLIC WORKS ADVISORY BOARD (meets the 3rd Wednesday of the month; 5:30pm; Vets Hall)

Marlys McPherson Liaison

MORRO BAY TOURISM BUSINESS IMPROVEMENT DISTRICT BOARD (meets the 3rd Thursday of every month; 9:00am; Vets Hall) AND SAN LUIS OBISPO COUNTY TOURISM MARKETING DISTRICT ADVISORY COMMITTEE (meets semi-annually on the first Thursday of May and December at Embassy Suites, 333 Madonna Rd., SLO)

Red Davis Liaison

CITIZENS OVERSIGHT / FINANCE COMMITTEE (meets the 3rd Tuesday of every month; 3:30pm; Vets Hall)

John Heading Liaison

WATER RECLAMATION FACILITY CITIZEN ADVISORY COMMITTEE (meets the 1st Tuesday of every month at 3pm; Vets Hall)

Marlys McPherson Liaison

GENERAL PLAN ADVISORY BOARD COMMITTEE (meets the third Thursday of the month at 4pm; Vets Hall)

Red Davis Liaison

The following appointments were made on City Council Sub-Committees:

COUNCIL SUBCOMMITTEE ON EMPLOYEE GRIEVANCES (meets as needed)

John Heading Member
Marlys McPherson Member

WATER RECLAMATION FACILITY / JPA SUB-COMMITTEE

Jamie Irons Member
Marlys McPherson Member

MORRO BAY POWER PLANT

Jamie Irons Member
John Heading Member

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Jamie Irons Member
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U.S. COAST GUARD

Jamie Irons Member
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ESTERO BAY ALLIANCE OF CARE ("EBAC")

Marlys McPherson Member
Red Davis Member

CANNABIS REGULATIONS

Red Davis Member
Marlys McPherson Member

REVIEW OF COUNCIL POLICIES & PROCEDURES / ADVISORY BOARD BY-LAWS

Jamie Irons Member
Marlys McPherson Member

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AGENDA NO: A-6
MEETING DATE: December 12, 2017

Council Report

TO: City Council **DATE:** November 29, 2017
FROM: Jamie L. Irons, Mayor
SUBJECT: Adoption of Resolution No. 62-17 Rescinding Resolution No. 18-15 and Committing to Update the City's General Plan and Local Coastal Plan by September 2018

RECOMMENDATION

Council adopt Resolution No. 62-17, rescinding Resolution No. 18-15 and committing to update the City's General Plan and Local Coastal Plan by September 2018.

ALTERNATIVES

None

FISCAL IMPACT

None

BACKGROUND/DISCUSSION

On April 14, 2015, at a regular City Council meeting, the Council adopted Resolution No. 18-15, committing to update the City's General Plan and Local Coastal Plan (GP/LCP) by December 2017. Recognizing this commitment, on April 11, 2017, the Council allocated additional funds in the amount of \$29,340 to add twelve additional General Plan Advisory Committee meetings and up to six Planning Commission and/or City Council meetings with the understanding this additional commitment in time and funds will extend the timeline to update our GP/LCP beyond the December 2017 deadline. By adopting Resolution No. 62-17, the Council will honor its commitment to update the City's GP/LCP and set a new completion date of September 2018.

CONCLUSION

Recommend adoption of Resolution No. 62-17.

ATTACHMENTS

1. Proposed Resolution No. 62-17
2. Staff report from the April 14, 2015 Council Meeting
3. Resolution No. 18-15

Prepared By: JL Irons Dept Review: _____
City Manager Review: SJC City Attorney Review: _____

RESOLUTION NO. 62-17

**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 SEPTEMBER 2018**

**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 an updated GP/LCP; and

WHEREAS, the City Council adopted Resolution No. 18-15 on April 14, 2015, committing to update and adopt the GP/LCP by December 2017 committing a minimum of \$806,250, through all sources, including grants; and

WHEREAS, in 2016, the City was awarded a \$200,000 grant from the round three California Coastal Commission Local Coastal Program update grant program; and

WHEREAS, the City Council on April 11, 2017 allocated additional funds in the amount of \$29,340 to add twelve additional General Plan Advisory Committee (GPAC) meetings and six Planning Commission and/or City Council meetings necessary to complete the GP/LCP update; and

WHEREAS, the City Council recognizes additional time will be required beyond the committed December 2017 deadline to update the GP/LCP set by Resolution No. 18-15 and the GP/LCP update is anticipated to be complete by September 2018; 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 hereby rescinds Resolution No. 18-15 and 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 September 2018.

PASSED AND ADOPTED by the City Council of the City of Morro Bay, at a regular City Council meeting thereof held on the 12th day of December 2017, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

JAMIE L. IRONS, Mayor

DANA SWANSON, City Clerk



AGENDA NO: D-1

MEETING DATE: April 14, 2015

Council Report

TO: City Council

DATE: April 10, 2015

FROM: Jamie L. Irons, Mayor

SUBJECT: Council Consideration of Citizen Request for a 45 day Building Moratorium and Council Consideration of other actions related to Neighborhood Compatibility

RECOMMENDATION

Deny the request for a building moratorium and adopt Resolution No. 18-15 committing to completing the General Plan/Local Coastal Program (GP/LCP) update in three years.

ALTERNATIVES

Direct staff to start the process to enact a 45 day building moratorium.

FISCAL IMPACT

The fiscal impact of a 45-day building moratorium includes the potential loss of development impact and permit fees, loss of sales tax due to reduced or no building, and the loss of incidental spending from the loss of building in the City.

BACKGROUND/DISCUSSION

Discuss citizen request to consider a 45 day building moratorium on new building permits. The consideration was presented due to the concern of the Neighborhood Compatibility Coalition (NECCO) over the development of homes larger in size, bulk, and scale, than the surrounding homes in the neighborhood and their desire to protect views. Also, discuss current status of interim design guidelines, status of GP/LCP update and RFP, Neighborhood Compatibility City Goal and consider adopting Resolution No. 18-15.

On March 25, a community meeting was held at the Community Center organized by a citizen group called Neighborhood Compatibility Coalition (NECCO). The discussion was centered around neighborhood compatibility, design guidelines, and view protection. At the conclusion of the meeting the question was asked if a building moratorium should be enacted until design guidelines could be implemented. The response from the 80 some people in attendance was overwhelmingly in support of a moratorium. Following the meeting, one of the organizers, KC Caldwell, sent an email to the Mayor and City Council with the request to

Prepared By: JI

City Manager Review: _____

City Attorney Review: _____

place an urgency item on the April 14th City Council agenda. The same request was followed by many others who attended the meeting expressing the need for urgency in this matter.

Process to enact a 45 day urgency ordinance

In order to implement a 45-day moratorium on development, the City Council must adopt an urgency ordinance outlining the reasons for the moratorium and defining which types of development applications are subject to the moratorium. Pursuant to California Government Code Section 65858, the City Council may, in order to protect public safety, health and welfare, adopt an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, Planning Commission or planning department is considering or studying, or intends to study within a reasonable time. Legislative findings are required to be made that there is a current and immediate threat to the public health, safety and welfare. A four-fifths vote of the Council is necessary and the interim ordinance may be in effect for 45 days. The legislative body may, after proper notice and public hearing, extend the interim ordinance for a 10 month and 15 day period, and extend again with proper notice and a public hearing for another one year period (also requires a four-fifths vote), for a total of two years. The findings that are necessary in support of a moratorium must relate to specific, adverse impacts to health, and safety, and the absence of a feasible alternative.

Council Policies and Procedures 1.2.2;

Pursuant to Policy 1.2., the Mayor is responsible for establishing the agenda and may place an item on the agenda without Council support. In such situation, the Mayor, or Council Member who the Mayor is accommodating, shall be responsible for providing a Mayor or Council report. (Reso. 11-11)

Additionally, an individual Council Member may place an urgency item on an agenda with a minimum of 72 hours legal notice and a memorandum from the Council Member to the Council and Staff setting forth the substantive issues of the item. For the purposes of this paragraph, urgency shall arise in those limited situations where an item requires immediate action, and the need to take immediate action came to the attention of the Council Member subsequent to the distribution of the agenda.

Initially, upon receipt of the request to agendize this matter, I suggested NECCO could speak at public comment and Council as a whole could discuss whether or not it should be agendized. I did not receive a request to agendize this matter from any other Council Member. However, in preparation for making comments on this topic I decided it was appropriate to agendize it because the issue is intertwined with several other topics currently being addressed by this Council.

History and understanding of neighborhood compatibility and the City's planning documents.

Neighborhood compatibility and neighborhood character have been discussed for some time in the City of Morro Bay and there have been more meetings and discussions around this topic than outlined in this report. Our General Plan, Local Coastal Plan, and Zoning Ordinance have language and policy that outlines *Protection of visual resource and compatible design*,

and Protection of Neighborhood Character. As a City, we have experienced much debate about how some residential projects have met the criteria of our policy documents and ordinance. The most recent significant project appealed to City Council was 1000 Ridgeway which the City Council ultimately upheld the appeal and denied the project. In addition to denying the project, Council directed Planning staff to develop interim design guidelines with stronger and clearer language for applicants and the community. The request for interim design guidelines was to address conflicting interpretation of our policy documents for the near term with the understanding that the long term fix would take place during our GP/LCP update that has been initiated and will go out for RFP shortly.

To date there have been five public meetings at Planning Commission and the interim design guidelines are slated to come to Council for adoption in the near future. It is fair to say various projects in Morro Bay over the years have been met with conflicting interpretation of the City's policy on neighborhood character. This conflict has made it difficult for staff, applicants, and our residents.

The following is a brief summary of the City's existing documents that address Neighborhood Compatibility, views, and a brief history of the City's planning documents, including our General Plan and Local Coastal Plan update that took place from 1997 to 2004 (**Attachment 1 includes timeline and correspondence**). That update was adopted by City Council in 2004 but failed to get certified by the California Coastal Commission (CCC). This is an important and timely discussion considering the City will be embarking on updating our GP/LCP once again.

The City of Morro Bay has three development documents: a General Plan, Local Coastal Plan and Zoning Ordinances. The GP and LCP are the blueprints to the City. They are the vision that shapes the future of how we grow. The zoning ordinances are tools for implementing these two documents. The GP/LCP has chapters or elements that are specific such as Land Use, Circulation, Housing Element, Visual Recourses, etc. Within those chapters are policy statements that are directives in how we implement the GP and LCP. In addition, as required by State law, the Housing Element in our General Plan is required to be updated every five years, and includes neighborhood compatibility language and programs.

In October of 1982, the CCC certified the City of Morro Bay's Local Coastal Plan. A Local Coastal Program is a local government's land use plan, zoning ordinances, zoning district maps, and implementing actions which, when taken together, meet the requirements of and implement the provisions of the Coastal Act at the local level. Our LCP has thirteen parts.

Chapter XIII. of our LCP pertains to Visual Recourses. Section 6. of chapter XIII outlines Protection of Neighborhood Character. It states, "***One of the priorities of the Coastal Act is the protection of the character of the community and its neighborhoods. Morro Bay recognizes the need to preserve the unique character of its varied neighborhoods and to create a higher quality visual environment within them. Among some of the issues that predicate the establishment of policy to preserve neighborhood character are the following***".

Attachment 2 has the entire section and includes the policy statement 12.06.

In 1988, the City of Morro Bay's General Plan was adopted. State law requires that each city prepare and adopt a comprehensive, long-term General Plan for the physical development of the city. The plan must also include any area outside of the community which in the City's judgment bears a relation to its planning. The General Plan must be internally consistent and it must contain implementation measures to ensure its compliance. Our GP has eight Elements.

Our GP element IV Visual Resources and Scenic Highway Element outlines Protection of Neighborhood Character which is identical in language and policy as our LCP (**Attachment 3**). Our GP has a Housing Element that also has language and programs that address Neighborhood Compatibility. A Housing Element is required by California law to establish policies and programs that will support the provision of an adequate housing supply for citizens of all income levels. The intent of state law is to ensure that all jurisdictions in the state provide adequate housing to all members of the community. Our Housing Element was approved and adopted in June of 2014. **Attachment 4** lists community comments from the adopted Housing Element pertaining to Neighborhood Compatibility and a program with strengthened and revised language committing the City to adopt neighborhood compatibility standards.

The City Council made a strong statement to adopt neighborhood compatibility standards in program H-13.1 of our Housing Element. However, clear guidelines must be adopted as an ordinance for guidelines to be enforceable. The Zoning Ordinance is the tool that implements the GP and LCP. **Attachment 5** explains provisions and titles from our Zoning Ordinance that implement the policies and programs from our GP/LCP.

In 2008, the City contracted with a consultant group, Management Partners to perform a City assessment. The City just now completed another city assessment by the same firm. The Management Partners Report 2008 was presented to City Council in May of 2008. The number 1 recommendation stated: *Use this report to lobby the Coastal Commission for an expeditious approval of the City's General Plan. The City must explain its grave financial position to the Commission and the need for certainty surrounding land use issues in order to attract investment to the community (Attachment 6).*

In February of 2011, the City received a letter from the CCC stating the 2004 Application to Certify the City's GP/LCP was deemed withdrawn for lack of activity (**Attachment 7**). Eleven years after the GP/LCP was approved and adopted by City Council we are faced with undertaking this process all over again at an estimated cost of \$800,000 to \$1,000,000. The 2004 GP/LCP also included neighborhood compatibility titled *Residential areas consistent with the city's character (Attachment 8)*.

CONCLUSION

My recommendation is to deny the request for a 45 day building moratorium and instead, stay the course on development of interim guidelines and updating and certifying the City's GP/LCP. Adopt Resolution No. 18-15 committing to completing the GP/LCP update in three years. While the lack of clear neighborhood compatibility guidelines is a concern, Council has recognized that with their request for interim design guidelines and setting a goal for

Neighborhood Compatibility Standards. In addition, to adopting Resolution No. 18-15, I recommend that Council gives direction to staff and the Planning Commission that we remain focused on completing on Neighborhood Design Guidelines, that we do not layer this process with Commercial Design guidelines and view protection at this time. I do not believe there is a level of urgency to warrant a building moratorium and the City is currently on course to undertake the development of a new GP/LCP and Design Controls that address Neighborhood Compatibility.

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

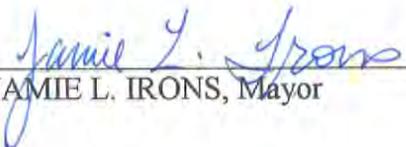
WHEREAS, the City Council commits to working collaboratively with the CCC and all agencies to accomplish the update of the GP/LCP; and

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



AGENDA NO: A-7

MEETING DATE: December 12, 2017

Staff Report

TO: Honorable Mayor and City Council

DATE: December 4, 2017

FROM: Dana Swanson, City Clerk

SUBJECT: Accept Jeffery Heller's Voluntary Resignation from the General Plan Advisory Committee (GPAC) and Adopt Resolution No. 64-17 Reducing the Number of GPAC Committee Members to Seven

RECOMMENDATION

Staff recommends the City Council accept the resignation of General Plan Advisory Committee (GPAC) Member Jeffery Heller and consider adoption of Resolution No. 64-17 reducing the committee size from nine to seven.

ALTERNATIVES

The Council may leave the number of committee members as is, and direct staff to begin a recruitment to fill the two existing vacancies.

FISCAL IMPACT

None

BACKGROUND AND DISCUSSION

The Morro Bay City Council adopted Resolution No. 39-15 (Attachment 1) in June of 2015, forming the GPAC and appointing nine community at-large members. Robert Davis was one of the original members of the GPAC, but because of his election to Council and, therefore, automatic vacancy of that membership, the number of GPAC members was reduced to eight. Recently, the Council adopted Resolution No. 51-17 appointing Planning Commissioner Joseph Ingraffia to fill a vacancy that occurred when Robert Tefft resigned, to allow him to serve as somewhat of a liaison between the two boards.

On November 28th, Mr. Heller submitted his resignation, once again bringing the number of current members to seven. A nine-member board with only seven serving members creates an issue with the establishment of a quorum. A nine-member board is required to have at least five members present to form a quorum. A seven-member board would be required to have at least four members present to form a quorum.

There are also issues with opening the recruitment to the general public, insofar as the General Plan/Local Coastal Program/Zoning Code update process has been underway for well over a year and the amount of background material covered to date, totals well in excess of 1,000 pages of material. Someone attempting to come up to speed with the process would face a steep learning curve.

If the Council were to reduce the number of GPAC member to seven, then the board would continue to function much as it has, and the chance of meetings being canceled due to a lack of quorum would lessen.

Prepared By: DS

Dept Review: _____

City Manager Review: SJC

City Attorney Review: _____

CONCLUSION

Staff recommends the City Council accept the voluntary resignation of General Plan Advisory Committee (GPAC) Member Jeffery Heller and consider adoption of Resolution No. 64-17 reducing the committee size from nine to seven.

ATTACHMENTS

1. Resolution No. 39-15
2. Resolution No. 51-17
3. Mr. Heller's letter of resignation dated 11/28/17
4. Proposed Resolution No. 64-17

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

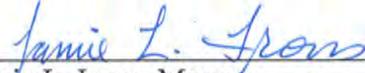
WHEREAS, following a broad outreach, the City Council held a special meeting on May 18, 2015 to conduct interviews and establish the committee.

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. 51-17

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
MODIFYING THE APPOINTMENT OF THE MEMBERS OF THE
GENERAL PLAN/LOCAL COASTAL PROGRAM ADVISORY COMMITTEE (GPAC)**

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

WHEREAS, by Resolution No. 39-15, the City Council formed the GPAC and appointed its 9 members; and

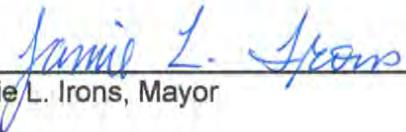
WHEREAS, there are currently two vacancies on the GPAC; and

WHEREAS, the City Council, at this time, desires to fill one of those vacancies.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Morro Bay, California, appoints Planning Commissioner Joseph Ingraffia to the GPAC to serve as a liaison between the GPAC and the Planning Commission.

PASSED AND ADOPTED, by the City of Morro Bay City Council, at a regular meeting held on this 26th day of September, 2017 by the following vote:

AYES: Irons, Davis, Heading, Makowetski, McPherson
NOES: None
ABSENT: None



Jamie L. Irons, Mayor

ATTEST:



Dana Swanson, City Clerk

Dana Swanson

From: Jeffery Heller
Sent: Tuesday, November 28, 2017 8:23 PM
To: Council
Cc: GPAC
Subject: Resignation from GPAC

To all

I have reached the point where I need to resign from the GPAC. It has been an interesting opportunity--and I have learned a lot along the way. However, business and personal interests are taking more and more of my time, and the unexplained cancellation of 5 of the meetings over the past months have left me wondering how much citizen input actually matters to the Mayor and council.

I wish you all the best in completing the "updated" general plan and LCP.

Regards

Jeff Heller

RESOLUTION NO. 64-17

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
AMENDING RESOLUTION NO. 39-15, REDUCING THE NUMBER
GENERAL PLAN/LOCAL COASTAL PROGRAM ADVISORY COMMITTEE (GPAC)
MEMBERS FROM NINE TO SEVEN**

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

WHEREAS, by Resolution No. 39-15, the City Council formed the GPAC and appointed its nine members; and

WHEREAS, the GPAC was formed as a limited-term, special purpose committee for the purpose of providing input and guidance throughout the General Plan/Local Coastal Plan (GP/LCP) update process to ensure the interests and values of all segments of the community are well represented; and

WHEREAS, there are currently two vacancies on the GPAC and given the update process has been underway for well over a year and the amount of background material covered to date would make it extremely difficult for a new member to come up to speed with the process; and

WHEREAS, the GP/LCP Update is anticipated to be complete in September 2018 and the GPAC will be dissolved at the end of the process.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Morro Bay, California, hereby amends Resolution No. 39-15, reducing the number of GPAC members from nine to seven.

PASSED AND ADOPTED, by the City of Morro Bay City Council, at a regular meeting held on this 12th day of December 2017 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Jamie L. Irons, Mayor

ATTEST:

Dana Swanson, City Clerk

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AGENDA NO: A-8

MEETING DATE: December 12, 2017

Staff Report

TO: Honorable Mayor and City Council

DATE: November 29, 2017

FROM: Jennifer Little, Tourism Manager

SUBJECT: Authorize the City Manager to Execute an Amendment to the City's Contract with Mental Marketing Inc. for Tourism Marketing and Public Relations

RECOMMENDATION

Council authorize the City Manager to execute an amendment, approved to form by the City Attorney, to the current contract with Mental Marketing Inc. to cover tourism marketing and public relations for year two of the contract, as provided for in the Council approved budget for FY 2017/18.

ALTERNATIVES

No alternatives are being recommended.

FISCAL IMPACT

There is no fiscal impact as the funding source for this contract was approved as part of the FY 2017/18 budget.

BACKGROUND

In 2016, the Morro Bay Tourism Bureau issued a request for proposals and interviewed three marketing companies to select a marketing and public relations firm to provide services for FY 2016/17 and 2017/18. The Tourism Business Improvement District ("TBID") Advisory Board affirmed that recommendation to the City Council and the contract was awarded at the February 9, 2016, City Council Meeting.

Funding for tourism marketing and public relations services comes from the TBID assessment, which is collected by hoteliers when people stay at their facilities and is to be used solely for tourism marketing and promotions. Marketing and public relations are a crucial component of the City's tourism operations; and it is clear, since the inception of the TBID, a more robust revenue stream for marketing has had a substantial, positive impact on Transient Occupancy Tax revenues.

DISCUSSION

As noted in the February 9, 2016, staff report (Attachment 2), the FY 16/17 annual marketing budget, including planning, meetings, execution, and reporting, at that time was \$315,000 and the public relations budget was \$80,000. The approved budget for those same services in FY 17/18 is \$165,000 for planning, meetings, execution, and reporting and \$245,000 for promotions and advertising.

Upon review of the executed contract, the agreement is not to exceed \$400,000 for the two-year

Prepared By: JL/DS

Dept Review:

City Manager Review: SJC

City Attorney Review: JWP

contract term, instead of \$400,000 for each fiscal year, as was originally intended. Due to staff transitions in the City Manager's Office and Finance Department, the need to amend the contract for FY 17/18 marketing services was overlooked.

Through the FY17/18 budget process, the Council approved the marketing budget at a total of \$410,000, as well as grant funding for special events noted below. Staff is recommending the current contract be amended to cover the following items, plus the correction on the dollars spent per year.

2016-17 Grant Award Dollars

The Council authorized a \$60,000 General Fund contribution to the TBID to support events that would increase overnight stays in Morro Bay. Of that \$60,000, the TBID Board recommended allocating **\$12,000** direct to Mental Marketing to help promote and market seven annual events to help elevate the level of exposure Morro Bay would get in booking hotel rooms. Those events included:

- Kite Festival \$1,500
- Lighted Boat Parade \$1,500
- Surfboard Art Festival \$1,500
- San Salvador Public Tours \$5,000
- Soupabration \$1,500
- Downtown Winter Street Fairs \$1,000

2017-18 Grant Award Dollars

The Council authorized a \$90,000 General Fund contribution to the TBID to support events that would increase overnight stays in Morro Bay. Of that \$90,000, the TBID Board recommended allocating **\$14,000** for Mental Marketing to help promote and market four annual events. Those events included:

- Harbor Festival \$5,000
- Kite Festival \$3,000
- Lighted Boat Parade \$3,000
- WinterFest \$3,000

Amgen 2017 Public Relations contract

Mental Marketing was hired to activate a public relations plan for the City during Amgen 2017 at a total cost of **\$15,000**.

2016-17 Mid-year Budget Adjustment by Council

The Council approved additional **\$33,000** funds for marketing to promote tourism while Highway 1 and Highway 41 were closed due to rock and mudslides.

Change of the Total Contract Amount to include FY 2017/18

As noted above, upon review of the executed contract, the agreement is not to exceed \$400,000 for the two-year contract term instead of \$400,000 each fiscal year.

CONCLUSION

Staff recommends Council authorize the City Manager to execute a contract amendment approved as to form by the City Attorney in the amount of \$884,000 with Mental Marketing to cover marketing and tourism promotion services covered in the previously approved FY 16/17 budget at \$460,000

and 17/18 budget at \$424,000.

ATTACHMENTS

1. Current Mental Marketing Consulting Contract
2. February 9, 2016 staff report

CITY OF MORRO BAY

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made, by and between, the City of Morro Bay, a municipal corporation (“City”) and Mental Marketing Inc., a California Corporation, (“Consultant”). In consideration of the mutual covenants and conditions set forth herein the parties agree as follows:

1. TERM

This Agreement shall commence on July 1, 2016, and shall remain and continue in effect until tasks described herein are completed, but in no event later than June 30, 2018, unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

Consultant shall perform the tasks described as Consultant Services in Exhibit A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

3. PERFORMANCE

Consultant shall at all times faithfully, competently and to the best of their ability, experience, and talent, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. CITY MANAGEMENT

City’s Tourism Manager shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but not including the authority to enlarge the Tasks to Be Performed or change the compensation due to Consultant. City’s City Manager shall be authorized to act on City’s behalf and to execute all necessary documents which enlarge the Tasks to Be Performed or change Consultant’s compensation, subject to Section 5 hereof.

5. PAYMENT

(a) City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit A, attached hereto and incorporated herein by this reference as though set forth in full, and based upon actual time spent on the above tasks. That amount shall not exceed Four Hundred Thousand Dollars and No Cents

(\$400,000.00) for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed Fifty Thousand Dollars (\$50,000). Any additional work in excess of this amount shall be approved by the City Council.

(c) Consultant will submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days after receipt of each invoice as to all non-disputed fees. If City disputes any of Consultant's fees, then it shall give written notice to Consultant within fifteen (15) days after receipt of an invoice of any disputed fees set forth on the invoice.

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

(a) City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon Consultant at least sixty-days' (60-days') prior written notice. Upon receipt of said notice, Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If City suspends or terminates a portion of this Agreement, then such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, City shall pay to Consultant the actual value of the work performed up to the time of termination. Upon termination of the Agreement pursuant to this Section, Consultant will submit an invoice to City pursuant to Section 5.

7. DEFAULT OF CONSULTANT

(a) Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date Consultant is notified of default and can terminate this Agreement immediately by written notice to Consultant. If such failure by Consultant to make progress in the performance for work hereunder arises out of causes beyond Consultant's control, and without fault or negligence of Consultant, then it shall not be considered a default.

(b) If the City Manager or his/her delegate determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, then he/she shall cause to be served upon Consultant a written notice of the default. Consultant shall have ten (10) days after

service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that Consultant fails to cure its default within such period of time, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. OWNERSHIP OF DOCUMENTS

(a) Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, and full payment by City for services performed pursuant to, this Agreement, all final work product such as documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of City and may be used, reused, or otherwise disposed of by City without the permission of Consultant. With respect to computer files, Consultant shall make available to City, as a service in addition to those set forth herein, at Consultant's office and upon reasonable written request by City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

9. INDEMNIFICATION

(a) Indemnification for Professional Liability. When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including reasonable attorney's fees and costs to the extent same are caused by any negligent act, error or omission of Consultant, its officers, agents, employees or subconsultants (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this agreement. City agrees to hold harmless and indemnify Consultant from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising out of or in any way connected with the modification, misinterpretation, misuse or reuse by others of the computer files or any other document provided by Consultant under this Agreement.

(b) Indemnification for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys' fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or subconsultants of Consultant.

(c) General Indemnification Provisions. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subconsultant or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this agreement. In the event Consultant fails to obtain such indemnity obligations from others as required here, Consultant agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this agreement or this section.

10. INSURANCE

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit B attached to and part of this agreement.

11. INDEPENDENT CONSULTANT

(a) Consultant is and shall at all times remain as to City a wholly independent Consultant. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

12. LEGAL RESPONSIBILITIES

Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. Consultant shall at all times observe and comply with applicable legal requirements in effect at the time the drawings and specifications are prepared. City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of Consultant to comply with this Section.

13. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of City will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling City to any and all remedies at law or inequity.

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(b) Consultant shall promptly notify City if Consultant, or any of its officers, employees, agents, or subconsultants are served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder or with respect to any project or property located within City. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate with City by providing the

opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

16. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City:	City of Morro Bay 595 Harbor Street Morro Bay, CA 93442 Attention: Tourism Manager
To Consultant:	Mental Marketing, Inc. 9185 Arvine Ct. Atascadero, CA 93422 Attention: William Stansfield, Jr.

17. ASSIGNMENT

Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of City.

18. LICENSES

At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

19. GOVERNING LAW

City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with jurisdiction over City.

20. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

21. CONTENTS OF PROPOSAL

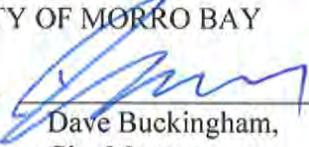
Consultant is bound by the contents of the proposal submitted by Consultant, Exhibit A hereto.

22. AUTHORITY TO EXECUTE THIS AGREEMENT

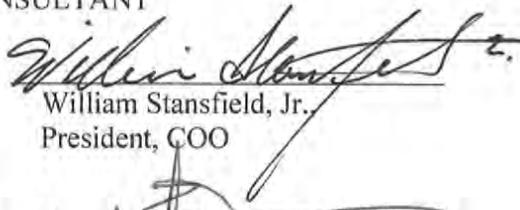
The person or persons executing this Agreement on behalf of Consultant warrants and represents he/she has the authority to execute this Agreement on behalf of Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF MORRO BAY

By: 
Dave Buckingham,
City Manager

CONSULTANT

By: 
William Stansfield, Jr.,
President, COO

Attest:


Dana Swanson, City Clerk

By: 
Mark Elterman, CEO

Approved As To Form:

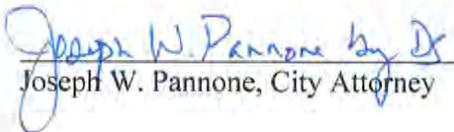

Joseph W. Pannone, City Attorney

Exhibit A
2016/17 Budget and Consultant Fees

Consultant Services

Subject to a final City Tourism Marketing and Public Relations Plan, as approved by City's City Manager, or his written designee, Consultant will provide City: marketing strategy, advertising campaign creation, creative services, production, media placement strategy and buying, public relations planning, coordination, reporting, public relations outreach, media list database management, press releases creation and distribution, media hosting coordination, press conferences, media performance reporting, social media management, budget management, execution and reporting and various project management services.

Initial 14-16 Month Budget

The 'Estimated Total' budget below will be performed within a 14 to 16-month cycle on a 'not to exceed' basis as described in this Agreement. The final approved strategic marketing plan will establish detailed budgets for projects requested and assigned by City.

Marketing, advertising, media and PR Strategic Plan:	\$12,000
Account management, coordination, meetings, reporting:	\$30,000
Public relations plan, execution, outreach, reporting:	\$80,000
Social media planning, execution, analytics:	\$36,000
Advertising placement:	\$200,000
Branding, creative services, production:	\$28,000
Photography and videography:	\$5,000
Co-Op advertising:	<u>\$9,000</u>
<i>Not to Exceed:</i>	<i>\$400,000</i>

Calculation of Consultant Fees

Consultant fees are based on blended hourly rate of \$125. All hard costs paid directly to vendors, such as photography, videography and illustrations, by Consultant are marked up 15%. City pre-approved travel expenses are billed at cost. City will incur all direct costs associated with pre-approved journalist visits such as travel, lodging, meals, activities and events. Consultant receives a 15% commission on all paid advertising gross billings.

[See Subsection 5(c)].



AGENDA NO: A-5

MEETING DATE: February 9, 2016

Staff Report

TO: Honorable Mayor and City Council

DATE: January 28, 2016

FROM: Sam Taylor, Deputy City Manager

SUBJECT: Award of Professional Services Contract with Mental Marketing for Tourism Marketing and Public Relations Services

RECOMMENDATION

Staff recommends the Council approve the selection of Mental Marketing for tourism marketing and public relations services and delegate the authority to execute said contract to the City Manager after preparation and approval by the City Attorney.

ALTERNATIVES

No alternatives are recommended.

FISCAL IMPACT

The marketing budget including planning, meetings, execution and reporting is \$315,000 and Public Relations budget, including the same items, is \$80,000, which will be paid for out of TBID assessment funds.

BACKGROUND

Since 2013, the City has contracted for its tourism operations with the Morro Bay Tourism Bureau (Bureau). Under the direction of Executive Director Brent Haugen, the Bureau has a general policy to issue an RFP every two years to investigate potential new professional entities to provide the community's tourism marketing and public relations.

Because the City will discontinue contracting for tourism operations with the Bureau this year, City staff and Bureau staff have worked to ensure appropriate cooperation and coordination of potential future tourism work. That includes seeking a new marketing and public relations agency.

To that end, the Bureau issued an RFP for those services and received proposals back by August 31, 2015. At its January 14, 2016 meeting, the Bureau Board of Directors held interviews with the top three candidates that submitted proposals. City staff attended the presentations as well.

The Directors voted to recommend to the Tourism Business Improvement District (TBID) Advisory

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

Board (a City entity that makes the official recommendation to the City Council, but technically the same people as on the Bureau Board) the selection of Mental Marketing for the services agreement.

At a January 28, 2016, special meeting, the TBID Advisory Board unanimously recommended the City Council approve a two-year agreement with Mental Marketing for public relations and marketing services.

DISCUSSION

The RFP process, and particularly the interview process conducted by the Bureau and its Board, was done very well and had an amazing creative component. Executive Director Haugen challenged the top three candidates to devise a mock campaign for a “Sustainable Seafood Festival” in Morro Bay and provided various factors they had to consider as part of the campaign, including a budget figure and ongoing challenges, including the loss of visitors to the event over time. Staff encourages the Council and the public to watch the presentations, which have been uploaded to the City’s YouTube channel here: <https://www.youtube.com/watch?v=ypgkZBNso0U>.

The proposed budget for this work is based on the current 2015-16 fiscal year, and the numbers fluctuate depending on the market (in other words, TBID assessment revenue collected can be impacted by the number of visitors that stay at hotels) and other factors. The budgeted dollars for the agreement reflect a 14-16 month marketing and public relations plan to avoid gaps in overall outreach. The annual marketing budget including planning, meetings, execution and reporting is \$315,000 and Public Relations budget, including the same items, is \$80,000. Work conducted is based on an annual marketing and public relations plan that is built by expert tourism staff and reviewed by the TBID Advisory Board, which sends a recommendation for final approval by the City Council.

That two-year agreement would begin July 1, 2016, with a mid-year annual review and the option to terminate the contract after any 30-day period during the term of the agreement. Agencies were informed during the RFP process, if they wished to continue service after that two-year agreement, then they would likely be required to go through a similar RFP process as other interested agencies.

The agreement would be different from the previous one in that both marketing services and public relations services would be undertaken by one firm. Previously, two separate contracts were let for those services. Verdin Marketing currently provides marketing services while Mental Marketing provides the community’s public relations services related to tourism operations. Bureau staff and the Board felt a single contract for both services would provide better coordination of those endeavors.

Funding for tourism marketing and public relations services comes from the TBID assessment, which is collected by hoteliers when people stay at their facilities. In FY 2014-15, the City collected about \$741,000 in TBID funding to be used for tourism marketing and promotions.

Marketing and public relations are a crucial component of the City’s tourism operations and it’s clear, since the inception of the TBID, a more robust revenue stream for tourism marketing and

public relationships has had a substantial, positive impact on Transient Occupancy Tax revenues.

TBID/Bureau board members conducted a rigorous review of the potential candidates for the contract and were impressed with the overall creativity and energy of Mental Marketing and their mock presentation. The Board noted the firm is very familiar with the community, which helps the agency better tell the story of Morro Bay to visitors.

CONCLUSION

Staff recommends awarding to Mental Marketing a two-year agreement to provide the City of Morro Bay's tourism marketing and public relations services and to authorize the City Manager to sign that agreement after preparation by and approval as to form by the City Attorney.

ATTACHMENT

Mental Marketing RFP Response



AGENDA NO: A-9
MEETING DATE: December 12, 2017

Staff Report

TO: Honorable Mayor and City Council **DATE:** November 28, 2017

FROM: Rob Livick, PE/PLS –Director of Public Services/City Engineer
Pamela Newman, Assistant Engineer

SUBJECT: Approval of Final Map for Tract 2739 – Black Hills Villas (485 & 495 South Bay Blvd.)

RECOMMENDATION

Staff recommends City Council adopt Resolution 63-17 approving the Final Map for Tract 2739 – Black Hills Villas.

ALTERNATIVES

If City Council believes that the Subdivider has not met the conditions of approval the City Council shall deny the approval of the Final Map.

FISCAL IMPACT

There is no fiscal impact as a result of this action.

BACKGROUND/ DISCUSSION

At its regular meeting on November 13, 2006 the Planning Commission approved the request for a Vesting Tentative Subdivision Map (S00-038), Use Permit (UPO-070) and Coastal Development Permit (CPO-110) for Tract 2739.

This subdivision divides a 3.17 acre parcel (APN 066-371-003) into nineteen (19) lots comprised of 16 (sixteen) residential lots, one (1) common area/private street lot and two (2) open space lots.

Since then, the applicant has satisfied all subdivision conditions of approval along with all City and State (Subdivision Map Act) provisions required for the recordation of this map. The Final Map substantially conforms to the approved tentative map. Per Morro Bay Municipal Code section 16.16.210, the City Council shall approve if the previously stated requirements have been satisfied.

CONCLUSION

Approval of a Tract Map is a "ministerial act", pursuant to the California Subdivision Map Act (Government Code Section 66474.1), once the map is found to be in substantial conformance with the approved tentative map. This final map has met all City regulations and no further discretionary approvals are required. Staff recommends the City Council approve Tract Map 2739.

Prepared By: <u>PN/rl</u>	Dept Review: <u>RL</u>
City Manager Review: <u>SJC</u>	City Attorney Review: <u> </u>

ATTACHMENT

1. Resolution No. 63-17
2. Final Map for Tract 2739

RESOLUTION NO. 63-17

A RESOLUTION OF THE CITY COUNCIL OF MORRO BAY APPROVING THE FINAL MAP FOR A 16-LOT RESIDENTIAL SUBDIVISION KNOWN AS TRACT 2739 (BLACK HILLS VILLAS) AND ACCEPTING THE ASSOCIATED PUBLIC UTILITY EASEMENT DEDICATION

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

WHEREAS, on November 13, 2006 the Planning Commission did hold a public hearing, received public testimony, and after closing the public hearing fully considered the various issues surrounding the case; and

WHEREAS, the Planning Commission did approve the Vesting Tentative Map for Tract 2739, and associated development applications, subject to certain Conditions of Approval; and

WHEREAS, the Planning Commission has previously made findings required by the California Environmental Quality Act (CEQA) and the City of Morro Bay procedures for implementation of CEQA; and

WHEREAS the applicant has since satisfied or guaranteed all Conditions of Approval and requests permission to record the Final Map; and

WHEREAS the applicant has guaranteed the installation of minor frontage improvements and public utilities (water and sewer) with surety bonds per the City Engineer approved Public Improvement Plans; and

WHEREAS, the recordation of a final map is a ministerial act pursuant to the City of Morro Bay Subdivision Ordinance and California Subdivision Map Act;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, that the City hereby approves the final map for Tract 2739.

PASSED AND ADOPTED by the City Council of the City of Morro Bay, California, at a regular meeting held on the 12th day of December 2017, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk

OWNER'S STATEMENT

WE, THE UNDERSIGNED, HEREBY CERTIFY THAT WE ARE ALL THE OWNERS OF, AND ALL RECORD HOLDERS OF SECURITY INTEREST IN, AND ALL PARTIES HAVING ANY RECORD TITLE INTEREST IN THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION AND PROJECT SHOWN ON THIS MAP, AND THAT EACH OF US DOES HEREBY CONSENT TO THE FILING AND/OR RECORDATION OF THIS MAP.

WE HEREBY RESERVE TO OURSELVES, OUR HEIRS, AND ASSIGNS CERTAIN PRIVATE ACCESS, PRIVATE DRAINAGE, RAPTOR HABITAT PRESERVATION AREA, AND STATE PARK BUFFER AREA FOR THE USE AND BENEFIT OF THE PRESENT OR FUTURE OWNERS OF THE LOTS AFFECTED BY SUCH EASEMENTS AS DELINEATED ON SAID MAP.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES:

- 1. PUBLIC UTILITY EASEMENT OR "PUE" FOR THE PUBLIC USE AND THE BENEFIT OF THE SEVERAL PUBLIC UTILITY COMPANIES WHICH ARE AUTHORIZED TO SERVICE IN SAID SUBDIVISION AS SHOWN HEREON.
2. USE AND ACCESS OF THAT CERTAIN TRAIL WITHIN THE OPEN SPACE RIPARIAN ENHANCEMENT AREA AS SHOWN HEREON.

BLACK HILLS VILLAS, LP

Wayne Colmer SIGNATURE
Wayne Colmer PRINTED NAME
President, Colmer Construction TITLE
General Partner TITLE

NOTARY ACKNOWLEDGEMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO Orange
ON Nov. 16, 2017 BEFORE ME, Philip Andrew Horn, Notary Public

PERSONALLY APPEARED Wayne Colmer
WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND AND SEAL.

Phil Horn SIGNATURE 2090766 COMMISSION NO.
Philip Andrew Horn PRINTED NAME Nov. 21, 2018 COMMISSION EXPIRES

NOTE: NO NOTARY SEAL PER CALIFORNIA GOVERNMENT CODE §66436(c)

NOTARY ACKNOWLEDGEMENT

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STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO
ON _____ BEFORE ME, _____

PERSONALLY APPEARED _____
WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND AND SEAL.

SIGNATURE _____ COMMISSION NO. _____
PRINTED NAME _____ COMMISSION EXPIRES _____

NOTE: NO NOTARY SEAL PER CALIFORNIA GOVERNMENT CODE §66436(c)

BENEFICIARY'S STATEMENT

HOMESTREET BANK, A WASHINGTON STATE CHARTERED COMMERCIAL BANK AS BENEFICIARY UNDER DEED OF TRUST DATED OCTOBER 12, 2017 RECORDED AS INSTRUMENT NO. 2017-049906 OF OFFICIAL RECORDS OF SAN LUIS OBISPO COUNTY, CALIFORNIA

Anthony Lopilato SIGNATURE
ANTHONY LOPILATO PRINTED NAME

VICE PRESIDENT TITLE

NOTARY ACKNOWLEDGEMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO Orange
ON Nov. 16, 2017 BEFORE ME, Philip Andrew Horn, Notary Public

PERSONALLY APPEARED Anthony Lopilato
WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND AND SEAL.

Phil Horn SIGNATURE 2090766 COMMISSION NO.
Philip Andrew Horn PRINTED NAME Nov. 21, 2018 COMMISSION EXPIRES

NOTE: NO NOTARY SEAL PER CALIFORNIA GOVERNMENT CODE §66436(c)

PLANNING COMMISSION STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS MAP AND THAT I AM SATISFIED THAT THE MAP CONFORMS WITH THE ACTION TAKEN BY THE CITY OF MORRO BAY FOR TRACT 2739 ON _____

SCOT GRAHAM DATE
COMMUNITY DEVELOPMENT DIRECTOR
CITY OF MORRO BAY

SOILS REPORT

SOILS ENGINEERING REPORT PROJECT SL09827-1
PREPARED BY GEOSOLUTIONS, INC
JANUARY 17M 2017

SIGNATURE OMISSIONS

THE SIGNATURES OF PACIFIC GAS AND ELECTRIC COMPANY HAVE BEEN OMITTED UNDER THE PROVISIONS OF SECTION 66436 SUBSECTION (A-3-A-1) OF THE SUBDIVISION MAP ACT, THEIR INTEREST IS SUCH THAT IT CANNOT RIPEN INTO A FEE TITLE AND SAID SIGNATURES ARE NOT REQUIRED BY THE GOVERNING BODY.

CITY CLERK'S STATEMENT

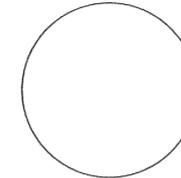
I, DANA SWANSON, DO HEREBY STATE THE CITY COUNCIL OF THE CITY OF MORRO BAY, STATE OF CALIFORNIA, DID, ON _____, 2017, APPROVE THIS MAP OF TRACT 2739 SHOWN HEREON IN ACCORDANCE WITH THE PROVISIONS OF THE SUBDIVISION MAP ACT, AND ALSO AGREE TO ACCEPT ON BEHALF OF THE PUBLIC THE PUBLIC UTILITY EASEMENT AND TRAIL ACCESS WITHIN THE OPEN SPACE RIPARIAN ENHANCEMENT AREA.

DANA SWANSON DATE
CITY CLERK
CITY OF MORRO BAY

CITY ENGINEER'S/SURVEYOR'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE ANNEXED MAP ENTITLED TRACT MAP 2739, THAT THE SUBDIVISION SHOWN HEREON IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE APPROVED TENTATIVE MAP AND ANY APPROVED ALTERATIONS THEREOF, AND THAT THE PROVISIONS OF THE SUBDIVISION MAP ACT OF THE STATE OF CALIFORNIA AND THE CITY OF MORRO BAY LOCAL ORDINANCE HAVE BEEN COMPLIED WITH AND THAT I AM SATISFIED THAT THIS MAP IS TECHNICALLY CORRECT.

ROBERT A. LMICK, P.L.S. NO 8126 DATE
CITY ENGINEER
CITY OF MORRO BAY, CALIFORNIA



RECORDER'S STATEMENT

FILED THIS _____ DAY OF _____, 2017, AT _____ M. IN THE BOOK _____ OF MAPS, AT PAGE _____ TO _____ AT THE REQUEST OF RICHARD H. CASSERA.

DOC NO.: _____ FEE: \$ _____

BY: _____ COUNTY RECORDER DEPUTY

RECORDER'S DISCLAIMER

THE TABULATION, LISTING AND NUMBERING OF ANY SEPARATE DOCUMENTS AUTHORIZED TO BE RECORDED CONCURRENTLY WITH THIS MAP HAVE BEEN PROVIDED BY THE SUBDIVIDER OR BY THE LOCAL AGENCY APPROVING THE MAP. THE COUNTY RECORDER MAKES NO REPRESENTATIONS REGARDING THE ACCURACY OR THE TABULATION, LISTING AND NUMBERING OF ANY SEPARATE DOCUMENTS REFERRED TO ON THIS MAP.

NOTE: THE FOLLOWING DOCUMENTS AFFECTING THE PROPERTY DENOTED HEREON ARE BEING RECORDED CONCURRENTLY HEREWITH:

- 1. COVENANTS, CONDITIONS, & RESTRICTIONS PER INSTRUMENT NUMBER _____
2. DEED RESTRICTION PER INSTRUMENT NUMBER _____

SURVEYOR'S STATEMENT

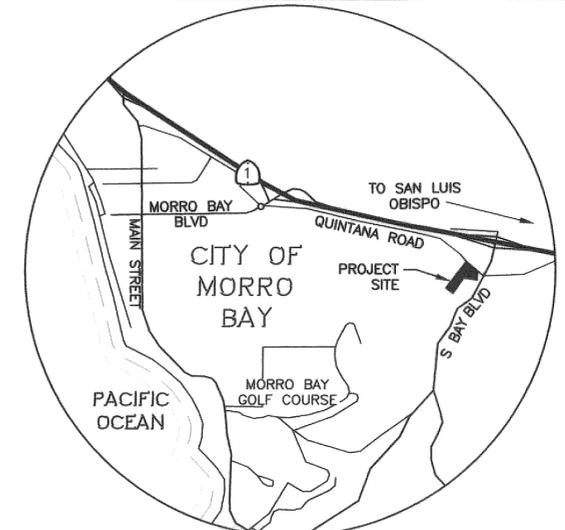
THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES AT THE REQUEST OF BLACK HILLS VILLAS, LP IN NOVEMBER 2016. I HEREBY STATE THAT THIS TRACT MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE MAP. I ALSO HEREBY STATE THAT ALL THE MONUMENTS SHOWN HEREON WILL BE SET IN THESE POSITIONS WITHIN ONE YEAR AND WILL BE SUFFICIENT TO ENABLE THIS SURVEY TO BE RETRACED.

Richard H. Cassera SIGNATURE
RICHARD H. CASSERA, LS 4283

10/31/2017



VICINITY MAP



TRACT 2739

A PORTION OF LOT 12 OF RANCHO SAN BERNARDO SURVEY BY R.R. HARRIS IN DECEMBER 1884, AS SHOWN ON MAP FILE IN BOOK 1 OF MAPS AT PAGE 60.

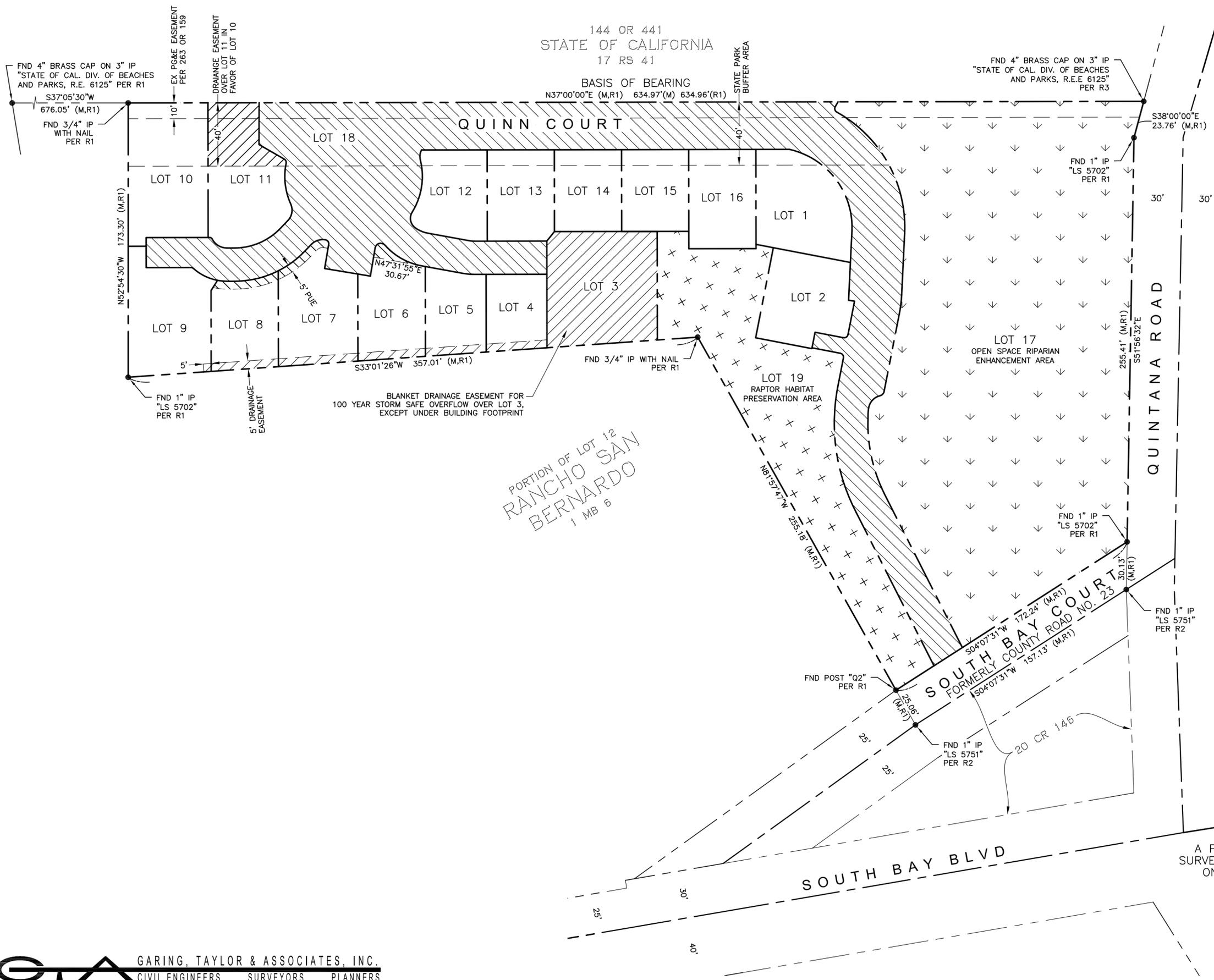
CITY OF MORRO BAY
COUNTY OF SAN LUIS OBISPO
STATE OF CALIFORNIA

MAY 2015

SHEET 1 OF 4

144 OR 441
STATE OF CALIFORNIA
17 RS 41

BASIS OF BEARING
N37°00'00"E (M,R1) 634.97'(M) 634.96'(R1)



LEGEND

- FOUND MONUMENT AS NOTED
- M MEASURED
- FND FOUND
- R1 101 RS 50
- R2 20 CR 146
- R3 17 RS 41

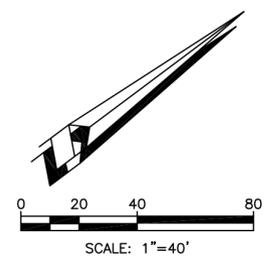
BASIS OF BEARING

THE BASIS OF BEARING FOR THIS SURVEY IS THE NORTHWEST PROPERTY LINE BETWEEN FOUND MONUMENTS AS SHOWN, BEING N37°00'00"E.

EASEMENT LEGEND

- PUBLIC UTILITY EASEMENTS & PRIVATE ACCESS
- DRAINAGE EASEMENT
- RAPTOR HABITAT PRESERVATION AREA
- OPEN SPACE RIPARIAN ENHANCEMENT AREA

PORTION OF LOT 12
RANCHO SAN BERNARDO
1 MB 6

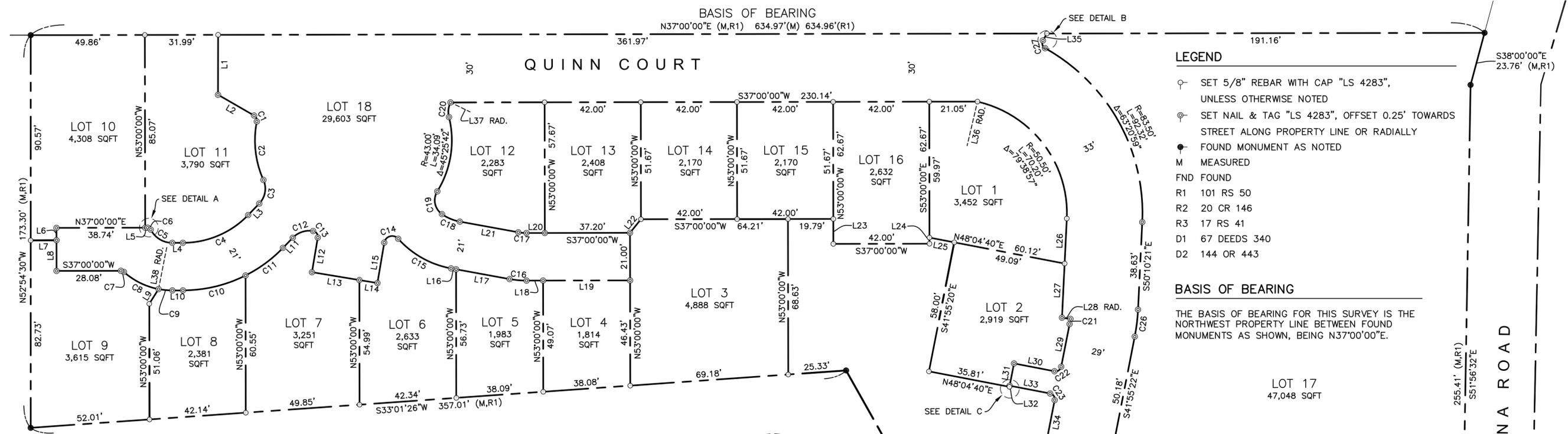


TRACT 2739

A PORTION OF LOT 12 OF RANCHO SAN BERNARDO SURVEY BY R.R. HARRIS IN DECEMBER 1884, AS SHOWN ON MAP FILE IN BOOK 1 OF MAPS AT PAGE 60.

CITY OF MORRO BAY
COUNTY OF SAN LUIS OBISPO
STATE OF CALIFORNIA

MAY 2015
SHEET 2 OF 4



LEGEND

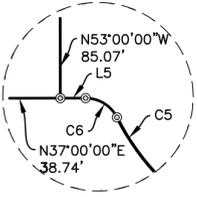
- SET 5/8" REBAR WITH CAP "LS 4283", UNLESS OTHERWISE NOTED
- ⊙ SET NAIL & TAG "LS 4283", OFFSET 0.25' TOWARDS STREET ALONG PROPERTY LINE OR RADIALLY
- FOUND MONUMENT AS NOTED
- M MEASURED
- FND FOUND
- R1 101 RS 50
- R2 20 CR 146
- R3 17 RS 41
- D1 67 DEEDS 340
- D2 144 OR 443

BASIS OF BEARING

THE BASIS OF BEARING FOR THIS SURVEY IS THE NORTHWEST PROPERTY LINE BETWEEN FOUND MONUMENTS AS SHOWN, BEING N37°00'00"E.

LINE	BEARING	DISTANCE
L1	S52°48'35"E	26.44'
L2	N67°17'00"E	18.22'
L3	S09°15'19"E	7.04'
L4	S37°00'00"W	4.60'
L5	S37°00'00"W	1.09'
L6	N53°00'00"W	5.46'
L7	N36°45'30"E	11.26'
L8	N53°00'00"W	13.54'
L9	S20°57'03"E	7.63'
L10	N37°00'00"E	4.60'
L11	N09°15'19"W	6.21'
L12	S43°24'13"E	15.50'
L13	N46°35'47"E	21.01'
L14	N46°35'47"E	8.00'
L15	N43°24'13"W	18.10'
L16	N47°31'55"E	2.21'
L17	N47°31'55"E	23.76'
L18	N37°00'00"E	7.24'
L19	N37°00'00"E	37.99'

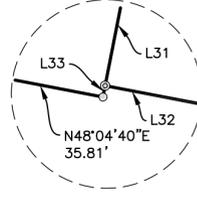
LINE	BEARING	DISTANCE
L20	S37°00'00"W	8.02'
L21	S47°31'55"W	25.97'
L22	S14°20'25"E	7.68'
L23	N53°00'00"W	11.00'
L24	S53°00'00"E	2.70'
L25	N48°04'40"E	11.02'
L26	S50°10'21"E	19.89'
L27	S50°10'21"E	23.90'
L28	N45°39'51"E	3.74'
L29	S41°55'22"E	19.20'
L30	S48°04'40"W	18.00'
L31	S41°55'20"E	10.00'
L32	N41°55'20"W	0.50'
L33	N48°04'40"E	18.00'
L34	S41°55'22"E	18.65'
L35	S23°35'31"E	3.53'
L36	S39°49'18"E	50.50'
L37	N63°02'17"E	9.50'
L38	N41°56'13"W	31.50'



DETAIL A
NOT TO SCALE



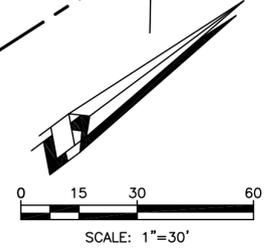
DETAIL B
NOT TO SCALE



DETAIL C
NOT TO SCALE

CURVE	RADIUS	LENGTH	DELTA
C1	2.50'	3.10'	70°58'41"
C2	43.00'	26.36'	35°07'26"
C3	9.50'	11.21'	67°36'26"
C4	39.50'	31.89'	46°15'19"
C5	10.50'	11.68'	63°43'00"
C6	1.50'	1.67'	63°43'00"
C7	2.00'	1.47'	42°12'30"
C8	31.50'	17.12'	31°08'43"
C9	31.50'	6.08'	11°03'47"
C10	60.50'	28.37'	26°52'13"
C11	60.50'	20.47'	19°23'05"
C12	10.00'	9.75'	55°52'33"
C13	2.50'	3.93'	89°58'32"
C14	3.50'	7.89'	129°13'26"

CURVE	RADIUS	LENGTH	DELTA
C15	40.50'	27.06'	38°17'18"
C16	40.50'	7.44'	10°31'55"
C17	19.50'	3.58'	10°31'55"
C18	19.50'	8.56'	25°08'27"
C19	7.50'	11.25'	85°58'53"
C20	9.50'	6.60'	39°48'44"
C21	54.50'	2.30'	2°24'49"
C22	2.50'	3.93'	90°00'02"
C23	2.50'	3.93'	89°59'58"
C24	9.50'	11.76'	70°56'09"
C25	3.50'	3.97'	65°01'54"
C26	83.50'	12.02'	8°15'01"
C27	2.50'	3.92'	89°55'49"

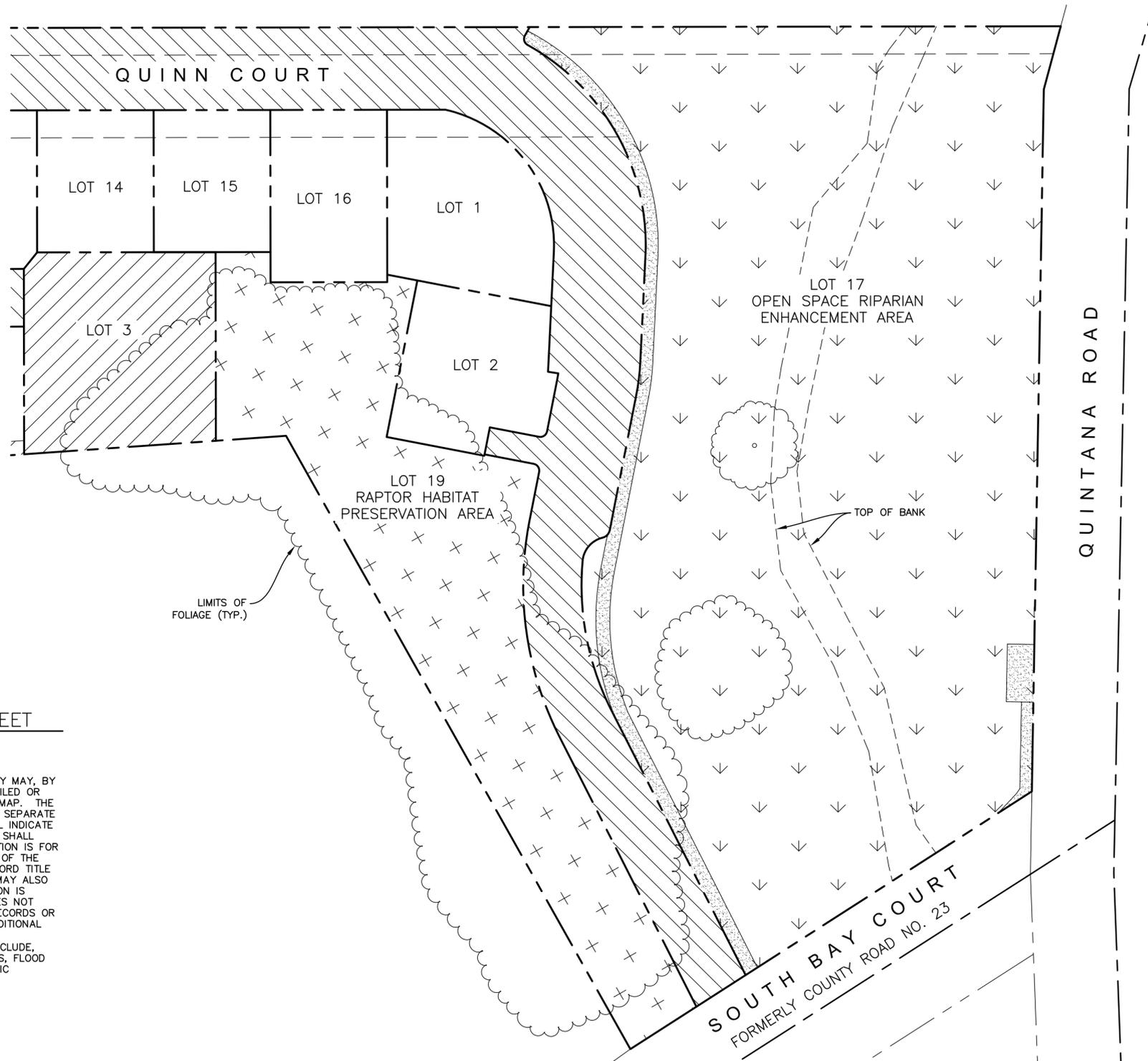


TRACT 2739

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CITY OF MORRO BAY
COUNTY OF SAN LUIS OBISPO
STATE OF CALIFORNIA

MAY 2015
SHEET 3 OF 4

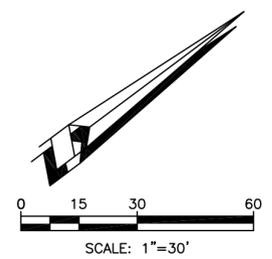


EASEMENT LEGEND

	PUBLIC UTILITY EASEMENTS
	DRAINAGE EASEMENT
	RAPTOR HABITAT PRESERVATION AREA
	OPEN SPACE RIPARIAN ENHANCEMENT AREA
	TRAIL

ADDITIONAL INFORMATION SHEET
CALIFORNIA GOVERNMENT CODE

66434.2
 (A) ON OR AFTER JANUARY 1, 1987, A CITY OR COUNTY MAY, BY ORDINANCE, REQUIRE ADDITIONAL INFORMATION TO BE FILED OR RECORDED SIMULTANEOUSLY WITH A FINAL OR PARCEL MAP. THE ADDITIONAL INFORMATION SHALL BE IN THE FORM OF A SEPARATE DOCUMENT OR AN ADDITIONAL MAP SHEET WHICH SHALL INDICATE ITS RELATIONSHIP TO THE FINAL OR PARCEL MAP, AND SHALL CONTAIN A STATEMENT THAT THE ADDITIONAL INFORMATION IS FOR INFORMATIONAL PURPOSES, DESCRIBING CONDITIONS AS OF THE DATE OF FILING, AND IS NOT INTENDED TO AFFECT RECORD TITLE INTEREST. THE DOCUMENT OR ADDITIONAL MAP SHEET MAY ALSO CONTAIN A NOTATION THAT THE ADDITIONAL INFORMATION IS DERIVED FROM PUBLIC RECORDS OR REPORTS, AND DOES NOT IMPLY THE CORRECTNESS OR SUFFICIENCY OF THOSE RECORDS OR REPORTS BY THE PREPARER OF THE DOCUMENT OR ADDITIONAL MAP SHEET.
 (B) ADDITIONAL SURVEY AND MAP INFORMATION MAY INCLUDE, BUT NEED NOT BE LIMITED TO: BUILDING SETBACK LINES, FLOOD HAZARD ZONES, SEISMIC LINES AND SETBACKS, GEOLOGIC MAPPING, AND ARCHAEOLOGICAL SITES.



TRACT 2739

A PORTION OF LOT 12 OF RANCHO SAN BERNARDO SURVEY BY R.R. HARRIS IN DECEMBER 1884, AS SHOWN ON MAP FILE IN BOOK 1 OF MAPS AT PAGE 60.

CITY OF MORRO BAY
 COUNTY OF SAN LUIS OBISPO
 STATE OF CALIFORNIA

MAY 2015
 SHEET 4 OF 4

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AGENDA NO: A-10

MEETING DATE: December 12, 2017

Staff Report

TO: Honorable Mayor and City Council

DATE: November 28, 2017

FROM: Rob Livick, Public Works Director

SUBJECT: Adoption of Resolution No. 66-17 Authorizing a Budget Adjustment of \$43,250 for American with Disabilities Act (ADA) Transition Plan Improvements

RECOMMENDATION

Staff recommends the City Council authorize a budget adjustment of \$43,250 in Fund 915-8500, which is an on-going capital project for ADA implementation throughout the City.

ALTERNATIVES

Staff does not recommend any alternatives

FISCAL IMPACT

In Fiscal Year (FY) 2016/17, the City funded a capital improvement project for ADA implementation work. The project consisted of an ADA assessment and recommendations for improvements in compliance with ADA requirements. The assessment was completed and a balance of \$43,250 remained in the originally approved budget. During the FY 2017/18 budget adoption, the remaining funds were not appropriated for continued work on the implementation, rather the funds were allocated to deferred revenue for future ADA work. With approval of this recommendation, the City Council would appropriate the remaining funds of \$43,250 for City staff to fund ADA implementation work throughout the City.

BACKGROUND

In every public environment there exist accessibility deficiencies and opportunities for improvement. The Morro Bay ADA assessment identified thousands of those situations. Many of the deficiencies are beyond the scope of our current resources. But many of the deficiencies are minor and corrections are achievable. Thus, staff has been making those improvements at every opportunity.

However, in the absence of a specific funding source, staff is unable to demonstrate the monetary value of those improvements for future audits. With the availability of funding specific to the improvements, the City will be able to more clearly support and demonstrate its progress toward compliance.

Prepared By: MW/DS

Dept Review: RL

City Manager Review: _____

City Attorney Review: _JWP_

DISCUSSION

Staff has been installing and adjusting rest room grab bars. Staff has installed 19 additional curbside accessible parking stalls with the proper signage throughout the downtown. Staff has contracted and assisted with alterations to make the City Hall Annex Bldg. and conference room a fully accessible public facility.

Staff intends to install the proper levered door handles and push bar exit hardware in public access areas, *i.e.* Public Works (est. \$5,000) and City Hall (est. \$6,000). Staff will utilize a portion of the funds for the Olive Street (est. \$8,400) and Centennial stairway (est. \$4,800) handrail upgrades. Staff is also working with professional volunteers to renovate the Del Mar restrooms that will include an ADA compliant unisex stall (est. \$8-10,000).

Staff will not utilize the funds as an offset for internal labor costs.

CONCLUSION

Staff recommends Council authorize the budget adjustment of \$43,250 from the deferred revenue account to the capital projects budget in Fund 915-8500 to fund ADA Transition Plan improvements throughout the City.

ATTACHMENT

1. Resolution No. 66-17

RESOLUTION NO. 66-17

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
AUTHORIZING AMENDMENT TO THE CITY'S 2017/18
OPERATING AND CAPITAL BUDGETS**

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

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

WHEREAS, the City Council adopted the original Operating and Capital Improvement Budgets on June 13, 2017, by Resolution No. 30-17; and

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

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, authorizes the budget adjustment of \$43,250 from Deferred Revenue to the Capital Projects Budget in Fund 915-8500 for the purposes of completing Americans with Disabilities ("ADA") improvements throughout the City.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 12th day of December 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk

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AGENDA NO: A-11
MEETING DATE: December 12, 2017

Staff Report

TO: Honorable Mayor & City Council **DATE:** November 7, 2017
FROM: Scot Graham, Community Development Director
SUBJECT: Authorization to enter into a contract with Stafford McCarty for representation related to the Sale or Lease of the Market Plaza property

RECOMMENDATION

Staff recommends the City Council review the staff report, and authorize the City Manager to enter into a contract with Stafford McCarty (Steve McCarty) for listing of the Market Plaza & Centennial Parkway project/properties. The contract is provided as Attachment A to this staff report.

ALTERNATIVES

- The Council could provide direction for desired changes to the contract
- Council could direct that Staff promote the property through the RFQ process
- Council could provide direction to pursue sale/lease of the property in some other fashion found acceptable to a majority of the Council.
- Council could choose not to place the properties on the market.

FISCAL IMPACT

If Stafford McCarty is successful in negotiating either the sale or lease of the property, to the satisfaction of the City, then it will be entitled to a commission equal to 6% of the purchase price or 5% of the total rental for the first 5-years and 2.5% of the total rental for the balance of the term. See Broker contract provided in Attachment A. Given the unique nature of the property, and the lack of comparable properties, it may also be necessary to obtain an appraisal to accurately establish a listing price for the property.

BACKGROUND/DISCUSSION

On June 13, 2017, the Council authorized staff to change the method for marketing the Market Plaza/Centennial Parkway project from the previously authorized Request for Qualifications (RFQ) process to a more direct and proactive approach using California Hotel Brokers. California Hotel Brokers withdrew its name from consideration in August of 2017. Staff subsequently researched other brokers who had experience representing hotel properties and who also had familiarity working with governmental agencies.

Stafford McCarty provided two Broker Qualifications documents, which demonstrate both its familiarity representing hospitality related properties and experience working with governmental agencies. The Stafford McCarty Qualifications documents are provided as Attachments B and C to the Staff report.

Council did request staff return with the broker representation contract for review and approval prior to moving forward. To that end, the contract is provided as attachment A to this staff report.

Prepared By: <u>SG</u>	Dept Review: <u>SG</u>
City Manager Review: <u>SJC</u>	City Attorney Review: <u>JWP</u>

The project area includes the Centennial Parkway improvements on the East side of the Embarcadero, redevelopment of the City owned property containing DiStasio's Restaurant, the City owned parking lot at the corner of Market and Pacific and the City owned parking lot below the DiStasio's restaurant. See Project area map provided below.



Potential project components may include:

- Mixed-use full service hotel, restaurant and retail development.
- Include Centennial Parkway improvements (East side of Embarcadero only)
- No large monolithic structure/development
- Incorporate a parking garage to replace lost parking
- Step the development down the slope
- Include differing roof lines
- Retail/restaurant on East side of Embarcadero at street level

CONCLUSION

If the objective of the Market Plaza project is centered on economic development with the goal of revitalizing the project area with the best project possible, then it makes sense to attempt to reach the largest potential group of buyers. Marketing the project through a broker will allow the City to reach a far larger pool of buyers/hotelier/developers than releasing the project as a RFQ.

The initial term of the contract is for a period of one year (December 12, 2017 – December 11, 2018) If that method of marketing the property/project proves unsuccessful, then the City can always move forward with the RFQ process.

ATTACHMENTS

- A. Broker Listing Agreement
- B. Broker Qualifications
- C. Broker Qualifications Supplement



**EXCLUSIVE RIGHT TO REPRESENT OWNER
FOR SALE OR LEASE OF REAL PROPERTY**
(Non-Residential)

1. BASIC PROVISIONS ("BASIC PROVISIONS").

1.1 **Parties:** This agency Agreement ("**Agreement**"), dated for reference purposes only November 15, 2017, is made by and between City of Morro Bay, whose address is 595 Harbor Street, Morro Bay, CA 93442, telephone number 805 772-6200, Fax No. 805772-7329 ("**Owner**"), and Stafford McCarty, Inc., whose address is 641 Higuera St, Suite 201, San Luis Obispo, CA 93401, telephone number 805 543-1801, Fax No. 805 654-1857 ("**Agent**").

1.2 **Property/Premises:** The real property, or a portion thereof, which is the subject of this Agreement is commonly known as (street address, city, state, zip) See Attachment A, located in the County of San Luis Obispo, and generally described as (describe briefly the nature of the property): See Attachment A ("**Property**"). (See also Paragraph 3).

1.3 **Term of Agreement:** The term of this Agreement shall commence on December 12, 2017 and expire at 5:00 p.m. on December 11, 2018, except as it may be extended ("**Term**"). (See also paragraph 4)

1.4 **Transaction:** The nature of the transaction concerning the Property for which Agent is employed ("**Transaction**") is (check the appropriate box(es)):

(a) A sale for the following sale price and terms: To be determined by Owner (supported by appraisal) and other additional standard terms reasonably similar to those contained in the "STANDARD OFFER, AGREEMENT AND ESCROW INSTRUCTIONS FOR THE PURCHASE OF REAL ESTATE" published BY AIR CRE ("**AIR**"), or for such other price and terms agreeable to Owner;

(b) A lease or other tenancy for the following rent and terms: To be determined by Owner (supported by appraisal) and other additional standard terms reasonably similar to those contained in the appropriate AIR lease form or for such other rent and terms agreeable to Owner.

2. EXCLUSIVE EMPLOYMENT AND RIGHTS.

2.1 Owner hereby employs Agent as Owner's sole and exclusive agent to represent Owner in the Transaction and to find buyers or lessees/tenants ("**lessees**"), as the case may be, for the Property. Agent shall use reasonably diligent efforts to find such buyers or lessees. All negotiations and discussions for a Transaction shall be conducted by Agent on behalf of Owner. Owner shall promptly disclose and refer to Agent all written or oral inquiries or contacts received by Owner from any source regarding a possible Transaction.

2.2 Owner authorizes Agent to:

- (a) Place advertising signs on the Property;
- (b) Place a lock box on the Property if vacant;
- (c) Accept deposits from potential buyers or lessees; and
- (d) Distribute information regarding the Property to participants in THE MULTIPLE ("**MULTIPLE**") ~~of the AIR~~ and/or any other appropriate local commercial multiple listing service, to other brokers, and to potential buyers or lessees of the Property. Owner shall identify as "confidential" any information provided to Agent that Owner considers confidential and does not want disclosed. All other information provided by Owner may be disclosed as Agent may deem appropriate or necessary. After consummation of a Transaction, Agent may publicize the terms of such Transaction.

2.3 Agent shall comply with the Rules of Professional Conduct of the AIR, if a member or if not, the Rules of Professional Conduct of the Society of Industrial and Office Realtors, and shall submit the Property to the MULTIPLE. Agent shall cooperate with participants in the MULTIPLE and may, at Agent's election, cooperate with other real estate brokers (collectively "**Cooperating Broker**").

2.4 If the Transaction is a sale and Agent finds a prospective buyer for the Property, or if the Transaction is a lease and Agent finds a prospective lessee for the Property, Owner hereby authorizes Agent also to represent and act as the agent for such buyer or lessee, and Owner consents to such dual agency. If a Cooperating Broker finds such a buyer or lessee, then Agent shall act as agent for Owner only, the Cooperating Broker shall act as agent for the buyer or lessee only, and the Cooperating Broker shall not be Owner's agent, even though the Cooperating Broker may share in the commission paid by Owner to Agent. A Cooperating Broker shall not be an agent or subagent of Owner or Agent.

2.5 Owner agrees that Agent may, during the ordinary and normal course of marketing the Property, respond to inquiries on the Property by showing and providing information on the Property, as well as on other competing properties, to prospective buyers and lessees and that such activities may result in the payment of a commission to Agent by a third party.

3. PROPERTY.

3.1 The term "Property" shall **be sold "AS IS, WHERE IS" and per the public report.** ~~include all of the following which are currently located on the Property and owned by Owner: permanent improvements, electrical distribution systems (power panels, buss ducting, conduits, disconnects, lighting fixtures, etc.), telephone distribution systems (lines, jacks and connections), space heaters, air conditioning equipment, air lines, carpets, window coverings, wall coverings, partitions, doors, suspended ceilings, built-ins such as cabinets, and _____ (if there are no additional items write "NONE"). If the Transaction is a sale, the term "Property" shall additionally include, to the extent owned by Owner, oil and mineral rights, leases and other agreements which will continue in effect after Owner's transfer of title to the Property.~~

3.2 Within five business days after the commencement of the Term hereof, Owner shall provide Agent with the following:

- (a) A duly completed and fully executed Property Information Sheet on the most current form published by the AIR;
- (b) Copies of all leases, subleases, rental agreements, option rights, rights of first refusal, rights of first offer, or other documents containing any other limitations on Owner's right, ability and capacity to consummate a Transaction, and
- (c) If available to Owner, copies of building plans, and if the Transaction is a sale, title reports, boundary surveys, and existing notes and trust deeds which will continue to affect the Property after consummation of a sale.

INITIALS

INITIALS

3.3 Agent shall have no responsibility for maintenance, repair, replacement, operation, or security of the Property, all of which shall be Owner's sole responsibility. ~~Unless caused by Agent's gross negligence, Agent shall not be liable for any loss, damage, or injury to the person or property of Owner, any lessees of the Property, any buyer, prospective buyer, lessee, or prospective lessee, including, but not limited to, those which may occur as a result of Agent's use of a lock box.~~

4. EXTENSION OF TERM. If the Transaction is a sale, and a sale is not consummated for any reason after Owner accepts an offer to purchase the Property ("**Sale Agreement**"), then the expiration date of the Term of this Agreement shall be extended by the number of days that elapsed between the date Owner entered into the Sale Agreement and the later of the date on which the Sale Agreement is terminated ~~or the date Owner is able to convey title to a new buyer free and clear of any claims by the prior buyer of the Property; provided, however, in no event shall the Term be so extended beyond one year from the date the Term would have otherwise expired.~~

5. COMMISSION.

5.1 Owner shall pay Agent a commission in the amount of 6% of the Purchase Price, in the event of a sale; and/or 5% of the total rental for the first 5 years and 2.5% of the total rental for the balance of the term. in accordance with the commission schedule attached hereto ("**Agreed Commission**"), for a Transaction, whether such Transaction is consummated as a result of the efforts of Agent, Owner, or some other person or entity. Agent shall also be entitled to the Agreed Commission if any of the Owner's representations and warranties described in paragraph 8 are shown to be false. Such Agreed Commission is payable:

(a) If the Transaction is a sale, (i) the Property is sold ; (ii) Owner breaches or repudiates any Sale Agreement, escrow instructions or other documents executed by Owner regarding the sale of the Property; (iii) the Property or any interest therein is voluntarily ~~or involuntarily~~ sold, conveyed, contributed or transferred; (iv) the Property or any interest therein is taken under the power of Eminent Domain or sold under threat of condemnation, ~~or (v) if Owner is a partnership, joint venture, limited liability company, corporation, trust or other entity, and any interest in Owner is voluntarily or involuntarily sold, contributed, conveyed or transferred to another person or entity that, as of the date hereof, does not have any ownership interest in Owner;~~

(b) If the Transaction is a lease and a lease of the Property, or a portion thereof is executed; or

(c) If Owner ~~without making a finding at a duly noticed public meeting the public interest is best served~~ (i) removes or withdraws the Property from a Transaction or the market; (ii) acts as if the Property is not available for a Transaction; (iii) treats the Property as not available for a Transaction; (iv) breaches, terminates, cancels or repudiates this Agreement; (v) renders the Property unmarketable; or (vi) changes the status of the Property's title, leases, agreements, physical condition or other aspects thereof, which such change adversely impacts the value, use, desirability or marketability of the Property.

~~(d) If earnest money or similar deposits made by a prospective purchaser or tenant are forfeited Agent shall be entitled to one-half (1/2) thereof, but not to exceed the total amount of the commission that would have been payable had the sale or lease transaction been consummated.~~

5.2 If the Transaction is a sale, the purchase agreement and/or escrow instructions to be entered into by and between Owner and a buyer of the Property shall provide that:

(a) Owner irrevocably instructs the escrow holder to pay from Owner's proceeds accruing to the account of Owner at the close of escrow the Agreed Commission to Agent;

(b) A contingency to the consummation of the sale shall be the payment of the Agreed Commission to Agent at or prior to close of the escrow; and

(c) No change shall be made by Owner or buyer with respect to the time of, amount of, or the conditions to payment of the Agreed Commission, without Agent's written consent.

5.3 If the Transaction is a lease it shall be paid per the Commission Schedule

6. ALTERNATIVE TRANSACTION. If the Transaction changes to any other transaction, including, but not limited to, a sale, exchange, option to buy, right of first refusal, ground lease, lease, sublease or assignment of lease (collectively "**Alternative Transaction**"), then Agent shall automatically be Owner's sole and exclusive Agent for such Alternative Transaction and represent Owner in such Alternative Transaction, under the terms and conditions of this Agreement. If, during the Term hereof, an Alternative Transaction is entered into, then Owner shall pay Agent the Agreed Commission.

7. EXCLUDED AND REGISTERED PERSONS.

7.1 Owner shall, within 5 business days after the date hereof, provide Agent, in writing, with the names of those persons or entities registered with Owner by any other broker under any prior agreement concerning the Property ("**Excluded Persons**", see paragraph 7.5). Owner shall also specify for each Excluded Person the type of transaction the consummation of which during the Term of this Agreement entitles such other broker to any compensation ("**Excluded Transaction**"). Agent may within 10 days of receiving such written list, either (a) accept the Excluded Persons and Excluded Transactions, (b) cancel this Agreement, or (c) attempt to renegotiate this portion of the Agreement with Owner. Once accepted by Agent, the written list shall automatically become an exhibit to this Agreement. If Owner timely provides Agent with the names of the Excluded Persons and specifies the Excluded Transaction for each Excluded Person, then the Agreed Commission paid to Agent with respect to consummation of such an Excluded Transaction with an Excluded Person shall be limited as follows: if such Excluded Transaction is concluded within the first 30 days of the commencement of the Term hereof, then Agent shall be paid a commission equal to the reasonable out-of-pocket expenses incurred by Agent in the marketing of the Property during said 30 days; or if such Excluded Transaction is concluded during the remainder of the Term hereof, then Agent shall be entitled to a commission equal to one-half of the Agreed Commission. If the specified information concerning Excluded Persons and Transactions is not provided as set forth herein, then it shall be conclusively deemed that there are no Excluded Persons.

7.2 Agent shall, within 5 business days after the expiration of the Term hereof, provide Owner, in writing, with the name of those persons or entities with whom Agent either directly or through another broker had negotiated during the Term hereof ("**Registered Persons**", see paragraph 7.5), and specify the type of transaction of the Property for which such negotiations were conducted ("**Registered Transaction**"). Those persons or entities who submitted written offers or letters of intent shall, however, automatically be deemed to be Registered Persons for the type of transaction which was the subject of such offer or letter of intent. If Agent fails to timely notify Owner of the existence of any other Registered Persons, then it shall be conclusively deemed that there are no other Registered Persons. A person or entity shall not be a Registered Person if Agent fails to timely specify a Registered Transaction for such person or entity. The parties are aware that the registration of certain individuals and/or entities might create a Dual Agency, and Owner hereby consents to any such Dual Agency.

7.3 If, within 180 days after the expiration of the Term hereof, Owner enters into a contract with a Registered Person for consummation of a Registered Transaction, then Owner shall, upon consummation of such Registered Transaction, pay Agent the Agreed Commission for the Registered Transaction.

7.4 If, within 180 days after the expiration of the Term hereof, Owner enters into another owner-agency or listing agreement with a broker other than Agent for any transaction concerning the Property, then Owner shall provide to Owner's new broker the names of the Registered Persons and the Registered Transaction for each Registered Person, and provide in such new agreement that the new broker shall not be entitled to receive any of the compensation payable to Agent hereunder

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for consummation of a Registered Transaction with a Registered Person.

7.5 In order to qualify to be an Excluded Person or a Registered Person the individual or entity must have: toured the Property, submitted a letter of interest or intent, and/or made an offer to buy or lease the Property. In addition, Excluded Persons may only be registered by a broker who previously had a valid listing agreement covering the Property, and such broker may only register individuals and entities actually procured by such listing broker.

8. OWNER'S REPRESENTATIONS.

Owner represents and warrants that:

- (a) Each person executing this Agreement on behalf of Owner has the full right, power and authority to execute this Agreement as on behalf of Owner;
- (b) Owner owns the Property and/or has the full right, power and authority to execute this Agreement and to consummate a Transaction as provided herein, and to perform Owner's obligations hereunder;
- (c) Neither Owner nor the Property is the subject of a bankruptcy, insolvency, probate or conservatorship proceeding;
- (d) Owner has no notice or knowledge that any lessee or sublessee of the Property, if any, is the subject of a bankruptcy or insolvency proceeding;
- (e) There are no effective, valid or enforceable option rights, rights of first refusal, rights of first offer or any other restrictions, impediments or limitations on Owner's right, ability and capacity to consummate a Transaction, except as disclosed in writing pursuant to Paragraph 3.2(b).
- (f) That as of the date of this Agreement the asking sales price is not less than the total of all monetary encumbrances on the Property.

9. OWNER'S ACKNOWLEDGMENTS. Owner acknowledges that it has been advised by Agent to consult and retain experts to advise and represent it concerning the legal and tax effects of this Agreement and consummation of a Transaction or Alternative Transaction, as well as the condition and/or legality of the Property, including, but not limited to, the Property's improvements, equipment, soil, tenancies, title and environmental aspects. Agent shall have no obligation to investigate any such matters unless expressly otherwise agreed to in writing by Owner and Agent. Owner further acknowledges that in determining the financial soundness of any prospective buyer, lessee or security offered, Owner will rely solely upon Owner's own investigation, notwithstanding Agent's assistance in gathering such information.

10. MISCELLANEOUS.

10.1 This Agreement shall not be construed either for or against Owner or Agent, but shall be interpreted, construed and enforced in accordance with the mutual intent of the parties ascertainable from the language of this Agreement.

10.2 All payments by Owner to Agent shall be made in lawful United States currency. If Owner fails to pay to Agent any amount when due under this Agreement, then such amount shall bear interest at the rate of 15% per annum or the maximum rate allowed by law, whichever is less.

~~10.3 In the event of litigation or arbitration between Owner and Agent arising under or relating to this Agreement or the Property, the prevailing party shall be paid its attorney's fees and costs by the losing party. The term, "Prevailing Party" shall include, without limitation, one who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other party of its claim or defense. The attorney's fees award shall not be computed in accordance with any court fee schedule, but shall be in an amount to fully reimburse all attorney's fees reasonably incurred in good faith.~~

10.4 Owner agrees to indemnify, defend (with counsel reasonably acceptable to Agent), and hold Agent harmless from and against any claim or liability asserted against Agent as a result of the failure of Owner to make a full and complete disclosure pursuant to law and paragraph 3.2(a) or as a result of the fact that any of the representations made by Owner (see paragraph 8) were not true at the time that this Agreement was signed.

~~10.5 Owner hereby releases and relieves Agent, and waives Owner's entire right of recovery against Agent, for direct or consequential loss or damage arising out of or incident to the perils covered by insurance carried by Owner, whether or not due to the negligence of Agent.~~

~~10.6 In the event that the Transaction is not an outright sale, Owner agrees that if Agent is not paid the Agreed Commission provided for herein within thirty days of the date due, that Agent shall have a lien in the amount of such commission, and may record a notice of such lien, against the Property.~~

10.7 Owner agrees that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to the services to be performed by Agent pursuant to this Agreement may be brought against Agent more than one year after the expiration of the Term of this Agreement (see paragraph 1.3) ~~and that the liability (including court costs and attorney's fees) of Agent with respect to any such lawsuit and/or legal proceeding shall not exceed any fee received by Agent pursuant to this Agreement; provided, however, that the foregoing limitation on liability shall not be applicable to any gross negligence or willful misconduct of Agent.~~

11. ARBITRATION OF DISPUTES.

~~11.1 ANY CONTROVERSY ARISING UNDER OR RELATING TO THIS AGREEMENT SHALL BE DETERMINED BY BINDING ARBITRATION TO BE CONDUCTED BY: THE AMERICAN ARBITRATION ASSOCIATION OR _____ USING THE COMMERCIAL RULES ESTABLISHED BY SUCH ORGANIZATION OR IF NONE THE AMERICAN ARBITRATION ASSOCIATION'S COMMERCIAL RULES. ARBITRATION HEARINGS SHALL BE HELD IN THE COUNTY WHERE THE PROPERTY IS LOCATED.~~

~~11.2 NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.~~

~~11.3 WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.~~

Owner's Initials

Agent's Initials

~~11.4 THE PROVISIONS OF THE ABOVE ARBITRATION CLAUSE SHALL NOT BE BINDING ON EITHER PARTY UNLESS BOTH PARTIES HAVE PLACED THEIR INITIALS UNDER PARAGRAPH 11.3.~~

12. Additional Provisions: Additional provisions of this Agreement are set forth in the following blank lines or in an addendum attached hereto and made a part hereof consisting of paragraphs _____ through _____ (if there are no additional provisions write "NONE"):

13. Disclosures Regarding The Nature of a Real Estate Agency Relationship. When entering into an agreement with a real estate agent an Owner should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction.

- (i) *Owner's Agent.* An Owner's agent may act as an agent for the Owner only. An Owner's agent or subagent has the following affirmative obligations:

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To the Owner: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings. To a potential buyer/lessee and the Owner: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) *Agent Representing Both Parties.* A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both Parties in a transaction, but only with the knowledge and consent of the Parties. In a dual agency situation, the agent has the following affirmative obligations to both Parties: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Party. b. Other duties to the Owner as stated above in subparagraph (i). When representing both Parties, an agent may not without the express permission of the respective Party, disclose to the other Party that the Owner will accept rent/purchase price in an amount less than that indicated in the listing or that the buyer/lessee is willing to pay a higher rent/purchase price than that offered.

The above duties of the Agent do not relieve Owner from the responsibility to protect its own interests. Owner should carefully read all agreements to assure that they adequately express its understanding of the transaction.

Date: _____

Date: _____

OWNER

AGENT

City of Morro Bay

Stafford McCarty, Inc,

By: _____

By: _____

Name Printed: _____

Name Printed: Steve McCarty

Title: _____

Title: Owner

Agent BRE License #: 01240829

Address: 641 Higuera Street, 201, San Luis Obispo, CA 93401

Phone: 805 543-1801

Fax: _____

Email: steve@staffordmccarty.com

AIR CRE. 500 North Brand Blvd, Suite 900, Glendale, CA 91203, Tel 213-687-8777, Email contracts@aircre.com

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DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(As required by the Civil Code)

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

SELLER'S AGENT ("Seller" includes both a vendor and a lessor)

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

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

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT ("Buyer" includes both a purchaser and a lessee)

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

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

To the Buyer and the Seller:

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

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

AGENT REPRESENTING BOTH SELLER AND BUYER

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

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

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

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

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

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

Buyer Seller Lessor Lessee _____ Date: _____

Buyer Seller Lessor Lessee _____ Date: _____

Agent: _____ BRE Lic. #: _____
Real Estate Broker (Firm)

By: Steve McCarty BRE Lic. #: 01240829 Date: _____
(Salesperson or Broker-Associate)

NOTE:

* When the listing brokerage company also represents Buyer/Lessee: The Listing Agent shall have one Agency Disclosure form signed by Seller/Lessor and a second Agency Disclosure form signed by Buyer/Lessee.

* When Seller/Lessor and Buyer/Lessee are represented by different brokerage companies: (i) the Listing Agent shall have one Agency Disclosure form signed by Seller/Lessor and (ii) the Buyer's/Lessee's Agent shall have one Agency Disclosure form signed by Buyer/Lessee and either that same or a different Agency Disclosure form presented to Seller/Lessor for signature prior to presentation of the offer. If the same form is used, Seller/Lessor may sign here:

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____ Date: _____
Seller/Lessor

THIS FORM HAS BEEN PREPARED BY AIR CRE. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF THIS FORM FOR ANY SPECIFIC TRANSACTION. PLEASE SEEK LEGAL COUNSEL AS TO THE APPROPRIATENESS OF THIS FORM.

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AD-2.00, Revised 01-03-2017

**DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP
CIVIL CODE SECTIONS 2079.13 THROUGH 2079.24 (2079.16 APPEARS ON THE FRONT)**

2079.13 As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

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

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

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

2079.16 Reproduced on Page 1 of this form.

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

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

(DO NOT COMPLETE, SAMPLE ONLY)	is the agent of (check one): <input type="checkbox"/> the seller exclusively; or <input type="checkbox"/> both the buyer and seller.
(Name of Listing Agent)	
(DO NOT COMPLETE, SAMPLE ONLY)	is the agent of (check one): <input type="checkbox"/> the buyer exclusively; or <input type="checkbox"/> the seller exclusively; or <input type="checkbox"/> both the buyer and seller.
(Name of Selling Agent if not the same as the Listing Agent)	

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

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

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

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically

prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

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

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

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

(b) A lender or an auction company retained by a lender to control aspects of a transaction of real property subject to this part, including validating the sales price, shall not require, as a condition of receiving the lender's approval of the transaction, the homeowner or listing agent to defend or indemnify the lender or auction company from any liability alleged to result from the actions of the lender or auction company. Any clause, provision, covenant, or agreement purporting to impose an obligation to defend or indemnify a lender or an auction company in violation of this subdivision is against public policy, void, and unenforceable.

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

AIR CRE. 500 North Brand Blvd, Suite 900, Glendale, CA 91203, Tel 213-687-8777, Email contracts@aircre.com

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ATTACHMENT A

Market Plaza and Centennial Parkway



Stafford ♦ McCarty
Commercial Real Estate

BROKERAGE QUALIFICATIONS
FOR
REAL ESTATE MARKETING AND BROKERAGE SERVICES
CITY OF MORRO BAY

SCOPE OF EXPERIENCE AND BROKER QUALIFICATIONS

INTRODUCTION TO STAFFORD McCARTY COMMERCIAL REAL ESTATE

Stafford McCarty Commercial Real Estate has been one of the most successful regional commercial real estate companies for over 24 years, completing some of the largest and most complex asset sales in the region.

Our client and transaction representation range from listing and selling Fortune 500 company assets to municipal acquisitions. Given our depth of commercial real estate work, Stafford McCarty Commercial Real Estate has been a guest author for the both the UCSB Economic Forecast and Central Coast Economic Forecast for over 12 years reporting on commercial real estate trends and activities.



OUR FIRM'S EXPERIENCE

Our continued success is founded on establishing on-going relationships with both individual clients and corporate accounts who appreciate our competent, professional, results-oriented representation. In addition to our sales and leasing expertise, we have a broad understanding of entitlement issues and the development process as well as public institutional experience. Our marketing reach via local, regional and national exposure has proven to be effective with local clients and brokers to national corporations.

We detail our municipal experience later in this response by outlining some of our transactions as case studies. In addition, we have included some additional case studies in an Appendix for your review to highlight the range of services we have provided beyond just the municipal sector.

BROAD BACKGROUND OF BOTH ASSET (MARKET) TYPES AND TRANSACTIONS

Our broad background of market sector knowledge –industrial, office, retail, investment and development and our experience in the greater Central Coast Region - from San Miguel in the north to Santa Barbara in the south, inclusive of the coastal communities- make us experts for this area. No other firm has this breadth and depth within their select brokers. Our firm has also conducted significant transactions within these market sectors and geographic territories.

Stafford McCarty Commercial Real Estate interfaces well with other brokerage firms. As a result, we are

Stafford McCarty Commercial Real Estate
Brokerage Qualifications, City of Morro Bay, August 2017

recommended by others regularly and are often referred business because of our “team attitude”. This all works to the benefit of the client through quality cooperation and broader reach.

YOUR TEAM AT STAFFORD McCARTY

Based out of San Luis Obispo, the firm is comprised of two seasoned brokers serving as your team, Steve McCarty, which will be the primary contact and lead broker, and Steve Davis will head up the analytical and marketing efforts.

YEARS IN BUSINESS

Stafford McCarty Commercial Real Estate has been in Business since 1992. Steve McCarty, firm principal, has been in the business for 29 years and originally started with TOLD Commercial Real Estate in 1988 before founding Stafford McCarty Commercial Real Estate. Steve Davis, Broker Associate, has been in the industry and with Stafford McCarty for 9 years.

MARKET TRENDS - EXTRACT OF STAFFORD McCARTY COMMERCIAL REAL ESTATE PUBLISHED DATA

As noted above, no other firm has the depth of market knowledge and history of published research than our organization. Steve McCarty and Steve Davis are guest authors for Beacon Economics, the economists engaged by the Central Coast Economic Forecast Project.

CITY OF MORRO BAY REAL ESTATE ASSETS

Stafford McCarty Commercial Real Estate with its long history has dealt with issues surrounding the types of property you hold. (Please see our case studies in the Experience Section for reference.) We are comfortable analyzing, pricing and negotiating across a wide range of property types and uses and generating creative solutions to help achieve our client’s goals.

Akin to the City of Morro Bay assets, Stafford McCarty has worked with banks and lenders and their portfolios of assets taken back in the last and previous recessions.

On a strategic note, we understand that given the present strains of pensions and transportation on municipal budgets, converting underperforming assets into reliable cash flow versus just selling them off are key strategic decisions. We believe our experience makes us an asset to be a part of that dialog in which we can add value through our experience to analyze and evaluate alternatives.

STAFFORD MCCARTY TEAM NARRATIVE RESUMES



Steve McCarty

Steve McCarty has been the driving force at Stafford McCarty for over 20 years. With broad knowledge in investment land and building sales and leasing, Steve has assisted clients in hundreds of successful real estate transactions. From key agricultural land to large industrial leases, from office and warehouse space to placing investments, Steve's knowledge of the Central Coast and its key players is a significant asset.

After graduating from the University of California at Santa Barbara with Bachelor and Master of Arts degrees in 1981, Steve worked major accounts within the computer hardware and software industry. Prior to the formation of Stafford-McCarty Commercial Real Estate, Steve McCarty started his career in real estate sales and leasing with TOLD Real Estate Corporation in 1988, and operated out of Santa Maria, California. Steve McCarty, along with partner Greg Stafford (retired), Steve started Stafford McCarty in 1992.

Steve's current community involvement efforts include being a board member of both the Central Coast Economic Forecast (current Board Chair) and UCSB Northern Santa Barbara County Economic Forecast Project, as well on the board of directors for the San Luis Obispo Community Foundation (past Board Chair) and San Luis Obispo Real Estate Foundation (past Board Chair). Other non-profit associations: Steve was Past President of the YMCA San Luis County and was also on the Board of Directors of Central Coast Home Builders Association for a number of years.



Steve Davis

Steve Davis brings his fast-paced, detail-oriented approach to assisting clients with their commercial real estate needs on the Central Coast. Whether representing a small business looking for their first location or an established industrial client looking for the next manufacturing facility, Steve's incisive analysis and market knowledge enable the team at Stafford McCarty to find the best solutions for complex real estate needs.

After graduating from Stanford in 1981 with a Bachelor of Science Degree in Industrial Engineering, Steve worked as a management consultant for Arthur Young and Company before moving to Sacramento to open a marketing and graphic design business, Dore Davis Design. Steve has developed his marketing and operations expertise through management positions in the hospitality industry (directing alumni resorts and conference centers for both Stanford University and University of the Pacific), being CFO of a medical research firm and working as an analyst for the Dean of the College of Liberal Arts at Cal Poly. Current volunteer efforts include being a member of the Downtown Association Economic Development Committee, being a board member of the SLO Youth Sports Association and a graduate of Leadership SLO XXIII.

EXPERIENCE IN ASSISTING GOVERNMENTAL AGENCIES AND QUASI GOVERNMENTAL AGENCIES

EXPERIENCE

Stafford-McCarty has conducted many transactions within the Central Coast for governmental and quasi governmental agencies. The following are summarized case studies.

City of Santa Maria







1770 Acres of land sited for a Managed Waste Facility for the City of Santa Maria. Stafford-McCarty was engaged via retainer fee and commission structure representing the City of Santa Maria in its search and acquisition.

This transaction is significant due to the complexity of the client’s intended use, operating oil leases, potential biological and environmental mitigations involved with such a large property. This transaction also involved surface fee acquisition and analysis for relinquishing mineral rights.

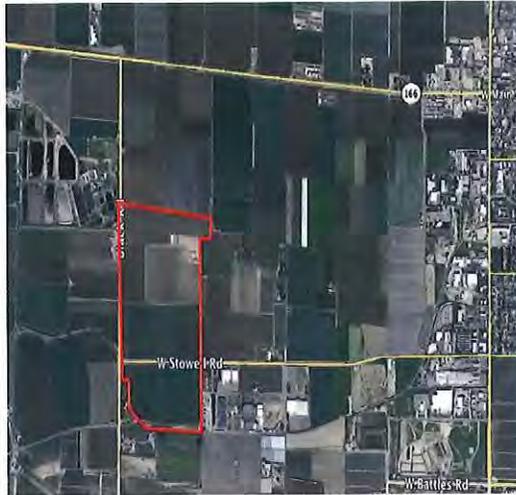
Stafford McCarty Commercial Real Estate
Brokerage Qualifications, City of Morro Bay, August 2017

City of Santa Maria



240 Acres of land sited for expansion of its waste water treatment for the City of Santa Maria. Stafford-McCarty was engaged by the City of Santa Maria in its search and acquisition. Stafford McCarty represented the City and was paid a commission by the City for the transaction.

This transaction is significant due to its creative acquisition structure minimizing the cash from the City. It involved asset swaps with the seller for other City held properties and master lease backs which involving financial modeling and analysis. Nick Tompkins, a local developer, (NKT Commercial), was the Seller as he was President of APIO at the time.



Stafford McCarty Commercial Real Estate
Brokerage Qualifications, City of Morro Bay, August 2017

City of Santa Maria



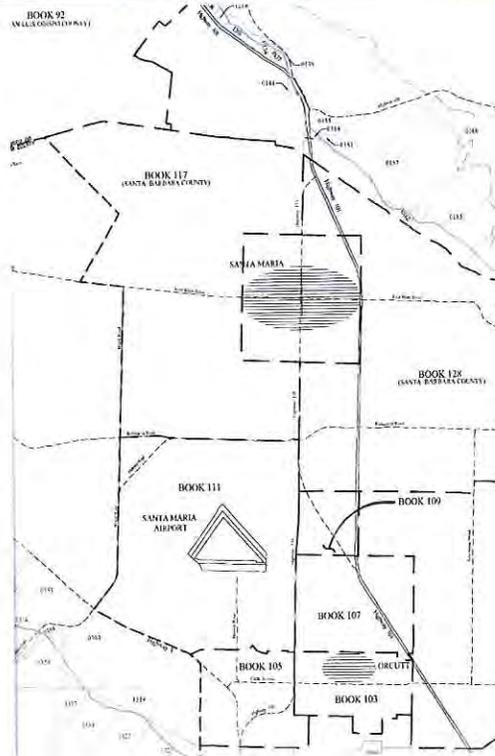
While under retainer, Stafford McCarty was directed to:

Negotiate on behalf of the City in a dispute with the Santa Maria Valley Railroad regarding a transit station lease. We were brought in at a point where parties were threatening litigation. We able to resolve the dispute through negotiation thus preventing litigation.

Also under a retainer for services and commission agreement, identified mitigation ground to offset endangered species habitat (California Tiger Salamander) for the Union Valley Parkway as well as additional acreage for land fill buffer.

Negotiated gray water line easement over private property.

Worked with City Utilities Director on identifying ground water delivery alternatives with Twitchell Reservoir, State Water and City of Santa Maria adjudicated Basin water allocations to purvey water to the Nipomo Community Services District.



Water Basin Map

Stafford McCarty Commercial Real Estate
 Brokerage Qualifications, City of Morro Bay, August 2017

Santa Maria Public Airport District



Stafford McCarty procured a Buyer for both parcel fee acquisition and land lease of this approximately 4.75 acre project for self-storage. Working through approvals with the FAA were required to complete the transactions.

Significance to the Airport District: low employee and traffic impact. Negotiated an easement with the City of Santa Maria to a major traffic corridor to increase the usability of the land.

Southern Pacific Union Pacific Railroads



Approximately 10 acres, San Luis Obispo and Guadalupe, CA

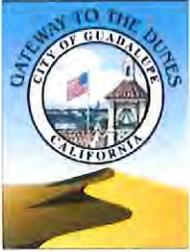
Multiple transactions, with the San Luis Obispo transaction pictured here. Stafford-McCarty represented Southern Pacific, listing the properties and procuring the Buyers.

Significance: Complex purchase agreements with indemnity requirements benefiting the railroad, including extensive mitigation potential.

Note: Stafford McCarty Commercial Real was the exclusive Broker for Southern Pacific in this region prior to its merger with Union Pacific and has extensive knowledge of local rail spurs and siding.



City of Guadalupe



Engaged by the City to sell industrial land in the redevelopment district to attract business to Guadalupe. Transacted multiple sales to a variety of industrial users completing the inventory of parcels.

Engaged at a later date to sell residential subdivisions for the City's RDA which were foreclosed upon and taken back by the RDA. Multiple sales: approximately 120 unit sold to Carriage Homes; 74 units to People's Self Help Housing.

Brought in again to list and sell a mixed use building and commercial parcel repossessed the City.

Note: Stafford McCarty has listed and sold entire Specific Plans. Stafford McCarty has sold multiple subdivisions including residential, commercial retail and office.



Regional Transit Authority



Approximately 17,000 sq. ft facility on 2.66 acres in San Luis Obispo.

Selected via 3rd party consultant to represent the RTA as exclusive representative for siting a new maintenance facility. Developed multiple options, performed analysis and lease negotiation along with San Luis Obispo County counsel.

Significance: Strategic combining of parcels and complex lease agreements to create a site in a market with minimal inventory.



County of Santa Barbara



Stafford McCarty was selected, listed and sold this approximately 23,846 sq. ft. former probation office surplus property on approximately 4.67 acres for the County of Santa Barbara.

Significance: Stafford McCarty worked closely with two North County Supervisors as they were part of the asset disposition team with the County. The asset sale was highly visible as they County was not known to sell assets at that time.



REFERENCES**Rennie Pili***Former City Mayor and Councilman**City of Guadalupe**805 868-0168 personal phone**Engaged by the City of Guadalupe to dispose of property foreclosed upon by the Redevelopment Agency and Successor Agencies. We listed and sold Residential subdivisions, Industrial subdivision parcels as well as a mixed use building (residential over commercial). Presently selling a corner former gas station parcel still having residual contamination and working through Brownfield issues.**These services were performed at different times over a period of years and working with multiple City Managers from the early 1990's to present. Mayor Rennie Pili was on council for many of these years.***Paul Karp***Director of Public Works, (retired)**City of Santa Maria,**(805) 234-0731 personal cell phone**Paul brought us in originally to site the waste water treatment plant in the mid 90's. We were brought in on additional projects at various points in time over the next score of years. The last major work was approximately 5 years ago.***Rick Sweet***Director of Utilities, (retired)**City of Santa Maria,**805 878-3671 personal cell phone**After Paul retired we continued to do work for Rick (and the City attorney) under various retainer and commission arrangements: such as lease negotiations, easements, theoretical property taking estimates (Right of Way expansions), searching for mitigation ground, potential brine water injection wells and alternate methods of water delivery, potential locations for a Police Department shooting range and driving safety courses. Searching for a site for the Department of Motor Vehicles, etc. Much of this work was trying to identify opportunities for cost savings or compliance.*

Personal Reference not related to Governing agencies work:

Jim Brabeck*President**Farm Supply**(805) 441-6321 personal cell phone***NO CURRENT LITIGATION, OUTSTANDING JUDGMENTS, LIENS AND CONFLICTS OF INTEREST**

We are not currently, nor have ever been, in litigation. Moreover, there no known conflicts of interest in our working with the City Morro Bay. Stafford McCarty nor its principals own real

property within the area of service being proposed.

As a general rule, Stafford McCarty Commercial Real Estate does not practice dual representation.

FEE SCHEDULE:

Our standard Fee Schedule is attached below.

Other thoughts.....

A. If applicable, hourly rates as may be applicable to special (non-commission) project analysis.

Typically, we have an initial retainer, against which we bill at an hourly rate of \$150 per hour. Commissions are usually credited against the retainer in situations in which the City was responsible for fees. That being said we look to the first sources of commission fees from the Seller, especially if it is an asset which is formally listed.

B. Potential other costs the City of Morro Bay may encounter in marketing these assets.

Although not specifically related to service work with Stafford McCarty Commercial Real Estate, the City should be prepared to be able to present for each property:

- Preliminary Title Reports
- Environmental Assessments (Phase 1 and possibly 2 if needed)
- Natural Hazard Reports
- Seller Property Disclosures including HVAC and structural audits (other than land) on
- any of the assets it wants to sell or lease

APPENDICES – ADDITIONAL CASE STUDIES

Federal Express, San Luis Obispo and Santa Maria



San Luis Obispo

Stafford-McCarty represented and procured the investor and sited the asset for the San Luis Pension Trust.

Santa Maria

Stafford-McCarty represented the investor (sports celebrity) and sited and procured the asset as a build-to-suit shown here. 40,000 square feet



Level 3 Communications, San Luis Obispo



Stafford-McCarty first represented a local investor and acquired the site approx. 11-acre site from Vons and then resold the approx. 30,000 square feet on 4.5 acres, multiple parcels.

Stafford McCarty represented the ownership, co-brokered the transaction with a Level 3 national representative.



FairSky Business Park, Santa Maria



Multiple sales of 20,000 square feet buildings within this Tech Park, one shown above.

20,000 square feet leased investment sale.
Stafford-McCarty represented the initial investor, located the vacant property, installed a tenant and sold the building to a second investor.

Holly Sugar, Santa Maria



733 Acres of Industrial Land with numerous manufacturing buildings, warehouses and office facilities. Extensive exposure was made for this unique asset. Stafford-McCarty represented Holly Sugar, listed the property and produced the Buyer.



Stafford-McCarty interfaced with Corporate executives and legal counsel throughout this transaction. Imperial Holly Sugar went on to hire Stafford-McCarty to perform asset valuation and disposition analysis throughout the state for their other facilities.

Stafford McCarty Commercial Real Estate
Brokerage Qualifications, City of Morro Bay August 2017

Syndicate Systems, Paso Robles



207,000 square feet, manufacturing, warehouse and office.

This is one of the largest and most complex manufacturing facilities in the entire central coast. The building being large for the market was divided for several tenant operations.

Stafford-McCarty represented Syndicate Systems (Leggett and Platt), listed the property and procured the out of area investor via a direct contact made.



Bristol-Myers Squibb, Paso Robles



40,800 square feet.

Bio-medical manufacturing, clean room and office. Stafford-McCarty represented, listed the property and procured the sub-lessee.

This facility had a large clean room manufacturing component





SUPPLEMENTAL SELECTED CASE STUDIES
TO THE
BROKERAGE QUALIFICATIONS
FOR
REAL ESTATE MARKETING AND BROKERAGE SERVICES
CITY OF MORRO BAY

EXPERIENCE

Stafford-McCarty has a breadth and depth of experience locating and selling hospitality and mixed use projects. The following are summarized case studies focusing on:

- 1) Experience with hospitality and downtown mixed use transactions,*
- 2) Strategic partnering with the ownerships and/or buyers and*
- 3) Working with governing agencies to obtain the necessary entitlements.*

Stafford McCarty is presently working with multiple developers to site projects.

Santa Maria Hotel Development

Stafford McCarty listed and sold this 5.07 acre site to a Bay Area hotel developer. It was branded as Marriott Fairfield.

Significance: Complex parcel configuration; parcels were previously merged and needed to be re-split for financing purposes.



Santa Maria Hotel Development

A second adjoining parcel was later developed into a Candelwood extended stay hotel.

Significance: The transaction was complex with multiple option payments being made to accommodate the financing of the neighboring hotel. Value was created for the ownership through the re-establishing of separate parcels.



Santa Maria Hotel Site Ground Lease

Stafford McCarty worked with a local Santa Maria land owner and Bay Area hotelier to create this 2.2 acre hospitality site.

Strategy: As the ownership did not want to sell, Stafford McCarty was able to successfully negotiate a ground lease.

Significance: To create this opportunity for the hotel site, a lot line adjustment was obtained and recorded as well as creating the concept plan for an approximate 110 room hotel.



Pismo Beach Hotel Acquisition and Upgrade

This sale was a bank owned property.

Significance: Stafford McCarty worked with this Santa Barbara hotelier for over a year of diligent follow up with the lender as the hotelier (Buyer) wanted to purchase this boutique hotel for its private water access. When the property quietly became available the Buyer stepped in. The property was subsequently remodeled.



Buellton Hotel Development

Stafford McCarty represented the Bank of Montecito (lender owned property) and worked with the City and the Buyer to obtain entitlements for this 3.35 acre sale to a San Luis Obispo hotelier.

Significance: A good portion of the land area was in the flood plain. Stafford McCarty recommended engineering studies to determine buildable portions and multiple flood zones to establish pricing before it went to market.



San Luis Obispo Mixed Use Development

Sale of existing, aged asset positioned for future demolition and redevelopment into a mixed use commercial property.

Significance: Stafford McCarty worked with the Seller to determine the highest and best use and secured multiple buyers for this downtown property of approximately 34,000 sq. ft of land zoned downtown commercial.



San Luis Obispo Parcel Split for Hospitality

Stafford McCarty worked strategically with the neighboring restaurant owner to parcel off surplus land for commercial tourist uses.

After the lot split the land was sold to a hotelier who developed a Hampton Inn.

Significance: Stafford McCarty added value for the ownership of the land by advising and assisting the ownership with creating market size parcels.



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AGENDA NO: A-12

MEETING DATE: December 12, 2017

Staff Report

TO: Honorable Mayor and City Council **DATE:** December 7, 2017

FROM: Eric Endersby, Harbor Director

SUBJECT: Adoption of (i) Resolution No. 67-17 Approving the New Amendment #1 to the New Lease Agreement between the City of Morro Bay and Boatyard LLC for Lease Site 89/89W, Located at 845 Embarcadero, and Commonly Known as The Boatyard, and Rescinding the Approval of the Previous Amendment #1 and (ii) Resolution No. 68-17 Approving a New Master Lease Agreement between the City of Morro Bay and Boatyard LLC for Lease Site 90/90W, Located at 885 Embarcadero, and Commonly Known as Otter Rock Cafe

RECOMMENDATION

Staff recommend the City Council adopt Resolution No. 67-17, approving the new Amendment #1, and rescinding the Amendment #1 previously approved by the City Council on August 22, 2017, to the new Lease Agreement for Lease Site 89/89W, as proposed.

Staff further recommend the City Council adopt Resolution No. 68-17, approving a new Master Lease Agreement for Lease Site 90/90W, as-proposed.

ALTERNATIVES

Council may elect not to approve Resolution Nos. 67-17 and 68-17 for the lease agreements as-proposed, and direct staff accordingly.

FISCAL IMPACT

Pursuant to Amendment #1 of the Boatyard lease agreement, in today's dollars and current revenue and appraised site values, the Harbor Fund will see an approximate \$478,000 decrease in total rent paid on this site over ten years, whereinafter the rent will revert to rent levels as stipulated in the lease. That is in recognition of the tenant expending at least \$1.4M for site rehabilitation and the parties agreeing to release each other from any and all potential liability that could have likely resulted from the seawall failure.

Pursuant to the Otter Rock lease agreement, the Harbor Fund will see an approximate \$467,000 decrease in total rent paid on this site over ten years, whereinafter the rent will revert to rent levels as stipulated in the lease. That is in partial recognition of the tenant expending approximately \$435,000 on significant site deficiencies and renovation of the site to more modern code standards and greater marketability, which should bring increased percent gross revenues in the long run. This reduction also reflects release from any and all potential liability on the adjoining Boatyard seawall and revetment repairs contemplated under that lease agreement.

It should be noted the time cost of money, increasing gross revenues and higher site appraisals are *not* factored into the above calculations; and, therefore, the actual impacts to the Harbor Fund will likely be less over time.

01181.0001/431269.1

Prepared By: EE

Dept Review: EE

City Manager Review: _____

City Attorney Review: JPW

BACKGROUND

In 2015, a large portion of the seawall at the Boatyard site suffered a major failure, the cause of and legal responsibility for which is of significant dispute. To prevent the wall from completely failing, the Tenant obtained emergency repair permits and Associated Pacific Constructors effected a temporary repair.

After nearly two years of discussions with the Boatyard tenant, staff negotiated a cooperative and beneficial “package” to deal with the seawall failure and provide a global resolution of all legal claims resultant of that failure and other disputed lease management issues, with the end result being on October 11, 2016 the City Council approved a new Master Lease Agreement (MLA). The Council was kept aware of and provided input for those negotiations during several closed sessions.

Because of several possible remaining financial unknowns with the estimated \$1.4M seawall and revetment repair that could reveal themselves as time and work on the project progressed, the new MLA included a proviso wherein the Tenant could “reopen” negotiations if a \$60,000 estimated project spending cap above \$1.4M was reached. That cap was met in the spring of this year, whereas Tenant and staff have reopened negotiations.

In addition, the Boatyard tenant has received Planning Commission approval for the seawall and revetment repair project, which also includes a substantial rehabilitation and rebuild of the slips and docks at the site.

At the Otter Rock site, the Boatyard tenant is in a purchase escrow of the Otter Rock lease to settle a legal dispute with that leaseholder. Because of the integrated nature of the seawall and revetment improvements to be completed on the Boatyard site and pursuant to the new MLA for the Boatyard, and some of the improvements on the Otter Rock site encroach into the Boatyard site, it warrants combining of those projects.

In addition, because significant structural, maintenance and repair deficiencies on the Otter Rock site improvements have been identified, the Boatyard tenant is proposing to mitigate those deficiencies, as well as completing a significant remodel of the Otter Rock building to more modern code requirements and waterfront market conditions, as a combined Boatyard/Otter Rock rehabilitation/remodel project, the Boatyard tenant is requesting a new MLA on the Otter Rock site as part of a global rehabilitation of the two sites and settlement of the Boatyard seawall issue.

DISCUSSION

The proposed Amendment #1 to the new MLA for the Boatyard lease site to once again settle the dispute over the seawall failure consists of the following significant lease section element highlights:

1. Section 1.02, Lease Contingency: provided the California Coastal Commission and other necessary governmental permitting bodies permit the seawall/revetment repair and dock project without “material design and/or structural change” from what the Planning Commission approved, no further lease considerations or concessions will be made and the Tenant will be obligated to complete the project.
2. Section 1.03, Effective Date and Term: The effective date of the new MLA will be when it is signed by both parties. The 47-year term will commence 180 days after the first calendar month when all required permits per Subdivision 13.03 A. of the lease are obtained, which permit acquisition has timeline performance standards. The current (old) Boatyard lease has ~24 years left on its term. In addition, tenant has the right, with 12-month’s written notice, to unilaterally terminate the lease beginning on the 30th year of the lease.

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3. Section 2.01, Annual Minimum Rent: the minimum annual guaranteed starting rent will be \$45,000 per year, with normal five-year reappraisal and annual CPI adjustments. The current new MLA annual rent is \$58,000/year.

In addition, beginning with the commencement date, as described in Paragraph 2., above, no rent will be due for a 180-day period to accommodate the impacts of construction anticipated during that period.

4. Section 2.02, CPI Adjustment to Annual Minimum Rent: annual CPI cap (increase or decrease) of 1%, unless the CPI increases or decreases more than 6%, then the CPI adjustment will be 1%, plus half increase or decrease over 6%. The current new MLA has a 2.5% cap, plus the over 6% provision.
5. Subdivision 2.03 D, Calculation of New Minimum Rent: new annual minimum rent at the five-year reappraisal and minimum rent-setting marks will be based on the greater of 4% of the appraised value of the leased property, or 65% of the average of the total yearly rent payable during the previous five-year period. The current new MLA has a 6% of appraised value provision, with the 65%/five-year average unchanged.
6. Section 2.07, Semi-Annual Rent Credit: new section adding a semi-annual rent credit of \$19,800 (\$39,600 per year) to be applied to the first ten years of the new MLA term.
7. Section 3.01, Permitted Uses: provides clarifications on the allowed uses of the site, with said uses subject to alignment with current Conditional Use Permit and/or Coastal Development Permit allowances on the site. On commencement, said uses include retail sales and service, coffee shop, wine tasting room, beer and wine sales, boat excursion ticket sales, passenger for hire operations, boat rental and berthing, kayak rentals and launches, and public and private restrooms.

New allowed uses, with the requirement an appropriate Minor Use Permit be obtained, are office space to serve the Otter Rock lease site, and one liveaboard (provided the liveaboard ordinance is complied with).

8. Subdivision 13.03 A, Schedule for the Rehabilitation Project; clarification of tenant's obligations to complete the revetment/seawall and dock project with regard to performance and timelines.

A copy of Amendment #1 to the new MLA is included with this staff report as Attachment #1.

The proposed new MLA for the Otter Rock lease site consists of the following significant lease section element highlights:

1. Section 1.03, Termination of Steinmann Lease: as a condition of closing the escrow for the sale of the Otter Rock site, a termination document for the current Otter Rock MLA shall be executed between all parties concurrent with the effective date of the new Otter Rock MLA. Until said escrow closes, the current Otter Rock tenant (Steinmann) shall be fully responsible for the site under the terms of the existing MLA.
2. Section 1.04, Lease Contingency: tenant can terminate the new Otter Rock MLA in the event: (i) it exercises its termination rights under the contingency provided in Section 1.02 of the new Boatyard MLA Amendment #1, (ii) tenant is unable to obtain before October 31, 2018, the

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necessary governmental permitting necessary for the rehabilitation of the Otter Rock as described in Section 13.01 of the MLA without “material design and/or structural change” to the project, (iii) the permits, construction and repair proposed in the Otter Rock rehabilitation project cannot be conducted concurrently with the revetment/seawall repair in the Boatyard lease site rehabilitation project or (iv) escrow on the sale of the Otter Rock site fails to close.

3. Section 1.05, Effective Date and Term: The effective date of the new MLA will be when it is signed by both parties. The 47-year term to commence 180 days after the first calendar month when all required permits per Subdivision 13.03 A. of the Boatyard lease are obtained and all required permits per Subdivision 13.02 F. of the Otter Rock lease are obtained, which permit acquisition has timeline performance standards. The current Otter Rock lease has ~23 years left on its term. In addition, tenant has the right, with 12-month’s written notice, to unilaterally terminate the lease beginning on the 30th year of the lease.
4. Section 2.01, Annual Minimum Rent: the minimum annual guaranteed starting rent will be \$35,000 per year, with normal five-year reappraisal and annual CPI adjustments. The current MLA annual rent is ~\$39,000/year.

In addition, beginning with the commencement date, as described in Paragraph 3., above, no rent will be due for a 180-day period to accommodate the impacts of construction anticipated during that period.

5. Section 2.01, CPI Adjustment to Annual Minimum Rent: annual CPI cap (increase or decrease) of 1%, unless the CPI increases or decreases more than 6%, then the CPI adjustment will be 1% plus half increase or decrease over 6%. The current MLA has no CPI caps.
6. Section 2.03, Calculation of New Minimum Rent: new annual minimum rent at the five-year reappraisal and minimum rent-setting marks will be based on the greater of 4% of the appraised value of the leased property, or 65% of the average of the total yearly rent payable during the previous five-year period. The current MLA has an 8% of appraised value and 75% of the five-year average provisions.
7. Section 2.04, Percentage Rent: percentage rent shall be 3% for all uses for the first 20 years of the MLA, and 5% thereafter. The current MLA has a 5% requirement on all uses.
8. Section 2.07, Semi-Annual Credit: new section adding a semi-annual rent credit of \$12,500 (\$25,000 per year) to be applied to the first ten years of the new MLA term.
9. Section 3.01, Permitted Uses: provides clarifications on the allowed uses of the site, with said uses subject to alignment with current Conditional Use Permit and/or Coastal Development Permit allowances on the site. On commencement, said uses include restaurant dining room, take-out service, bar service of food and beverages, including alcoholic beverages, gift and retail sales and rental of dock space.

New allowed uses, with the requirement an appropriate Minor Use Permit be obtained, are wine tasting, outside barbecue, live and recorded entertainment and music, wholesale and retail seafood processing and sales, use of dock space for loading or unloading seafood or mariculture products, boat excursion ticket sales, tour boats up to 38 seats and boat rental and berthing.

10. Section 13.02, Schedule for the Rehabilitation Project: clarification of tenant's obligations to complete the rehabilitation and remodel project with regard to performance and timelines.

11. Section 13.03, Site Integrations: allows a subtenant on the Boatyard site to rent dock space on the Otter Rock site for commercial passenger for hire operations.

Also allows for a subtenancy on the Boatyard site for the office needs of the tenant on the Otter Rock site.

12. Section 13.04, Sale of Premises: subject to the normal assignment and assumption requirements in the lease, tenant shall have the option to assign, sell, or otherwise transfer tenant's entire interest in the Otter Rock lease site 90/90W (land and water portions) to the same person/entity that owns the Boatyard lease site 89/89W, or, alternatively, to sell lease site 90 (land) and lease site 90W (water) separately, so long as lease site 90W remains under the same ownership as the ownership of either Lease Site 89/89W or with Lease Site 90.

A copy of the new MLA for the Otter Rock site is included with this staff report as Attachment #2.

CONCLUSION

Approval of Amendment #1 to the Boatyard site MLA and new MLA on the Otter Rock site will ensure a global resolution and settlement of numerous issues and potential litigation resulting from the failure of a significant portion of a seawall and other matters related to the adjoining sites, including integration of the two individual site rehabilitation projects into one cohesive project. When completed, the adjoining sites will be significantly improved, and in the long run should generate significantly more revenues than are currently produced.

As such, staff recommend the City Council approve Resolution No. 67-17, included with this staff report as Attachment #3, and approve Resolution No. 68-17, included with this staff report as Attachment #4.

ATTACHMENTS

1. Amendment #1 to the new Master Lease Agreement for Boatyard lease site 89/89W.
2. New Master Lease Agreement for Otter Rock lease site 90/90W.
3. Resolution 67-17.
4. Resolution 68-17.

**AMENDMENT #1 TO THE LEASE AGREEMENT FOR
LEASE SITE 89/89W, LOCATED AT 845 EMBARCADERO**

This Amendment ("this Amendment #1") is made and entered into as of this 12th day of December, 2017, by and among the City of Morro Bay, a municipal corporation of the State of California, hereinafter called "City," and Boatyard, LLC, a California limited liability company, hereinafter called "Tenant." (Collectively, City and Tenant are sometimes referred to herein as the "Parties".)

WHEREAS, this Amendment #1 is to that certain Lease, which was signed on behalf of the Parties and is effective as of October 11, 2016 (the "Master Lease");

WHEREAS, pursuant to the Lease Contingency set forth in Section 1.02 of the Master Lease, Tenant may terminate the Master Lease under certain circumstances;

WHEREAS, Tenant believes at least one of the circumstances that would allow it to terminate the Master Lease has occurred, but rather than exercise that right of termination, Tenant has proposed changes to the Master Lease, under which that right to terminate will be modified, and Tenant will proceed with the Rehabilitation Project (as defined in the Master Lease with the new Exhibit B as replaced below);

WHEREAS, Tenant has already received the necessary approvals from City for a Concept Plan and Precise Plan for the Rehabilitation Project;

WHEREAS, Tenant has timely filed (as required by the Master Lease) a complete application with the California Coastal Commission for a revised Coastal Development Permit for the Rehabilitation Project, as approved by the Concept Plan and Precise Plan; and

WHEREAS, the Parties desire to amend the Master Lease so the Rehabilitation Project will proceed.

NOW THEREFORE, Tenant and City agree, as follows:

1. Unless expressly stated herein, words used in this Amendment #1 shall have the same meaning as stated in the Master Lease, except to the extent the context requires otherwise.
2. The foregoing recitals are incorporated into this Amendment #1 as true and correct.
3. The Parties acknowledge and agree the Current Lease Agreement and all of the terms and conditions of the Current Lease Agreement are in full force and effect, including but not limited to the tolling period to bring any claim or action until the Commencement Date of the Master Lease.
4. Exhibit B to the Master Agreement is replaced, in its entirety, by the Exhibit B, attached hereto and made a part hereof by this reference. Each reference to Exhibit B in the Master Lease shall be deemed to be a reference to the Exhibit B attached hereto. Furthermore, the parties agree that all references in the Master Lease to the Rehabilitation Project shall be deemed to be a reference to the new Exhibit B attached hereto.



5. Section 1.02 of the Master Lease is hereby amended in its entirety to read as follows:

Section 1.02 Lease Contingency.

TENANT shall have the right to give CITY written notice of termination of this Lease, if, (i) all Permits (as defined in Subdivision 13.03 A.) cannot be obtained without any material design and/or structural change required to the Rehabilitation Project on or before October 31, 2018; and/or (ii) the seawall/revetment on Lease Site 89/89W has collapsed prior to TENANT'S contractor's commencement of the Rehabilitation Project for the repair of the seawall/revetment to the extent a material design and/or structural change is then required to repair the seawall/revetment; and/or (iii) TENANT does not close the escrow for the purchase of the Otter Rock Cafe with the current subtenant on Lease Site 90/90W. Upon the occurrence of any of those contingencies, TENANT may deliver written notice to CITY of termination of this Lease, and neither Party shall have any further obligation to the other Party and this Lease shall be null and void, and the Current Lease Agreement shall continue in full force and effect. The parties agree, prior to the effective date of this Amendment a timely application has been filed with City and with the California Coastal Commission.

The parties acknowledge and agree nothing in this section shall obligate TENANT to file any appeal or resubmit any application to any applicable governmental agency after such governmental agency makes a finding, provides a notice, or issues a Permit with some item that would require any material design or structural change to the Rehabilitation Project.

Notwithstanding anything contained in the Lease, including this section above, prior to the commencement of the Rehabilitation Project, TENANT shall cause TENANT'S contractors to make a one-time maintenance on the temporary repairs TENANT and TENANT'S contractors deem necessary to the previously installed temporary seawall repairs performed by Associated Pacific Contractors. CITY acknowledges and agrees all maintenance to the temporary repairs of the seawall on the Premises shall not: (i) constitute commencement of the Rehabilitation Project; (ii) create any legal obligation of TENANT to construct the Rehabilitation Project, except as expressly set forth in the Lease; (iii) constitute any guarantee or representation by TENANT and/or TENANT'S contractors, whatsoever, including, but not limited to, for how long the maintenance and/or the temporary repairs will be adequate and sufficient; (iv) obligate TENANT or TENANT'S contractors to perform any additional maintenance, repairs, or other work; or (v) void or limit, in any manner, TENANT'S right to exercise TENANT'S contingencies to terminate the Lease set forth in this section above.

6. Section 1.03 of the Master Lease is hereby amended in its entirety to read as follows:

Section 1.03 Effective Date and Term.

The effective date of this Lease Agreement shall be the date it has been signed on behalf of CITY, as long as it has also been signed on behalf of TENANT. The term of this Lease shall be a period of 47 years (the "Term"), commencing on the first day of the complete calendar month one hundred eighty (180) days following TENANT'S receipt of all of the "Permits," as defined in Section 13.03 A. (the "Commencement Date"). Notwithstanding the foregoing, TENANT shall have the right to terminate this Lease beginning on the thirtieth (30th) year of the Lease by delivering written notice of termination to CITY at least 12

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months prior to the termination date in TENANT'S written notice. Unless sooner terminated as herein provided, the Term shall terminate without notice on the forty seventh (47th) annual anniversary after the Commencement Date. Within 5 days after the Commencement Date, the parties agree to sign a Commencement/Termination Date Memo, substantially similar to Exhibit C, attached hereto.

7. The first sentence of Section 2.01 of the Master Lease is hereby amended to read as follows:

TENANT agrees to pay to City a minimum guaranteed annual rental for the use and occupancy of the Premises, in an initial amount of \$45,000 per year (the "Minimum Rent"), payable in advance in equal semiannual installments on January 1 and July 1 each year during the term of the lease.

8. Section 2.01 is amended by adding a last sentence thereto to read as follows:

Notwithstanding the foregoing and in partial consideration of completion of the Rehabilitation Project and Release, established by Section 7.11 and changes made to Section 1.02 and Subdivision 13.03 A. by that certain Amendment #1 to this Lease, effective December 12, 2017, CITY agrees TENANT shall not be required to pay any Minimum Rent or Percentage Rent (defined below) for the 180-day period commencing on the Commencement Date.

9. Section 2.02 of the Master Lease is hereby amended in its entirety to read as follows:

Section 2.02 CPI Adjustment to Annual Minimum Rent.

The Parties agree, as of every July 1 following the Commencement Date (each, a "CPI Adjustment Date"), except as outlined in Section 2.03 hereof, the annual Minimum Rent shall be adjusted in direct proportion to any upward or downward movement in the then current Consumer Price Index from the Consumer Price Index applicable on the Commencement Date (Base Index), but, in consideration of the reasons set forth in Section 1.02, above, that increase or decrease shall not exceed 1.0% in any one year; provided, that the parties agree, if:

(1) the CPI increases or decreases over 6%, then the maximum CPI increase or decrease shall be 1.0%, plus half of the increase or decrease over 6%. As an illustration only, if the CPI increase is 8%, then the new CPI rent calculation would be one half of the difference between 6% and 8%, or 1%, added to the maximum 1.0% for a new 2.0% CPI. The percentage adjustment for any given year shall be based on the monthly average Index for the calendar year immediately preceding the CPI Adjustment Date as compared with the Base Index. The Consumer Price Index referred to herein is the Consumer Price Index (all items indexes, all urban consumers) for Los Angeles - Anaheim - Riverside, California, compiled and published by the United States Department of Labor, Bureau of Labor Statistics, 1982-84 Base Year = 100 (the "Index"); and

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

CIB *[Signature]*

10. Subdivision 2.03 D. is amended and restated in its entirety to read as follows:

In partial consideration of completion of the Rehabilitation Project and Release, established by Section 7.11 and changes made to Section 1.02 and Subdivision 13.03 A. by that certain Amendment #1 to this Lease, effective December 12, 2017, the new Minimum Rent for the five-year period commencing on each Appraisal Adjustment Date shall be the greater amount of sixty-five percent (65%) of the average of the total yearly Rent payable during the previous five-year (5-year) period (as set out in paragraph C. above) or four percent (4.0%) of the fair market value of the Premises (as established in paragraph A. above) for the twenty (20) years following the Commencement Date, and then that will increase to the greater amount of sixty-five percent (65%) of the average of the total yearly Rent payable during the previous five-year (5-year) period (as set out in Paragraph C. above), or six percent (6.0%) of the fair market value of the Premises (as established in Paragraph A. above) for the remainder of the Term. The new Minimum Rent shall be divided by two to determine the semiannual payments and shall be paid by TENANT to CITY on the first of each January and July thereafter. That new Minimum Rent shall be adjusted each following year in proportion to any increase in the Consumer Price Index as set out in Section 2.02 of this Lease. The base index shall be adjusted upon each Calculation of new Minimum Rent as set out in this section so that the Base index for CPI adjustment shall be the Consumer Price Index for January 1 of the year of the calculation of new Minimum Rent.

11. Section 2.04 is amended to add the following new paragraph after the end of the first paragraph:

For an illustration only, if we assume the Minimum Rent payable by TENANT is \$48,000 and TENANT'S total yearly Gross Sales are \$1,800,000, then the Percentage Rent payable by TENANT to CITY would be \$6,000 calculated as follows: \$54,000 (3% of \$1,800,000) less \$48,000 (Minimum Rent already payable by TENANT).

12. The following new Section 2.07 is added to the Master Lease to read as follows:

Section 2.07 Semi-Annual Credit

In partial consideration of completion of the Rehabilitation Project and Release, established by Section 7.11 and changes made to Section 1.02 and Subdivision 13.03 A. by that certain Amendment #1 to this Lease, effective December 12, 2017, CITY agrees to credit against each semi-annual payment due to CITY pursuant to this Lease \$19,800 for twenty consecutive semi-annual payments due to CITY, commencing with the first full semi-annual payment due after the Commencement Date; provided, that if the semi-annual Minimum Rent payable is less than an applicable semi-annual credit, that excess credit shall not be refunded or carried over as a credit for any subsequent semi-annual payment.

13. Section 3.01 of the Master Lease is hereby amended in its entirety to read as follows:

Section 3.01 Permitted Uses.

The Premises shall, during the Term, be used for the purpose of operating and conducting thereon and therein the uses permitted by, and in compliance with (i) Conditional Use Permit (CUP) 30-99, A00-045 to CUP 30-99, CUP 15-99, CUP 16-01, CUP 28-02, Coastal Development Permits (CDP) CDP 3-99-064, CDP 3-93-017-A2, and CDP 3-17-0564 (when issued), and (ii), if issued, any new CUP or CDP number(s) or Minor Use Permits or amendment to any or all of those approvals, after a request from TENANT for the new CUPs, CDPs, Minor Use Permits or amendments, and for no other purpose

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(collectively, the "Entitlements"). The Parties agree and acknowledge all the terms and conditions contained in this Lease shall be deemed to be materially consistent with the Conditions of Approval as set forth in the Entitlements. On the Commencement Date, the Entitlements include the following permitted uses: retail sales and service, coffee shop, wine tasting room, beer and wine sales, boat excursion ticket sales, passenger for hire operations, boat rental and berthing, kayak rentals and launches, and public and private restrooms. In addition, the following uses are allowed, pursuant to issuance of one or more Minor Use Permits, as applicable: the existing office space for the business located on Lease Site 90/90W and one live-aboard unit on the Premises; provided, that as to the live-aboard, only to the extent permitted by Morro Bay Municipal Code ("MBMC") section 15.40. Upon receipt of a complete application and payment of processing fees for necessary Minor Use Permit(s), CITY'S Community Development Director shall, in good faith, review the application with the goal of finding a way, within the provisions of the applicable law, to approve the Minor Use Permit(s). Notwithstanding the foregoing, it is acknowledged and agreed by the Parties, TENANT has had under the Current Lease Agreement one live-aboard permit issued by the CITY and TENANT'S right to a live-aboard permit from the CITY shall be "grandfathered" and continue even in the event the CITY amends the MBMC. The Parties also agree nothing in this Lease limits TENANT'S legal ability to seek a revision to any land use entitlement to add or delete any uses to be allowed on the Premises.

14. The first sentence in Section 3.03 is replaced in its entirety with the following:

TENANT'S failure, in good faith, to actively and diligently conduct, or TENANT'S failure, in good faith, to actively and diligently pursue TENANT'S subtenants to actively and diligently conduct, the business authorized herein, constitutes a breach of this Lease and shall, at the option of CITY, terminate this Lease after all applicable notice periods and cure periods have expired pursuant to this Lease.

15. The first sentence of Section 3.07 of the Master Lease is hereby amended to read as follows:

TENANT shall, at no cost to CITY, comply with all of the requirements of all local, municipal, county, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, and shall faithfully observe in the use of the Premises all local, municipal, county, state and federal statutes, laws, rules, regulations and orders now in force or which may hereafter be in force, including, but not limited to, payment of prevailing wages as required by law (collectively, "Legal Requirements"); provided, that TENANT shall not be required to comply with any Legal Requirement imposed by CITY that would substantially deprive TENANT of a material benefit under this Lease, unless the Legal Requirements have been imposed or required by a county, state or federal authority or to preserve public health and safety and the latter are applied to similar businesses within CITY'S jurisdiction.

16. Subdivision 13.03 A. of the Master Lease is hereby amended in its entirety to read as follows:

A. Unless TENANT has delivered to CITY notice of termination of this Master Lease pursuant to Section 1.02, within sixty days after TENANT'S receipt of all approvals of the Rehabilitation Project from the California Coastal Commission, as evidenced by a "Notice of Intent Issue a Permit" and a final Coastal Development Permit, TENANT shall file complete applications for all necessary permits, permissions and certifications for the Rehabilitation

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Project, as then currently approved by CITY and the California Coastal Commission, from all other applicable governmental agencies, including, but not limited to, the Army Corps of Engineers and the Central Coast Regional Water Quality Control Board, where required. Unless TENANT has delivered to CITY notice of termination of this Master Lease pursuant to Section 1.02, within forty-five days after receipt of all necessary land use approvals from (i) CITY, including any changes to the Concept Plan and Precise Plan that may be required due to any other governmental agencies' approval, and (ii) all the governmental agencies listed above, TENANT shall file with CITY'S Community Development Department all necessary complete construction plans for CITY to issue valid building and other construction related permits for the Rehabilitation Project, as then currently approved by all applicable governmental agencies. All necessary building and other land use permits and approvals from CITY and all other applicable governmental agencies, including, but not limited to, the California Coastal Commission, the Army Corps of Engineers and the Central Coast Regional Water Quality Control Board, are hereinafter referred to collectively as the "Permits." For purposes of this Lease, "complete application" shall mean submission to the applicable governmental agency a satisfactory completed application form for the Rehabilitation Project, as then currently approved by all applicable governmental agencies, as required by that governmental agency, along with the payment of the fees required by that governmental agency.

17. The second sentence of Section 13.04 is replaced in its entirety with the following:

CITY shall process and grant, if legally possible, a request from TENANT to waive any requirement TENANT comply with Sections 1803.2 through 1803.6, J 104.3 and J 104.4 of the 2016 California Building Code.

18. Except as expressly stated herein, all provisions of the Master Lease shall remain in full force and effect.

19. The effective date of this Amendment #1 is the date first written above.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment #1 as of the date written above.

CITY OF MORRO BAY

BOATYARD, LLC

By: _____
Jamie L. Irons, Mayor

By: _____
Cliff Branch, Manager

APPROVED AS TO FORM:

Joseph W. Pannone, City Attorney

ATTEST:

Dana Swanson, City Clerk

LEASE

This LEASE is made and entered into by and between the CITY OF MORRO BAY, a municipal corporation of the State of California herein called CITY and BOATYARD, LLC, a California limited liability company herein called TENANT.) (CITY and TENANT are sometimes referred to herein separately as Party and collectively as Parties.)

WHEREAS, CITY currently leases to Josef Steinmann (Steinmann) a site ("Premises") in the City of Morro Bay, County of San Luis Obispo, State of California, described as Lease Site 90/90W and delineated on Parcel Map of CITY of Morro Bay No. 68-30, which map was recorded on October 10, 1968, in Book 3, Page 10 of Parcel Maps in the Office of the County Recorder, San Luis Obispo County, California (Map). A copy of the Map is attached hereto as Exhibit A and made a part hereof by reference. The lease between CITY and Steinmann is hereinafter referred to as the "Steinmann Lease";

WHEREAS, at TENANT'S request, Steinmann, as the current master tenant of the Premises, authorized CITY and TENANT to negotiate a new lease for the Premises pursuant to which TENANT would be the master lessee and CITY the master lessor and the Steinmann Lease would be terminated;

WHEREAS, TENANT desires to lease from CITY and CITY desires to lease to TENANT the Premises and CITY and TENANT have mutually agreed to enter into this lease agreement ("this Lease" or "this Lease Agreement);

WHEREAS, TENANT currently leases from CITY Lease Site 89/89W, which abuts the Premises, pursuant to that certain Assignment and Assumption of Lease Agreement dated January 11, 2006;

WHEREAS, on or about October 11, 2016, CITY and TENANT have entered into that certain new Master Lease Agreement for Lease Site 89/89W, as amended ("New MLA for Lease Site 89/89W") for a term of 45 years that, pursuant to Section 1.03 of the New MLA for Lease Site 89/89W, commences on the first day of the complete calendar year following TENANT'S receipt of all the permits, as defined in Section 13.03 of the New MLA for Lease Site 89/89W;

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Section 1.03 Termination of Steinmann Lease.

As a material condition of this Lease and concurrently with the effective date of this Lease Agreement, as described in Section 1.05, below, CITY and the tenant of the Steinmann Lease and each of that tenant's subtenants/renters shall execute a document, substantially similar to Exhibit E, terminating the Steinmann Lease and any sublease/rental agreement related to the Steinmann Lease (the "Termination Document"). Because TENANT is not following CITY'S typical process of having the Steinmann Lease, which is still effective, assigned to it and assuming the obligations of the Steinmann Lease to become a City tenant of Lease Site 90/90W, a material condition to the close of escrow for the transaction between TENANT and the tenant of the Steinmann Lease related to TENANT'S purchase of the that tenant's business interests related to Lease Site 90/90W is for the fully executed Termination Document to be deposited, into that escrow before its closure.

Section 1.04 Lease Contingency.

TENANT shall have the right to give CITY written notice of termination of this Lease and this Lease shall be void and of no force or effect if, (i) TENANT exercises the contingency in Section 1.02 of the New MLA for Lease Site 89/89W, as amended; or (ii) TENANT is not able to obtain all Permits (as defined in Section 13.02 F., below) without any material design and/or structural change for the Rehabilitation Project on or before October 31, 2018; or (iii) the Permits and the construction of the repairs and improvements for the Rehabilitation Project cannot be obtained and completed concurrently with the portion of the Rehabilitation Project for Lease Site 89/89W related to the repair of the seawall/revetment for Lease Site 89/89W without any material design and/or structural change for the Rehabilitation Project or (iv) TENANT does not close the escrow for the purchase of the Otter Rock Cafe with the current subtenant on Lease Site 90/90W. The parties acknowledge time is of the essence in obtaining all Permits for the Premises because TENANT has already submitted a "complete application" to the California Coastal Commission for the Rehabilitation Project on Lease Site 89/89W.

Section 1.05 Effective Date and Term.

The effective date of this Lease Agreement shall be the date it has been signed on behalf of CITY, as long as it has also been signed on behalf of TENANT. The term of this Lease shall be a period of forty-seven (47) years (the "Term"), commencing on the first day of the complete calendar month one hundred eight (180) days following TENANT'S receipt of all of the "Permits," as defined in Section 13.03 A. of the New MLA for Lease Site 89/89W and for all "Permits," as defined in Section 13.02 F. of this Lease (the "Commencement Date"). Notwithstanding the foregoing, TENANT shall have the right to terminate this Lease beginning on the thirtieth (30th) year of the Lease by delivering written notice of termination to CITY at

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least 12 months prior to the termination date in TENANT'S written notice. Unless sooner terminated as herein provided, the Term shall terminate without notice on the forty-seventh (47th) annual anniversary after the Commencement Date. Within 5 days after the Commencement Date, the parties agree to sign a Commencement/Termination Date Memo, substantially similar to Exhibit C, attached hereto.

Section 1.06 No Extensions.

The Term shall not be extended nor shall this Lease be renewed without a mutually agreeable amendment signed by the Parties.

Section 1.07 Hold Over.

If TENANT holds the demised Premises after the expiration of the Term with the consent of CITY, express or implied, then such holding over (in the absence of a written agreement between CITY and TENANT with respect thereto) shall be deemed to create a tenancy from month-to-month, terminable on thirty-days' written notice from either party to the other, at a monthly rental equal to one hundred fifty percent (150%) of the average total Rent per month for the twelve (12) months immediately preceding the expiration of the Lease, and otherwise subject to each and every term, covenant and condition of this Lease.

Article 2 RENT

Section 2.01 Annual Minimum Rent.

TENANT agrees to pay to CITY a minimum guaranteed annual rental for the use and occupancy of the Premises, in an initial amount of \$35,000.00 per year (the "Minimum Rent"), payable in advance in equal semiannual installments on January 1 and July 1 each year during the term of the Lease. If the Commencement Date is other than January 1 or July 1, then TENANT shall pay, on the Commencement Date, then the proportionate amount of the Minimum Rent payable for the period from the Commencement Date until the next payment date of January 1 or July 1, as the case may be. If the term of the Lease expires on a date other than December 31 or June 30, then TENANT'S final installment of Minimum Rent shall be proportionate to the time remaining in the term. All Rent, including the Minimum Rent and the Percentage Rent, shall be paid in lawful money of the United States of America, without offset or deduction and shall be paid to CITY at City Hall located at 595 Harbor Street, Morro Bay, California, or at such other place or places CITY may from time to time designate by written notice delivered to TENANT.

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Notwithstanding the foregoing and in consideration of the reasons set forth in Section 1.02, above, CITY agrees TENANT shall not be required to pay any Minimum Rent or Percentage Rent (defined below) for the 180-day period commencing on the Commencement Date.

Section 2.02 CPI Adjustment to Annual Minimum Rent.

The Parties agree, as of every July 1 following the Commencement Date (each, a "CPI Adjustment Date"), except as outlined in Section 2.03 hereof, the annual Minimum Rent shall be adjusted in direct proportion to any upward or downward movement in the then current Consumer Price Index from the Consumer Price Index applicable on the Commencement Date (Base Index), but, in consideration of the reasons set forth in Section 1.02, above, that increase or decrease shall not exceed 1.0% in any one year; provided, that the parties agree, if:

(1) the CPI increases or decreases over 6%, then the maximum CPI increase or decrease shall be 1.0%, plus half of the increase or decrease over 6%. As an illustration only, if the CPI increase is 8%, then the new CPI rent calculation would be one half of the difference between 6% and 8%, or 1%, added to the maximum 1.0% for a new 2.0% CPI. The percentage adjustment for any given year shall be based on the monthly average Index for the calendar year immediately preceding the CPI Adjustment Date as compared with the Base Index. The Consumer Price Index referred to herein is the Consumer Price Index (all items indexes, all urban consumers) for Los Angeles - Anaheim - Riverside, California, compiled and published by the United States Department of Labor, Bureau of Labor Statistics, 1982-84 Base Year = 100 (the "Index"); and

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

Section 2.03 Calculation of New Minimum Rent.

At the end of the initial five years and of each five-year (5-year) period thereafter, a new Minimum Rent shall be calculated for the following five-year (5-year) period (each, a "Subsequent Rental Period") as follows:

A. The Minimum Rent shall be subject to adjustment by appraisal as of the fifth anniversary of the Commencement Date and every five years thereafter (each, an "Appraisal

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

B. In the event the appraisal process is not concluded on or before the Appraisal Adjustment Date, the Minimum Rent shall be adjusted retroactively to such Appraisal Adjustment Date as set out herein below when said appraisal process is completed.

C. The total Rent payable, including both the Minimum Rent and the Percentage Rent for each year within the applicable previous five-year (5-year) period, shall be averaged to produce the average annual total Rent payable for such previous period.

D. In consideration of the reasons set forth in Section 1.02, above, the new Minimum Rent for the five-year period commencing on each Appraisal Adjustment Date shall be the greater amount of sixty-five percent (65%) of the average of the total yearly Rent payable during the previous five-year (5-year) period (as set out in paragraph C. above) or four percent (4.0%) of the fair market value of the Premises (as established in paragraph A. above) for the twenty (20) years following the Commencement Date and then that will increase to the greater amount

of sixty-five percent (65%) of the average of the total yearly Rent payable during the previous five-year (5-year) period (as set out in Paragraph C. above), or six percent (6%) of the fair market value of the Premises (as established in Paragraph A. above) for the remainder of the Term. The new Minimum Rent shall be divided by two to determine the semiannual payments and shall be paid by TENANT to CITY on the first of each January and July thereafter. That new Minimum Rent shall be adjusted each following year in proportion to any increase in the Consumer Price Index as set out in Section 2.02 of this Lease. The base index shall be adjusted upon each Calculation of new Minimum Rent as set out in this section so that the Base index for CPI adjustment shall be the Consumer Price Index for January 1 of the year of the calculation of new Minimum Rent.

Section 2.04 Percentage Rent.

A. In addition to the Minimum Rent, in consideration of the reasons set forth in Section 1.02, above, commencing on the Commencement Date and continuing until the twentieth (20th) annual anniversary of the Commence Date TENANT agrees to pay to CITY at the time and in the manner hereinafter specified, as additional Rent for the use and occupancy of the Premises, a sum equal to three percent (3%) of TENANT'S Gross Sales, hereinafter defined, less the amount of the Minimum Rent payable pursuant to this Lease (the "Percentage Rent"). Thereafter, for the remainder of the Term, the Percentage Rent applicable and due will be five percent (5%) of TENANT'S Gross Sales less the amount of Minimum Rent payable for the fiscal year pursuant to this lease.

For an illustration only, if we assume the Minimum Rent payable by TENANT is \$47,000 and TENANT'S total yearly Gross Sales are \$1,900,000, then the Percentage Rent payable by TENANT to CITY would be \$10,000 calculated as follows: \$57,000 (3% of \$1,900,000) less \$47,000 (Minimum Rent already payable by TENANT).

B. The term "Gross Sales," as used herein, shall mean (subject to the exceptions and authorized deductions as hereinafter set forth), the total selling price and the total gross amount received by TENANT from all rentals, merchandise sold and services rendered in, on or from the Premises by TENANT, its sublessees, licensees, or concessionaires, both for cash and on credit including, but not limited to, rentals of dockage space, leasing and servicing operations and ticket sales, and if on credit whether or not payment be actually made therefore, all charges for services, alterations or repairs made in or upon the Premises; the gross amount received by TENANT for merchandise sold, full-filled and paid for from business entirely conducted/transacted at Premises, either in person or through the internet or other media; and the

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

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

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

D. TENANT shall keep or cause to be kept full, complete, and accurate records, and books of account in accordance with accepted accounting and commercial practices showing the total amount of Gross Sales, as defined herein, made each calendar month in, on or from the Premises. Furthermore, TENANT shall at the time of sale and in the presence of the customer cause the full selling price of each piece of merchandise, each rental received and each service rendered in, on or from the Premises to be recorded in a cash register or cash registers that have cumulative totals and are recorded in accordance with standard commercial practices. The records, books of account and cash register tapes, including any sales tax reports TENANT may be required to furnish any government or governmental agency shall at all reasonable times be open to the inspection of CITY, CITY'S auditor, or other authorized representative or agent of CITY. TENANT consents to the release of sales tax information to CITY and on demand will furnish to CITY a copy of the sales tax reports, quarterly reports and any audit reports of sales for confidential internal use of CITY in determining Gross Sales for TENANT in, on or from the Premises.

E. By July 31 of each year, TENANT shall furnish CITY with a statement, to be certified by TENANT, as current, true and accurate, which shall set forth the Gross Sales of each department, sublessee, licensee and concession operating in, on or from the Premises for the previous twelve (12) calendar months, ending June 30, just concluded, and the authorized deductions, if any, therefrom ("Statement" or "Statements"); and with it TENANT shall pay to CITY the amount of the Percentage Rent which is due to CITY as shown thereby.

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F. Except as provided in this subsection F., CITY shall be entitled at any time within five years after the receipt of any such Percentage Rent payment, to question the sufficiency of the amount thereof and the accuracy of any Statement or Statements furnished by TENANT to justify the same. For the purpose of enabling CITY to check the accuracy of any Statement or Statements, TENANT shall for said period of five years after submission to CITY of any Statement or Statements keep all of TENANT'S records commercially necessary to establish in detail TENANT'S Gross Sales and any authorized deductions therefrom, as shown by any Statement or Statements, and shall upon request make the same available to CITY for examination for periodic auditing purposes.

Except as provided in this subsection F, although it is the policy of CITY to audit Tideland Trust tenants once every approximate five years, CITY may, once in any twelve-month period, cause an audit of the business of TENANT to be made by a public accountant of CITY'S own selection.

Notwithstanding the foregoing provisions of this Section 2.04 and in consideration of the reasons set forth in Section 1.02, above, CITY agrees not to conduct any audit of TENANT for any reason for a period of five years after the Commencement Date, unless CITY'S City Manager has substantial evidence to believe TENANT'S annual Gross Sales reporting during that period is not accurate. TENANT shall, upon receiving written notice of CITY'S desire for such an audit deliver and make available any and all sales tax reports TENANT and each subtenant has filed with the California Franchise Tax Board for the period being audited. If any or all of the sales tax reporting are not timely provided or are not reasonably adequate for auditing purposes, then TENANT shall deliver and make available all commercially necessary records to the public or certified public accountant selected by CITY. In addition, for any and all business transactions made by or on behalf of TENANT or any subtenant at the Premises not subject to sales taxes, all commercially necessary records shall be made available for auditing purposes.

In the event any audit or other review of records discloses that the amounts reported as Gross Sales was understated by TENANT by ten percent or more, CITY shall be entitled to recover from TENANT a penalty equal to one and one-half (1.5) times the Percentage Rent due pursuant to this Lease on such unreported amounts. Whenever any audit discloses Gross Sales were understated by any amount, TENANT shall immediately pay the additional Percentage Rent therein shown to be payable by TENANT to CITY, together with interest at the Default Rate thereon, from the date the Percentage Rent was payable until the date paid.

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Section 2.05 Reimbursements.

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

Section 2.06 Penalty and Interest.

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

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

Section 2.07 Semi-Annual Credit.

In partial consideration of completion of the Rehabilitation Project, CITY agrees to credit against each semi-annual payment due by TENANT to CITY pursuant to this Lease Twelve Thousand Five Hundred Dollars (\$12,500.00) for twenty consecutive semi-annual payments due to CITY, commencing with the first full semi-annual payment due after the Commencement Date; provided, that if the semi-annual Minimum Rent payable is less than an applicable semi-annual credit, that excess credit shall not be refunded or carried over as a credit for any subsequent semi-annual payment.

Article 3 USE OF PREMISES

Section 3.01 Permitted Uses.

The Premises shall, during the Term, be used for the purpose of operating and conducting thereon and therein the uses permitted by and in compliance with (i) Conditional Use Permit Number CUP 1692 Precise, CUP 1693 minor mod by PC, CUP16-92 major mod, and CUP 28-02, Coastal Development Permits (CDP) CDP 3-93-17, and CDP 3-93-017-A2 (when issued), and (ii), if issued, any new CUP or CDP number(s) or Minor Use Permits or amendment to any or all of those approvals, after a request from TENANT for the new CUPs, CDPs,

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Minor Use Permits or amendments, and for no other purpose (collectively, the "Entitlements"). The Parties agree and acknowledge all the terms and conditions contained in this Lease shall be deemed to be materially consistent with the Conditions of Approval as set forth in the Entitlements. On the Commencement Date, the Entitlements include the following permitted uses: restaurant dining room, take-out service, and bar service of food and beverage including alcoholic beverages, gift and retail sales, and rental of dock space. In addition, the following uses are allowed, pursuant to issuance of one or more Minor Use Permits, as applicable: wine tasting, outside barbecue, live and recorded entertainment and music, wholesale and retail seafood processing and sales, use of dock space for loading or unloading seafood or mariculture products, boat excursion ticket sales, tour boat(s) up to 38 seats and boat rental and berthing. Upon receipt of a complete application and payment of processing fees for necessary Minor Use Permit(s), CITY'S Community Development Director shall, in good faith, review the application with the goal of finding a way, within the provisions of the applicable law, to approve the Minor Use Permit(s). The Parties also agree nothing in this Lease limits TENANT'S legal ability to seek a revision to any land use entitlement to add or delete any uses to be allowed on the Premises.

Section 3.02 Unauthorized Use.

TENANT agrees to allow only those uses authorized in Section 3.01 hereinabove and any unauthorized use thereof shall constitute a breach of this Lease and shall, at the option of CITY, terminate this Lease.

Section 3.03 Operation of Business - Hours of Operation.

TENANT'S failure, in good faith, to actively and diligently conduct, or TENANT'S failure, in good faith, to actively and diligently pursue TENANT'S subtenants to actively and diligently conduct the business authorized herein, constitutes a breach of this Lease and shall, at the option of CITY, terminate this Lease, after all applicable notice periods and cure periods have expired pursuant to this Lease. TENANT shall during the Term conduct business of the nature specified in Section 3.01 of this Lease on the Premises in an efficient and diligent manner and keep the Premises open for the conduct of business continuously and without interruption for at least six hours each day of the year except one day each week and legal holidays. This provision shall not apply if the Premises shall be closed and the business of TENANT is temporarily shut down for a period not to exceed fourteen calendar days in any calendar year to make necessary repairs, maintenance or other construction deemed necessary by TENANT and/or for any longer period as reasonably necessary to complete the Rehabilitation Project. This provision shall not apply if the Premises shall be closed and the business of TENANT is

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temporarily shut down as authorized or required by CITY'S City Manager or on account of strikes, walkouts, or causes beyond the control of TENANT or for the death or illness of an officer, member or employee of TENANT, any subtenant, or officer, member of employee of any subtenant.

Section 3.04 Competition.

During the Term, TENANT shall not directly nor indirectly acquire or establish any similar or competing business within a radius of five (5) miles from the location of the Premises; provided, however, that TENANT may, with prior written approval from CITY, own or operate more than one business, whether or not competing and similar along the Embarcadero upon CITY lease sites. The purpose of this section is to prevent and prohibit TENANT from reducing revenue to CITY by diverting business from the operation at the Premises to another similar business owned by TENANT within CITY but not upon a CITY lease site from which CITY is paid rent based on Gross Sales.

Section 3.05 Hazardous Materials.

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

(2) TENANT shall promptly notify CITY of: (i) any enforcement, cleanup or other regulatory action taken or threatened by any governmental or regulatory authority with respect to the presence of any Hazardous Material on the Premises or the migration thereof from or to other property, (ii) any demands or claims made or threatened by any party against TENANT or the Premises relating to any loss or injury resulting from any Hazardous Material on or from the Premises, and (iii) any matters where TENANT is required by applicable law to give a notice to

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any governmental or regulatory authority respecting any Hazardous Material on the Premises. CITY shall have the right (but not the obligation) to inspect the Premises, to take such remedial action on the Premises, as CITY may deem appropriate, and to join and participate, as a party, in any legal proceedings or actions affecting the Premises initiated in connection with any environmental, health or safety law.

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

(4) Notwithstanding anything contained in this Section 3.05, TENANT and all subtenants of the Premises shall have the right to use oil, gas, diesel, and other Hazardous Material, but only in connection with motorized water craft at or near the docks on the Premises, as an integral part of the approved use of the Premises.

Section 3.06 Tidelands Trust.

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

Section 3.07 Compliance with Law.

TENANT shall, at no cost to CITY, comply with all of the requirements of all local, municipal, county, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, and shall faithfully observe in the use of the Premises all local, municipal, county, state and federal statutes, laws, rules, regulations and orders now in force or

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which may hereafter be in force, including, but not limited to, payment of prevailing wages as required by law (collectively, "Legal Requirements"); provided, that TENANT shall not be required to comply with any Legal Requirement imposed by CITY that would substantially deprive TENANT of a material benefit under this Lease, unless the Legal Requirements have been imposed or required by a county, state or federal authority or to preserve public health and safety and the latter are applied to similar businesses within CITY'S jurisdiction. The judgment of any court of competent jurisdiction, or the admission of TENANT in any action or proceeding against TENANT, whether CITY be a party thereto or not, TENANT has violated any of the Legal Requirements in the use of the Premises shall be conclusive of that fact as between CITY and TENANT.

Section 3.08 Waste or Nuisance.

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

Section 3.09 Use by CITY.

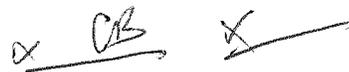
(1) Subject to TENANT'S rights hereunder to possession of the Premises, CITY may grant licenses to, or otherwise authorize, other persons and entities permitting uses of the Morro Bay Harbor, so long as no license or other interest over or to the Premises is conveyed, granted, or otherwise transferred for any commercial purpose, except for a public right-of-way to the docks and bay waters or that may otherwise be reasonably approved by TENANTS; provided, that the Parties understand the following applies to this and all Tidelands Trust lands pursuant to the Tidelands Trust Grant: There is hereby reserved, however, in the people of the State of California the absolute right to fish in the waters of said harbor with the right of convenient access to said waters over said lands for said purposes.

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

Article 4 CONSTRUCTION, ALTERATION AND REPAIRS

Section 4.01 Construction Approval.

(1) TENANT shall not make or permit any other person to make any alterations or structural additions or structural modifications to the Premises or to any structure thereon or



facility appurtenant thereto if the cost thereof shall exceed Ten Thousand Dollars, without the prior written consent of CITY. The consent to be obtained pursuant to this Section 4.01(1) shall be requested from the Harbor Director, or CITY'S designee, for CITY. If the Harbor Director or any future successor to the duties of CITY'S Harbor Director, or CITY'S designee, gives such consent to proceed, then it is understood such consent is given by CITY only in its capacity as the landlord under this Lease and not as the permit-issuing authority. TENANT remains obligated to obtain any needed building permits and comply with all applicable planning processes. Once the Permits are issued for the Rehabilitation Project, CITY will be deemed to have provided written consent for that project.

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

Section 4.02 Construction Bond.

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

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

(3) In lieu of the above referenced bonds, TENANT must: (i) demonstrate, to CITY'S reasonable satisfaction, TENANT'S reasonable financial liquidity of uncommitted and totally accessible assets equal to Three Hundred Seventy-five Thousand Dollars (\$375,000.00), (ii) post cash deposits equal to 100% of the soft and hard actual construction costs, or (iii) make other mutually agreeable arrangements to guarantee the completion of construction projects. In

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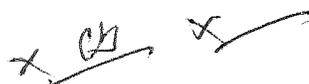
the event the contractor bonds the construction, CITY may be named as additional indemnitee to comply with these requirements.

Section 4.03 Mechanics' Liens.

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

Section 4.04 Ownership of Improvements.

The Parties agree CITY has the option and right to require TENANT to remove all buildings, structures, installations, improvements of any kind or other property belonging to or placed upon the Premises by TENANT at the termination of this Lease, however occurring, providing CITY gives notice, in writing, no later than one hundred eighty (180) days prior to the termination of the Lease, of its decision to require the improvements be removed. The Parties agree if CITY exercises its option, then at the termination of this Lease, however occurring, TENANT shall have one hundred twenty (120) days thereafter to remove all buildings, structures, facilities, installations, improvements and other property belonging to TENANT from the Premises, except the seawall/revetment, structural piers, pilings and posts, bulkheads, retaining walls, underground utilities and/or sewer and water lines, docks and dock improvements that are attached to piers, pilings, and posts, and/or the permanent foundations to



any improvements. If CITY exercises such option and TENANT fails to remove all such improvements and other property within sixty days after the termination of this Lease, then CITY shall have the right to have any or all such improvements and other property removed at the expense of TENANT. If CITY does not exercise its option to remove (or require the removal of) the improvements and other property, then title to such improvements and other property shall vest in CITY and TENANT shall not remove same.

Article 5 LEASEHOLD MORTGAGES

Tenant shall not mortgage, securitize or hypothecate the leasehold interest in whole or any part without the prior written approval of CITY, as evidenced by a resolution of CITY'S City Council. Notwithstanding the forgoing, CITY shall not unreasonably withhold, condition, or delay consent for TENANT to secure any mortgage against the Premises for up to seventy-five percent (75%) of the then current fair market value of the leasehold interest in the Premises, as long as the proceeds from such mortgage are used for improvements to the Premises or to reduce the interest applicable to then existing debt secured by the leasehold interest in the Premises.

Article 6 REPAIRS, MAINTENANCE AND RESTORATION

Section 6.01 Maintenance by TENANT.

At all times during the Term and subject to the percentage limitation set forth in Section 6.07, TENANT shall, at TENANT'S own cost and expense, keep and maintain all improvements now or hereafter on the Premises in good order and repair and in a safe and clean condition. Furthermore, TENANT shall, at TENANT'S own cost and expense, maintain at all times during the Term the whole of the Premises in a clean, sanitary, neat and orderly condition. CITY may, at the sole option of CITY, clean and clear the Premises, at TENANT'S cost and expense, in the event TENANT fails to clean and clear the Premises in accordance with this Section to the satisfaction of CITY after fifteen-days' written notice to TENANT from CITY of CITY'S intent to exercise this option.

Section 6.02 Seawalls and Revetment.

At all times during the Term and subject to the percentage limitations set forth in Section 6.07, TENANT shall at TENANT'S own cost and expense repair, maintain, replace and rebuild as necessary, the improvements, pilings, bulkheads, seawalls, revetment, piers, posts and any structures or other improvements located in the water portion of the Premises. Further, TENANT shall at TENANT'S own cost and expense conduct maintenance surveys at reasonable

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intervals to locate and determine needed repairs. The parties agree and understand, if TENANT takes benefit of the percentage limitations set forth in Section 6.07, then CITY has no obligation to TENANT or TENANT'S subtenants, assignees or successors-in-interest to repair, maintain replace or rebuild the improvements, pilings, bulkheads, seawalls, revetment, piers, posts and any structures or other improvements located in the water portion of the Premises.

Section 6.03 Legal Requirements.

At all times during the Term and subject to the percentage limitations set forth in Section 6.07, TENANT, at no cost to CITY, shall:

- (1) Make all alterations, additions, or repairs to the Premises or the improvements or facilities on the Premises required by any Legal Requirements (as defined in Section 3.07 above) now or hereafter made or issued;
- (2) Observe and comply with all Legal Requirements now or hereafter made or issued respecting the Premises or the improvements or facilities located thereon; and
- (3) Obtain all required permits pursuant to the MBMC or State law prior to the initiation of any repair or maintenance activity.

Section 6.04 Failure to Repair.

In the event failure to repair results in a hazardous or unsafe condition, CITY shall have the right and option, but not the obligation, to close and prohibit access to the unsafe portion of the Premises until such repairs are completed and accomplished and the Premises rendered safe for public use. In addition, if TENANT fails to repair any hazardous or unsafe condition within ten business days after written notice thereof from CITY, then CITY shall have the right, but not the obligation, to perform such repair at TENANT'S expense and TENANT shall reimburse CITY for any such repair undertaken by CITY, promptly upon CITY'S demand, as additional Rent subject to the percentage limitations set forth in Section 6.07 below. Failure by CITY to enforce any of the provisions of this Article shall not constitute a waiver of any of the provisions of this Article and CITY may at any time enforce all of the provisions of this Article.

Section 6.05 Inspection by CITY.

Except in the event of an emergency, CITY or CITY'S agents, representatives, or employees may enter the Premises, upon at least 48-hours' prior written notice, at all reasonable times for the purpose of inspecting the Premises to determine whether TENANT is complying with the terms of this Lease and for the purpose of doing other lawful acts that may be necessary to protect CITY'S interest in the Premises under this Lease or to perform CITY'S duties under this Lease.

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Section 6.06 TENANT'S Duty to Restore Premises.

(1) Except as provided in Section 6.07 below, if, at any time during this Lease, any improvements now or hereafter on the Premises are destroyed in whole or in part by the elements, or any other cause not the fault of TENANT or CITY, then this Lease shall continue in full force and effect and TENANT, at TENANT'S own cost and expense, shall repair and restore the damaged or destroyed improvement(s) according to the original plan thereof or according to such modified plans therefore as shall be approved in writing by CITY (the "Repair and Restoration"). TENANT shall pursue, with all due diligence and dispatch, obtaining the permitting required from all applicable public agencies for the Repair and Restoration (the "Repair Permits"), shall commence the Repair and Restoration within thirty (30) days after entitlement to issuance of the Repair Permits and shall use reasonable efforts to complete the Repair and Restoration not later than three hundred sixty five (365) days after the work is commenced, unless the Parties mutually agree, in writing, to an extension. In all other respects, the Repair and Restoration shall be done in accordance with the requirements for construction work on the Premises, set forth in Article 4 of this Lease. Subject to Section 6.07, any failure by TENANT either to commence or to complete the Repair and Restoration as required by this Section 6.06 shall be a material default under this Lease.

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

Section 6.07 Termination of Lease for Extraordinary Repairs.

Notwithstanding the provisions of this Article, in consideration of the reasons set forth in Section 1.02, above, TENANT shall have the option of terminating this Lease as provided in this Section 6.07 if: any improvements now or hereafter on the Premises are so damaged or destroyed by the elements or any cause not the fault of TENANT, that they cannot be repaired and restored as required by Section 6.06 of this Lease at a cost of ten percent (10%) or less than the fair market value of all the improvements on the Premises immediately prior to the damage or destruction. It is further agreed by the Parties:

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

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destruction as described herein. Such termination shall be effective on the last day of the calendar month following the month in which TENANT provides its notice. If TENANT exercises TENANT'S option under this Section 6.07, then TENANT shall have no obligation to CITY or subtenants, assignees or successors-in-interest to repair, maintain replace or rebuild any of the improvements, pilings, bulkheads, retaining walls, any underground utilities and/or sewer and water lines, seawalls, revetment, piers, posts, docks, dock structures, and any other structures or improvements located on the Premises.

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

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

- (a) first, to each lender whose loan is secured by the leasehold interest in this Lease, then
- (b) to the demolition of the improvements and removal of all demolition debris, then
- (c) to any accrued and unpaid Rent as of the effective date of the termination, then
- (d) the remaining proceeds, if any, to TENANT.

Section 6.08 Destruction Due to Risk Not Covered by Insurance.

Notwithstanding anything to the contrary in this Article of this Lease, TENANT shall have the right to terminate this Lease at any time if the improvements on the Premises are damaged or destroyed by a casualty for which TENANT is not required under this Lease to carry insurance and the cost to repair or restore such improvements exceeds ten percent (10%) of the fair market value of all the improvements on the Premises immediately prior to the damage or destruction.

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Article 7 INDEMNITY, RELEASE AND INSURANCE

Section 7.01 Indemnity Agreement.

TENANT shall defend, indemnify and hold harmless CITY, and the property of CITY (including the Premises and any improvements now or hereafter on the Premises), and each of CITY'S officers, officials, employees and volunteers from any and all liability, claims, loss, damages, and expenses, including reasonable attorney's fees and litigation expenses, arising from any act or omission of TENANT or any of its officers, agents, representatives, subtenants, employees, contractors, subcontractors, invitees or anyone for whom TENANT may be liable related to this Lease; provided, that the obligation to indemnify and hold harmless shall only be to the extent Damages are caused by TENANT or any of its officers, agents, representatives, subtenants, employees, contractors, subcontractors, invitees or anyone for whom TENANT may be liable.

Section 7.02 Liability Insurance.

During the Term, TENANT shall maintain at its cost Commercial General Liability insurance with coverages at least as broad as ISO Forms labeled "City of Morro Bay Insurance requirements for Lessees", Certificate of Insurance – City of Morro Bay", and "Additional Insureds – Managers or Lessors of Premises" attached hereto as Exhibit D and made a part hereof as may be updated or changed from time to time at the sole discretion of CITY, insuring against claims for bodily injury (including death), property damage, contractual liability, personal injury and advertising injury occurring on the Premises or from operations located in any part of the Premises. Such insurance shall afford protection in amounts no less than One Million Dollars per occurrence for bodily injury, personal injury and property damage; provided, that if insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Premises or the general aggregate limit shall be twice the occurrence limit stated in this Section. All liability insurance carried by TENANT hereunder shall name CITY, its officers, officials, employees and volunteers as additional insureds, and shall be primary insurance with respect to such additional insureds. All coverages for subtenants shall comply with all requirements of this Article 7.

Section 7.03 Worker's Compensation.

TENANT shall maintain at TENANT'S own expense and keep in full force and effect during the Term, Worker's Compensation Insurance as provided by law. Said insurance shall contain a waiver of subrogation rights against CITY. TENANT shall also maintain employer's

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liability insurance with minimum coverage of One Million Dollars per accident for bodily injury or disease.

Section 7.04 Property Insurance.

TENANT shall, at its cost, at all times during the Term keep all improvements and other structures on the Premises, as well as any and all additions, improvements and betterments thereto, insured for one hundred percent of their full replacement cost with no co-insurance provision against loss or destruction by the perils covered by "all risk" (excluding earthquake) property damage insurance policies. Notwithstanding the foregoing, TENANT shall, as soon as possible, meet the obligations of this Section 7.04 with regard to the insurance for the seawall/revetment; provided, that CITY shall not hold TENANT in breach or default of this Lease if TENANT is unable to procure such insurance prior to or within sixty days after Completion of the Rehabilitation Project.

Section 7.05 Additional Coverage.

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

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

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

Section 7.06 General Requirements.

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

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

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(2) CITY may at any time require TENANT to increase the minimum coverage limits for insurance required by this Lease, but not more than by ten percent over any ten-year period and every such increase shall be reasonable under the circumstances.

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

(4) Any deductibles or self-insured retentions greater than \$25,000, which amount shall be adjusted annually by the increase/decrease in the CPI, must be declared to and approved by CITY.

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

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

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

Section 7.07 No Subrogation.

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

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Section 7.08 TENANT'S Waiver.

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

Section 7.09 Insurance Not a Limit.

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

Article 8 TAXES AND FEES

Section 8.01 TENANT to Pay Taxes.

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

Section 8.02 TENANT to Pay License and Permit Fees.

TENANT shall pay any fees imposed by law for licenses or permits for any business or activities including construction by TENANT upon the Premises, subject to Article 13, below.

Section 8.03 Utilities.

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

Article 9 CONDEMNATION

Section 9.01 Total Condemnation.

If title and possession to all of the Premises is permanently taken for any public or quasi-public use under any statute, or by the right of eminent domain, then this Lease shall terminate on the date that possession of the Premises is taken, and both CITY and TENANT shall

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thereafter be released from all obligations, including Rent, all of which shall be prorated to the date of termination, except those specified in Section 9.02 of this Lease.

Section 9.02 Condemnation Award.

In consideration of the reasons set forth in Section 1.02, above, any compensation or damages awarded or payable because of the permanent taking of all or any portion of the Premises by eminent domain shall be allocated between CITY and TENANT as follows:

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

(2) All compensation or damages awarded or payable which is specifically attributed by the taking party to the "good will" of TENANT'S business shall be paid to and be the sole property of TENANT and not any of TENANT'S subtenants.

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

(4) All compensation or damages awarded or payable because of any improvements constructed and located on the portion of the Premises taken by eminent domain where this Lease is terminated because of the taking by eminent domain, whether all or only a portion of the Premises is taken by eminent domain, shall be allocated to TENANT and not any of TENANT'S subtenants.

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

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

Section 9.03 Termination for Partial Taking.

If, during the Term, title and possession of only a portion of the Premises be taken for any public or quasi-public use under any statute, or by right of eminent domain, then TENANT may, at TENANT'S option, terminate this Lease by serving written notice of termination on

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CITY within ninety days after TENANT has been deprived of actual physical possession of the portion of the Premises taken for such public use. This Lease shall terminate on the first day of the calendar month following the calendar month in which the notice of termination described in this section is served on CITY. On termination of this Lease pursuant to this Article, all subleases and subtenancies in or on the Premises or any portion of the Premises created by TENANT under this Lease shall also terminate and the Premises shall be delivered to CITY free and clear of all such subleases and subtenancies, provided, however, that CITY may, at CITY'S option, mail written notice to a subtenant allow any subtenant to attorn to CITY and continue such subtenant's occupancy on the Premises as a TENANT of CITY. On termination of this Lease pursuant to this section, however, both CITY and TENANT shall be released from all obligations under this Lease, except those specified in Section 9.02 of this Lease.

Section 9.04 Rent Abatement for Partial Taking.

If, during the Term, title and possession of only a portion of the Premises is taken under the power of eminent domain by any public or quasi-public agency or entity and TENANT does not terminate this Lease, then this Lease shall terminate as to the portion of the Premises taken under eminent domain on the date actual physical possession of the portion taken by eminent domain is taken by the agency or entity exercising the eminent domain power. Furthermore, the Rent payable under this Lease shall, as of that time be reduced in the same proportion of the Premises taken by eminent domain bears to the full value of the Premises at that time.

Section 9.05 Conveyance in Lieu of Eminent Domain.

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

Section 9.06 Temporary Taking.

If the possession of the Premises or any portion thereof should be taken under the power of eminent domain by any public or quasi-public agency or entity for a limited period not extending beyond the Term, then this Lease shall not terminate (except as provided in this Section 9.06) and TENANT shall continue to perform all its obligations hereunder, except only to the extent that TENANT is prevented from performing such obligations by reason of such taking. TENANT shall be entitled to receive the entire amount of compensation or damages awarded because of such temporary taking. In consideration of completion of the reasons set

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forth in Section 1.02, above, if a temporary taking extends for more than thirty-six months, then TENANT shall have the right to terminate this Lease, and TENANT shall be entitled to receive the compensation and damages awarded because of such temporary taking.

Article 10 ASSIGNMENT AND SUBLEASING

Section 10.01 No Assignment Without CITY'S Consent.

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

Section 10.02 Preapproved Assignments.

Notwithstanding Sections 10.01 and 10.03, each assignment by TENANT to a trust or an entity in which Clifford Branch, Lynette Branch, James Edmund Smith, Beverly Elder Smith or any of their heirs and beneficiaries have complete control over the trust or entity is deemed preapproved upon written notice from TENANT of such assignment and the assignees' written agreement to assume all rights and obligations of TENANT pursuant to this Lease and no application fee, transfer fee or other fee shall be due by TENANT to CITY for that assignment.

Section 10.03 Application for Assignment.

For other than any assignment described in Section 10.02, a condition of an assignment shall be TENANT shall file with CITY an application to assign the leasehold prepared by the prospective assignee. Concurrently with filing the application, TENANT shall pay a reasonable fee associated with the cost of processing said application, in cash or certified or cashier's check to enable CITY adequately to investigate the proposed assignee's qualifications as a permitted assignee. CITY shall not be required to account for the use of the sum paid. If the proposed assignee's net worth on the date of assignment is not sufficient to reasonably guarantee

successful operation of the Premises in compliance with all applicable CITY, County, State and federal requirements, then CITY may withhold approval of the assignment or condition it upon TENANT'S guarantee of such assignee's obligations hereunder for such period as CITY deems advisable. Net worth shall mean the amount by which the total of all assets shall exceed the total of all liabilities as determined in accordance with general accepted accounting principles as approved by CITY'S auditor, or other authorized representative or agent.

Section 10.04 No Sublease Without CITY'S Consent.

TENANT shall not sublease the whole nor any part of the Premises, or license, permit, or otherwise allow any other person (the employees of TENANT excepted) to occupy or use the Premises, or any portion thereof, without the prior written consent of CITY'S Harbor Director, or any future successor to the duties of CITY'S Harbor Director. A consent to one subletting, occupation, licensing or use shall not be deemed to be a consent to any subsequent subletting, occupation, licensing or use by another person. Any sublease or license without CITY'S written consent shall be void, and shall at CITY'S option, terminate this Lease. CITY shall not unreasonably nor arbitrarily withhold its consent to sublet to one who is qualified and financially reliable and will operate a business permitted pursuant to this Lease, all as reasonably determined by CITY; provided, that if the sublease is not approved by CITY within ten business days after CITY'S receipt of a completed request for approval from CITY, then the sublease shall be deemed disapproved. Notwithstanding any provisions herein to the contrary, the terms "assignment," "subletting," "occupation," or "use," shall not be construed or interpreted to mean or include the temporary, short term renting or leasing of boat slips, motel, hotel, or apartment accommodations on the Premises.

Section 10.05 Subtenant Subject to Lease Terms.

Any and all subleases shall be expressly made subject to all the terms, covenants, and conditions of this Lease. In no event shall the term of any sublease extend beyond the Term. Subject to Section 10.08, termination of this Lease prior to the expiration of this Lease term shall also terminate any and all subleases. A breach of the terms of this Lease by a subtenant shall constitute a breach on the part of TENANT and shall subject both the subtenant and TENANT to all the remedies provided to CITY herein and by law. Failure by any subtenant to report Gross Sales or to pay Percentage Rent due from subtenant shall constitute a breach of this lease. TENANT hereby agrees to and does guarantee payment of such Percentage Rent due by a subtenant under the terms of this lease.

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Section 10.06 Consent Form Agreement.

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

Section 10.07 TENANT Remains Liable.

Prior to approval by CITY to any sublease hereof, TENANT shall agree to be primarily and jointly and severally liable to CITY for all obligations due CITY by any subtenant, including the payment of rents, and TENANT shall agree CITY may proceed directly against TENANT for any obligation owing CITY by the subtenant.

Section 10.08 Nondisturbance.

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

Article 11 DEFAULT AND TERMINATION

Section 11.01 Abandonment by TENANT.

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

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Section 11.02 Termination for Breach by TENANT.

All covenants and agreements contained in this Lease are declared to be conditions to this Lease and to the term hereby demised to TENANT. If TENANT fails to perform any covenant, condition, or agreement contained in this Lease, except for payment of any Rent or other monetary amount due, and such failure is not cured within sixty (60) days after written notice thereof is served on TENANT, then CITY may commence legal and equitable actions to terminate this Lease immediately.

Section 11.03 Termination for Failure to Pay Rent.

If any payment of Rent is not made as herein provided and such failure to pay is not cured within thirty days after written notice thereof is served on the TENANT, then CITY shall have the option to commence legal and equitable actions to immediately terminate this Lease.

Section 11.04 Lender May Cure Default.

CITY shall afford the Lender under any Leasehold Encumbrance of record with CITY the right to cure any default by TENANT of the covenants, conditions, or agreements hereof, as provided in Article 5 of this Lease.

Section 11.05 Damages for Breach.

If TENANT defaults in the performance of any covenant, condition or agreement contained in this Lease and the default is incurable or cannot be cured within the time period set forth in this Article above, unless TENANT commences to cure within such time period, continues to diligently cure without interruption until cured and the cure is completed as soon as reasonably practicable, then CITY may commence legal and equitable action to terminate this Lease.

Section 11.06 Cumulative Remedies.

The remedies available to CITY in this Article shall not be exclusive but shall be cumulative with and in addition to all remedies now or hereafter allowed by law or elsewhere provided in this Lease.

Section 11.07 Waiver of Breach.

The waiver by CITY of any breach by TENANT of any of the provisions of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach by TENANT either of the same or a different provision of this Lease.

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Section 11.08 Surrender of Premises.

On expiration or sooner termination of this Lease, TENANT shall surrender the Premises, and, subject to Section 4.04, all improvements in or on the Premises, and all facilities in any way appertaining to the Premises, to CITY in a broom clean condition, reasonable wear and tear excepted. Notwithstanding anything contained in the Lease to the contrary, CITY acknowledges and agrees all the improvements located on the Premises, including, but not limited to, those certain improvements constructed by TENANT pursuant to the Rehabilitation Project, are subject to reasonable wear and tear normally experienced by structures constructed and located on or about water and in coastal areas.

Article 12 MISCELLANEOUS

Section 12.01 Notices.

Any and all notices or demands by or from CITY to TENANT, or TENANT to CITY, shall be in writing. They shall be served either personally or by Fed-Ex, UPS, or other similar national carrier if signed and acknowledged by the Party representative set forth below. Any notice or demand to CITY may be given to:

Harbor Director
City of Morro Bay
1275 Embarcadero
Morro Bay, California 93442

with a copy to:

City Manager
City of Morro Bay
595 Harbor Street
Morro Bay, CA 93442

Any notice or demand to TENANT may be given at:

Cliff Branch, Lynette Branch or Tyler Jenkins
755 Santa Rosa Street, Suite 310
San Luis Obispo, CA 93401

with copy of:

Paul B. Parker, Esq.
Parker & Sander
755 Santa Rosa Street, Suite 300
San Luis Obispo, CA 93401

Such addresses may be changed by written notice by either party to the other party.

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Section 12.02 Governing Law and Jurisdiction.

This Lease, and all matters relating to this Lease, shall be governed by the laws of the State of California in force at the time any need for interpretation of this Lease or any decision concerning this Lease arises. CITY and TENANT consent to exclusive personal and subject matter jurisdiction in the Superior Court of San Luis Obispo County, and each Party waives any claim such court is not a convenient forum. Each Party hereby specifically waives the provisions of California Code of Civil Procedure Section 394, and any successor statute thereto.

Section 12.03 Binding on Successors.

Subject to the provisions herein relating to assignment and subletting each and all of the terms, conditions, and agreements herein contained shall be binding upon and inure to the benefit of the successors and assigns of any and all of the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

Section 12.04 Partial Invalidity.

If any provision of this Lease is held by a court of competent jurisdiction to be either invalid, void, or unenforceable, then the remaining provisions of this Lease shall remain in full force and effect unimpaired by the holding.

Section 12.05 Sole and Only Agreement.

This Lease, including all exhibits incorporated by reference, constitutes the sole and only agreement between CITY and TENANT respecting the Premises and the leasing of the Premises to TENANT. Any other agreements or representations respecting the Premises and their leasing to TENANT by CITY, which are not expressly set forth in this Lease, are null and void. The terms herein specified, as amended, correctly set forth the obligations of CITY and TENANT as of the effective date. No modification, amendment, or alteration of this Lease shall be valid unless it is in writing and signed by both parties.

Section 12.06 Modification.

This Lease shall not be modified, except pursuant to a written agreement executed by the Mayor and City Clerk, pursuant to prior approval by CITY'S City Council. TENANT understands this Lease may not be modified by oral statements by any person representing CITY. TENANT specifically agrees not to rely on oral statements, purported oral waivers, or purported oral modifications and agrees not to rely upon purported written modifications unless they meet the requirements of this paragraph and are approved in writing pursuant to formal action of CITY'S City Council and a subsequent written modification signed by the Mayor and

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City Clerk. If the title of any person authorized to act for CITY under this Lease shall be changed during the Term, then the person who succeeds to substantially the same responsibilities with respect to CITY shall have the authority to act for CITY under this Lease.

Section 12.07 Time of Essence.

Time is expressly declared to be the essence of this Lease.

Section 12.08 Memorandum of Lease for Recording.

CITY and TENANT shall, at the request of either at any time during the Term, execute a memorandum or "short form" of this Lease, which shall describe the parties, set forth a description of the leased premises, specify the Term, and incorporate this Lease by reference.

Article 13 SPECIAL PROVISIONS PECULIAR TO THE PREMISES

Section 13.01 Rehabilitation Project.

Pursuant to the terms and conditions of this Lease, TENANT shall complete the Rehabilitation Project as set forth and depicted in the Site Plan attached hereto as Exhibit B, which includes the following:

- A. Repair or replace the roof on the building located on the Premises as necessary;
- B. Repair the deck as required;
- C. Replace the existing dock and pilings as required;
- D. Paint the exterior of the building on the Premises; and
- E. Renovate the interior of the building on the Premises as necessary.

In addition, subject to TENANT paying all necessary fees and obtaining all necessary permits from CITY and all other required governmental agencies, as required, CITY also consents and acknowledges TENANT shall have the right to remove the existing water-wheel fountain located near the front entrance to the current Otter Rock Cafe restaurant on the Premises at any time during the term of the Lease. CITY shall not unreasonably condition or delay any permits or consents necessary to remove the water wheel and shall assist TENANT with obtaining any other permits required from other governmental agencies, not including payment of any fees required for those permits.

The Parties acknowledge and agree to each of the following:

- i. TENANT is only obligated to perform the repairs and improvements that are part of the Rehabilitation Project.

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- ii. In the event of any discrepancy or contradiction between this Lease and the Site Plan, the Parties agree the Site Plan shall control and be determinative, but not to the extent prohibited by law.
- iii. Within seven days after the execution of this Lease, CITY will provide to TENANT a set of plans for the existing Otter Rock Café building on Lease Site 90/90W.
- iv. For purposes of this Lease, "complete application" shall mean submission to the applicable governmental agency a satisfactory completed application form for the Rehabilitation Project, as then currently approved by all applicable governmental agencies, as required by that governmental agency, along with the payment of the fees required by that governmental agency.
- v. CITY shall process and grant, if legally possible, a request from TENANT to waive any requirement TENANT comply with Sections 1803.2 through 1803.6, J 104.3 and J 104.4 of the 2016 California Building Code.
- vi. All license fees, permit fees, plan check fees, and any and all other fees and costs for the Rehabilitation Project charged or imposed, solely on behalf of CITY, by CITY to TENANT shall not exceed the amount CITY is permitted to impose pursuant to Article XIII C of the California Constitution and are generally applicable to similar projects.
- vii. Notwithstanding anything contained in Section 3.07 to the contrary, if ADA improvements are required by CITY or another governmental agency or by law, then CITY will agree to reduce each Minimum Rent payment equally over a five-year period in a total amount equal to one-half of the documented costs of up to \$30,000 to TENANT for required ADA improvements to the two restrooms..

Section 13.02 Schedule for Rehabilitation Project.

Unless TENANT has delivered to CITY notice of termination on this Lease pursuant to Section 1.03,

A. On or before December 31, 2017, TENANT shall submit, to the CITY, a complete application, consistent with the Rehabilitation Project, for, as applicable, approval of a Minor Amendment to Existing Permit (Administrative), Amendment to Existing Permit (Planning Commission) to Conditional Use Permit # [whatever the appropriate CUP is for 90/90W to be amended], or a Concept Plan and Precise Plan if administrative or Planning Commission approval is not legally allowed.

B. Provided CITY is legally authorized to do so based on the plans submitted by TENANT pursuant to A., above, on or before one hundred twenty (120) days after TENANT'S

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submission of the complete application to the CITY, for the Rehabilitation Project, CITY shall provide TENANT, as applicable, with the approval of a Minor Amendment to Existing Permit (Administrative), Amendment to Existing Permit (Planning Commission) to Conditional Use Permit # [whatever the appropriate CUP is for 90/90W to be amended], or a Concept Plan and Precise Plan if administrative or Planning Commission approval is not legally allowed.

C. If the Coastal Commission requires TENANT to obtain approval from the Coastal Commission for the Rehabilitation Project, then, within sixty (60) days after receipt of approval from CITY, as applicable, of a Minor Amendment to Existing Permit (Administrative), Amendment to Existing Permit (Planning Commission) to Conditional Use Permit # [whatever the appropriate CUP is for 90/90W to be amended], or a Concept Plan and Precise Plan if administrative or Planning Commission approval is not legally allowed, TENANT shall file a complete application for review and approval of the Rehabilitation Project with the Coastal Commission. Within sixty (60) days after receipt of all approvals of the Rehabilitation Project from the Coastal Commission, as evidenced by a "Notice of Intent Issue a Permit" and a final Coastal Development Permit, if that approval is required, TENANT shall file complete applications for all necessary land use approvals for the Rehabilitation Project from all other applicable governmental agencies, including, but not limited to, the Army Corps of Engineers and the Central Coast Regional Water Quality Control Board, where required.

D. If the Coastal Commission does not require approval of the Rehabilitation Project, then within sixty (60) days after receipt from CITY, as applicable, of a Minor Amendment to Existing Permit (Administrative), Amendment to Existing Permit (Planning Commission) to Conditional Use Permit # [whatever the appropriate CUP is for 90/90W to be amended], or a Concept Plan and Precise Plan if administrative or Planning Commission approval is not legally allowed, then TENANT shall file complete applications for all necessary permits, permissions and certifications for the Rehabilitation Project from all other applicable governmental agencies, including, but not limited to, the Army Corps of Engineers and the Central Coast Regional Water Quality Control Board.

E. Within forty-five (45) days after receipt of all necessary land use approvals from CITY and all the governmental agencies listed above, as required, TENANT shall file with CITY'S Community Development Department all necessary complete construction plans for CITY to issue valid building and other construction related permits for the Rehabilitation Project.

F. Pursuant to the terms and conditions of this Lease, TENANT shall obtain from CITY and any and all other applicable governmental agencies, including but not limited to, the Coastal Commission, the Army Corps of Engineers, and the Central Coast Regional Water

Quality Control Board, any and all permits and approvals necessary for the Rehabilitation Project, if any (the "Permits").

G. Within one hundred fifty (150) days after receipt of the Permits, unless TENANT is delayed through no fault of TENANT, TENANT shall have commenced the Rehabilitation Project and expended at least \$50,000 in actual hard construction costs for the Rehabilitation Project (the "Project Commencement").

H. Within one hundred eighty days (180) after the Project Commencement, TENANT shall cause the completion of the Project. For the purpose of this Lease, completion shall mean when the Rehabilitation Project is entitled to receive final inspection approval from CITY, if necessary, and all other applicable government agencies, if necessary, (the "Completion"). Notwithstanding the foregoing, CITY'S final inspection and approval of the Rehabilitation Project shall not be unreasonably withheld, conditioned or delayed and in no event shall such final inspection by CITY be more than ten business days after TENANT'S written request.

Section 13.03 Site Integrations.

A. The Parties agree a tenant on Lease Site 89/89W may be allowed to sublease dock-space on the Premises for docking and operation of that sublessee's commercial boat for the business that sublessee conducts. If such a sublease exists, then TENANT shall allow the customers, employees and invitees of that business reasonable ingress and egress the Premises to access that dock and boat.

B. TENANT and CITY, as lessee and lessor of Lease Site 89/89W, shall allow TENANT to sublease to a sublessor on the Premises, office space on Lease Site 89/89W directly needed for the operation of a business conducted on the Premises by that sublessee. TENANT and CITY, as lessor and lessee of Lease Site 89/89W, agree to amend 89/89W Lease to provide for that office space use of the Premises, as may be needed.

Section 13.04 Sale of Premises.

Subject to the assignment and assumption provisions contained in this Lease, CITY acknowledges and agrees TENANT shall have the option to assign, sell, or otherwise transfer (i) TENANT's entire interest in the Premises (*i.e.*, both Lease Site 90 and Lease Site 90W) to the same person/entity that owns Lease Site 89/89W, or (ii) TENANT's interest in Lease Site 90 and Lease Site 90W separately, so long as Lease Site 90W remains under the same ownership as the ownership of either Lease Site 89/89W or with Lease Site 90.

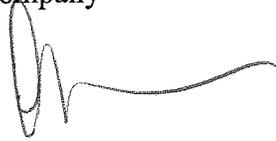
Handwritten signatures and initials in black ink, including a large 'B' and a signature that appears to be 'K'.

EXECUTED on the dates noted below at Morro Bay or San Luis Obispo,
San Luis Obispo County, California.

CITY OF MORRO BAY

BOATYARD, LLC, a California limited
liability company

By: _____
Jamie Irons, Mayor

By: 
Cliff Branch, Manager

Date: _____, 2017

Date: 12/8, 2017

ATTEST:

Dana Swanson, City Clerk

APPROVED AS TO FORM:

Joseph W. Pannone, City Attorney

DRAFT

EXHIBIT A
COPY OF PARCEL MAP

ACB → *H*



LEASE SITES MAP

CITY OF MORRO BAY, SAN LUIS OBISPO CO., CALIF.

Scale: 1" = 50'

GARING, TAYLOR, & ASSOC., INC.

Atty. General, California
1987

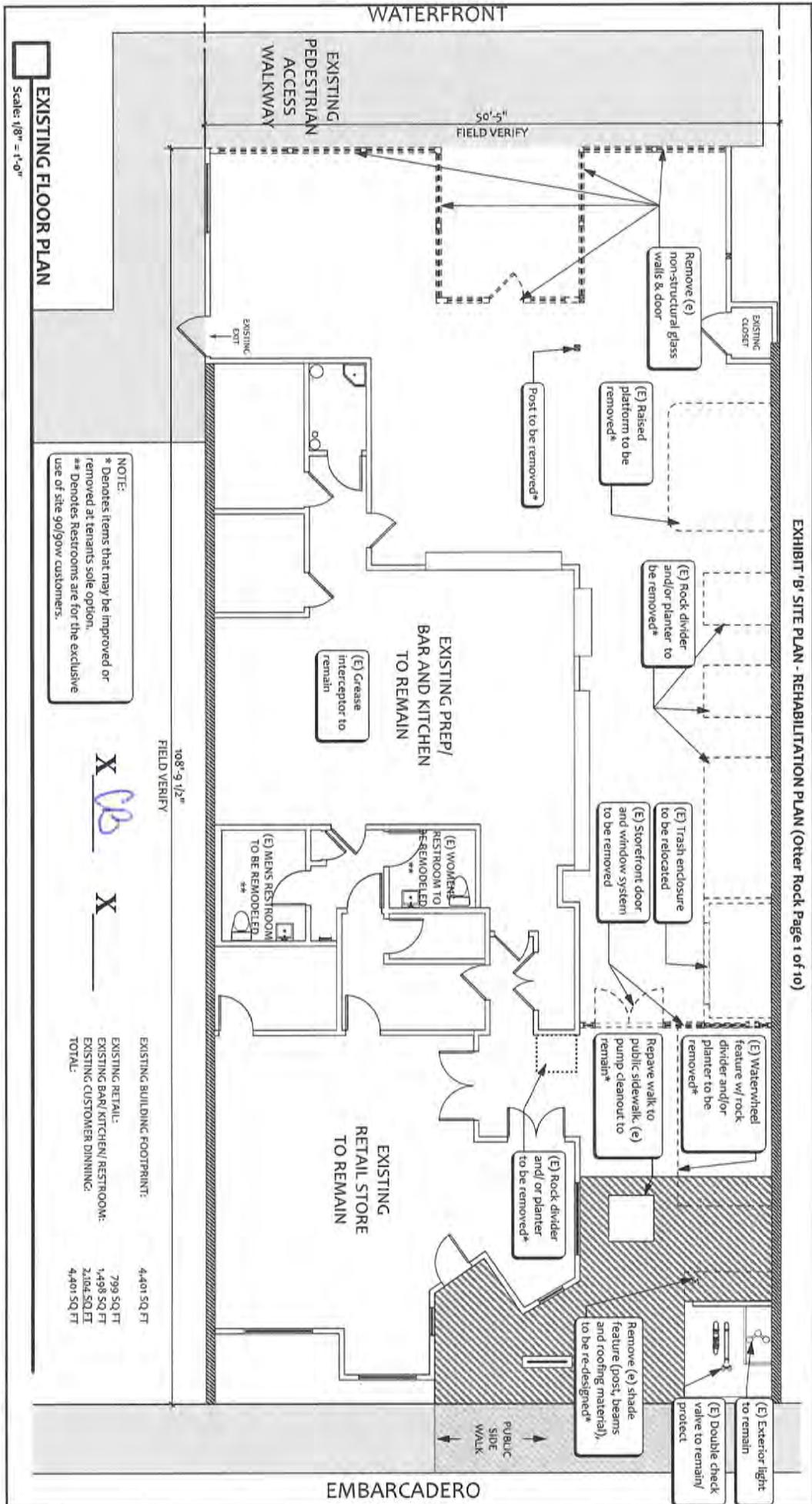
DRAFT

EXHIBIT B

SITE PLAN - REHABILITATION PROJECT
(Otter Rock 10 Pages)

(Immediately following this page)

X LP X



NOTE:
 * Denotes items that may be improved or removed at tenants sole option.
 ** Denotes Restrooms are for the exclusive use of site 90/90w customers.

EXISTING BUILDING FOOTPRINT:	4,401 SQ FT
EXISTING RETAIL:	799 SQ FT
EXISTING BARI/ KITCHEN/ RESTROOM:	1,498 SQ FT
EXISTING CUSTOMER DINNING:	2,104 SQ FT
TOTAL:	4,401 SQ FT

Steven Puglisi
ARCHITECTS
INC.

569 Higgins Street
 Suite A
 San Luis Obispo
 CA 93401
 P: 805.535.1042
 F: 805.535.1081

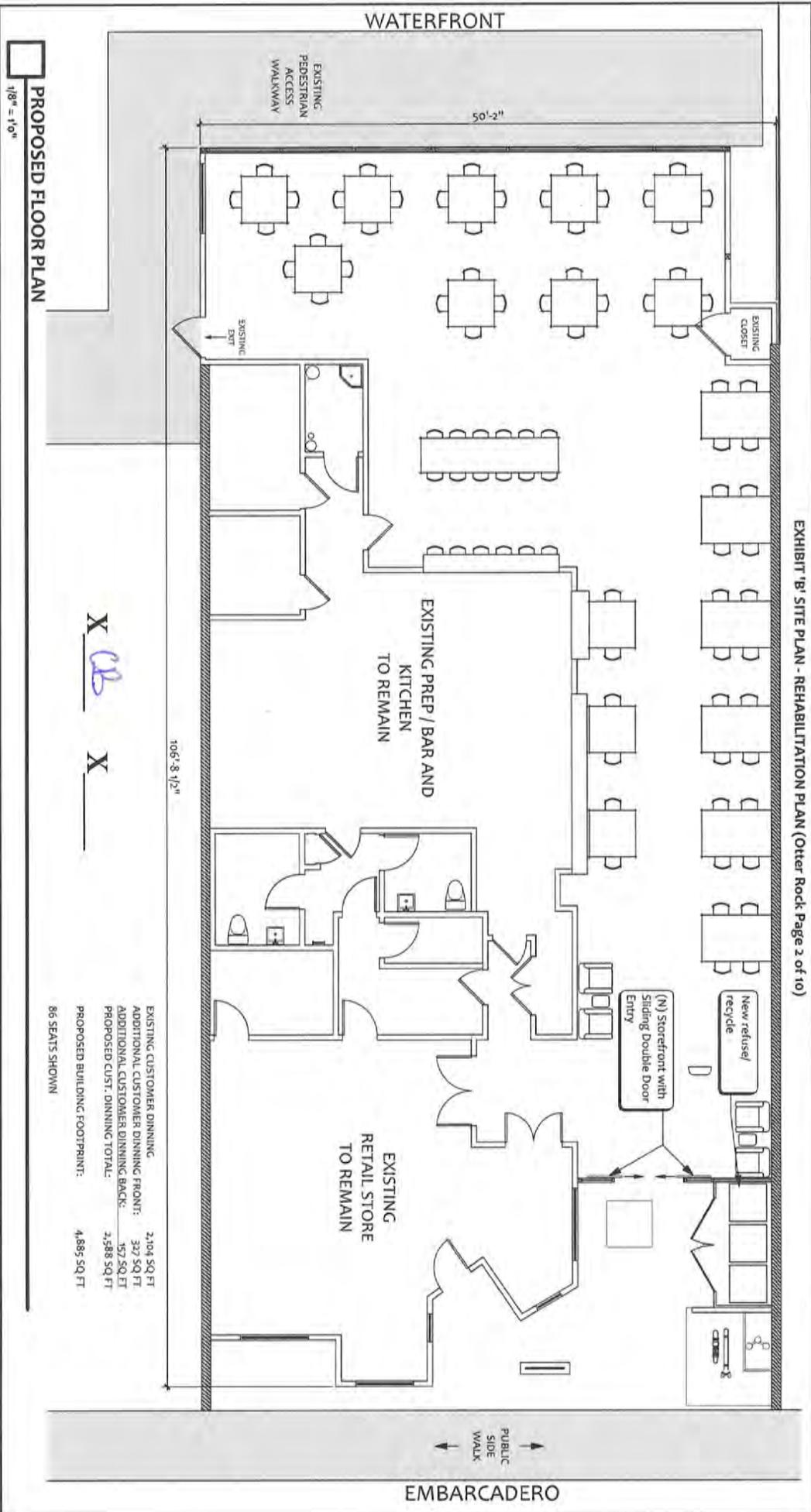
Otter Rock Cafe Renovation & Deck Repair
 885 Embarcadero, Morro Bay, CA 93442
 (LEASE SITE 90)

EXISTING FLOOR PLAN

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Date: 08/17/17
 Job: Otter Rock
 Drawn by: STC
 Sheet No: P1



X *LB* X

EXISTING CUSTOMER DINNING: 2,104 SQ. FT.
 ADDITIONAL CUSTOMER DINNING FRONT: 327 SQ. FT.
 ADDITIONAL CUSTOMER DINNING BACK: 157 SQ. FT.
 PROPOSED CUST. DINNING TOTAL: 2,588 SQ. FT.
 PROPOSED BUILDING FOOTPRINT: 4,885 SQ. FT.
 86 SEATS SHOWN

Steven Puglisi
ARCHITECTS
INC.

569 Highway Street
 Suite A
 San Luis Obispo
 CA 93401
 P: 805.521.1842
 F: 805.521.1882

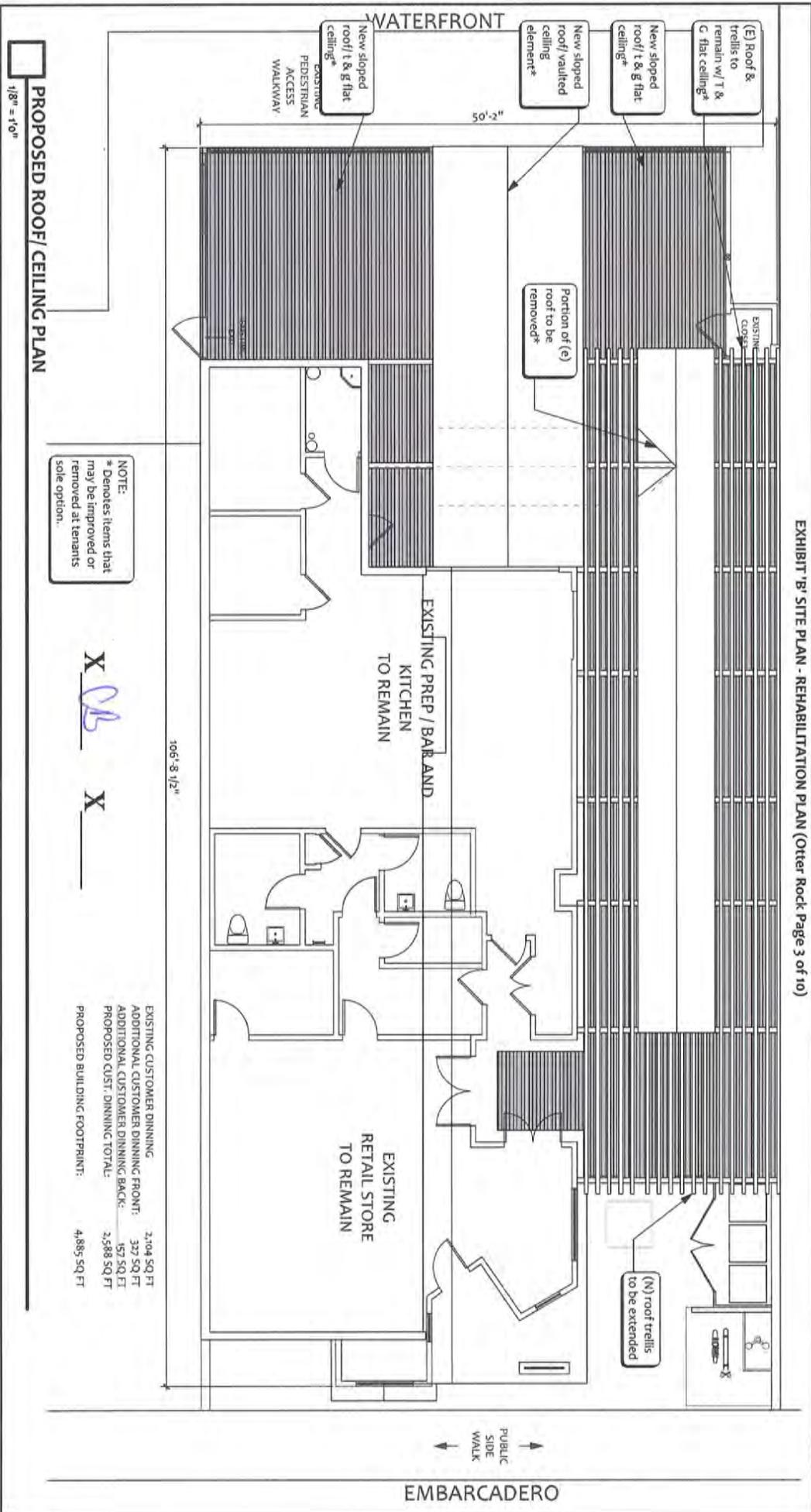
Otter Rock Cafe Renovation & Deck Repair
 885 Embarcadero, Morro Bay, CA 93442
 (LEASE SITE 90)

PROPOSED FLOOR PLAN

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Date: 08/17/17
 Job: Otter Rock
 Drawn by: SKC
 Sheet No: **P2**



NOTE:
* Denotes items that may be improved or removed at tenants sole option.

X AB X

EXISTING CUSTOMER DINNING: 2,104 SQ FT
 ADDITIONAL CUSTOMER DINNING FRONT: 337 SQ FT
 ADDITIONAL CUSTOMER DINNING BACK: 157 SQ FT
 PROPOSED CUST. DINNING TOTAL: 2,588 SQ FT
 PROPOSED BUILDING FOOTPRINTS: 4,885 SQ FT

Steven Puglisi
ARCHITECTS
INC.

590 Hispania Street
 San Jose, CA 95140
 Ph: 805.595.1849
 Fax: 805.595.1980

Otter Rock Cafe Renovation & Deck Repair
 885 Embarcadero, Morro Bay, CA 93442
 (LEASE SITE 90)

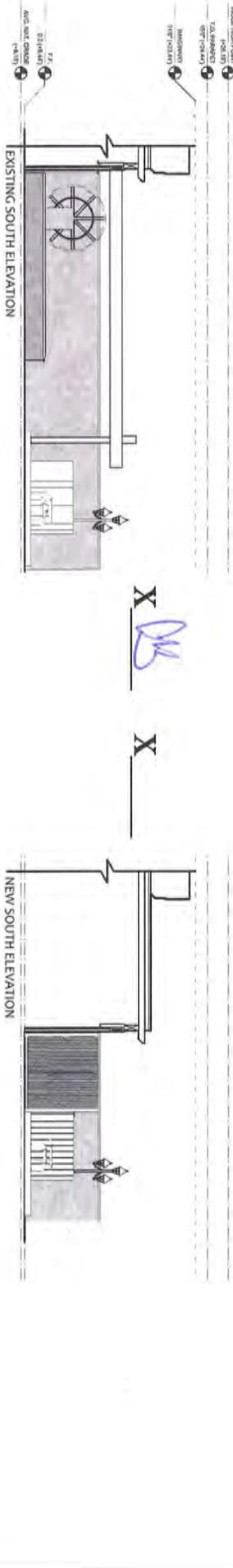
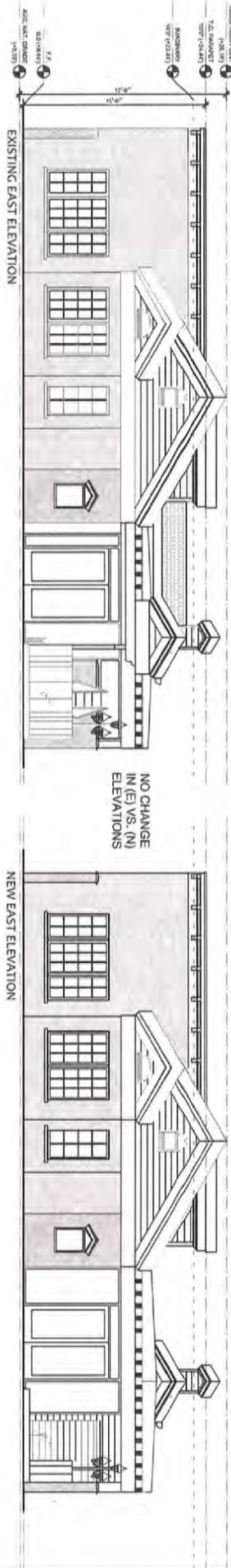
PROPOSED ROOF/CEILING PLAN

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Date: 08/17/2017
 Job: Otter Rock
 Drawn by: SKC
 Sheet No: **P3**

EXHIBIT 'B' SITE PLAN - REHABILITATION PLAN (Otter Rock Page 4 of 10)



X *BB* X

Steven Puglisi
ARCHITECTS
INC.

569 Hearst Street
Suite A
San Luis Obispo
P.O. Box 5261 1949
P.O. Box 5261 1982

Otter Rock Cafe Renovation & Deck Repair
885 Embarcadero, Morro Bay, CA 93442
(LEASE SITE 90)

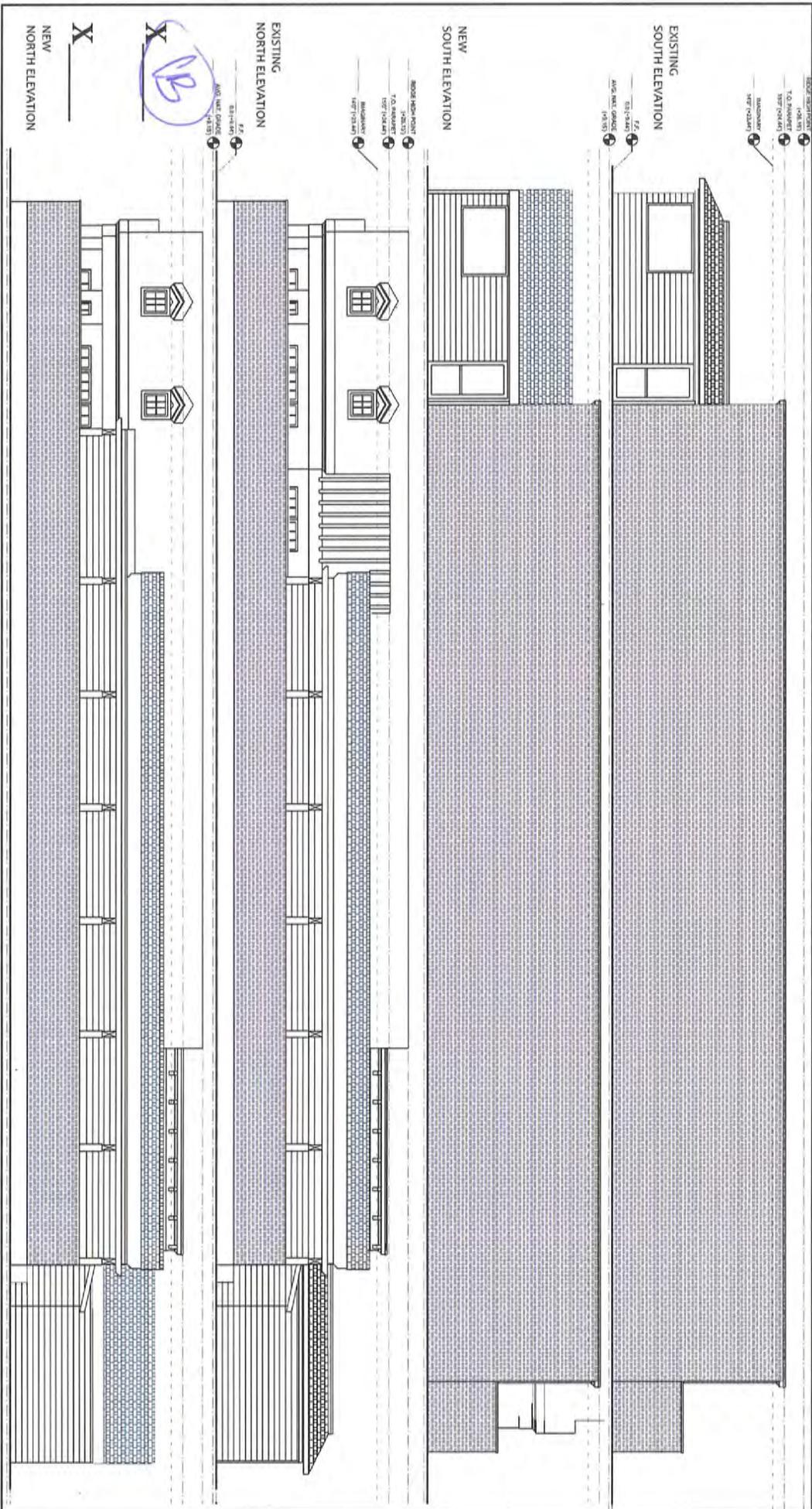
EXTERIOR ELEVATIONS

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Date: 08/17/07
Job: Otter Rock
Drawn by: SKU
Sheet No: **P4**

EXHIBIT 'B' SITE PLAN - REHABILITATION PLAN (Otter Rock Pages 5 of 10)



Steven Puglisi
ARCHITECTS
INC.

569 Laguna Street
Suite A
San Luis Obispo
CA 93401-1049
Ph: 805.525.1949
Fk: 805.525.1980

Otter Rock Cafe Renovation
885 Embarcadero, Morro Bay, CA 93442
(LEASE SITE 90)

EXTERIOR ELEVATIONS

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Date: 08/17/07
Job: Otter Rock
Drawn by: SJC
Sheet No: **P5**

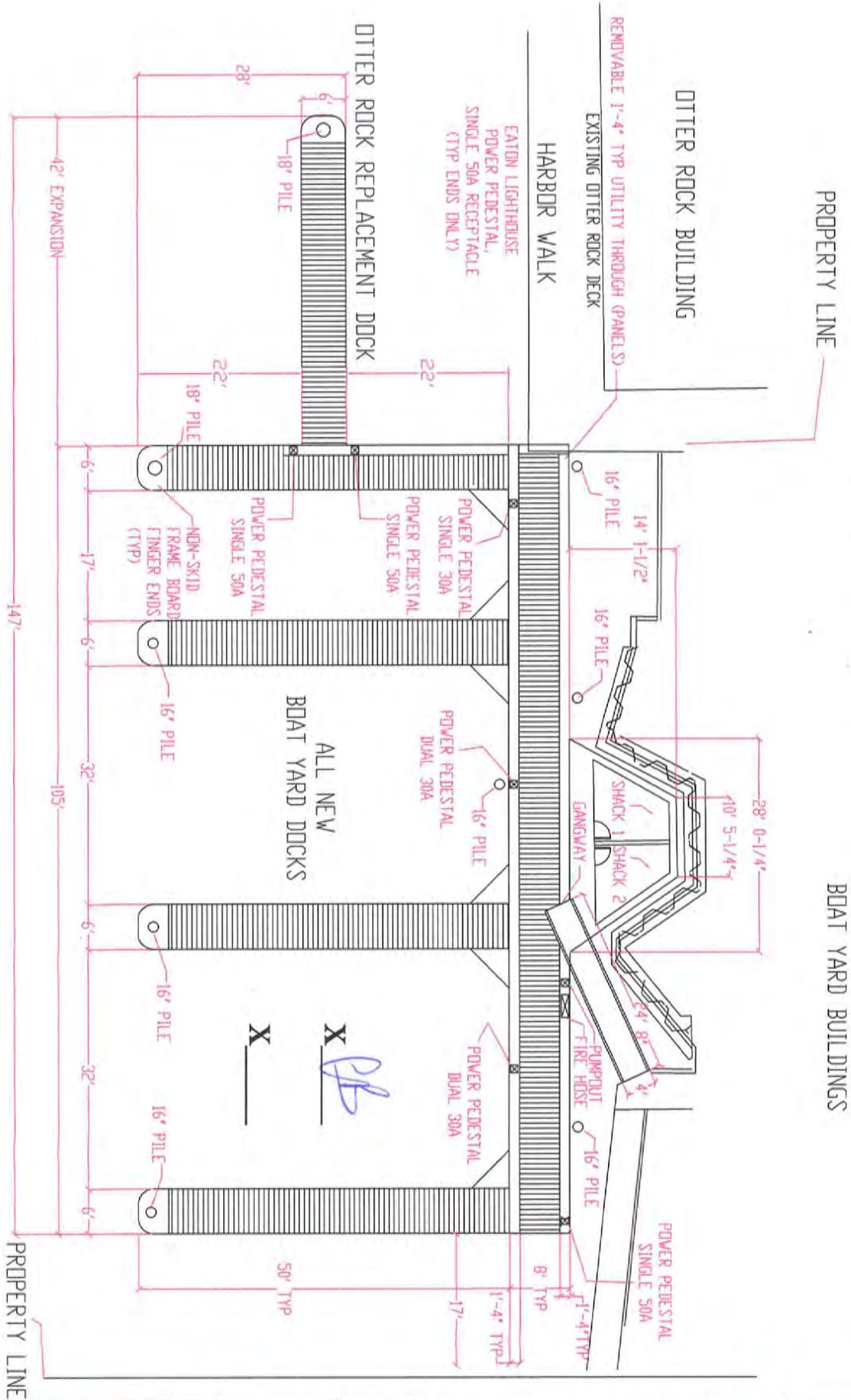
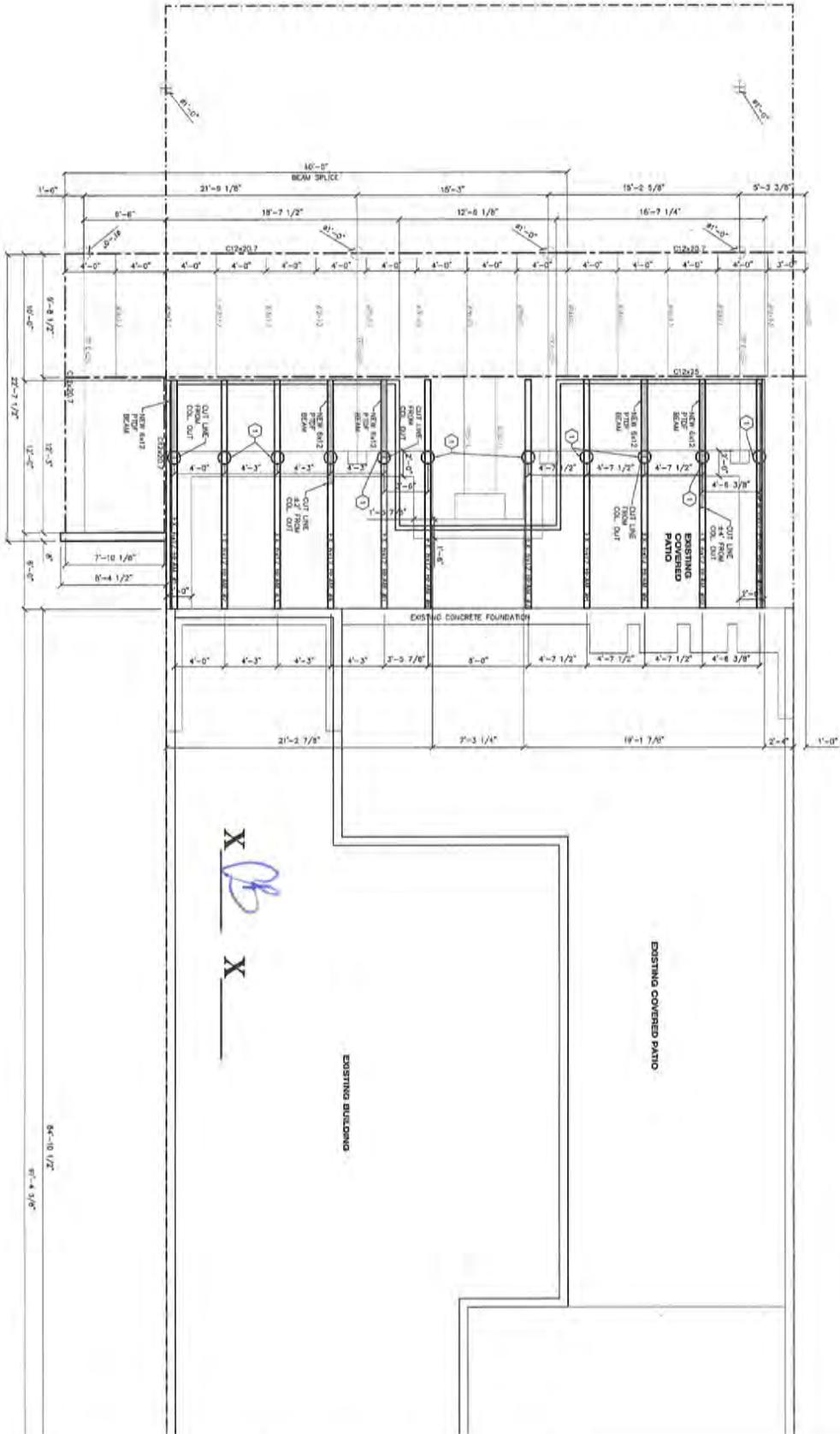


EXHIBIT B : OTTER ROCK REPLACEMENT DOCK

SHEET: CON-2	DRAW AND MANUFACTURED BY: BLUEWATER MARINE & DOCK SPECIALTIES <small>10500 PARKWAY 17 WILMINGTON, CA 90707 (949) 436-2200 INFO@BLUEWATERDOCK.COM</small>	Associated Pacific Constructors, Inc. <small>Encinitas • San Marcos • Poway • Dulles</small>	PROJECT NAME: 845 EMBARCADERO FLOATING DOCK	ORIGINAL RELEASE DATE: 3/24/2005
			DRAWING TITLE: FLOATING DOCK CONCEPT	NO. REVISION DATE BY 0-7-2007
DATE: D				NOT TO SCALE



SITE PLAN

SCALE: 3/16" = 1'-0"

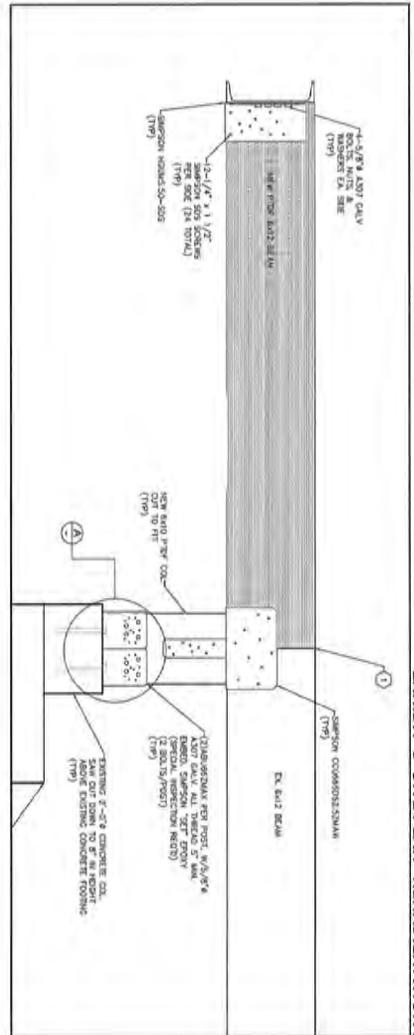


EXHIBIT B
OTTER ROCK DECK
REPAIR SITE PLAN

NOTES:

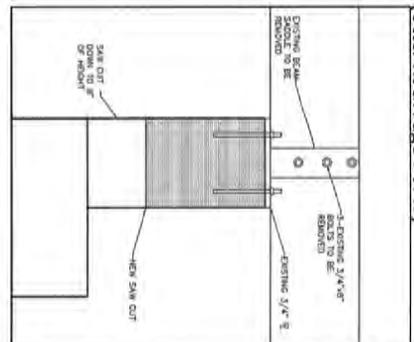
- 1) REPLACE EXISTING SILLING, BUCK PLATE, AND WOODS.

EXHIBIT 'B' SITE PLAN - REHABILITATION PLAN (Other Rock Page 8 of 10)



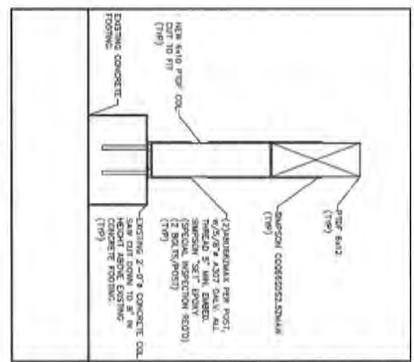
ELEVATION

SCALE: 1-1/2" = 1'-0"



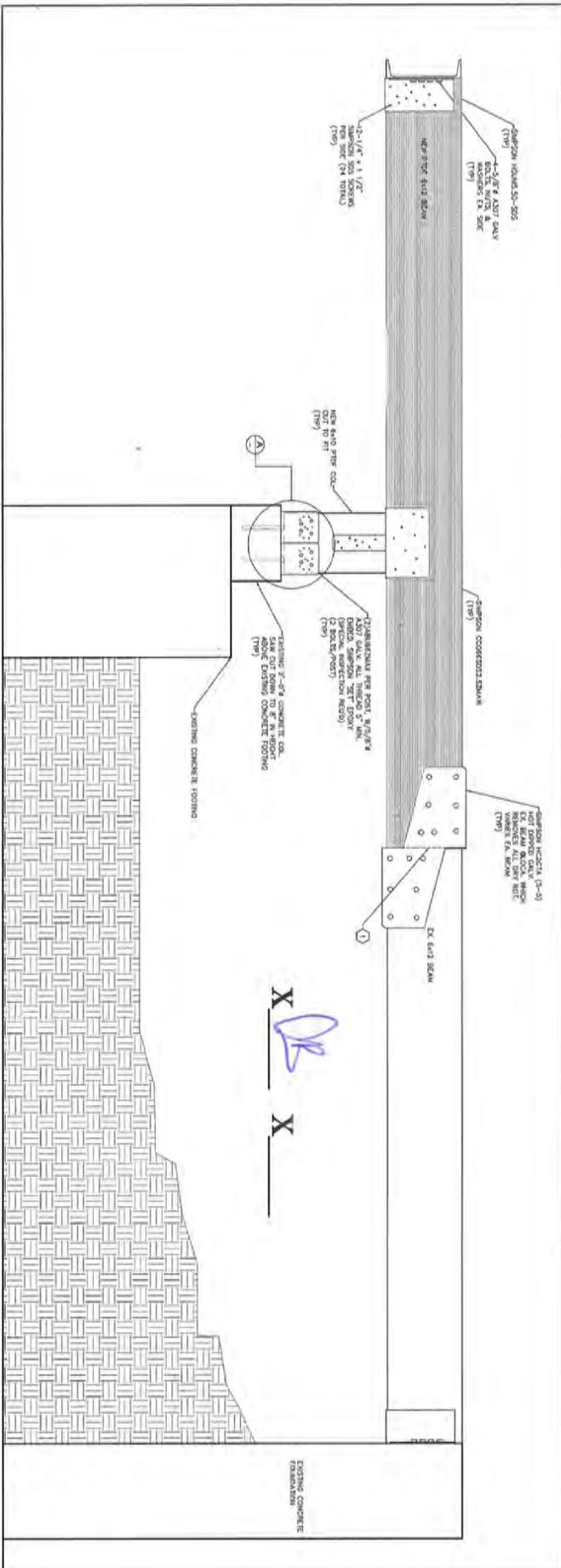
DETAIL A (EXISTING)

SCALE: 1-1/2" = 1'-0"



DETAIL A (SIDE VIEW)

SCALE: 1-1/2" = 1'-0"



ELEVATION

SCALE: 1-1/2" = 1'-0"

EXHIBIT B

OTTER ROCK DECK REPAIR ELEVATION

NOTE(S):

- ALL UTTER PROPOSER'S NAIL, HANGERS, BOLTS, STRAPS, ETC SHALL BE SHOWN BY AREA OR POINT SYMBOL ONLY BY SYMBOLS.
- ① WARES SHOW BEAM. SEE SHEET 1 FOR CUT LINE LOCATIONS.

X *OR* X

DRAFT

EXHIBIT C

COMMENCEMENT/TERMINATION DATE MEMO

[CITY LETTERHEAD]

The Parties have signed that certain Lease Agreement, dated _____, 20__ , (the "Lease"). Pursuant to Section 1.02 of the Lease the Parties agreed to sign a memo, substantially similar to this memo, within 5 days after the Commencement Date as defined in the Lease. The Commencement Date of the Lease is _____, 201_. The Lease terminates as of _____, 205_, unless terminated earlier as provided in the Lease.

CITY OF MORRO BAY

BOATYARD, LLC

Mayor

By: _____
Clifford Branch, Manager

Dated: _____

Dated: _____

X CB

EXHIBIT D

CITY OF MORRO BAY

595 Harbor St.
Morro Bay, CA 93442
(805) 772-6200
FAX (805) 772-7329

INSURANCE REQUIREMENTS FOR TENANT (NO AUTO RISKS)

TENANT 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 TENANT'S operation and use of the leased premises. The cost of such insurance shall be borne by TENANT.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance (for lessees with employees).
3. Property insurance against all risks of loss to any tenant improvements or betterments.

Minimum Limits of Insurance

Lessee shall maintain limits no less than:

1. General Liability: **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.
3. Property Insurance: Full replacement cost with no coinsurance penalty provision.

✓ VED ✓

City of Morro Bay
Insurance Requirements for TENANT

Deductibles and Self-Insured Retentions

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

Other Insurance Provisions

The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of ownership, maintenance or use of that part of the premises leased to Tenant.
2. TENANT'S insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be excess of TENANT'S insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

Verification of Coverage

TENANT shall furnish CITY with original certificates and amendatory **endorsements** effecting coverage required by this clause. The endorsements should be on forms provided by CITY or on other than CITY'S forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by CITY **before** use of the Premises, unless expressly stated otherwise in the Lease. CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

X CB X

City of Morro Bay
Insurance Requirements for TENANT

Sub-lessee

TENANT shall include all sub-lessees as insureds under its policies or shall furnish separate certificates and endorsements for each sub-lessee. All coverages for sub-lessees shall be subject to all of the requirements stated herein.

X UB X

City of Morro Bay
Insurance Requirements for TENANT

Reproduction of Insurance Services Office, Inc. Form

INSURER: ISO Form CG 20 11 11 85 (Modified)
POLICY NUMBER: Commercial General Liability
ENDORSEMENT NUMBER:

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED -- MANAGERS OR LESSORS OF PREMISES

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

1. Designation of Premises (Part Leased to You):
2. Name of Person or Organization (Additional Insured): City of Morro Bay
3. Additional Premium:

(If no entry appears above, the information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the person or organization shown in the schedule.

Modifications to ISO form CG 20 11 11 85:

1. The Insured scheduled above includes the Insured's elected or appointed officers, officials, employees and volunteers.
2. This insurance shall be primary as respects the Insured shown in the schedule above, or if excess, shall stand in an unbroken chain of coverage excess of the Named Insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the Insured scheduled above shall be in excess of this insurance and shall not be called upon to contribute with it.
3. The insurance afforded by this policy shall not be canceled except after thirty days prior written notice by certified mail return receipt requested has been given to the City.

Signature-Authorized Representative

Address

α CR *X*

EXHIBIT E

FORM OF TERMINATION OF STEINMANN LEASE

(Immediately following this page)

x PR $\frac{x}{\downarrow}$

TERMINATION OF LEASE

THIS TERMINATION OF LEASE, dated _____, 2017, is entered into by and among the CITY OF MORRO BAY, a municipal corporation ("City"), Josef Steinmann, as an individual ("Tenant"), Jaime Parker, doing business as Otter Rock Cafe, ("Subtenant") and Lost Isle Adventures, LLC, a California limited liability company ("Renter").

1. City and Tenant entered into an unrecorded lease (the "Lease"), as of June 22, 1993, pursuant to which City leases to Tenant and Tenant leases from City all of the following premises (hereinafter the "Premises") in the City of Morro Bay, County of San Luis Obispo, State of California, described as Lease Site 90/90W and delineated on Parcel Map of CITY of Morro Bay No. 68-30, which map was recorded on October 10, 1968, in Book 3, Page 10 of Parcel Maps in the Office of the County Recorder, San Luis Obispo County, California (Map).
2. Subtenant subleases a portion of the Premises from Tenant, as authorized by City, pursuant to that certain sublease, dated September 1, 2011, for operation of the Otter Rock Cafe (the "Sublease").
3. Renter rents docks from Tenant as part of the operation of a business located at Lease Site 89/89W, pursuant to that certain rental agreement between Renter and Tenant (the "Dock Rental Agreement").
4. Pursuant to the Lease, Tenant operates a hat shop on the Premises.
5. Subject to Paragraph 13., below, Tenant and Subtenant do hereby terminate the Sublease and City approves of that termination.
6. Subject to Paragraph 13., below, Renter and Tenant do hereby terminate the Dock Rental Agreement and City approves that termination.
7. Subject to Paragraph 13., below, City and Tenant do hereby terminate the Lease.
8. Subject to Paragraph 13., below, For valuable consideration, the receipt and adequacy of which are hereby acknowledged, City, Tenant, Subtenant and Renter hereby release and forever discharge each other and each's elected or appointed public officials, officers, employees and agents, including, but not limited to, each of their



associates, predecessors, successors, heirs, assignees, agents, directors, officers, employees, representatives, elected or appointed public officials, attorneys, and all persons acting by, through, under or in concert with them, or any of them ("Releasees"), of and from any and all manner of action or actions, cause or causes of action, in law or in equity, suits, debts, liens, contracts, agreements, promises, liability, claims, demands, damages, loss, cost or expenses, of any nature whatsoever, known or unknown, fixed or contingent (hereinafter called "Claims"), which City and Tenant, Subtenant and Renter, jointly and separately, now have or may hereafter have against Releasees, or any of them, by reason of any matter, cause, or thing whatsoever from the beginning of time to the date hereof including, without limiting the generality of the foregoing, any Claims constituting, arising out of, based upon, or relating to the Lease, Sublease or Dock Rental Agreement, as well as any matters, causes, or things whatsoever that were, or have been, could in any way have been, alleged or may be related to the Lease, Sublease and Dock Rental Agreement, or that could be alleged as arising from the Lease, Sublease or Dock Rental Agreement or any other cause.

9. Subject to Paragraph 13,, below, City Tenant, Subtenant and Renter acknowledge each may hereafter discover facts different from or in addition to those they now know or believe to be true with respect to the claims, demands, causes of action, obligations, damages, and liabilities of any nature whatsoever that are the subject of the Release set forth in Paragraph 8 of this Termination of Lease, and expressly agree to assume the risk of the possible discovery of additional or different facts, and Tenant, Subtenant and Renter agree this Termination of Lease shall be and remain effective in all respects regardless of such additional or different facts.

10. Subject to Paragraph 13,, below, the Release set forth above in Paragraph 8 of this Termination of Lease is a release of ALL claims, demands, causes of action, obligations, damages, and liabilities of any nature whatsoever that are described in the Release and is intended to encompass all known and unknown, foreseen and unforeseen claims, which Tenant, Subtenant or Renter may have as a direct or an indirect result of or directly or indirectly arising from the Lease, Sublease or Dock Rental Agreement or any other cause.

X VB X

11. Subject to Paragraph 13., below, further, City, Tenant, Subtenant and Renter expressly agree to waive and relinquish all rights and benefits they may have against Releasees under Paragraph 8 of this Termination of Lease based on Section 1542 of the Civil Code of the State of California which reads as follows:

§1542. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

<u> </u> Initials of City	<u> </u> Initials of Tenant	<u> </u> Initials of Subtenant	<u> </u> Initials of Renter	<u> </u> Initials of Renter
------------------------------------------	--------------------------------------------	-----------------------------------------------	--------------------------------------------	-----------------------------------------------

12. City, Tenant, Subtenant and Renter represent none of them have any complaints or charges against any of Releasees with any local, state or federal agency or court; and if any such agency or court assumes jurisdiction of any complaint or charge against the Releasees or any of their predecessors, successors, heirs, assigns, employees, shareholders, officers, directors, agents, attorneys, subsidiaries, divisions or affiliated corporations or organizations, whether previously or hereafter affiliated in any manner, on behalf of City, Tenant, Subtenant or Renter, whenever filed, Tenant, Subtenant or Renter will request such agency or court to withdraw and dismiss the matter forthwith.

13. The effective date of the terminations described in Paragraphs 5., 6., and 7., above are the same date as the closure of the escrow opened between Tenant and Boatyard, LLC, with escrow numbers _____ and _____ (the "October Escrows"), by which Boatyard, LLC, is purchasing Tenant's business and ABC licenses; provided, that such closure occurs before October 31, 2018 (the "Effective Date of the Terminations").

14. Except for Paragraphs 5., 6., 7. 8., 9., 10., and 11., the effective date of this Termination of Lease is the date it is signed on behalf of City.

15. Tenant and City acknowledge and agree a new master lease between Tenant and Boatyard. LLC will also be effective on the same day this Termination of Lease is effective, but Boatyard LLC's typical operations and maintenance obligations of the Premises as a tenant do not commence until the closure of the October Escrows. Based on the foregoing and until the Effective Date of the Terminations, Tenant,

Handwritten signatures in black ink, including a signature that appears to be 'J. CB' and another signature to its right.

Subtenant and Renter shall, until that closure and as applicable to each, continue to perform all the obligations of maintenance and operations of the Lease, Sublease and Rental Agreement.

Executed at Morro Bay, California, as of the date first written above.

TENANT

"CITY"

Josef Steinmann

By _____
Jamie L. Irons, Mayor

Dated: _____, 2017

Dated: _____, 2017

SUBTENANT

RENTER

Jaime Parker. dba Otter Rock Cafe

By: _____
Dane Jacob, Member

Dated: _____, 2017

Dated: _____, 2017

By: _____
James Sfregola, CEO

Dated: _____, 2017

X OR H

RESOLUTION NO. 67-17

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA, RESCINDING
A PREVIOUSLY APPROVED AMENDMENT #1 AND
APPROVING A NEW AMENDMENT #1 TO THE NEW LEASE AGREEMENT
FOR LEASE SITE 89/89W, LOCATED AT 845 EMBARCADERO**

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

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

WHEREAS, Boatyard LLC ("Tenant") has been the lessee of Lease Site 89/89W since 2006 and is a tenant in good standing; and

WHEREAS, on October 11, 2016, Tenant and City entered into that certain new master lease agreement for the Lease Site (the "New Lease Agreement"); and

WHEREAS, City and Tenant wish to better resolve issues over a failing portion of the seawall on the Lease Site and modify various provisions of the New Lease Agreement, including the contingency provisions, by approving Amendment #1 of the New Lease Agreement for the Lease Site.

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

1. Amendment #1 to the New Lease Agreement approved by the City Council on August 22, 2017, is hereby rescinded.
2. The attached new Amendment #1 to the New Lease Agreement is hereby approved.
3. The Mayor is hereby authorized to execute said Amendment #1.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 12th day of December, 2017 on the following vote:

AYES:
NOES:
ABSENT:

Jamie L. Irons, Mayor

ATTEST:

Dana Swanson, City Clerk

RESOLUTION NO. 68-17

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING A NEW LEASE AGREEMENT
FOR LEASE SITE 90/90W, LOCATED AT 885 EMBARCADERO**

**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, Josef Steinmann (“Tenant”) has been the lessee of Lease Site 90/90W (the “Lease Site”) since 2001; and

WHEREAS, Tenant is in escrow for sale of the Lease Site to the tenant of Lease Site 89/89W (“New Tenant”); and

WHEREAS, City and New Tenant wish to resolve issues over a failing portion of the seawall on Lease Site 89/89W; and because of the integrated nature of the seawall and revetment improvements to be completed on Lease Site 89/89W (the “Boatyard”), pursuant to the new Lease Agreement for the Boatyard, as amended by Amendment #1, and because some of the improvements on the Lease Site to be completed pursuant to the Lease Agreement being approved by this Resolution and encroach into the Lease Site 89/89W, a combined project is warranted; and

WHEREAS, New Tenant is proposing substantial repair, maintenance and renovation/remodel improvements on the Lease Site; and

WHEREAS, City and New Tenant wish to enter into the Lease Agreement for the Lease Site to take into account the proposed improvements and integration with the improvement rehabilitation project on Lease Site 89/89W.

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

1. The attached new Lease Agreement for Lease Site 90/90W is hereby approved.
2. The Mayor is hereby authorized to execute the new Lease Agreement.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 12th day of December, 2017 on the following vote:

AYES:
NOES:
ABSENT:

Jamie L. Irons, Mayor

ATTEST:

Dana Swanson, City Clerk

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AGENDA NO: C-1

MEETING DATE: December 12, 2017

Staff Report

TO: Honorable Mayor and City Council

DATE: November 30, 2017

FROM: Eric Endersby, Harbor Director
Jennifer Callaway, Finance Director
Joseph W. Pannone, City Attorney

SUBJECT: Status Update and Evaluation of Conditional Consent of Landowner Performance Pertaining to Request for Proposals Award on Lease Site 87-88/87W-88W Located at 833 Embarcadero (Off the Hook) to TLC Family Enterprises, and Council Direction, as Deemed Appropriate

RECOMMENDATION

Staff recommend Council receive staff presentation and TLC Family Enterprises input, and consider whether TLC has performed adequately to continue with the redevelopment process of this lease site. It is staff's recommendation the Council deem TLC's submissions responsive to the COL requirements as discussed in this staff report.

ALTERNATIVES

1. Revoke the COL from TLC as non-responsive, as provided for in the COL document, and direct staff to work with Central Coast Investments, Inc. (the remaining proposer from the Request for Proposals process) on their redevelopment proposal, and to bring back to a future Council meeting for consideration of COL approval.

2. Revoke the COL from TLC as non-responsive, and direct staff to re-issue a new Request for Proposals document for redevelopment of the site.

If either Alternative 1 or 2 is chosen by Council, then further consideration and direction regarding the operation of the lease site after the current lease's expiration at the end of March, 2018, will be required, as current Council direction is to enter a short-term lease with TLC next spring (assuming TLC continues on as the chosen redeveloper).

FISCAL IMPACT

Pending any redevelopment of the lease site or additional subleases being approved, staff expects the site to continue generating the same revenue it has solely from the operation of Under the Sea Gallery. If the lease site is redeveloped and businesses operating as proposed, then in ~2022 it is expected revenues to the Harbor Fund from this site will increase approximately \$10,000 to \$80,000 in year one from current levels, depending on what is negotiated in the lease and assuming the lease site performs as expected.

Prepared By: EE

Dept Review: EE

City Manager Review: _____

City Attorney Review: JWP

BACKGROUND

On August 22, 2017, the City Council granted a conditional Consent of Landowner (COL) for the redevelopment of lease site 87-88/87W-88W, located at 833 Embarcadero road and commonly known as “Off the Hook” restaurant, to TLC Family Enterprises based on its site redevelopment proposal. A copy of that COL is included with this staff report as Attachment 1.

In addition to setting definitive timeline performance standards in the COL for various aspects of the project and process, Council directed staff to bring back, in ~90 days, an update on the status of conditions 1-4 in the COL, which had a November 1, 2017 deadline to perform, in order to evaluate whether or not the performance parameters for these items had been met.

The minutes to the August 22, 2017 Council meeting can be found at this link:

<http://www.morro-bay.ca.us/ArchiveCenter/ViewFile/Item/4419>

Due to the significant personnel changes that have occurred with the City Manager and Finance Director positions in recent months, TLC requested a ~two-week extension of the November 1 deadline for submission of its business and marketing plans in order to enable discussions with the new permanent personnel in those positions about those plans before submitting them. With the authority granted in the COL document, Interim City Manager Marty Lomeli granted that extension until November 13, 2017.

TLC successfully submitted the required materials within the deadlines.

DISCUSSION

Addressing the COL conditions 1-4:

1. Evidence of Available Financing. TLC submitted an updated Letter of Interest from Mid Coast Capital (MCC), as well as a Preliminary Expression of Interest from American Riviera Bank. In addition, an Expression of Interest letter was provided from Community West Bank, but it was submitted after the November 1 deadline.

Mid Coast has pledged \$3.0M in financing, while American Riviera states the amount is to be determined, with a 65% loan-to-value (LTV) cap for a conventional loan, and 70% LTV cap on a government guaranteed (USDA) loan. Community West indicates a \$2.7M loan amount.

TLC proposes the project will be financed through a capital investment from TLC of \$1.2M, an interest-only construction loan at 5.7% and a 25-year final loan at 4.76% for \$2.7M, totaling \$3.9M. This is to include ~\$200K cash working capital at doors-opening for business start-up. Some of those costs would be covered from substantiated personal assets of the owners of TLC.

TLC’s total project cost estimate for lending purposes, including construction start-up “soft” costs and operational and other start-up costs, is \$3.6M to get the doors open for business. With TLC indicating an interest-only construction loan need of \$2.7M, a 75% loan-to-cost (LTC) ratio is indicated. This means TLC is investing 25% of the project’s costs through construction, or \$900K “out-of-pocket,” which ratio is well within the industry norm.

After construction, the interest-only loan would be converted to a permanent loan with standard terms. TLC estimates start of construction in ~2020, completion in ~2021, first full year of operation in ~2022, and with a final project value estimation of \$4.15M. With a permanent loan of \$2.7M and a project as-built value of \$4.15M, a 65% loan-to-value (LTV) ratio is indicated. This ratio falls at

the favorable lower end of the general industry standard of 65%-80%, and within what American Riviera Bank states is their maximum on a conventional loan.

In the financial documentation provided, TLC has satisfactorily demonstrated a combination of current cash reserves, as evidenced by bank account statements, asset liquidity, as evidenced by investment letter from Giovanni DeGarimore and Mr. DeGarimore's bank statements, and future savings capacity in the form of profit from Ms. Hansson's four successful Under the Sea Gallery retail shops (two in Morro Bay, one in Avila and one on Kauai, Hawaii) as evidenced by bank deposit history, for their \$1.2M capital investment they are bringing to the project in 2020 to satisfy their lender's borrowing ratio requirements.

Given the point at which the project is in the process timeline, without significant savings or significant commercial development track record, an "expression of interest" (EOI) type of commitment is likely the most a bank or other financier would be willing to commit to a development of this nature. As such, given the proformas, business and marketing plans developed by TLC, and financial evidence and information provided the lenders by TLC, it appears financing will be available and three lenders are interested in funding the project at the \$2.7M level.

Debt service coverage ratio (DSCR) is a metric designed to measure the ability of a business to meet debt obligations without utilizing cash reserves. A debt service ratio of 1 would indicate that a business has just enough income to cover all their debt costs, with nothing left over to cover unexpected events. A debt service ratio of above 1 would indicate that a business has more than enough operating income to pay all of its obligations while a ratio of less than 1 would indicate a lack of cash flow to cover all debt costs. Credit standards for Small Business Lending typically require a DSCR of 1.15 or higher. Given the size of this project a higher DSCR ranging between 1.5 to 2.0 would be appropriate as it would indicate the capacity of TLC to absorb any downward fluctuations in their revenue estimates, increased costs or unexpected costs that were not projected for.

The business plan submitted by TLC identifies a DSCR of 1.62 in year 2022, the first year of operations. After review of the detail projected financial data, staff believes the estimates are generally reasonable to support the DSCR of 1.62. Staff is further comforted by the fact that the DSCR of 1.62 indicates there is capacity to absorb additional expenditures or reduced revenues while still being able to meet the debt obligations.

In summary, staff has reviewed all the financial materials provided, including personal credit ratings for both Ms. Hansson and Mr. Leage, the Expression of Interest and other financing documents previously discussed, as well as a review of the financial plans and projections within the business plans, with the following of note:

- A. Cherise Hansson has a credit score falling in the middle of the "excellent" range (720-850) as of August 2017, which would indicate a low credit risk at that point in time. Travis Leage's credit report did not provide a score; however, it did indicate a construction-related default during the recent recession period, which was not unusual for that industry at the time.
- B. Based on Expression of Interest letters provided, evidence of financing seems likely for a project in this phase.
- C. Start-up expenses and start-up construction costs generally seem reasonable.
- D. Loan-to-Cost Ratio is 75% which is within industry standard.
- E. Loan-to-Value Ratio is 65%, industry standard is 65%-80%.

- F. The DSCR of 1.62 leaves capacity for absorbing expense and revenue variations from projected.
- G. TLC satisfactorily demonstrated the capacity to bring \$1.2M capital investment to the project.
- H. A portion of the operating capital for the hotel start-up will be derived from a salary Mr. Leage will pull from the construction loan as the project's general contractor and construction manager.

2. Submission of a Professionally-Prepared Business Plan. TLC intends to operate the overall lease site as one business entity, "HarborWalk Plaza," with subleases for the retail, restaurant and hotel portions, and the hotel being operated by TLC as a separate business entity, "HarborWalk Inn." As such, TLC submitted two business plans - one for HarborWalk Plaza, and one for HarborWalk Inn. Both plans were submitted within the extended deadline, and prepared by consulting firm Rabbit Hole Business Solutions of Atascadero. A summary of the primary financial elements of the two business plans are included with this staff report as Attachment 2.

Each plan submitted by TLC includes the following sections: Executive Summary, Opportunity, Execution, Company, Development Financial Plan, Operations Financial Plan and Harbor and City Income, with sub-sections under each primary element. A typical business plan will include the following general elements:

1. Executive Summary
2. Business Overview
3. Operations Plan
4. Market Analysis
5. Products and Services
6. Sales and Marketing
7. Competitive Analysis
8. Management Team
9. Financing Plan
10. Financial Projections

Staff have reviewed each plan, and believe they contain the necessary "industry-standard" elements expected of such a plan, and thus are responsive to the requirements of the COL.

As to the elements of each plan, the business overview, operations plan, market analysis, services, competitive analysis, and marketing plan and management team are comprehensive and described with sufficient detail for this stage of the project. A business plan, however, should be routinely refined as the project further develops, and staff would expect TLC Family Enterprises would continue to elaborate and refine their plan should their project continue to move forward.

The business plans provided contain both Developmental and Operational financial plans and forecasts. TLC has included information on key assumptions, start-up expenses and start-up construction costs, cash flow analysis, source and use of funds and projected financials such as profit and loss, balance sheets and projected cash flow statements for the years 2017 through 2021 as-applicable in the pre-construction years, and for 2022 through 2026 as-applicable post-construction and operation.

As would be expected, TLC further defined forecasted financial data, including key assumptions that drive the projections such as monthly rental basis. The business plans include revenue and

expense forecast tables and charts, net profit or loss and cash flow projections from year 2022 through 2026. Projected balance sheets and cash flow statements through the same five-year period are also included within the plans, including detail on the projected gross revenues for the HarborWalk Plaza and HarborWalk Inn, as well as the projected Harbor Enterprise and City revenues generated for Measure Q, the General Fund and TBID.

The business plan for the HarborWalk Inn provides monthly detailed projected profit and loss statements, balance sheets and cash flow statements from June 2020 through May 2022 with annual projections being provided for years 2022 through 2026.

In summary, staff has evaluated the two business plans submitted, with the following of note:

- A. HarborWalk Plaza sublease pricing and revenue projections are generally reasonable and assume a 2% annual increase. Year 1 revenue projections are largely in-line with, although somewhat more conservative than (by approximately 12%), both the TLC and City estimations from the August 22, 2017 Council item staff report when the COL was first approved for TLC. By year 2-3, TLC's current revenue projections match those that were provided in August for Year 1.
- B. HarborWalk Plaza expense projections are generally reasonable, and assume a 2% annual increase where applicable.
- C. HarborWalk Inn revenue projections appear low on Average Daily Rate (ADR), but high on percent occupancy, in addition to being aggressive in their growth assumptions. As such, TLC indicates hotel loss in Year 1 of ~\$6,500, and profitability of ~\$34,000 in Year 2. A more conservative approach, using TLC's expense projections, would use the City-wide annual hotel growth trend of 6%, and indicate profitability in Year 4/5.

3. Submission of a Professionally-Prepared Marketing Plan. TLC submitted a marketing plan for the development. It was submitted within the extended deadline, and prepared by consulting firm Mental Marketing of Morro Bay. The marketing plan is included with this staff report as Attachment 3.

The marketing plan includes the following sections: Property Overview, Marketing Objectives and Audiences, Tourism Trends Impacting Property, Property Marketing Approach, Program 1 – Pre-Launch, Program 2 – Destination Co-Op PR and Program 3 – Paid Digital Media.

A typical marketing plan will include the following general elements:

1. Business Overview and Situation Analysis
2. Opportunities and Objectives
3. Market Analysis and Target Markets
4. Strategic Planning
5. Budgeting
6. Evaluation and Updating

Staff have reviewed the plan, and believe it contains the necessary "industry-standard" elements expected of such a plan, and thus is responsive to the requirements of the COL.

In summary, staff, including the Tourism Manager, have evaluated the marketing plan, with the following of note:

- A. TLC's planned "LEED" certification, if accomplished, stands to allow this project to build on a new customer base not currently well-served in Morro Bay.
- B. While the marketing plan does include goals and objectives, detail about how each objective will be achieved is lacking. As in the business plans, the marketing plan should be routinely refined as the project further develops. Part of this development should be implementation timelines to ensure timely execution, and continued engagement of a professional marketing agency.
- C. TLC proposes a start-up ADR (\$225) somewhat lower than the waterfront average (\$250-\$275), and assumes a higher occupancy (70%) because of it, in addition to aggressive initial year growth projections. As previously noted, a more conservative approach would be to use the current waterfront ADR, occupancy rates and ~6% growth patterns, which if assumed would indicate profitability in Year 4/5. That is more the norm in the industry and pattern on our waterfront, but even as such, the project appears able to remain solvent to weather the early start-up years given the financial capacity and financial plans demonstrated.
- D. The plan foresees partnering with vacation rentals and bringing them into the TBID to expand available marketing funds. Since vacation rentals are not currently in the TBID, it cannot be assumed leveraging them will increase TBID revenues.

4. Centennial Project Coordination and Financial Commitment. The COL requires TLC to show evidence of coordination with the lease site owners adjacent to the Centennial Parkway Concept Plan for joint participation in the plan. This was to include participation in building elements of the plan, and demonstrated financial commitment to the funding mechanism the City eventually develops to build the Centennial project.

TLC reported and provided evidence, in the form of email, text and phone records, of reaching out to lessees Burt Caldwell with the Libertine Pub site, and Doug Redican with Rose's Landing and discussing mutually beneficial opportunities. Both Caldwell and Redican appear prepared to coordinate with TLC and others on elements of the Centennial project that are mutually beneficial, as that project progresses.

TLC continues to be committed to the development of some element of the Centennial plan in the future, and has budgeted \$20,000 to that effort as was evidenced in their business plan financials.

Staff, therefore, believe those efforts are responsive to the requirements of the COL.

CONCLUSION

Staff have analyzed TLC's submitted plans and financial capacity, and conducted revenue and expense calculations and comparisons to arrive at the conclusion the proposal still appears financially viable as-proposed. TLC's current revenue projections, although more conservative than what they proposed previously, still indicate a financially viable redevelopment project. In addition, it appears TLC will be adequately funded to complete the project, provided their own capital investment meets their lender's requirements when it comes time to fund, which currently appears to be the case. Finally, TLC has the plans, project team members and business and marketing participants with the apparent capacity to plan, permit, build and operate the project.

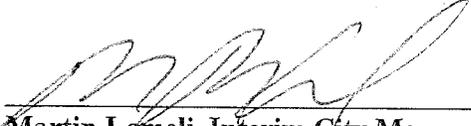
Staff, therefore, recommend the City Council deem TLC's submission requirements of the COL items 1-4 responsive to allow TLC to continue the process to redevelop lease Site 87-88/87W-88W.

ATTACHMENTS

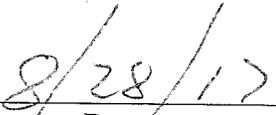
1. Council-approved and executed Consent of Landowner document.
2. Financial summary of HarborWalk Plaza and HarborWalk Inn Business Plans.
3. HarborWalk Plaza Marketing Plan.

5. The Applicant must file a complete application for a Conditional Use Permit for the project as-proposed, per the City Planned Development Overlay Zone and Concept Plan Submittal Requirements, with the Community Development Department by January 2, 2018 at 4:00 p.m. or this Consent of Landowner Agreement will expire on January 3, 2018.
6. The Applicant must obtain Concept Plan approval from the Planning Commission and City Council on or before August 31, 2018 at 4:00 p.m. or this Consent of Landowner Agreement will expire on September 1, 2018.
7. The Applicant, after obtaining Concept Plan approval by the Planning Commission and City Council, shall negotiate in good faith with the City for a new lease on the lease site. Upon execution of the new lease, this Consent of Landowner Agreement shall no longer be of any effect. If a new lease agreement is not executed by both parties on or before October 25, 2018, then this Consent of Landowner Agreement shall expire on October 26, 2018. Among other things, the lease will include the following milestones, which if not met will automatically terminate the lease without notice:
 - a. On or before 120 days after the lease is executed, the Applicant shall obtain evidence of financing necessary for completion of the proposed project, as approved by the Finance Director and City Attorney.
 - b. The Applicant must file a complete application for a Coastal Development Permit from the Coastal Commission, and any other necessary agency permits, for the approved Concept Plan for the project on or before November 30 2018 at 4:00 p.m.
 - c. The Applicant must obtain a Coastal Development Permit and other permits on or before April 30, 2019 at 4:00 p.m.
 - d. The Applicant must file a complete application for Precise Plan review by the Planning Commission for the project by July 31, 2019 at 4:00 p.m.
 - e. The Applicant must obtain Precise Plan approval from the Planning Commission for the project on or before November 30, 2019 at 4:00 p.m.
 - f. The Applicant must file complete construction drawings and p Plans to obtain a building permit from the Building Division for the project on or before February 28, 2020 at 4:00 p.m.
 - g. The Applicant must obtain the building permit on or before May 31, 2020 at 4:00 p.m.
 - h. The Applicant must commence construction for the approved project on or before August 31, 2020. Commencement shall mean when the Applicant has incurred at least \$50,000 of hard construction costs for actual work satisfactorily completed for the project on the site pursuant to the approved building permit
 - i. The Applicant must complete construction for the approved project on or before August 31, 2021, as evidenced by a Certificate of Occupancy issued by the City.

If, due to any reason within or outside the control of Applicant, as reasonably determined by the City Manager, then one or more extensions to any or all of the compliance dates may be granted.



Martin Lomeli, Interim City Manager



Date



CITY OF MORRO BAY

CITY HALL

595 Harbor Street
Morro Bay, CA 93442

October 9, 2017

Cherise Hansson
TLC Family Enterprises, Inc.

Morro Bay, CA 93442

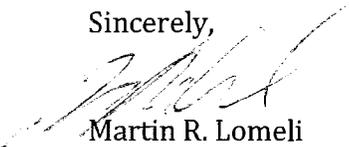
Dear Ms. Hansson,

Thank you for your request for an extension of the deadlines for filing TLC's business and marketing plans, as required by the Consent of Landowner (COL) for Lease Site 87-88/87W-88W, 833 Embarcadero Road.

I have reviewed that request with the Harbor Director and City Attorney. Due to the significant personnel changes the City will be experiencing in the next few weeks, I have determined, as expressly permitted in the COL, it is reasonable for those deadlines to be extended through November 13, 2017. The item will be considered by the City Council at the meeting of December 12, 2017. All other terms and conditions of the COL remain in full force and effect.

We look forward to your continued efforts to improve the subject lease site and community.

Sincerely,


Martin R. Lomeli
Interim City Manager

CC: Eric Endersby, Harbor Director
Scot Graham, Community Development Director
Joseph Pannone, City Attorney

HarborWalk Plaza & HarborWalk Inn Business Plan Financial Summaries

Overall Projected Revenues – Year 1

Revenue Source	Staff Analysis – Aug. 2017	TLC Business Plan
Retail Sales	\$578,400 ¹	\$478,000 ²
Restaurant Sales	\$1,222,780 ³	\$1,080,000 ⁴
Hotel Sales	\$479,000 ⁵	\$402,300 ⁶
Slip Rents	\$24,360 ⁷	\$24,360 ⁷
Total Annual Lease Site Gross Revenue	\$2,304,540	\$1,984,660

Notes:

1. 1,446 square feet of retail space at \$400/ft²/year.
2. 1,446 square feet of retail space at \$331/ft²/year.
3. 2,375 square feet of restaurant space at \$470/ft²/year, and 318 square feet of fast food sales space at \$335/ft²/year.
4. TLC estimate.
5. 7 rooms with \$250 average daily rate (ADR), 75% (initial stabilized) occupancy.
6. 7 rooms with \$225 ADR, 70% (start-up) occupancy.
7. 4 35-foot slips at \$14.50/foot/month each (\$507.50/month).

HarborWalk Plaza Profit & Loss, Liabilities and Cash

Totals	2022	2023	2024	2025	2026
Gross Revenues	\$433,700	\$442,300	\$451,200	\$460,200	\$469,400
Operating Expenses	\$134,300	\$128,400	\$130,600	\$132,800	\$135,000
Net Operating Income	\$299,400	\$313,900	\$320,600	\$327,400	\$334,400
Fixed Expenses	\$232,700	\$234,100	\$233,400	\$232,600	\$231,700
Net Profit	\$66,700	\$79,800	\$87,200	\$94,800	\$102,700
Total Liabilities	\$2,566,900	\$2,506,200	\$2,440,300	\$2,371,200	\$2,298,700
Cash at End of Period	\$272,700	\$329,600	\$378,700	\$412,200	\$430,100

HarborWalk Inn Profit & Loss - Operations

Totals	2022	2023	2024	2025	2026
Gross Revenues	\$402,300	\$450,500	\$500,800	\$534,300	\$564,700
Direct Costs	\$1,600	\$1,800	\$2,000	\$2,100	\$2,200
Operating Expenses	\$377,400	\$382,600	\$403,600	\$419,300	\$434,100
Net Operating Income	\$23,300	\$66,100	\$95,200	\$112,900	\$128,400
Fixed Expenses	\$30,000	\$35,900	\$43,000	\$46,600	\$49,700
Net Profit (Loss)	(\$6,700)	\$30,200	\$52,200	\$66,300	\$78,700

RECEIVED

NOV - 1 2017

City Morro Bay
Harbor Department

@ 3:19 pm
-CME

Harbor Walk Plaza Marketing Plan



T.L.C. Family Enterprises
October 31, 2017

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PROPERTY OVERVIEW	PG. 3
MARKETING OBJECTIVES AND AUDIENCES	PG. 4
TOURISM TRENDS IMPACTING PROPERTY	PG. 4
PROPERTY MARKETING APPROACH	PG. 6
PROGRAM 1: PRE-LAUNCH	PG. 7
PROGRAM 2: DESTINATION CO-OP PR	PG. 8
PROGRAM 3: PAID DIGITAL MEDIA	PG. 9

THE HARBOR WALK PLAZA

PROPERTY DESCRIPTION

Situated prominently on the Embarcadero overlooking the iconic Morro Bay Harbor, The Harbor Walk Plaza will be rebuilt and renovated into a state of the art, multi-sensory retail, restaurant, and lodging experience. Investing \$3,500,000 to redevelop the site, T.L.C. Family Enterprises will build and manage a unique family-oriented property using modern design that benefits the public and community of Morro Bay. As the most prominent, and one of highest-valued properties on the waterfront, the new property will feature:

- Visitor-serving venues with destination activities, retail, restaurant and other services.
- Restaurant space, at the tenant's option, that may be divided to optimize three separate dining venues.
- The second floor area for a 7 unit boutique hotel (**The Harbor Walk Inn**) with approximately 1060 sq. ft. of view decks.
- Two-bayside docks, 4 slips and areas for outside seating.
- Permanent play structures built in the outdoor public spaces.
- 15 foot lateral public access built along the waterfront and the property.
- Cutting edge, LEED certified construction, lighting and energy output.



The unique fishing village theme will capture the imagination of families, upscale boomers and honeymoon couples with vintage lamps, cleats, pulleys, and netting tastefully displayed. The design combines distressed wood blended with clean lines, looking glass decks and the occasional porthole.

The LEED Certified property embraces the concept of Stewardship Travel - a burgeoning trend that takes ecotourism to the next level of visitor engagement. Placed around the property will be educational plaques and photos with information about the history and local ecology of Morro Bay, as well as specific Stewardship activities that help visitors immerse themselves in the local heritage and culture.

The following Marketing Plan presented to City Staff represents a preliminary strategic outline demonstrating a commitment to professional property and destination marketing practices. The brand marketing approach embraces Morro Bay's destination marketing strategy to enhance the variety of properties in the destination while increasing occupancy during mid-week and shoulder season. It is important to note that prior to launching the outreach, an up-to-date tactical paid, earned and owned media plan will be created and activated.

MARKETING GOALS & TARGET AUDIENCES

GOALS & OBJECTIVES

- a. Establish brand awareness of the property experience
- b. Achieve forecasted lodging occupancy and revenues
- c. Generate higher Average Daily Rate (ADR) than the competitive set
- d. Help position Morro Bay's lodging portfolio as more diverse, upscale.
- e. Position retail, restaurant tenants for sustainable growth
- f. Positively impact transient occupancy tax (TOT) for the City of Morro Bay

TARGET MARKET APPROACH

With seven rooms, the goal to deliver high occupancy & ADR is straightforward and obtainable overall. However, anticipating slow periods (midweek and shoulder season) will require devoting resources for outreach to specific target markets.

The Harbor Walk Inn lodging operation will be positioned in the underserved luxury boutique experience Morro Bay's lodging portfolio needs to attract more upscale guests.

By looking at the historical data and taking into consideration the differing travel trends, the tourism department found three key factors in its analysis and decided to focus on targeted markets from all CA drive markets to Southern CA and San Joaquin Valley. These key factors are:

1. How to best leverage marketing dollars that increase lodging conversions
2. How to help mitigate drop in international tourism by growing core markets
3. Tourism research commissioned through Visit SLO CAL and database profiles analysis that indicate these markets spend more and visit more

DESTINATION AND TOURISM TRENDS IMPACTING PROPERTY

1. Families are traveling throughout the year
 - a. Morro Bay's number 1 lifestyle market: Traveling Families. Morro Bay has all there is to offer for families Targeting family travel with campaign messaging throughout the year
2. Multigenerational travel continues to grow
 - a. Partnering with Vacation Rentals and bringing them into the TBID will expand marketing funds to leverage this travel trend
3. Target Millennials
 - a. Fun, hip, unique adventures that they can't find anywhere else? Morro Bay speaks to the Millennial.
4. Technology: mobile is king!
 - a. Engage with customers, no matter where they are? Mobile is king in the travel world and the destination partners with the most sophisticated digital ad networks that use top analytical tools to find 1) What are the profiles of people visiting our website and ultimately booking a room? 2) What creative is working best? 3) What is the cost of conversion? 4) How can we get more bookings for less?
5. Sharing Economy/co living

- a. According to Bjorn Hanson, clinical professor with the NYU Preston Robert Tisch Center for Hospitality and Tourism, “The amount of new (hotel) projects being launched is almost double what it was in 2014,” so hotels are not going away, but how to include the airbnbs and VRBOs.
6. Ecotourism
 - a. Morro Bay has been an eco friendly destination for decades, but as eco awareness gets to that tipping point of saturation in the marketplace, more and more people want to engage with the destinations they are traveling to. They want to do docent led tours about the cormorant rookery, they want to do coordinated beach clean ups, they want to set good examples of how to interact with nature for their children. Morro Bay will engage at a higher level through the city Parks and Rec department and work to include coordinated events and tours of this nature.
 7. Virtual Reality Experiences for Travel - Rich content goes to the next level
 - a. Video taken to the next level, the virtual reality of 360 degree video allows the visitor to feel what it’s like to kayak in the harbor with the rock looming large over the water as the sun sets in the distance. First person video, what a fun idea.
 8. Solo/Female Travel
 - a. Wellness travel, mindful travel, yard sale aficionados. Women are traveling solo and in groups more than ever and Morro Bay has everything they are looking for. Let’s make sure they get to know us.
 9. Mine Data and Analytics
 - a. City tourism hired destination and hospitality SEO guru to fine tune website analytics
 - b. Growing database to target higher income levels, more sophisticated traveler
 - c. Knowing that segmentation is more sophisticated than ever, prospect email and direct mail can be highly effective acquisition channels when fully integrated with campaign strategies: geo/lifestyle cohort targeting, campaign creative, paid media, public relations, social media and existing database.
 10. Lifestyle Marketing with Emphasis on Experience Continues to Make Sense
 - a. For many of us this is also known as lifestyle marketing, targeting different lifestyles that audiences are drawn to. Whether we target outdoor enthusiasts, health nuts, nature lovers, or foodies, this approach allows for targeted media buys and niche PR efforts based on these common interests. This approach targets different ages from millennials to baby boomers, and all ages in between based on their lifestyle, and brings them together for a common cause.

PROPERTY MARKETING APPROACH

The marketing approach for Harbor Walk Plaza is simple: to inspire people want to sleep with you, shop with you, dine with you, party with you, and - most importantly - talk about you.

While rational elements such as location, traffic and room rates remain a factor in the brand marketing process, there has to be a strong emotional appeal to establish a sustainable presence in a hyper-competitive Coastal California market.

The most successful boutique hotel brands do exactly that by offering an experience beyond just a room to stay in.

In other words, if there isn't a reason to post on Instagram, there's no hope for generating the level of break-through buzz to capture the imaginations of the informed, influential travelers Harbor Walk targets.

The lodging theme has been conceived to fulfill the challenge Bonnie Raitt once sang: *"Let's give them something to talk about."*

Throughout the launch of the property, the T.L.C. executive team will interface with local tourism leaders, community groups, Chamber of Commerce, Morro Bay's marketing firm and real estate brokers to fine tune and execute an integrated brand marketing program. The plan will leverage the most cost effective channels to define the property and deliver bookings: ambient/gorilla marketing, events, paid, earned and social media.

The final launch plan will leverage co-operative tourism programs that deliver midweek and shoulder season travelers efficiently. To capture the attention of travelers in the early stages of awareness, the program supports the successful public relations efforts proven to place Morro Bay top of mind with priority travel and lifestyle media.

CREATE THE PROMISE

During early stages of property development, Harbor Walk Plaza will generate a strong sense of anticipation to key stakeholders through an inspiring narrative of the property experience. Far beyond the pedestrian ‘coming soon’ message, successful multi-use properties are turning to multi-media presentations and calls to action to draw leases and future bookings.

STRATEGY: Build brand awareness, develop and database and keep Harbor Walk Plaza top of mind in the community, local media and travelers through multi-media digital presence, property display and ‘ground-breaking’ activities that include calls to action!

TACTICS:

1. **Deliver strong visual identity package:** Mental Marketing will create a cohesive, distinct brand marketing work plan, logo, color palette, signage and website/social media/email interface design. These tools will be needed for all pre/post launch executions.
2. **Web/Social Multi-media Video:** A highly engaging video will be used on website and delivered to targeted groups to showcase the multi-sensory property experience. This presentation is designed to influence community partners, Morro Bay’s repeat travelers considering a new experience and prospective retail/restaurant vendors considering the property.
3. **Ground-Breaking Event:** A chamber-type event with Harbor Walk’s unique spin. Includes a taste/tease of the culinary/wine experience, along with an engaging presentation of the mix of retail and Stewardship Travel information.
4. **Database Acquisition with Calls to Action:** While under construction, Harbor Walk will gain viral attention to website and social media with a variety of offers including a ‘getaway giveaway’ to stay, play, dine and shop in the future.



MEDIA HOSTING

Since April 2014 Mental Marketing has executed strategic public relations programs to increase awareness of Morro Bay as a visitor destination through third party endorsements from bloggers, travel writers and editors from California feeder markets and primary national audiences. The programs we used to raise awareness included media relations inviting niche lifestyle travel journalists to Morro Bay, developing itineraries showcasing activities targeted to their audiences in outdoor adventure, culinary, wine and beer, family fun, and getting back to nature. Over the past three years we have seen a tremendous growth in media awareness and demand for information and hosted visits to Morro Bay.

STRATEGY: Build brand awareness of the luxury boutique segment in Morro Bay in the travel, lifestyle media and daily news press by hosting Tourism Bureau approved media to stay, dine and shop at the Harbor Walk Plaza.

TACTICS:

1. **Visiting Journalist Program:** A highly effective component of the PR strategy is hosting top journalists on FAM trips. Throughout all the targeted outreach programs, Harbor Walk Plaza will coordinate with Morro Bay Tourism Bureau to invite approved primary targeted media to come stay in Morro Bay in return for feature stories. This outreach strategy is designed to target specific travel, adventure, food, wine, baby boomer, family, pet friendly and lodging journalists and invite the top media that will produce the best results and meet our strategic PR goals.
2. **Media Pitches through Tourism Partners:** Provide story ideas unique to Harbor Walk's new happenings to: Morro Bay, Visit SLO County, CCTC and their international offices, Visit CA, SLO Wine and the Paso Robles Wine Country Alliance, among other sources. These media outlets are looking for stories on new openings, new and unique culinary, wine, lodging, shopping and interactive experiences. Harbor Walk Plaza, with our ever-exciting mix, will be ideally-positioned to contribute story ideas.

SOCIAL MEDIA SOLUTIONS DESIGNED FOR ENGAGEMENT

As Harbor Walk Plaza will maintain a robust social media presence showing travelers the experience, and allowing them to engage while here and at home. People want to know what is available to them for a better travel experience, in real time, but they don't want to be "sold" the information. From the destination experiences, bay view kayaks, golf courses and city streets, we'll bring an "educate and inform" angle to our marketing efforts and keep it personal and welcoming.

Great daily content through partnerships, visual impacts, and information about upcoming events and marketing promotions, but most importantly, sharing our retail / restaurant images, fan posts and more. NOTHING helps Social Media thrive more than letting Morro Bay's guests know that they are important, we're paying attention to them, and we think what they're saying is important enough to share ourselves. **KEEPIN' IT REAL**

STRATEGY: 60% PULL AND 40% PUSH CONTENT

60%: Pull marketing “pulls” the consumer to engage through response, interest, inquiries, and transactions, through the use of actionable and experiential digital content i.e. social posts, blogs, e-newsletters.

40%: Push marketing “pushes” content to the user using persuasive calls to action to get them to response through discounts, special offerings and ads.

TACTICS:

- Web Cam showing the weather, gorgeous Harbor view and weather promoted on social.
- Calendar posts across all channels on monthly basis, integrated with campaigns and outreach efforts
- Develop strategic local social partners through Tourism Bureau and other highly social active groups and organizations ie Central Coast Women for Fisheries, MB National Estuary Program, MB Harbor Dept/Coast Guard, Whale Watching
- Strategic sharing with group pages specific to upcoming events
- Partner with area photographers to feature the picturesque values of Morro Bay visitors love, and highly engage with
- Share insider blog program posts which will feature a variety of travel perspectives (Seniors, Young Families, Outdoor Enthusiasts, etc.)
- Create integrated lodging specials and packages to promote on social media and Tourism Bureau

PROGRAM 3: CONVERSION FOCUS DIGITAL/SOCIAL MEDIA PLAN & PROMOTIONS

STRATEGY: Develop strong seasonal digital ad campaigns using display and text ads and online advertorials targeting lifestyle groups in geo-targeted southern and eastern CA markets to generate appropriate level of bookings and conversions, and increase database of visitors to retarget during slow periods.

TACTIC 1: PAID LODGING MEDIA

As the digital media landscape for hospitality operators is highly dynamic, a current mix of paid media channels will be refined 90 days prior to Grand Opening. The updated plan will thoroughly evaluate outdoor, OTA, print, pay per click, travel ad networks, TripAdvisor, streaming media, cooperative, native content, database-driven email programs, mobile ad networks, social media advertising and retargeting campaigns. The Harbor Walk Plaza’s media firm will present a media schedule, budget and revenue conversion forecast when appropriate.

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AGENDA NO: C-2 ADDENDUM
MEETING DATE: December 12, 2017

ADDENDUM

TO: Honorable Mayor and City Council **DATE:** December 8, 2017
FROM: Rob Livick, Public Works Director
Jennifer Callaway, Finance Director
SUBJECT: Receive Water Reclamation Facility Fiscal Year 2016-17 4th Quarter Program Budget Update and Provide Comments and Direction as Deemed Appropriate

BACKGROUND

Prior to the WRFCAC meeting on December 5, 2017 a series of 6 questions were received related to the committee report. Staff verbally responded to those questions during the discussion of this item. Attachment 1 is a listing of the questions and summary of staff's response.

In addition, at the City Council meeting on November 14, 2017, the Morro Bay City Council directed staff to review the 4th quarter program expenditures and budget for the Water Reclamation Facility (WRF) project and report back to Council at the December 12, 2017 Council meeting. The direction was to provide the updated quarterly financials in the traditional format to Council, and the WRFCAC if time permitted.

Staff completed the review of the 4th quarter WRF expenditures and budget and provided a program budget update to the WRFCAC at the regularly scheduled meeting on Tuesday, December 5, 2017. During the presentation, staff indicated that the 4th quarter expenditures and budget were being provided, however cash balances for the Sewer Fund were not provided as City staff was in the process of verifying those balances and had outstanding questions to discuss with prior City staff. The updated cash balance for the Sewer Fund would be provided for the Council discussion on Tuesday, December 12, 2017.

FISCAL IMPACT

The reported cash balances in the City's adopted budget, beginning in FY 2015/16, were overstated, resulting in a cumulative difference through FY 2017/18 of \$813,471 less than originally projected. However, it is important to clarify that no actual funds are unaccounted for, rather they were reported inaccurately through the budget documents and previous WRF financial reports.

DISCUSSION

In July 2017, the City Council and community were presented with financial information from the

Prepared By: RL, JC Dept Review: _____
City Manager Review: SJC City Attorney Review: _____

budget document regarding the WRF project, including cash balances for the Sewer and Water Accumulation Funds. The cash balances that were provided for the Sewer Accumulation Fund were as follows:

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

These balances were provided as part of the adopted FY 2017/18 budget (page 94 of the budget document is provided as Attachment 2 for reference).

In preparing the requested financial update for Council, staff began to verify the prior reported cash balances and determined that effective in FY 2015/16, forward into FY 2017/18, the reported cash balances in those budgets were not in agreement with the cash balances in the City's finance system (New World). The chart below shows the previously reported cash balances compared to the actual cash balances that staff have verified in the City's financial system, and notes the difference:

Sewer Accumulation Fund

	2015/16 Per Adopted Budget	2015/16 Actual - Per City's Finance System	Difference
Beginning Cash Balance	\$4,209,495	\$4,209,495	
Ending Cash Balance	\$6,334,741	\$4,337,164	(\$1,997,577)
Source/(use of) Fund Balance	\$2,125,246	\$127,669	

	2016/17 Per Adopted Budget	2016/17 Actual - Per City's Finance System	Difference
Beginning Cash Balance	\$6,334,741	\$4,337,164	
Ending Cash Balance	\$8,330,242	\$5,646,241	(\$2,684,001)
Source/(use of) Fund Balance	\$1,995,501	\$1,309,077	

	2017/18 Per Adopted Budget	2017/18 Corrected Budgeted Amounts	Difference
Beginning Cash Balance	\$8,330,242	\$5,646,241	
Ending Cash Balance	\$5,113,924	\$4,300,453 *	(\$813,471)
Source/(use of) Fund Balance	(\$3,216,318)	(\$1,345,788)	

* The Ending projected cash balance at June 30, 2018 includes an adjustment of a double counting of the MB/CSD Wastewater Treatment Plant in the amount of \$1.87 million. Effectively, this helps to mitigate the prior year variances.

The overstatements that were presented to Council in July 2017 were drawn from budget documents. Therefore, staff reviewed all related cash transactions, beginning with FY 2015/16, that affected the Sewer Revenue and Accumulation funds. In addition, staff reviewed the budget spreadsheets to determine where the discrepancy occurred and to reconcile to the financial system to ensure all funds are accounted for. Based on this review, staff determined that the overstatement occurred only in the budget document, which was separate and independent of the City's financial system. The city's financial system is accurate and reflective of true program revenues and expenditures.

The primary causes of the overstatement in the budget of cash balances versus actual cash balance in FY 2015/16 was twofold:

First, the adopted budget sheets for the FY 2017/18 budget reported actual figures for FY 2015/16. Those actual figures reported were, in some cases, not updated to the true actuals; instead they were budgeted figures for the year. As a result, the Morro Bay/Cayucos Sanitation District (MB/CSD) Wastewater Treatment Plant expenditure of \$1.67 million was not captured in the actual number reported for FY 2015/16. The chart below is a snapshot of the relevant budget page. Highlighted in yellow is the missing expenditure (see next page for chart).

CITY OF MORRO BAY
2017/18 ADOPTED BUDGET

SEWER REVENUE FUND

	2013/14 Actual	2014/15 Actual	2015/16 Actual	2016/17 Amended Budget	2017/18 Adopted Budget
Beginning cash balance	\$ -	\$ -	\$ -	\$ -	\$ -
Revenues from:					
Sewer user fees	4,070,514	4,221,780	4,921,000	5,561,000	6,198,000
Intergovernmental	-	-	-	-	-
Rental income	18,704	23,370	20,000	20,000	20,000
Other revenues (Penalties)	33,330	34,675	25,000	27,000	48,000
Subtotal	<u>4,122,548</u>	<u>4,279,825</u>	<u>4,966,000</u>	<u>5,608,000</u>	<u>6,266,000</u>
Transfers in from:					
Accumulation fund	-	-	-	-	-
Other	-	-	-	-	-
Subtotal	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Total revenues and transfers in	<u>4,122,548</u>	<u>4,279,825</u>	<u>4,966,000</u>	<u>5,608,000</u>	<u>6,266,000</u>
Expenses for:					
Personnel	(535,091)	(543,849)	(653,618)	(649,167)	(591,989)
Supplies	(127,031)	(116,221)	(156,250)	(223,750)	(199,760)
Services	(236,783)	(341,322)	(424,984)	(582,768)	(487,693)
Other (no depreciation)	(71,690)	(61,396)	-	-	(14,075)
MB/CSD Wastewater Treatment Plant	(2,624,352)	(2,700,186)	-	(1,796,417)	(1,680,199)
Subtotal	<u>(3,594,947)</u>	<u>(3,762,974)</u>	<u>(1,234,852)</u>	<u>(3,252,102)</u>	<u>(2,973,716)</u>
Transfers out to:					
General fund for cost allocation	(164,701)	(166,348)	(167,512)	(170,862)	(174,228)
Utility discount program	-	(28,409)	(25,000)	(27,000)	(48,000)
IT replacement fund	-	-	(4,000)	(5,164)	(18,384)
to Waste Water Treatment Fund	-	-	-	-	(1,870,530) *
Accumulation fund	(362,900)	(322,094)	(3,534,636)	(2,152,872)	(1,181,142)
Subtotal	<u>(527,601)</u>	<u>(516,851)</u>	<u>(3,731,148)</u>	<u>(2,355,898)</u>	<u>(3,292,284)</u>
Total expenses and transfers out	<u>(4,122,548)</u>	<u>(4,279,825)</u>	<u>(4,966,000)</u>	<u>(5,608,000)</u>	<u>(6,266,000)</u>
Revenues over/(under) expenses	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
and transfers out	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Ending cash balance	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>

* This is a double counting of the MB/CSD Wastewater Treatment Plant and should be removed from the expenditures. This is further discussed later in the report.

Staff has confirmed that the annual \$1.67 million expense for the city's share of the existing system did occur, was accurately recorded in the New World system and accounted for in the FY 2015/16 annual audit. The error only affected reported cash balances on the budget versus actual report in the July 2017 update.

Second, the FY 2015/16 actual numbers reported in the FY 2017/18 adopted budget did not capture the Capital project costs, or CIP costs, related to the current WRF project. In FY 2015/16 the capital projects totaled \$1.8 million dollars. These projects impact cash and should have been accounted for in the reported cash balances in the budget document. Staff has confirmed the capital projects expenses were incurred and were correctly recorded on the City's books.

The offsetting difference for FY 2015/16 is a combination of other adopted figures being reported as actuals, pre-paid, accrual and receivable items.

Ending cash balances carryforward into the following fiscal year as beginning cash balances. Therefore, with the initial overstatement being reported in FY 2015/16, this resulted in the following years cash balances being impacted.

Fiscal Year 2017/18 Adopted Sewer Accumulation Fund Budget

In the adopted budget, the June 30, 2018 cash balance in the sewer accumulation fund was projected to be \$5.1 million. With the corrected cash balances brought forward, the new projected June 30, 2018 cash balance would be \$2.4 million. However, it has been noted that there was a double counting within the adopted budget for FY 2017/18 of the MB/CSD Wastewater Treatment Plant costs, totaling \$1.87 million. Based on staff's review, the FY 2017/18 adopted budget for the sewer fund does appear to have double counted the expense. Therefore, with the removal of the \$1.87 million dollars from the expenditure budget, the new projected June 30, 2018 cash balance in the Sewer Accumulation fund is \$4.3 million, a difference of \$813,000 from the previously reported estimates.

It is important to note, that the new projected cash balance amount of \$4.3 million is inclusive of the WRF project budget of \$4.2 million for FY 2017/18, meaning that the Council and community have sufficient cash on hand to continue with the budgeted project expenditures.

CONCLUSION

In honoring the commitment to transparency and professional due diligence, staff felt it was incumbent to daylight these overstatements as soon as they were confirmed. As such, staff is continuing to work on verifying all funds reported cash balances in the budget document, will work to reconcile any differences from the actual cash balances that may be discovered, and report back to Council in January 2018 with a comprehensive summary of our findings.

ATTACHMENTS

1. Questions and Staff's Response for WRFCAC Meeting on November 14, 2017
2. Sewer Accumulation Fund Adopted FY 2017/18 Budget

Questions Received Prior to the WRFCAC meeting at 1300 on December 4, 2017 (Staff responses are in **Bold**)

1. Minutes of 7/5/17 meeting (bottom of first paragraph): EPA's website address is incorrect. Please change this address to read: epa.gov/waterfinancecenter.

Minutes corrected

2. Staff Report dated 11/29/17 (B-1)
Page 5, Economic Outreach: Lobbying support expenditures year-to-date are \$18,017. What services has the Ferguson Group provided other than lobbying for the dredging of Morro Bay's harbor?

The Ferguson Group does not provide any assistance for the dredging of the Morro Bay Harbor. The Ferguson Group provides advocacy services at the federal level focused on project funding and favorable legislative and regulatory action. In that effort, TFG has assisted with outreach to the USEPA, USDA, USBR, and Congressman Carbajal's office and has facilitated meeting with the same.

Page 6, Printing Advertising: Year-to-date expenditures by outside vendors for copies, printing, and postage to develop and distribute WRF program materials are \$25,592. One way to reduce this cost (especially postage) is to develop (in-house) Qs & As (one page) on different WRF topics and include these with the City's monthly water/sewer bills.

Yes, the Staff can incorporate FAQs or Q and As and incorporate into the water/sewer bills. Since not all citizens of Morro Bay receive a printed water/sewer bill, staff would also keep these FAQs updated on the website and have printed material available at the public counter.

Page 7, second paragraph: The report states that the City was awarded a \$10.3 million SRF planning and design loan from the SWRCB. Is this loan still viable? (In other words, is there a requirement to start spending the award by a certain date or the award is withdrawn?)

The State Revolving Fund (SRF) Planning and Design loan is still active. The City has not needed to access those loan funds, as there has been sufficient funds available within the Sewer Enterprise Accumulation Fund. Once the Design-Build contract notice to proceed is issued, the City will need to access the SRF Planning and Design funds to fund the first steps into the design for the design build process prior.

Page 7, third paragraph: Has the City actually started to write the application for the WIFIA loan from EPA? And if so, has the City encountered any stumbling blocks? (The report only mentions an initial conference call with EPA staff.)

The City has not started filling out the actual EPA WIFIA application forms. Staff has been working with our EPA WIFIA program manager to develop the technical and environmental packages needed to support the application. Additionally we are coordinating between the two subsidized loans WIFIA and SRF to minimize the duplication of effort.

3. Quarterly Budget Summary for 4Q2016/17

Page 2, Property Acquisition: What does the \$30,500 expenditure reflect?

\$5,500 in appraisal fees and \$25,000 payment to the property owner for an option on the Righetti property. The option expired and is no longer in effect.

Page 2, SRF Loan: Has the City been awarded \$59,937,500 for a SRF construction loan or is this just an estimate? (I was led to believe that SRF loans for future projects were uncertain. Has this situation changed?)

The City does not have a SRF construction loan in hand. \$59,937,500 is an estimate of potential revenue available given the existing rate structure.

4. Staff Report dated 11/29/17 (B-2)

- Program Schedule Update: Suggest moving up the deliverable date for the rate study to April since the final analysis will be completed in February. Also suggest holding the Prop 218 hearing in May instead of June. These changes would allow the City more time to make last minute edits to the WIFIA loan application.

The rate analysis and Prop 218 process will rely upon the costs prepared by the Design Build firms responding to the RFP. Those proposals will not be due until the end of April 2018.

5. Morro Bay WRF Project Schedule

- Line item 167: Task 106 – Grant and Loan Pursuit and Management. How does this task relate to Ferguson’s lobbying work? (In other words, are the City’s consultants and lobbyists coordinating their efforts to obtain funding for the WRF?)

Both Kestrel and the Ferguson Group are coordinating their efforts through City staff and the Program Management Team. The Ferguson Group provides advocacy at the federal level while Kestrel coordinates with local and regional agency staff and prepares funding applications.

6. Staff Report dated 11/29/17 (B-3 rev 1)

Discussion, bullet 1: With regard to the WRFCAC members who are chosen to assist in the review of the SOQs, I suggest that they ask the interviewees to provide examples of creative solutions they have implemented in the past to reduce project costs.

Comment noted and is one of the existing evaluation criteria for the SOQ

ATTACHMENT 2

CITY OF MORRO BAY
2017/18 ADOPTED BUDGET

SEWER ACCUMULATION FUND

	<u>2013/14</u> <u>Actual</u>	<u>2014/15</u> <u>Actual</u>	<u>2015/16</u> <u>Actual</u>	<u>2016/17</u> <u>Amended</u> <u>Budget</u>	<u>2017/18</u> <u>Adopted</u> <u>Budget</u>
Beginning cash balance	\$ 3,714,093	\$ 3,964,766	\$ 4,209,495	\$ 6,334,741	\$ 8,330,242
Revenues from:					
Impact fees	54,256	82,103	50,000	60,000	41,115
Interest income	24,209	-	-	-	-
Subtotal	<u>78,465</u>	<u>82,103</u>	<u>50,000</u>	<u>60,000</u>	<u>41,115</u>
Transfers in from:					
Revenue fund	<u>362,900</u>	<u>322,094</u>	<u>3,534,636</u>	<u>2,152,872</u>	<u>1,181,142</u>
Subtotal	<u>362,900</u>	<u>322,094</u>	<u>3,534,636</u>	<u>2,152,872</u>	<u>1,181,142</u>
Total revenues and transfers in	<u>441,365</u>	<u>404,197</u>	<u>3,584,636</u>	<u>2,212,872</u>	<u>1,222,257</u>
Capital improvements	<u>-</u>	<u>(44,468)</u>	<u>(1,319,390)</u> ¹	<u>(40,000)</u>	<u>(4,261,204)</u>
Transfer out to:					
Sewer Equipment Replacement Fund	<u>(115,000)</u>	<u>(115,000)</u>	<u>(140,000)</u>	<u>(177,371)</u>	<u>(177,371)</u>
Sewer Revenue Fund	<u>(75,692)</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Subtotal	<u>(190,692)</u>	<u>(115,000)</u>	<u>(140,000)</u>	<u>(177,371)</u>	<u>(177,371)</u>
Total capital and transfers out	<u>(190,692)</u>	<u>(159,468)</u>	<u>(1,459,390)</u>	<u>(217,371)</u>	<u>(4,438,575)</u>
Revenues and transfers over(under) capital improvements and transfers out	<u>250,673</u>	<u>244,729</u>	<u>2,125,246</u>	<u>1,995,501</u>	<u>(3,216,318)</u>
Ending cash balance	\$ <u>3,964,766</u>	\$ <u>4,209,495</u>	\$ <u>6,334,741</u>	\$ <u>8,330,242</u>	\$ <u>5,113,924</u>

The FY 17/18 expenditure is \$4,261,204 for the WWTP Relocation and Replacement project (WRF).

¹ Represents anticipated spending through June 30 2017. The majority of appropriations for Capital Projects will go unexpended for FY 2016/17



AGENDA NO: C-2

MEETING DATE: December 12, 2017

Staff Report

TO: Honorable Mayor and City Council **DATE:** November 30, 2017

FROM: Rob Livick, Public Works Director
Jennifer Callaway, Finance Director

SUBJECT: Receive Water Reclamation Facility Fiscal Year 2016-17 4th Quarter Program Budget Update and Provide Comments and Direction as Deemed Appropriate

RECOMMENDATION

Staff recommends that City Council receive and file the budget status report of the WRF program and provide 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

Staff has prepared a budget update for the fourth quarter of fiscal year 2016/17 (4Q16/17). The third quarter budget update was presented to Council in early August 2017. The delay in producing the 4Q16/17 report is a result of staffing transitions, particularly within the Finance Department and City Manager's Office. During the November 14, 2017, City Council meeting, the City Council directed staff to prepare a 4Q16/17 budget update for the December 12, 2017, Council meeting. The direction was to provide the budget update in the traditional format for the Council and community to review.

The Program Management Team and City Staff have previously developed a budget and expense report format with input from the WRFAC 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 the consultant contracts. The first page shows budget and expense figures for the quarter and the fiscal year; and the second page contains the project totals. The final page provides a higher level of detail on budget status of individual consultant contracts since inception of the project.

This report is meant to be provided quarterly to both the City Council and WRFAC, and currently represents expenses through June 30, 2017.

The following items should be noted:

Prepared By: RL, JC

Dept Review:

City Manager Review: SJC

City Attorney Review: JPW

- Since issuance of the 3rd quarter report, new line items included in this 4th quarter report include legal services (account 6101), Economic Outreach (account 6140), and Fuel Oil & Lubricants (account 5110).
- The line item under Contractual Services for the Rate Study has been changed to “Rate Study – preliminary analysis costs.” That is because the Rate Study contract and invoices are now being tracked with the other consultant contracts and is grouped with Current Consultant Contracts.

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.

Object Name (from Attachment 1)	Description	Comments
Past Siting Studies	Contractual services for studies completed prior to initiating the Facility Master Plan process (2013-2015)	These work efforts were completed, contracts expired, and there are no further encumbrances
Current Consultant Contracts	Summary of Page 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	--
Rate Study – Preliminary Analysis Costs	Contract services for preliminary analysis of rate increase for funding	These work efforts were completed before the rate study to assist in early estimates of rate impacts. Subsequent expenses are included with “Current Consultant Contracts”
Legal Services	Attorney fees for the WRF Project	--
Economic Outreach	Costs for lobbying support from State and Federal representatives and agencies	This is the cost for professional services from The Ferguson Group. These costs are not tracked in Procure and invoices are sent directly to the City.
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	--
Travel Expense	Costs for travel related to the WRF project	--
Fuel Oil & Lubricants	Costs for fuel oil and lubricants for vehicular maintenance	--

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's Men's Colony, and the State Revolving Fund (SRF) Loan. 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. That assumed debt service coverage would be reduced and reallocated by reprioritizing other wastewater capital projects. It is assumed revenue for the WRF 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. That would occur after construction is complete, which is projected to start in FY 21/22 per the Bartle Wells Rate Study published in April 2017.

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, and \$6M budgeted for FY 2016/17.

The City was awarded a \$10.3M planning and design loan from the State Water Resources Control Board (SWRCB) State Revolving Fund and the loan agreement was executed on January 20, 2017. As the City pays consultant expenses, staff can submit the invoices to SRWCB staff and request reimbursement. Since the loan was approved January 20, 2017, WRF expenditures have been paid from the sewer accumulation fund and no loan draws have been required to date. As the project moves forward into further engineering design, it is anticipated that the loan will be utilized.

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 July of 2018 and the City has had an initial conference call with the EPA staff managing the program.

ATTACHMENTS

1. Quarterly Budget Summary for 4Q2016/17

City of Morro Bay										
Water Reclamation Facility Advisory Committee (WRFAC) Quarterly Budget Review Summary 4Q16/17										
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	
321-8312	Contractual Services									
6105	Past Siting Studies (Completed - no further encumbrance)	--	--	--	--	--	--	--	--	
6105	Current Consultant Contracts (see P.3)	\$802,851	\$292,194	36.39%	\$510,657	\$3,211,405	\$1,220,399	38.00%	\$1,991,006	
6105	Water Rights Legal Support (See Note 2)	\$0	\$0	--	\$0	\$0	\$0	--	\$0	
6105	Rate Study - preliminary analysis costs	\$0	\$0	--	\$0	\$0	\$0	--	\$0	
6101	Legal Services	\$0	\$2,583	--	(\$2,583)	\$0	\$2,583	--	(\$2,583)	
6140	Economic Outreach	\$0	\$13,517	--	(\$13,517)	\$0	\$18,017	--	(\$18,017)	
	Subtotal	\$802,851	\$308,294	38.40%	\$494,557	\$3,211,405	\$1,240,999	38.64%	\$1,970,406	
321-8312	Labor (Fully Burdened)									
4910.4999	Labor and Benefits	\$15,000	\$21,967	146.45%	(\$6,967)	\$60,000	\$68,248	113.75%	(\$8,248)	
	Subtotal	\$15,000	\$21,967	146.45%	(\$6,967)	\$60,000	\$68,248	113.75%	(\$8,248)	
321-8312	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	\$11,165	--	(\$11,165)	\$0	\$25,592	--	(\$25,592)	
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	\$777	155.43%	(\$277)	\$2,000	\$4,278	--	(\$2,278)	
5199, 6514, 6510	Travel expense	\$0	\$471	--	(\$471)	\$0	\$921	--	(\$921)	
5110	Fuel oil & lubricants	\$0	\$37	--	(\$37)	\$0	\$75	--	(\$75)	
	Subtotal	\$35,000	\$12,450	35.57%	\$22,550	\$2,607,204	\$42,711	1.64%	\$2,564,493	
	TOTALS	\$852,851	\$342,711	40.18%	\$510,140	\$5,878,609	\$1,351,958	23.00%	\$4,526,651	
	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	0.00%	\$0	
	Subtotal	\$0	\$0	0.00%	\$0	\$0	\$0	0.00%	\$0	
SWRCB	State Revolving Fund (SRF) Loan									
	SRF Planning Loan Proceeds	\$852,851	\$0	0.00%	(\$852,851)	\$5,878,609	\$0	0.00%	(\$5,878,609)	
	SRF Construction Loan Proceeds	\$0	\$0	0.00%	\$0	\$0	\$0	0.00%	\$0	
	Subtotal	\$852,851	\$0	0.00%	(\$852,851)	\$5,878,609	\$0	0.00%	(\$5,878,609)	
User Rates	Cash funds from Current Operations									
	Cash funds from Current Operations	\$0	\$342,711	--	\$342,711	\$0	\$1,351,958	--	\$1,351,958	
	Subtotal	\$0	\$342,711	--	\$342,711	\$0	\$1,351,958	--	\$1,351,958	
	TOTALS	\$852,851	\$342,711	40.18%	(\$510,140)	\$5,878,609	\$1,351,958	23.00%	(\$4,526,651)	

Notes:

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

City of Morro Bay						
Water Reclamation Facility Advisory Committee (WRFAC) Quarterly Budget Review Summary 4Q16/17						
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
321-8312	Contractual Services					
6105	Past Siting Studies (Completed - no further encumbrance)	\$534,418	\$448,057	\$0	83.84%	\$86,361
6105	Current Consultant Contracts (see P.3)	\$4,653,067	\$2,666,461	\$1,986,606	57.31%	\$1,986,606
6105	Water Rights Legal Support (See Note 2)	\$0	\$7,880	\$0	--	(\$7,880)
6105	Rate Study - preliminary analysis costs	\$0	\$1,457	\$0	--	(\$1,457)
6101	Legal Services	\$0	\$2,583	\$0	--	(\$2,583)
6140	Economic Outreach	\$0	\$18,017	\$0	--	(\$18,017)
	Subtotal	\$5,187,485	\$3,144,455	\$1,986,606	60.62%	\$2,043,030
321-8312	Labor (Fully Burdened)					
4910,4999	Labor and Benefits	\$400,000	\$281,261	\$0	70.32%	\$118,739
	Subtotal	\$400,000	\$281,261	\$0	70.32%	\$118,739
321-8312	Other Costs					
6105, 6162	Laboratory/Sampling	\$200,000	\$35,483	\$0	--	\$164,517
5199,5305, 6106, 6105,6710	Printing and Advertising	\$0	\$40,178	\$0	--	(\$40,178)
5199	Software license and fees	\$371,205	\$42,206	\$329,000	11.37%	\$329,000
5199,7101	Property Acquisition	\$2,425,000	\$30,500	\$0	--	\$2,394,500
5199, 6106, 6750	Program office equipment	\$2,000	\$8,529	\$0	--	(\$6,529)
5199, 6514, 6510	Travel expense	\$0	\$1,300	\$0	--	(\$1,300)
5110	Fuel oil & lubricants	\$0	\$75	\$0	--	(\$75)
	Subtotal	\$2,998,205	\$158,271	\$329,000	5.28%	\$2,839,934
	TOTALS	\$8,585,690	\$3,583,987	\$2,315,606	41.74%	\$5,001,703
Difference from City Adopted Budget						
City Adopted Budget						
REVENUE						
Key Definitions						
Accounts (See Note 1)		Total Project				
Funding	Revenue	Amended	Recognized		Percent	Variance
	Recycled Water Planning Grant	\$75,000	\$0		0.00%	(\$75,000)
	[Approval Pending]	\$0	\$0		0.00%	\$0
	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	\$3,496,625		0.00%	\$3,496,625
	Subtotal	\$0	\$3,496,625		0.00%	\$0
	TOTALS	\$70,474,861	\$3,583,987		5.09%	(\$66,890,874)

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
- 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
- 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
- 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 06-30-2017)

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	\$833,936.85	\$826,246.65	\$7,695.35	99%	100%	\$0.00	Black & Veatch
SC--002	CEQA/NEPA Documentation and Consulting	Approved	\$346,538.00	\$0.00	\$346,538.00	\$71,283.11	\$57,161.06	\$289,376.94	16%	21%	\$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	\$51,576.97	\$50,076.97	\$15,675.03	76%	78%	\$0.00	Kestrel
SC--011	2015 Program Management	Approved	\$920,808.00	\$1,248,766.00	\$2,169,574.00	\$1,135,789.02	\$989,762.94	\$1,179,811.06	46%	52%	\$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	\$15,811.10	\$15,811.10	\$20,988.90	43%	43%	\$0.00	Bartle Wells Associates
SC--017	Flow Monitoring Services	Approved	\$105,000.00	\$0.00	\$105,000.00	\$56,005.44	\$41,619.31	\$105,000.00	0%	0%	\$0.00	V&A
Total			\$2,460,402.87	\$1,633,468.56	\$4,093,871.43	\$2,666,461.00	\$2,460,403.40	\$1,675,087.34	60%	65%	\$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, not including Total Draw Requests for SC--016, which are reflected in the Rate Study line item on Page 2.

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AGENDA NO: C-3

MEETING DATE: December 12, 2017

Staff Report

TO: Honorable Mayor and City Council

DATE: December 4, 2017

FROM: Dana Swanson, City Clerk

SUBJECT: **Review of Council Subcommittee Proposed Changes to the Council Policies & Procedures and Advisory Board Bylaws and Adoption of Resolution No. 65-17 Amending the Advisory Board By-Laws regarding Appointment and Qualifications of Members and Meeting Frequency for the Recreation and Parks Commission**

RECOMMENDATION

Staff recommends the City Council review the Council subcommittee list of proposed changes to the Council Policies & Procedures and Advisory Board Bylaws, and adopt Resolution No. 65-17 amending the Advisory Board By-Laws for the Recreation and Parks Commission ("RPC") to reduce the number of Commissioners from seven to five and reduce the number of regular meetings from eight to six per year.

ALTERNATIVES

None are proposed

FISCAL IMPACT

There is no fiscal impact associated with this action.

BACKGROUND and DISCUSSION

Council Policies & Procedures / Advisory Board Handbook & By-laws

At its August 22, 2017, regular meeting, the Council established a subcommittee consisting of Mayor Irons and Council Member McPherson to work with staff to review the Council Policies & Procedures and Advisory Board Bylaws in their entirety, consider the possible revisions presented in that staff report and any others deemed necessary, then return to Council with proposed revisions for consideration and adoption.

That subcommittee has developed list of proposed changes to each policy document, which is included as Attachment 1 for Council consideration. The subcommittee requests a brief discussion to establish Council concurrence those are appropriate areas of focus as they move forward with developing new policy language. Those proposed changes will be brought back to Council at a future meeting for further discussion and adoption.

Recreation and Parks Commission

One proposed item for Council consideration that is more time sensitive than others, is the number of members and meeting frequency of the RPC. The RPC is comprised of seven voting members,

Prepared By: DS

Dept Review: _____

City Manager Review: **SJC**

City Attorney Review: **JWP**

five of which must be qualified electors of the City of Morro Bay. Each year the City prepares a list of appointments and conducts a recruitment to fill upcoming vacancies for appointive terms that will expire on January 31 of the upcoming year. The list of current appointments and their respective terms is provided as Attachment 2. The RPC currently has two vacancies and two more members whose terms expire January 31, 2018. The notice of vacancies will be published in the Bay News and posted at City Hall and the Morro Bay Library this week with interviews held in early to mid-January. If the Council wishes to reduce the number of members to five, then staff recommends that be done prior to the recruitment to fill current and upcoming vacancies.

In March 2016, the Council adopted Resolution No. 18-16 changing the meeting frequency of the RPC from six to eight meetings per year. Staff has determined the additional regular meetings are not necessary and recommends the policy revert back to meeting every other month in odd-numbered months. Should issues arise that require immediate attention, staff will schedule an occasional special meeting.

CONCLUSION

Staff recommends the City Council review the Council subcommittee list of proposed changes to the Council Policies & Procedures and Advisory Board Bylaws, and adopt Resolution No. 65-17 amending the Advisory Board By-Laws for the Recreation and Parks Commission ("RPC") to reduce the number of Commissioners from seven to five and reduce the number of regular meetings from eight to six per year.

ATTACHMENTS

1. Council Subcommittee Comments dated 11/28/17
2. 2017 List of Commissions and Boards as of 12/5/17
3. Proposed Resolution No. 65-17
4. Link to [Council Policies & Procedures](#)
5. Link to [Advisory Board Bylaws](#)

Proposed Changes to Advisory Board Handbook & By-Laws

1. Change Title to Advisory Body Handbook & By-Laws
2. Update City's mission statement
3. Fix typos and language edits
4. Include relevant information from Council Policies & Procedures instead of asking advisory members to read it in entirety (some of which is not applicable). Following are topics to be included in the Advisory Body Handbook & By-Laws:
 - a. Council/Advisory Body relationship conduct & expectations; role of advisory bodies
 - b. Meeting procedures (e.g., follow council procedures? Include moment of silence and/or pledge of allegiance?)
 - c. Civil behavior and civil discourse policies
 - d. Work plans
 - e. Advisory body/staff relationship
 - f. Formation of sub-committees
 - g. Reconsideration of issues
 - h. Providing comments to Council
 - i. Violation of advisory body policies
 - j. Resignation notification
5. Include training requirements
6. Include a brief discussion of special committees, e.g., WRFCAC and GPAC
7. Include more information and detail on the vetting/selection process, e.g., Council may not make an appointment when there is only one applicant
8. Expand section on the Brown Act to include information on violations, e.g., communicating with other advisory body members and/or Council, serial meetings
9. Re Recreation & Parks Commission:
 - a. Change meeting schedule to reflect current practices
 - b. Revisit number of members and qualifications for membership
10. Re Tourism Business Improvement District Advisory Board:
 - a. No regular meeting schedule?
 - b. TBID mission statement is included; should be formally adopted by Council
11. Planning Commission: revisit duties to determine if all are still applicable
12. Citizens Financial Oversight Committee:
 - a. Decide on formal title (several different ones in use)
 - b. Revisit duties and eliminate those that are not being done, e.g., reviewing the annual budget before Council makes a decision

Proposed Changes to Council Policies & Procedures

1. Very few substantive changes to propose
2. Most changes involve expanding discussion to clarify an issue (e.g., study sessions, use of facilities other than Vet's Hall, meeting procedures)
3. Reorganize some sections, i.e., move to make reading more straightforward
4. Changes & discussion points recommended in July 21, 2017 staff report
5. Brown Act Chapter, include advisory board language

CITY OF MORRO BAY

2017 - COMMISSIONS AND BOARDS

PLANNING COMMISSION (5)

<u>Name</u>	<u>Title</u>	<u>Appointed</u>	<u>Expires</u>
Gerald Luhr	Chair	02-01-15	01-31-19
Jesus "Jesse" Barron	Commissioner	10-24-17	01-31-21
Richard Sadowski	Commissioner	02-01-15	01-31-19
Michael Lucas	Commissioner	02-01-17	01-31-21
Joseph Ingraffia	Commissioner	02-01-16	01-31-20

RECREATION AND PARKS COMMISSION (7)

<u>Name</u>	<u>Title</u>	<u>Appointed</u>	<u>Expires</u>
Drew Sidaris	Chair	02-01-17	01-31-21
Robert Swain	Vice-Chair	02-01-14	01-31-18
Skip Sorich	Commissioner	02-01-17	01-31-21
Jeffrey Cox	Commissioner	05-18-15	01-31-18
Vacant as of 4-24-17	Commissioner		01-31-20
Vacant as of 11-16-17	Commissioner		01-31-21
Kevin Carroll	Commissioner	06-23-15	01-31-20

HARBOR ADVISORY BOARD (7)

<u>Name</u>	<u>Title</u>	<u>Appointed</u>	<u>Expires</u>
Ron Reisner Marine-oriented Business	Chair	02-01-17	01-31-21
Lynn Meissen Member-at-Large	Vice-Chair	02-01-14	01-31-18
William Luffee Member-at-Large	Member	02-01-17	01-31-21
Dana McClish Recreational Boating	Member	02-01-15	01-31-19
Gene Doughty South Bay/Los Osos	Member	02-01-14	01-31-18
Neal Maloney Waterfront Leaseholder	Member	02-01-15	01-31-19
Jeremiah O'Brien	Member	02-01-17	01-31-21
--Owen Hackleman	Alternate Member	02-01-17	01-31-21
--Peter Griffin Commercial Fishermen's Association	Alternate Member	02-01-17	01-31-21

PUBLIC WORKS ADVISORY BOARD (7)

<u>Name</u>	<u>Title</u>	<u>Appointed</u>	<u>Expires</u>
Ric Deschler	Chair	02-01-17	01-31-21
Stephen Shively	Vice-Chair	02-01-12	01-31-20
Stewart Skiff	Member	02-01-15	01-31-20
Chris Parker	Member	02-01-15	01-31-19
Jan Goldman	Member	02-01-17	01-31-21
John Erwin	Member	12-13-16	01-31-21
Chris Erlendson	Member	03-14-17	01-31-21

TOURISM BUSINESS IMPROVEMENT DISTRICT ADVISORY BOARD (7)

<u>Name</u>	<u>Title</u>	<u>Appointed</u>	<u>Expires</u>
Aaron Graves 22 or less rooms	Chair	11-17-15	01-31-20
Charles Yates Hotelier (Member-at-Large)	Vice-Chair	02-01-16	01-31-20
Vacant as of 4-20-17 50 or less rooms	Member		01-31-21
Taylor Newton Member-at-large	Member	02-01-15	01-31-19
Margaret Juren Hotelier (Member-at-Large)	Member	05-31-16	01-31-19
Sean Green Member-at-large	Member	03-14-17	01-31-19
Steve Allen Hotelier (Member-at-Large)	Member	03-14-17	01-31-21

VISIT SLO COUNTY (VSLOC) BOARD OF DIRECTORS

<u>Name</u>	<u>Title</u>	<u>Appointed</u>	<u>Expires</u>
Valerie Seymour	Member	05-23-17	01-20-20

CITIZEN OVERSIGHT/CITIZENS FINANCE COMMITTEE (7)

<u>Name</u>	<u>Title</u>	<u>Appointed</u>	<u>Expires</u>
Barbara Spagnola	Chair	02-01-13	01-31-19
Walter Heath	Member	05-18-15	01-31-19
John Martin	Member	04-11-17	01-31-22
Dawn Addis	Member	02-01-16	01-31-22
David Betonte	Member	02-01-16	01-31-22
John Erwin	Member	12-13-16	01-31-19
Bart Beckman	Member	08-09-16	01-31-22

WRF CITIZEN ADVISORY COMMITTEE (9)

<u>Name</u>	<u>Title</u>	<u>Appointed</u>
John Diodati	Chair	07-08-14
Barbara Spagnola	Vice-Chair	07-08-14
Paul Donnelly	Member	07-08-14
Ginny Garelick	Member	07-08-14
Dale Guerra	Member	07-08-14
Valerie Levulett	Member	07-08-14
Richard Sadowski	Member	07-08-14
Steve Shively	Member	07-08-14
Ann Fullerton	Member	04-11-17

GP/LCP ADVISORY COMMITTEE (GPAC) (9)

<u>Name</u>	<u>Title</u>	<u>Appointed</u>
Rich Buquet	Member	05-18-15
Jan Goldman	Member	05-18-15
Susan Schneider	Member	05-18-15
Glenn Silloway	Member	05-18-15
Melani Smith	Member	05-18-15
Susan Stewart	Member	05-18-15
Joseph Ingrassia	Planning Commission Liaison	10-10-17
Vacant as of 12-12-16	Member	
Vacant as of 11-28-17	Member	

RESOLUTION NO. 65-17

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AMENDING THE CITY OF MORRO BAY ADVISORY BOARDS
HANDBOOK AND BY-LAWS REGARDING APPOINTMENT AND QUALIFICATIONS OF
MEMBERS AND MEETING FREQUENCY FOR THE RECREATION & PARKS COMMISSION**

**THE CITY COUNCIL
CITY OF MORRO BAY, CALIFORNIA**

WHEREAS, to ensure all Advisory Board Members are familiar with and understand the City of Morro Bay's philosophies and policies regarding serving on an Advisory Board, and to establish consistency throughout the by-laws for all commissions and advisory boards, the City of Morro Bay adopted the Advisory Boards Handbook and By-Laws on August 12, 2002; and

WHEREAS, the Advisory Boards Handbook and By-Laws for the City of Morro Bay is a composite of the City Council actions, policies, references, and information regarding the City Advisory Boards; and

WHEREAS, the current By-Laws for each Advisory Body establish the number of voting members and qualifications; and

WHEREAS, the City Council desires to amend the Advisory Boards Handbook and By-Laws for the Recreation & Parks Commission to reduce the number of Commissioners from seven to five; and

WHEREAS, the Recreation & Parks Commission has requested the number of meetings held annually be reduced from eight to six per year, held in odd-numbered months, as was the practice prior to the adoption of Resolution No. 18-16.

NOW, THEREFORE, BE IT RESOLVED the City Council of the City of Morro Bay does hereby amend the following sections of the Recreation & Parks Commission By-Laws to read as follows:

NUMBER OF MEMBERS AND APPOINTMENT

The Recreation and Parks Commission shall be comprised of five members. Appointments and the filling of vacancies shall be made by the City Council. Commissioners shall serve at the pleasure of the City Council.

QUALIFICATIONS

Four of the five 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.)

PROCEDURE

Regular meetings shall be held every other month on odd numbered months 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 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.

PASSED AND ADOPTED by the City Council, City of Morro Bay at a regular meeting thereof held on the 12th day of December 2017 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk