



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, April 9, 2019 Veterans Memorial Hall - 5:30 P.M. 209 Surf St., Morro Bay, CA

ESTABLISH QUORUM AND CALL TO ORDER

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

RECOGNITION

CLOSED SESSION REPORT

MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS

CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS

PRESENTATIONS

- Bike to Work Day by Peter Williamson from San Luis Obispo Council of Governments
- Month of the Child Proclamation

PUBLIC COMMENT PERIOD

Members of the audience wishing to address the Council on City business matters not on the agenda may do so at this time. For those desiring to speak on items on the agenda, but unable to stay for the item, may also address the Council at this time.

Public comment is an opportunity for members of the public to provide input to the governing body. To increase the effectiveness of the Public Comment Period, the City respectfully requests the following guidelines and expectations be followed:

- Those desiring to speak are asked to complete a speaker slip, which are located at the entrance, and submit it to the City Clerk. However, speaker slips are not required to provide public comment.
- When recognized by the Mayor, please come forward to the podium to speak. Though not required, it is helpful if you state your name, city of residence and whether you represent a business or group. Unless otherwise established by the Mayor, comments are to be limited to three minutes.
- All remarks should be addressed to Council, as a whole, and not to any individual member thereof.
- The Council respectfully requests that you refrain from making slanderous, profane or personal remarks against any elected official, commission and/or staff.
- Please refrain from public displays or outbursts such as unsolicited applause, comments or cheering.
- Any disruptive activities that substantially interfere with the ability of the City Council to carry out its meeting will not be permitted and offenders will be requested to leave the meeting.
- Your participation in City Council meetings is welcome and your courtesy will be appreciated.
- The Council in turn agrees to abide by its best practices of civility and civil discourse according to Resolution No. 07-19.

A. CONSENT AGENDA

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion. The public will also be provided an opportunity to comment on consent agenda items.

- A-1 APPROVAL OF MINUTES FOR THE FEBRUARY 26, 2019, CITY COUNCIL MEETING;
(ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-2 APPROVAL OF MINUTES FOR THE MARCH 1, 2019, CITY COUNCIL SPECIAL
MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-3 APPROVAL OF MINUTES FOR THE MARCH 26, 2019, CITY COUNCIL SPECIAL
CLOSED SESSION MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-4 PROCLAMATION RECOGNIZING APRIL 2019 AS "MONTH OF THE CHILD" AND
"CHILD ABUSE PREVENTION MONTH"

RECOMMENDATION: Approve as submitted.

- A-5 SECOND READING AND ADOPTION OF ORDINANCE NO. 621 TO ALLOW AND
REGULATE WIRELESS TELECOMMUNICATION FACILITIES IN THE PUBLIC RIGHT-
OF-WAY; (COMMUNITY DEVELOPMENT)

RECOMMENDATION: Adopt by title only Ordinance No. 621, "An Ordinance of the City Council of the City of Morro Bay, California, Adding Chapter 12.12 to Title 12 of the Morro Bay Municipal Code, entitled 'Wireless Telecommunications Facilities in the Public Right-of-Way'," and waive further reading of Ordinance No. 621.

- A-6 APPROVAL OF ISSUANCE OF REQUEST FOR PROPOSALS FOR
REDEVELOPMENT ON LEASE SITES 34W AND 35W-36W, ADJACENT TO 225 &
235-245 MAIN STREET, RESPECTIVELY; (HARBOR)

RECOMMENDATION: Approve issuance of the revised Request for Proposals document to put Lease Sites 34W and 35W-36W out to bid for redevelopment.

- A-7 ADOPTION OF RESOLUTION NO. 23-19 INITIATING PROCEEDINGS TO LEVY THE
ANNUAL ASSESSMENT FOR THE CLOISTERS PARK AND OPEN SPACE -
LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT; (PUBLIC
WORKS)

RECOMMENDATION: Adopt Resolution No. 23-19 ordering the preparation of an Engineer's Report detailing the expenses projected for Fiscal Year 2019/20 for the maintenance of the Cloisters Park and Open Space under the provisions of the "Landscaping and Lighting Act of 1972."

- A-8 ADOPTION OF RESOLUTION NO. 24-19 INITIATING PROCEEDINGS TO LEVY THE
ANNUAL ASSESSMENT FOR THE NORTH POINT NATURAL AREA - LANDSCAPING
AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT; (PUBLIC WORKS)

RECOMMENDATION: Adopt Resolution No. 24-19 ordering the preparation of an Engineer's Report detailing the expenses projected for Fiscal Year 2019/20 for the

maintenance of the North Point Natural Area under the provisions of the "Landscaping and Lighting Act of 1972."

B. PUBLIC HEARINGS - None.

C. BUSINESS ITEMS

C-1 ADOPTION OF RESOLUTION NO. 22-19, APPROVING A SUPPLEMENTAL LEASE AGREEMENT TO THE UNITED STATES COAST GUARD STATION MORRO BAY BUILDING LEASE FOR BUILDING EXPANSION PURPOSES, LOCATED ON LEASE SITE 141 AT 1279 EMBARCADERO; (HARBOR)

RECOMMENDATION: City Council adopt Resolution No. 22-19, included with this staff report as Attachment 1, approving a Supplemental Lease Agreement to the Coast Guard's Station Morro Bay building lease to enable the Coast Guard to expand their building.

C-2 DISCUSSION OF REVISING THE GENERAL FUND ALLOCATION AMOUNT PROVIDED TO THE TOURISM BUSINESS IMPROVEMENT DISTRICT; (CITY MANAGER/FINANCE)

RECOMMENDATION: City Council review and comment on the various options available to the City with regard to the annual General Fund allocation to the Tourism Business Improvement District (TBID), direct staff to take this item to the TBID Advisory Board at their April 2019 meeting for input, and provide other direction as appropriate.

C-3 ADOPTION OF RESOLUTION OF INTENTION TO APPROVE THE AMENDMENT TO THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM CONTRACT TO IMPLEMENT COST SHARING FOR LOCAL POLICE MEMBERS IN THE MORRO BAY PEACE OFFICERS ASSOCIATION; (FINANCE/HUMAN RESOURCES)

RECOMMENDATION: City Council adopt Resolution No. 25-19 giving notice of the City's intention to approve an amendment to the contract between the City and the Board of Administration of the California Public Employees' Retirement System (CalPERS) to provide employee cost sharing of 1% for local police members in the Morro Bay Peace Officers Association (MB POA) for Fiscal Year 2018/19 (FY2018/19).

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, April 23, 2019 at 5:30 p.m.** at the Veteran's Memorial Hall located at 209 Surf Street, Morro Bay, California.

THIS AGENDA IS SUBJECT TO AMENDMENT UP TO 72 HOURS PRIOR TO THE DATE AND TIME SET FOR THE MEETING. PLEASE REFER TO THE AGENDA POSTED AT CITY HALL FOR ANY REVISIONS OR CALL THE CLERK'S OFFICE AT 772-6205 FOR FURTHER INFORMATION.

MATERIALS RELATED TO AN ITEM ON THIS AGENDA SUBMITTED TO THE CITY COUNCIL AFTER DISTRIBUTION OF THE AGENDA PACKET ARE AVAILABLE FOR PUBLIC INSPECTION AT CITY HALL LOCATED AT 595 HARBOR STREET; MORRO BAY LIBRARY LOCATED AT 625 HARBOR STREET; AND MILL'S COPY CENTER LOCATED AT 495 MORRO BAY BOULEVARD DURING NORMAL BUSINESS HOURS.

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN A CITY MEETING, PLEASE CONTACT THE CITY CLERK'S OFFICE AT LEAST 24 HOURS PRIOR TO THE MEETING TO INSURE REASONABLE ARRANGEMENTS CAN BE MADE TO PROVIDE ACCESSIBILITY TO THE MEETING.

This Page Intentionally Left Blank

PRESENT:	John Headding	Mayor
	Dawn Addis	Council Member
	Robert Davis	Council Member
	Jeff Heller	Council Member
	Marlys McPherson	Council Member
STAFF:	Scott Collins	City Manager
	Chris Neumeyer	City Attorney
	Dana Swanson	City Clerk
	Jennifer Callaway	Finance Director
	Rob Livick	Public Works Director
	Scot Graham	Community Development Director
	Jody Cox	Police Chief
	Eric Endersby	Harbor Director
	Matt Vierra	Fire Marshal
	Eric Casares	WRF Program Manager – Carollo Engineering

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding called the meeting to order at 6:00 p.m., with all members present.

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

RECOGNITION – None

CLOSED SESSION REPORT – City Attorney Neumeyer reported the City Council met in Closed Session and authorized litigation against the property owner at 320 Orcas to seek a receivership petition.

MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS

<https://youtu.be/VZwuYsclGJw?t=114>

CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS

<https://youtu.be/VZwuYsclGJw?t=501>

PRESENTATIONS

- Morro Bay Chamber of Commerce Quarterly Report
<https://youtu.be/VZwuYsclGJw?t=545>
- Friends of the Morro Bay Fire Department Scholarship Presentation
<https://youtu.be/VZwuYsclGJw?t=1361>
 - Receipt of donation from Steve and Jacquelyn Frank, parents of Matthew Frank (“SLO Stringer”), to the Friends of the Morro Bay Fire Department
 - Presentation of scholarships to Reserve Firefighters Drew Baham, Grant Frempter, Greg Whelan and Joel Wilkie.

PUBLIC COMMENT PERIOD

<https://youtu.be/VZwuYsclGJw?t=2187>

Megan Souza, Co-owner of Megan’s CBD Market on Quintana and Kings Avenue, provided the business spot. For more information, visit www.meganscbdmarket.com or call (805) 235-6678.

Del Mar Elementary students, Rocio, Emerson Macquay and Andre Deangelis, spoke regarding upcoming school events and projects.

Carolyn Brinkman, Morro Bay, requested an update on the GSI Water Solutions feasibility study.

Barry Branin, Morro Bay, asked about the status of sewer pipeline repairs.

Liz Moore and Crystal Schwabenland, San Luis Coastal Unified School District, announced Just One Job Fair to be held March 19 at Morro Bay High School from 9:00 – 11:00 a.m. Individuals and businesses wishing to assist may call (805) 782-7282.

Meredith Bates, Morro Bay, supported the Tourism Strategic Plan and encouraged staff to seek out grants for more art and murals. She also spoke to the importance of the vacation rental ordinance update.

Gary Rubin, Cuesta College, announced an upcoming experiential learning project where students will perform customer service audits at local restaurants and those restaurants will have the opportunity to participate in a customer service academy.

Brad Spahr shared information regarding SCORE, an organization that assists and advises small businesses and start-ups to help them thrive. Mentoring services, online resources and workshops are available. Call (310) 345-6350 for more information.

Rigmor, Morro Bay, opposed relocating the City Park bus stop and suggested the City need not comply with ADA requirements to replace the Surf Street staircase.

Brad Evans, member of Morro Bay Chamber of Commerce, expressed his appreciation for training opportunities being offered by the Chamber.

Chuck Jehle, Director of Women's Business Center, an organization that provides training, resources and consulting services to help small businesses thrive. Call (805) 595-1357 for more information.

Nick Juren, Co-owner of Beach-n-Bay Getaways and URelax Quality Vacation Rentals, shared his appreciation for the Chamber of Commerce.

Mayor Heading closed public comment.

The Council asked staff to respond to issues raised during public comment.

A. CONSENT AGENDA
<https://youtu.be/VZwuYsclGJw?t=4694>

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 FEBRUARY 13, 2019, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 DISCUSSION OF AGENDA FOR THE C-MANC ANNUAL "WASHINGTON WEEK" MEETINGS AND WATER RECLAMATION FACILITY MEETINGS IN WASHINGTON, D.C.; (ADMINISTRATION/HARBOR)

RECOMMENDATION: Receive and file.

- A-3 APPROVAL OF TWO PUBLIC WORKS ADVISORY BOARD MEMBER REQUESTS FOR EXCUSED ABSENCES; (ADMINISTRATION)

RECOMMENDATION: Staff recommends the City Council consider the request submitted by Public Works Advisory Board (PWAB) Member, Steve Shively, for an excused absence from the March 2019 regular meeting due to a planned out of country vacation, and the request submitted by PWAB Member, Chris Erlendson, for an excused past absence from the October 2018 regular meeting.

- A-4 ADOPTION OF RESOLUTION NO. 14-19 AUTHORIZING SUBMISSION OF SB 1 STATE OF GOOD REPAIR GRANT APPLICATION TO FUND BUS STOP IMPROVEMENTS AT CITY PARK TRANSIT HUB; (PUBLIC WORKS)

RECOMMENDATION: City Council adopt Resolution No. 14-19 authorizing submission by the City Manager of an application to the SLOCOG for FY 19/20 State of Good Repair (SGR) program funds for bus stop improvements at the City Park transit hub.

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

Council Member McPherson pulled Item A-4.

MOTION: Council Member Davis moved approval of Items A-1 through A-3. The motion was seconded by Council Member McPherson and carried 5-0 by roll call vote.

- A-4 ADOPTION OF RESOLUTION NO. 14-19 AUTHORIZING SUBMISSION OF SB 1 STATE OF GOOD REPAIR GRANT APPLICATION TO FUND BUS STOP IMPROVEMENTS AT CITY PARK TRANSIT HUB; (PUBLIC WORKS)
<https://youtu.be/VZwuYsciGJw?t=4758>

Public Works Director Livick explained this grant opportunity would help fund the relocation of the City Park bus stop to provide a more visible, accessible location, and that the design is not complete at this time.

Council Member Davis proposed an amendment to the resolution, as underlined below:

NOW, THEREFORE, BE IT RESOLVED, that the City of Morro Bay does hereby authorize the City Manager, or his duly appointed representative, to submit an application to the SLOCOG for FY 19/20 SGR program funds in the amount of \$378,625 for bus stop improvements at the City Park transit hub.

MOTION: Council Member Davis moved the Council approve Item A-4, as amended. The motion was seconded by Council Member McPherson and carried 5-0 by roll call vote.

B. PUBLIC HEARINGS - None

C. BUSINESS ITEMS

C-1 RECEIVE AND DISCUSS THE JANUARY 2019 MONTHLY STATUS REPORT FOR THE WATER RECLAMATION FACILITY PROJECT; (PUBLIC WORKS)
<https://youtu.be/VZwuYsclGJw?t=5045>

WRF Program Manager Casares presented the report and responded to Council inquiries.

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

Bill Martony, Morro Bay, spoke regarding recycled water needs and the proposed Quintana pipeline route.

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

Following discussion, the Council agreed a monthly summary report is sufficient with a full report provided on a quarterly basis. It was understood more specific reporting requirements might be needed for various funding agencies.

No formal action was taken by the Council.

The Council took a brief recess at 8:11 p.m. The meeting reconvened at 8:23 p.m. with all members present.

C-2 REVIEW AND APPROVE MORRO BAY DESTINATION TOURISM STRATEGIC PLAN; (TOURISM)
<https://youtu.be/VZwuYsclGJw?t=8007>

City Manager Collins introduced the item then turned it over to Carl Ribaldo of SMG Consulting, who provided an overview of the Plan and responded to Council inquiries.

The public comment period for Item C-2 was opened

Erica Crawford, Morro Bay Chamber of Commerce, spoke in support of the proposed strategic plan.

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

There was Council concurrence the proposed plan provided a good starting point and that action items could be identified and prioritized through the goal setting process. Mayor Heading was concerned with metrics that could not be measured or quantified.

MOTION: Council Member Davis moved the Council approve the Morro Bay Destination Tourism Strategic Plan and that staff follow direction as given. The motion was seconded by Council Member Addis and carried 4-1 by roll call vote with Mayor Heading opposed.

C-3 RECEIVE FISCAL YEAR 2018/19 MID-YEAR BUDGET PERFORMANCE AND STATUS REPORT – SIX MONTHS ENDING DECEMBER 31, 2018; ADOPT RESOLUTION NO. 15-19 AUTHORIZING STAFF TO PROCEED WITH RECOMMENDED BUDGET ADJUSTMENTS; AND RECEIVE THE FY 2018/19 CAPITAL IMPROVEMENT PLAN MID-YEAR UPDATE; (FINANCE)
<https://youtu.be/VZwuYsclGJw?t=12138>

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

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

MOTION: Council Member Davis moved the Council approve \$65,000 from Measure Q unallocated fund balance to purchase a new patrol vehicle, safety & uniform equipment, and a new laptop to support a School Resource Officer (“SRO”) for Morro Bay High School and Del Mar Elementary pending approval of a contract with San Luis Coastal Unified School District to fully fund the personnel costs of the SRO. The motion was seconded by Council Member McPherson and carried 5-0 by roll call vote.

MOTION: Council Member McPherson moved the Council approve staff recommendation to adopt Resolution No. 15-19 authorizing staff to proceed with the second quarter budget adjustments with the exception of waiting until the 3rd quarter to true up the TBID contribution. The motion was seconded by Council Member Addis and carried 5-0 by roll call vote.

C-4 APPROVAL OF ISSUANCE OF REQUEST FOR PROPOSALS FOR REDEVELOPMENT OF LEASE SITES 34W AND 35W-36W, ADJACENT TO 225 & 235 MAIN STREET, RESPECTIVELY; (HARBOR)
<https://youtu.be/VZwuYsciGJw?t=14405>

Harbor Director Endersby provided the report and proposed revisions to the Request for Proposals document as a result of agenda correspondence, and responded to Council inquiries.

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

Jane Heath spoke on behalf of Bernadette Pekarek and Bill Martony, owners of the upland property, restated comments submitted as agenda correspondence and requested the City be specific about desired development for that location.

Bill Martony, Morro Bay, appreciated the proposed revisions and was pleased to be moving forward.

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

The Council discussed the importance of uses that provide revenue to the City and are compatible with nearby residential property.

MOTION: Mayor Heading moved the Council move forward with the issuance of the RFP; however, that prior to final approval, the upland land owner and City staff meet to address issues raised and incorporate any changes that staff thinks appropriate and include those in the recommended RFP that comes back to Council. The motion was seconded by Council Member McPherson and carried 5-0 by roll call vote.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS
<https://youtu.be/VZwuYsciGJw?t=16601>

Council Member Heller requested the Community Development Director provide an update on the City’s climate change policies and plans. There was full Council support for a staff presentation as no Council action was needed at this time.

Council Member Davis raised the topic of building a new Veterans Memorial Building for discussion during goal setting. Council Member McPherson noted the Council would consider a grant proposal to help fund facility improvements at the next meeting.

E. ADJOURNMENT

The meeting adjourned at 10:53 p.m.

Recorded by:

Dana Swanson
City Clerk

MINUTES - MORRO BAY CITY COUNCIL
SPECIAL MEETING – MARCH 1, 2019
VETERANS MEMORIAL HALL
209 SURF STREET – 4:00 P.M.

AGENDA NO: A-2
MEETING DATE: April 9, 2019

PRESENT:	John Headding Dawn Addis Robert Davis Jeff Heller Marlys McPherson	Mayor Council Member Council Member Council Member Council Member
STAFF:	Scott Collins Dana Swanson Rob Livick Scot Graham Steve Knuckles Eric Endersby Rick Catlett Jennifer Little Kirk Carmichael	City Manager City Clerk Public Works Director Community Development Director Fire Chief Harbor Director Acting Police Commander Tourism Manager Recreation Services Manager
FACILITATOR:	Garret Olson	

ESTABLISH QUORUM AND CALL TO ORDER
<https://youtu.be/3tFlwqggYzc?t=22>

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

PLEDGE OF ALLEGIANCE

SPECIAL MEETING AGENDA ITEMS:

- I. INTRODUCTION AND OVERVIEW OF CITY COUNCIL'S STRATEGIC PLANNING PROCESS
<https://youtu.be/3tFlwqggYzc?t=181>
- II. STATUS UPDATE ON EXISTING GOALS & OBJECTIVES
<https://youtu.be/3tFlwqggYzc?t=293>
Scott Collins, City Manager, reviewed the Strategic Planning process and provided an update on the 2018 Goals & Objectives. He described the methods of public outreach conducted to date on 2019-20 goals and objectives and next steps.
- III. PUBLIC COMMENT
<https://youtu.be/3tFlwqggYzc?t=752>
Facilitator, Garret Olson, described the methods of public outreach conducted thus far, including online survey via Polco, City advisory body input, and constituent emails to Council Members.

The public comment period was opened.

Don Maruska, Morro Bay business owner, suggested elevating to a major city goal short-term actions to stimulate improved business performance. Targeted Actions for Progress (TAP) program would provide a \$400,000 opportunity fund over the next two years for targeted investments with collaborating businesses providing a matching investment.

Rigmor, Morro Bay, suggested the need for a conference center.

Ken MacMillan, property and business owner, commented on his recent business development on Morro Bay Blvd. and suggested the City capitalize on that investment by way of tax breaks, seed money, etc. to encourage development.

Meredith Bates, Morro Bay, spoke in support of HEAP grant funding to create a warming shelter and opportunities to have more art in the public spaces.

Mike Manchak, Economic Vitality Corporation (EVC), spoke in support of the work the Chamber is doing, Mr. Maruska's proposal for economic development, and the importance of investing in our community before the next recession.

Lynda Merrill, Morro Bay, appreciated the work that is being done and detail provided.

Carolyn Brinkman, Morro Bay, spoke to the importance of 2-way communication between government and residents, and suggested affordable housing as an action item under fiscal sustainability.

Erica Crawford, Morro Bay Chamber of Commerce, reiterated statements regarding the need to invest in local businesses and the importance for developers to have a key point of contact. She summarized recent 4MB activities and need to select year 2 deliverables.

Tim Cowan, Morro Bay resident and business owner, appreciated the Chamber and training opportunities provided for local businesses. He agreed with points made by previous speakers about the importance of investing in business community. He suggested fiscal sustainability should be better defined.

Sandy Rowe, Morro Bay, spoke regarding the importance of senior and affordable housing.

The public comment period was closed.

Mr. Collins provided a summary of public input received thus far through online survey and emails to City Council and explained a more refined poll will be developed based on that input.

IV. COUNCIL DISCUSSION AND GENERAL DIRECTION FOR STAFF

<https://youtu.be/3tFlwqggYzc?t=3283>

Council Members provided individual comments, including:

- Consensus to deemphasize the WRF project and place it under Public Infrastructure.
- Consideration of a sales tax or transient occupancy tax ballot measure
- Economic Development and supporting business development is a top priority.
 - Ombudsman to serve as single point of contact for developers
 - Public /private partnerships
 - Support wind farm and future development of the power plant property

- Need for affordable workforce and senior housing is a challenge that can best addressed at the regional level.
- City infrastructure needs should be assessed and prioritized. Explore potential funding sources, such as HEAP grants and potential tax measures.
- Improved communication / collaboration with volunteer organizations and community members.
- Consideration of increased staffing to support key tasks.
- Shorter City Council meetings.

V. SUMMARY & NEXT STEPS

<https://youtu.be/3tFlwqggYzc?t=5425>

Mr. Olson shared from his perspective there was a high degree of public engagement providing the public with opportunities to weigh in on objectives and tasks. Mr. Collins summarized next steps for community engagement with a more refined list of discrete actions items likely brought back to Council in April.

ADJOURNMENT

The meeting adjourned at 5:34 p.m.

Recorded by:

Dana Swanson
City Clerk

This Page Intentionally Left Blank

This Page Intentionally Left Blank

**A PROCLAMATION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY
DECLARING APRIL 2019 AS “MONTH OF THE CHILD”
AND “CHILD ABUSE PREVENTION MONTH”**

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

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

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

WHEREAS, Saturday, April 13, 2019, will commemorate the “Day of the Child” at the 41st Annual Children’s Day in the Plaza celebration from 10:00am to 3:00pm in the San Luis Obispo Mission Plaza; this year’s celebration where children and families will have the opportunity to discover creativity, individuality, diversity, and the arts while exploring community resources; and

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

WHEREAS, Friday, April 26, 2019, will be the 11th Annual Child Abuse Prevention Academy, hosted by Center for Family Strengthening and Cuesta College to raise awareness about the many children in our midst who suffer daily from abuse and neglect, and to pledge support for strategies that strengthen families and protect our young ones; and

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

NOW, THEREFORE, BE IT RESOLVED the Morro Bay City Council is proclaiming April 2019 as the "Month of the Child", and “Child Abuse Prevention Month” and April 13, 2019 as “Day of the Child”.

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the City of Morro Bay to be affixed this 9th day of April 2019.

JOHN HEADDING, MAYOR
City of Morro Bay, California

This Page Intentionally Left Blank



AGENDA NO: A-5

MEETING DATE: April 9, 2019

Staff Report

TO: Honorable Mayor and City Council **DATE:** April 2, 2019

FROM: Scot Graham, Community Development Director

SUBJECT: Second Reading and Adoption of Ordinance No. 621 to Allow and Regulate Wireless Telecommunication Facilities in the Public Right-of-Way

RECOMMENDATION

Adopt by title only Ordinance No. 621, "An Ordinance of the City Council of the City of Morro Bay, California, Adding Chapter 12.12 to Title 12 of the Morro Bay Municipal Code, entitled 'Wireless Telecommunications Facilities in the Public Right-of-Way,' and waive further reading of Ordinance No. 621.

ALTERNATIVES

The City Council could elect not to move forward with the ordinance.

FISCAL IMPACT

No fiscal impacts are associated with the ordinance. However, installation of wireless facilities would be subject to cost recovery fees, and yield (if not in the public right-of-way) potential lease revenue. Staff will bring to City Council a proposed Master License Agreement for use of City infrastructure in the public right-of-way and a fee resolution for any fees associated with these applications at a later date.

BACKGROUND/SUMMARY

Ordinance No. 621 was introduced for first reading at the March 26, 2019 Council meeting. Additional information related to Ordinance No. 621 can be found in the March 26, 2019 Council staff report item C-2: <https://www.morro-bay.ca.us/ArchiveCenter/ViewFile/Item/4973>

The proposed ordinance seeks to balance the community's need for wireless services, the industry's desire to quickly deploy new technologies, federal and State preemption of significant aspects of local control, and the City's obligation to maintain safety and protect the aesthetic qualities of our neighborhoods. As drafted, the proposed ordinance would:

- Add a new Chapter 12.12 to the Municipal Code entitled "Wireless Telecommunications Facilities in the Public Right-of-Way." For all wireless facility installations in the public right-of-way (PROW), the ordinance provides, among other regulations, permit and review procedures, as well as operation and maintenance standards. The ordinance treats wireless installations in the PROW similar to other installations in the PROW by requiring an encroachment permit. Once the encroachment permit is issued, the carrier may still need to obtain traffic control plans, construction permits and if necessary, a license to attach to City infrastructure.
- The substantially shorter (than prior) "shot clocks" for City review of complete applications, established by an FCC Order dated September 27, 2018, render discretionary review by the planning commission (or any other hearing body) much

Prepared By: LK/SG

City Manager Review: SC City Attorney Review: CFN

more difficult, if not logistically impossible. (Being 60 days for small wireless facilities (or “SWFs”) added to existing structures - regardless of whether the structure already supports a wireless service - and 90 days for SWFs proposing a new structure.) To this end, the proposed ordinance presents an entirely new administrative review process for SWF applications, with public works taking the lead of administratively reviewing SWF applications.

- The new ordinance recognizes, and establishes procedures and standards for, “eligible facility requests” pursuant to Federal law. These are ministerial modifications and collocations that must be approved by-right, which provisions are not included in the current Municipal Code, despite since 2012 being the law.
- Given the short time that the City has to act on SWF applications under Federal law, the ordinance only allows for a short, two-day appeal period, and provides that the appeal will be heard by an independent hearing officer, who can hold hearings on short notice within the short time frame. Doing so also provides an independent level of oversight over the decisions before they become final and subject to potential challenge in court.
- The ordinance contains a comprehensive list of permit conditions that will apply to wireless encroachment permits, including insurance requirements, indemnification, performance bond for removal upon abandonment, and maintenance and inspection requirements. The permits are in effect for a term of 10 years, which stems from a State law that allows the City to limit the permits to 10 years; compared to utility poles, for example, which are erected in perpetuity.
- Staff affirms the importance of public awareness and involvement for installation of wireless facilities. The ordinance thus requires applicants to provide mailed notices to owners, occupants within 300 feet of proposed SWFs and major facilities before they are considered for approval.
- Finally, the ordinance allows the flexibility needed in the face of rapidly changing wireless laws and technology. Rather than publish SWF design standards in the ordinance, staff proposes that such standards should be adopted as administrative regulations that may be readily and quickly adapted given the frequency of substantial changes in law and technology surrounding wireless installations.

The proposed ordinance and design standards will bring the City into compliance with laws governing wireless telecommunications facilities and allow the City to impose aesthetic and other design requirements on such facilities.

ATTACHMENT

1. Ordinance No. 621

ORDINANCE NO. 621

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, ADDING CHAPTER 12.12 TO TITLE 12 OF THE MORRO BAY MUNICIPAL CODE, ENTITLED “WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY”

THE CITY COUNCIL City of Morro Bay, California

A. The City Council may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws.

B. Significant changes in Federal and State law that affect local authority over wireless communications facilities (“WCFs”) have occurred, including but not limited to the following:

- i. On November 18, 2009, the Federal Communications Commission (“FCC”) adopted a declaratory ruling (the “2009 Shot Clock”), which established presumptively reasonable timeframes for State and local governments to act on applications for WCFs.
- ii. On February 22, 2012, Congress adopted Section 6409(a) of the Middle Class Tax Relief and Job Creation Act (“Section 6409(a)”), which mandated that State and local governments approve certain modifications and collocations to existing WCFs, known as eligible facilities requests.
- iii. On October 17, 2014, the FCC adopted a report and order that, among other things, implemented new limitations on how State and local governments review applications covered by Section 6409(a), established an automatic approval for such applications when the local reviewing authority fails to act within 60 days, and also further restricted generally applicable procedural rules under the 2009 Shot Clock.
- iv. On October 9, 2015, California adopted Assembly Bill No. 57 (Quirk), which deemed approved any WCF applications when the local reviewing authority fails to act within the 2009 Shot Clock timeframes.
- v. On August 2, 2018, the FCC adopted a declaratory ruling that formally prohibited express and de facto moratoria for all telecommunications services and facilities under 47 U.S.C. § 253(a).
- vi. On September 26, 2018, the FCC adopted a declaratory ruling and report and order that, among other things, creates a new regulatory classification for small wireless facilities (“SWFs”), requires State and local governments to process applications for small wireless facilities within 60 days or 90 days, establishes a national standard for an effective prohibition and provides that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition.

C. In addition to the changes described above, new Federal laws and regulations that drastically alter local authority over WCFs are currently pending, including without limitation, the following:

- i. On March 30, 2017, the FCC issued a Notice of Proposed Rulemaking (WT Docket No. 17-79, WC Docket No. 17-84) and has acted on some of the noticed issues referenced above, but may adopt forthcoming rulings and/or orders that further limit local authority over wireless facilities deployment.
- ii. On June 28, 2018, United States Senator John Thune introduced and referred to the Senate Committee on Commerce, Science and Transportation the “STREAMLINE Small Cell Deployment Act” (S. 3157) that, among other things, would apply specifically to small cell WCFs and require local governments to review applications based on objective standards, shorten the 2009 Shot Clock timeframes, require all proceedings to occur within the 2009 Shot Clock timeframes, and provide a “deemed granted” remedy for failure to act within the applicable 2009 Shot Clock.

D. Given the rapid and significant changes in Federal and State law, the actual and effective prohibition on moratoria to amend local policies in response to such changes and the significant adverse consequences for noncompliance with Federal and State law, the City Council desires to add Chapter 12.12 to Title 12 of the Morro Bay Municipal Code, entitled “WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY” (the “Ordinance”) to allow greater flexibility and responsiveness to the new Federal and State laws while still preserving the City’s traditional authority to the maximum extent practicable.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The facts set forth in the recitals in this Ordinance are true and correct and incorporated by reference. The recitals constitute findings in this matter and, together with the staff report, other written reports, public testimony and other information contained in the record, are an adequate and appropriate evidentiary basis for the actions taken in the Ordinance.

SECTION 2. The Ordinance is consistent with the City’s General Plan, Municipal Code, Zoning Code and applicable Federal and State law.

SECTION 3. The Ordinance will not be detrimental to the public interest, health, safety, convenience, or welfare.

SECTION 4. The Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (“CEQA”) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City’s boundaries. The Ordinance is further exempt from CEQA because the City Council’s adoption of the Ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment (State

CEQA Guidelines, § 15061(b)(3)). Installations, if any, would be exempt from CEQA review in accordance with either State CEQA Guidelines Section 15302 (replacement or reconstruction), State CEQA Guidelines Section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines Section 15304 (minor alterations to land).

SECTION 5. The Ordinance is hereby adopted by the addition of a new Chapter 12.12, “WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY” in Title 12 of the Morro Bay Municipal Code to read in its entirety as shown in Exhibit “A” attached hereto and incorporated herein by this reference.

SECTION 6. If the provisions in this Ordinance conflict in whole or in part with any other City regulation or ordinance adopted prior to the effective date of this section, the provisions in this Ordinance will control.

SECTION 7. If any subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional or otherwise unenforceable, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declare that they would have passed each subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more subsection, subdivision, paragraph, sentence, clause, or phrase be declared unconstitutional or otherwise unenforceable.

SECTION 8. This Ordinance shall take effect 30 days after its adoption.

SECTION 9. The City Clerk shall certify as to the passage and adoption of this Ordinance and shall cause the same to be posted at the designated locations in the City of Morro Bay.

INTRODUCED at a regular meeting of the City Council held on the 26th day of March 2019, by motion of Councilmember Davis and seconded by Council Member McPherson.

PASSED and APPROVED on this ___ day of _____, 2019.

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

CHRIS F. NEUMEYER, City Attorney

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

I, Dana Swanson, CITY CLERK OF THE CITY OF MORRO BAY, DO
HEREBY CERTIFY that the foregoing Ordinance Number _____ was duly adopted by the City
Council of the City of Morro Bay at a regular meeting of said Council on the __ day of _____,
2019, and that it was so adopted by the following vote:

AYES:

NOES:

ABSENT:

City Clerk, Dana Swanson

EXHIBIT A

Chapter 12.12 – WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

12.12.010 – PURPOSE.

The purpose and intent of this chapter is to provide a uniform and comprehensive set of regulations and standards for the permitting, development, siting, installation, design, operation and maintenance of wireless telecommunications facilities in the city’s public right-of-way. These regulations are intended to prescribe clear and reasonable criteria to assess and process applications in a consistent and expeditious manner, while reducing the impacts associated with wireless telecommunications facilities. This chapter provides standards necessary (1) for the preservation of the public right-of-way (“PROW”) in the city for the maximum benefit and use of the public, (2) to promote and protect public health and safety, community welfare, visual resources and the aesthetic quality of the city consistent with the goals, objectives and policies of the general plan, and (3) to provide for the orderly, managed and efficient development of wireless telecommunications facilities in accordance with the state and federal laws, rules and regulations, including those regulations of the Federal Communications Commission (“FCC”) and California Public Utilities Commission (“CPUC”), and (4) to ensure that the use and enjoyment of the PROW is not inconvenienced by the use of the PROW for the placement of wireless facilities. The city recognizes the importance of wireless facilities to provide high-quality communications service to the residents and businesses within the city, and the city also recognizes its obligation to comply with applicable federal and state laws. This chapter shall be constructed and applied in consistency with the provisions of state and federal laws, and the rules and regulations of FCC and CPUC. In the event of any inconsistency between any such laws, rules, and regulations and this chapter, the laws, rules, and regulations shall control.

12.12.020 – DEFINITIONS.

- A. “Accessory equipment” means any and all on-site equipment, including, without limitation, back-up generators and power supply units, cabinets, coaxial and fiber optic cables, connections, equipment buildings, shelters, radio transceivers, transmitters, pedestals, splice boxes, fencing and shielding, surface location markers, meters, regular power supply units, fans, air conditioning units, cables and wiring, to which an antenna is attached in order to facilitate the provision of wireless telecommunication services.
- B. “Antenna” means that specific device for transmitting and/or receiving radio frequency or other signals for purposes of wireless telecommunications services. “Antenna” is specific to the antenna portion of a wireless telecommunications facility.
- C. “Antenna array” shall mean two or more antennas having active elements extending in one or more directions, and directional antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and antenna support, all of which elements are deemed to be part of the antenna.
- D. “Base station” shall have the meaning as set forth in Title 47 Code of Federal Regulations (C.F.R.) Section 1.40001(b)(1), or any successor provision. This means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network (regardless of the technological configuration,

and encompassing DAS and small cells). “Base station” does not encompass a tower or any equipment associated with a tower. Base station includes, without limitation:

1. Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
2. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small cells).
3. Any structure other than a tower that, at the time the relevant application is filed with the city under this chapter, supports or houses equipment described in paragraphs 1 and 2 of this definition that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.
4. “Base station” does not include any structure that, at the time the relevant application is filed under this chapter, does not support or house equipment described in paragraphs 1 and 2 of this definition. Other structures that do not host wireless telecommunications facilities are not “base stations.”

As an illustration and not a limitation, the FCC’s definition of “base station” refers to any structure that actually supports wireless equipment even though it was not originally intended for that purpose. Examples include, but are not limited to, wireless facilities mounted on buildings, utility poles, light standards or traffic signals. A structure without wireless equipment replaced with a new structure designed to bear the additional weight from wireless equipment constitutes a base station.

- E. “Cellular” means an analog or digital wireless telecommunications technology that is based on a system of interconnected neighboring cell sites.
- F. “City” means the City of Morro Bay.
- G. “Code” means the City of Morro Bay Municipal Code.
- H. “Collocation” bears the following meanings:
 1. For the purposes of any eligible facilities request, the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be amended, which defines that term as “[t]he mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.” As an illustration and not a limitation, the FCC’s definition means to add transmission equipment to an existing facility and does not necessarily refer to two or more different facility operators in the same location; and
 2. For all other purposes, the same as defined in 47 CFR 1.6002(g)(1) and (2), as may be amended, which defines that term as (1) Mounting or installing an antenna facility on a pre-existing structure, and/or (2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

- I. “Collocation facility” means the eligible support structure on, or immediately adjacent to, which a collocation is proposed, or a wireless telecommunications facility that includes collocation facilities. (*See*, Gov. Code, § 65850.6(d).)
- J. “COW” means a “cell on wheels,” which is a portable, self-contained wireless telecommunications facility that can be moved to a location and set up to provide wireless telecommunication services, which facility is temporarily rolled in, or temporarily installed, at a location. Under this chapter, the maximum time a facility can be installed to be considered a COW is five (5) days. A COW is normally vehicle-mounted and contains a telescoping boom as the antenna support structure.
- K. “Distributed antenna system” or “DAS” means a network of spatially separated antennas (nodes) connected to a common source (a hub) via a transport medium (often fiber optics) that provide wireless telecommunications service within a specific geographic area or building. DAS includes the transport medium, the hub, and any other equipment to which the DAS network or its antennas or nodes are connected to provide wireless telecommunication services.
- L. “Eligible facilities request” means any request for modification to an existing eligible support structure that does not substantially change the physical dimensions of such structure, involving:
 - 1. Collocation of new transmission equipment;
 - 2. Removal of transmission equipment;
 - 3. Replacement of transmission equipment (replacement does not include completely replacing the underlying support structure); or
 - 4. Hardening through structural enhancement where such hardening is necessary to accomplish the eligible facilities request, but does not include replacement of the underlying support structure.
- M. “Eligible facilities request” does not include modifications or replacements when an eligible support structure was constructed or deployed without proper local review, was not required to undergo local review, or involves equipment that was not properly approved. “Eligible facilities request” does include collocation facilities satisfying all the requirements for a non-discretionary collocation facility pursuant to Government Code Section 65850.6.
- N. “Eligible support structure” means any support structure located in the PROW that is existing at the time the relevant application is filed with the city under this chapter.
- O. “Existing” means a support structure, wireless telecommunications facility, or accessory equipment that has been reviewed and approved under the city’s applicable zoning or siting process, or under another applicable state or local regulatory review process, and lawfully constructed prior to the time the relevant application is filed under this chapter. However, a support structure, wireless telecommunications facility, or accessory equipment that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is “existing” for purposes of this chapter. “Existing” does not apply to any structure that (1) was illegally constructed without all proper local agency approvals, or (2) was constructed in noncompliance with such approvals. “Existing” does not apply where an existing

support structure is proposed to be replaced in furtherance of the proposed wireless telecommunications facility.

- P. “Facility(ies)” means wireless telecommunications facility(ies).
- Q. “FCC” means the Federal Communications Commission.
- R. “Ground-mounted” means mounted to a pole, tower or other freestanding structure which is specifically constructed for the purpose of supporting an antenna or wireless telecommunications facility and placed directly on the ground at grade level.
- S. “Lattice tower” means an open framework structure used to support one or more antennas, typically with three or four support legs.
- T. “Located within (or in) the public right-of-way” includes any facility which in whole or in part, itself or as part of another structure, rests upon, in, over or under the PROW.
- U. “Modification” means a change to an existing wireless telecommunications facility that involves any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, changes in size, shape, color, visual design, or exterior material. “Modification” does not include repair, replacement or maintenance if those actions do not involve whatsoever any expansion, alteration, enlargement, intensification, reduction, or augmentation of an existing wireless telecommunications facility.
- V. “Monopole” means a structure composed of a pole or tower used to support antennas or related equipment. A monopole also includes a monopine, monopalm and similar monopoles camouflaged to resemble faux trees or other faux objects attached on a monopole (e.g. water tower).
- W. “Mounted” means attached or supported.
- X. “OTARD antennas” means antennas covered by the “over-the-air reception devices” rule in 47 C.F.R. sections 1.4000 et seq. as may be amended or replaced from time to time.
- Y. “Permittee” means any person or entity granted a WTFP pursuant to this chapter.
- Z. “Personal wireless services” shall have the same meaning as set forth in 47 United States Code Section 332(c)(7)(C)(i).
- AA. “Planning director” means the community development director, or his or her designee.
- BB. “Pole” means a single shaft of wood, steel, concrete or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of this code.
- CC. “Public works director” means the director of public works, or his or her designee.
- DD. “Public right-of-way” or “PROW” means a strip of land acquired by reservation, dedication, prescription, condemnation, or easement that allows for the passage of people and goods. The PROW includes, but is not necessarily limited to, streets, curbs, gutters, sidewalks,

roadway medians, and parking strips. The PROW does not include lands owned, controlled or operated by the city for uses unrelated to streets or the passage of people and goods, such as, without limitation, parks, city hall and community center lands, city yards, and lands supporting reservoirs, water towers, police or fire facilities and non-publicly accessible utilities.

EE. “Replacement” refers only to replacement of transmission equipment, wireless telecommunications facilities or eligible support structures where the replacement structure will be of like-for-like kind to resemble the appearance and dimensions of the structure or equipment replaced, including size, height, color, landscaping, materials and style.

1. In the context of determining whether an application qualifies as an eligible facilities request, the term “replacement” relates only to the replacement of transmission equipment and does not include replacing the support structure on which the equipment is located.
2. In the context of determining whether a SWF application qualifies as being placed upon a new eligible support structure or qualifies as a collocation, an application proposing the “replacement” of the underlying support structure qualifies as a new pole proposal.

FF. “RF” means radio frequency.

GG. “Small cell” means a low-powered antenna (node) that has a range of 10 meters to two kilometers. The nodes of a “small cell” may or may not be connected by fiber. “Small,” for purposes of “small cell,” refers to the area covered, not the size of the facility. “Small cell” includes, but is not limited to, devices generally known as microcells, picocells and femtocells.

HH. “Small cell network” means a network of small cells.

II. “Spectrum Act” means Section 6409(a) of the Middle Class Tax Relief Act and Job Creation Act of 2012, 47 U.S.C. §1455(a).

JJ. “Substantial change” has the same meaning as “substantial change” as defined by the FCC at 47 C.F.R. 1.40001(b)(7). Notwithstanding the definition above, if an existing pole-mounted cabinet is proposed to be replaced with an underground cabinet at a facility where there are no pre-existing ground cabinets associated with the structure, such modification may be deemed a non-substantial change, in the discretion of the public works director and based upon his/her reasonable consideration of the cabinet’s proximity to residential view sheds, interference to public views and/or degradation of concealment elements. If undergrounding the cabinet is technologically infeasible such that it is materially inhibitive to the project, the public works director may allow for a ground mounted cabinet. A modification or collocation results is a “substantial change” to the physical dimensions of an eligible support structure if it does any of the following:

1. It increases the height of the structure by more than 10% or more than ten feet, whichever is greater;
2. It involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

3. It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets. However, for towers and base stations located in the public rights-of-way, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
4. It entails any excavation or deployment outside the current site. For purposes of this Subsection, excavation outside the current site occurs where excavation more than twelve feet from the eligible support structure is proposed;
5. It defeats the concealment or stealthing elements of the eligible support structure; or
6. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in paragraphs 1 through 4 of this definition.
7. For all proposed collocations and modifications, a substantial change occurs when:
 - a. The proposed collocation or modification involves more than the standard number of new equipment cabinets for the technology involved, but not to exceed four equipment cabinets;
 - b. The proposed collocation or modification would defeat the concealment elements of the support structure; or
 - c. The proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval that is inconsistent with the thresholds for a substantial change described in this Section.

The thresholds and conditions for a “substantial change” described in this Section are disjunctive such that the violation of any individual threshold or condition results in a substantial change. The height and width thresholds for a substantial change described in this Section are cumulative for each individual support structure. The cumulative limit is measured from the physical dimensions of the original structure for base stations, and for all other facilities sites in the PROW from the smallest physical dimensions that existed on or after February 22, 2012, inclusive of originally approved-appurtenances and any modifications that were approved prior to that date.

KK. “Support structure” means a tower, pole, base station or other structure used to support a wireless telecommunications facility.

LL. “SWF” means a “small wireless facility” as defined by the FCC in 47 C.F.R. 1.6002(l) as may be amended, which are personal wireless services facilities that meet all the following conditions that, solely for convenience, have been set forth below:

1. The facilities:

- a. Is mounted on an existing or proposed structure 50 feet or less in height, including antennas, as defined in Title 47 C.F.R. Section 1.1320(d); or
 - b. Is mounted on an existing or proposed structure no more than 10 percent taller than other adjacent structures, or
 - c. Does not extend an existing structure on which it is located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
2. Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. Section 1.1320(d)), is no more than three cubic feet in volume;
 3. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
 4. The facility does not require antenna structure registration under 47 C.F.R. Part 17;
 5. The facility is not located on Tribal lands, as defined under Title 36 C.F.R. Section 800.16(x); and
 6. The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in Title 47 C.F.R. Section 1.1307(b).
- MM. “SWF Regulations” means those regulations adopted by the City Council Resolution 21-19 implementing the provisions of this chapter applicable to SWFs and further regulations and standards applicable to SWFs.
- NN. “Telecommunications tower” or “tower” bears the meaning ascribed to wireless towers by the FCC in 47 C.F.R. § 1.40001(b)(9), including without limitation a freestanding mast, pole, monopole, guyed tower, lattice tower, free standing tower or other structure designed and built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include utility poles.
- OO. “Transmission equipment” means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- PP. “Utility pole” means any pole or tower owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or other utility services regulated by the California Public Utilities Commission. A telecommunications tower is not a utility pole.

QQ. “Wireless telecommunications facility” means equipment and network components such as antennas, accessory equipment, support structures, and emergency power systems that are integral to providing wireless telecommunications services. Exceptions: The term “wireless telecommunications facility” does not apply to the following:

1. Government-owned and operated telecommunications facilities.
2. Emergency medical care provider-owned and operated telecommunications facilities.
3. Mobile services providing public information coverage of news events of a temporary nature.
4. Any wireless telecommunications facilities exempted from this code by federal law or state law.

RR. “Wireless telecommunications services” means the provision of services using a wireless telecommunications facility or a collocation facility, and shall include, but not limited to, the following services: personal wireless services as defined in the federal Telecommunications Act of 1996 at 47 U.S.C. § 332(c)(7)(C) or its successor statute, cellular service, personal communication service, and/or data radio telecommunications.

SS. “WTFP” means a “wireless telecommunications facility permit” required by this chapter, which may be categorized as either a Major WTFP or an Administrative WTFP.

12.12.030 – APPLICABILITY.

- A. This chapter applies to the siting, construction or modification of any and all wireless telecommunications facilities proposed to be located in the public right-of-way.
- B. Pre-existing Facilities in the PROW. Nothing in this chapter shall validate any existing illegal or unpermitted wireless facilities. All existing wireless facilities shall comply with and receive a wireless encroachment permit, when applicable, to be considered legal and conforming.
- C. This chapter does not apply to the following:
 1. Amateur radio facilities;
 2. OTARD antennas;
 3. Facilities owned and operated by the city for its use or for public safety purposes;
 4. Any entity legally entitled to an exemption pursuant to state or federal law or governing franchise agreement, including without limitation the holder of a state-issued franchise under the Digital Infrastructure & Video Competition Act of 2006, as amended, excepting that to the extent such the terms of state or federal law, or franchise agreement, are preemptive of the terms of this chapter, then the terms of this chapter shall be severable to the extent of such preemption and all remaining regulations shall remain in full force and effect. Nothing in the exemption shall apply so as to preempt the city’s valid exercise of police powers that do not substantially impair franchise contract rights.

5. Installation of a COW or a similar structure for a temporary period in connection with an emergency or event at the discretion of the public works director, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities.
- D. Public use. Except as otherwise provided by state or federal law, any use of the PROW authorized pursuant to this chapter will be subordinate to the city's use and use by the public.

12.12.040 – WIRELESS TELECOMMUNICATIONS FACILITY PERMIT REQUIREMENTS.

- A. Administration. Unless a matter is referred to the planning director as provided below, the public works director is responsible for administering this chapter. As part of the administration of this chapter, the public works director may:
1. Interpret the provisions of this chapter;
 2. Develop and implement standards governing the placement and modification of wireless telecommunications facilities consistent with the requirements of this chapter, including regulations governing collocation and resolution of conflicting applications for placement of wireless facilities;
 3. Develop and implement acceptable design, location and development standards for wireless telecommunications facilities in the PROW, taking into account the zoning districts bounding the PROW;
 4. Develop forms and procedures for submission of applications for placement or modification of wireless facilities, and proposed changes to any support structure consistent with this chapter;
 5. Collect, as a condition of the completeness of any application, any fee established by this chapter;
 6. Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with federal laws and regulations;
 7. Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued;
 8. Require, as part of, and as a condition of completeness of any application, that an applicant for a wireless encroachment permit send notice to members of the public that may be affected by the placement or modification of the wireless facility and proposed changes to any support structure;
 9. Subject to appeal as provided herein, determine whether to approve, approve subject to conditions, or deny an application; and

10. Take such other steps as may be required to timely act upon applications for placement of wireless telecommunications facilities, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.
- B. Administrative Wireless Telecommunications Facilities Permits (“Administrative WTFP”).
1. An Administrative WTFP, subject to the public works director’s approval, may be issued for wireless telecommunications facilities, collocations, modifications or replacements to an eligible support structure that meet the following criteria:
 - a. The proposal is determined to be for a SWF; or
 - b. The proposal is determined to be an eligible facilities request; or
 - c. Both.
 2. In the event that the public works director determines that any application submitted for an Administrative WTFP does not meet the administrative permit criteria of this chapter, the public works director shall convert the application to a Major WTFP and refer it to the planning director for a planning commission hearing pursuant to subsection C.
 3. Except in the case of an eligible facilities request, the public works director may refer, in his/her discretion, any application for an Administrative WTFP to the planning director, who shall have discretion to further refer the application to planning commission for hearing. If the planning director determines not to present the Administrative WTFP application to the planning commission for hearing, the application shall be relegated back to the public works director for processing. This exercise of discretion shall not apply to an eligible facilities request.
- C. Major Wireless Telecommunications Facilities Permit (“Major WTFP”). All other new wireless telecommunications facilities or replacements, collocations, or modifications to a wireless telecommunications facility that are *not* qualified for an Administrative WTFP shall require a Major WTFP subject to planning commission hearing and approval unless otherwise provided for in this chapter.
- D. Special Provisions for SWFs; SWF Regulations. Notwithstanding any other provision of this chapter as provided herein, all SWFs are subject to a permit as specified in the SWF Regulations, which are adopted and may be amended by city council resolution. All SWFs, shall comply with the SWF Regulations, as they may be amended from time to time.
1. The SWF Regulations are intended to be constructed in consistency with, and addition to, the terms and provisions of this chapter. To the extent general provisions of this chapter are lawfully applicable to SWFs, such terms shall apply unless in contradiction to more specific terms set forth in the SWF Regulations, in which case the more specific terms of the SWF Regulations shall control.
- E. Other Permits Required. In addition to any permit that may be required under this chapter, the applicant must obtain all other required prior permits or other approvals from other city departments, or state or federal agencies. Any permit granted under this chapter is subject to

the conditions and/or requirements of other required prior permits or other approvals from other city departments, state or federal agencies. Building and encroachment permits, and all city standards and requirements therefor, are applicable.

- F. Eligible Applicants. Only applicants who have been granted the right to enter the PROW pursuant to state or federal law, or who have entered into a franchise agreement with the city permitting them to use the PROW, shall be eligible for a WTFP pursuant to this chapter.

12.12.050 – APPLICATION FOR WIRELESS TELECOMMUNICATIONS FACILITY PERMITS.

- A. Generally. Unless the SWF Regulations specifically provide otherwise, the applicant shall submit a paper copy and an electronic copy of any application, amendments, or supplements to a WTFP application, or responses to requests for information regarding a WTFP, in accordance with the provisions of this section. SWF applications shall be governed by any additional terms set forth in the SWF Regulations, and in the event of an inconsistency between the provisions of this Section and the terms of the SWF Regulations, the Regulations shall control.
 - 1. All applications for WTFPs shall be initially submitted to the public works director. In addition to the information required of an applicant for an encroachment permit or any other permit required by this code, each applicant shall fully and completely submit to the city a written application on a form prepared by the public works director and published on the city's website.
 - 2. Application Submittal Appointment. All WTFP applications must be submitted to the public works director at a pre-scheduled application submission appointment. City staff will endeavor to provide applicants with an appointment within five business days after receipt of a written request. A WTFP application will only be reviewed upon submission of a complete application therefor.
 - 3. If the wireless telecommunications facility will also require the installation of fiber, cable or coaxial cable, such cable installations shall be included within the application form and processed in conjunction with the proposal for vertical support structure(s). Applicants shall simultaneously request fiber installation or other cable installation when seeking to install antennas in the PROW. Standalone applications for the installation of fiber, cable or coaxial cable, or accessory equipment designed to serve an antenna must include all features of the wireless telecommunications facility proposed.
- B. Application Contents—Administrative WTFPs. The content of the application form for facilities subject to an Administrative WTFP shall be determined by the public works director, but at a minimum shall include the following:
 - 1. The name of the applicant, its telephone number and contact information, and if the applicant is a wireless infrastructure provider, the name and contact information for the wireless service provider that will be using the wireless facility.
 - 2. The name of the owner of the structure, if different from the applicant, and a signed and notarized owner's authorization for use of the structure.

3. A complete description of the proposed wireless telecommunications facility and any and all work that will be required to install or modify it, including, but not limited to, detail regarding proposed excavations, if any; detailed site plans showing the location of the wireless telecommunications facility, and dimensioned drawings with specifications for each element of the wireless facility, clearly describing the site and all structures and facilities at the site before and after installation or modification; and a dimensioned map identifying and describing the distance to the nearest residential dwelling unit and any historical structure within 500 feet of the facility. Before and after 360 degree photo simulations must be provided.
4. Documentation sufficient to show that the proposed facility will comply with generally-applicable health and safety provisions of the Municipal Code and the FCC's radio frequency emissions standards.
5. A copy of the lease or other agreement, if any, between the applicant and the owner of the property to which the proposed facility will be attached.
6. If the application is for a SWF, the application shall state as such and shall explain why the proposed facility meets the definition of a SWF.
7. If the application is for an eligible facilities request, the application shall state as such and must contain information sufficient to show that the application qualifies as an eligible facilities request, which information must demonstrate that the eligible support structure was not constructed or deployed without proper local review, was not required to undergo local review, or involves equipment that was not properly approved. This shall include copies of all applicable local permits in-effect and as-built drawings of the current site. Before and after 360 degree photo simulations must be provided, as well as documentation sufficient to show that the proposed facility will comply with generally-applicable health and safety provisions of the Municipal Code and the FCC's radio frequency emissions standards.
8. For SWFs, the application must contain all additional application information, if any, required by the SWF Regulations.
9. The Administrative WTFP applicant shall submit a fee for noticing, consistent with the City's adopted fee schedule to provide notice all properties and record owners of properties within 300 feet of the project location.
10. If the applicant contends that denial of the application would prohibit or effectively prohibit the provision of service in violation of federal law, or otherwise violate applicable law, the application must provide all information on which the applicant relies on in support of that claim. Applicants are not permitted to supplement this showing if doing so would prevent the city from complying with any deadline for action on an application.

C. Application Contents—Major WTFPs. The public works director shall develop an application form and make it available to applicants upon request and post the application form on the city's website. The application form for a Major WTFP shall require the following

information, in addition to all other information determined necessary by the public works director:

1. The name, address and telephone number of the applicant, owner and the operator of the proposed wireless telecommunication facility.
2. If the applicant does not, or will not, own the support structure, the applicant shall provide a duly-executed letter of authorization from the owner of the structure. If the owner of the support structure is the applicant, but such owner/applicant will not directly provide wireless telecommunications services, the owner/applicant shall provide a duly-executed letter of authorization from the person(s) or entity(ies) that will provide those services.
3. A full written description of the proposed wireless telecommunications facility and its purpose.
4. Detailed engineering plans of the proposed wireless telecommunications facility and related report prepared by a professional engineer registered in the state documenting the following:
 - a. Height/elevation, diameter, layout and design of the facility, including technical engineering specifications, economic and other pertinent factors governing selection of the proposed design, together with evidence that demonstrates that the proposed facility has been designed to be the least intrusive equipment within the particular technology available to the carrier for deployment.
 - b. A photograph and model name and number of each piece of the facility or proposed antenna array and accessory equipment included.
 - c. Power output and operating frequency for the proposed antenna array (including any antennas existing as of the date of the application serving the carrier identified in the application).
 - d. Total anticipated capacity of the wireless telecommunications facility for the subject carrier, indicating the number and types of antennas and power and frequency ranges, which can be accommodated.
 - e. Sufficient evidence of the structural integrity of the support structure as required by the city.
5. A written description identifying the geographic service area to be served by the proposed WTFP, plus geographic or propagation maps showing applicant's service area objectives.
6. A justification study which includes the rationale for selecting the proposed wireless telecommunication facility design, support structure and location. A detailed explanation of the applicant's coverage objectives that the proposal would serve, and how the proposed use is the least intrusive means for the applicant to cover such objectives. This shall include:

- a. A meaningful comparative analysis that includes the factual reasons why the proposed location and design deviates is the least noncompliant or intrusive location and design necessary to reasonably achieve the applicant's reasonable objectives of covering an established significant gap (as established under state and federal law).
 - b. Said study shall include all eligible support structures and/or alternative sites evaluated for the proposed WTFP, and why said alternatives are not reasonably available, technically feasible options that most closely conform to the local values. The alternative site analysis must include the consideration of at least two eligible support structures; or, if no eligible support facilities are analyzed as alternatives, why no eligible support facilities are reasonably available or technically feasible.
 - c. If a portion of the proposed facility lies within a jurisdiction other than the city's jurisdiction, the applicant must demonstrate that alternative options for locating the project fully within one jurisdiction or the other is not a viable option. Applicant must demonstrate that it has obtained all approvals from the adjacent jurisdiction for the installation of the extra-jurisdictional portion of the project.
7. Site plan(s) to scale, specifying and depicting the exact proposed location of the proposed wireless telecommunications facility, location of accessory equipment in relation to the support structure, access or utility easements, existing utilities, adjacent land uses, and showing compliance with all design and safety requirements set forth in this chapter.
8. A completed environmental assessment application, or in the alternative any and all documentation identifying the proposed WTFP as exempt from environmental review (under the California Environmental Quality Act, Public Resources Code 21000–21189, the National Environmental Policy Act, 42 U.S.C. §4321 *et seq.*, or related environmental laws). Notwithstanding any determination of environmental exemption issued by another governmental entity, the city reserves its right to exercise its rights as a responsible agency to review *de novo* the environmental impacts of any WTFP application.
9. An accurate visual impact analysis showing the maximum silhouette, view-shed analysis, color and finish palette and proposed screening for the wireless telecommunications facility, including scaled photo simulations from at least three different angles.
10. Completion of the radio frequency (RF) emissions exposure guidelines checklist contained in Appendix A to the FCC's "Local Government Official's Guide to Transmitting Antenna RF Emission Safety" to determine whether the facility will be "categorically excluded" as that term is used by the FCC.
11. For a facility that is not categorically excluded under the FCC regulations for RF emissions, the applicant shall submit an RF exposure compliance report prepared and certified by an RF engineer acceptable to the city that certifies that the proposed

facility, as well as any facilities that contribute to the cumulative exposure in the subject area, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts effective radio power “ERP”) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.

12. Copies of any documents that the applicant is required to file pursuant to Federal Aviation Administration regulations for the proposed wireless telecommunications facility.
 13. A noise study prepared by a qualified acoustic engineer documenting that the level of noise to be emitted by the proposed wireless telecommunications facility will comply with this code, including Chapter 8.28 (Noise) of this code.
 14. A traffic control plan when the proposed installation is on any street in a non-residential zone. The city shall have the discretion to require a traffic control plan when the applicant seeks to use large equipment (e.g. crane).
 15. A scaled conceptual landscape plan showing existing trees and vegetation and all proposed landscaping, concealment, screening and proposed irrigation with a discussion of how the chosen material at maturity will screen the wireless telecommunication facility.
 16. Certification that applicant is a telephone corporation or a statement providing the basis for its claimed right to enter the right-of-way. If the applicant has a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, it shall provide a copy of its CPCN.
 17. Evidence that the proposed wireless facility qualifies as a “personal wireless services facility” as defined in United States Code, Title 47, Section 332(c)(7)(C)(ii).
 18. Address labels for use by the city in noticing all property owners within 500 feet of the proposed wireless telecommunication facility and, if applicable, all public hearing information required by the municipal code for public noticing requirements.
 19. Any other information and/or studies reasonably determined to be necessary by the public works or planning director(s) may be required.
- D. Fees and Deposits Submitted with Application(s). For all WTFPs, application fee(s) shall be required to be submitted with any application, as established by city council resolution and in accordance with California Government Code Section 50030. Notwithstanding the foregoing, no application fee shall be refundable, in whole or in part, to an applicant for a WTFP unless paid as a refundable deposit.

- E. Independent Expert. The public works and/or planning director, as applicable, is authorized to retain on behalf of the city one or more independent, qualified consultant(s) to review any WTFP application. The review is intended to be a review of technical aspects of the proposed wireless telecommunications facility and shall include, but not be limited to, application completeness or accuracy, structural engineering analysis, or compliance with FCC radio frequency emissions standards.
- F. Costs. Reasonable costs of city staff, consultant and attorney time (including that of the city attorney) pertaining to the review, processing, noticing and hearing procedures directly attributable to a WTFP shall be reimbursable to the city. To this end, the public works and/or planning director, as applicable, may require applicants to enter a trust/deposit reimbursement agreement, in a form approved by the city attorney, or other established trust/deposit accounting mechanism for purposes of obtaining an applicant deposit from which the direct costs of city processing of an application may be drawn-down.
- G. Effect of State or Federal Law on Application Process. In the event a state or federal law prohibits the collection of any information or application conditions required by this Section, the public works director is authorized to omit, modify or add to that request from the city's application form in consultation with the city attorney. Requests for waivers from any application requirement of this Section shall be made in writing to the public works director or his or her designee. The public works director may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of a waiver, the city will be provided all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the WTFP sought. All waivers approved pursuant to this subsection shall be (1) granted only on a case-by-case basis, and (2) narrowly-tailored to minimize deviation from the requirements of the municipal code.
- H. Applications Deemed Withdrawn. To promote efficient review and timely decisions, any application governed under this chapter will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the city on any application within thirty (30) calendar days after the application is deemed incomplete in a written notice to the applicant. The public works or planning director (as applicable) may, in his/her discretion, grant a written extension for up to an additional thirty (30) calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension.
- I. Waiver of Applications Superseded by Submission of New Project. If an applicant submits a WTFP application, but substantially revises the proposed facility during the application process prior to any city hearing or decision on such application, the substantially revised application shall be deemed a new application for all processing purposes, including federal shot clocks, and the prior submittals deemed waived and superseded by the substantially revised application. For purposes of this subparagraph, "substantially revised" means that the project as initially-proposed has been alternately proposed for a location 300 feet or more from the original proposal or constitutes a substantial change in the dimensions or equipment that was proposed in the original WTFP application.
- J. Rejection for Incompleteness. WTFPs will be processed, and notices of incompleteness provided, in conformity with state, local, and federal law. If such an application is incomplete,

it may be rejected by the public works director by notifying the applicant in writing and specifying the material omitted from the application.

12.12.060 – REVIEW PROCEDURE.

- A. Generally. Wireless telecommunications facilities shall be installed and modified in a manner that minimizes risks to public safety and utilizes installation of new support structures or equipment cabinets in the PROW only after all existing and replacement structure options have been exhausted, and where feasible, places equipment underground, and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the PROW; and ensures that the city bears no risk or liability as a result of the installations, and that such use does not inconvenience the public, interfere with the primary uses of the PROW, or hinder the ability of the city or other government agencies to improve, modify, relocate, abandon, or vacate the PROW or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the PROW.
- B. Collocation Encouraged. Where the facility site is capable of accommodating a collocated facility upon the same site in a manner consistent with the permit conditions for the existing facility, the owner and operator of the existing facility shall allow collocation of third-party facilities, provided the parties can mutually agree upon reasonable terms and conditions.
- C. Findings Required for Approval.
 - 1. Administrative WTFP Applications for SWFs. For WTFP applications proposing a SWF, the public works director or planning director, as the case may be, shall approve such application if, on the basis of the application and other materials or evidence provided in review thereof, all of the following findings can be made:
 - a. The facility qualifies as a SWF; and
 - b. The facility meets all standards, requirements and further findings as may be specified in the SWF Regulations; and
 - c. The facility is not detrimental to the public health, safety, and welfare; and
 - d. The facility meets applicable requirements and standards of state and federal law.
 - 2. Administrative WTFP Applications for Eligible Facility Requests. For WTFP applications proposing an eligible facilities request, the public works director shall approve such application if, on the basis of the application and other materials or evidence provided in review thereof, all of the following findings can be made:
 - a. That the application qualifies as an eligible facilities request; and
 - b. That the proposed facility will comply with all generally-applicable laws.
 - 3. Major WTFP Applications. No Major WTFP shall be granted unless all of the following findings are made by the applicable decision-maker:

- a. If applicable, all notices required for the proposed WTFP have been given, including the inclusion, or placement on-site, of photo simulations for the proposed facility.
 - b. The proposed wireless telecommunications facility has been designed and located in compliance with all applicable provisions of this chapter.
 - c. If applicable, the applicant has demonstrated its inability to locate on an eligible support structure.
 - d. The applicant has provided sufficient evidence supporting the applicant's claim that it has the right to enter the public right-of-way pursuant to state or federal law, or the applicant has entered into a franchise agreement with the city permitting them to use the public right-of-way.
 - e. The applicant has demonstrated the proposed installation is designed such that the proposed installation represents the least intrusive means possible, supported by factual evidence and a meaningful comparative analysis to show that all alternative locations and designs identified in the application review process were technically infeasible or not reasonably available.
- D. Notice; Decisions. The provisions in this Section describe the procedures for the approval process, any required notice and public hearings for a WTFP application.
1. Administrative WTFPs: Notice of a WTFP application for a SWF shall be mailed to owners and occupants of real property surrounding the proposed SWF site in the manner specified in the SWF Regulations. Applications qualifying for eligible facilities requests shall not require notice.
 2. Major WTFP Applications. Any Major WTFP application shall require notice and a public hearing. Notice of such hearing shall be provided in accordance with Government Code Section 65091. Public notices shall include color photo simulations from three different angles depicting the wireless telecommunication facility as proposed to be considered by the planning commission. If the application proposes the use of an existing or replacement eligible support structure, such simulations shall be posted upon the proposed support structure for a period of at least thirty (30) days prior to the date of approval; such posted simulations shall remain in-place until final decision on the application is reached.
 3. Written Decision Required for All WTFP Determinations. Unless otherwise specified for SWF's in the SWF Regulations, all final decisions made pursuant to this chapter, including those for administratively-processed permits and eligible facilities requests, shall be in writing and based on substantial evidence in the written administrative record. Within five days after any decision to grant, approve, deny or conditionally grant a WTFP application, the public works director or planning director, as applicable, shall provide written notice including the following:

- a. A general explanation of the decision, including the findings required for the decision, if any, and how those findings were supported or not supported by substantial evidence;
 - b. A general description of the property involved;
 - c. Information about applicable rights to appeal the decision and explanation of how that right may be exercised; and
 - d. To be given by first class mail to:
 - (i) The project applicant and property owner,
 - (ii) Any person who submitted written comments concerning the WTFP,
 - (iii) Any person who has filed a written request with the city to receive such notice, and
 - (iv) Any homeowner association on file with the city that has jurisdiction over the WTFP site.
4. Once a WTFP is approved, no changes shall be made to the approved plans without review and approval in accordance with this chapter.

E. Appeals.

1. Administrative WTFP Appeals. Any person claiming to be adversely affected by an administrative decision pursuant to this chapter may appeal such decision. The appeal will be considered by a hearing officer appointed by the city manager. The hearing officer may decide the issues de novo and his/her written decision will be the final decision of the city. An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the wireless facility. Because Section 332(c)(7) of the Telecommunications Act preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, appeals of the administrative decision premised on the environmental effects of radio frequency emissions will not be considered.
 - a. Where the administrative decision grants an application based on a finding that denial would result in a prohibition or effective prohibition under applicable federal law, the decision shall be automatically appealed to the hearing officer. All appeals must be filed within two (2) business days of the written administrative decision, unless the public works director extends the time therefore. An extension may not be granted where extension would result in approval of the application by operation of law.
 - b. Any appeal shall be conducted so that a timely written decision may be issued in accordance with applicable law. For SWFs, the appeal shall be conducted in accordance with any procedures adopted in the SWF Regulations.

2. Appeals on Major WTFPs shall proceed as provided in accordance with the appeal provisions in Title 17 of the Municipal Code, Sections 17.58.100 and 17.60.130 (Appeals). The appellate authority may hear the appeal de ovo.

F. Notice of Shot Clock Expiration. The city acknowledges there are federal and state shot clocks which may be applicable to a proposed wireless telecommunications facility. That is, federal and state law provide time periods in which the city must approve or deny a proposed wireless telecommunications facility. As such, the applicant is required to provide the city written notice of the expiration of any shot clock, which the applicant shall ensure is received by the city (e.g. overnight mail) no later than 20 days prior to the expiration.

12.12.070 – DESIGN AND DEVELOPMENT STANDARDS.

A. SWF Design and Development Standards. SWFs are subject to those design and development standards and conditions of approval set forth in the SWF Regulations. The city's grant of a WTFP for a SWF does not waive, and shall not be construed to waive, any standing by the city to challenge any FCC orders or rules related to small cell facilities, or any modification to those FCC orders or rules.

B. Eligible Facilities Request Design and Development Standards. Approved eligible facilities requests for which the findings set forth in Section 12.12.060 have been made are subject to the following conditions, unless modified by the approving authority:

1. WTFP subject to conditions of underlying permit. Any WTFP granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit and all such conditions that were applicable to the facility prior to approval of the subject eligible facility request.

2. No permit term extension. The city's grant or grant by operation of law of an eligible facilities request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the city's grant or grant by operation of law of a eligible facilities request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall have the same term as the underlying permit or other regulatory approval for the subject tower or base station.

3. No waiver of standing. The city's grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the city to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.

C. Major WTFP Design and Development Standards. All wireless telecommunications facilities subject to a Major WTFP that are located within the PROW shall be designed and maintained as to minimize visual, noise and other impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the following standards:

1. General Guidelines.
 - a. The applicant shall employ screening, undergrounding and camouflage design techniques in the design and placement of wireless telecommunications facilities in order to ensure that the facility is as visually screened as possible, to prevent the facility from dominating the surrounding area and to minimize significant view impacts from surrounding properties and public views, all in a manner that achieves compatibility with the community and in compliance with this code.
 - b. Screening shall be designed to be architecturally compatible with surrounding structures using appropriate techniques to camouflage, disguise, and/or blend into the environment, including landscaping, color, and other techniques to minimize the facility's visual impact as well as be compatible with the architectural character of the surrounding buildings or structures in terms of color, size, proportion, style, and quality.
 - c. Wireless telecommunications facilities shall be located consistent with Section 12.12.080 (Location Restrictions) unless an exception is granted.
2. Traffic Safety. All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety.
3. Blending Methods. All facilities shall have subdued colors and non-reflective materials that blend with the materials and colors of the surrounding area, infrastructure and structures.
4. Equipment. The applicant shall use the least visible equipment for the provision of wireless telecommunications services that is technically feasible. Antenna elements shall be flush mounted, to the extent feasible, with all cables and wires clipped-up or otherwise out of public view. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers. Unless otherwise provided in this Section, antennas shall be situated as close to the ground as technically feasible.
5. Support Structures.
 - a. Pole-Mounted Only. Only pole-mounted antennas (excepting wooden poles per subparagraph 5.b below) shall be permitted in the public right-of-way. Mountings to all other forms of support structure in the public right-of-way are prohibited unless an exception pursuant to Section 12.12.080 is granted.
 - b. Utility Poles. Wireless telecommunications facilities shall not be located on wooden poles unless an exception pursuant to Section 12.12.080 is granted. The maximum height of any antenna shall not exceed 48 inches above the height of an existing utility pole, nor shall any portion of the antenna or equipment mounted on a pole be less than 24 feet above any drivable road surface. All installations on utility poles shall fully comply with the California

Public Utilities Commission general orders, including, but not limited to, General Order 95, as may be revised or superseded.

- c. Light Poles. The maximum height of any antenna shall not exceed four feet above the existing height of a light pole. Any portion of the antenna or equipment mounted on a pole shall be no less than 16½ feet above any drivable road surface.
- d. Replacement Poles. If an applicant proposes to replace a pole that is an eligible support structure to accommodate the proposed facility, the replacement pole shall be designed to resemble the appearance and dimensions of existing poles near the proposed location, including size, height, color, materials and style to the maximum extent feasible.
- e. Equipment mounted on a support structure shall not exceed four (4) cubic feet in dimension.
- f. No new guy wires shall be allowed unless required by other laws or regulations.
- g. An exception pursuant to Section 12.12.080 shall be required to erect any new support structure (non-eligible support structure) that is not the replacement of an existing eligible support structure.
- h. As applicable to all new support structures (non-eligible support structures), regardless of location, the following requirements shall apply:
 - (i) Such new support structure shall be designed to resemble existing support structures of the same type in the right-of-way near that location, including size, height, color, materials and style, with the exception of any existing structural designs that are scheduled to be removed and not replaced.
 - (ii) Such new support structures that are not replacement structures shall be located at least 90 feet from any eligible support structure to the extent feasible.
 - (iii) Such new support structures shall not adversely impact public view corridors, as defined in the General Plan & Local Coastal Program and shall be located to the extent feasible in an area where there is existing natural or other feature that obscures the view of the new support structure. The applicant shall further employ concealment techniques to blend the new support structure with said features including but not limited to the addition of vegetation if feasible.
 - (iv) A justification analysis shall be submitted for all new support structures that are not replacements to demonstrate why an eligible support facility cannot be utilized and demonstrating the new structure is the least intrusive means possible, including a demonstration that

the new structure is designed to be the minimum functional height and width required to support the proposed wireless telecommunications facility.

- i. All cables, including, but not limited to, electrical and utility cables, shall be run within the interior of the support structure and shall be camouflaged or hidden to the fullest extent feasible. For all support structures wherein interior installation is infeasible, conduit and cables attached to the exterior shall be mounted flush thereto and painted to match the structure.
6. Space. Each facility shall be designed to occupy the least amount of space in the right-of-way that is technically feasible.
 7. Wind Loads. Each facility shall be properly engineered to withstand wind loads as required by this code or any duly adopted or incorporated code. An evaluation of high wind load capacity shall include the impact of modification of an existing facility.
 8. Obstructions. Each component part of a facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, incommode the public's use of the right-of-way, or cause safety hazards to pedestrians and motorists.
 9. Public Facilities. A facility shall not be located within any portion of the public right-of-way interfering with access to a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure, or any other public health or safety facility.
 10. Screening. All ground-mounted facility, pole-mounted equipment, or walls, fences, landscaping or other screening methods shall be installed at least 18 inches from the curb and gutter flow line.
 11. Accessory Equipment. Not including the electric meter, all accessory equipment shall be located underground, except as provided below:
 - a. Unless city staff determines that there is no room in the public right-of-way for undergrounding, or that undergrounding is not feasible, an exception pursuant to Section 12.12.080 shall be required in order to place accessory equipment above-ground and concealed with natural or manmade features to the maximum extent possible.
 - b. When above-ground is the only feasible location for a particular type of accessory equipment and will be ground-mounted, such accessory equipment shall be enclosed within a structure, and shall not exceed a height of five feet and a total footprint of 15 square feet, and shall be fully screened and/or camouflaged, including the use of landscaping, architectural treatment, or acceptable alternate screening. Required electrical meter cabinets shall be screened and/or camouflaged. Also, while pole-mounted equipment is generally the least favored installation, should pole-mounted equipment be sought, it shall be installed as required in this chapter.

- c. In locations where homes are only along one side of a street, above-ground accessory equipment shall not be installed directly in front of a residence. Such above-ground accessory equipment shall be installed along the side of the street with no homes.
- 12. Landscaping. Where appropriate, each facility shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs. Additional landscaping shall be planted, irrigated and maintained by applicant where such landscaping is deemed necessary by the city to provide screening or to conceal the facility.
- 13. Signage. No facility shall bear any signs or advertising devices other than certification, warning or other signage required by law or permitted by the city.
- 14. Lighting.
 - a. No facility may be illuminated unless specifically required by the Federal Aviation Administration or other government agency. Beacon lights are not permitted unless required by the Federal Aviation Administration or other government agency.
 - b. Legally required lightning arresters and beacons shall be included when calculating the height of facilities such as towers, lattice towers and monopoles.
 - c. Any required lighting shall be shielded to eliminate, to the maximum extent possible, impacts on the surrounding neighborhoods.
 - d. Unless otherwise required under FAA or FCC regulations, applicants may install only timed or motion-sensitive light controllers and lights, and must install such lights so as to avoid illumination impacts to adjacent properties to the maximum extent feasible. The city may, in its discretion, exempt an applicant from the foregoing requirement when the applicant demonstrates a substantial public safety need.
 - e. The applicant shall submit a lighting study which shall be prepared by a qualified lighting professional to evaluate potential impacts to adjacent properties. Should no lighting be proposed, no lighting study shall be required.
- 15. Noise.
 - a. Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 7:00 p.m. and 7:00 a.m.
 - b. At no time shall equipment noise from any facility exceed the noise levels permitted by Chapter 9.28 of this code.
- 16. Security. Each facility shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti and other conditions that would

result in hazardous situations, visual blight or attractive nuisances. The public works director or the approving city body, as applicable, may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of their location and/or accessibility, a facility has the potential to become an attractive nuisance. Additionally, no lethal devices or elements shall be installed as a security device.

17. Modification. Consistent with current state and federal laws and if permissible under the same, at the time of modification of a wireless telecommunications facility, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual, noise and other impacts, including, but not limited to, undergrounding the equipment and replacing larger, more visually intrusive facilities with smaller, less visually intrusive facilities.
18. The installation and construction approved by a wireless telecommunications facility permit shall begin within one year after its approval or it will expire without further action by the city.
19. Conditions of Approval. All Major WTFPs shall be subject to such conditions of approval as reasonably imposed by the public works director or the approving city body, as applicable, as well as any modification of the conditions of approval deemed necessary by the public works director or the approving city body.

12.12.080 – LOCATION RESTRICTIONS; EXCEPTIONS FOR NON-COMPLIANT MAJOR WIRELESS TELECOMMUNICATIONS FACILITIES.

- A. Locations Requiring an Exception. Major WTFPs are strongly disfavored in certain areas and on certain support structures. Therefore the following locations are permitted only when an exception has been granted pursuant to subsection B hereof:
 1. Public right-of-way within those zones identified in the general plan as residential;
 2. Public right-of-way within 100 feet of designated historic buildings;
- B. Required Findings for an Exception on Major WTFPs. For any Major WTFP requiring an “exception” under this chapter, no such exception shall be granted unless all the following requirements are satisfied:
 1. The proposed wireless facility qualifies as a "personal wireless services facility" as defined in United States Code, Title 47, Section 332(c)(7)(C)(ii);
 2. The applicant has provided the city with clear and convincing evidence a clearly defined significant gap (as established under state and federal law) and a clearly defined potential site search area.
 - a. In the event the applicant seeks to install a wireless telecommunications facility to address service coverage concerns, the applicant shall provide the city with full-color signal propagation maps with objective units of signal strength measurement that show the applicant's current service coverage levels from all adjacent wireless telecommunications facilities without the proposed

facility, predicted service coverage levels from all adjacent facilities serving applicant with the proposed facility, and predicted service coverage levels from the proposed facility without all adjacent facilities.

- b. In the event the applicant seeks to address service capacity concerns, the applicant shall provide the city with a written explanation and propagation maps identifying the existing facilities with service capacity issues together with competent evidence to demonstrate the inability of those facilities to meet capacity demands.
 3. The applicant has provided the city with a meaningful comparative analysis that includes the factual reasons why any alternative location(s) or design(s) suggested by the city or otherwise identified in the administrative record, including but not limited to potential alternatives identified at any public meeting or hearing, are not technically feasible or reasonably available.
 4. The applicant has provided the city with a meaningful comparative analysis that includes the factual reasons why the proposed location and design deviates is the least noncompliant location and design necessary to reasonably achieve the applicant's reasonable objectives of covering an established significant gap (as established under state and federal law).
 5. The applicant has demonstrated that strict compliance with provisions in this chapter from which the applicant seeks to be exempt would effectively prohibit the provision of personal wireless services.
- C. **Scope.** The planning commission or public works director, as applicable, shall limit an exemption for a Major WTFP to the extent to which the applicant demonstrates such exemption is necessary to reasonably achieve its objectives of covering an established significant gap (as established under state and federal law). The planning commission or public works director, as applicable, may adopt conditions of approval as reasonably necessary to promote the purposes in this chapter and protect the public health, safety and welfare.

12.12.090 – OPERATION AND MAINTENANCE STANDARDS.

All wireless telecommunications facilities must comply at all times with the following operation and maintenance standards:

- A. The permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations and other rules, including, without limitation, those applying to use of the PROW. The permittee shall ensure that all equipment and other improvements to be constructed and/or installed in connection with the approved WTFP are maintained in a manner that is not detrimental or injurious to the public health, safety, and general welfare and that the aesthetic appearance is continuously preserved, and substantially the same as shown in the approved plans at all times relevant to the WTFP.
- B. Unless otherwise provided herein, all necessary repairs and restoration shall be completed by the permittee, owner, operator or any designated maintenance agent at its sole cost within 48 hours:

1. After discovery of the need by the permittee, owner, operator or any designated maintenance agent; or
 2. After permittee, owner, operator or any designated maintenance agent receives notification from the city.
- C. Insurance. The permittee shall obtain and maintain throughout the term of the permit a type and amount of insurance as specified by city's risk management. The relevant policy(ies) shall name the city, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insured. The permittee shall use its best efforts to provide thirty (30) days prior notice to the public works director of to the cancellation or material modification of any applicable insurance policy.
- D. Indemnities. The permittee and, if applicable, the owner of the property upon which the wireless facility is installed shall defend, indemnify and hold harmless the city, its agents, officers, officials, and employees (i) from any and all damages, liabilities, injuries, losses, costs, and expenses, and from any and all claims, demands, law suits, writs of mandamus, and other actions or proceedings brought against the city or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul the city's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs, and expenses, and any and all claims, demands, law suits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors, or independent contractors. In the event the city becomes aware of any such actions or claims the city shall promptly notify the permittee and, if applicable, the private property owner and shall reasonably cooperate in the defense. The city shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the city's defense, and the property owner and/or Permittee (as applicable) shall reimburse the city for any costs and expenses directly and necessarily incurred by the city in the course
- E. Performance Bond. Prior to issuance of a wireless encroachment permit, the permittee shall file with the city, and shall maintain in good standing throughout the term of the approval, a performance bond or other surety or another form of security for the removal of the facility in the event that the use is abandoned or the permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal to 100% of the cost of removal of the facility as specified in the application for the WTFP or as that amount may be modified by the public works director in in the permit based on the characteristics of the installation. The permittee shall reimburse the city for staff time associated with the processing and tracking of the bond, based on the hourly rate adopted by the city council. Reimbursement shall be paid when the security is posted and during each administrative review.
- F. Adverse Impacts on Adjacent Properties. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the facility. All facilities, including each piece of equipment, shall be located and placed in a manner so as to not interfere with the use of the PROW, impede the flow of vehicular or pedestrian traffic, impair the primary use and purpose of poles/signs/traffic signals or other infrastructure, interfere with

outdoor dining areas or emergency facilities, or otherwise obstruct the accessibility of the PROW.

- G. Contact Information. Each permittee of a wireless telecommunications facility shall provide the public works director with the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator and the agent responsible for the maintenance of the facility (“contact information”). Contact information shall be updated within seven days of any change.
- H. All facilities, including, but not limited to, telecommunication towers, poles, accessory equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the facility site shall be maintained in good condition, including ensuring the facilities are reasonably free of:
 - 1. Subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to city streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems (water, sewer, storm drains, gas, oil, electrical, etc.) that result from any activities performed in connection with the installation and/or maintenance of a wireless facility in the PROW.
 - 2. General dirt and grease;
 - 3. Chipped, faded, peeling, and cracked paint;
 - 4. Rust and corrosion;
 - 5. Cracks, dents, and discoloration;
 - 6. Missing, discolored or damaged artificial foliage or other camouflage;
 - 7. Graffiti, bills, stickers, advertisements, litter and debris. All graffiti on facilities must be removed at the sole expense of the permittee within forty eight (48) hours after notification from the city.
 - 8. Broken and misshapen structural parts; and
 - 9. Any damage from any cause.
- I. All trees, foliage or other landscaping elements approved as part of the facility shall be maintained in neat, safe and good condition at all times, and the permittee, owner and operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping. No amendment to any approved landscaping plan may be made until it is submitted to and approved by the public works director.
- J. The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is not sufficient to return the facility to the condition it was in at the time of installation.
- K. Each facility shall be operated and maintained to comply at all conditions of approval. The permittee, when directed by the city, must perform an inspection of the facility and submit a

report to the public works director on the condition of the facility to include any identified concerns and corrective action taken. Additionally, as the city performs maintenance on city-owned infrastructure, additional maintenance concerns may be identified. These will be reported to the permittee. The city shall give the permittee thirty (30) days to correct the identified maintenance concerns after which the city reserves the right to take any action it deems necessary, which could include revocation of the permit. The burden is on the Permittee to demonstrate that it complies with the requirements herein. Prior to issuance of a permit under this Chapter, the owner of the facility shall sign an affidavit attesting to understanding the city's requirement for performance of annual inspections and reporting.

- L. All facilities permitted pursuant to this chapter shall comply with the Americans with Disabilities Act.
- M. The permittee is responsible for obtaining power to the facility and for the cost of electrical usage.
- N. Failure to comply with the city's adopted noise standard after written notice and reasonable opportunity to cure have been given shall be grounds for the city to revoke the permit.
- O. Interference.
 - 1. The permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the city shall be moved to accommodate a permitted activity or encroachment, unless the city determines that such movement will not adversely affect the city or any surrounding businesses or residents, and the permittee pays all costs and expenses related to the relocation of the city's structure, improvement, or property. Prior to commencement of any work pursuant to a wireless encroachment permit, the permittee shall provide the city with documentation establishing to the city's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement, or property within the PROW or city utility easement to be affected by permittee's facilities.
 - 2. The facility shall not damage or interfere in any way with city property, the city's operations or the operations of prior-existing, third party installations. The city will reasonably cooperate with the permittee and/or carrier to carry out such activities as are necessary to correct the interference.
 - a. Signal Interference. The permittee shall correct any such interference within 24 hours of written notification of the interference. Upon the expiration of the 24-hour cure period and until the cause of the interference is eliminated, the permittee shall cease operation of any facility causing such interference until such interference is cured.
 - b. Physical Interference. The city shall give the permittee thirty (30) days to correct the interference after which the city reserves the right to take any action it deems necessary, which could include revocation of the permit.

3. The city at all times reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter, or improve the sites. Such actions may temporarily interfere with the operation of the facility. The city will in all cases, other than emergencies, give the applicant 30 days written notification of such planned, non-emergency actions.
- P. RF Exposure Compliance. All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards. After transmitter and antenna system optimization, but prior to unattended operations of the facility, the permittee or its representative must conduct on-site post-installation RF emissions testing to demonstrate actual compliance with the FCC Office of Engineering and Technology Bulletin 65 RF emissions safety rules for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit.
1. Testing of any equipment shall take place on weekdays only, and only between the hours of 8:30 a.m. and 4:30 p.m., except that testing is prohibited on holidays that fall on a weekday. In addition, testing is prohibited on weekend days.
- Q. Records. The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition or fails to produce true and complete copies of such records within a reasonable time after a written request from the city, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee.
- R. Attorney's Fees. In the event the city determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a permit, and such legal action is taken, the permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the city, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the city should otherwise agree with permittee to waive said fees or any part thereof. The foregoing shall not apply if the permittee prevails in the enforcement proceeding.

12.12.100 – NO DANGEROUS CONDITION OR OBSTRUCTIONS ALLOWED.

No person shall install, use or maintain any wireless telecommunications facility that in whole or in part rests upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facility unreasonably interferes with or unreasonably impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location.

12.12.110 – NONEXCLUSIVE GRANT; NO POSSESSORY INTERESTS.

- A. No permit or approval granted under this chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the public right-of-way of the city for any purpose whatsoever. Further, no approval shall be construed as a warranty of title.
- B. No possessory interest is created by a WTFP. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, the permittee acknowledge that the city has given to the applicant notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a WTFP may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Wireless telecommunications facility operators shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes, fees, and assessments levied against their right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by the WTFP.
- C. The permission granted by a WTFP shall not in any event constitute an easement on or an encumbrance against the PROW. No right, title, or interest (including franchise interest) in the PROW, or any part thereof, shall vest or accrue in permittee by reason of a wireless encroachment permit or the issuance of any other permit or exercise of any privilege given thereby.

12.12.120 – PERMIT EXPIRATION; ABANDONMENT OF APPLICATIONS.

- A. Permit Term. Unless Government Code Section 65964, as may be amended, authorizes the city to issue a permit with a shorter term, a permit for any wireless telecommunications facility shall be valid for a period of ten (10) years, unless pursuant to another provision of this code it lapses sooner or is revoked. At the end of ten (10) years from the date of issuance, such permit shall automatically expire.
- B. A permittee may apply for a new permit within 180 days prior to expiration. Said application and proposal shall comply with the city's current code requirements for wireless telecommunications facilities.
- C. Timing of Installation. The installation and construction authorized by a WTFP shall begin within one (1) year after its approval, or it will expire without further action by the city. The installation and construction authorized by a WTFP shall conclude, including any necessary post-installation repairs and/or restoration to the PROW, within thirty (30) days following the day construction commenced.
- D. Commencement of Operations. The operation of the approved facility shall commence no later than ninety (90) days after the completion of installation, or the WTFP will expire without further action by the city. The permittee shall provide the public works director notice that operations have commenced by the same date.

12.12.130 – CESSATION OF USE OR ABANDONMENT.

- A. A wireless telecommunications facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless telecommunications services for 90

or more consecutive days unless the permittee has obtained prior written approval from the director which shall not be unreasonably denied. If there are two or more users of a single facility, then this provision shall not become effective until all users cease using the facility.

- B. The operator of a facility shall notify the public works director in writing of its intent to abandon or cease use of a permitted site or a nonconforming site (including unpermitted sites) within ten days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator of the facility shall provide written notice to the public works director of any discontinuation of operations of 30 days or more.
- C. Failure to inform the public works director of cessation or discontinuation of operations of any existing facility as required by this Section shall constitute a violation of any approvals and be grounds for:
 - 1. Litigation;
 - 2. Revocation or modification of the permit;
 - 3. Acting on any bond or other assurance required by this article or conditions of approval of the permit;
 - 4. Removal of the facilities by the city in accordance with the procedures established under this code for abatement of a public nuisance at the owner's expense; and/or
 - 5. Any other remedies permitted under this code or by law.

12.12.140 – REMOVAL AND RESTORATION—PERMIT EXPIRATION, REVOCATION OR ABANDONMENT.

- A. Upon the expiration date of the permit, including any extensions, earlier termination or revocation of the WTFP or abandonment of the facility, the permittee, owner or operator shall remove its wireless telecommunications facility and restore the site to the condition it was in prior to the granting of the WTFP, except for retaining the landscaping improvements and any other improvements at the discretion of the city. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the city. Expired, terminated or revoked wireless telecommunications facility equipment shall be removed from the site at no cost or expense to the city.
- B. Failure of the permittee, owner or operator to promptly remove its facility and restore the property within 90 days after expiration, earlier termination or revocation of the WTFP, or abandonment of the facility, shall be a violation of this code. Upon a showing of good cause, an extension may be granted by the public works director where circumstances are beyond the control of the permittee after expiration. Further failure to abide by the timeline provided in this Section shall be grounds for:
 - 1. Prosecution;
 - 2. Acting on any security instrument required by this chapter or conditions of approval of permit;

3. Removal of the facilities by the city in accordance with the procedures established under this code for abatement of a public nuisance at the owner's expense; and/or
 4. Any other remedies permitted under this code or by law.
- C. **Summary Removal.** In the event any city director or city engineer determines that the condition or placement of a wireless telecommunications facility located in the public right-of-way constitutes a dangerous condition, obstruction of the public right-of-way, or an imminent threat to public safety, or determines other exigent circumstances require immediate corrective action (collectively, "exigent circumstances"), such director or city engineer may cause the facility to be removed summarily and immediately without advance notice or a hearing. Written notice of the removal shall include the basis for the removal and shall be served upon the permittee and person who owns the facility within five business days of removal and all property removed shall be preserved for the owner's pick-up as feasible. If the owner cannot be identified following reasonable effort or if the owner fails to pick-up the property within 60 days, the facility shall be treated as abandoned property.
- D. **Removal of Facilities by City.** In the event the city removes a wireless telecommunications facility in accordance with nuisance abatement procedures or summary removal, any such removal shall be without any liability to the city for any damage to such facility that may result from reasonable efforts of removal. In addition to the procedures for recovering costs of nuisance abatement, the city may collect such costs from the performance bond posted and to the extent such costs exceed the amount of the performance bond, collect those excess costs in accordance with this code. Unless otherwise provided herein, the city has no obligation to store such facility. Neither the permittee, owner nor operator shall have any claim if the city destroys any such facility not timely removed by the permittee, owner or operator after notice, or removal by the city due to exigent circumstances.

12.12.150 – EFFECT ON OTHER ORDINANCES.

Compliance with the provisions of this chapter shall not relieve a person from complying with any other applicable provision of this code. In the event of a conflict between any provision of this chapter and other sections of this code, this chapter shall control.

12.12.160 – STATE OR FEDERAL LAW.

The implementation of this chapter and decisions on applications for placement of wireless telecommunications facilities in the PROW shall, at a minimum, ensure that the requirements of this chapter are satisfied, unless it is determined that the applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this Chapter may be waived, but only to the minimum extent required to avoid the prohibition or violation.

12.12.170 – LEGAL NONCONFORMING WIRELESS TELECOMMUNICATIONS FACILITIES IN THE RIGHT-OF-WAY.

- A. Legal nonconforming wireless telecommunications facilities are those facilities that existed but did not conform to this chapter on the date this chapter became effective.

- B. Legal nonconforming wireless telecommunications facilities shall, within ten years from the date this chapter became effective, be brought into conformity with all requirements of this article; provided, however, that should the owner desire to expand or modify the facility, intensify the use, or make some other change in a conditional use, the owner shall comply with all applicable provisions of this code at such time, to the extent the city can require such compliance under federal and state law.

- C. An aggrieved person may file an appeal to the city council of any decision of the public works director or other deciding body made pursuant to this Section. In the event of an appeal alleging that the ten-year amortization period is not reasonable as applied to a particular property, the city council may consider the amount of investment or original cost, present actual or depreciated value, dates of construction, amortization for tax purposes, salvage value, remaining useful life, the length and remaining term of the lease under which it is maintained (if any), and the harm to the public if the structure remains standing beyond the prescribed amortization period, and set an amortization period accordingly for the specific property.



AGENDA NO: A-6

MEETING DATE: April 9, 2019

Staff Report

TO: Honorable Mayor and City Council

DATE: March 25, 2019

FROM: Eric Endersby, Harbor Director

SUBJECT: Approval of Issuance of Request for Proposals for Redevelopment on Lease Sites 34W and 35W-36W, Adjacent to 225 & 235-245 Main Street, Respectively

RECOMMENDATION

Approve issuance of the revised Request for Proposals document to put Lease Sites 34W and 35W-36W out to bid for redevelopment.

ALTERNATIVES

Council could elect to not issue a Request for Proposals (RFP) for these lease sites, and direct staff accordingly.

FISCAL IMPACT

There will be no fiscal impact until the site(s) are redeveloped, where after positive fiscal impact is anticipated depending on proposals received and new leases negotiated.

BACKGROUND

On February 26, 2019, this RFP was brought to Council for approval. While supportive, Council directed staff to make certain changes to the document, and bring it back for review and approval on the City Council meeting Consent calendar at a later date.

DISCUSSION & CONCLUSION

Included with this staff report as Attachment 1 is an updated request for proposals document for the two sites, based on direction received from the Council on February 26. Key changes made are as follows:

- A. Corrected all references to addresses to incorporate all applicable street numbers.
- B. Explained more clearly what a "ground" lease is.
- C. Updated the Key Objectives to best reflect what is being asked of proposers.
- D. Provided additional information regarding the adjacent property covenants providing access, restrooms, utilities and parking to Lease Site 34W.
- E. Included a reference the City is making no representations or warranties as to the condition of any improvements.
- F. Better description of the public/private property lines in relation to the lease site boundaries.
- G. Added a qualifier that proposers should consult with Community Development regarding zoning.
- H. Added a section regarding the adjacent upland property owners' "littoral" water access rights.

Prepared By: EE

Dept Review: EE

City Manager Review: SC

City Attorney Review: CFN

- I. Added language about necessary financial data submission, and that all financial data will be kept confidential.
- J. Filled-in the tentative proposal schedule, which includes a ~120-day (four month) RFP “soak” time to be out to bid.
- K. Replaced the lease site maps attachment to include the most-recently recorded lease site survey maps.

Once approved by the Council, the RFP will be issued and managed accordingly.

ATTACHMENT

- 1. Updated final draft Request for Proposals document for Lease Sites 34W and 35W-36W.



City of Morro Bay Request for Proposals



Redevelopment of Lease Sites
34W and/or 35W-36W
225 and 235-245 Main Street
Morro Bay, CA 93442
Project No. MB-2019-HRFP1

01181.0024/542901.2



CITY OF MORRO BAY

HARBOR DEPARTMENT

1275 Embarcadero Road
Morro Bay, CA 93442

April 12, 2019

Prospective Proposers:

SUBJECT: REQUEST FOR PROPOSALS FOR LEASE SITES 34W AND/OR 35W-36W, LOCATED AT 225 AND 235-245 MAIN STREET, MORRO BAY, CA 93442

The City of Morro Bay invites the submittal of proposals from qualified individuals and entities (Proposer) to redevelop and operate/manage the water leases located on Main Street for Lease Sites 34W and/or 35W-36W, located adjacent to 225 and 235-245 Main Street, Morro Bay, CA 93442.

The City of Morro Bay intends to select a Proposer or Proposers to redevelop the Properties. The Properties will be available for short-term Interim Lease initially, then on a long-term water-area lease basis (meaning there is no “land” being leased, and all improvements are the property and responsibility of the lessee, subject to the terms of the lease), after Concept Plans for site redevelopment are approved.

Instructions and forms to be used in preparing a proposal are found in the information included in the RFP document. The activity schedule for the RFP is included.

For more information and a copy of the City of Morro Bay Harbor Department Lease Management Policy, as well as a copy of the City’s standard lease format, visit the Harbor Department’s page of the City website under “Harbor Administration and Leases.” If you cannot agree to the requirements exactly as set forth in the RFP, then please do not submit a proposal.

For general questions, please contact Eric Endersby, Harbor Director, by email at eendersby@morrobayca.gov. Specific questions relevant to the RFP must be submitted as-directed in the “Invitation to Participate” section of the RFP. It is the responsibility of any Proposer to review the City’s website for any revisions or answers to questions regarding the RFP prior to submitting a proposal in order to ensure all proposals are complete and responsive.

Sincerely,

Eric Endersby,
Harbor Director

**REQUEST FOR PROPOSALS
REDEVELOPMENT OF LEASE SITES
34W AND/OR 35W-36W, LOCATED AT
225 AND 235-245 MAIN STREET, MORRO BAY, CA 93442
PROJECT MB-2019-HRFP1**

TABLE OF CONTENTS

INTRODUCTION	4
SECTION I SITE HISTORIES	6
SECTION II SITE DATA	7
SECTION III INVITATION TO PARTICIPATE	10
SECTION IV SELECTION PROCESS	13
SECTION V REQUEST FOR PROPOSALS SUBMITTAL PACKAGE ...	16
SECTION VI TENTATIVE PROPOSAL SCHEDULE	19
SECTION VII ATTACHMENTS	20

INTRODUCTION

Purpose

The City is seeking proposals from qualified individuals and entities (“Proposers”) to redevelop and manage the water-only Lease Sites 34W and/or 35W-36W, located at 225 & 235-245 Main Street, respectively, Morro Bay, CA 93442, and hereinafter referred to as the “Site” or “Sites.”

The City will consider proposals to redevelop and lease the Sites either individually or collectively, and will be available for short-term interim lease while Concept Plans for the Proposer’s proposal(s) are processed and approved, where after a long-term lease or leases will be negotiated and executed.

The term (length) and conditions of the long-term lease to be awarded as a result of this Request for Proposals (RFP) will be negotiable, depending on the investment and redevelopment plan of the Proposer. The subsequent long-term lease agreement will become effective once approved by the City Council.

Objectives

The Morro Bay City Council has determined it is in the best interest of the City and public to consider redevelopment proposals for these Sites. The City desires to have the Sites redeveloped to continue to provide access to the bay with marine-dependent uses, as well as an economic return to the City, while meeting modern design criteria that incorporate current planning, building and zoning codes in compatibility with the residential neighborhood in which the Sites are located.

Key Objectives with the RFP are redevelopments that include:

- Best and highest use of Sites to maximize revenues and return on investment, including maximization of public benefit. Unique uses or features will be considered.
- Continue to provide and enhance bay access and marine-dependent uses.
- Restore and/or enhance the environment, where applicable.
- Include safety enhancements to the area, where applicable.
- Provide 10-foot wide lateral public access along the bayfront, if feasible, given these are water-only lease sites with no established public access, except for users of slips located at Lease Site 34W by means of an access covenant over the real property abutting that lease site.

- Proposers who have the demonstrated experience, financial resources, and professional expertise to deliver the highest quality and economically feasible project(s).
- Proposals that are consistent with and best implement the land and water uses outlined in the General Plan, Local Coastal Program, Harbor Department Lease Management Policy and City Council Goals and Objectives, as applicable.

SECTION I: SITE HISTORIES

Tracing back to English Common law, the Public Trust Doctrine establishes navigable water or lands subject to tidal influence are “sovereign,” held open to the public for public uses as stipulated in the Coastal Act.

In 1947, the State of California granted those public trust lands in Morro Bay to the County of San Luis Obispo. The City of Morro Bay assumed trusteeship of the granted lands upon incorporation in 1964-1965. The Tidelands Grant in Morro Bay is in perpetuity, provided the City conforms to the terms of the legislative grant. The granted lands must be used, where applicable, for commerce, fisheries, navigation, recreational purposes, parklands, public access, public parking and environmental protection or enhancement. Residential or strictly private use of the public lands is specifically prohibited. The City may lease out the lands to private businesses for a period up to 50 years and all revenues from such leases must be expended within the area of the granted lands for the purposes of the public trust.

It is primarily with those lease revenues the City manages the waterfront leases, provides and maintains various public, commercial fishing and other facilities and amenities, manages open spaces and the moorings in the bay and provides for the public safety with Harbor Patrol and Lifeguard services.

These Sites have operated as water-only leases as the adjacent upland properties are fee-simple private property.

SECTION II: SITE DATA

Lease Site 34W is located adjacent to 225 Main Street, and delineated in City of Morro Bay Resolution No. 77-74 approving the “Lease Site Map” for the City of Morro Bay. The Site is located within the Tidelands Trust granted lands, has been surveyed and contains approximately 5,525 square feet of water lease area and adjacent revetment and seawall area. Said map is included with this document in Attachment 3.

Lease Site 35W-36W is located adjacent to 235-245 Main Street, and delineated in City of Morro Bay Resolution No. 77-74 approving the “Lease Site Map” for the City of Morro Bay. The Site is located within the Tidelands Trust granted lands, has been surveyed and contains approximately 13,537 square feet of water lease area. In addition, a lease extension to the west of approximately 250 feet and incorporating an additional approximately 67,500 square feet is available. Said map is included with this document in Attachment 3.

A. Current Uses

Site 34W currently serves as a small recreational vessel slip facility for up to four vessels, with access through the adjacent private properties by way of legal covenants recorded on those properties, and restroom facilities for the marina at 225 Main provided for in the same legal covenant. These covenants are only for users of slips at Lease Site 34W, and not general public access or use points. Vehicle parking is provided for the Site across Main Street at 206 Main Street by way of a legally-recorded parking covenant on the 206 Main property. 34W is currently under lease holdover with its current tenant.

Site 35W-36W is currently vacant and unleased, but previously contained a large commercial unloading wharf that served the adjacent seafood processing and retail facility. Those uses ceased approximately eighteen years ago, including removal of the wharf. There is currently no established legal access to the Site through the abutting private property.

The City makes no representations or warranties concerning the condition of any improvements on, in or adjacent to any of these lease sites; and it is the responsibility of Proposers to fully investigate the suitability of any improvements for a proposed use or purpose.

B. Topography/Site Conditions

Site 34W is a water-only lease, beginning at the established Ordinary High Water Mark (OHWM) as-surveyed in Attachment 3 to this RFP, with a very small portion of seawall inside the leased boundary. Investigation of seawall and harbor bottom conditions for suitability of the proposed development shall be the responsibility of the Proposer.

Site 35W-36W is entirely a water-only lease, with the adjacent seawall under private property ownership behind the OHWM. Investigation of revetment below the seawall and the harbor bottom conditions for suitability of the proposed development shall be the responsibility of the Proposer.

C. Hazards

The Sites are subject to all conditions and hazards commonly associated with a bay/ocean-front setting including, but not limited to:

- 1. Flooding: the Sites are not in a designated flood zone.
- 2. Tsunami: the Sites are within the tsunami 50-foot inundation zone.
- 3. Earthquake: the Sites are within an earthquake hazard zone.
- 4. Storms: the Sites are subject to periodic storm conditions.
- 5. Tidal Overflow: the Sites can be subject to periodic tidal overflow.
- 6. Seawalls/Revetments (if present): subject to erosion, scouring, tidal influences and normal deterioration in the marine environment.

D. Archeology

The Sites are not listed as, nor are they within 300 feet of a known archaeological site.

E. Zoning

The Sites are zoned Harbor (H), and the adjacent upland private properties are zoned Waterfront with a Planned Development overlay (WF/PD). Allowable uses in the Harbor zone for this area can be found in Morro Bay Municipal Code (MBMC) 17.24.190 and include a mixture of mariculture, vessel habitation, promotion and accommodation of commerce and navigation and vessel accommodation. Proposers are advised to consult the Community Development Department for full zoning information.

Planning entitlements require both a Conditional Use Permit (CUP) from the City and a Coastal Development Permit from the California Coastal Commission, in addition to permit requirements from other governmental agencies, as necessary

F. Parking

There are currently five off-site parking spaces attributed to 225 Main Street, where Lease Site 34W is located, by way of a legally recorded property covenant on 206 Main Street (across Main Street from 225 Main) when calculating parking requirements for proposals. These five spaces are for exclusive use of both of 225 Main Street residents/guests and Lease Site 34W slip users on a first-come, first-served basis.

There are currently no legally established parking spaces for Lease Site 35W-36W.

G. Littoral Rights

The owners of private property that abuts each Site may, by State law, be entitled to access to the bay from that abutting property. Therefore, reasonable opportunities for that access shall be included with each Proposer's development proposal on the respective Sites.

SECTION III: INVITATION TO PARTICIPATE

The City is seeking proposals from Proposers with the experience, financial resources and capabilities to fund a proposed project, and whose general development approach and concept for the site best meets the City’s objectives in this Request for Proposals.

PROPOSALS MAY BE FOR EITHER LEASE SITE 34W OR 35W-36W, OR THE TWO SITES IN COMBINATION.

A. Proposal Process

1. All proposals must be submitted per Section V, “Request for Proposals Submittal Package.” All proposals become the property of the City of Morro Bay and will not be returned.
2. All times referenced in the RFP are “Verizon” cell phone time.
3. Submittals will be initially screened to ensure they are complete and conform to the RFP. City staff will review and evaluate the qualifying proposals and make recommendations in a Staff Report to a Selection Panel, defined below.
4. The City will convene a Selection Panel to review the proposals, and to interview each qualified proposing party if necessary. The Selection Panel may consist of any combination of the following, as the City Manager, in consultation with the Harbor Director, determines in the City’s best interest:
 - Members from City staff.
 - Members of the public.
 - Members of the Harbor Advisory Board and/or other constituencies.
5. The Selection Panel will make Primary and Secondary Proposer recommendations, or combination of recommendations for separate site proposals, to the City Council.
6. The City Council will determine the final Primary and Secondary proposal, or combination of proposals, and approve Consent of Landowner and short-term Interim Lease agreements with the Primary Proposer(s) to begin the Concept Plan approval process.

The Consent of Landowner will include specific milestones, such as, but not limited to, dates for submissions of plans and financial capacity information. If the Primary Proposer declines to participate, then the Secondary Proposer will ascend to the Primary Proposer position.

7. Concurrent with the Concept Plan approval process, City staff will begin preliminary negotiations for a long-term lease agreement(s) with the Primary Proposer(s). Upon approval of the Concept Plan by the City Council, City staff will be in a position to complete lease negotiations and recommend to the City Council approval and execution of a long-term lease agreement. Proposing parties must assume the basic terms of the new lease agreement(s) will be as set forth in the City's draft standard master lease format and in compliance with the Harbor Department Lease Management Policy.

B. Permitting and Project Costs

ANY AND ALL COSTS INCURRED BY A PROPOSER RELATED TO THE RFP PROCESS, INCLUDING, BUT NOT LIMITED TO, PERMITTING, DESIGN, ENGINEERING, AND PLAN PREPARATION AND SUBMITTAL WILL BE THE SOLE RESPONSIBILITY OF EACH PROPOSER. THE CITY SHALL INCUR NO COST OR LIABILITY FOR ANY COSTS RELATED TO THE RFP OR IF THE PROPOSER IS UNABLE TO COMPLETE THE PROJECT APPROVAL OR PERMITTING PROCESS.

C. City's Right to Amend RFP

The City reserves the right to amend the RFP process and the selection procedures at any time. It is the responsibility of any Proposer to review the City's website for any RFP revisions or answers to questions prior to submitting a proposal in order to ensure all proposals are complete and responsive.

D. Contact Person

RFP Packets and written inquiries regarding the RFP or the project site can be obtained by contacting:

Harbor Director Eric Endersby, Morro Bay Harbor Department
1275 Embarcadero
Morro Bay, CA 93442
805-772-6254
eendersby@morrobayca.gov

E. Pre-Proposal Meeting and Questions

Attendance is recommended at the Pre-Proposal Meeting and Site Walk-Through on April 26, 2019, at 10:00 a.m. starting at the Harbor Office, 1275 Embarcadero in Morro Bay. All questions on the RFP are due by 4:00 p.m. on May 10, 2019. For any questions posed, a response will be posted on the City website under the original proposal posting by 4:00 p.m. on May 17, 2019.

SECTION IV: SELECTION PROCESS

The City reserves the right in its sole discretion to waive any defect or omission in any proposal that does not materially affect the terms of the response to the RFP. The City reserves the right in its sole discretion to reject any and all proposals submitted, to revise its selection process at any time, and to rescind the RFP at any time.

A. Criteria for Selection of Proposer

The City will select Proposals on the basis of maximization of public benefit in the proposed project, in addition to the proposing party's potential to bring the project to completion and successfully operate the lease site based on financial capability and experience. The City expects to negotiate with the selected Proposer(s) on all aspects of the development program including a long-term lease for the Site(s).

Important elements influencing selection of a proposal are:

- Proposal best meets the Key Objectives of the RFP.
- Maximization of public benefit of the project and best utilization of the Site.
- Demonstrated financial capability, capacity, capitalization and experience at the time of submitting proposal to undertake the redevelopment and successfully maintain ongoing operations.
- Proven capabilities, history and expertise in commercial development and redevelopment projects.
- Professionally-prepared business plan and ten-year pro forma with industry-standard elements expected of such documents.
- Best balance between uses and requirements in the City’s General Plan, Local Coastal Program, Zoning Ordinance, building codes, and design elements.
- The overall quality of the development team as evidenced by the professional reputations and experience of the principals and agents.
- Lease terms proposed.
- Experience in commercial leasing and property management.
- Anticipated financial benefit to the City.
- Proposed timing and progress through the design, planning, and permitting processes in order to minimize redevelopment timeline.

Proposed uses on the Site(s) shall be in conformance with the Tidelands Trust and consistent with current planning, zoning and land use policies of the City. The selected Proposal(s) will be subject to the normal planning, permitting and approval processes of the City and other regulators, including, but not necessarily limited to, the California Coastal Commission, Army Corps of Engineers and Central Coast Regional Water Quality Control Board.

B. Proposer Selection

The City reserves its right to seek input from various community and business representatives, staff, and other agencies. In addition, the City may utilize the services of leading consultants in the areas of design, land and marine architecture and engineering, real estate, economics, and law to assist in the evaluation of the proposals and to negotiate a new lease.

In order to submit a proposal, a \$5,000 deposit is required as outlined in Section V. Deposits from proposing parties reviewed by the City will be held in trust during the proposal review period. After City Council selection, the City will refund Deposits from parties not in Primary or Secondary position, if any. The City will hold the Deposits from Proposers under final Primary and Secondary consideration in trust during the approximate 12-month Concept Plan processing period. If the Primary Proposer(s) successfully complete Concept Plan approval of the selected Proposal(s), then all Deposits will be fully refunded. If Primary Proposer(s) fail to complete Concept Plan approval within the specified time, then the City will retain the Deposit(s) as a processing fee and the Secondary Proposer(s) may ascend to Primary status and the remaining Deposit(s) handled accordingly.

C. Selection Methodology

In reviewing and evaluating the qualifications of the Proposers and the Proposals, the following criteria will be considered:

1. The Proposal's compliance with the RFP – **Pass/Fail**
2. Overall quality of the conceptual design(s) of the facilities and site plan(s). – **up to 15 points**
3. Proposer's financial strength and current relationships with financing sources, and demonstrated ability to finance the proposal(s) through to completion – **up to 20 points**
4. Proposal(s) that include the Key Objectives as outlined – **up to 20 points**
5. Demonstrated understanding of the development constraints on the bay and waterfront, and market knowledge of Morro Bay and the Central Coast – **up to 10 points**
6. Proposed lease terms, including financial benefit to the City – **up to 15 points**

7. Overall Proposer(s) and team qualifications and experience in similar projects – **up to 15 points**
8. Proposed development schedule(s) – **up to 5 points**

D. Exclusive Lease Negotiation

The City intends to enter into a Consent of Landowner concept approval and short-term Interim Lease for the Proposal(s), in addition to a long-term water area lease(s) with the selected Proposer(s) once Concept Plan approval is obtained from the Planning Commission and City Council. No “land” would be leased, and all improvements are the property and responsibility of the lessee, subject to the terms of the lease. The Harbor Department’s typical ground lease is “triple net” and includes base rent and percentage rent terms. The selected Proposer(s) will be financially responsible for all construction activities.

The lease(s) will outline roles, expectations, responsibilities, goals, objectives and timelines with regard to the proposed development(s) and specific financial parameters to which both the selected Proposer(s) and City will adhere. Proposers will be responsible for all costs associated with the RFP process including all costs incurred by the Proposer(s) associated with the negotiation and development of the lease(s), as well as all costs associated with the entitlement, permitting, CEQA processing, and development. The selected Proposer(s) will work closely with the City to establish general design parameters for the proposed development(s).

The City and the selected Proposer(s) shall negotiate long-term ground lease agreement(s) not to exceed a term of 50 years, the maximum allowable under State law.

SECTION V: REQUEST FOR PROPOSALS SUBMITTAL PACKAGE

1. **Proposal Submittal.** All responses to the RFP must be received by mail or in person no later than **4:00 p.m. on August 9, 2019. Postmarks and proposals submitted by facsimile or email will not be accepted.**

Proposals shall be delivered in person or mailed to:

**City of Morro Bay
Attention: City Clerk
595 Harbor Street
Morro Bay, CA 93442**

Submittal envelopes shall be clearly marked “MB-2019-HRFP1.” No fax or email proposals will be accepted.

2. **Acknowledgement Form.** Each proposing party must review, complete, and sign the attached Acknowledgement Form and include it with the Proposal(s).
3. **Deposit Check.** A \$5,000 Deposit check or bank draft payable to the City of Morro Bay must be included with each Proposal. Deposit disposition shall be in accordance with Section IV, B.

All Proposers must submit four copies of the following information:

A. Proposer Information

1. **Identification.** Name of Proposer and type of entity. Also, provide known members of development team such as architect, engineer, landscape architect, major equity investors, consultants, including project organizational and management roles in implementation of development.
2. **Experience.** Provide a brief description of the Proposer’s and key team members’ recent development experience. That experience should include projects in which the Proposer was instrumental, and which are similar to the kind of project or similar project being proposed. Please be specific and indicate references for each project.
3. **Financial and Business Data.** Provide information indicating:
 - a. How the Proposer has sufficient financial resources to undertake the project, including a statement of proof of financial capability to plan and construct the proposed project.
 - b. Bank references where appropriate. The latter may be in the form of letters of financial approval from bank or financing institutions.
 - c. A minimum of three credit references.

- d. Financing for prior or current development projects.
- e. A current Credit Report, including Credit Score.
- f. If the Proposer is involved in any litigation or other disputes that could affect its ability to fulfill the terms of a commercial lease.
- g. Any other documents or reports that would assist in determining the financial condition of the Proposer.
- h. The length of time and locations at which the Proposer has operated like or other operations or businesses.
- i. Contact information for three business references.
- j. A current or most recent Landlord reference, if applicable.

Financial information and data submitted per the above can be any combination of documents or sources necessary to determine Proposer’s ability to finance the improvements being offered.

The City will independently investigate the financial background of proposing parties as agreed to in the required Acknowledgment Form.

All Proposer financial data and information will be kept strictly confidential to the extent permitted by law.

B. Business Plan and Pro Forma(s)

The Proposal(s) shall include a business plan and ten-year pro forma for the entire development to include, but not be limited to, design, planning, permitting, construction, operation and maintenance, and stabilization. A description of the Proposal’s financing as it pertains to the pro forma shall also be included. The Proposal(s) should include an estimate of the total value of the project. The pro forma(s) must reflect all income and expense line items necessary to the proper functioning of the operation, including, but not limited to, ground lease payments, with sufficient detail and clarity, for the Proposal(s) to be properly evaluated by the City.

C. Proposal Narrative(s)

- 1. **Narrative.** Written narrative(s) must be included in the Proposal(s) describing the redevelopment of the Site(s), the type of development(s) envisioned and their market orientation, which best implement the elements of the Site(s).
- 2. **Design.** The narrative(s) should include the basic design elements, especially as they pertain to the City’s design criteria, and all current planning conditions and zoning standards.

D. Proposal Visuals

ALL DRAWINGS SHALL BE 24” X 36” BLACKLINE PRINTS WITH A HORIZONTAL LAYOUT. FOUR SETS ARE REQUIRED.

EACH 24” X 36” DRAWING SHALL ALSO BE PROVIDED IN 8 ½” X 11” BLACK

AND WHITE REDUCTIONS WHICH CAN BE PHOTO-COPIED.

1. **Site Plan.** Site Plan illustrating at an appropriate scale the outline of all improvements, including any proposed public improvements. Tabulations in square and linear footage of the following shall be shown on the Site Plan:
 - a. Improvement footprints and lengths of slips, docks etc.
 - b. Parking designated as standard, compact, handicap and loading spaces, if applicable.
2. **Colored Site Plan Rendering.** A rendering utilizing the above-mentioned Site Plan shall be provided. The Site Plan rendering is intended to provide a colored overall view of the entire project.
3. **Adjacent Land.** Proposals must include plans, elevations and other depictions for any supporting facilities or improvements proposed on the adjacent private property abutting the Site(s), if applicable.

NOTE: Each Plan will be considered “pre-Conceptual” and will be subject to adjustment and City approval once a proposal has been selected and the details of the project are finalized through the planning, permitting, and negotiation processes.

E. Terms of Lease

The proposal(s) must include an accurate estimate of the total cost of redevelopment, and a set of draft business terms and conditions the Proposer would be willing to negotiate in a short-term Interim Lease(s) and subsequent long-term Master (“ground”) Lease(s).

F. Schedule

Include a preliminary time schedule including any proposed phasing of redevelopment. The schedule(s) should include any financial scheduling, amortization, etc.

G. Ownership of Materials

All drawings, plan documents, proposals and other materials submitted by the Proposer shall become the permanent property of the City.

SECTION VI: TENTATIVE PROPOSAL SCHEDULE

ACTIVITY/Key Steps	DATE
Issue Request for Proposals	Friday, April 12, 2019
Recommended Pre-Proposal Meeting and Site Walk-Through	Friday, April 26, 2019
Questions Due by	Friday, May 10, 2019
Responses to Questions Posted by	Friday, May 17, 2019
Proposals Due by	Friday, August 9, 2019
Proposals Evaluated	August, 2019
Consent of Landowner Approval Granted Winning Proposer (estimated)	August/September, 2019
Winning Proposer Submits Complete Plans to Begin Concept Plan Approval Process (estimated)	September/October, 2019
Concept Plans Approved, Lease Negotiation (estimated)	Winter, 2019/2020
New Lease Approved and Inaugurated (estimated)	Winter/Spring, 2020
Site Redevelopment Begins (estimated)	Spring/Summer, 2020

SECTION VII: ATTACHMENTS

Attachment 1: Acknowledgement Form

Attachment 2: Proposer Information

Attachment 3: Lease Site Maps

THANK YOU FOR YOUR INTEREST IN WORKING WITH THE CITY OF MORRO BAY
ON THIS EXCITING OPPORTUNITY.

WE LOOK FORWARD TO RECEIVING YOUR PROPOSAL.

ATTACHMENT 1

**ACKNOWLEDGEMENT FORM REQUEST FOR PROPOSALS
DEVELOPMENT OF LEASE SITES 34W AND/OR 35W-36W
PROJECT MB-2019-HRFP1**

Initial Below

1. _____ I have reviewed all of the information in this Request for Proposals, and all additions, changes and answer provided on the City’s website and agree to all of the terms and conditions outlined therein.

2. _____ I understand each proposing party must review the City’s General Plan, Local Coastal Program, and any and all planning and permitting elements as they pertain to this lease site.

3. _____ Any new lease with the City must be in the City’s approved Master Lease format and should comply with the City’s Harbor Department Lease Management Policy.

4. _____ I have reviewed the City’s Master Lease format and Harbor Department Lease Management Policy and agree the lease policy and basic lease format is acceptable for any future lease negotiations.

5. _____ I agree the City of Morro Bay may take all steps necessary to investigate any financial information provided in response to this Request for Proposals. The City has my permission and consent to investigate such information however it deems appropriate.

6. _____ Enclosed is a check or bank counter draft in the amount of \$5,000 made out to the City of Morro Bay as a Deposit and an indication of good faith interest for consideration in this Request for Proposals.

7. _____ I agree that check will be handled as outlined in this Request for Proposals including that the check may be retained by the City as a processing fee under certain conditions.

8. _____ The parties signing below are all the parties in interest in our proposal to the City in response to this Request for Proposals, and, if part of a partnership or other entity, affirm that they have the authority to enter into this Request for Proposals.

Printed Name

Signature

Date

Printed Name

Signature

Date

ATTACHMENT 2

**PROPOSER INFORMATION
REQUEST FOR PROPOSALS
DEVELOPMENT OF LEASE SITES 34W AND/OR 35W-36W
PROJECT MB-2019-HRFP1**

Include the personal information for all persons or entities submitting this proposal. If a partnership, include partnership information:

Name _____

Address _____

Phone(s) _____ (home) _____ (work)
_____ (cell)

Email _____

Name _____

Address _____

Phone(s) _____ (home) _____ (work)
_____ (cell)

Email _____

Name _____

Address _____

Phone(s) _____ (home) _____ (work)
_____ (cell)

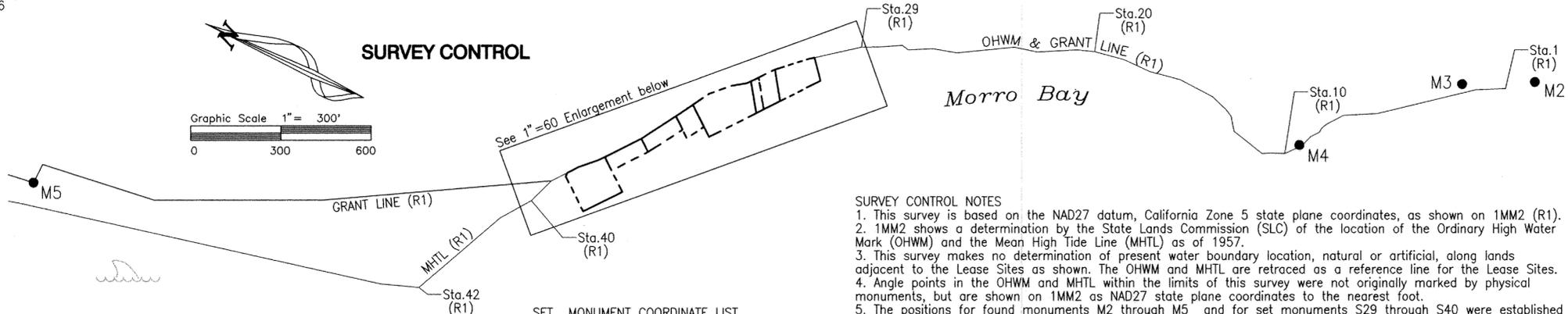
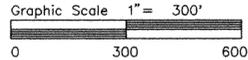
Email _____

ATTACHMENT 3

LEASE SITE MAPS/SURVEYED BOUNDARIES
(follows)

1508-rs.pro
FB 116

SURVEY CONTROL



SURVEY CONTROL NOTES

- 1. This survey is based on the NAD27 datum, California Zone 5 state plane coordinates, as shown on 1MM2 (R1).
2. 1MM2 shows a determination by the State Lands Commission (SLC) of the location of the Ordinary High Water Mark (OHWM) and the Mean High Tide Line (MHTL) as of 1957.
3. This survey makes no determination of present water boundary location, natural or artificial, along lands adjacent to the Lease Sites as shown. The OHWM and MHTL are retraced as a reference line for the Lease Sites.
4. Angle points in the OHWM and MHTL within the limits of this survey were not originally marked by physical monuments, but are shown on 1MM2 as NAD27 state plane coordinates to the nearest foot.
5. The positions for found monuments M2 through M5 and for set monuments S29 through S40 were established using RTK GNSS methods, deemed suitable for retracement of and reestablishing positions of SLC stations on the NAD27 datum.
6. This survey recovered and used M1, "WHITE RESET" as the base station for RTK GNSS measurements.
7. The FOUND MONUMENT COORDINATE LIST shows a comparison between record and field measured positions at monuments M2 through M5, in order to demonstrate adequate recovery of both the monuments and the NAD27 datum for this survey.

FOUND MONUMENTS

- M1 - found USC&GS brass disk "WHITE RESET 1960" in rock structure atop White's Point. NGS PID FV0403. While this monument is not shown on R1, its grid coordinates are derived from conversion of superseded NAD27 latitude & longitude on NGS data sheet to provide datum control consistent with R1.
M2 - found Pt "B" (R1), Mon.43 (R2) - decayed concrete cylinder remnants, at sand level, fair condition, center well-defined
M3 - found Mon.45 (R2) - remains of concrete, very decayed, 0.3 below sand, bad condition, center poorly defined
M4 - found Pt."D" (R1) - Beaches & Parks brass disk stamped RE 6125, grouted to rock - very good condition, center mark clear
M5 - found 1"IP & cap "Sylvester RCE 29743" (R3), noted as "Fd 3/4" rod per 4 RS 10. 4 LS 10 sets a 3/4" rod. (R1) shows a 3/4" iron rod at Pt."A"

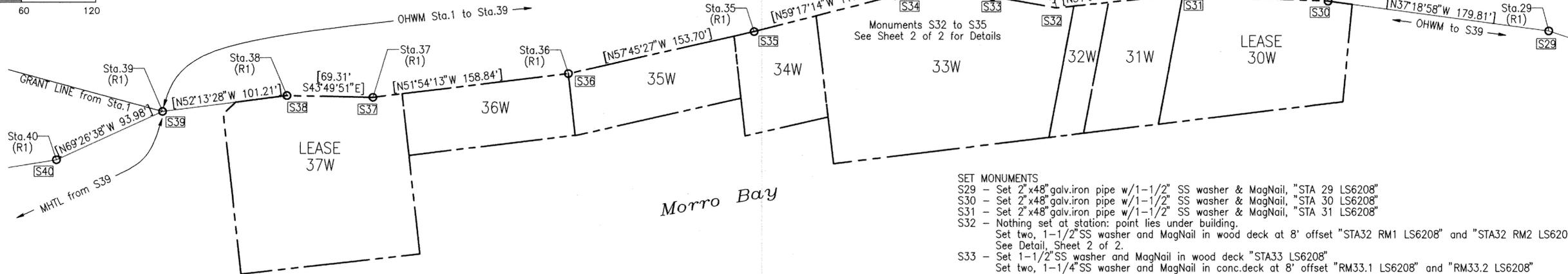
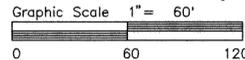
M1 WHITE RESET

FOUND MONUMENT COORDINATE LIST

Table with columns: Mon., N Rec, E Rec, N Meas, E Meas, ΔN, ΔE. Rows M1 through M5.

SET MONUMENT COORDINATE LIST table with columns: Mon., N Rec, E Rec, Description. Rows S29 through S40.

OHWM STATIONS



SET MONUMENTS

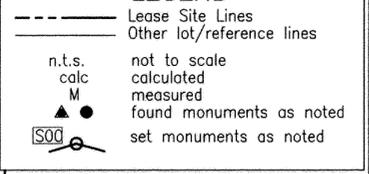
- S29 - Set 2"x48" galv.iron pipe w/1-1/2" SS washer & MagNail, "STA 29 LS6208"
S30 - Set 2"x48" galv.iron pipe w/1-1/2" SS washer & MagNail, "STA 30 LS6208"
S31 - Set 2"x48" galv.iron pipe w/1-1/2" SS washer & MagNail, "STA 31 LS6208"
S32 - Nothing set at station: point lies under building.
Set two, 1-1/2" SS washer and MagNail in wood deck at 8' offset "STA32 RM1 LS6208" and "STA32 RM2 LS6208"
See Detail, Sheet 2 of 2.
S33 - Set 1-1/2" SS washer and MagNail in wood deck "STA33 LS6208"
Set two, 1-1/4" SS washer and MagNail in conc.deck at 8' offset "RM33.1 LS6208" and "RM33.2 LS6208"
See Detail, Sheet 2 of 2.
S34 - Set 1-1/2" SS washer and MagNail in wood deck "STA34 LS6208"
Set two, 1-1/4" SS washer and MagNail in conc.deck at 3' offset "RM34.1 LS6208" and "RM34.2 LS6208"
See Detail, Sheet 2 of 2.
S35 - Set 1-1/2" SS washer and MagNail in wood deck "STA35 LS6208"
Set two, 1-1/4" SS washer and MagNail in conc.deck at 2' offset "RM35.1 LS6208" and "RM35.2 LS6208"
See Detail, Sheet 2 of 2.
S36 - Set 1-1/2" SS washer and MagNail in iron anchor loop at angle point on conc.bulkhead "STA36 LS6208"
S37 - Set 1-1/2" SS washer and MagNail in conc.bulkhead "STA37 LS6208"
S38 - Set 1-1/2" SS washer and MagNail in conc.boatyard deck "STA38 LS6208"
S39 - Set 1-1/2" SS washer and MagNail in conc.driveway "STA39 LS6208"
S40 - Set 1-1/2" SS washer and MagNail in conc.bulkhead "STA40 LS6208"

SS = Stainless Steel " " = stamping

LEASE SITE NOTES

- 1. Dimensions for OHWM & MHTL shown thus: [bearing dist] are derived from inverses between coordinates shown on 1MM2 (R1).
2. Dimensions for Lease Sites 30W through 37W, excluding 34W, shown thus: (bearing dist) are derived from information on the 1974 "OFFICIAL LEASE SITES MAP" (Lease Maps) by Garing, Taylor & Assoc., on file in the office of the City Engineer of Morro Bay.
3. Dimensions shown thus: { bearing dist } are derived from information in the Lease Agreement for Lease site 34W on file in the office of the City Engineer of Morro Bay.
4. The Lease Sites are protracted along the OHWM, MHTL and GRANT LINE from 1 MM2 (R1) per Lease Maps.
5. No monuments were set by this survey at Lease Site corners along OHWM.

LEGEND



REFERENCES

- R1 - 1 Miscellaneous Maps 2 (State Lands Commission, 1957)
R2 - 17 LS 41 (Calif. Parks & Rec. 1970)
R3 - 48 LS 29 (Sylvester, 1984)

PURPOSE OF SURVEY

The purpose of this survey is to establish the locations of Lease Sites 30W to 37 in the City of Morro Bay, relative to OHWM per 1 MM 2.

BASIS OF BEARINGS

The basis of bearings for this survey is the NAD27 California Coordinate System Zone 5 grid. The mapping angle at Sta.30 is +1°37'20". Distances shown are grid. To obtain ground distance, multiply distances by 1.00002180.

SURVEYOR'S STATEMENT

This map correctly represents a survey made by me in conformance with the requirements of the Professional Land Surveyors Act, at the request of the City of Morro Bay Harbor Dept. in April, 2015.

Robert J. Reese, LS 6208 license exp. 03.31.2016



07.03.2015

COUNTY SURVEYOR'S STATEMENT

This map has been examined in accordance with section 8766 of the Professional Land Surveyors Act this 7th day of July, 2015.

Doug Rion, LS 8546 license exp. 12.31.2016



COUNTY RECORDER'S STATEMENT

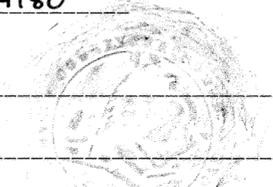
Filed this 10th day of July, 2015, at 9:08 A.M., in BOOK 110 of LICENSED SURVEYS at PAGE 98-99 at the request of Robert J. Reese.

Document No. 2015-034180

Fee \$ 10.-

TOMMY GONG County Recorder

Toney Deputy



Record of Survey

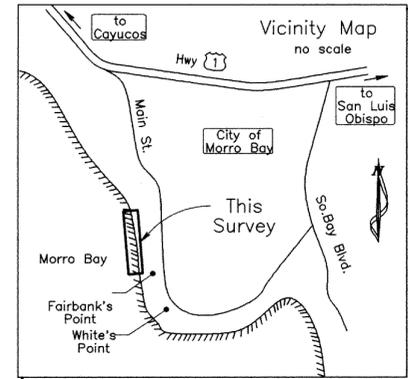
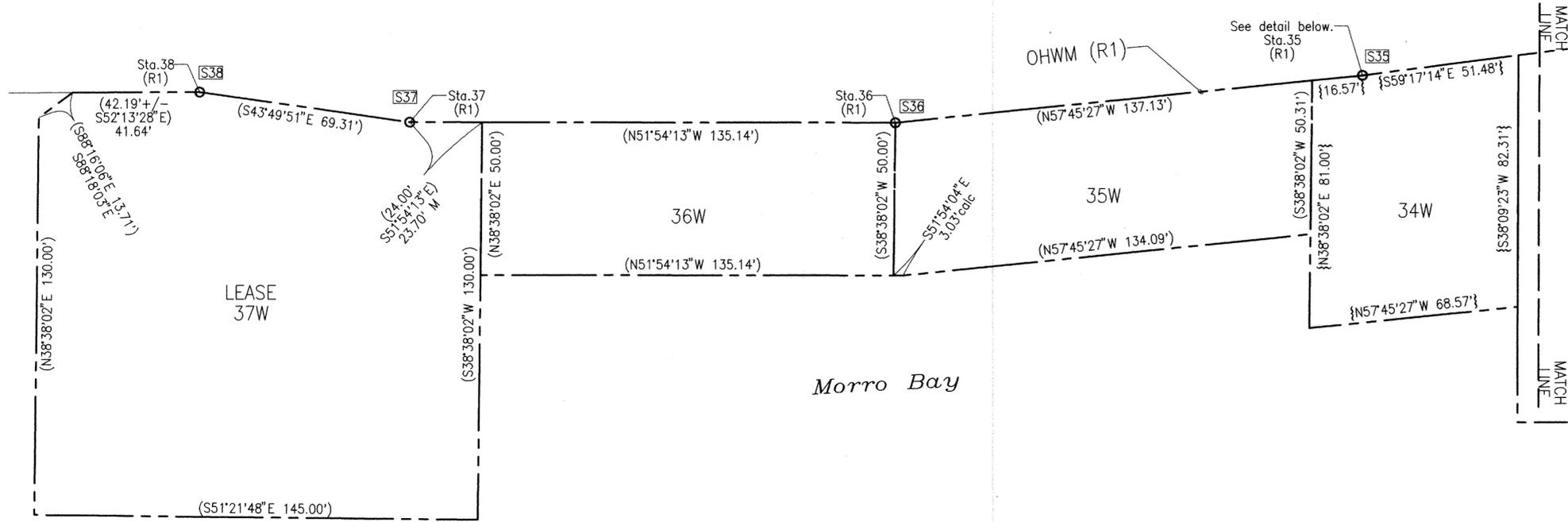
Lease Sites 30W to 37W in the City of Morro Bay County of San Luis Obispo California

April, 2015

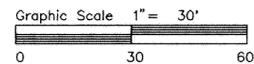


1508-rs.pro
FB 116

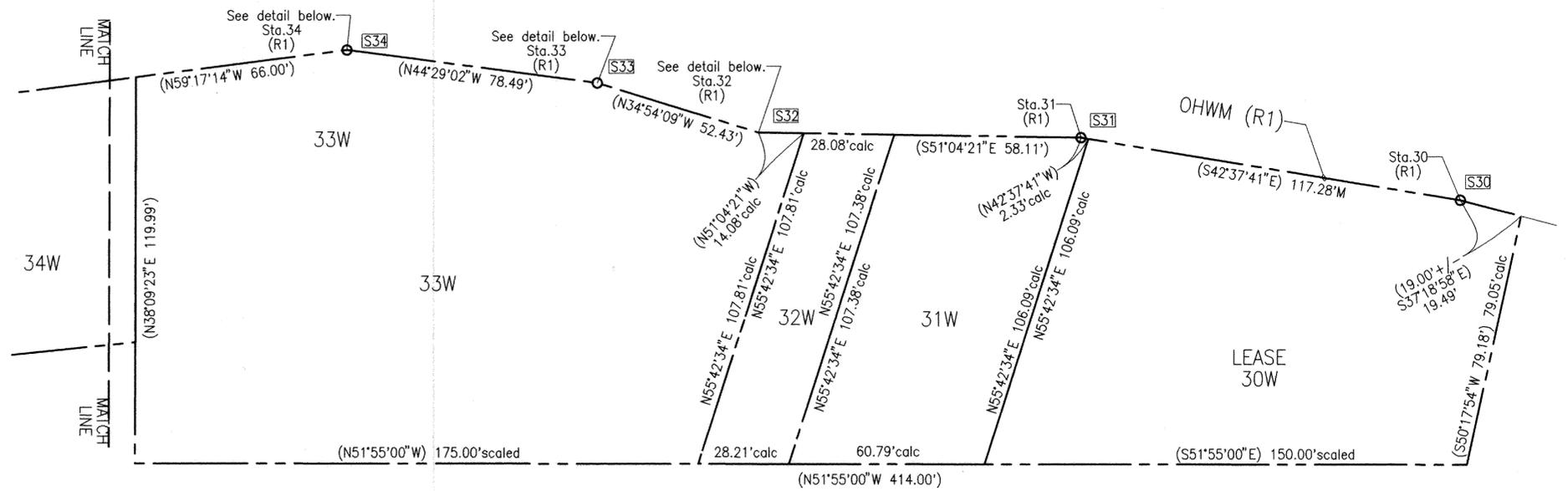
L.S. 110



LEASE SITES RELATIVE TO OHWM



LEGEND	
---	Lease Site Lines
---	Other lot/reference lines
n.t.s.	not to scale
calc	calculated
M	measured
▲ ●	found monuments as noted
⊙	set monuments as noted



Morro Bay

Record of Survey

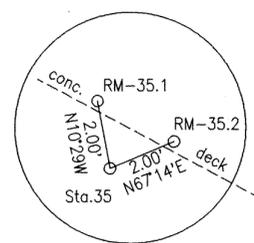
Lease Sites 30W to 37W
in the
City of Morro Bay
County of San Luis Obispo
California

April, 2015

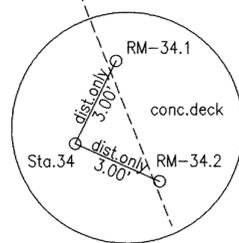
REESE Water & Land SURVEYING SERVICES
1970 Partridge Drive
San Luis Obispo CA 93405
805.543.5375

LEASE SITE NOTES

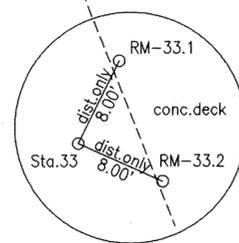
1. Dimensions for OHWM & MHTL shown thus: [bearing dist] are derived from inverses between coordinates shown on 1MM2 (R1).
2. Dimensions for Lease Sites 30W through 37W, excluding 34W, shown thus: (bearing dist) are derived from information on the 1974 "OFFICIAL LEASE SITES MAP" (Lease Maps) by Garing, Taylor & Assoc., on file in the office of the City Engineer of Morro Bay.
3. Dimensions shown thus: } bearing dist } are derived from information in the Lease Agreement for Lease site 34W on file in the office of the City Engineer of Morro Bay.
4. The Lease Sites are protracted along the OHWM, MHTL and GRANT LINE from 1 MM2 (R1) per Lease Maps.
5. No monuments were set by this survey at Lease Site corners along OHWM.



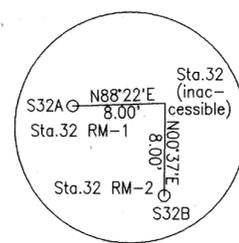
Detail - Sta. 35
nts



Detail - Sta. 34
nts



Detail - Sta. 33
nts



Detail - Sta. 32
nts

This Page Intentionally Left Blank



AGENDA NO: A-7

MEETING DATE: April 9, 2019

Staff Report

TO: Honorable Mayor and City Council

DATE: April 2, 2019

FROM: Rob Livick, PE/PLS - Public Works Director/City Engineer

SUBJECT: Adoption of Resolution No. 23-19 Initiating Proceedings to Levy the Annual Assessment for the Cloisters Park and Open Space - Landscaping and Lighting Maintenance Assessment District

RECOMMENDATION

Adopt Resolution No. 23-19 ordering the preparation of an Engineer's Report detailing the expenses projected for Fiscal Year 2019/20 for the maintenance of the Cloisters Park and Open Space under the provisions of the "Landscaping and Lighting Act of 1972."

ALTERNATIVE

Staff does not recommend any alternatives to the recommendation.

FISCAL IMPACT

If approved by City Council, the FY2019/20 assessments are estimated to provide \$148,944 for the maintenance of the Cloisters Park and Open space totaling 34 acres.

BACKGROUND

On September 23, 1996, the City Council passed Resolution No. 69-96, which approved the final map for Tract 1996, known as the Cloisters Sub-division, consisting of 124 lots. With that approval, the City Council accepted lots 121 and 122 of the Cloisters subdivision, 34 acres of open space and organized park. Prior to the acceptance of the final map and pursuant to the Conditions of Approval, an assessment district was formed to cover the cost of maintenance of the parkland and open space. The assessment district formation proceedings began in August 1996 and concluded with the final public hearing for formation on September 23, 1996, which levied an annual assessment of \$148,944 for the maintenance of the 34 acres of parkland and open space.

After the initial formation of the assessment district, each year thereafter, for the assessment to continue, the City must adopt a series of three resolutions to confirm the levy of assessment for the upcoming fiscal year. The first resolution, which is the one being proposed by this staff report, initiates the annual levy process and orders the preparation of an Engineer's Report; the second resolution approves the Engineer's Report and notices the intent to levy the assessment; and the third resolution levies the assessment for the upcoming fiscal year.

DISCUSSION

After the adoption of Resolution No. 23-19, which initiates the proceedings to levy the annual assessment, an Engineer's Report will be prepared for review, modification, acceptance or rejection at the May 14, 2019 City Council meeting. At that meeting will be a resolution for consideration declaring the City Council's intent to levy and collect the assessment. That Resolution will list the improvements, name the district and give its general location; it also refers to the proposed assessment and gives notice of the time and place for a meeting

Prepared By: rl

Dept Review: RL

City Manager Review: SC

City Attorney Review: CFN

regarding the levy of the continuing assessment. The Government Code states the third and final meeting must be noticed in accordance with Sections 22500 *et seq.* of the California Streets and Highways Code and is tentatively scheduled for June 25, 2019.

The Cloisters Landscaping and Lighting Maintenance Assessment District is a separate fund from all other City funds and can only be utilized for improvements within the District. Once set, the annual assessment is transmitted to the County Auditor for recording on the County assessment role. The assessment amount then appears on the parcel owner's annual property tax bill.

In conformance with Proposition 218, The Right to Vote on Taxes Act, passed in 1996 by the voters in the State of California, the Cloisters Landscaping and Lighting Maintenance Assessment District was approved, at that time, by one hundred percent (100%) of the owners for which the assessment is to be levied. All property owners were fully apprised of the costs and benefits associated with the district, prior to its approval by them.

CONCLUSION

Resolution No. 23-19 has been prepared for City Council review and adoption. The Resolution serves as the initiation of the annual assessment proceedings and orders the preparation of the Annual Engineer's Report detailing the proposed costs for the maintenance of the Cloisters Park and Open Space, for purposes of assessing property owners of lots located within the bounds of Tract Map No. 1996 (excluding the City's property). The Resolution also gives notice of review and acceptance, modification, or rejection, of the Engineer's Report by City Council, scheduled for the May 14, 2019, Council meeting.

ATTACHMENT

1. Proposed Resolution No. 23-19

RESOLUTION NO. 23-19

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
INITIATING PROCEEDINGS TO LEVY THE ANNUAL ASSESSMENT
FOR CLOISTERS LANDSCAPING AND LIGHTING
MAINTENANCE ASSESSMENT DISTRICT PURSUANT TO THE
“LANDSCAPING AND LIGHTING ACT OF 1972”
(STREETS AND HIGHWAYS SECTIONS 22500 *ET SEQ.*)**

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

WHEREAS, the City Council has placed certain conditions on the development of Tract 1996, The Cloisters, requiring formation of a property Maintenance Assessment District encompassing and coterminous with the proposed subdivision to provide for the maintenance of a public park, bicycle pathway, right-of-way landscaping, coastal access ways, ESH restoration area, and other common area improvements to be held by or dedicated to the City of Morro Bay as required by City Ordinance and;

WHEREAS, those conditions are more specifically identified in Vesting Tentative Tract Map (condition 10e) and Precise Plan (condition 2c) as required by City Ordinance; and

WHEREAS, the owners of the real property within the proposed district (the “Owners”) consented in writing to the formation of the district pursuant to the Landscaping and Lighting Act of 1972 (Streets and Highways Code sections 22500 *et seq.*) (the “Act”), and are the only owners of property to be subject to assessments within the district; and

WHEREAS, the Owners offered, in fee and in perpetuity, Lot 121 (Parcel 1) and Lot 122 of Tract 1996, and the City has accepted that Offer of Dedication; provided, that the costs of maintenance thereof, are borne by an assessment district as required by the Conditions of Approval of the project; and

WHEREAS, one hundred percent of the property owners, at the time of the subdivision of the land, approved formation of the district to assure conformance with the “Right to Vote on Taxes Act” (Proposition 218, California Constitution Act XIII C & D); and

WHEREAS, subsequent owners of the lots within the subdivision have received constructive notice of the existence of the assessment district through the real estate disclosures, title report process, and publicly available records.

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

1. The City Council of the City of Morro Bay hereby declares its intent to initiate the proceedings to levy and collect assessments pursuant to the Act.
2. The improvements to be subject to assessment for maintenance by such District shall include those enumerated in the conditions of project approval and in Section 22525 of the Act, which were installed by the developer as a condition of approval of Tract 1996; pursuant to the Final Improvement Plans for the Cloisters Project as approved by the City.

3. The Assessment District is a District located in the City of Morro Bay, County of San Luis Obispo. A map showing the boundaries of the District is attached as Exhibit A which is hereby incorporated herein.
4. An Engineer's Report, detailing the proposed costs for the maintenance of the Cloisters Park and Open Space, will be prepared for consideration by the City Council at the May 14, 2019, meeting and that date is set to review and accept, modify, or reject that report.
5. This District is called the "Cloisters Landscaping and Lighting Maintenance Assessment District."

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 9th day of April 2019 by the following vote:

AYES:
NOES:
ABSENT:

John Heading, Mayor

ATTEST:

Dana Swanson, City Clerk

This Page Intentionally Left Blank



AGENDA NO: A-8

MEETING DATE: April 9, 2019

Staff Report

TO: Honorable Mayor and City Council DATE: April 1, 2019

FROM: Rob Livick, PE/PLS – Public Works Director/City Engineer

SUBJECT: Adoption of Resolution No. 24-19 Initiating Proceedings to Levy the Annual Assessment for the North Point Natural Area - Landscaping and Lighting Maintenance Assessment District

RECOMMENDATION

Adopt Resolution No. 24-19 ordering the preparation of an Engineer's Report detailing the expenses projected for Fiscal Year 2019/20 for the maintenance of the North Point Natural Area under the provisions of the "Landscaping and Lighting Act of 1972."

ALTERNATIVE

Staff does not recommend any alternatives to the recommendation.

FISCAL IMPACT

If approved by Council, the FY2019/20 assessments are estimated to provide \$5,645 for the maintenance of the North Point Natural Area.

BACKGROUND

On June 27, 1994, the City Council accepted Lot 11 of the North Point subdivision and accepted the final map for Tract 2110. As per the conditions of approval, a Landscaping and Lighting Maintenance Assessment District was formed for the ongoing maintenance of the 1.3-acre natural area. The area includes a non-irrigated meadow area, decomposed granite and asphalt walkways, stairway/beach access, parking lot, drip irrigation system, public access signage and parking lot.

On December 9, 1996, the City Council adopted Resolution No. 89-96, which ordered the formation of the North Point Landscaping and Lighting Maintenance Assessment District and confirmed the yearly assessment of \$5,645. On January 13, 1997, the City Council adopted Resolution No. 01-97, which approved and accepted the on- and off-site improvements for Tract 2110. By adoption of Resolution No. 01-97, the City officially started the maintenance of the North Point Natural Area.

After the initial formation of the assessment district, each year, for the assessment to continue, the City must adopt a series of three resolutions to confirm the levy of assessment for the

Prepared By: RL

Dept Review: RL

City Manager Review: SC

City Attorney Review: CFN

upcoming fiscal year. The first resolution, which is the one being proposed by this staff report, initiates the annual levy process and orders the preparation of an Engineer's Report; the second resolution approves the Engineer's Report and notices the intent to levy the assessment; and the third resolution levies the assessment for the upcoming fiscal year.

DISCUSSION

Upon adoption of Resolution No. 24-19, which initiates the proceedings to levy the annual assessment, an Engineer's Report will be prepared for review, modification, acceptance or rejection at the May 14, 2019 City Council meeting. At that meeting will be a resolution for consideration declaring the City Council's intent to levy and collect the assessment. That Resolution will list the improvements, names the district and gives its general location; it also refers to the proposed assessment and gives notice of the time and place for a meeting regarding the levy of the continuing assessment. The Government Code states the third and final meeting must be noticed in accordance with Sections 22500 *et seq.* of the California Streets and Highways Code and is tentatively scheduled for June 25, 2019.

The North Point Natural Area Landscaping and Lighting Maintenance Assessment District is a separate fund from all other City funds and can only be expended for improvements authorized for the District. Once set, the annual assessment is transmitted to the County Auditor for recordation on the County assessment role. The assessment amount then appears on the parcel owner's annual property tax bill.

In conformance with Proposition 218, "The Right to Vote on Taxes Act," passed in 1996 by the voters in the State of California, the North Point Natural Area Landscaping and Lighting Maintenance Assessment District was approved, at that time, by one hundred percent (100%) of the owners for which the assessment is to be levied. All property owners were fully apprised of the costs and benefits associated with the district, prior to its approval by them.

CONCLUSION

Resolution No. 24-19 has been prepared for City Council review and adoption. The Resolution serves as the initiation to the annual assessment proceedings and orders an Engineer's Report detailing the proposed costs for the maintenance of the North Point Natural Area, for purposes of assessing private property owners of Tract Map No. 2110 (excluding the City's property). The Resolution also gives notice of review and acceptance, modification or rejection, of the Engineer's Report, scheduled for the May 14, 2019, Council meeting.

ATTACHMENT

1. Proposed Resolution No. 24-19

RESOLUTION NO. 24-19

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
INITIATING PROCEEDINGS TO LEVY THE ANNUAL ASSESSMENT
FOR THE NORTH POINT NATURAL AREA LANDSCAPING AND LIGHTING
MAINTENANCE ASSESSMENT DISTRICT PURSUANT TO THE
“LANDSCAPING AND LIGHTING ACT OF 1972”
(STREETS AND HIGHWAYS SECTIONS 22500 *ET SEQ.*)**

**T H E C I T Y C O U N C I L
City of Morro Bay, California**

WHEREAS, the City placed certain conditions on the development of Tract 2110 “North Point,” requiring formation of a property Landscaping and Lighting Maintenance Assessment District encompassing and coterminous with the proposed subdivision to provide for the maintenance of a natural area, parking lot, landscaping, decomposed granite and asphalt walkways, and coastal access stairway and other common area improvements to be held by or dedicated to the City of Morro Bay; and

WHEREAS, those conditions are more specifically identified in the Precise Plan (condition F1-F7) related to North Point; and

WHEREAS, the owners of the real property within the proposed district (the “Owners”) consented to the formation of the district pursuant to the Landscaping and Lighting Act of 1972 (Streets and Highways Code sections 22500 *et seq.*) (the “Act”), and are the only owners of property to be subject to assessments within the district; and

WHEREAS, the Owners offered, in fee and in perpetuity, Lot 11 of Tract 2110, and the City accepted that Offer of Dedication; provided, that the cost of maintenance, thereof, would be borne by an assessment district as required by the Conditions of Approval of North Point; and

WHEREAS, one hundred percent of the property owners, at the time of the subdivision of the land, approved formation of the District to assure conformance with the “Right to Vote on Taxes Act” (Proposition 218, California Constitution Act XIII, C & D); and

WHEREAS, subsequent owners of the lots within the subdivision have received “constructive notice” of the existence of the assessment district through the real estate disclosures, title report process, and publicly available records.

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

1. The City Council of the City of Morro Bay hereby declares its intent to initiate the proceedings to levy and collect assessments pursuant to the Act.

2. The improvements to be subject to assessment for maintenance by the District shall include those enumerated in the conditions of approval of North Point and in Section 22525 of the Act, which were installed by the developer as a condition of approval of Tract 2110 or which are hereafter installed by developer; pursuant to the Final Improvement Plans for North Point as approved by the City.
3. The Assessment District is a District located in the City of Morro Bay, County of San Luis Obispo. A map showing the boundaries of the proposed District is attached as Exhibit A which is hereby incorporated herein.
4. An Engineer's Report will be prepared for consideration at the May 14, 2019, City Council meeting and that date is set to review and accept or reject that report.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 9th day of April 2019 by the following vote:

AYES:
NOES:
ABSENT:

John Headding, Mayor

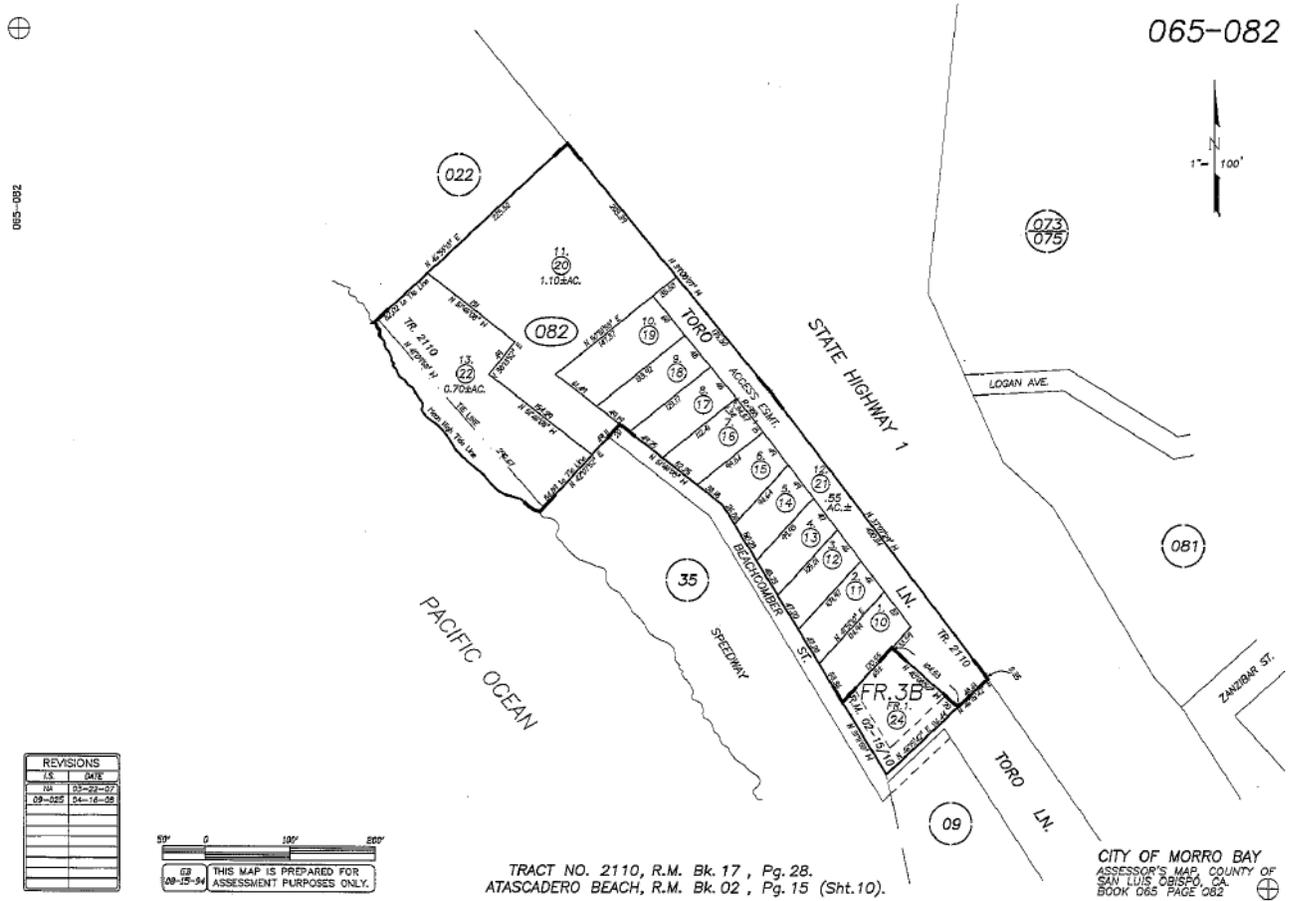
ATTEST:

Dana Swanson, City Clerk

Exhibit A

DISTRICT BOUNDARY DIAGRAM

The boundary diagrams for the District have previously been submitted to the City Clerk in the format required under the Act and, by reference are hereby made part of this Report. The boundary diagrams are available for inspection at the office of the City Clerk during normal business hours. The following diagram provides an overview of the District.



This Page Intentionally Left Blank



AGENDA NO: C-1

MEETING DATE: April 9, 2019

Staff Report

TO: Honorable Mayor and City Council

DATE: March 22, 2019

FROM: Eric Endersby, Harbor Director

SUBJECT: Adoption of Resolution No. 22-19, Approving a Supplemental Lease Agreement to the United States Coast Guard Station Morro Bay Building Lease for Building Expansion Purposes, Located on Lease Site 141 at 1279 Embarcadero

RECOMMENDATION

City Council adopt Resolution No. 22-19, included with this staff report as Attachment 1, approving a Supplemental Lease Agreement to the Coast Guard's Station Morro Bay building lease to enable the Coast Guard to expand their building.

ALTERNATIVES

No alternatives are being presented.

FISCAL IMPACT

There will be a one-time \$75,000 offset fee paid to the Harbor Fund by the United States Coast Guard (USCG) for expansion of the footprint of the USCG's current building into the parking lot adjacent to that building.

BACKGROUND

The three-story building currently housing the USCG Station Morro Bay was built in the early 1990's to serve as the administrative headquarters for the two medium-endurance 87-foot cutters, the Point Winslow and Point Heyer, then stationed in Morro Bay. That ~3,500 square-foot building was purpose-built to serve the mission of those cutters and crew. As part of that project and due to the benefits to the City, including the fishing community provided by having a USCG station in the Morro Bay harbor, a 49-year, \$1/year lease was approved in 1990, expiring in 2039.

Over the 1990's and early 2000's, the USCG's mission in Morro Bay changed drastically from a dual cutter base, to a Search and Rescue Detachment with the departure of the cutters and addition of smaller, quick response 44-foot motor lifeboats, to today's Station Morro Bay with two, and occasionally three, 47-foot motor lifeboats. That mission change has doubled the staffing of the 1990's. As such, the current USCG building is now quite inadequate to serve that current mission and staffing needs. In addition, it cannot accommodate females; and thus, USCG Station Morro Bay is one of the few, if not the only, all-male station in the country.

Through the late 1990's and mid 2000's, City staff worked with the USCG on several concept projects to build a new, joint Harbor/USCG facility on the combined Harbor and USCG sites.

Prepared By: EE

Dept Review: EE

City Manager Review: SC

City Attorney Review: JWP

Despite significant time and resources dedicated to the projects over many years, including significant architectural and cost estimation work, none ever came to fruition. That is primarily because the USCG could not procure the necessary funding to build anything themselves, nor commit on a long-term basis for the funding that the City required to secure a loan of its own to build the joint complex.

In early 2013, the USCG approached the City for a location to build an independent, two-story ~2,500 square-foot building to support the existing building, as the USCG had procured ~\$1.4M of funding “reverted” from other, uncompleted projects. That funding was to be obligated to a definite project by the end of the Federal 2019 fiscal year, or the USCG would lose it for this current proposed project. Over several months, staff worked with the USCG on potential sites, including the Triangle Lot, Coleman Park area and parking lot just north of the power plant intake structure, the current Morro Bay Oyster Company lease site and the Dynege power plant intake structure.

On November 12, 2013, in regular session the Council considered the USCG’s request for land entitlement north of the intake building for its proposal. While the Council was supportive of the USCG’s needs, that particular location was not deemed desirable and the Council voted to appoint an ad-hoc committee to work with staff to evaluate other options.

After several months of work and multiple meetings to scope possible locations, two primary locations were identified as the most viable options for the USCG: the two largely “vacant” and unleased lease sites 138-139 (Site 138-139), between the current Harbor Office and Crill’s Saltwater Taffy shop, where the North T-Pier public restroom and open parking space currently exist, and the current site of the Harbor Department office. While the USCG was amenable to use of Sites 138-139, the Harbor Department site, lease site 140, was preferred by the USCG.

On July 8, 2014, approval of a Consent of Landowner (COL) for Sites 138-139 were brought to the City Council for consideration in regular session, and was approved, including language that could consider lease site 140, if that option became viable for the City, recognizing that would require the relocation of the Harbor Department to a new site and building - something currently unplanned and unbudgeted. USCG’s preference for lease site 140 was predicated primarily on the notion of not “splitting” its facilities and personnel over two locations, despite those locations being less than 75 feet from each other.

On August 7, 2014, the proposal was brought to the Harbor Advisory Board (HAB) for consideration and input., The HAB endorsed the USCG proposal for Sites 138-139, and recommended the lease for those sites be at a fair market value, as opposed to the \$1/year the USCG pays for the current site, lease site 141.

The USCG began the necessary project processing, which started with appraisals of the value of the Harbor Office building and the public restroom building in the event one of those buildings was “purchased” by the USCG through eminent domain, as they would be paying fair market value for that “purchase.” That included an evaluation of the current Harbor Office’s “historic” value. (The USCG concluded there was no such value.) With an appraised value of \$60,000 for the restroom and \$315,000 for the Harbor Office, in March 2016, the USCG presented the City with two draft MOUs, one for each site, for consideration of approval to move forward on one of the sites.

Unfortunately, with no funding available to move the Harbor Department, no viable path forward was identified to enable the USCG to utilize lease site 140, so the USCG in conjunction with staff began investigating site alternatives adjacent to and attached to the current USCG building in which to expand, thus not relying on the City and relocation of the Harbor Department. That analysis was

necessary due to the time for the availability of the funding source that would be available to the USCG was starting to be an issue. In early 2018, the USCG engaged staff exploring several one-, two- and three-story iterations of expanding the USCG Station Morro Bay into the parking lot between the existing building (and connected to it) and the Embarcadero where the USCG's ten dedicated parking spaces are currently located.

Several conference calls and in-person discussions over several months involving USCG personnel and variously the City Manager, Finance Director, Community Development Director, City Attorney and Harbor Director, the USCG were conducted. The outcome of those discussions, with City staff concurrence, focused on a two-story, ~1,850 square-foot addition to the eastern side of the current building, into the five parking spaces adjacent to it, as the most viable course of action to expand USCG Station Morro Bay for the much-needed space.

On August 14, 2018, in regular session the City Council approved a new Consent of Landowner (COL) document, memorializing and enabling the USCG to pursue the building addition project expanding into the adjacent parking lot, taking five spaces currently identified for exclusive Coast Guard personnel use. That COL is included with this staff report as Attachment 2.

As the USCG began the detailed planning, engineering and architecture to start the Conditional Use Permit (CUP) process, it became apparent only a single-story, ~800 square-foot addition was possible given the limited funding available and other constraints. The USCG remained, however, determined to build critically needed additional space for the USCG Station Morro Bay, even if it meant reducing it to a smaller, single-story one.

DISCUSSION

Completion of this project requires primarily two actions by the City; approval of the necessary permit entitlements through the standard CUP process, and approval of a Supplemental Lease Agreement (SLA) to the Coast Guard's current 49-year lease for the current building on Lease Site 141.

Approval of this SLA, included with Resolution No. 22-19 in Attachment 1, memorializes the Coast Guard's commitment and obligations, and allowances by the City for the project. The necessary CUP is tentatively scheduled for Planning Commission dual Concept/Precise Plan review and approval on April 16, and City Council review and approval on May 14, 2019. Included with this staff report as Attachment 3, for informational purposes only, are two plan sheets from the USCG's Station Morro Bay building expansion plans being processed by Community Development.

Highlights of the SLA are as-follows:

- A. The USCG is authorized to build an approximate 806 square-foot addition to the eastern section of its existing facility, contingent upon obtaining all the necessary and proper permitting.
- B. In exchange for taking the area currently occupied by five USCG-dedicated parking spaces, a one-time \$75,000 offset fee will be paid to the Harbor Fund.

By way of a separate "support services" lease, with current rent of ~\$23,000/year and a September, 2019, expiration, the USCG is allowed ten undetermined but dedicated parking spaces for station vehicles and personnel, 140 linear feet of dock space/slips for USCG vessels and placement of the work shack at the north end of the North T-Pier. The ten parking spaces have historically been located in the lot immediately east of that facility, and

with the five spaces being displaced by the new building addition; these spaces will need to be relocated.

With the pending expiration of the “support services” lease, location of the ten spaces, including relocation of the five being displaced by this project, will become part of the renegotiation of that lease this summer.

- C. The USCG will build a screening enclosure for the station’s trash cans and dumpster near the street entrance off Embarcadero to the lot adjacent to the building in the “dead” space where the cans and dumpster currently reside. That is to be incorporated as a permit condition in the CUP as well.
- D. The USCG will create, with City assistance, and install an informational/historical sign, similar to others along the waterfront, highlighting the USCG’s history and role in Morro Bay, as well as the military history in Morro Bay, as space allows on the sign. That too will be incorporated as a permit condition in the CUP, and will be located near the station.

Highlights of the CUP in addition to the above are as-follows:

- A. Lease lines will need to be modified and extended around the new addition.
- B. One ADA-accessible parking space to be added in front of the Harbor Department office building for future (Harbor Department project) change of the Harbor Department “front” door to the east wall of the building and ADA pathway to the new “front” door.

CONCLUSION

This project, in its various forms and steps over the past ~six years, was brought to the City Council in both regular and closed sessions for guidance, input and direction, and has culminated in a definite project that will partially relieve the USCG Station Morro Bay space needs. Of equal importance, it will enable the USCG to accomplish a moderate degree of gender parity by allowing some capacity for female member assignments once the project is completed.

Approval of Resolution No. 22-19 and SLA will enable the USCG to continue moving forward with the needed project, which will eventually be considered for Concept and Precise Plan approval by the Planning Commission and City Council in the near future.

ATTACHMENTS

1. Resolution No. 22-19.
2. August 14, 2018 Consent of Landowner document between the City of Morro Bay and United States Coast Guard.
3. Plan sheets from Coast Guard Station Morro Bay’s building expansion plan Conditional Use Permit.

RESOLUTION NO. 22-19

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING A SUPPLEMENTAL LEASE AGREEMENT
FOR UNITED STATES COAST GUARD STATION MORRO BAY
BUILDING LEASE NO. DTCG89-91-L-6-63-160
ON LEASE SITE 141 AT 1279 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, the United States Coast Guard has leased City property for its station needs since 1967, is a tenant in good standing on Lease Site 141 and is an active and engaged community member; and

WHEREAS, the United States Coast Guard has stationed personnel, equipment and vessels in Morro Bay for the purposes of boating safety and enforcement, smuggling and drug interdiction, search and rescue and standing by the Morro Bay harbor entrance during hazardous conditions to assist vessels in transit and distress; and

WHEREAS, the United States Coast Guard Station Morro Bay building does not adequately accommodate the station's personnel and equipment/storage needs, and the Coast Guard is desirous of expanding their existing building; and

WHEREAS, the United States Coast Guard is currently processing a Conditional Use Permit for an 806 square-foot expansion of their Station Morro Bay building into the parking lot adjacent to their station; and

WHEREAS, the City of Morro Bay is supportive of the United States Coast Guard and desirous of assisting the Coast Guard better accommodate those in the Coast Guard that serve their community and country.

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

1. The attached Supplemental Lease Agreement to the United States Coast Guard lease No. DTCG89-91-L-6-63-160 on Lease Site 141 memorializes the lease changes desired by both parties to accommodate the new building expansion project.
2. The Mayor is hereby authorized to execute said Supplemental Lease Agreement.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 9th day of April, 2019 on the following vote:

AYES:
NOES:
ABSENT:

ATTEST:

John Headding, Mayor

Dana Swanson, City Clerk

SUPPLEMENTAL LEASE AGREEMENT

SUPPLEMENTAL AGREEMENT

DATE

NO. 0001

3/1/2019

TO LEASE NO. DTCG89-91-L-6-63-160 (Lease)

PREMISES:

USCG STATION MORRO BAY

THIS AGREEMENT, made entered into this date by and between

CITY OF MORRO BAY

Whose address is

595 Harbor Street
Morro Bay, CA 93442

Hereinafter called the Lessor, and the UNITED STATES OF AMERICA, hereinafter called the Government:

WHEREAS, the parties hereto desire to amend the above Lease.

NOW, THEREFORE, the parties for the considerations hereinafter mentioned covenant and agree the Lease is amended, effective 3/1/2019 as follows:

The Government is authorized to construct a one-story, 806 square-foot addition to the eastern section of the existing Coast Guard facility located on lot 141 (USCG Facility). Addition is contingent upon obtaining Conditional Use Permit UPO #18-10 and a building permit from Lessor.

Within 30 days after Conditional Use Permit UPO #18-10 is approved, the Government will pay a onetime parking offset fee of \$75,000 for five parking spaces (\$15,000/space) that the new addition will impact.

The Coast Guard hall to install a trash enclosure adjacent to the northern Embarcadero parking space behind the USCG Facility, as may be approved by Conditional Use Permit UPO #18-10).

The Coast Guard is allowed to add a Historical Sign, as may be approved by Conditional Use Permit UPO #18-10).

Parking offset fee paid through Contracting: (2/P/9P/037/00/0/390603/73001/3201/21/19/889PQQ/72/001)

This amendment is authorized under direct leasing authority 14 U.S.C 92(f)

All other terms and conditions of the Lease shall remain in force and effect.

IN WITNESS WHEREOF, the parties subscribed their names as of the above date

LESSOR:

BY _____
(Signature)

(Official Title)

Approved by: _____
(Signature)

(Title)

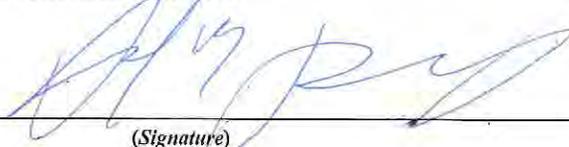
(Date)

IN PRESENCE OF

(Signature)

(Title)

UNITED STATES OF AMERICA

BY 
(Signature)

David E. Brumley
Real Estate Contracting Officer
United States Coast Guard

(Official Title)

540631.1 FORM

City of Morro Bay
Tidelands Trust Grant Properties
Consent of Landowner Agreement Form

Consent For:

Remodeling existing Coast Guard building on Lease Site 141 into adjacent parking lot area, 1279 Embarcadero Road, by the United States Coast Guard, as proposed in conceptual plan presented to the City Council on August 14, 2018.

Site Location: Lease Site 141 and adjacent parking lot, 1279 Embarcadero, Morro Bay, CA

Property Owner: City of Morro Bay Telephone: 805-772-6201

Address: 595 Harbor St. City: Morro Bay State: CA Zip: 93442

Applicant: United States Coast Guard Telephone: 805-772-2167

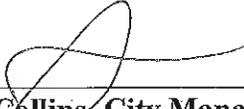
Address: Building 54-D, Coast Guard Island City: Alameda State: CA Zip: 94501

I, as representative of the City of Morro Bay, the owner/trustee of record of the interest in the above noted land for which an application for a Conditional Use Permit is being requested by the Applicant, do certify Consent of Landowner is given for the preliminary concept plans presented to the City Council on August 14, 2018, and attached hereto as Exhibit A, in accordance with the following:

1. 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 August 31, 2019 at 4:00 p.m. or this Consent of Landowner Agreement will expire on September 1, 2019.
2. The Applicant must obtain Concept Plan approval from the Planning Commission and City Council on or before June 30, 2020 at 4:00 p.m. or this Consent of Landowner Agreement will expire on July 1, 2020.
3. The Applicant, after obtaining Concept Plan approval by the Planning Commission and City Council, shall negotiate in good faith with the City for a Supplemental Lease Agreement ("SLA") for the new premises required to build the project as-proposed, and including provisions for financial consideration for the expanded USCG facility and relating to parking impacts. Upon execution of the SLA, this Consent of Landowner Agreement shall no longer be of any effect. If a SLA is not executed by both parties on or before December 31, 2020, then this Consent of Landowner Agreement shall expire on January 1, 2021.
4. The SLA will include the following time milestones:
 - a. The Applicant must commence construction for the approved project on or before January 1, 2021.

- b. The Applicant must complete construction for the approved project on or before December 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.

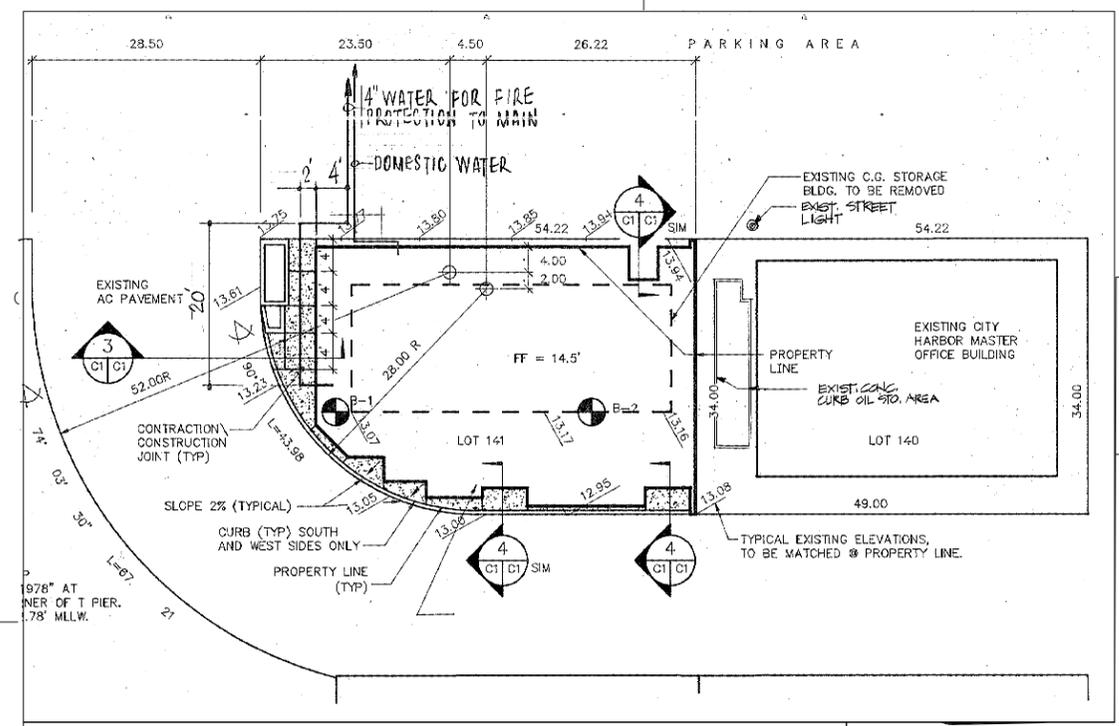


Scott Collins, City Manager

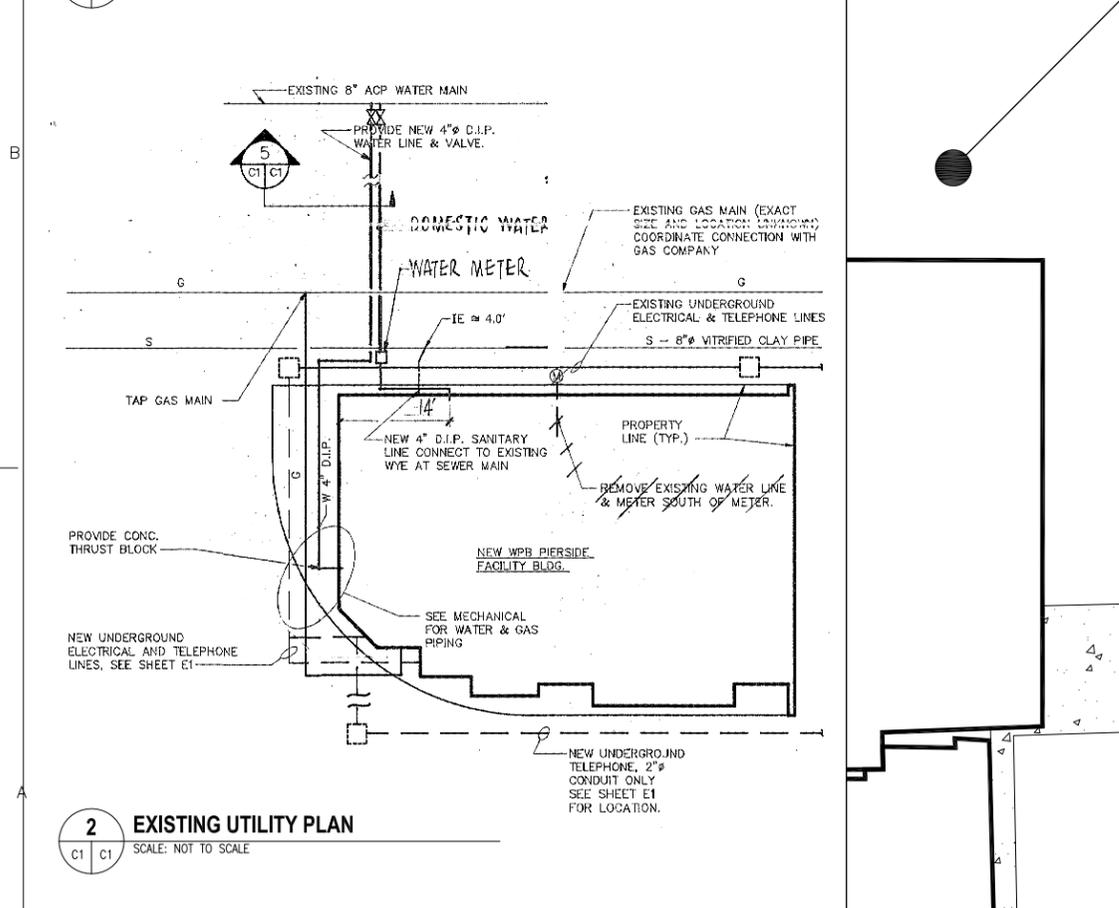
8/17/18

Date

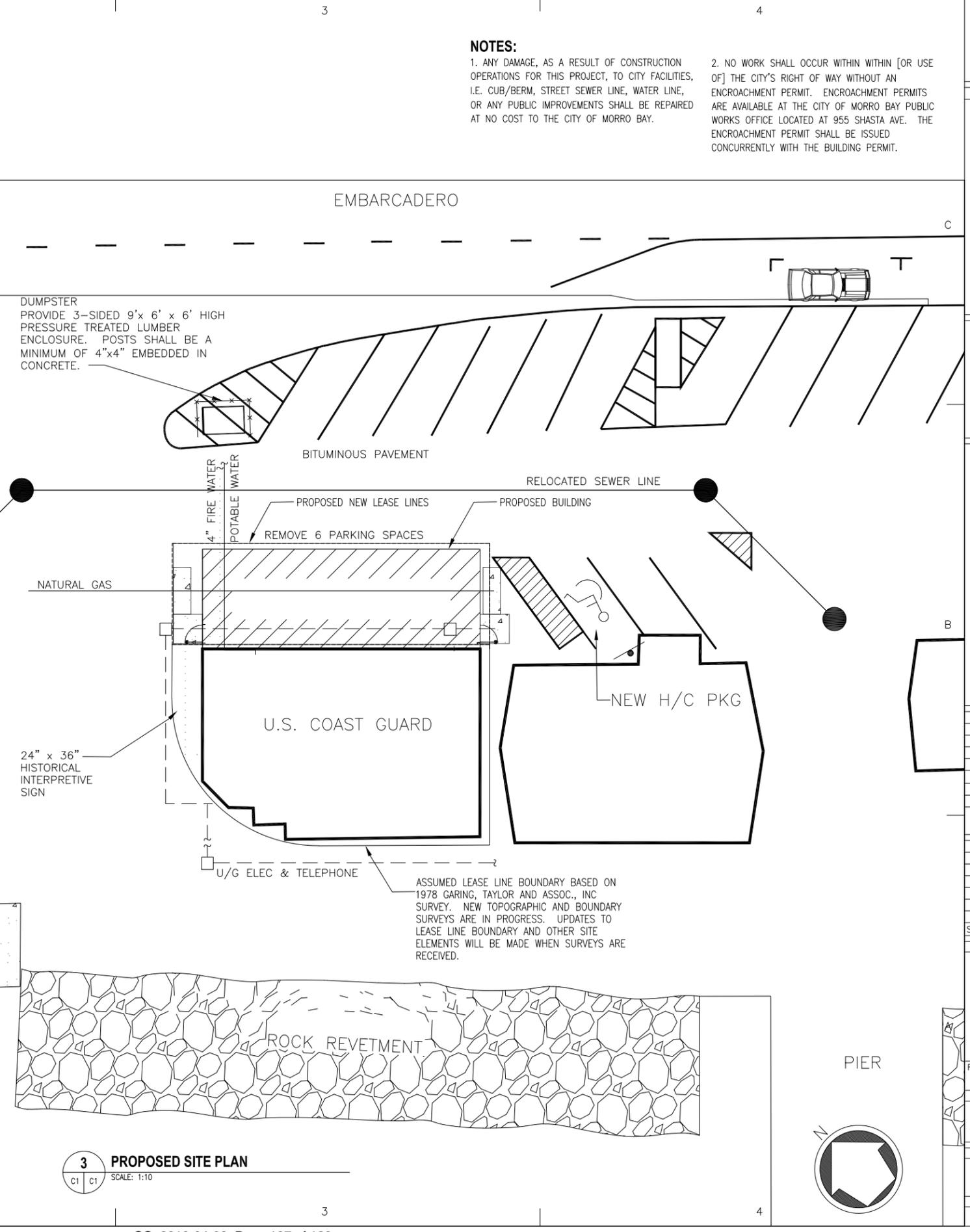
J:\CKENNA\PROJECTS\CA\5039735 STA MORRO BAY EXPANSION\7_DRAFT DRAWINGS\5039735C1-031519.DWG LAYOUT: C100 3/19/2019 2:43PM DIMSCALE: 20 R21.0



1 EXISTING SITE PLAN
SCALE: NOT TO SCALE



2 EXISTING UTILITY PLAN
SCALE: NOT TO SCALE



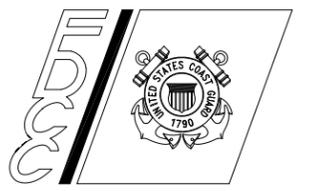
3 PROPOSED SITE PLAN
SCALE: 1:10

NOTES:

1. ANY DAMAGE, AS A RESULT OF CONSTRUCTION OPERATIONS FOR THIS PROJECT, TO CITY FACILITIES, I.E. CUB/BERM, STREET SEWER LINE, WATER LINE, OR ANY PUBLIC IMPROVEMENTS SHALL BE REPAIRED AT NO COST TO THE CITY OF MORRO BAY.
2. NO WORK SHALL OCCUR WITHIN [OR USE OF] THE CITY'S RIGHT OF WAY WITHOUT AN ENCROACHMENT PERMIT. ENCROACHMENT PERMITS ARE AVAILABLE AT THE CITY OF MORRO BAY PUBLIC WORKS OFFICE LOCATED AT 955 SHASTA AVE. THE ENCROACHMENT PERMIT SHALL BE ISSUED CONCURRENTLY WITH THE BUILDING PERMIT.

CONSULTANTS

U. S. COAST GUARD
FACILITIES DESIGN & CONSTRUCTION
CENTER- SEATTLE DETACHMENT



915 SECOND AVE, ROOM 2664
SEATTLE, WASHINGTON 98174-1011

ISSUE		
MARK	DATE	DESCRIPTION

A/E PROJECT NO:
CAD FILE NAME: 5039735T1.dwg
DESIGNED BY: M. BRYANT
DRAWN BY:
EDITED BY:
CHECKED BY:

SCALE: PLOT SCALE: 1 : 1

SHEET TITLE
USCG STATION MORRO BAY ADDITION
1279 EMBARCADERO
MORRO BAY CA

CIVIL SITE PLAN

REVIEWED BY: REVIEWED BY: REVIEWED BY:
PROJECT ENG. BRANCH CHIEF TECH. DIRECTOR

APPROVING OFFICER DATE

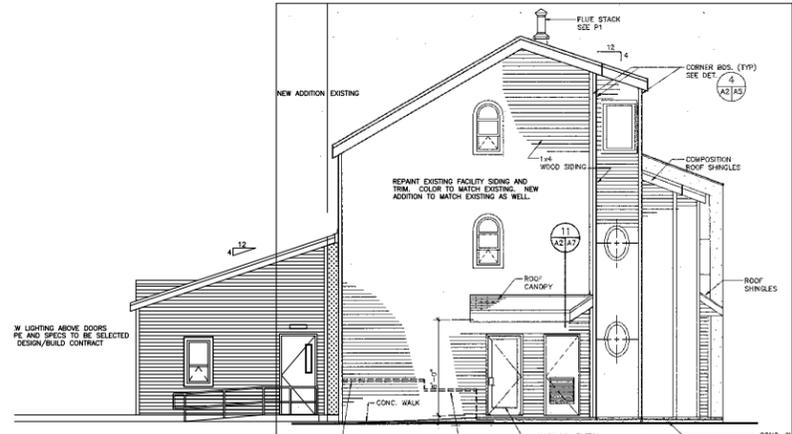
PROJECT NUMBER DRAWING NUMBER
11-5039735 C1

DISCIPLINE/SHT NO SHEET X OF XX
X

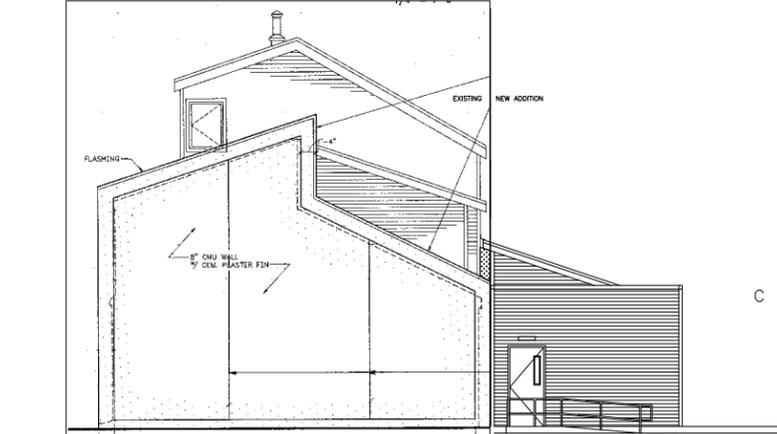
J:\MCKENNA\F\VALLEDCOSSDATA\PROJECTS\CA\5039735 STA MORRO BAY EXPANSION\7 - RFPD\1 - DRAFT\DRAWINGS\5039735A2 ELEVATIONS.DWG LAYOUT: LAYOUT1 3/20/2019 7:56AM DIMSCALE: 1/8"=1'-0"



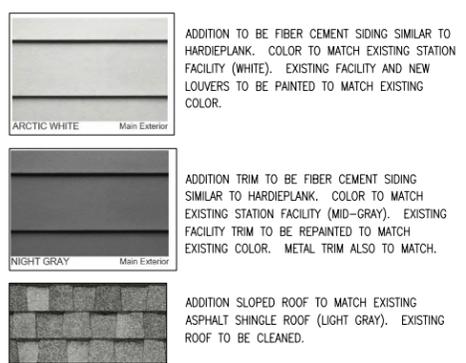
1 NORTHEAST ELEVATION - VIEW FROM EMBARCADERO
 SCALE: 1/8"=1'-0"



2 NORTHWEST ELEVATION
 SCALE: 1/8"=1'-0"



3 SOUTHEAST ELEVATION
 SCALE: 1/8"=1'-0"



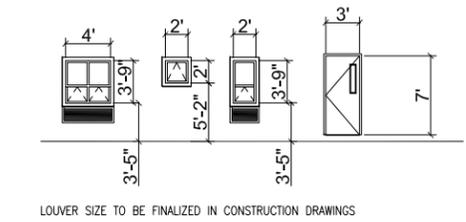
4 PROPOSED EXTERIOR COLOR BOARD
 SCALE: N/A



5 EXISTING VIEW FROM EMBARCADERO
 SCALE: N/A



6 PROPOSED VIEW FROM EMBARCADERO
 SCALE: N/A



7 PROPOSED DOOR / WINDOW SCHEDULE
 SCALE: N/A



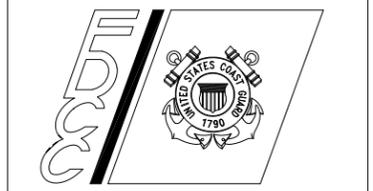
8 PROPOSED VIEW FROM WATERSIDE
 SCALE: N/A



9 PROPOSED VIEW FROM PARKING ENTRANCE
 SCALE: N/A

CONSULTANTS

U. S. COAST GUARD
 FACILITIES DESIGN & CONSTRUCTION
 CENTER- SEATTLE DETACHMENT



915 SECOND AVE, ROOM 2664
 SEATTLE, WASHINGTON 98174-1011

MARK	DATE	DESCRIPTION

A/E PROJECT NO:
 CAD FILE NAME: 5039735A2.dwg
 DESIGNED BY: J McKENNA
 DRAWN BY:
 EDITED BY:
 CHECKED BY:

SCALE: PLOT SCALE: 1 : 1

SHEET TITLE
 USCG STATION MORRO BAY ADDITION
 1279 EMBARCADERO
 MORRO BAY CA

ELEVATIONS

REVIEWED BY:	REVIEWED BY:	REVIEWED BY:
PROJECT ENG.	BRANCH CHIEF	TECH. DIRECTOR

PROJECT NUMBER	DRAWING NUMBER
11-5039735	A2
DISCIPLINE/SHT NO	SHEET X OF XX
X	



AGENDA NO: C-2

MEETING DATE: April 9, 2019

Staff Report

TO: Honorable Mayor and City Council

DATE: April 3, 2019

FROM: Scott Collins, City Manager
Jennifer Callaway, Finance Director

SUBJECT: Discussion of Revising the General Fund Allocation Amount Provided to the Tourism Business Improvement District

RECOMMENDATION

City Council review and comment on the various options available to the City with regard to the annual General Fund allocation to the Tourism Business Improvement District (TBID), direct staff to take this item to the TBID Advisory Board at their April 2019 meeting for input, and provide other direction as appropriate.

ALTERNATIVES

There are no alternative recommendations proposed for this item.

FISCAL IMPACT

Staff's recommendation would be that any reduction or elimination of general fund money to TBID be diverted to maintain economic development progress within the City, such as wayfinding implementation, continued support of coordination with the Chamber for the 4MB project, and other initiatives that come out of the City Goals and Objectives setting process. Currently, these same funds are used by TBID to support community events and tourism marketing and promotion. The fiscal impact is a determination between funding priorities for the Council and Community given the forecasted budget deficit and funding choices for future years.

Should City Council ultimately decide to reduce the General Fund allocation to the TBID, that reduction will help offset the City's projected deficit of \$325,000 for FY2019/20. A revision to the annual allocation would also reduce available revenue to the TBID for special event grants and other marketing efforts.

BACKGROUND

City Council approved Resolution No. 03-16 in 2016, which created a Tourism Marketing Division within the City to directly manage promotions and marketing with the TBID Advisory Board reviewing and providing recommendations on marketing efforts. Resolution No. 03-16 committed the City to an annual General Fund support to TBID in the amount of \$60,000, plus 20% of Transient Occupancy Tax (TOT) collection over \$3,000,000 (contribution capped at \$300,000). The bulk of Tourism marketing and promotions are paid for through the annual assessment of 3% collected on all hotel and motel overnight stays in Morro Bay, with a total annual budget of approximately \$1,066,500 in FY2018/19 (see attachment for the TBID budget). The table below demonstrates what the General Fund has contributed to TBID each year (revenue and overhead

Prepared By: SC

Dept Review: SC

City Manager Review: SC

City Attorney Review: CFN

subsidy) since the Tourism was brought into the City in FY2016/17.

	FY2016/17 Actuals	FY2017/18 Actuals	FY2018/19 Estimated
GF Contribution to TBID	\$60,000	\$125,428	\$145,837
Subsidy for Overhead*	55,200	51,700	51,000

*Estimated amount, based on recently conducted analysis for the draft cost allocation plan.

The purpose of bringing Tourism and TBID under City management was to help align all economic development operations in the City to ensure efficiency, coordination and enhance long-term operations. The purpose of the GF allocation to TBID, plus subsidization of City overhead costs to Tourism, was to help defray administrative costs and to conduct additional marketing and promotions of Morro Bay.

The GF allocation has been used by Tourism in FY2016/17, FY2017/18 and this fiscal year to:

- market special events and defray event costs,
- cover traveling journalists' expenses to incentivize coverage of Morro Bay in major publications,
- conduct small improvements (Downtown tree lighting), and
- amplify existing marketing efforts.

During the FY 2018/19 Budget development discussions in May of 2018, City Council requested that staff look at the General Fund allocation to TBID moving forward into future years and reach out to the TBID Advisory Board and other partners to gain input on a potential change to the allocation. That discussion came up within the context of using those funds for physical improvements to tourist serving areas, as opposed to going to TBID for marketing purposes.

City staff are anticipating the City will face a \$325,000 deficit in FY2019/20. That is a structural deficit, meaning it is on-going, and thus a structural reduction of expenses or increase in revenues is required to balance the budget long-term. Staff are reviewing a limited number of options available to the City that could balance the upcoming budget without disrupting services to the community. One such measure is to reduce the General Fund allocation to TBID. These funds could be diverted to the General Fund or another newly established economic development fund, in order to pursue economic development initiatives that the City may otherwise not be able to afford in FY2019/20. The City typically budgets \$100,000 to \$150,000 to help implement the Economic Development Strategic Plan, however with the forecasted structural budget deficits, the City will likely have to reduce or eliminate this allocation in future years.

The choice to reduce or eliminate the general fund contribution to TBID is a funding priority choice – i.e. should the Council choose to reduce or eliminate the general fund contribution? Staff's recommendation would be to use that money to continue to support the City's efforts at economic development within the City. Should the Council choose to continue funding TBID at the same rate or reduced rate, priority is given to special events and marketing. The next section of the report discusses a variety of options for City Council to consider in identifying funding priorities.

DISCUSSION

Below are several options available to the City Council to consider regarding the General Fund allocation to the TBID:

- A. Eliminate the General Fund Allocation completely. This would net the General Fund upwards of \$150,000 for FY2019/20. Those funds could be used for City economic development initiatives in FY2019/20 that the City otherwise may not be able to pursue, such as completing wayfinding implementation, continuation of the pilot 4MB business support program (Chamber of Commerce – City of Morro Bay partnership), and others identified through the City Goals and Objectives process.
- B. Eliminate the General Fund Allocation for one-year, as a moratorium. Council could then formally revisit the decision in advance of the FY2020/21 Budget. The same impacts would apply to FY2019/20 as Option A.
- C. Reduce the General Fund Allocation to the base amount of \$60,000. This would net the General Fund approximately \$90,000 for FY2019/20. Those funds could be used to support City economic development initiatives in FY2019/20, just not as many as option A. TBID would be able to allocate funds to special events or pursue additional marketing activities in FY2019/20.
- D. Maintain status quo, and provide TBID with General Fund allocation that matches the amount outlined in Resolution No. 03-16 (which is \$60,000, plus 20% of Transient Occupancy Tax collected over \$3,000,000, up to \$300,000 maximum). The City may either be unable to pursue economic development initiatives to the extent that is funded in the FY 2018/19 or current year budget, or must seek corresponding cuts in other City expenditures in the FY2019/20 Budget to pursue those initiatives.

For the sake of simplicity, the table below summarizes the options in terms of impact to the General Fund and Tourism/TBID in FY2019/20:

	Option A	Option B	Option C	Option D
GF Allocation to TBID*	\$0	\$0	\$60,000	\$150,000
Net Loss of Revenue to TBID*	\$150,000	\$150,000	\$90,000	\$0

*Estimated amount for FY2019/20

There are more options of reductions available to the City Council. However, staff felt these were sufficient to generate a good discussion for Council and TBID. The intent of all the options, with the exception of Option D (status quo), is to use any gained revenue from a corresponding reduction in TBID General Fund allocation to support City economic development initiatives that benefit our business community, including the local tourism industry. Staff is seeking Council direction to take this discussion and options to the TBID Advisory Board in April for their input and recommendation. Simultaneously, the City will be going through the TBID annual renewal process, which is a required process for the TBID to continue into FY2019/20. That multi-step process, which includes TBID input and a protest vote opportunity for hotel and motel owners in Morro Bay, will come to City Council in May for review and approval of the assessment for FY2019/20.

Thus, it is imperative to incorporate TBID’s input into the Council discussion about the General Fund allocation. Staff will return to City Council in May during FY2019/20 Budget meetings with TBID’s input, at which point Council will have the opportunity to make the determination about the General Fund allocation to TBID.

ATTACHMENTS

1. Resolution No. 03-16
2. TBID Summary Budget for FY2018/19

RESOLUTION NO. 03-16

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
DEFINING THE MANAGEMENT OF
TOURISM PROMOTIONS AND MARKETING**

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

WHEREAS, the City Council adopted the Tourism Business Improvement District (“TBID”) Law – Chapter 3.6 MBMC – via Ordinance 546 in 2009; and

WHEREAS, pursuant to MBMC 3.60.030, creation of the TBID is intended to provide a stream of revenue to the City to defray the costs of services, activities and programs promoting tourism which will benefit the operators of hotels in the district through the promotion of scenic, recreational, cultural and other attractions in the district as a tourist destination; and

WHEREAS, the City has managed its tourism promotions and marketing operations both internally in the past, though with no specific tourism staff, as well as contracted for said services with the Morro Bay Tourism Bureau (“MBTB”); and

WHEREAS, since the inception of the TBID assessment, tourism has increased tremendously in the City, and Transient Occupancy Taxes collected from hotel stays has increased by more than \$1 Million annually; and

WHEREAS, the City has greatly enhanced its focus on communitywide economic development, which includes tourism as Morro Bay’s major economic engine; and

WHEREAS, it is imperative the City strategically align all economic development operations to ensure efficiency, strong coordination, and enhanced long-term operations; and

WHEREAS, the City recognizes the important commitment to the hotelier stakeholder community when managing the community’s TBID assessment funds; and

WHEREAS, the City Council intends for the City to directly manage its tourism promotions and marketing, and provide for a structure of said management both as a way to outline the program and provide continued commitment to the hotelier stakeholder community;

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

The City Council finds it appropriate for the City to manage its tourism promotions and marketing directly. To that end, the following structure for management of the community's TBID assessment funds shall be as follows:

- 1) The City shall directly manage its tourism promotions and marketing, including expenditure of the community's TBID assessment funds. Expenditures shall be made pursuant to City and State law. A State-required annual report and work plan, recommended by the TBID Advisory Board and approved by the City Council, shall guide the expenditure of these funds.
- 2) Expert tourism professionals, reporting to the City Manager or his/her designee, will manage the City's tourism promotions and marketing. They shall be contractors, and will be required to follow all rules related to contracted services including, but not limited to, acquiring a Morro Bay business license, unless on further study the City Manager recommends an employee relationship and that position is approved and budgeted for in the FY 16/17 budget process. The existing MBTB staff will be offered those positions. The City may modify those contracted, or employee, relationship in the future if the City determines there is a more cost-effective approach to management of tourism marketing and promotions. Changes shall be reviewed by the TBID Advisory Board, which will make a recommendation to the City Council prior to operational changes.
- 3) The TBID Advisory Board shall participate in the annual review of the City's tourism manager and will assist in setting goals and metrics to measure the success of the community's tourism promotions and marketing undertaken by this contracted professional. The Advisory Board shall review and make recommendations for the selection of any future tourism manager.
- 4) The TBID Advisory Board shall have enhanced duties that include, not only the general tourism marketing and promotions, but any efforts to enhance the destination of Morro Bay as it relates to tourism. That can include Citywide brand management, destination-promoting community event management or review, and more. The Advisory Board shall assist staff in developing the overall duties of the Board, and will make a recommendation to City Council in order to update the Advisory Body's bylaws as appropriate.
- 5) The City shall commit \$300,000 in Transient Occupancy Taxes to the City's tourism operations. It is intended the budget shall provide for that amount incrementally, with 20 percent of annual TOT increases being set aside for these purposes, until the maximum is reached. The TBID Advisory Board will provide recommendations through its annual report and work plan on the appropriate expenditure of this funding to City Council.
- 6) The City's professional tourism professionals shall be provided office space in a City facility.

- 7) In order to focus as much of the TBID assessment as possible on directly promoting and marketing Morro Bay, the City shall provide for accounting, legal advice, IT support, as well as the aforementioned office space.
- 8) In order to transition to direct management of tourism operations, the City does not intend to extend its current contract with the MBTB past the May 2016 expiration of the existing contract. The City will coordinate a transition plan to direct management with MBTB input.
- 9) The City shall support any efforts within the local business community on the formation of an additional Business Improvement District that could include retail and restaurant businesses for the purposes of enhanced marketing of those businesses that help make Morro Bay the destination it is.

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

AYES: IRONS, HEADDING, JOHNSON, MAKOWETSKI, SMUKLER
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE



JAMIE L. IRONS, Mayor

ATTEST:



DANA SWANSON, City Clerk

TBID

Fund 007

SUMMARY OF REVENUES AND EXPENDITURES

	2015/16	2016/17	2017/18	2018/19	2018/19
	Actuals	Actuals	Actuals	Adopted	Estimated
SOURCES OF FUNDS					
Beginning Fund Balance	\$ 71,878	\$ 181,602	\$ 283,021	\$ 301,284	\$ 283,021
REVENUES					
TOT - Assessments	\$ 774,355	\$ 802,468	\$ 802,877	\$ 836,135	\$ 819,660
Interest			\$ 3,092	\$ -	
Other	61,175	70,070	4,294	36,000	36,000
Transfers In - GF Contribution	-	60,000	125,428	157,000	145,837
Intrafund Transfer				65,000	65,000
TOTAL REVENUES	\$ 835,530	\$ 932,538	\$ 935,691	\$ 1,094,135	\$ 1,066,497
EXPENDITURES					
Salaries and Benefits	\$ 9,268	\$ 159,288	\$ 173,495	\$ 195,814	\$ 195,814
Supplies	2,360	28,582	5,230	5,500	5,500
Services	630,945	713,118	719,220	819,005	819,005
Capital Outlay	-	-	-	-	-
Other	-	-	-	-	-
Debt Service	-	-	-	-	-
Equipment	-	-	-	-	-
TOTAL EXPENDITURES	\$ 642,573	\$ 900,988	\$ 897,945	\$ 1,020,319	\$ 1,020,319
Transfers Out					
General Fund 2% Admin	\$ 15,562	\$ 15,957	\$ 16,140	\$ 16,403	\$ 16,403
General Fund IT Support	-	-	3,343	3,760	3,760
AGP Video	2,000	-	-	-	-
Accumulation	-	-	-	295,174	295,174
Total Transfers	\$ 17,562	\$ 15,957	\$ 19,483	\$ 315,337	\$ 315,337
Total Expenditures & Transfers	\$ 660,135	\$ 916,945	\$ 917,428	\$ 1,335,656	\$ 1,335,656
Ending Fund Balance	\$ 181,602	\$ 283,021	\$ 301,284	\$ 59,763	\$ 13,862



AGENDA NO: C-3

MEETING DATE: April 9, 2019

Staff Report

TO: Honorable Mayor and City Council

DATE: April 2, 2019

FROM: Dana Swanson, City Clerk / Human Resources Manager

SUBJECT: Adoption of Resolution of Intention to Approve the Amendment to the California Public Employees' Retirement System Contract to Implement Cost Sharing for Local Police Members in the Morro Bay Peace Officers Association

RECOMMENDATION

City Council adopt Resolution No. 25-19 giving notice of the City's intention to approve an amendment to the contract between the City and the Board of Administration of the California Public Employees' Retirement System (CalPERS) to provide employee cost sharing of 1% for local police members in the Morro Bay Peace Officers Association (MB POA) for Fiscal Year 2018/19 (FY2018/19).

ALTERNATIVES

Council could elect to not adopt Resolution No. 25-19.

FISCAL IMPACT

The estimated fiscal impact for a full fiscal year is \$7,000; however, cost sharing will not be in effect for the full fiscal year so impact for the remainder of this fiscal year would be minimal. Impacts would be up to \$7,000 for FY 2019/20.

BACKGROUND

The City's current contract with CalPERS provides that all employees pay the full employee share toward their retirement benefit. That contribution percentage differs based on whether they are classic unit members (Tier 1 and Tier 2) or PEPRA unit members (Tier 3). During the most recent contract negotiations between the City and the MB POA, an agreement was reached whereby its police members would contribute 1% of salary toward the City's share of their retirement benefits. That agreement was approved by the Council at its September 11, 2018, meeting by the adoption of Resolution No. 70-18 approving a Successor Memorandum of Understanding (MOU) with the MB POA for the period July 1, 2018 – June 30, 2020.

More specifically, in addition to a 2% Cost of Living Adjustment (COLA) increase to base salaries for FY 2018/19 the City agreed in the MOU to provide an additional 1% COLA increase to base salaries for all unit classifications effective the first full payroll period after City Council approval of a CalPERS contract amendment implementing the following cost sharing for Fiscal Year 2018/19:

Effective the first full payroll period after City Council approval of a CalPERS Contract Amendment pursuant to Government Code section 20516, cost sharing shall take place as follows for classic members (Tier 1 & Tier 2) and PEPRA members (Tier 3), respectively:

Prepared By: DS

Dept Review:

City Manager Review: SC

City Attorney Review: CN

- a. CalPERS classic Unit members (Tier 1 & Tier 2) shall pay 9% as employee contribution, plus an additional 1% as employee cost sharing, for a total employee contribution of 10%.
- b. CalPERS PEPRA Unit members (Tier 3: also referred to as CalPERS “new members”) shall pay one half of total normal cost as an employee contribution, which CalPERS considers to be 12%, plus an additional 1% as employee cost sharing, for a total employee contribution of 13%.

Staff began working with CalPERS to amend the City’s contract to implement this change in October 2018 and received approval and the necessary information to move forward on March 25, 2019.

DISCUSSION

The cost share arrangement has already been agreed upon by the City and the MB POA through the MOU approved by the City Council on September 11, 2018. CalPERS required the City to provide more specificity on the agreed-to cost sharing arrangement, which the City did through the Side Letter Agreement with MB POA for Fiscal Year 2018/19 (Attachment 2). In order to proceed with amending the City’s contract with CalPERS for cost sharing, CalPERS requires a Resolution of Intention, an election of employees agreeing to the contract change, and adoption of an ordinance amending the City’s contract with CalPERS. This amendment would ultimately bring the CalPERS contract in alignment with the current adopted MOU.

The CalPERS contract amendment is straightforward; the only change is that it will provide for employee cost sharing of 1% for local police members in the MB POA. The additional amounts paid by the employee toward the City’s contribution will be credited to each member’s PERS account as normal contributions and will allow the City to process the full contribution as tax deferred compensation in accordance to IRC414(h)(2).

According to CalPERS procedures, an amendment to the contract that changes the employees’ rate of contribution requires a secret ballot election among the employees affected. That election must follow Council adoption of the Resolution of Intention and precede adoption of the final documents. Following the adoption of Resolution No. 25-19, the notice of election will be posted conspicuously in the department over a period of seven days that includes a weekend. The CalPERS contract cannot be amended if a majority of the affected members vote to disapprove the proposed plan. Should members of the MB POA vote to approve the cost sharing plan as already agreed to in the MOU, then staff will return with a proposed ordinance amending the CalPERS contract at the April 23 meeting, with final adoption on May 14 for an effective date of June 15, 2019.

As CalPERS does not allow multi-year or formula amendments for cost sharing, the City may need to amend the CalPERS contract for changes agreed to take effect July 1, 2019. For FY 2019/20, classic members (Tier 1 & Tier 2) agreed to pay an additional 1% to CalPERS as cost sharing, for a total classic employee contribution of 11%. PEPRA members (Tier 3) agreed to pay the statutorily mandated employee contribution rate of one half of the total normal cost or 14% of the employer cost, whichever is higher (Ref. Sections 14.1.3 and 18.5-18.6 the current MB POA MOU, provided as Attachment 3). Recent CalPERS changes may have modified the implementation process for future years and as such, staff will continue to work with CalPERS to implement the FY 2019/20 cost sharing.

CONCLUSION

Staff recommends the Council adopt Resolution No. 25-19 giving notice of the City's intention to approve an amendment to the contract between the City and the Board of Administration of the California Public Employees' Retirement System (CalPERS) to provide employees sharing additional cost of 1% for local police members in the Morro Bay Peace Officers Association (MB POA) for FY 2018/19 as agreed in the Successor Memorandum of Understanding approved by the City Council on September 11, 2018.

ATTACHMENTS

- 1) Resolution No. 25-19 including attached "Exhibit" (draft CalPERS Amendment to Contract)
- 2) Side Letter Agreement between the City and MB POA for Fiscal Year 2018/19
- 3) Resolution No. 70-18 adopted Sept 11, 2018

RESOLUTION NO. 25-19

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
DECLARING THE CITY'S INTENTION TO APPROVE AN AMENDMENT
TO CONTRACT BETWEEN THE BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
AND THE CITY OF MORRO BAY**

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

WHEREAS, the Public Employees' Retirement Law permits the participation of public agencies and their employees in the Public Employees' Retirement System by the execution of a contract, and sets forth the procedure by which said public agencies may elect to subject themselves and their employees to amendments to said Law; and

WHEREAS, one of the steps in the procedures to amend this contract is the adoption by the governing body of the public agency of a resolution giving notice of its intention to approve an amendment to said contract, which resolution shall contain a summary of the change proposed in said contract; and

WHEREAS, one of the steps in the procedures to amend this contract is the adoption by the governing body of the public agency of a resolution giving notice of its intention to approve an amendment to said contract, which resolution shall contain a summary of the change proposed in said contract; and

WHEREAS, the following is a statement of the proposed change:

To provide Section 20516 (Employees Sharing Additional Cost) of 1% for local police members in the Morro Bay Peace Officers Association.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Morro Bay, California does hereby give notice of intention to approve an amendment to the contract between said public agency and the Board of Administration of the Public Employees' Retirement System, a copy of said amendment being attached hereto, as an "Exhibit" and by this reference made a part hereof.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 9th day of April 2019 by the following vote:

AYES:
NOES:
ABSENT:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk



EXHIBIT

California
Public Employees' Retirement System

AMENDMENT TO CONTRACT

**Between the
Board of Administration
California Public Employees' Retirement System
and the
City Council
City of Morro Bay**

The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective July 1, 1965, and witnessed June 1, 1965, and as amended effective August 15, 1981, November 19, 1983, January 7, 1989, June 24, 1989, June 22, 1991, June 10, 1994, June 9, 1998, October 17, 1998, April 13, 2000, June 22, 2002, September 13, 2002, June 21, 2003, September 27, 2003, July 1, 2006, June 2, 2007, May 31, 2008, March 19, 2011, September 17, 2011 and December 10, 2011 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 17 are hereby stricken from said contract as executed effective December 10, 2011, and hereby replaced by the following paragraphs numbered 1 through 19 inclusive:
1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for classic local miscellaneous members entering membership in the miscellaneous classification on or prior December 10, 2011, age 60 for classic local miscellaneous members entering membership in the miscellaneous classification after December 10, 2011, age 62 for new local miscellaneous members, age 50 for classic local fire members entering membership in the fire classification on or prior to March 19, 2011, and for those classic local police members entering membership in the police classification on or prior to September 17, 2011; age 55 for classic local fire members entering

PLEASE DO NOT SIGN "EXHIBIT ONLY"

membership for the first time in the fire classification after March 19, 2011 and for those classic local police members entering membership for the first time in police classification after September 17, 2011 and age 57 for new local safety members.

2. Public Agency shall participate in the Public Employees' Retirement System from and after July 1, 1965 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorney fees that may arise as a result of any of the following:
 - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
 - (b) Any dispute, disagreement, claim, or proceeding (including without limitation arbitration, administrative hearing, or litigation) between Public Agency and its employees (or their representatives) which relates to Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than such employees' existing retirement benefits, provisions or formulas.
 - (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.
4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
 - a. Local Fire Fighters (herein referred to as local safety members);
 - b. Local Police Officers (herein referred to as local safety members);
 - c. Employees other than local safety members (herein referred to as local miscellaneous members).

PLEASE DO NOT SIGN "EXHIBIT ONLY"

5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:
 - a. **ELECTED OFFICIALS;**
 - b. **APPOINTIVE COMMISSIONS; AND**
 - c. **PERSONS COMPENSATED ON AN HOURLY BASIS.**
6. This contract shall be a continuation of the benefits of the contract of the Morro Bay Fire District, hereinafter referred to as "Former Agency", pursuant to Section 20508 of the Government Code, Former Agency having ceased to exist and succeeded by Public Agency on July 1, 1965. Public Agency, by this contract, assumes the accumulated contributions and assets derived therefrom and liability for prior and current service under Former Agency's contract with respect to the Former Agency's employees. Legislation repealed Section 20508, Statutes of 1949, effective January 1, 1988.
7. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local miscellaneous member in employment before and not on or after September 27, 2003 shall be determined in accordance with Section 21354 of said Retirement Law (2% at age 55 Full).
8. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local miscellaneous member in employment on or after September 27, 2003 and not entering membership for the first time in the miscellaneous classification after December 10, 2011 shall be determined in accordance with Section 21354.5 of said Retirement Law (2.7% at age 55 Full)..
9. The percentage of final compensation to be provided for each year of credited current service as a classic local miscellaneous member entering membership for the first time in the miscellaneous classification after December 10, 2011 shall be determined in accordance with Section 21353 of said Retirement Law (2% at age 60 Full).
10. The percentage of final compensation to be provided for each year of credited prior and current service as a new local miscellaneous member shall be determined in accordance with Section 7522.20 of said Retirement Law (2% at age 62 Full).
11. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local fire member entering membership in the fire classification on or prior to March 19, 2011 and for those classic local police members entering membership in the police classification on or prior to September 17, 2011 shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).

12. The percentage of final compensation to be provided for each year of credited current service as a classic local fire member entering membership for the first time in the fire classification after March 19, 2011 and for those classic local police members entering membership for the first time in the police classification after September 17, 2011 shall be determined in accordance with Section 21363.1 of said Retirement Law (3% at age 55 Full).
13. The percentage of final compensation to be provided for each year of credited prior and current service as a new local safety member shall be determined in accordance with Section 7522.25(d) of said Retirement Law (2.7% at age 57 Full).
14. Public Agency elected and elects to be subject to the following optional provisions:
 - a. Section 20965 (Credit for Unused Sick Leave).
 - b. Section 20042 (One-Year Final Compensation) for classic local fire members entering membership on or prior to March 19, 2011; those classic local police members entering membership on or prior to September 17, 2011 and for those classic local miscellaneous members entering membership on or prior to December 10, 2011.
 - c. Section 21024 (Military Service Credit as Public Service) for local miscellaneous members and local police members only.
 - d. Section 21574 (Fourth Level of 1959 Survivor Benefits).
 - e. Section 20423 ("Local Safety Member" shall include Harbor or Port Police Officers as described in Government Code Section 20423).
 - f. Section 21027 (Military Service Credit for Retired Persons) for local police members only.
 - g. Section 20475 (Different Level of Benefits). Section 21363.1 (3% @ 55 Full formula) and Section 20037 (Three-Year Final Compensation) are applicable to classic local fire members entering membership for the first time with this agency in the fire classification after March 19, 2011.

Section 21363.1 (3% @ 55 Full formula) and Section 20037 (Three-Year Final Compensation) are applicable to classic local police members entering membership for the first time with this agency in the police classification after September 17, 2011.

Section 21353 (2% @ 60 Full formula) and Section 20037 (Three-Year Final Compensation) are applicable to classic local miscellaneous members entering membership for the first time with this agency in the miscellaneous classification after December 10, 2011.

PLEASE DO NOT SIGN "EXHIBIT ONLY"
h. Section 20516 (Employees Sharing Additional Cost):

From and after the effective date of this amendment to contracts, 1% for local police members in the Morro Bay Peace Officers Association.

The portion of the employer's contribution that the member agrees to contribute from his or her compensation, over and above the member's normal contribution ("Cost Sharing Percentage"), shall not exceed the Employer Normal Cost Rate, as that rate is defined in the CalPERS Actuarial Valuation for the relevant fiscal year. If the Cost Sharing Percentage will exceed the relevant Employer Normal Cost Rate, the Cost Sharing Percentage shall automatically be reduced to an amount equal to, and not to exceed, the Employer Normal Cost Rate for the relevant fiscal year.

15. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on August 15, 1981. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
16. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
17. Public Agency shall also contribute to said Retirement System as follows:
 - a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21574 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local miscellaneous members and local safety members.
 - b. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
 - c. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.

18. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.
19. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the _____ day of _____, _____.

BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL
CITY OF MORRO BAY

BY _____
ARNITA PAIGE, CHIEF
PENSION CONTRACTS AND PREFUNDING
PROGRAMS DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY _____
PRESIDING OFFICER

Witness Date

Attest:

Clerk

**SIDE LETTER AGREEMENT BETWEEN
THE CITY OF MORRO BAY
AND
THE MORRO BAY PEACE OFFICERS' ASSOCIATION
CLARIFYING COST SHARING FOR FISCAL YEAR 2018-2019**

**SIDE LETTER AGREEMENT BETWEEN THE CITY OF MORRO BAY, AND THE
MORRO BAY PEACE OFFICERS' ASSOCIATION, CLARIFYING COST SHARING FOR
FISCAL YEAR 2018-2019**

PREAMBLE

The existing Memorandum of Understanding ("MBPOA MOU 2018-2020") between the City of Morro Bay ("City"), a municipal corporation, and the authorized representatives of the Morro Bay Peace Officers' Association ("MBPOA"), the recognized employee organization representing the City's Law Enforcement Unit ("Unit"), provides that the City will initiate a contract amendment with the California Public Employees' Retirement System ("CalPERS") in order to facilitate cost sharing in accordance with Government Code §20516.

The City has contacted CalPERS in order to initiate the CalPERS contract amendment process. The City was informed by CalPERS that in order to proceed with cost sharing by CalPERS contract amendment pursuant to Government Code §20516, the cost sharing language of the MBPOA MOU 2018-2020 would require clarification.

With respect to cost sharing in fiscal year 2018-2019, section 14.1.2 of the MBPOA MOU 2018-2020 provides as follows:

"Effective the first full payroll period after City Council approval of a CalPERS Contract Amendment pursuant to Government Code section 20516 providing for payment by classic members (Tier 1 & Tier 2) of an additional 1% to CalPERS as cost sharing for a total classic employee contribution of 10% and PEPRAs members (Tier 3) paying the statutorily mandated employee contribution rate of one half of the total normal cost or 13% of the employer cost, whichever is higher."

This Side Letter Agreement is intended facilitate the CalPERS contract amendment process by clarifying the specific cost sharing arrangement that will apply for fiscal year 2018-2019 for Unit members, consistent with the terms of the MBPOA MOU 2018-2020. Specifically, with respect to new CalPERS members, as 13% is higher than one half of total normal cost, which CalPERS considers to be 12%, these employees will pay the statutorily mandated employee contribution of 12%, plus 1% as cost sharing, for a total employee contribution of 13%.

For fiscal year 2019-2020, the City and MBPOA intended to execute a subsequent side letter agreement, which will clarify the specific cost sharing arrangement for that fiscal year consistent with the terms of the MBPOA MOU 2018-2020.

In accordance with Chapter 10 (Section 3500 *et seq.*) of Division 4, Title 1 of the Government Code, the parties have met and conferred regarding the issue of cost sharing for fiscal year 2018-2019 and have reached the following agreement.

AGREEMENT

1. The City and MPBPOA agree that, effective after the first full payroll period after City Council approval of a CalPERS Contract Amendment pursuant to

Government Code section 20516, cost sharing shall take place as follows for classic members (Tier 1 & Tier 2) and PEPRA members (Tier 3), respectively:

- a. CalPERS classic Unit members (Tier 1 & Tier 2) shall pay 9% as employee contribution, plus an additional 1% as employee cost sharing, for a total employee contribution of 10%.
 - b. CalPERS PEPRA Unit members (Tier 3; also referred to as CalPERS "new members") shall pay one half of total normal cost as an employee contribution, which CalPERS considers to be 12%, plus an additional 1% as employee cost sharing, for a total employee contribution of 13%.
2. This cost sharing arrangement shall only be applicable to members of the City's Law Enforcement Unit, who are covered by the MBPOA MOU 2018-2020 and represented by the Morro Bay Peace Officers' Association.
 3. This Side Letter agreement shall expire automatically and shall be of no force or effect upon the adoption of a successor MOU to the MBPOA MOU 2018-2020. The City and MBPOA may rescind or amend this Side Letter Agreement prior to such time in order to clarify the cost sharing arrangement for fiscal year 2019-2020.
 4. All terms and conditions of the expired MBPOA MOU 2018-2020 shall continue in full force and effect and are only supplemented by the terms reached herein.
 5. This Side Letter Agreement shall have no force or effect unless or until approved and signed by the represented parties below.

In witness whereof, the parties have caused their signatures to be affixed this 17 day of October, 2018.

MORRO BAY PEACE OFFICERS' ASSN.

CITY OF MORRO BAY



William Marvos, President



Scott Collins, City Manager
for Scott Collins

RESOLUTION NO. 70-18

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
APPROVING THE SUCCESSOR MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF MORRO BAY AND
THE MORRO BAY PEACE OFFICERS' ASSOCIATION FOR THE PERIOD
OF JULY 1, 2018 THROUGH JUNE 30, 2020**

**THE CITY COUNCIL
Morro Bay, California**

WHEREAS, the City of Morro Bay ("City") has, and continues to, recognize the Morro Bay Peace Officers' Association ("POA") as the sole exclusive bargaining agent for those City employees designated as being in the Law Enforcement Unit, including the classifications of Police Officer, Senior Officer, Corporal and Sergeant, for all matters concerning wages, hours and working conditions; and

WHEREAS, the most current Memorandum of Understanding ("MOU") between the City and the POA expired on June 30, 2018; and

WHEREAS, City labor relations representatives and POA representatives successfully met and conferred to negotiate a tentative agreement and successor MOU between the parties, pursuant to both the Meyers-Milias-Brown Act ("MMBA") (Government Code Sections 3500-3511) and the City's Employer-Employee Relations Resolution No. 08-17, and jointly prepared and executed a tentative agreement which was approved by the City Council on July 10, 2018; and

WHEREAS, Government Code Section 3505.1 provides: "If a tentative agreement is reached by the authorized representatives of the public agency and a recognized employee organization, or recognized employee organizations, the governing body shall vote to accept or reject the tentative agreement, within 30 days of the date it is first considered, at a duly noticed public meeting. If the governing body adopts the tentative agreement, the parties shall jointly prepare a written memorandum of understanding;" and

WHEREAS, City labor relations representatives and POA representatives have jointly prepared and executed the attached successor MOU between the City and the POA, for the period of July 1, 2018 through, and including, June 30, 2020 ("MBPOA MOU 2018-2020"), subject to City Council acceptance and approval, which is made a part hereof by this reference; and

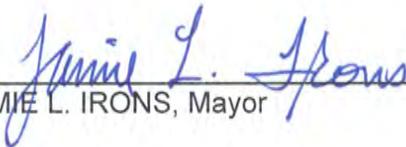
WHEREAS, once approved by the City Council, the MBPOA MOU 2018-2020 will become a binding agreement between the City and the POA.

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

Section 1. The City Council hereby approves the successor MOU between the City and the POA for the period of July 1, 2018 through, and including, June 30, 2020, a copy of which is attached hereto as Exhibit A.

PASSED AND ADOPTED, by the City Council of the City of Morro Bay, at a regular meeting thereof held on the 11th day of September 2018, by the following vote:

AYES: Irons, Davis, Headding, Makowetski, McPherson
NOES: None
ABSENT: None
ABSTAIN: None



JAMIE L. IRONS, Mayor

ATTEST:



DANA SWANSON, City Clerk

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE MORRO BAY PEACE
OFFICERS ASSOCIATION
AND
THE CITY OF MORRO BAY

JULY 1, 2018 – JUNE 30, 2020

Table of Contents

ARTICLE 1 - PURPOSE.....1
ARTICLE 2 - MANAGEMENT.....1
ARTICLE 3 - RECOGNITION.....4
ARTICLE 4 - ASSOCIATION BUSINESS.....4
ARTICLE 5 - AUTHORIZED AGENTS.....5
ARTICLE 6 - ASSOCIATION DUES AND DEDUCTIONS.....5
ARTICLE 7 – TERM.....6
ARTICLE 8 - RENEGOTIATIONS.....6
ARTICLE 9 - ANTI-DISCRIMINATION.....6
ARTICLE 10 - WORK SCHEDULE.....6
ARTICLE 11 - VACATION/HOLIDAY LEAVE.....8
ARTICLE 12 - SICK LEAVE.....11
ARTICLE 13 - BEREAVEMENT.....11
ARTICLE 14 - RETIREMENT.....11
ARTICLE 15 - HEALTH BENEFITS.....13
ARTICLE 16 - EDUCATIONAL INCENTIVES.....14
ARTICLE 17 - UNIFORMS.....15
ARTICLE 18 - SALARIES.....15
ARTICLE 19 - SPECIAL PAY PRACTICES.....18
ARTICLE 20 - BULLETIN BOARD.....21
ARTICLE 21 - PROBATIONARY PERIOD.....21
ARTICLE 22 - DRUG AND ALCOHOL TESTING.....21
ARTICLE 23 - GRIEVANCE PROCEDURE.....22
ARTICLE 24 - NO STRIKE, SLOW-DOWN OR OTHER INTERRUPTION TO WORK.....23
ARTICLE 25 - FULL UNDERSTANDING, MODIFICATION, WAIVER.....23
ARTICLE 26 - SEVERABILITY.....24
ARTICLE 27 – JOINT DRAFTING.....24
ARTICLE 28 – CITY COUNCIL APPROVAL.....24

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE MORRO BAY PEACE OFFICERS' ASSOCIATION
AND THE CITY OF MORRO BAY
2018 - 2020**

ARTICLE 1 - PURPOSE

WHEREAS, the City of Morro Bay is a municipal corporation, existing under the laws of the State of California as a general law city; and

WHEREAS, the City of Morro Bay is limited, insofar as funds are concerned, because of a fixed tax rate, and in structure because it is a public entity, rather than a profit-making business; and

WHEREAS, the Morro Bay Peace Officers' Association, Inc, is a California corporation, existing under the laws of the state of California; and

WHEREAS, the Morro Bay Peace Officers' Association, Inc., and the City of Morro Bay recognize that the mission and the purpose of the City is to provide high-quality and economical municipal services and facilities to the residents of the City of Morro Bay;

THEREFORE, this Memorandum of Understanding, referred to as "MOU", is entered into as of July 1, 2018, between the City of Morro Bay, referred to as "CITY," and the Morro Bay Peace Officers' Association, referred to as "ASSOCIATION."

It is the intent and purpose of this MOU to assure sound and mutually beneficial working and economic relations and conditions between the parties hereto, to provide for an orderly and peaceable method and manner of resolving any differences, which may arise, to negotiate any misunderstanding, which could arise, and to set forth herein the basic and full agreement between the parties, concerning the pay, wages, hours of employment, and other terms and conditions of employment.

ARTICLE 2 - MANAGEMENT

2.1 In order to ensure that the CITY shall continue to carry out its public safety functions, programs, and responsibilities to the public imposed by law, and to maintain efficient public safety service for the citizens of Morro Bay, the CITY continues to reserve and retain, solely and exclusively, all management rights, regardless of the frequency of use, including those rights and responsibilities set forth by law and those CITY rights set forth in the CITY's Personnel Rules and Regulations, and including, but not limited to, the following:

- 2.1.1 To manage the Police Department, and determine policies and procedures and the right to manage the affairs of the Department.
- 2.1.2 To determine the existence, or nonexistence, of facts which are the basis of the management decision in compliance with State law.
- 2.1.3 To determine the necessity, organization, implementation, and termination of any service or activity conducted by the CITY or other government jurisdiction, and to expand or diminish police services.
- 2.1.4 To direct, supervise, recruit, select, hire, evaluate, promote, transfer, discipline, discharge, terminate, demote, reduce, suspend, reprimand, withhold salary increases and benefits for disciplinary reasons, or otherwise discipline employees, in accordance with Department or CITY Rules, Regulations, or Ordinances.
- 2.1.5 To determine the nature, manner, means, extent, type, time, quantity, quality, technology, standard, and level of police services to be provided to the public.
- 2.1.6 To require the performance of other public safety services, not specifically stated herein, in the event of an emergency or disaster, as deemed necessary by the CITY.
- 2.1.7. To lay off employees of the Police Department because of lack of work or funds or under conditions where continued work would be inefficient or nonproductive or not cost effective, as determined by the CITY.
- 2.1.8. To determine and/or change the police facilities, methods, technology, equipment, operations to be performed, organization structure, and allocate or assign work by which the CITY police operations and services are to be conducted.
- 2.1.9. To determine methods of financing.
- 2.1.10 To plan, determine, and manage the Department's budget, which includes, but is not limited to, changes in the number of locations and types of operations, processes and materials to be used in carrying out all Police Department functions, and the right to contract or subcontract any work or operations of the Police Department.
- 2.1.11 To determine the size and composition of the Police Department work force, assign work to employees of the Police Department, in accordance with requirements determined by the Police Department, and to establish and require compliance to work hours and changes to work hours, work schedules, including

call back, standby, and overtime, and other work assignments, except as otherwise limited by this MOU, or subsequent MOUs.

- 2.1.12 To establish and modify goals and objectives, related to productivity and performance programs and standards, including, but not limited to, quality and quantity, and required compliance therewith.
- 2.1.13 To determine qualifications, skills, abilities, knowledge, selection procedures and standards, job classification, job specifications, and to reallocate and reclassify employees, in accordance with division and/or CITY Rules and Regulations.
- 2.1.14 To determine the issues of public policy and the overall goals and objectives of the Police Department, and to take necessary action to achieve the goals and objectives of the Police Department.
- 2.1.15 To hire, transfer intra- or inter-Department, promote, reduce in rank, demote, reallocate, terminate, and take other personnel action for non-disciplinary reasons, in accordance with Department and/or CITY Rules, Regulations and Ordinances.
- 2.1.16 To determine policies, procedures, and standards for recruiting, selecting, training, and promoting employees.
- 2.1.17 To establish, implement, and/or modify rules and regulations, policies, and procedures related to productivity, performance, efficiency, personal appearance standards, code of ethics and conduct, safety, health, and order, and to require compliance therewith.
- 2.1.18 To maintain order and efficiency in police facilities and operation.
- 2.1.19 To restrict the activity of an employee organization on CITY facilities, except as set forth in this MOU.
- 2.1.20 To take any and all necessary steps and actions to carry out the service requirements and mission of the CITY in emergencies or any other time deemed necessary by the CITY, and not specified above.
- 2.2 Nothing herein is meant to diminish CITY rights provided by the Government Code.
- 2.3 Nothing herein is meant to diminish the Public Safety Officers Procedural Bill of Rights Act, as set forth in the Government Code Sections 3300-3313.

2.4 AUTHORITY IF THIRD PARTY NEUTRAL - MANAGEMENT RIGHTS

All management rights, powers, authority, and functions, whether heretofore or hereinafter exercised, shall remain vested exclusively with the CITY. No third party neutral shall have the authority to diminish any of the management rights, which are included in this MOU.

ARTICLE 3 - RECOGNITION

- 3.1 Pursuant to Resolution No. 74-69, the Employer-Employee Relations Resolution of the City of Morro Bay and applicable State law, ASSOCIATION was designated by CITY as the representative of CITY employees in the Law Enforcement Unit (hereafter "UNIT"). The UNIT is comprised of the following classifications:

Sergeant
Corporal
Senior Officer
Police Officer

The term "employee" or "employees," as used herein, shall refer only to the foregoing classifications.

- 3.2 Employees working on a regular basis in a classified position, but less than full-time, shall receive vacation and sick leave accruals on a pro-rated basis, commensurate with hours worked. All benefits for new hires, including insurance benefits, will be allocated on a pro-rated basis commensurate with hours worked.

3.3 ELECTRONIC DEPOSIT:

All employees, hired after July 1, 1999, shall receive their pay by electronic methods. New hires must present account information for a checking or a savings account with an ACH member financial institution.

ARTICLE 4 - ASSOCIATION BUSINESS

- 4.1 Employee representatives, designated by the ASSOCIATION, shall be granted time off, without loss of pay, to attend "meet and confer" sessions with the City Manager, and/or his/her designee, on subjects within the scope of representation when such meetings are scheduled during regular working hours. Should such meetings extend beyond an employee representative's regular working hours, the employee representative shall be paid for only the regular working hours.

It is understood that this time-off provision shall only apply to a maximum of three (3) employees attending any one meeting between the CITY and the ASSOCIATION. Where exceptional circumstances warrant, the City Manager may approve the attendance at such meetings of additional employee representatives. The ASSOCIATION shall, whenever practicable, submit the names of all employee representatives to the City Manager, or designee, at least two working days in advance of such meetings. Provided further: (1) no employee representative shall leave his or her duty or work station or assignment, without specific approval of the department head or other authorized CITY management official; and (2) any such meeting is subject to scheduling by CITY management, in a manner consistent with operating needs and work schedules.

- 4.2 Nothing provided herein shall limit or restrict CITY management from scheduling such meetings before or after regular CITY or work hours.
- 4.3 Off-duty employees will not be paid for attending meet and confer sessions, nor will over-time be paid for same.

ARTICLE 5 - AUTHORIZED AGENTS

For the purpose of administering the terms and provisions of this MOU:

- 5.1 The CITY's principal authorized agent shall be the City Manager, or his/her duly authorized representative (address: 595 Harbor Street, Morro Bay, CA 93442; telephone (805) 772-6201), except where a particular management representative is specifically designated in the MOU.
- 5.2 The ASSOCIATION's principal authorized representative shall be the President of the Association, or his/her duly authorized representative (address P. O. Box 276, Morro Bay, CA 93443).

ARTICLE 6 - ASSOCIATION DUES AND DEDUCTIONS

- 6.1 The ASSOCIATION may request that the CITY deduct membership dues, initiation fees, and general assessments, as well as payment of any other membership benefit program sponsored by the ASSOCIATION, from the wages and salaries of ASSOCIATION members. The ASSOCIATION hereby certifies that ASSOCIATION has and shall maintain all such deduction authorizations signed by the individual from whose salary or wages the deduction is to be made and shall not be required to provide a copy of an individual authorization to the CITY unless a dispute arises about the existence or terms of the authorization. Accordingly, ASSOCIATION membership dues shall be deducted each pay period in accordance with CITY procedures and provisions of applicable law from the salary of each employee whose name is provided by the ASSOCIATION. Any changes in ASSOCIATION dues must be given to the CITY a minimum of thirty (30) days prior to

change to accommodate changes to payroll. ASSOCIATION will pay the costs incurred by the CITY in order to set up the employee's deductions. After initial set up, ASSOCIATION may be charged \$5 per employee to make changes to requested dues deductions.

6.2 The ASSOCIATION shall defend and indemnify, and hold harmless, the CITY, its officers, agents, and employees from any and all claims, demands, damages, costs, expenses, or liability arising out of this Article.

6.3 **DEPOSIT OF DEDUCTIONS**

It is agreed that the CITY will deposit payroll deductions, made payable to credit unions in which the CITY participates, providing the ASSOCIATION makes arrangements for such services that are acceptable to both members and the CITY under the same conditions as prevails for deductions as set forth above.

ARTICLE 7 – TERM

Except as otherwise provided herein, the term of this MOU commences on July 1, 2018, and expires, and is otherwise fully terminated, on June 30, 2020.

ARTICLE 8 - RENEGOTIATIONS

The parties agree to commence renegotiations for a successor MOU for the period beginning July 1, 2020, by serving their initial written proposals by January 1, 2020, with negotiations meetings to commence no later than March 1, 2020. Should the parties be unable to reach agreement on a new contract before the current contract expires, all applicable provisions of this MOU shall remain in full force and effect until such time as a new MOU is reached, or September 30, 2020, whichever first occurs.

ARTICLE 9 - ANTI-DISCRIMINATION

The CITY and ASSOCIATION mutually agree they will not discriminate against employees for the exercise of their rights under the State of California Government Code Section 3502.

ARTICLE 10 - WORK SCHEDULE

10.1 Alternative work schedules, in compliance with the federal Fair Labor Standards Act ("FLSA"), may be implemented upon approval of the Chief of Police. No guarantee of work, per day or per week, or of days of work per week, is implied.

The implementation of an alternate work schedule shall not incur any CITY obligation to allocate additional sworn personnel, vehicles or equipment. All deployment of sworn personnel shall ensure effective and efficient delivery of police protection to the community, sufficient to continue during times of vacation, sick leave, and Department-approved training.

10.2 OVERTIME

10.2.1 Sworn Personnel

Overtime shall be all work, authorized by management and actually worked by the employee, in excess of eighty (80) hours worked in a work period. For the purpose of defining hours worked, vacation leave and holiday leave taken shall count towards time worked, for the purpose of overtime. All overtime, as defined herein, shall be paid at one and one-half (1.5) times the employee's regular rate of pay.

NOTE: Hours spent in court under what used to be termed "Court Appearance Pay" shall be considered and paid as part of this article; except for the "minimum pay," which is now covered under Special Pay Practices.

10.2.2 Compensatory Time Off

Effective with the ratification of this MOU, Compensatory Time Off (hereinafter "CTO") shall be earned at the overtime rate of one and one-half (1.5) times the number of overtime hours, worked as defined in Articles 10.2.1 and 10.2.2. CTO may be accrued up to a maximum of 140 hours. Overtime earned, in excess of the CTO maximum accrual, shall be compensated in cash.

10.2.3 Compensatory Time Payoff

Employees may elect a payoff of up to a maximum total of 60 hours per fiscal year of accrued compensatory time. Upon 30 days' advance notice, partial or full payment will be made on the second paycheck received in March and/or on the second paycheck in September, as elected by the employee.

10.3 EMERGENCIES

10.3.1 Nothing herein shall be construed to limit or restrict the authority of management to make temporary assignments to different or additional locations, shifts, or duties for the purpose of meeting an emergency.

10.3.2 Such emergency assignments shall not extend beyond the period of said emergency.

10.3.3 Short staffing, caused solely by absences due to employees taking approved paid leave, shall not be considered an emergency.

10.4 SHIFT ROTATION

Shift rotation shall coincide with the first day of a pay period.

ARTICLE 11 - VACATION/HOLIDAY LEAVE

NOTE: ALL LEAVE TIME (VACATION, SICK LEAVE, HOLIDAY, ETC.), WILL BE TAKEN OFF ON AN HOUR FOR HOUR BASIS EQUALING EMPLOYEE ACTUAL TIME OFF, REGARDLESS OF ACCUMULATION RATES.

11.1 VACATION

11.1.1 The following is a list of vacation annual accrual schedule by years of employment, effective retroactive to July 1, 2016 for those employees still employed by the CITY upon City Council adoption of this successor MOU:

<u>SERVICE YEARS</u>	<u>VACATION ACCRUAL</u>
1-2	88 hrs
3-4	96 hrs
5	104 hrs
6-7	112 hrs
8-9	120 hrs
10	128 hrs
11-12	136 hrs
13-14	144 hrs
15 or more	160 hrs

UNIT members hired after July 1, 2016 may be credited with years of service based upon prior law enforcement service at other agencies as determined within the sole discretion of the Police Chief and as approved by the City Manager and to be documented in both the recruit's conditional offer and the City's initial hire Personnel Action Form. Retroactive application shall be applied to those employees hired on or before the City Council's adoption of this MOU, but there shall be no increased retroactive accrual of vacation. Rather the increased accrual only applies starting July 2, 2016.

11.1.2 Employees' vacation accrual will be credited to employee on a pro-rated basis over twenty-six (26) pay periods per year.

11.1.3 In determining priority of individual members for assignment of vacation periods, "seniority within rank" shall be the primary criteria. During the month of January of each year, each employee shall submit his/her preferences for vacation time off during that calendar year. It is agreed that every effort will be made to permit UNIT members to take vacation at a time and for periods as close to members' preference as possible, consistent with the necessity for maintaining adequate manning to assure performance of police department functions. It is further agreed that every effort will be made to schedule individual vacation periods so as to maximize consecutive vacation days off, consistent with annual vacation entitlement.

11.1.4 Effective retroactive to the pay period including July 1, 2016, the maximum amount of vacation accrual will be 280 hours. When an employee reaches the maximum accrual limit of 280 hours, the employee shall cease to accrue vacation leave until the usage of vacation causes the balance to be less than 280 hours. Employees, who have a requested vacation denied or canceled within 60 days prior to reaching the 280 hour accrual maximum, shall, upon request, be given an additional 60 days following reaching the maximum to utilize vacation, prior to ceasing to accrue.

11.1.5 A UNIT employee may exercise an option to convert into cash a maximum of forty (40) hours of accrued vacation leave each fiscal year, upon 30 days' notice to payroll. Such conversion shall be computed at the employee's current base hourly rate, on an hour-per-hour basis.

11.2 HOLIDAYS

11.2.1 For the purpose of this MOU, the following days are the holidays for the employees in this UNIT:

New Year's Day	January 1
Martin Luther King, Jr. Day	3 rd Monday in January
Lincoln's Birthday	February 12
Washington's Birthday	3 rd Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4 th
Labor Day	1 st Monday in September
Veterans Day	November 11 th
Thanksgiving Day	4 th Thursday in November
Day after Thanksgiving Day	Friday after Thanksgiving
Christmas Day	December 25 th
Day after Christmas	December 26 th
Floating Holiday	Varies

11.2.2 Effective upon City Council adoption of this MOU, employees who work a holiday listed in 11.2.1, shall be paid one and one-half (1.5) times their base hourly rate. An employee is eligible for the one and one-half time pay only for the hours actually worked during the actual calendar holiday date as set forth in 11.2.1 above regardless of any change in City observation of same based upon the actual day of the week of the holiday. Each employee will be credited eight (8) hours Holiday leave for each holiday listed in 11.2.1 or recognized under 11.2.3, in addition to pay for time worked on that holiday. Holiday Leave hours shall be pro-rated annually and credited to employees at the rate of four hours per pay period. (For example, if a listed holiday is Sunday, and the City recognizes the holiday on Monday, the employee working the actual holiday on Sunday shall receive credit

under the code Police Holiday Worked for working the actual holiday).

11.2.3 Holidays Proclaimed by Government Officials: It is agreed that when a holiday is proclaimed by the Mayor of the CITY, then each regular member of the UNIT shall be granted compensation in the same number of hours as equivalent to the time-off granted other employees of the CITY. Such time-off shall be selected by the Police Chief.

11.2.4 Accumulated Holiday Leave may be scheduled and taken upon approval of the Police Chief, or his/her designee.

11.2.5 Employees may accumulate up to a maximum of 116 hours Holiday Leave per year. All Holiday Leave, not taken by the pay period containing December 1, shall be paid off at the employee's current rate of pay. By request only, employees may be paid for a designated amount of accumulated Holiday Leave with the pay period including June 1, upon 30 days' advance notice to Payroll. When an employee terminates employment with the CITY, employee shall receive pay for employee's current holiday balance at employee's current base hourly rate.

NOTE: Subject to maximum accrual limits, employee specified amounts of Holiday Leave may be transferred to Compensatory Time Off, upon request in December only. Payroll must be notified by November 1st.

11.3 MILITARY LEAVE

11.3.1 Military Leave will be provided pursuant to City Resolution 65-01 and Military and Veterans Code 395.03

11.4 ASSOCIATION LEAVE

11.4.1 UNIT members will be allowed to contribute accumulated compensatory, holiday, or vacation time off to a special compensatory time account for the use of ASSOCIATION executive officers. ASSOCIATION officers, or their designee(s), may, subject to all normal approvals and restrictions for time off requirements, receive up to a total of forty (40) hours per fiscal year off for attendance at meetings, seminars, etc., on behalf of the ASSOCIATION.

At no time may the ASSOCIATION compensatory time account contain more than one hundred (100) accrued hours.

The parties agree herewith to retain the option to re-open collective bargaining, with respect to this section 11.4.1, regarding the specific issue of initiating a process in which the UNIT members can donate to a time bank for ASSOCIATION business.

ARTICLE 12 - SICK LEAVE

- 12.1 Sick leave shall be earned at the rate of eight hours each calendar month of service. There is no limit on the amount of sick leave that may be accumulated by members of this UNIT.
- 12.2 Based on individual utilization of paid sick leave in the preceding calendar year, rolling backwards 365 days from the date of requested conversion, employee may convert unused accumulated sick leave into paid vacation leave once per fiscal year, pursuant to the formula below:

<u>8 Hour Schedule</u>	<u>10 Hour Schedule</u>	<u>12 Hour Schedule</u>	<u>Maximum Conversion To Vacation Leave</u>
0	0	0	48 hours
.25 to 8	.25 to 10	.25 to 12	36 hours
8.25 to 16	10.25 to 20	12.25 to 24	24 hours
16.25 to 25	20.25 to 30	24.25 to 36	12 hours
over 25	over 30	over 36	0 hours

At least 160 accrued hours must remain in employee’s sick leave bank for any employee to be eligible for conversion, or for any conversion to be authorized. In addition, the right to convert, along with any conversion hours, does not carry over or rollover from fiscal year to fiscal year; failure to request conversion, in any fiscal year, eliminates the right to do so for that fiscal year, and does not permit employees to aggregate conversion hours in any other fiscal year.

- 12.3 At termination, unused accumulated sick leave is not compensable; however, upon retirement, may be converted to additional time, as provided by the PERS sick leave option.

ARTICLE 13 - BEREAVEMENT

Employees shall be permitted to utilize three (3) days of paid bereavement leave, per occurrence, in the case of the death of members of the employee’s immediate family (as defined in the Personnel Rules), where the funeral service will be held in state and five (5) days paid bereavement leave for funeral services held out-of-state. The three or five days shall be regardless of shift length, subject to a maximum of 12 hours per day. Any necessary extra time shall be taken from the employee’s accrued sick leave. In cases where sick leave is exhausted, vacation time shall be charged. Paid leave beyond the initial three or five days is subject to department approval.

ARTICLE 14 - RETIREMENT

- 14.1 It is the employee’s obligation to contribute the employee’s contribution to CalPERS. The employee shall pay his/her own contribution by payroll deduction, consistent with the provisions of 414 (h) 2 of the Internal Revenue Code.

- 14.1.1 For Sworn members, the current contribution rates are 9% CalPERS Safety for classic members (Tier 1 & Tier 2), 11.5% for new members (Tier 3).
- 14.1.2 Effective the first full payroll period after City Council approval of a CalPERS Contract Amendment pursuant to Government Code section 20516 providing for payment by classic members (Tier 1 & Tier 2) of an additional 1% to CalPERS as cost sharing for a total classic employee contribution of 10% and PEPRA members (Tier 3) paying the statutorily mandated employee contribution rate of one half of the total normal cost or 13% of the employer cost, whichever is higher.
- 14.1.3 Effective the first full payroll period FY 2019/20 and subject to the same conditions precedent being that the CITY meets the economic thresholds in subsection E above, and only after City Council approval of an additional CalPERS Contract Amendment pursuant to Government Code section 20516 providing for payment by classic members (Tier 1 & Tier 2) of another additional 1% to CalPERS as cost sharing for a total classic employee contribution of 11% and PEPRA members (Tier 3) paying the statutorily mandated employee contribution rate of one half of the total normal cost or 14% of the employer cost, whichever is higher
- 14.2 The ASSOCIATION understands and agrees that employees bear the risk of payment of any increases in the employee contribution, above the current percentage, made by action of CalPERS or the state legislature.
- 14.3 Parties agree that CITY payment of CalPERS contributions are made based upon tax treatment currently permitted by the State Franchise Tax Board and the IRS.
- 14.4 Should current tax treatment change, the ASSOCIATION and the employee shall hold harmless the CITY, its officers and agents, from any and all claims or costs of any type, including, but not limited to, liability for back taxes, arising out of this MOU, to pay part of the employee's CalPERS contribution. Should current tax treatment change, the ASSOCIATION shall have the opportunity to meet and confer, regarding any such changes.
- 14.5 For Sworn employees, hired prior to September 17, 2011, the CITY agrees to continue to provide CalPERS Safety employees in this UNIT with a retirement benefit program through the California Public Employees Retirement System (CalPERS) as follows:
 - 14.5.1 3% @ 50 formula (21362.2)
 - 14.5.2 Unused Sick Leave Credit (Section 20965)
 - 14.5.3 Military Service Credit (Sections 21023.5, 21024 & 21027)
 - 14.5.4 Final Compensation 1 Year (Section 20042)
 - 14.5.5 1959 Survivor Benefit, Level 4 (Section 21574)
 - 14.5.6 Pre-Retirement Death Benefits (Section 21548 Option 2W & 21551)
 - 14.5.7 Retired Death Benefit \$500 (Section 21620)

- 14.5.8 Prior service (Section 20055)
- 14.5.9 Public Service Credit for Periods of Layoff (Section 21022)
- 14.6 For Sworn employees, hired on or after September 17, 2011, and those hired on or after January 1, 2013, who meet the definition of classic member, pursuant to the California Public Employees Pension Reform Act of 2013 (PEPRA), the CITY will provide the following CalPERS formula and optional benefits:
 - 14.6.1 3% @ 55 formula (21363.1)
 - 14.6.2 Unused Sick Leave Credit (Section 20965)
 - 14.6.3 Military Service Credit (Sections 21023.5, 21024 & 21027)
 - 14.6.4 Final Compensation 3 Year (Section 20037)
 - 14.6.5 1959 Survivor Benefit Level 4 (Section 21574)
 - 14.6.6 Pre-Retirement Death Benefits (Section 21548 Option 2W and 21551)
 - 14.6.7 Retired Death Benefit \$500 (Section 21620)
 - 14.6.8 Prior Service (Section 20055)
 - 14.6.9 Public Service Credit for Periods of Layoff (Section 21022)
- 14.7 Pursuant to the California Public Employees' Pension Reform Act of 2013 (PEPRA), effective January 1, 2013, Sworn employees hired, who meet the definition of new member under PEPRA and are not eligible for reciprocity, will be provided the following retirement formula and optional benefits:
 - 14.7.1 2.7% @ 57 formula (Section 7522.25(d))
 - 14.7.2 Unused Sick Leave Credit (Section 20965)
 - 14.7.3 Military Service Credit (Sections 21023.5, 21024 & 21027)
 - 14.7.4 Final compensation 3 Year (Section 20037)
 - 14.7.5 1959 Survivor Benefit Level 4 (Section 21574)
 - 14.7.6 Pre-Retirement Death Benefits (Section 21548 Option 2W and 21551)
 - 14.7.7 Retired Death Benefit \$500 (Section 21620)
 - 14.7.8 Prior Service (Section 20055)
 - 14.7.9 Public Service Credit for Periods of Layoff (Section 21022)

ARTICLE 15 - HEALTH BENEFITS

15.1 HEALTH INSURANCE

- 15.1.1 Effective July 1, 2018, UNIT employees shall receive a cafeteria plan contribution, including the amount required by CalPERS, as follows:

- Employee only - up to \$715/month or cost of insurance, whichever is less
- Employee + 1 – up to \$1,135/month or cost of insurance, whichever is less
- Employee + family - up to \$1,460/month or cost of insurance, whichever is less

15.2 DENTAL AND VISION INSURANCE:

15.2.1 During the term of this MOU, the CITY shall offer dental, life and vision insurance, and each employee shall be required to carry both dental, life and vision insurance for self. Life Insurance is provided at \$50,000 per employee. The following rates are effective January 1, 2018:

	<u>Vision</u>	<u>Dental</u>	<u>Life</u>	<u>Totals</u>	<u>City pays</u>	<u>EE pays</u>
Employee only	\$ 8.73	\$ 55.03	\$8.15	\$ 71.91	\$ 68.98	\$ 2.93
Employee + 1	\$ 16.40	\$152.27	\$8.15	\$ 176.82	\$ 165.07	\$11.75
Employee + 2+	\$ 23.34	\$152.27	\$8.15	\$ 183.76	\$ 171.55	\$12.21

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

- 15.3 Any coverage made available to future retirees, beyond COBRA time requirements, shall be paid for by the retiree.
- 15.4 CITY contributions pursuant to this Article 15.0 shall remain effective through June 30, 2019. The CITY and ASSOCIATION agree herewith to retain the option to re-open collective bargaining, with respect to this Article 15, to discuss any health provider rate changes effective in calendar year 2019.

ARTICLE 16 - EDUCATIONAL INCENTIVES

16.1 P.O.S.T. CERTIFICATES

- 16.1.1 For UNIT members, hired prior to January 1, 1998, and possessing the Intermediate P.O.S.T. Certificate, CITY agrees to pay three percent (3%) over the base salary range and step schedule established for the position classification held by the UNIT member and as specified herein under Article 18, Salaries.
- 16.1.2 For UNIT members, hired prior to January 1, 1998 and possessing the Advanced P.O.S.T. Certificate, CITY agrees to pay six percent (6%) over the base salary range and step schedule established for the position classification held by the ASSOCIATION member and as specified herein under Article 18, Salaries.
- 16.1.3 For Sworn UNIT members hired on or after January 1, 1998, CITY agrees to pay \$140 per month for P.O.S.T. certificates as follows:

	<u>Intermediate</u>	<u>Advanced</u>
Sergeant	\$140	\$140
Corporal	\$140	\$140
Officer	\$140	\$140

ARTICLE 17 - UNIFORMS

- 17.1 Uniforms for employees shall be as set forth in Morro Bay Police Department Policy Manual Section 1046, Uniform and Equipment Regulations and Specifications.
- 17.2 Newly-hired employees shall receive a full uniform issue and will receive full uniform replacement as needed until the following July 1. Effective July 1 after hire, such employees shall commence receiving an annual uniform allowance.
- 17.3 The following uniform articles are covered by the uniform allowance and must meet the department uniform standards:
- a. Uniform pants
 - b. Uniform shirts - long and short sleeves
 - c. Dress belt
 - d. Ties
 - e. Duty jacket
 - f. Uniform patches
- 17.4 All maintenance, tailoring and other alterations will be at the employee's expense.
- 17.5 All optional equipment will be the responsibility of the employee.
- 17.6 All safety equipment originally issued and replaced by the department remains the Department's property.
- 17.7 The annual uniform allowance will be as follows:
- Sworn officers: \$ 1,150
- 17.8 The CITY agrees to repair or replace any personal article damaged while on duty, including uniform items as listed above, providing that such article is a reasonable and necessary part of the employee's attire.

ARTICLE 18 - SALARIES

- 18.1 For UNIT members employed as of July 1, 2018, the CITY will pay a one-time, lump sum signing bonus payment of \$600 to be paid the next full pay period after City Council approval and adoption of this MOU. The lump sum payment shall not be PERSable compensation and shall not be treated as off-salary schedule pay as defined under Section 571 of the California Code of Regulations.
- 18.2 Effective retroactive to the pay period including July 1, 2018 for those employees still employed by the CITY upon City Council adoption of this MOU, Longevity Pay shall be rolled into salary for all UNIT classifications and eliminated as a separate pay item per the attached revised salary schedule.

- 18.3 Effective retroactive to the pay period including July 1, 2018 for those employees still employed by the CITY upon City Council adoption of this MOU, the CITY shall provide a Cost of Living Adjustment (COLA) increase to base salaries for all UNIT classification by 2% per the attached revised salary schedule.
- 18.4 Effective the first full payroll period after City Council approval of a CalPERS Contract Amendment pursuant to Government Code section 20516 providing for payment by classic members (Tier 1 & Tier 2) of an additional 1% to CalPERS as cost sharing for a total classic employee contribution of 10% and PEPRAs members (Tier 3) paying the statutorily mandated employee contribution rate of one half of the total normal cost or 13% of the employer cost, whichever is higher, the CITY shall provide an additional 1% COLA increase to base salaries for all UNIT classifications.
- 18.5 Effective July 1, 2019, the CITY shall provide a 2% COLA increase to base salaries for all UNIT classifications with a condition precedent being that the CITY meets the following economic thresholds on three key revenue sources (Property Tax, Sales Tax and TOT) based on 10-year budget forecasts shown below:

- o Total major General Fund Revenues (Property Tax, Sales Tax and Transient Occupancy Tax) meet or exceed the combined forecasted amount of \$9,395,906 (matches 10-year forecast presented to City Council in February 2017). These figures are based on current tax rates. Increased tax rates would not count towards increased revenue receipts for this purpose (currently 1% Property Tax, 1.0% CITY Sales Tax, 10% TOT). The revenue projections serving as economic thresholds for purposes of this Section 18.5 are depicted in the following table:

COLA Year Affected	FY19-20
Combined Receipts Forecast	FY18-19 Forecast
Property Tax	3,034,754
Property Tax In-Lieu (VLFAA)	1,037,401
Subtotal Property Tax	4,072,155
Sales Tax (local & triple-flip)	1,745,439
Sales Tax (Prop 172-Safety)	123,525
Subtotal Sales Tax	1,868,964
Transient Occupancy Tax	3,454,787
Combined Total Threshold	\$9,395,906

- o The CalPERS investment rate of return (i.e. "Discount Rate") to take effect in FY18-19 does not drop below the rates announced by CalPERS on December 22, 2016, causing the CITY's contribution to CalPERS to increase more than \$100,000 beyond the current budgeted amounts for the General Fund.

- The CITY does not become responsible, during FY17-18, for any state/federally imposed unfunded mandates from any external source(s) that require significant unplanned/ un-forecasted General Fund expenditure(s) of more than \$300,000 in a fiscal year, including significant natural disasters affecting the CITY. Any such expenditure will be counted as a reduction in the combined revenue amount discussed in this section on which the various conditions are based, resulting either in a lower employee bonus or reduction in the intended COLA increase to 1% or 0%.
- For timing purposes, the COLA adjustment shall take effect on July 1, 2019 if the CITY determines, based on revenues received as of June 1, 2019, that it is reasonable to assume the combined receipts will meet or exceed the stated thresholds. If meeting the stated threshold is not a reasonable assumption as of June 1, 2019, then the parties agree to wait for actual receipts to be posted which are normally by the end of August. If the thresholds are met at the time actual receipts are received, then the CITY agrees to implement the 2% COLA retroactive to July 1, 2019.
- If total major General Fund Revenues are less than \$71,000 below the forecasted amount (i.e. more than \$9,322,906), then the COLA will still be 2%, effective July 1, 2019. If total major General Fund Revenues are between \$71,000 and \$141,000 below the forecasted amount (i.e. between \$9,253,907 - \$9,335,194), then the COLA will be 1% effective July 1, 2019. If total major General Fund Revenues are \$142,000 or more below the forecasted amount (i.e. less than \$9,253,906), then there will be no COLA effective July 1, 2019.
- If the conditions precedent described above are satisfied, and total major General Fund Revenues for FY 2018/19 are above forecast, then in addition to the 2% COLA, 20% of the amount above the forecast amount will be divided equally by the number of full-time equivalent (FTE) employees then working at the CITY and paid to UNIT members in the form of a one-time lump sum payment which shall not be PERSable compensation and shall not be treated as off-salary schedule pay as defined under Section 571 of the California Code of Regulations.

18.6 Effective the first full payroll period FY 2019/20 and subject to the same conditions precedent being that the CITY meets the economic thresholds in subsection 18.5 above, and only after City Council approval of an additional CalPERS Contract Amendment pursuant to Government Code section 20516 providing for payment by classic members (Tier 1 & Tier 2) of another additional 1% to CalPERS as cost sharing for a total classic employee contribution of 11% and PEPRAs members (Tier 3) paying the statutorily mandated employee contribution rate of one half of the total normal cost or 14% of the employer cost, whichever is higher, the CITY shall provide an additional 1% COLA increase to base salaries for all UNIT classifications.

ARTICLE 19 - SPECIAL PAY PRACTICES

19.1 STANDBY

19.1.1 Standby duty is defined as that circumstance which requires an employee so assigned to:

1. Be ready to respond immediately to a call for service;
2. Be readily available at all hours by telephone or other agreed-upon communication equipment; and
3. Refrain from activities which might impair his/her assigned duties upon call.

The parties agree that employees on standby as defined above, are “waiting to be engaged.”

19.1.2 Regardless of any hours actually worked, employees on standby shall be compensated for two (2) hours computed at their straight hourly base rate per twenty-four (24) hours of authorized standby time (e.g., 2 hours standby + actual time worked).

The twenty-four (24) hours’ time period is defined as 0700 hours to 0659 hours the following day.

Subject to the maximum accrual provisions of Section 10.2.3, employees may elect to receive two (2) straight time compensatory time off hours in lieu of paid standby compensation.

19.1.3 Court standby – Employees on court standby will receive two (2) hours computed at their straight hourly base rate to be available for court callback on off duty days. Subject to the maximum accrual provisions of Section 10.2.3 employees may elect to receive two (2) straight time compensatory time off hours in lieu of court standby compensation.

19.2 CALL BACK

19.2.1 Call back is defined as that circumstance which requires an employee to unexpectedly return to work after the employee has left work at the end of the employee’s work shift or work week; except that, an early call in of up to two (2) hours prior to the scheduled start of a work shift shall not constitute a call back; or, employee is required for off-duty court appearance.

19.2.2 Required off-duty court appearance. Employees called back shall receive either a two (2) hour minimum computed at straight hourly base rate or pay for all time

actually worked, whichever is greater. An employee shall not receive overlapping minimums.

19.2.3 An employee shall not receive standby pay for the same hours he/she received callback pay.

19.3 OUT OF CLASS ASSIGNMENT

19.3.1 The term “out-of-class assignment” shall be defined as the full-time performance of the significant duties of a vacant, funded position in one classification by an individual in a classification with a lower compensation range.

19.3.2 If an employee is required to work in an out-of-class assignment for more than fifteen (15) workdays, within a calendar month his/her department head shall, with prior approval of the Administrative Services Director, make an acting appointment. Such acting appointment shall be effective on the sixteenth (16th) workday within a calendar month of the out-of-class assignment.

19.3.3 An employee on an acting appointment shall receive a one (1) step increase within the employee’s current classification salary as provided by CITY’s Personnel Rules and Regulations. In the absence of available steps within his/her current range, the employee shall be granted a five percent (5%) increase above his/her current base salary.

19.4 BILINGUAL PAY

Qualified employees who possess the necessary ability and who are assigned to perform services as an interpreter in Spanish, shall be eligible for additional stipend depending upon the employee’s level of bilingual expertise. Qualifications shall be determined by the CITY.

19.5.1 For those employees who conduct conversational assistance in Spanish on a regular basis, seventy-five dollars (\$75) per month stipend is available.

19.5.2 For those employees who interpret and explain legal documents, conduct conversational assistance, and write documents for those persons who speak only Spanish, One Hundred Fifty dollars (\$150) per month stipend shall be available.

19.5 FIELD TRAINING OFFICER (FTO) ASSIGNMENT PAY

Individuals, in the classification of Police Officer formally assigned a trainee by the Chief of Police, or his/her designee, shall be compensated at the rate of 5% of base hourly rate. Compensation will be paid only when acting as FTO.

19.6 SENIOR OFFICER ASSIGNMENT PAY

Up to four (4) individuals may be assigned as Senior Police Officers. This assignment is not a permanent promotion to a higher classification. Continuation in the assignment is based on an annual performance evaluation of "Meets Satisfactory Performance Standards," as well as at the discretion of the Chief of Police. Senior Police Officers will be compensated at the rate of 5% above base pay for the term of the assignment. While receiving Senior Officer Assignment pay, employees are not eligible for FTO pay.

Incumbents in the Corporal classification will maintain status in the Corporal class, and maintain the terms and conditions of the classification as they existed at the time of their promotion; however, if the incumbents in the Corporal classification leave the positions (due to promotion, retirement, etc.), the Corporal classification revert to assignments of Senior Officers as provided above.

No individual may be concurrently assigned as both a Senior Officer and Detective.

19.7 DETECTIVE ASSIGNMENT PAY

Up to two individuals may be assigned as Detectives. The Detective assignment is not a permanent promotion to a higher classification. Continuation in the assignment is based on an annual performance evaluation of "Meets Satisfactory Performance Standards" as well as at the discretion of the Chief of Police. Detectives will be compensated at the rate of 5% above base pay for the term of the assignment.

Incumbent Corporals may apply for, and be appointed to the Detective assignment. If appointed, Corporals will maintain status in the Corporal class and maintain the terms and conditions of the classification as they existed at the time of their promotion. When the Detective assignment ends, the Corporal may be placed into a Senior Officer assignment or a regular officer position; still in the Corporal classification with the terms and conditions of the Corporal classification being maintained.

Any individual concurrently assigned as both a Corporal and Detective shall for compensation pay purposes only receive the Corporal salary and no additional compensation for being assigned as a Detective.

19.7.1 SCHOOL RESOURCE OFFICER (SRO) ASSIGNMENT PAY

The SRO assignment is not a permanent promotion to a higher classification. Continuation in the assignment is based on an annual performance evaluation of "Meets Satisfactory Performance Standards," as well as at the discretion of the Chief of Police.

SRO will be compensated at the rate of 5% above base pay for the term of the assignment, and will be responsible for juvenile investigations, as assigned.

19.8 NIGHT SHIFT DIFFERENTIAL

Sworn employees in this UNIT will receive 2.5% of base hourly pay for each hour worked between the hours of 7:00 p.m. and 7:00 a.m.

19.9 CANINE CARE PAY

An employee who is assigned a City canine, as part of a drug detection search program or a service dog program, and who boards the canine at his/her home, shall be paid \$13.50 per hour (hereinafter, the "canine care pay rate") for all time the employee spends outside of regular work hours on the care of the assigned canine. Compensable canine care activities include feeding, grooming, exercising, cleaning up, obtaining veterinarian services or caring for any injuries, and shall not include other time spent with the canine (e.g., commute time, as a family pet, etc.). Employees, subject to this provision, shall not receive on-call pay or call back pay for any time spent in the care of the assigned canine. The residence of the employee, assigned a City canine, shall not constitute the employee's work place. Travel (commute) time, from the employee's home to the assigned work site, or from the assigned work site to the employee's home, with the canine, shall not be considered time worked or care of the canine.

It is estimated and agreed that the officers spend one-half hour per day outside of regular work hours on compensable canine care activities. Off duty time spent on compensable canine care tasks shall be considered actual hours worked. These hours will be paid at the rate of 1.5 times the canine care pay rate (\$20.25).

ARTICLE 20 - BULLETIN BOARD

20.1 CITY agrees to furnish space for ASSOCIATION-purchased bulletin boards of reasonable size for the posting of ASSOCIATION material. Location of such bulletin boards shall be at the Police Station in an area commonly used for briefings or meetings.

20.2 ASSOCIATION agrees it shall not use bulletin boards to ridicule, defame, or harass any CITY employees, officer or agent.

ARTICLE 21 - PROBATIONARY PERIOD

The probationary period for new officers and lateral hires shall be 12 months.

ARTICLE 22 - DRUG AND ALCOHOL TESTING

ASSOCIATION agrees to the terms of the Substance Abuse and Testing Policy adopted by the Morro Bay City Council pursuant to Resolution No. 14-99.

ARTICLE 23 - GRIEVANCE PROCEDURE

23.1 The ASSOCIATION agrees that whenever investigation or processing of a grievance is to be transacted during working hours, only the amount of time necessary to bring about a prompt disposition of the matter will be utilized. It is further agreed that the time spent on an investigation and processing of grievances will not interfere with the normal operation of the department. CITY agrees to provide every reasonable amount of time for the investigation and the processing of a grievance, but by so agreeing does not imply that the processing or investigation of a grievance shall take priority over normal functions of the department.

CITY further agrees that any payment of overtime arising because of UNIT personnel's involvement in grievance investigation or processing shall not be authorized. Time spent on the investigation and processing of grievances will be recorded on a form provided by CITY. Stewards will be permitted reasonable time-off with pay for the investigation and processing of grievances provided, however, stewards shall first obtain permission from the department head and/or his/her designee and inform him/her of the nature of his/her business. CITY shall grant such permission promptly unless such absence would cause an undue interruption of work or would require the CITY to pay overtime in order to maintain the normal operation of the department.

Upon entering the work location, the steward shall inform the department head and supervisor of the nature of his/her business. Permission to leave a job will be granted to the employee involved unless such absence would cause an interruption of work. If the employee cannot be made available, the steward will seek an alternate time for employee availability with the department head or supervisor.

It is agreed that in some instances the investigation and processing of a grievance may be accomplished on the employee's time. This MOU is in recognition of the mutual sharing of costs involved in the handling of employee-initiated actions.

23.2 PURPOSE

The primary purpose of this procedure shall be to provide a means whereby an employee, without jeopardizing his employment, can express a personal grievance relating to his wages, hours of work, and working conditions, and obtain a fair and equitable disposition of his grievance.

23.3 ASSOCIATION REPRESENTATIVE

The CITY agrees that the ASSOCIATION may designate a representative to represent employees in the processing of grievances. The ASSOCIATION shall furnish the City Manager with a written list identifying by name and work location all regular and alternate representatives and the list shall be kept current by the ASSOCIATION at all times. The representatives are to begin investigating grievances only after the employee has tried to resolve the problem with his/her immediate supervisor and the two parties have failed to reach resolution of the problem.

23.4 PROCEDURE

Procedures shall be in accordance with Resolution No. 46-74 and any amendments thereto.

ARTICLE 24 - NO STRIKE, SLOW-DOWN OR OTHER INTERRUPTION TO WORK

24.1 ASSOCIATION agrees not to cause, authorize, advise, encourage or participate in any interruption of work or any other concerted action. The term "interruption of work" shall mean any work stoppage or strike (including economic and unfair labor practice strikes) or any intentional slow-down of work. The term "other concerted action" includes picketing or boycott activities by the ASSOCIATION.

24.2 Participation by any employee in any activity resulting in interruption of work or other concerted action or use of paid or unpaid leave for these purposes shall subject employee to disciplinary action, up to and including, discharge. When the City Manager has reason to believe that such leave is being used as a method of interruption work, the burden of proof of illness is upon the employee. Doctor's statements can be required in accordance with Resolution No. 34-83, Personnel Rules & Regulations, Section 13.B.4.

ARTICLE 25 - FULL UNDERSTANDING, MODIFICATION, WAIVER

25.1 This MOU sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any other prior or existing understanding or agreements by the parties, whether formal or informal, regarding any such matters are hereby superseded or terminated in their entirety.

25.2 It is agreed and understood that each party hereto voluntarily and unqualifiedly waives its right to negotiate, and agrees that the other party shall not be required to negotiate, with respect to any matter covered herein.

25.3 No agreement, alteration, understanding variation, waiver, or modification of any of the terms or provisions contained herein shall in any manner be binding upon the parties hereto unless made and executed in writing by all parties hereto, and if required, approved by the CITY and ratified by the membership of the ASSOCIATION.

25.4 The waiver of any breach of any term, or condition of this MOU by either party shall not constitute a precedent in the future enforcement of all its terms and provisions.

ARTICLE 26 - SEVERABILITY

If any provision(s) are held to be contrary to law by a court of competent jurisdiction, such provision will not be deemed valid and subsisting except to the extent permitted by law, but all other provisions will continue in full force and effect.

ARTICLE 27 – JOINT DRAFTING

Each party has cooperated in the drafting and preparation of this MOU. Hence, in any legal construction or interpretation to be made of this MOU, the same shall not be construed against any party.

ARTICLE 28 – CITY COUNCIL APPROVAL

The CITY’s labor relations representatives and the ASSOCIATION’s representatives have met and conferred in good faith on wages, hours and other terms and conditions of employment for the unit members represented by the ASSOCIATION and have reached agreements which are set forth in this MOU. This MOU, when executed by the CITY’s labor relations representatives and the ASSOCIATION representatives, constitutes a joint recommendation therefrom, after ratification of the ASSOCIATION membership, to be submitted to the City Council for its determination and approval by resolution, as the City Council may deem fit and proper. This MOU is of no force or effect unless or until approved and adopted by a resolution of the City Council.

[SIGNATURES ON NEXT PAGE]

MORRO BAY PEACE OFFICERS' ASSN.

CITY OF MORRO BAY

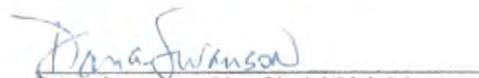

William Marvos, President


Scott Collins, City Manager


Stephen Leonesio, Chief Labor Negotiator


Colin Tanner, Labor Negotiator


Maria Lomeli, Employee Representative


Dana Swanson, City Clerk/ Risk Manager


Gene Stuart, Employee Representative


Laurie Goforth, Human Resources Analyst

MORRO BAY PEACE OFFICERS' ASSN.

CITY OF MORRO BAY



William Marvos, President



Scott Collins, City Manager

Stephen Leonesio, Chief Labor Negotiator

Colin Tanner, Labor Negotiator



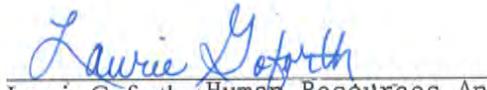
Maria Lomeli, Employee Representative



Dana Swanson, City Clerk/ Risk Manager



Gene Stuart, Employee Representative



Laurie Goforth, Human Resources Analyst

ATTACHMENT A

POLICE SALARY SCHEDULE

POSITION	ANNUAL COMPENSATION RANGE					
	1	2	3	4	5	6
Sergeant	\$ 78,089	\$ 81,993	\$ 86,093	\$ 90,398	\$ 94,918	\$ 99,664
Corporal	\$ 66,357	\$ 69,675	\$ 73,159	\$ 76,817	\$ 80,658	\$ 84,691
Special Assignments: Detective School Resource Officer Senior Officer	\$ 65,747	\$ 69,034	\$ 72,486	\$ 76,111	\$ 79,916	\$ 83,912
Police Officer	\$ 62,616	\$ 65,746	\$ 69,034	\$ 72,485	\$ 76,110	\$ 79,915