



# CITY OF MORRO BAY CITY COUNCIL AGENDA

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*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.*

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## **Regular Meeting Tuesday, May 26, 2020 – 5:30 P.M. Held Via Teleconference**

ESTABLISH QUORUM AND CALL TO ORDER  
MOMENT OF SILENCE  
PLEDGE OF ALLEGIANCE  
RECOGNITION  
CLOSED SESSION REPORT  
MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS  
CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS  
PRESENTATIONS - NONE

### PUBLIC COMMENT

*Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this Meeting will be conducted telephonically through Zoom and broadcast live on Cable Channel 20 and streamed on the City website (click [here](#) to view). Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, the Veterans' Hall will not be open for the meeting.*

### Public Participation:

*In order to prevent and mitigate the effects of the COVID-19 pandemic, and limit potential spread within the City of Morro Bay, in accordance with Executive Order N-29-20, the City will not make available a physical location from which members of the public may observe the meeting and offer public comment. Remote public participation is allowed in the following ways:*

- *Community members are encouraged to submit agenda correspondence in advance of the meeting via email to the City Clerk's office at [cityclerk@morrobayca.gov](mailto:cityclerk@morrobayca.gov) prior to the meeting and will be published on the City website with a final update one hour prior to the meeting start time. Agenda correspondence received less than an hour before the meeting start time may not be posted until after the meeting.*
- *Members of the public may watch the meeting either on cable Channel 20 or as streamed on the City [website](#).*
- *Alternatively, members of the public may watch the meeting and speak during general Public Comment or on a specific agenda item by logging in to the Zoom webinar using the information provided below. Please use the "raise hand" feature to indicate your desire to provide public comment. Each speaker will be allowed three minutes to provide input.*

Please click the link below to join the webinar:

➤ <https://us02web.zoom.us/j/82722747698?pwd=aWZpTzcwTHlRTk9xaTlmWVNWRFWFUQT09>

Password: 135692

➤ Or Telephone Attendee: (408) 638-0968 or (669) 900 6833 or (346) 248 7799; Webinar ID: 827 2274 7698; Password: 135692; Press \* 9 to "Raise Hand" for Public Comment

#### 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 APRIL 14, 2020, CITY COUNCIL MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-2 APPROVAL OF MINUTES FOR THE APRIL 28, 2020, CITY COUNCIL MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-3 APPROVAL OF MINUTES FOR THE MAY 12, 2020, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-4 ADOPTION OF RESOLUTION NO. 45-20 APPROVING COOPERATION AGREEMENT WITH THE URBAN COUNTY (CDBG PROGRAM) FOR FISCAL YEARS 2021-2023; (COMMUNITY DEVELOPMENT)

**RECOMMENDATION: Council review and approve Resolution No. 45-20 for Cooperation Agreement with the Urban County for Fiscal Years 2021-2023.**

#### B. PUBLIC HEARINGS

B-1 INITIATION OF A SPHERE OF INFLUENCE (SOI) AMENDMENT TO ADD 5 LOTS ABOVE PANORAMA DRIVE TO THE CITY'S SOI. APN: 073-075-002 AND PORTIONS OF APN 073-076-016 (LOTS 2, 8, 7 & 6); AND INITIATION OF DETACHMENT PROCEEDINGS FOR APN: 065-022-008. PROPERTY WOULD BE DETACHED FROM WITHIN THE CITY BOUNDARY RESULTING IN THE LOT BEING LOCATED WITHIN THE UNINCORPORATED COUNTY OF SAN LUIS OBISPO ; (COMMUNITY DEVELOPMENT DEPARTMENT)

**RECOMMENDATION: Staff recommends that the City Council: 1.) Take public comment; and 2) Continue item to a date uncertain.**

C. BUSINESS ITEMS

- C-1 REVIEW AND APPROVE POTENTIAL CHANGE ORDERS FOR THE WATER RECLAMATION FACILITY (WRF); REVIEW AND RECEIVE THE WRF CAPITAL PROJECT QUARTERLY UPDATE REPORT; AND REVIEW AND APPROVE PROPOSED GOOD FAITH LOCAL HIRE PROVISIONS FOR BID DOCUMENTS FOR THE REMAINING WRF PROJECT COMPONENTS INCLUDING AN AMOUNT FOR LIQUIDATED DAMAGES RELATED THERETO; (PUBLIC WORKS DEPARTMENT)

**RECOMMENDATION:** Staff recommends that the City Council consider the following:

1. Review and approve all twenty-six (26) potential change orders (PCOs) for the Water Reclamation Facility (WRF); and
2. As recommended by the Citizens Finance Advisory Committee (CFAC), review and receive the WRF Capital Project Quarterly Update Report and provide direction deemed appropriate if any with regard to the CFAC recommendation to provide the integrated Microsoft project management schedule with some key milestones for the WRF project updated frequently and shared with City staff, CFAC and City Council; and
3. Review and approve proposed local labor provision language for the bid packages and contract agreements for the remaining components of the WRF project; and
4. Provide a value to be used for liquidated damages for a contractor or subcontractor failing to comply with the local labor good faith requirements.

- C-2 REVIEW AND APPROVE CONSTRUCTION WORK RESTRICTIONS DEVELOPED FOR THE CONVEYANCE FACILITIES COMPONENT OF THE WATER RECLAMATION FACILITY PROJECT; (PUBLIC WORKS DEPARTMENT)

**RECOMMENDATION:** Council review and approve the construction work restrictions that have been developed for construction of the Conveyance Facilities component of the Water Reclamation Facility (WRF) Project.

- C-3 INTRODUCTION OF ORDINANCE NO. 633 TO AMEND CHAPTER 5.50 (COMMERCIAL CANNABIS OPERATIONS REGULATORY PROGRAM) OF TITLE 5 OF THE MORRO BAY MUNICIPAL CODE TO PERMIT CERTAIN ADULT-USE COMMERCIAL CANNABIS USES (RETAIL SALES, DELIVERIES AND (WHOLESALE) DISTRIBUTOR) AND AUTHORIZE COMMUNITY DEVELOPMENT DIRECTOR TO ISSUE ADMINISTRATIVE REGULATIONS; AND, GENERAL DISCUSSION AND POTENTIAL DIRECTION TO STAFF ON AUTHORIZED COMMERCIAL CANNABIS OPERATIONS; (CITY ATTORNEY)

**RECOMMENDATION:** Staff recommends:

1. Council discuss, and then consider introduction for first reading by title only and with further reading waived, Ordinance No. 633: An Ordinance of the City Council of the City of Morro Bay, California, Amending Chapter 5.50 (Commercial Cannabis Operations Regulatory Program) of Title 5 of the Morro Bay Municipal Code to Permit Certain Adult-Use Commercial Cannabis Uses (Retail Sales, Deliveries and (Wholesale) Distributor) and to Authorize Community Development Director to Issues Administrative Regulations.
2. Council discuss, and provide potential direction to Staff on, authorized commercial cannabis operations in the City of Morro Bay.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, June 9, 2020 at 5:30 p.m.** via teleconference.

**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 805-772-6205 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 UPON REQUEST BY CALLING THE CITY CLERK'S OFFICE AT 805-772-6205.**

**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.**

*City Council conducted this meeting in accordance with Section 3 of California Governor Newsom's Executive Order N-29-20 issued on March 17, 2020 in response to the present State of Emergency in existence due to the threat of COVID-19. This meeting was held via teleconference for all participants.*

PRESENT: John Headding Mayor  
Dawn Addis Council Member  
Robert Davis Council Member  
Jeff Heller Council Member  
Marlys McPherson Council Member

ABSENT: None

STAFF: Scott Collins City Manager  
Chris Neumeyer City Attorney  
Dana Swanson City Clerk  
Jennifer Callaway Finance Director/Acting Public Works Director  
Scot Graham Community Development Director  
Steve Knuckles Fire Chief  
Eric Endersby Harbor Director  
Rob Livick City Engineer

#### ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding established a quorum by roll call and called the meeting to order at 5:30 p.m., with all members present.

MOMENT OF SILENCE  
RECOGNITION – None

CLOSED SESSION REPORT – City Attorney Neumeyer stated no reportable action was taken by the City Council in accordance with the Brown Act.

MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS  
<https://youtu.be/6Dv07AAZVr4?t=156>

CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS  
<https://youtu.be/6Dv07AAZVr4?t=922>

#### PRESENTATIONS

- Morro Bay National Estuary Program 2020 State of the Bay Update presentation by Lexi Bell  
<https://youtu.be/6Dv07AAZVr4?t=1260>
- Morro Bay Chamber of Commerce Quarterly Update by Erica Crawford  
<https://youtu.be/6Dv07AAZVr4?t=2252>

PUBLIC COMMENT  
<https://youtu.be/6Dv07AAZVr4?t=3432>

Rema Cory, Hookah Chamber of Commerce, requested the Council exempt hookah products from the flavored tobacco ban.

Neve Donahue opposed a ban on the sale of flavored tobacco products and hoped for a compromise that would not ban the sale of hookah products.

George Johnson, Regal Hookah, requested the Council consider amending the proposed ordinance to provide a cultural exemption for non-electronic hookah products.

Melanie Williams-Mahan, Morro Bay, expressed concern regarding the financial impacts of the COVID-19 pandemic, suggested putting the WRF project on hold, and spoke in opposition for Item C-3.

Betty Winholtz, Morro Bay, informed the City there were issues with the meeting livestream.

Dan Sedley, Morro Bay, suggested the WRF project be deferred and requested information regarding financial impacts of the COVID-19 pandemic.

Michelle Leicester-Cadaret, Morro Bay, spoke regarding Item C-4, requesting language be added to protect single-family homeowners in close proximity to their neighbors from secondhand smoke.

Mayor Headding closed public comment.

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

A. CONSENT AGENDA  
<https://youtu.be/6Dv07AAZVr4?t=4909>

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 11, 2020, CITY COUNCIL MEETING;  
(ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-2 APPROVAL OF MINUTES FOR THE FEBRUARY 25, 2020, CITY COUNCIL SPECIAL  
MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-3 APPROVAL OF MINUTES FOR THE MARCH 10, 2020, CITY COUNCIL SPECIAL  
CLOSED MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-4 APPROVAL OF MINUTES FOR THE MARCH 19, 2020, CITY COUNCIL SPECIAL  
MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-5 APPROVAL OF MINUTES FOR THE MARCH 23, 2020, CITY COUNCIL SPECIAL  
CLOSED MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-6 APPROVAL OF MINUTES FOR THE APRIL 1, 2020, CITY COUNCIL SPECIAL MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-7 APPROVAL OF MINUTES FOR THE APRIL 3, 2020, CITY COUNCIL SPECIAL CLOSED MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-8 ADOPTION OF RESOLUTION NO. 27-20 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. 27-20 ordering the preparation of an Engineer's Report detailing the expenses projected for Fiscal Year 2020/21 for the maintenance of the Cloisters Park and Open Space under the provisions of the "Landscaping and Lighting Act of 1972."**

A-9 ADOPTION OF RESOLUTION NO. 28-20 INITIATING PROCEEDINGS TO LEVY THE ANNUAL ASSESSMENT FOR THE NORTH POINT NATURAL AREA - LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT; (PUBLIC WORKS)

**RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 28-20 ordering the preparation of an Engineer's Report detailing the expenses projected for Fiscal Year 2020/21 for the maintenance of the North Point Natural Area under the provisions of the "Landscaping and Lighting Act of 1972."**

A-10 ADOPTION OF RESOLUTION NO. 29-20 APPROVING A 1-YEAR LEASE AGREEMENT WITH THE MORRO BAY SKATEBOARD MUSEUM, INC. FOR PROPERTY LOCATED AT 781 MARKET STREET.; (COMMUNITY DEVELOPMENT)

**RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 29-20, approving a 1-year Lease Agreement for the City property located at 781 Market Street (APN: 066-321-027).**

A-11 AUTHORIZATION TO SUBMIT A LOCAL EARLY ACTION PLANNING (LEAP) GRANT APPLICATION TO THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT; (COMMUNITY DEVELOPMENT)

**RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 30-20 authorizing staff to submit a grant application to the State of California Department of Housing and Community Development (HCD) for Local Early Action Planning Grant (LEAP) program funds to assist in the preparation and adoption of planning documents and process improvements that accelerate housing production and facilitate compliance to implement the sixth cycle of the regional housing need assessment (RHNA) in the City of Morro Bay, in the amount of \$65,000.**

A-12 CONSIDER RESOLUTION 31-20 APPROVING DESIGNATION OF CITY'S AGENTS IN APPLYING FOR REIMBURSEMENT FROM THE CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES (CAL OES) FOR FEMA COVID-19 RELATED EXPENSES

AND AUTHORIZING CITY MANAGER TO TAKE ALL NECESSARY ACTIONS FOR COVID-19 REIMBURSEMENTS; (CITY ATTORNEY)

**RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 31-20 approving the Designation of Applicant's Agent Resolution and authorizing the City Manager, or designee, to take all necessary actions to apply for reimbursement of eligible City costs resulting from the COVID-19 pandemic.**

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

Council Member Heller pulled Items A-8, A-9 and A-12.

MOTION: Council Member Addis moved approval of all items on the Consent agenda except Items A-8, A-9 and A-12. The motion was seconded by Council Member Davis and carried 5-0 by roll call vote.

A-8 ADOPTION OF RESOLUTION NO. 27-20 INITIATING PROCEEDINGS TO LEVY THE ANNUAL ASSESSMENT FOR THE CLOISTERS PARK AND OPEN SPACE - LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT; (PUBLIC WORKS)

A-9 ADOPTION OF RESOLUTION NO. 28-20 INITIATING PROCEEDINGS TO LEVY THE ANNUAL ASSESSMENT FOR THE NORTH POINT NATURAL AREA - LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT; (PUBLIC WORKS)  
<https://youtu.be/6Dv07AAZVr4?t=5079>

Regarding Items A-8 and A-9, Council Member Heller asked if the process to continue the assessments could be simplified to eliminate the need for three separate resolutions. City Attorney Neumeyer explained any change in the renewal procedures would require an agreement between the City and affected property owners.

A-12 CONSIDER RESOLUTION 31-20 APPROVING DESIGNATION OF CITY'S AGENTS IN APPLYING FOR REIMBURSEMENT FROM THE CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES (CAL OES) FOR FEMA COVID-19 RELATED EXPENSES AND AUTHORIZING CITY MANAGER TO TAKE ALL NECESSARY ACTIONS FOR COVID-19 REIMBURSEMENTS; (CITY ATTORNEY)  
<https://youtu.be/6Dv07AAZVr4?t=5426>

At Council Member Heller's request, staff described the costs that are anticipated to be reimbursable, and the Council discussed the importance of Federal and State assistance and reimbursement for direct costs and other impacts associated with the COVID-19 pandemic.

MOTION: Council Member Addis moved to approve Items A-8, A-9 and A-12. The motion was seconded by Council Member Heller and carried 5-0 by roll call vote.

B. PUBLIC HEARINGS - None

C. BUSINESS ITEMS

C-1 CONSIDERATION OF RESOLUTION NO. 32-20 TO JOIN THE SAN LUIS OBISPO COUNTYWIDE REGIONAL COMPACT ON HOUSING; (CITY MANAGER)  
<https://youtu.be/6Dv07AAZVr4?t=5885>

City Manager Collins introduced Carolyn Berg from the County of San Luis Obispo, who presented the report and responded to Council inquiries.

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

Betty Winholtz, Morro Bay, asked if one or more cities could back out of the agreement and how it would be handled if one city overruled another.

Dan Sedley, Morro Bay, expressed concern about joining countywide group and asked about the funding mechanism.

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

Staff responded to questions raised during public comment.

MOTION: Mayor Headding moved to receive a presentation and adopt Resolution No. 32-20 approving and authorizing the Mayor to sign the San Luis Obispo Countywide Regional Compact (on housing). The motion was seconded by Council Member Addis for discussion.

Following individual comments, the motion carried 5-0 by roll call vote.

- C-2 ADOPT RESOLUTION NO. 33-20 REGARDING PUBLICATION OF EMERGENCY ORDERS ON EVICTIONS, FORECLOSURES AND PRICE GOUGING (COVID-19 STATE OF EMERGENCY); (CITY ATTORNEY)  
<https://youtu.be/6Dv07AAZVr4?t=7615>

City Attorney Neumeyer provided the report and responded to Council inquiries.

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

Dan Sedley, Morro Bay, expressed concern regarding the call-in system for public comment and requested the meeting be suspended as the public is being prevented from observing the meeting and commenting on the meeting.

Betty Winholtz, Morro Bay, agreed with the prior speaker's concerns and spoke in support of the agenda item.

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

MOTION: Council Member McPherson moved to recommend the City Council adopt Resolution No. 33-20 regarding Publication of Emergency Orders on Evictions, Foreclosures and Price Gouging (COVID-19 State of Emergency). The motion was seconded by Council Member Addis for discussion.

Following discussion, the motion carried 5-0 by roll call vote.

The Council took a brief recess at 8:05 p.m. The meeting reconvened at 8:12 p.m. with all members present.

- C-3 APPROVAL OF CONSULTANT AGREEMENT FOR IMPLEMENTATION OF THE FIRST PHASE OF THE MORRO BAY ONEWATER PLAN (WATER AND WASTEWATER) AND AUTHORIZATION FOR THE CITY MANAGER TO SIGN THE AGREEMENT; (PUBLIC WORKS)

<https://youtu.be/6Dv07AAZVr4?t=9797>

City Engineer Livick provided the report and introduced Steve Kahn of Cannon Corporation, who provided additional information and responded to Council inquires.

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

Dan Sedley, Morro Bay, requested confirmation residents will not be asked to pay for their back yard laterals out to new mains in the street and whether this project will increase utility rates.

Betty Winholtz, Morro Bay, raised concerns about the Nutmeg Tank project and other issues.

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

Mr. Livick and Mr. Kahn responded to questions raised during public comment.

**MOTION:** Council Member Addis moved to approve and authorize the City Manager to execute a time and materials consultant agreement with Cannon Corporation, for engineering services to implement the first phase of the OneWater plan in an amount not to exceed \$815,237 without prior written authorization, and additionally authorize a ten-percent contingency to be used, for additions to the scope of work, at the discretion of the City Manager, resulting in a total authorization of \$896,761, with the budget for the project will come from the water and wastewater enterprise funds and will not impact the City's General Fund. The motion was seconded by Council Member Davis for discussion.

Council Member Heller favored award of contract to Cannon Corporation but felt the structure of the proposed contract was not in the best interest of the City. He preferred a fixed price contract over time and materials.

Following discussion, the motion carried 4-1 by roll call vote with Council Member Heller opposed.

**MOTION:** Council Member McPherson moved the meeting to go past 9:30 p.m. The motion was seconded by Council Member Davis and carried 5-0 by roll call vote.

**C-4 INTRODUCTION OF ORDINANCE NO. 632 TO REGULATE TOBACCO, VAPING AND SECONDHAND SMOKE, INCLUDING THROUGH A TOBACCO RETAILER LICENSING PROGRAM, A PROHIBITION ON THE SALE OF E-CIGARETTES (VAPING PRODUCTS), AND ENHANCING THE CITY'S CURRENT SECONDHAND SMOKING REGULATIONS BY A SMOKEFREE POLICY FOR MULTI-UNIT HOUSING; (CITY ATTORNEY)**

<https://youtu.be/6Dv07AAZVr4?t=13869>

City Attorney Neumeyer provided the report and responded to Council inquires.

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

Dan Sedley, Morro Bay, hoped the ordinance will protect residents from secondhand smoke.

An unnamed speaker expressed concern about the precedent if restrict adults from purchasing things we feel might not be beneficial to others and requested hookah products be provided an exemption based on its cultural aspects.

Jeremy Bird agreed it was important to protect children but felt the proposed ordinance disproportionately affected family traditions.

An unnamed speaker opposed any flavor ban that would include hookah products.

Michelle Leicester-Cadaret, Morro Bay, requested single family homes be included in the ordinance to protect all individuals, not just those in multi-family areas.

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

MOTION: Mayor Headding moved to introduce for first reading, by title only with further reading waived, Ordinance No. 632 to both add Chapter 5.54 (Tobacco, Electronic Cigarettes and Vaping) to Title 5 of the Municipal Code as well as to amend Chapter 9.24 (Secondhand Smoking Regulations) of Title 9 of the Municipal Code. The motion was seconded by Council Member Addis and carried 4-0-1 by roll call vote with Council Member McPherson abstaining.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

In response to resident requests, Council Member Addis requested an agenda item to consider writing a letter to the Governor in support of a rent freeze. There was no support for the request.

E. ADJOURNMENT

The meeting adjourned at 9:57 p.m.

Recorded by:

Dana Swanson  
City Clerk

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*City Council conducted this meeting in accordance with Section 3 of California Governor Newsom's Executive Order N-29-20 issued on March 17, 2020 in response to the present State of Emergency in existence due to the threat of COVID-19. This meeting was held via teleconference for all participants.*

PRESENT:            John Headding                            Mayor  
                         Dawn Addis                                Council Member  
                         Robert Davis                              Council Member  
                         Jeff Heller                                 Council Member  
                         Marlys McPherson                      Council Member

ABSENT:            None

STAFF:             Scott Collins                              City Manager  
                         Chris Neumeyer                          City Attorney  
                         Dana Swanson                            City Clerk  
                         Jennifer Callaway                      Finance Director/Acting Public Works Director  
                         Scot Graham                              Community Development Director  
                         Steve Knuckles                          Fire Chief  
                         Jody Cox                                  Police Chief  
                         Eric Endersby                             Harbor Director  
                         Rob Livick                                 City Engineer

**ESTABLISH QUORUM AND CALL TO ORDER**

Mayor Headding called the meeting to order by roll call vote at 5:30 p.m., with all but Council Member Addis present. Council Member Addis joined the meeting at 5:33 p.m.

**MOMENT OF SILENCE**

**PLEDGE OF ALLEGIANCE**

RECOGNITION – None

**CLOSED SESSION REPORT** – City Attorney Neumeyer stated no reportable action was taken by the City Council in accordance with the Brown Act.

**MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS**

[https://youtu.be/G8b\\_R0tq5\\_g?t=158](https://youtu.be/G8b_R0tq5_g?t=158)

**CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS**

[https://youtu.be/G8b\\_R0tq5\\_g?t=931](https://youtu.be/G8b_R0tq5_g?t=931)

**PRESENTATIONS**

- Month of the Child and Child Abuse Prevention Proclamation presented to Raechelle Bowlay, Community Action Partnership of SLO County ("CAPSLO")  
[https://youtu.be/G8b\\_R0tq5\\_g?t=1196](https://youtu.be/G8b_R0tq5_g?t=1196)

**PUBLIC COMMENT**

[https://youtu.be/G8b\\_R0tq5\\_g?t=1580](https://youtu.be/G8b_R0tq5_g?t=1580)

Cherise Hansson, Morro Bay, requested the City consider reducing percentage rents for Tidelands Trust leaseholders to encourage businesses to stay the course.

Phil Hill, Morro Bay, opposed increased liveaboard fees presented in Item B-1.

Dan Sedley, Morro Bay, asked how the City planned to deal with increased visitors and various questions related to the Water Reclamation Facility project.

Jeremiah O'Brien, Morro Bay Commercial Fishermen's Organization, commented on the proposed use of Castle Wind community benefit funds and hoped once those loans were paid back funds would go to T-Pier and dock repairs, as planned.

Betty Winholtz, Morro Bay, spoke regarding PG&E's draft Statement of Basis for remediation of the Morro Bay Power Plant property and hoped the City would agendaize this item and consider submitting comments to the Department of Toxic Substances.

Melanie Williams-Mahan, Morro Bay, expressed concern about individuals not wearing masks and gloves in public and stated her support for filling vacant police officer positions.

Mayor Heading closed public comment.

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

A. CONSENT AGENDA  
[https://youtu.be/G8b\\_R0tq5\\_g?t=3543](https://youtu.be/G8b_R0tq5_g?t=3543)

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 APRIL 14, 2020, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-2 ADOPTION OF ORDINANCE NO. 632 TO REGULATE TOBACCO, VAPING AND SECONDHAND SMOKE, INCLUDING THROUGH A TOBACCO RETAILER LICENSING PROGRAM, A PROHIBITION ON THE SALE OF E-CIGARETTES (VAPING PRODUCTS), AND ENHANCING THE CITY'S CURRENT SECONDHAND SMOKING REGULATIONS BY A SMOKEFREE POLICY FOR MULTI-UNIT HOUSING; (CITY ATTORNEY)

**RECOMMENDATION: Staff recommends Council consider adopting, by second reading and by title only with further reading waived, Ordinance No. 632, entitled "An Ordinance of the City Council of the City of Morro Bay, California, Adding Chapter 5.54 (Tobacco, Electronic Cigarettes and Vaping) to Title 5 (Business Tax Certificates and Regulations), and amending Chapter 9.24 (Secondhand Smoking Regulations) of Title 9 (Public Peace, Morals and Welfare), of the Morro Bay Municipal Code, to regulate the sale of tobacco and vaping products and update and expand the City's Secondhand Smoking Regulations."**

A-3 RESOLUTION AUTHORIZING STAFF TO SIGN A GRANT AGREEMENT WITH THE STATE COASTAL CONSERVANCY TO RECEIVE ONE HUNDRED AND FIFTY THOUSAND DOLLARS FOR USE IN PURCHASE OF DOG BEACH (APN: 073-075-016 AND PORTION OF APN 065-022-008); (COMMUNITY DEVELOPMENT)

**RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 34-20 authorizing the Community Development Director to accept grant funds from the**

**State Coastal Conservancy (SCC), for acquisition of Dog Beach and authorizing the Community Development Director to negotiate and sign all documents related to the grant agreement on behalf of the City of Morro Bay.**

A-4 ADOPT RESOLUTION NO. 35-20 TO ESTABLISH ANNUAL CITY MANAGER EVALUATION PROCESS AND RESCIND RESOLUTION NO. 93-18; (CITY ATTORNEY)

**RECOMMENDATION: Based on comments from the City Council during a City Manager's confidential evaluation on April 14, 2020, the City Attorney recommends the City Council consider adopting Resolution No. 35-20, establishing an annual Council evaluation process for the City Manager.**

A-5 PROCLAMATION DECLARING APRIL 2020 AS FAIR HOUSING MONTH; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-6 PROCLAMATION DECLARING APRIL 2020 AS MONTH OF THE CHILD AND CHILD ABUSE PREVENTION MONTH; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

Mayor Heading opened public comment for the Consent Agenda.

Betty Winholtz, Morro Bay, raised questions regarding Item A-3.

Dan Sedley, Morro Bay, spoke regarding Item A-3.

The public comment period was closed.

Council Member Davis pulled Item A-3. Council Member McPherson noted a correction was needed on Item A-4.

MOTION: Council Member Addis moved approval of Items A-1, A-2, A-5 and A-6 on the Consent Agenda. The motion was seconded by Council Member Heller and carried 5-0 by roll call vote.

A-3 RESOLUTION AUTHORIZING STAFF TO SIGN A GRANT AGREEMENT WITH THE STATE COASTAL CONSERVANCY TO RECEIVE ONE HUNDRED AND FIFTY THOUSAND DOLLARS FOR USE IN PURCHASE OF DOG BEACH (APN: 073-075-016 AND PORTION OF APN 065-022-008); (COMMUNITY DEVELOPMENT)  
[https://youtu.be/G8b\\_ROtq5\\_g?t=4268](https://youtu.be/G8b_ROtq5_g?t=4268)

Staff responded to questions raised during public comment,

MOTION: Council Member Addis moved to approve Item A-3. The motion was seconded by Council Member Heller and carried 5-0 by roll call vote.

A-4 ADOPT RESOLUTION NO. 35-20 TO ESTABLISH ANNUAL CITY MANAGER EVALUATION PROCESS AND RESCIND RESOLUTION NO. 93-18; (CITY ATTORNEY)  
[https://youtu.be/G8b\\_ROtq5\\_g?t=4511](https://youtu.be/G8b_ROtq5_g?t=4511)

MOTION: Council Member McPherson moved to approve A-4 with the following correction: the evaluation form should have 3-point scale with 5 = Exceeds

Standard, 3 = Meets Standard and 1 = Needs Improvement. The motion was seconded by Council Member Addis and carried 5-0 by roll call vote.

**B. PUBLIC HEARINGS**

- B-1 PUBLIC HEARING AND ADOPTION OF RESOLUTION NO. 36-20, WHICH RESCINDS RESOLUTION NO. 88-19 AND AMENDS AND ADOPTS THE COMPLETE FY 2020/21 MASTER FEE SCHEDULE; (FINANCE DIRECTOR)  
[https://youtu.be/G8b\\_ROtq5\\_g?t=4570](https://youtu.be/G8b_ROtq5_g?t=4570)

Finance Director Callaway provided the report and responded to Council inquires.

Mayor Headding opened the Public Hearing.

Dan Sedley, Morro Bay, opposed any fee increase stating his belief it was double taxation for residents paying property taxes.

Craig Kent spoke in opposition to the proposed liveaboard fees.

Betty Winholtz, Morro Bay, urged the Council to not raise appeal fees and disagreed with philosophy of full cost recovery for services.

Phil Hill, Morro Bay, opposed the increased liveaboard fees.

Mayor Headding opened Public Comment.

The Public Hearing was closed.

Following discussion, a majority of the Council supported the fees, as presented, and appreciation for the phased approach in light of the COVID-19 pandemic and impact on the local economy. Council Member Heller disagreed and urged the City to look at operations and cut expenses before imposing new fees.

**MOTION:** Mayor Headding moved to adopt Resolution No. 36-20, which updates the City's Master Fee Schedule for Fiscal Year (FY) 2020/21. This Resolution will also rescind Resolution No. 88-19 that adopted the current FY 2019/20 Master Fee Schedule and replaces it in its entirety for the new fiscal year. The motion was seconded by Council Member McPherson and carried 4-1 by roll call vote with Council Member Heller opposed.

**C. BUSINESS ITEMS**

- C-1 APPROVE THE MEMORANDUM OF UNDERSTANDING (MOU) WITH THE MORRO BAY OPEN SPACE ALLIANCE (MBOSA) RELATED TO CERRITO PEAK/EAGLE ROCK (EAGLE ROCK); (CITY MANAGER)  
[https://youtu.be/G8b\\_ROtq5\\_g?t=7596](https://youtu.be/G8b_ROtq5_g?t=7596)

City Manager Collins introduced the item and turned it over to City Attorney Neumeyer who provided the report and responded to Council inquires.

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

Betty Winholtz, Morro Bay, commented on the lower amount being accepted by the City and agreed funds received should go back to the Emergency Fund.

Dan Sedley, Morro Bay, opposed the item, expressing concern about maintenance costs and stating it was an inappropriate use of emergency reserve funds.

John Weiss, Morro Bay, agreed with previous speakers and congratulated MBOSA on their successful fundraising efforts.

Melanie Williams-Mahan, Morro Bay, suggested the City have the property appraised to ensure the property is sold at market rate.

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

MOTION: Mayor Headding moved to approve the MOU with the MBOSA through which MBOSA will reimburse the City the \$265,000 the City paid to purchase Eagle Rock to preserve it as open space and that the \$265k be placed into the GF Reserve Account. The motion was seconded by Council Member McPherson for discussion.

Following discussion, the motion carried 4-1 by roll call vote with Council Member Heller opposed.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS  
[https://youtu.be/G8b\\_R0tq5\\_g?t=10088](https://youtu.be/G8b_R0tq5_g?t=10088)

Council Member Heller suggested the balance of issues covered during the April 28 special meeting be agendaized as soon as possible in a format where public comment could be accepted for each item. There was consensus to bring back an update on financial issues as soon as possible.

Council Member Heller requested an agenda item covering the Department of Toxic Substances public comment period regarding PG&E's draft Statement of Basis document. Since no Council action was needed, there was support to either bring a report forward as a Consent item or publish information on the City website.

Council Member Addis asked if there was a need to agendaize adult use cannabis ordinance. Staff confirmed that item will be brought to the Council in May.

E. ADJOURNMENT

The meeting adjourned at 8:30 p.m.

Recorded by:

Dana Swanson  
City Clerk

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MINUTES - MORRO BAY CITY COUNCIL  
SPECIAL CLOSED SESSION MEETING –  
MAY 12, 2020 – 3:00 P.M.  
TELECONFERENCE

AGENDA NO: A-3  
MEETING DATE: May 26, 2020

*City Council conducted this meeting in accordance with Section 3 of California Governor Newsom's Executive Order N-29-20 issued on March 17, 2020 in response to the present State of Emergency in existence due to the threat of COVID-19. This meeting was held via teleconference for all participants.*

PRESENT:            John Headding                    Mayor  
                         Dawn Addis                        Council Member  
                         Robert Davis                      Council Member  
                         Jeff Heller                         Council Member  
                         Marlys McPherson               Council Member

ABSENT:            None

STAFF:             Scott Collins                      City Manager  
                         Chris Neumeyer                  City Attorney  
                         Colin Tanner                      Special Labor Counsel  
                         Scot Graham                      Community Development Director  
                         Eric Endersby                     Harbor Director  
                         Rob Livick                         City Engineer

**ESTABLISH QUORUM AND CALL TO ORDER**

Mayor Headding called the meeting to order at 3:00 p.m. with all members present.

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

**CLOSED SESSION PUBLIC COMMENT** – Mayor Headding opened public comment for items on the agenda; seeing none, the public comment period was closed.

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

**CS-1 CONFERENCE WITH LABOR NEGOTIATORS**

A closed session will be held, pursuant to Government Code § 54957.6, with City negotiator and designated labor representative Colin Tanner, special labor counsel, regarding labor negotiations with employee organizations: Morro Bay Firefighters' Association and Service Employee's International Union - SEIU Local 620

**CS-2 GOVERNMENT CODE SECTION 54956.8 – CONFERENCE WITH REAL PROPERTY NEGOTIATOR:**

Property:            Lease Sites 86/86W (Libertine Pub, 801 Embarcadero)  
Property Negotiators: Burt Caldwell  
Agency Negotiators: Eric Endersby, Harbor Director; Chris Neumeyer, City Attorney; Scott Collins, City Manager  
Negotiation:        Price and Terms of Payment

**CS-3 CONFERENCE WITH REAL PROPERTY NEGOTIATOR – GOVERNMENT CODE SECTION 54956.8**

Property:            2783 Coral, Vacant lot at corner of Coral Avenue and San Jacinto; APN: 065-386-015  
Property Negotiators: Morro Bay Ventures LLC  
Agency Negotiators: Scott Collins, City Manager; Scot Graham, Community Development Director and Chris Neumeyer, City Attorney  
Under Negotiation: Price and Terms of Payment

**CS-4 CONFERENCE WITH REAL PROPERTY NEGOTIATOR – GOVERNMENT CODE SECTION 54956.8**

Property: Assessor Parcel No. 068-411-007  
Property Negotiators: Dan Shepard et al  
Agency Negotiators: Scott Collins, City Manager; Rob Livick, City Engineer; Eric Casares, WRF Program Manager and Chris Neumeyer, City Attorney  
Under Negotiation: Price and Terms of Payment

RECONVENE IN OPEN SESSION – The City Council reconvened in Open Session. The Council did not take any reportable action in accordance with the Brown Act.

ADJOURNMENT - The meeting adjourned at 5:14 p.m.

Recorded by:

Dana Swanson  
City Clerk



<b>AGENDA NO:</b>	<b>A-4</b>
<b>MEETING DATE:</b>	<b>May 26, 2020</b>

# Staff Report

**TO:** Honorable Mayor and City Council **DATE:** May 18, 2020

**FROM:** Cindy Jacinth, Senior Planner

**SUBJECT:** Adoption of Resolution No. 45-20 approving Cooperation Agreement with the Urban County (CDBG program) for Fiscal Years 2021-2023

**RECOMMENDATION**

Council review and approve Resolution No. 45-20 for Cooperation Agreement with the Urban County for Fiscal Years 2021-2023.

**ALTERNATIVES**

The City Council may move to decline participation in the Urban County of San Luis Obispo which would decline federal formula CDBG allocation or entitlement and instead become an eligible applicant to the competitive State CDBG, HOME and ESG funding programs.

**FISCAL IMPACT**

Fiscal impact is anticipated to be negligible as County staff administer most of the program. The City is able to use a portion of its CDBG funding for administrative staff costs. Total City and County administrative costs are limited to 20% per federal requirements.

**BACKGROUND/DISCUSSION**

Since 2011, the City of Morro Bay has participated with other cities and the County of San Luis Obispo as an “Urban County” for purposes of U.S. Department of Housing and Urban Development (HUD) entitlement funding of Community Development Block Grant (CDBG), HOME, and Emergency Shelter Grant (ESG) funds. The City’s cooperation agreement with the Urban County runs in a 3-year cycle and currently expires June 30, 2021. On April 3, 2020, the City received a letter (Attachment 3) from the County announcing an invitation to participate again in the Urban County. Participation in the Urban County would extend the City’s involvement for an additional three years of HUD entitlement funding and expire June 30, 2024 (Attachment 2).

For the next 3-year cycle, staff recommends the City continue its participation with the Urban County. Estimated amount of CDGB funding for 2021 is anticipated to be consistent with previous year’s entitlement allocations. CDBG funding over the last 3 years has averaged approximately \$69,000. This funding has been used for repayment of the \$236,420.47 CDBG advance received via the three-way 2016 agreement between the City, County of San Luis Obispo, and City of Atascadero. The CDBG advance was used to fund the City’s Pedestrian

Prepared By: <u>  CJ  </u>	Dept Review: <u>  SG  </u>
City Manager Review: <u>  SC  </u>	City Attorney Review: <u>  CFN  </u>

Accessibility Project to help meet ADA priorities in the downtown area and has since been completed.

The County of San Luis Obispo is the lead agency for the Urban County and its federal requirements. The County will perform most of the work in preparing the five-year consolidated plan, annual plans and the various federally required reports, conducting citizen participation efforts and providing training to City staff on federal CDBG requirements as consistent with previous cooperation agreement. City staff will still be responsible for some administrative activities in order to comply with federal requirements, and the City will be able to use a small portion of its CDBG allocation for those staff costs.

**CONCLUSION**

Staff has attached Resolution No. 45-20 which approves the Cooperation Agreement (Attachment 2) between the County of San Luis Obispo and the City of Morro Bay, subject to approval by the City Attorney, and authorizes the City Manager to sign. If the Resolution is adopted, the Cooperation Agreement is scheduled to be presented to the County Board of Supervisors for their approval at their July 7, 2020 meeting.

**ATTACHMENTS**

1. Resolution No. 45-20
2. Proposed Cooperation Agreement 2021-2023
3. April 3, 2020 Notice of Opportunity Letter

**RESOLUTION NO. 45-20**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
APPROVING A COOPERATION AGREEMENT BETWEEN THE COUNTY  
OF SAN LUIS OBISPO AND THE CITY OF MORRO BAY  
FOR JOINT PARTICIPATION IN THE URBAN COUNTY FOR PURPOSES OF  
RECEIVING FEDERAL FUNDING UNDER COMMUNITY DEVELOPMENT BLOCK  
GRANT PROGRAM, THE HOME INVESTMENT PARTNERSHIP PROGRAM,  
AND THE EMERGENCY SOLUTIONS GRANT PROGRAM,  
FOR FISCAL YEARS 2021-2023**

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

**WHEREAS**, the County of San Luis Obispo, a political subdivision of the State of California (“County”), and the City of Morro Bay, a municipal corporation (“City”), desire to participate in the Community Development Block Grant (CDBG) program (Program) administered by the U.S. Department of Housing and Urban Development (HUD); and

**WHEREAS**, the Program will promote the public health, safety and welfare by providing grant funds to be used by the City and County to improve housing opportunities for low and moderate- income households, to encourage economic reinvestment, to improve community facilities and public services, and to provide other housing-related facilities, or services; and

**WHEREAS**, the County submitted to the City a Notice of Opportunity to be included in the Urban County of San Luis Obispo for Purposes of Federal CDBG, HOME, and ESG Funding in a letter dated April 3, 2020; and

**WHEREAS**, the County’s April 3, 2020 letter states that under HUD regulation, the City must notify the County via email whether the City elects to participate in the Urban County; and

**WHEREAS**, the City desires to participate jointly with the County in said program and responded via email correspondence dated May 1, 2020; and

**WHEREAS**, HUD requires that the parties enter into a cooperation agreement to define their rights and obligations as a prerequisite of participation in the CDBG program; and

**WHEREAS**, the proposed 2021-2023 cooperation agreement is consistent with the General Plan and with City and County policies encouraging cooperation between agencies on issues of regional significance such as affordable housing and public improvements; and

**WHEREAS**, the proposed cooperation agreement will promote the public health, safety and welfare by enabling the City and County to participate in the U.S. Department of Housing and Urban Development’s CDBG program under an “urban county” entitlement; thus making available funds for a variety of housing, economic development, and public services programs not otherwise available; and

**WHEREAS**, the City and County enter into yearly subrecipient agreements which establish administrative policies and procedures, performance standards, and guidelines for funding specific CDBG programs and projects; and

**WHEREAS**, the proposed cooperation agreement is not a “project” for purposes of compliance with the provisions of the California Environmental Quality Act (CEQA) Section 15378 and the City’s CEQA Guidelines.

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

1. The City Council hereby approves and authorizes the City Manager to participate and also enter into a cooperation agreement, subject to approval by the City Attorney, with the County to enable joint participation in the Program.
2. The City Manager or his/her designee is hereby authorized to act on behalf of the City in connection with the implementation of the agreement, ongoing operation of the Program, and other activities necessary to carry out the intent of the cooperation agreement.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 26<sup>th</sup> day of May 2020 on the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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JOHN HEADDING, Mayor

ATTEST:

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DANA SWANSON, City Clerk

**A COOPERATION AGREEMENT BETWEEN THE COUNTY OF SAN LUIS OBISPO AND THE CITY OF MORRO BAY FOR JOINT PARTICIPATION IN THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM, THE HOME INVESTMENT PARTNERSHIPS PROGRAM, AND THE EMERGENCY SOLUTIONS GRANT PROGRAM FOR FISCAL YEARS 2021 THROUGH 2023**

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the County of San Luis Obispo, a political subdivision of the State of California, hereinafter called "County," and the City of Morro Bay, a municipal corporation of the State of California, located in the County of San Luis Obispo, hereinafter called "City;" jointly referred to as "Parties."

**WITNESSETH**

**WHEREAS**, in 1974, the U.S. Congress enacted and the President signed a law entitled, The Housing and Community Development Act of 1974, herein called the "Act." The Act is omnibus legislation relating to federal involvement in a wide range of housing and community development activities and contains eight separate titles; and

**WHEREAS**, Title I of the Act is entitled "Community Development" and governs programs for housing and community development within metropolitan cities and urban counties or communities by providing financial assistance annually for area-wide plans and for housing, public services and public works programs; and

**WHEREAS**, the Community Development Block Grant Program (hereinafter referred to as "CDBG"), the HOME Investment Partnerships Act Program (hereinafter referred to as "HOME"), and the Emergency Solutions Grant Program (hereinafter referred to as "ESG") are consolidated under Title I of the Act; and

**WHEREAS**, the County has requested of the federal Department of Housing and Urban Development, hereinafter referred to as "HUD," designate the County as an "urban county;" and

**WHEREAS**, the County needs to requalify as an urban county and will be eligible to receive CDBG funds provided that the County's entitled cities defer their entitlement to the County to enable both the County and the entitlement cities to jointly participate in the program; and

**WHEREAS**, the City desires to participate jointly with the County in said program; and

**WHEREAS**, if HUD redesignates the County as an urban county, then the County may also be eligible to receive funds from the HOME Program and the ESG Program; and

**WHEREAS**, the CDBG Regulations issued pursuant to the Act provide qualified urban counties must submit an application to the HUD for funds, and cities and smaller communities within the metropolitan area not qualifying as metropolitan cities may join the County in said application and thereby become a part of a more comprehensive County effort; and

**WHEREAS**, as the urban county applicant, the County must take responsibility and assume all obligations of an applicant under federal statutes, including: the analysis of needs, the setting of objectives, the development of community development and housing assistance plans, the consolidated plan, and the assurances of certifications; and

**WHEREAS**, by executing this Agreement, the Parties hereby give notice of their intention to participate in the urban county CDBG, HOME, and ESG Programs.

**NOW THEREFORE**, in consideration of the mutual promises, recitals and other provisions hereof, the Parties agree as follows:

**SECTION I. General.**

- A. **Responsible Officers.** The Director of the County of San Luis Obispo Department of Planning and Building (hereinafter referred to as “Director”) is hereby authorized to act as applicant for the CDBG, HOME, and ESG Programs and to administer funding and activities under the programs. The City Manager is hereby authorized to act as the responsible officer of the City under the programs.
- B. **Full Cooperation.** Parties agree to fully cooperate and to assist each other in undertaking eligible grant programs or projects, including but not limited to community renewal and lower income housing assistance activities, specifically urban renewal and publicly-assisted housing; public services; and economic development.
- C. **Term of Agreement – Automatic Renewal Provision.** The term of this Agreement shall be for a period of three (3) years commencing July 1, 2021 through June 30, 2024. Before the end of the three-year term (and any subsequent three year term),, the County will timely notify the City in writing of its right to continue to participate in the urban county for a successive three-year term through further written agreement or amendment to extend the term by another three years. Thereafter, for each three year period the City elects to continue the term of the agreement, the County will continue to provide such timely notice.

The Parties agree to adopt amendments to this Agreement incorporating changes necessary to meet the requirements for cooperation agreements set forth in an Urban County Qualification Notice by HUD for a subsequent three-year urban County qualification period, prior to the subsequent three-year extension of the term. Any amendment to this Agreement shall be submitted to HUD as required by the regulations and any failure to adopt required amendments will void the automatic renewal of this Agreement for the relevant qualification period.

This Agreement remains in effect until the CDBG, HOME, and ESG Program funds and program income received with respect to the three-year qualification period, and any subsequent three-year renewals are expended and the funded activities are completed. The Parties may not terminate or withdraw from this Agreement while this Agreement remains in effect.

- D. **Scope of Agreement.** This Agreement covers the following formula funding programs administered by HUD where the County is awarded and accepts funding directly from HUD: the CDBG Program, the HOME Program, and the ESG Program.

**SECTION II. Preparation and Submittal of CDBG Funding Applications.**

- A. **Inclusion of City as Applicant.** The Parties agree the City shall be included in the application the County shall submit to HUD for Title I Housing and Community Development Block funds under the Act.
- B. **Consolidated Plan.** The City shall assist the County by preparing a community development plan, for the period of this Agreement, which identifies community development and housing needs, projects and programs for the City; and specifies both short and long-term City objectives, consistent with requirements of the Act. County agrees to: (1) include the City plan in the program application, and (2) include City's desired housing and community development objectives, policies, programs, projects and plans as submitted by the City in the County's consolidated plan.
- C. **Application Submittal.** The County agrees to commit sufficient resources to completing and submitting the Consolidated Plan and supporting documents to HUD in time for the Parties to be eligible to receive funding beginning July 1, 2021, and to hold public hearings as required to meet HUD requirements.
- D. **County Responsibility.** Parties agree the County shall, as applicant, be responsible for holding public hearings and preparing and submitting the CDBG funding application and supporting materials in a

timely and thorough manner, as required by the Act and the federal regulations established by HUD to secure entitlement grant funding beginning July 1, 2021.

- E. **Grant Eligibility.** In executing this Agreement, the Parties understand they shall not be eligible to apply for grants under the Small Cities or State CDBG Programs for appropriations for fiscal years during the period in which the Parties are participating in the urban county CDBG entitlement program; and further, the City shall not be eligible to participate in the HOME, or ESG Programs except through the urban county.

**SECTION III. Program Administration.**

- A. **Program Authorization.** The Director is hereby authorized to carry out activities that will be funded from the annual CDBG, HOME, and ESG Programs from fiscal years 2021, 2022, and 2023 appropriations and from any program income generated from the expenditure of such funds.
- B. **Responsibilities of Parties.** The Parties agree the County shall be the governmental entity required to execute any grant agreement received pursuant to the CDBG, HOME, and ESG applications, and subject to the limitations set out in this Agreement, the County shall thereby become liable and responsible thereunder for the proper performance of the plan and CDBG, HOME, and ESG under County programs. County agrees to perform program administrative tasks such as environmental clearance under the National Environmental Policy Act (NEPA), subrecipient agreements and monitoring of subrecipients. The City agrees to act in good faith and with due diligence in performance of the City obligations and responsibilities under this Agreement and under all subrecipient agreements. The City further agrees that it shall fully cooperate with the County in all things required and appropriate to comply with the provisions of any Grant Agreement received by the County pursuant to the Act and its Regulations.
- C. **City Assistance.** The City agrees to undertake, conduct, perform or assist the County in performing the essential community development and housing assistance activities identified in the City's community development plan. Pursuant to the Act and pursuant to 24 CFR 570.501(b), the City is subject to the same requirements applicable to subrecipients, including the requirement of a written agreement with the County as set forth in 24 CFR 570.503.

**SECTION IV. Use of Program Funds.**

A. **Allocation of CDBG funds.** All funds received by the County pursuant to this Agreement shall be identified and allocated, as described below, to the specific projects or activities set out in the application, and such allocated amounts shall be expended exclusively for such projects or activities; provided, however, that a different distribution may be made when required by HUD to comply with Title I of the Housing and Community Development Act of 1974, as amended.

- 1) **Metropolitan Cities' Allocation.** The Parties agree the County shall make available to the City a total amount of CDBG funds equal to that which the City would have been entitled had it applied separately as a "metropolitan city," using HUD allocation formulas as applied by the County, except that an amount equal to thirteen (13) percent of the Metropolitan Cities' allocations of CDBG funds will be deducted by the County to meet its obligations under the terms of this Agreement and/or HUD requirements for administrative costs. Further, with respect to the availability of the funds, the County agrees to fully cooperate and assist the City in expending such funds.
- 2) **Non-Metropolitan Cities' Allocation.** The County agrees to allocate a portion of CDBG program funds to the non-Metropolitan, incorporated cities participating in the program. The amount of allocation per city shall be equal to that which the urban county formula award from HUD increases as a result of the HUD allocation formulas as applied by the County, except that an amount equal to thirteen (13) percent of the Non-Metropolitan Cities' allocations of CDBG funds will be deducted by the County to meet its obligations under the terms of this Agreement and/or HUD requirements for administrative costs.
- 3) **Urban County.** Parties shall not recommend a CDBG award of less than \$8,000 for any one project or program due to the staff cost of processing such awards in compliance with federal requirements. A project or program recommended to receive an amount less \$8,000 can still receive an award if any other Party or Parties make an award, which is aggregated to be greater than \$8,000.
- 4) **Administrative Costs.** The County hereby acknowledges the City, as a subrecipient defined in 24 CFR 570.500(c) and its eligibility to incur administrative costs per 24 CFR 570.206, or as otherwise negotiated and approved in the Action Plan for related Planning and Capacity Building costs per 24 CFR Part 570.205. The City shall submit invoices and supporting documentation to the County

for reimbursement of eligible administrative costs in accordance with the following schedule:

2021 Program Year: Friday, June 1, 2022

2022 Program Year: Friday, June 7, 2023

2023 Program Year: Friday, June 5, 2024

Administrative funds that are not drawn down following the review and approval by county staff by the deadlines above will be used to reimburse the County's administrative costs.

- B. **Availability of Funds.** The County agrees to make CDBG funds available to all participating incorporated cities as set out here when HUD makes the CDBG funds available to it. The County shall immediately notify the participating incorporated cities of the availability of the funds.

It is understood by the Parties, hereto, the CDBG funds being used for the purposes of this Agreement are funds furnished to the County, through HUD, pursuant to the provisions of the Act. Notwithstanding any other provision of this Agreement, the liability of the County shall be limited to CDBG funds available for the Project. The City understands that the County must wait for release of CDBG funds from HUD before CDBG funds may be advanced or reimbursed. The County shall incur no liability to the City, its officers, agents, employees, suppliers, or contractors for any delay in making any such payments.

- C. **Public Services Costs.** The County agrees that after the availability of CDBG program funds to the City, the County shall not use its remaining balance of funds in any way that would limit the City's ability to use its CDBG funds to the maximum extent allowed by HUD for public service purposes.
- D. **Income Generated.** The City shall notify the County of any income generated by the expenditure of CDBG funds received by the City. Such program income may be retained by the City subject to the provisions of this Agreement, the Act and its Regulations. Any program income retained must only be used for eligible activities in accordance with all CDBG requirements as they apply.
- E. **Use of Program Income.** The County shall monitor the use of any program income, requiring appropriate record-keeping and reporting by the City as may be needed for this purpose, and shall report the use of such program income to HUD. In the event of close-out or change of status of the City, all program income on hand or received by the City subsequent to the close-out or change of status shall be paid to the

County. In the event that the City withdraws from the urban county to become an entitlement grantee, as provided under 24 CFR 570.504, all program income on hand or received by the City from urban county activities shall be retained by the City to be used as additional CDBG funds subject to all applicable requirements governing the use of CDBG funds.

- F. **Change in Use of Property.** The City shall notify the County of any modification or change in the use of real property acquired or improved in whole or in part using CDBG funds that is within the control of the City, from that use planned at the time of acquisition or improvement including disposition. Such notification shall be made within thirty (30) calendar days of such change of use and comply with the provisions of 24 CFR 570.505.
- G. **Fair Housing Implementation.** The Parties agree no urban county funding shall be allocated or expended for activities in or in support of any cooperating unit of general local government that does not affirmatively further fair housing within its own jurisdiction or that impedes the County's actions to comply with its fair housing certification.
- H. **Conflict Resolution.** In the event of disagreement between the County and the City as to the allocations, disbursement, use, or reimbursement of CDBG funds, the Parties agree to accept HUD's written determination as to the appropriate resolution or disposition of funds to the extent HUD is willing to resolve such disagreement.
- I. **Consolidated and Further Continuing Appropriations Act.** The City may not sell, trade, or otherwise transfer all of any portion of CDBG funds to another metropolitan city, urban county, unit of general local government, or Indian tribe, or insular area that directly or indirectly receives CDBG funds in exchange for any other funds, credits or non-Federal considerations, but must use such funds for activities eligible under Title I of the Act.
- J. **Special Provisions for the Urban County.**
  - (1) To affirmatively furthers fair housing and implement the Analysis of Impediments to Fair Housing Choice or better known as the Fair Housing Plan, the cities are encouraged to contribute CDBG funds to affordable housing projects when there is an eligible CDBG component in the proposal that is located within the city's jurisdiction.
  - (2) The County will enforce remedies for noncompliance pursuant to 2 CFR Part 200.338 and allowed per 2 CFR Part 200.207 by pulling

CDBG funds for under performing projects or programs not implemented during agreed timeframe identified in the subrecipient agreement.

**SECTION V. Amendment or Extension of Agreement.**

- A. **Subrecipient Agreement.** For each fiscal year during the term of this Agreement, the County and the City shall enter into a Subrecipient Agreement, prepared jointly by the County and the City, which identifies a project or program that the County will administer with the City's CDBG entitlement funds during that program year. The Subrecipient Agreement will set forth the minimum requirements found at 24 CFR 570 and as otherwise required by applicable federal laws. In addition, the agreements will provide project changes, time schedule for completion of the project(s), deliverable checklist, and additional funding sources, if any. If substantial compliance with the completion schedule cannot be met by the City due to unforeseen or uncontrollable circumstances, then the County may extend the schedule for project completion, as allowed by federal regulations.
  
- B. **Amendments.** Any amendments to this Agreement shall be in writing. Parties agree any such fully executed amendment or amendments to this Agreement may be entered into at any time if required or necessary to implement the plans contemplated hereunder, or to comply with any grant agreement or the regulations issued pursuant to the Act.

**SECTION VI. Compliance with Federal Regulations.**

- A. **General.** The Parties agree to take all actions necessary to assure compliance with the urban county's certifications required by section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, regarding Title VI of the Civil Rights Act of 1964, the Fair Housing Act, affirmatively furthering fair housing, Section 109 of Title I of the Housing and Community Development Act of 1974; the National Environmental Policy Act of 1969; the Uniform Relocation Assistance and Real Property Acquisition Act of 1970; and other applicable laws.
  
- B. **Citizen Participation.** The Parties agree to comply with federal citizen participation requirements of 24 CFR Part 91, and provide citizens with:
  - 1) An estimate of the amount of CDBG funds proposed to be used for activities that will benefit persons of low and moderate income; and

- 2) A plan for minimizing displacement of persons as a result of CDBG-assisted activities and programs, and to provide assistance to such persons.

C. **Citizen Participation Plan.** The Parties agree to follow a citizen participation plan which:

- 1) Provide for and encourages citizen participation, particularly those of low or moderate income who reside in slum or blighted areas where CDBG funds are proposed to be used;
- 2) Provide citizens with reasonable and timely access to local meetings, staff reports, and other information relating to grantee's proposed use of funds, as required by HUD regulations related to the actual use of funds under the Act;
- 3) Provides for public hearings to obtain citizen views and to respond to proposals and questions at all stages of the community development program, including at least: 1) formulation of needs; 2) review of proposed grant activities; and 3) review of program performance; for which public hearings shall be held after adequate notice, at times and locations convenient to potential or actual beneficiaries, and with accommodation of handicapped persons;
- 4) Provides for a timely written answer to written complaints and grievances, within 15 working days where practicable;
- 5) Identifies how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.
- 6) Identifies the use of non-traditional methods of community outreach, including the provision of CDBG documents in a user-friendly format, including but not limited to Braille, large print, oral format, and delivering copies to homebound individuals.

D. **The Parties hereby certify, to the best of their knowledge and belief, that:**

- 1) **Conflict of Interest.** No federal grant monies have been paid or will be paid, by or on behalf of the Parties, to any officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering

into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan, or cooperative agreement.

- 2) **Influence.** If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 3) **Certifications Disclosure.** Parties agree to include this certification in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements), and that all grant subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was entered into.

**E. Certification Regarding Policies Prohibiting Use of Excessive Force and Regarding Enforcement of State and Local Laws Barring Entrances.**

In accordance with Section 519 Public Law 101-144 (the 1990 HUD Appropriations Act), the City certifies that it has adopted and is enforcing.

- 1) A policy prohibiting the use of excessive force by law enforcement agencies within their respective jurisdictions against any individuals engaged in non-violent civil rights demonstrations; and
- 2) A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within their jurisdictions.

**SECTION VII. Execution of Agreement and Recordkeeping.**

- A. **HUD Certification.** The Director is hereby authorized to execute and submit to the County the HUD Certification Form with respect to the community development activities carried out within the boundaries of the City. It is further understood that the County will rely upon the certification executed by the Director for purposes of executing a certification form for submission to HUD.

- B. **Maintenance of Records.** The City shall maintain records of activities for any projects undertaken pursuant to the program, and said records shall be open and available for inspection by auditors assigned by HUD and/or the County on reasonable notice during the normal business hours of the City.

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

\_\_\_\_\_  
Chairperson of the Board of Supervisors

ATTEST:

WADE HORTON  
Ex-Officio Clerk of the Board of Supervisors

By: \_\_\_\_\_  
Deputy Clerk

[SEAL]

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL  
County Counsel

By: \_\_\_\_\_  
Deputy County Counsel

Dated: \_\_\_\_\_

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

CITY OF MORRO BAY

\_\_\_\_\_  
, MAYOR

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
DANA SWANSON, CITY CLERK

Date: \_\_\_\_\_  
APPROVED AS TO CONTENT:

\_\_\_\_\_  
SCOTT COLLINS, CITY MANAGER

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
CHRISTOPHER NEUMEYER, CITY ATTORNEY

Date: \_\_\_\_\_



**COUNTY OF SAN LUIS OBISPO**  
**DEPARTMENT OF PLANNING & BUILDING**  
**TREVOR KEITH, DIRECTOR**

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April 3, 2020

Scott Collins, City Manager  
City of Morro Bay  
595 Harbor Street  
Morro Bay, CA 93442  
(sent via email)

Subject: Invitation to Participate in the San Luis Obispo Urban County

Dear Mr. Collins,

We would like to thank the City of Morro Bay for participating in the San Luis Obispo Urban County ("Urban County") and invite the City to continue participating for the next Cooperation Agreement term. The City's current (2018-2020) Cooperation Agreement with the County will expire on June 30, 2021.

**Instructions for Participating in the Urban County for the 2021-2023 Term**

To continue receiving U.S. Housing and Urban Development (HUD) entitlement funds for fiscal years 2021-2022, 2022-2023, and 2023-2024, please reply via email (mleal@co.slo.ca.us) by May 1, 2020 stating the City would like to participate in the Urban County for the 2021-2023 Cooperation Agreement term. In your reply, please also indicate when you anticipate taking the Cooperation Agreement to your Council for approval. The deadline for submitting a fully executed Cooperation Agreement to the County is June 19, 2020.

If the City declines to participate in the Urban County, the City is required to notify the County and HUD field office by May 15, 2020. You may contact the State Housing and Community Development (HCD) Department for any questions regarding the State's non-entitlement HUD grant program: <https://www.hcd.ca.gov/grants-funding/active-funding/index.shtml>.

**Draft 2021-2023 Cooperation Agreement**

A track changes version of the draft 2021-2023 Cooperation Agreement is attached for your review. The agreement includes one substantive revision that we discussed with you and Community Development Director, Scott Graham, over the phone on March 9, 2020, as well

### Attachment 3

## Invitation to Participate in the San Luis Obispo Urban County

as a few minor clean ups.

The substantive revision would require participating jurisdictions to seek reimbursement of administrative costs by the end of the fiscal year as required by HUD. The County would use any unclaimed administrative funds to offset the cost of administering the Urban County. Please reach out to Matt Leal or myself (contact information below) by May 1, 2020 if you would like to further discuss this revision.

At the February 14, 2020 City Managers meeting, County staff proposed a regional approach for allocating Community Development Block Grant (CDBG) funds, and the City Managers emphasized the importance of maintaining local control of CDBG funds to meet their unique community development needs. Based on this feedback, the draft 2021-2023 Cooperation Agreement would not change how CDBG funds are allocated to the cities. County staff, however, would like to remind the cities that all participating jurisdictions of the Urban County should allocate funds to eligible activities in a manner that is consistent with the Consolidated Plan. The draft 2020-2024 Consolidated Plan states that the Urban County's highest priority is to address affordable housing and homelessness. The 2020-2024 Consolidated Plan is scheduled for Board of Supervisors consideration on May 5, 2020.

### Timeline

The key milestones and deadlines for 2021-2023 Cooperation Agreements are as follows:

Milestone	Deadline
Response to this invitation	May 1, 2020
Submit comments on the Draft 2021-2023 Cooperation Agreements	May 1, 2020
Notify County and HUD of decision to not participate in Urban County <i>(for existing participants declining to participate for the 2021-2023 term)</i>	May 15, 2020
Send fully executed 2021-2023 Cooperation Agreement to the County	June 19, 2020
Board of Supervisors approves all 2021-2023 Cooperation Agreements	July 7, 2020
County sends approved 2021-2023 Cooperation Agreements to HUD	July 14, 2020

If you have any questions or concerns regarding this process or the County's HUD programs, please contact me at (805) 781-5198 or [asingewald@co.slo.ca.us](mailto:asingewald@co.slo.ca.us) or Matt Leal at [mleal@co.slo.ca.us](mailto:mleal@co.slo.ca.us) or (805) 781-5113.

Sincerely,

*Airlin M. Singewald*

Airlin M. Singewald  
Division Manager



AGENDA NO: B-1

MEETING DATE: May 26, 2020

# Staff Report

**TO:** Honorable Mayor and City Council **DATE:** May 20, 2020

**FROM:** Scot Graham, Community Development Director

**SUBJECT:** Initiation of a Sphere of Influence (SOI) Amendment to add 5 lots above Panorama Drive to the City's SOI. APN: 073-075-002 and portions of APN 073-076-016 (lots 2, 8, 7 & 6); and Initiation of Detachment proceedings for APN: 065-022-008. Property would be detached from within the City boundary resulting in the lot being located within the unincorporated County of San Luis Obispo.

## RECOMMENDATION

Staff recommends that the City Council:

1. Take public comment
2. Continue item to a date uncertain

## ALTERNATIVES

None

## FISCAL IMPACT

None

## BACKGROUND/DISCUSSION

Both the Sphere of Influence amendment and Detachment are part of a larger effort surrounding preservation efforts concerning the Chevron property located to the north and east of the City of Morro Bay. The City has been involved in discussions for many years with Chevron, Trust for Public Lands (TPL), the Cayucos Sanitary District (CSD), the Cayucos Land Conservancy, the Land Conservancy of San Luis Obispo and San Luis Obispo County looking into various conservations options for several of the Chevron Estero Marine Terminal lots. On January 28, 2020 the City Council authorized City Manager signature on a nonbinding Memorandum of Understanding (MOU) to address the preservation process for the first phase of conservation for some of the Chevron lots (See MOU provided as Attachment 1). The MOU addresses the following four items:

Prepared By: SG

Dept Review: \_\_\_\_\_

City Manager Review: \_\_\_\_\_

City Attorney Review: CFN

1. Acquisition of lot 6SW (Southern portion of Dog Beach) by the City of Morro Bay. Lot 6SW is currently owned by the CSD, who previously purchased it from Chevron. TPL is proposing to purchase the property from the CSD and convey it to the City of Morro Bay through a purchase agreement.
2. Amendment of the City's Sphere of Influence (SOI) to include 5 lots above Panorama Drive (APN: 073-075-002 and portions of APN 073-076-016 (lots 2, 8, 7 & 6). Those lots are owned by Chevron, and it is Chevron's intention for annexation of the lots into the City to occur. Each of the lots would accommodate one single-family residence, for a total of no more than 5 single-family homes in that area. The homes would be restricted to the lower portions of each lot leaving the remainder of the hillside above Panorama undeveloped.
3. Detachment of lot 6NE (APN: 065-022-008) from within the City's boundary, resulting in lot 6NE being under County jurisdiction. That process requires authorization by Council for submittal of an application for Detachment to LAFCO and subsequent approval by LAFCO. Lot 6NE is owned by the CSD and contains a sewer lift station operated by the CSD.
4. Annexation into the City of Lot 6NW (Continuation of Dog Beach). Lot 6NW is currently located in the County but is within the City's SOI. The intent behind Lot 6NW's location within the City's SOI was to facilitate its future annexation into the City for preservation of Dog Beach. Lot 6NW is currently owned by the CSD and is proposed to be purchased by TPL and conveyed to the City. The annexation requires Council authorization and subsequent approval by LAFCO.

The above referenced MOU items involve City purchase of the two Dog Beach lots (6NW and 6SW), through a purchase agreement process. The City is in ongoing negotiations related to development of the purchase agreement and recently some issues have developed that will require resolution prior to the City moving forward with application to the Local Agency Formation Commission for the SOI amendment and Detachment.

### **CONCLUSION**

Staff recommends that the City Council: 1) Take public comment; and 2) Continue item to a date uncertain.

### **ATTACHMENT**

1. January 28, 2020 MOU

## Exhibit 2

### MEMORANDUM OF UNDERSTANDING

Chevron Estero Marine Terminal, Lot 6SW

This Memorandum of Understanding (“MOU”), dated January 31, 2020, constitutes a **non-binding** agreement among The Trust for Public Land, a California nonprofit public benefit corporation (“TPL”), the City of Morro Bay (“**Morro Bay**”), the Cayucos Sanitary District (“CSD”), and Chevron Land and Development Company, a Delaware Corporation (“**Chevron**”), each of which may individually be referred to herein as a “**Party**” and collectively as the “**Parties.**”

#### RECITALS

- A. The Parties are interested in achieving a common conservation goal and appropriate public ownership (“**Project**”) for Lot 6SW, as shown in Exhibit A (“**Property**”), which has been historically used by the general public and is commonly known as “**Dog Beach.**”
- B. Chevron sold the Property to CSD on September 17, 2019 pursuant to that certain Grant Deed but also subject to that certain Memorandum of Repurchase Rights/Option recorded concurrently with the Grant Deed, which Memorandum contains certain rights in favor of Chevron (“**Residual Rights**”).
- C. CSD is willing to sell the Property to TPL, which will concurrently sell it to Morro Bay, with the ultimate intention that the Property will continue to be used for the benefit of the public.
- D. TPL’s purchase of the Property and concurrent sale to Morro Bay will be contingent on TPL’s receipt of certain public and private funding, which funding and acquisition, in turn, is contingent on Chevron’s termination of the Residual Rights.
- E. Chevron ultimately desires to have its lots shown in Exhibit A in the Estero Marine Terminal (“**Panorama Lots**”) annexed into the City of Morro Bay. Chevron is willing to terminate its Residual Rights upon certain conditions specified below.

The Parties agree as follows:

1. **OPTION AGREEMENT:** TPL and CSD will negotiate in good faith to enter into an option agreement whereby TPL will have the right to purchase the Property from CSD subject to the termination of the Residual Rights and securing funding for the acquisition (“**Option Agreement**”). TPL shall remain the principal Party involved with negotiating the terms and provisions of the Option Agreement and the concurrent sale with Morro Bay.
2. **PUBLIC FUNDING:** TPL will use its best efforts to secure public and philanthropic funding sources to support the acquisition of the Property from CSD and concurrent sale to Morro Bay. TPL shall be solely responsible for all aspects of requesting, securing and reporting associated with the funding sources.
3. **OBLIGATIONS OF CHEVRON:** Chevron agrees to execute and acknowledge and deliver to

TPL and Morro Bay a document in a form satisfactory to Chevron, TPL and Morro Bay to terminate or transfer the Residual Rights following Morro Bay's submission of an application to the Local Agency Formation Commission ("**LAFCO**") to place the Panorama Lots within the City's Sphere of Influence and the LAFCO staff indicates support for same ("**LAFCO Application**").

4. **OBLIGATIONS OF MORRO BAY:** Morro Bay shall seek City Council approval to proceed with filing the LAFCO Application. The LAFCO Application shall also seek to annex Lot 6NW into the City of Morro Bay and to de-annex Lot 6NE, both of which respective lots are shown on Exhibit A. Morro Bay will make best efforts to (i) complete the LAFCO Application such that LAFCO can make a decision at its May 2020 meeting, and (ii) file the LAFCO Application as soon as feasible but no later than April 25<sup>th</sup>, 2020. The Parties understand that nothing in this MOU commits the City Council to approve the LAFCO Application and that such decision must be made by the City Council pursuant to applicable law, including, but not limited to, the Brown Act.
5. **OBLIGATIONS OF ALL PARTIES:** The Parties acknowledge that (i) funding for acquisition of the Property and other Estero properties planned for acquisition and public ownership are interdependent; and (ii) time is of the essence to obtain the LAFCO decision regarding the LAFCO Application. All Parties agree to make best efforts to support the LAFCO Application for review at the LAFCO May meeting or as soon thereafter as feasible.
6. **OBLIGATIONS OF CSD:** CSD agrees to negotiate the terms of the Option Agreement with TPL, which will include standard provisions for the purchase of real property including the issuance of title insurance. CSD and TPL intend that the Option Agreement will be executed by the end of January 2020.
7. **OBLIGATIONS OF MORRO BAY AND TPL:** Concurrently with the negotiations between TPL and CSD as to the Option Agreement, Morro Bay and TPL will negotiate a purchase and sale agreement ("**PSA**") to be consummated concurrently with TPL's acquisition of title to the Property under the Option Agreement.
8. **OPTION TERMINATION:** If the Property is not acquired by TPL pursuant to the terms of the Option Agreement (as may be extended), all Parties shall be relieved of further obligations under this MOU. In such event, TPL shall be solely responsible for returning funds that it raised for the acquisition of the Property where such funds need to be returned in the event the Property is not acquired.
9. **INTENT:** This MOU is intended to memorialize the Parties' intent and desire to work together to perform the tasks required (including the Option Agreement and PSA) in connection with the acquisition of the Property by Morro Bay for continued public use free of the Residual Rights, while Morro Bay concurrently seeks City Council approval to file the LAFCO Application. Chevron intends, after LAFCO approval of the LAFCO Application, to request that Morro Bay annex the Panorama Lots into the City of Morro Bay ("**Annexation**"). The Parties understand that Morro Bay is not committing to approve

the Annexation, as such action must be made by the City Council and in compliance with applicable law, including the City of Morro Bay Municipal Code.

**10. NON-BINDING; TERMINATION:** This MOU is non-binding and is intended only to provide a framework for continued discussions between the Parties in connection with the Project. It is an expression of the current intent of the Parties but is not intended to constitute an agreement that will be legally binding on any Party. No Party has any obligation, responsibility, or liability to any other Party for failure to complete the items set forth above. This MOU is not binding and may be terminated in accordance with the terms set out in Section 8 above, or by any Party delivering written notice to the other Parties. Upon the termination of this MOU, no Party will have any liability under this MOU to any other Party, and the Parties will be released from all of their obligations under this MOU.

**11. COUNTERPART EXECUTION:** The Parties may execute this MOU in counterparts which together will constitute the entire MOU.

**TPL**

The Trust for Public Land, a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**CSD**

Cayucos Sanitary District, a political subdivision of the State of California

By: \_\_\_\_\_  
Its: \_\_\_\_\_

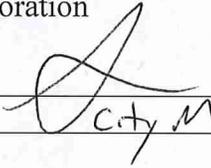
**CHEVRON**

Chevron Land and Development Company, a Delaware Corporation

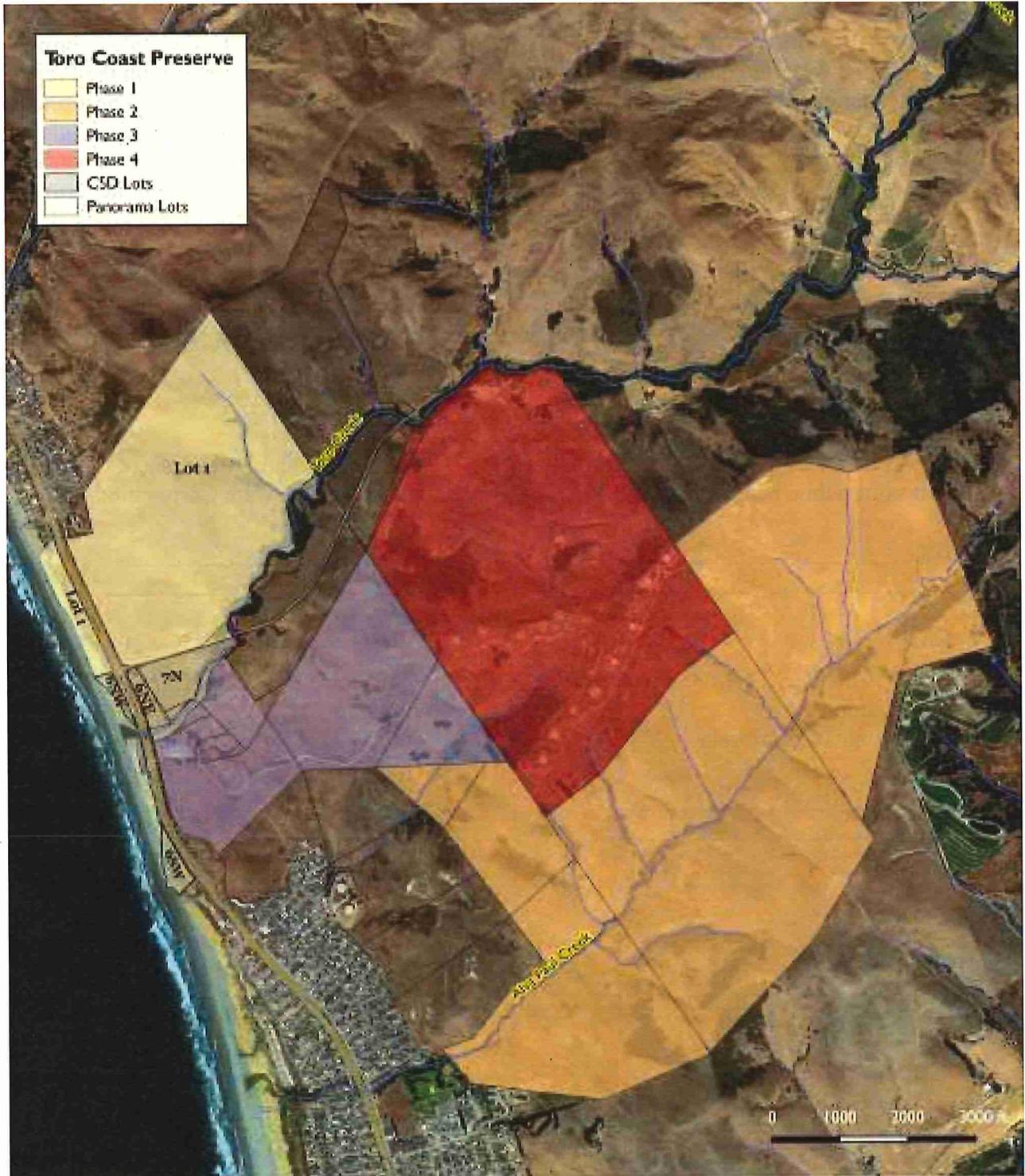
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**MORRO BAY**

City of Morro Bay, a municipal corporation

By:  1/31/2020  
Its: City Manager

# Exhibit A



# Toro Coast Preserve

SAN LUIS OBISPO COUNTY, CALIFORNIA





AGENDA NO: C-1

MEETING DATE: May 26, 2020

## Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** May 21, 2020

**FROM:** Eric Casares, PE – WRF Program Manager  
Rob Livick, PE/PLS –City Engineer

**SUBJECT:** Review and Approve Potential Change Orders for the Water Reclamation Facility (WRF); Review and Receive the WRF Capital Project Quarterly Update Report; and Review and Approve Proposed Good Faith Local Hire Provisions for Bid Documents for the Remaining WRF Project Components including an amount for liquidated damages related thereto

### **RECOMMENDATION**

Staff recommends that the City Council consider the following:

1. Review and approve all twenty-six (26) potential change orders (PCOs) for the Water Reclamation Facility (WRF); and
2. As recommended by the Citizens Finance Advisory Committee (CFAC), review and receive the WRF Capital Project Quarterly Update Report and provide direction deemed appropriate if any with regard to the CFAC recommendation to provide the integrated Microsoft project management schedule with some key milestones for the WRF project updated frequently and shared with City staff, CFAC and City Council; and
3. Review and approve proposed local labor provision language for the bid packages and contract agreements for the remaining components of the WRF project; and
4. Provide a value to be used for liquidated damages for a contractor or subcontractor failing to comply with the local labor good faith requirements.

### **ALTERNATIVES**

Council could choose to accept or reject all PCOs, or accept some and not others.

Further, City Council may choose not to approve good faith local labor provision language for the bid packages and agreements for the remaining components of the WRF project.

### **FISCAL IMPACT**

The total cost for the twenty-six (26) PCOs is \$5,992,217. If all the PCOs are approved, then the guaranteed maximum price for the WRF facility component of the overall project would increase from \$68,934,508 to \$74,926,725. This total cost for the PCOs exceeds the planned contingency for the WRF included in the original \$126 Million baseline budget by \$1,451,000. Acceptance of all the PCOs would result in an increase in the overall WRF project budget from \$126 Million to \$130.6 million. This new amount of \$130.6 Million maintains a total project contingency of \$4.2 Million (with \$1.45 Million designated for the WRF facility component of the project). Despite the overall increase in the estimated total cost of the WRF project, it will not impact the existing water and sewer rates for Morro Bay residents and businesses.

Prepared By: RL

Dept Review:

City Manager Review: SC

City Attorney Review: JWP

In order to evaluate the impacts of the updated WRF project budget and the cost of money as a result of reduced interest rates on the WRF project, the City’s financial consultant, Bartle Wells Associates (BWA) developed a comparison of debt service payments developed in 2018, as part of the original Rate Study. That analysis was performed in October 2019 following the City being placed on the 2019 fundable projects list by the Clean Water State Revolving Fund (CWSRF), and in May 2020 that reflects the new budget and the actual interest rate included in the executed loan agreement with the Water Infrastructure Financing and Innovation Act (WIFIA) program. The results are presented in the table below:

<b>Scenario</b>	<b>2018 Rate Study</b>	<b>2019 Financial Plan Update</b>	<b>2020 Debt Service Projections</b>
<b>Project Budget</b>	\$126,000,000	\$125,882,000	\$130,596,000
<b>Debt Proceeds</b>	\$95,175,000	\$97,000,000	\$101,714,000
<b>Total Debt Service Cost</b>	\$179,945,000	\$132,660,000	\$128,138,000
<b>Present Value of Total Debt Service Payments<sup>(1)</sup></b>	\$107,738,000	\$81,698,000	\$74,622,000
<b>Maximum Annual Debt Service Payment</b>	\$5,293,000	\$4,422,000	\$3,993,000
Notes: (1) Present value is shown in current dollars and assumes a 3-percent discount rate.			

## **BACKGROUND/DISCUSSION**

### **Potential Change Orders**

At the October 23, 2018, City Council meeting, a contract was awarded to the Filanc/Black & Veatch Team (DB team) in the amount of \$67,234,512 (DB Agreement). The contract is structured as a guaranteed maximum price (GMP). Therefore, the DB team committed to delivering the work specifically identified in the contract for a cost not to exceed \$67,234,512. The contract award was the culmination of a year-long competitive procurement that began with the advertisement of a request for qualifications (RFQ) on October 27, 2017. The scope of work (i.e., Exhibit B) included in the contract is the same as the scope of work included in the DB team’s original proposal received by the City on May 08, 2018.

The DB team is responsible for design of the WRF facility (and not the other two components of the overall project – conveyance and injection well systems). Per the DB agreement, the design has progressed and been presented to the City over the course of the following design deliverables:

- Basis of Design Report/30 Percent Submittal
- 60 Percent Design Submittal
- 90 Percent Design Submittal

Since the DB agreement was executed, the DB team has been advancing the design concept that was included in their proposal. This refinement is captured in the Draft Basis of Design Report (BDR) and 30 Percent Design Submittal, 60 Percent Design Submittal, and 90 Percent Design Submittal.

The DB team, City staff, and Program Manager have been working closely to refine the WRF scope of work to reflect a facility that best fits the City's current and long-term operational needs. In addition to weekly status updates, the following design, internal-working meetings or workshops have been held since November 2018:

Meeting	Date	Topics
Workshop No. 1	November 28, 2018 November 29, 2018	<ul style="list-style-type: none"> <li>• Permitting</li> <li>• Process design criteria</li> <li>• Electrical design criteria</li> <li>• Instrumentation design criteria</li> </ul>
Workshop No. 2	December 19, 2018	<ul style="list-style-type: none"> <li>• Permitting</li> <li>• Partnering</li> <li>• Process design criteria</li> <li>• Architectural review</li> </ul>
Workshop No. 3	December 20, 2018	<ul style="list-style-type: none"> <li>• Coordination with Conveyance Facilities Project</li> <li>• Process design criteria</li> </ul>
Workshop No. 4	January 10, 2019	<ul style="list-style-type: none"> <li>• Permitting</li> <li>• Control descriptions</li> </ul>
Workshop No. 5	March 12, 2019	<ul style="list-style-type: none"> <li>• Permitting</li> <li>• PCO review</li> </ul>
Workshop No. 6	March 28, 2019	<ul style="list-style-type: none"> <li>• PCO review</li> </ul>
Workshop No. 7	May 08, 2019	<ul style="list-style-type: none"> <li>• Design review</li> <li>• Equipment procurement</li> </ul>
Workshop No. 8	May 29, 2019	<ul style="list-style-type: none"> <li>• Permitting</li> <li>• Equipment procurement</li> </ul>
Workshop No. 9	August 12, 2019	<ul style="list-style-type: none"> <li>• Design review (60 Percent)</li> <li>• Equipment procurement</li> </ul>
Workshop No. 10	September 12, 2019	<ul style="list-style-type: none"> <li>• Design review</li> </ul>
Workshop No. 11	February 19, 2020	<ul style="list-style-type: none"> <li>• Design review (Yard Piping)</li> <li>• PCO review</li> <li>• Permitting</li> </ul>
Workshop No. 12	April 23, 2020	<ul style="list-style-type: none"> <li>• Design review (90 Percent)</li> </ul>

At this time, the City has identified a total of twenty six (26) PCOs that include a cost impact to the DB Agreement for consideration by the City Council. The table below summarizes the PCOs currently being considered. Approval of the PCO's would increase the GMP.

PCO No.	Description	Cost Impact (Increase/Decrease)	Final PCO Cost	Primary Rationale
16	Modify Outfall Pump Station	Increase	\$367,632	Reliability and Redundancy
19	Reduce Size of the Product Water Tank	Decrease	\$(129,681)	Construction Cost Savings
32	Sulfuric Acid System	Increase	\$315,652	Changing Conditions

37	PLC/SCADA Software Uniformity (MBR, RO, and Headworks Only)	Increase	\$201,577	Long-Term O&M Cost Savings
39	NTP Delay	Increase	\$1,220,532	Biological Opinion
40	Headworks Valve Automation	Increase	\$249,946	Reliability and Redundancy
41	Perimeter Barbed Wire Fence	Increase	\$79,935	Changing Conditions
42	UV/AOP System Modifications	Decrease	\$(33,481)	Construction Cost Savings
44	Tank Access Improvements	Increase	\$210,327	Operator Safety
45	Maintenance Ceiling Revisions and Automated Roll-Up Door	Increase	\$21,009	Improved Operations
46	Curbed Washdown Areas	Increase	\$76,250	Reliability and Redundancy
47	Changes to Furnishings and Residential Equipment	Increase	\$85,194	Improved Operations
50	Revisions to Water/Sewer Supply Storage Sheds	Increase	\$13,142	Improved Operations
52	Analyzer Relocation and Enclosures	Increase	\$76,555	Improved Operations
55	Notice of Dispute - PG&E Temporary Power	Increase	\$13,163	Changing Conditions
56	Impacts of Water Quality Changes	Increase	\$282,420	Changing Conditions
57	Soil Lateral Earth Pressure	Increase	\$116,329	Changing Conditions
58	Permanent Exclusion Fencing	Increase	\$855,991	Biological Opinion
59	Increased Escalation Costs	Increase	\$1,232,677	Biological Opinion
61	PCO Design Impacts	Increase	\$158,172	Changing Conditions
62	Conduit Alternative Design	Decrease	\$(268,400)	Construction Cost Savings
64	Reduce Performance Period	Decrease	\$(35,450)	Construction Cost Savings
66	Caltrans Intersection Improvements	Decrease	\$(21,893)	Construction Cost Savings
67	BNR System Modifications	Increase	\$742,405	Improved Operations
68	SAFE Equalization Settle Tank Drain Piping	Increase	\$62,215	Improved Operations
69	Third Party Inspection and Testing	Increase	\$100,000	Changing Conditions
<b>Total</b>			<b>\$5,992,217</b>	

The above listed PCOs are represented in the 90 Percent Design Submittal and will be discussed as part of the presentation at the May 26, 2020 Council meeting.

The primary rationale for the need for each PCO can be attributed to the following:

- Biological Opinion – Resulting from consultation with United States Fish and Wildlife Services (USFWS) over the California Red Legged Frog (CRLF). The process delayed the start of construction by nearly 5 months, which resulted in delay and escalation costs as the City projected the start date in the contract with BV/F to be late October 2019, when in fact the project could not start until March based upon USFWS consultation. Further, the Biological Opinion from USFWS required a permanent wildlife exclusion fence to keep the CRLF out of the site.
- Changing Conditions – These are primarily related to expenses that were discovered through the review of the WRF project and changing water quality that were unknown at the time the contract was executed.
- Improved Operations – These will help improve the overall efficiency of the WRF project and reduce operational costs once the WRF project becomes operational.
- Reliability and Redundancy – These improvements will help ensure the WRF project continues to operate in the event of mechanical failures.
- Operator Safety – Refinements made to provide greater safety features for operations and maintenance staff.
- Long-Term O&M Cost Savings
- Construction Cost Savings

A summary of the value of each of those primary rationale categories is included in the table below.

<b>Primary Rationale</b>	<b>Value</b>
Biological Opinion	\$3,309,201
Changing Conditions	\$1,065,670
Improved Operations	\$1,000,520
Reliability and Redundancy	\$693,828
Operator Safety	\$210,327
Long-Term O&M Cost Savings	\$201,577
Construction Cost Savings	\$(488,905)
<b>Total</b>	<b>\$5,992,217</b>

### **WRF Quarterly Update**

At the May 19, 2020 Citizens Finance Advisory Committee (CFAC) reviewed the attached WRF Quarterly report and asked questions of staff. The CFAC discussed a variety of issues related to the format of the report and requested additional project scheduling information. They also discussed and asked questions about the impact of the proposed PCO's. A list of CFAC Member questions and staff responses are provided as Attachment 5 for Council and public review. By motion, passing by a 4-3 vote, the CFAC approved asking City Council to request the integrated Microsoft project management schedule be updated with some key milestones frequently and shared with the team and City Council.

At its May 20, 2020, meeting, the Public Works Advisory Board (PWAB) reviewed the PCO's and asked questions of the WRF team (City staff and Carollo representatives). Questions submitted in advance of the PWAB meeting, and staff's responses, are included for Council and public review as

Attachment 6. PWAB asked questions about specific PCO's, in particular the PCO's related to the delay and escalation costs and biological opinion issued by the (USFWS related to the red legged frog. PWAB did not make a formal recommendation on the PCO's.

### **Local Labor Provisions**

City Council identified local labor for the WRF project as a City Goal in 2019/2020. City Council considered, but did not approve, a project labor agreement for either the Conveyance Facilities or Recycled Water Facilities components of the WRF Project. However, City Council directed staff to provide it with local labor provision considerations for bids and contracts for the Conveyance and Recycled Water components of that portion of the WRF project. Below is a summary of the efforts to achieve City Council direction.

Following the direction provided by City Council, Carollo developed a memorandum (attached) that evaluated what some of our other projects/clients have included in the way of local labor provisions (includes a discussion of Morro Bay's existing local labor provisions). Carollo discussed any limitations CWSRF may put on the local labor provisions and they indicated it was up to the City (City Attorney) to make sure whatever language is proposed does not run afoul of public contract code.

The City Attorney has recommended the City's Program Manager be the arbiter for compliance with the performance of good faith efforts in regards to local hire for the WRF projects.

The recommended approach would be promoting the use of local labor by contractors:

- a. At the time of bidding
- b. Ongoing throughout the project after the contract is awarded and additional subcontracting needs arise

Staff recommends that Council review and approve the prepared Section 0434 that encourages the Contractor to identify local labor as part of the bid package (attached). Staff further recommends Council review and approve the prepared draft language, which if approved, would be added to Article 19 of the City's formal contract for remaining WRF project components to promote local hire after bid award. That language is provided below, and includes a blank field for City Council to determine the appropriate amount of liquidated damages if this proposed contract provision is violated.

#### ***ARTICLE 19 – LOCAL LABOR:***

*Local Hiring: A goal of City with respect to this Project is to foster employment opportunities for City residents and businesses. To that end, Contractor shall make continued reasonable efforts to cause all solicitations for full-time, part-time, new or replacement employment, needed for the construction, maintenance and repair of this Project, which is the subject of this Agreement, to be advertised in such a manner as to target local City residents and businesses. Such efforts are subject to City's Project Manager's prior written approval and shall be in addition to the DBE requirements. Contractor's subcontractors, of every tier related to this Project, shall also be required to comply with the foregoing. Contractor shall ensure all of its subcontracts relating to this Project, of every tier, include similar language and all those subcontractors adhere to these requirements. Nothing in this Section shall require Contractor or any of its subcontractors, at any tier, to offer employment to any individual who is not otherwise qualified for such employment. A violation of this provision by Contractor or any of its subcontractors, at any tier, shall be a material breach of this Agreement. In addition to any other remedy City has regarding a material breach of this Agreement, a violation of this provision shall also result in the*

*assessment of liquidated damages of \$ [REDACTED] per violation. Without limiting the generality of the foregoing, the provisions of this section are not intended, and shall not be construed, to benefit or be enforceable by any person whatsoever other than City.*

Staff further recommends adding text to Article 12 of Specification Section 0200 – Instructions to Bidders. This includes a proposed form that will be submitted throughout the entirety of the work for the Conveyance Facilities or Recycled Water Facilities components of the WRF project. That form will continue to be used by the selected prime contractor and subcontractors (as any tier) for any hiring they do after the award of the contract.

### ***Local Labor Good Faith Effort***

- a. *Contractor shall make continued reasonable efforts to cause all solicitations for full-time, part-time, new or replacement employment, needed for the construction, maintenance and repair of this Project to be advertised in such a manner as to target local City residents and businesses.*
  - i. *Contractor shall submit Subcontractor Form, as shown in the Appendix to this Specification, to provide good faith effort to foster employment opportunities for the City residents and business throughout the project.*
  - ii. *Good Faith Effort Re Local Hiring form, as shown in the Appendix to this Specification, shall be submitted to the City's Project Manager for approval and shall be submitted for each hired subcontractor not included in Specification Section 00434 – Proposed Subcontractors Form at time of bid and each hired individual after the contract is awarded."*

### **CONCLUSION**

Staff recommends the City Council consider the following:

1. Review and approve the potential change orders to the DB Agreement for the WRF project); and
2. As recommended by the CFAC, receive the WRF Capital Project Quarterly Update Report and provide direction deemed appropriate if any with regard to the CFAC recommendation to provide the integrated Microsoft project management schedule with some key milestones for the WRF project updated frequently and shared with City staff, CFAC and City Council; and
3. Review and approve proposed local labor provision language for the bid packages and formal contract for the remaining components of the WRF project; and
4. Provide a dollar value to be used for liquidated damages if a prime contractor or subcontractor, at any tier, for those remaining components fails to comply with the local labor good faith requirements.

### **ATTACHMENT**

1. [Summary of PCOs](#)
2. [90 Percent Design Drawings](#)
3. [90 Percent Design Specifications](#)
4. WRF Quarterly Report
5. CFAC Questions and Staff Responses to WRF Quarterly Report
6. PWAB Questions and Staff Responses to PCO Review
7. Project Memorandum regarding Local Labor Preference Investigation (3/19/2020)
8. Document 00434 - Proposed Subcontractors Form
9. Powerpoint Presentation



MORRO BAY  
**OUR WATER**  
RELIABLE. CLEAN. FOR LIFE.

City of Morro Bay  
Water Reclamation Facility Project

QUARTERLY REPORT MARCH 2020

FINAL | May 2020

The logo for Carollo, featuring a stylized blue wave icon followed by the word "carollo" in a bold, lowercase, sans-serif font, with a registered trademark symbol (®) to the right.





City of Morro Bay  
Water Reclamation Facility Project

## QUARTERLY REPORT MARCH 2020

FINAL | May 2020

This document is released for the  
purpose of information exchange review  
and planning only under the authority of  
Eric T. Casares,  
May 2020,  
State of California, P.E. 73351



## Contents

Section 1	1
PROJECT OVERVIEW	1
1.1 General Project Status Update	1
1.2 Quarterly Budget Revision	5
Section 2	9
KEY PERFORMANCE MEASURES	9
2.1 Performance Measures	9
Section 3	13
PROJECT COSTS	13
3.1 Project Budget	13
3.2 Project Cash Flow	13
3.3 Project Cost Summary	16
3.4 Detailed Project Costs	16
3.5 Change Orders	17
3.6 Reimbursement from Funding Agencies	18
Section 4	19
PROJECT SCHEDULE	19
4.1 Project Milestones	19
Section 5	25
DESIGN AND PROCUREMENT	25
5.1 Design Status	25
5.2 Procurement	25
Section 6	27
CONSTRUCTION STATUS	27
6.1 Construction Summary	27
6.2 Upcoming Traffic Control	27
6.2.1 Planned Impacted Areas	27
6.2.2 Hours of Planned Lane/Road Closures	27
6.3 Construction Safety	27

Section 7	29
OTHER PROGRAM ACTIVITIES	29
7.1 Public Outreach	29
7.2 Permitting Activities	29
7.3 Funding Status	30
7.4 City Operations Activity	30
Section 8	31
PROJECT DETAILS	31
8.1 Water Reclamation Facility	31
8.1.1 Design/Build	31
8.1.2 Project Scope	31
8.1.3 Current Progress	31
8.1.4 Project Challenges	31
8.2 Conveyance Facilities	32
8.2.1 Designer	32
8.2.2 Contractor	32
8.2.3 Project Scope	33
8.2.4 Current Progress	33
8.2.5 Upcoming Activities	33
8.2.6 Project Challenges	33
8.3 Recycled Water Facilities	34
8.3.1 Designer	34
8.3.2 Contractor	34
8.3.3 Project Scope	35
8.3.4 Current Progress	35
8.3.5 Upcoming Activities	35
8.3.6 Project Challenges	36

## Tables

Table 1	Project Accomplishments and Challenges	3
Table 2	Budget Revision Summary	6
Table 3	Estimates at Completion	8

Table 4	WRF Project Performance Measures	11
Table 5	WRF Project Overall Budget Status (thru March 2020)	13
Table 6	WRF Project Cost Fiscal Year Projections	15
Table 7	WRF Project Cost Summary (through December 2019)	16
Table 8	General Project Activities Cost Summary (through March 2020)	16
Table 9	WRF Cost Summary (through March 2020)	17
Table 10	Conveyance Facilities Cost Summary (through March 2020)	17
Table 11	Recycled Water Facilities Cost Summary (through March 2020)	17
Table 12	Summary of Approved Change Orders (Amendment No. 1)	18
Table 13	Summary of Approved Change Orders (Amendment No. 2)	18
Table 14	Summary of Reimbursement Requests	18
Table 15	Time Schedule Order Milestone Summary	19
Table 16	Expanded Milestone Schedule	23
Table 17	Procurement Status (through March 2020)	25
Table 18	Procurement Status (through March 2020)	25
Table 19	Project Construction Costs	27
Table 20	WRF Performance Measures	31
Table 21	WRF Construction Summary	32
Table 22	Conveyance Facilities Performance Measures	33
Table 23	Conveyance Facilities Summary	34
Table 24	Recycled Water Facilities Performance Measures	36
Table 25	Recycled Water Facilities Summary	36

## Figures

Figure 1	Project Cash Flow Projections and Actual Expenditures	14
Figure 2	Project Summary Schedule	21



## Abbreviations

Bartle Wells	Bartle Wells Associates
BO	Biological Opinion
BOD	Biochemical Oxygen Demand
CDP	Coastal Development Permit
CDWF	California Department of Fish and Wildlife
CPT	Cone Penetration Test
CPUC	California Public Utilities Commission
CRLF	California Red Legged Frog
CWSRF	Clean Water State Revolving Fund
DDW	Division of Drinking Water
Design Build Team	Filanc and Black & Veatch
EACs	estimates and completion
EPA	Environmental Protection Agency
ESCP	Enhanced Source Control Program
GMP	Guaranteed Maximum Price
IFC	issued for construction
IIPP	Illness and Injury Prevention Plan
IPR	Indirect Potable Reuse
KPI	Key Performance Indicator
MBCC	Morro Bay Chamber of Commerce
MBR	Membrane Bioreactor
NPDES	National Pollution Discharge Elimination System
NTP	notice to proceed
PA	Programmatic Agreement
PCO	Potential Change Order
PPP	Pollution Prevention Program
Program Manager	Carollo Engineers
Project	Water Reclamation Facility Project
PWAB	Public Works Advisory Board
PWAB	Public Works Advisory Board
RWQCB	Regional Water Quality Control Board
SHPO	State Historic Preservation Office
SPI	Schedule Performance Index
TSO	Time Schedule Order
TSS	Total Suspended Solids
USBR	United States Bureau of Reclamation
USFWS	

UVAOP	Ultraviolet Advanced Oxidation Process
Vistra	Vistra Energy
WIFIA	Water Infrastructure Finance and Innovation Act
WRF	Water Reclamation Facility
WRFCAC	Water Reclamation Facility Citizens Advisory Committee
WWE	Water Works Engineers
WWTP	

## Section 1

# PROJECT OVERVIEW

### 1.1 General Project Status Update

All components of the Water Reclamation Facility Project (Project) are currently in progress.

During the last quarter, the design-build team advanced the design of the Water Reclamation Facility (WRF) and delivered the 90 percent design deliverable on March 31, 2020. The City also issued a notice to proceed (NTP) for construction on March 20, 2020. The design-build team has begun mobilization and mass earthwork at the South Bay Boulevard site.

The pipeline designer delivered the 90-percent design deliverable for the Conveyance Facilities on February 10, 2020. A workshop was held with the Program Manager and the City to review substantial comments on February 25 and 26, 2020.

On March 09, 2020, the City signed a \$61.7 million low-interest loan with the Environmental Protection Agency's (EPA's) Water Infrastructure Finance and Innovation Act (WIFIA) program. Finalizing the loan agreement was the culmination of a process in 2017 that began with the City submitting a letter of interest to EPA. Based on the timing of execution, the City was able to take advantage of a low interest rate at 0.83 percent.

City staff and the Program Manager have been working closely with the EPA's WIFIA staff to complete the Section 7 consultation process with the USFWS regarding the California Red Legged Frog (CRLF) since October 2019. On February 20, 2020, the City received the Final Biological Opinion (BO), which allowed the City to sign the WIFIA loan agreement soon after and issue the construction NTP to the design-build team for the WRF.

Table 1 summarizes some of the key accomplishments and critical challenges identified for the Project through March 2020.



Table 1 Project Accomplishments and Challenges

Project Component	Key Accomplishments	Critical Challenges	Actions to Overcome Challenges	Likely Outcomes
General Project	Signed WIFIA loan agreement for \$61.7 million.			
	Completed Section 7 consultation with the USFWS for the CRLF and received the Final BO.			
Water Reclamation Facility	Completed the 90-percent design deliverable.			
	Issued the construction NTP.			
		Numerous potential change orders (PCOs) need to be considered that will likely exceed the \$126 million Project budget.	PCOs will be presented to the Public Works Advisory Board (PWAB) and City Council.	
Conveyance Facilities		Complete the permitting process with the California Department of Fish and Wildlife (CDFW).	Continue to coordinate with CDFW staff to facilitate review.	Avoidance of certain areas on the WRF site is causing construction inefficiencies that could result in a future PCO.
	Completed the 90-percent design deliverable.			
		Expediting completion of the final design for the Conveyance Facilities.	Possible elimination of intermediate design deliverables.	Further delays in the start of construction could impact the start-up of the WRF and delay compliance with the time schedule order (TSO).
		Receipt of easements necessary to construct the pipelines in the City's existing bike path.	Work closely with Vistra (Vistra Energy), PG&E, and California Public Utilities Commission (CPUC) to obtain the easements.	Delayed receipt of the easements could complicate or delay construction of the Conveyance Facilities.
Recycled Water Facilities		Receipt of property necessary to construct the injection wells.	Work with Vistra to obtain the property for the injection wells.	Without expediting the schedule, the completion of the injection wells will be delayed (does not impact compliance with the TSO).



## 1.2 Quarterly Budget Revision

The original \$126 million baseline budget was developed in June 2018 (Q4 Fiscal Year 2017/2018) and was used as the basis for the rate study prepared by Bartle Wells Associates (Bartle Wells). At the beginning of each fiscal year, the budget is updated and used as the measure of performance for the Project during that upcoming fiscal year. The budget is then reviewed and reconciled on a quarterly basis so it can be compared to both the current fiscal year and baseline budgets. The next budget reconciliation will occur at the end of Q4 Fiscal Year 2019/2020 (June 30, 2020). A summary of the baseline, reconciled quarterly, and fiscal year budgets are summarized in Table 2. Subsequent budget reconciliations (quarterly) and fiscal year budgets (annual) will also be presented in this table for reference.

Table 2 Budget Revision Summary

Project Component	Baseline (Q4 FY 17/18)	Quarterly Reconciliation (Q3 FY 18/19)	Current Fiscal Year (Q4 FY 18/19)	Quarterly Reconciliation (Q1 FY 19/20)	Quarterly Reconciliation (Q2 FY 19/20)	Quarterly Reconciliation (Q3 FY 19/20)
Water Reclamation Facility	\$62,414,000	\$74,059,000	\$72,891,000	\$72,598,000	\$72,231,000	\$71,856,000
Conveyance Facilities	\$21,087,000	\$27,108,000	\$28,864,000	\$28,524,000	\$29,224,000	\$29,989,000
Recycled Water Facilities	\$8,593,000	\$5,366,000	\$5,250,000	\$5,212,000	\$5,353,000	\$5,526,000
General Program	\$24,403,000	\$11,614,000	\$11,801,000	\$11,625,000	\$11,701,000	\$12,964,000
Construction Contingency	\$9,444,000	\$6,450,000	\$7,132,000	\$7,131,000	\$7,364,000	\$10,264,000
<b>Total</b>	<b>\$125,941,000</b>	<b>124,597,000</b>	<b>\$125,938,000</b>	<b>\$125,090,000</b>	<b>\$125,873,000</b>	<b>\$130,599,000</b>

Notes:

(1) Breakdown of the current contingency (\$10,264,000) is as follows: WRF = \$7,506,000; Conveyance Facilities = \$2,458,000; and Recycled Water Facilities = \$300,000

Changes to the Project budget since the completion of the fiscal year budget reconciliation in Q1 Fiscal Year 2018/2019 can be attributed to the following:

- Addition of \$2.9 million in construction contingency for the WRF needed to cover additional PCOs that will be considered by the City Council in late May 2020.
- Addition of pre-construction archeological investigations outlined in the Programmatic Agreement (PA) negotiated with the State Historic Preservation Office (SHPO) for the Conveyance Facilities and Recycled Water Facilities components of the Project.
- Addition of archeological and tribal representative monitoring for the Conveyance Facilities and Recycled Water Facilities components of the Project.
- Addition of biological monitoring for the Conveyance Facilities and Recycled Water Facilities components of the Project.

Table 3 summarizes the positions and estimates at completion (EACs) for the major elements of the Project through the end of Q3 FY 19/20 when the last budget reconciliation was completed.

Table 3 Estimates at Completion

Project Component	Original Estimates	Initial Contract Value	Current Contract Value	Expenditures to Date	Estimate at Completion
<b>General Project</b>	<b>\$24,403,000</b>			<b>\$4,174,821</b>	<b>\$13,917,000</b>
City Costs <sup>(2)</sup>				\$1,898,617	\$4,078,000
Program Management <sup>(3)</sup> (Carollo Engineers)		\$293,000	\$4,280,916	\$2,276,204	\$9,839,000
<b>Water Reclamation Facility</b>	<b>\$62,414,000</b>			<b>\$8,158,699</b>	<b>\$68,871,000</b>
Design/Build (Filanc/Black & Veatch)		\$67,234,512	\$68,870,572	\$8,158,699	\$68,871,000
<b>Conveyance Facilities</b>	<b>\$21,087,000</b>			<b>\$1,807,054</b>	<b>\$26,386,000</b>
Design (Water Works Engineers)		\$1,360,565	\$2,052,387	\$1,807,054	\$2,152,000
Construction				-	\$24,234,000
<b>Recycled Water Facilities</b>	<b>\$8,593,000</b>			-	<b>\$3,575,000</b>
Design				-	\$450,000
Construction				-	\$3,125,000
<b>Contingency</b>	<b>\$9,444,000</b>				<b>\$10,263,000</b>
Water Reclamation Facility					\$7,505,000
Conveyance Facilities					\$2,458,000
Recycled Water Facilities					\$300,000
<b>Other Contracts<sup>(4)</sup></b>				<b>\$5,367,826</b>	<b>\$7,587,000</b>
<b>Total</b>	<b>\$125,941,000</b>			<b>\$19,508,400</b>	<b>\$130,599,000</b>

## Notes:

- (1) Total expenditures and EAC are based on the budget reconciliation completed for Q3 FY 19/20.
- (2) City costs include staff salaries and benefits, legal services, land acquisition, supplies and equipment, etc.
- (3) Includes total program management costs including public outreach and construction oversight/management.
- (4) Other Contracts includes previous consultants including MKN and Black & Veatch and current consultants including Far Western, ESA, Kestrel, GSI, Bartle Wells Associates, etc.

## Section 2

# KEY PERFORMANCE MEASURES

### 2.1 Performance Measures

A set of five (5) Key Performance Indicators (KPIs) were established to readily measure the progress of the Project. These KPIs represent various success factors associated with the WRF project management and delivery that were established by the Program Manager and City staff and are summarized as Table 4. The Project's performance is also illustrated graphically in Figures 1 and Figure 2.



Table 4 WRF Project Performance Measures

Performance Measure	Data	Baseline (Q4FY 18/19)	Current (Q1 FY 19/20)	Delta	Status	ⓐ	ⓑ	ⓒ
1: Total Project Costs	Total Project Projected Cost at Completion versus the Baseline Budget (budget as of 03/31/20)	\$125.9 M	\$130.6 M	3.7%	ⓐ	Estimated cost within 5% of target budget	Estimated cost > 5% above target budget	Estimated cost > 10% above target budget
1.1: WRF Costs	On Site WRF Projected Cost at Completion versus the Baseline Budget (budget as of 03/31/20)	\$77.3 M	\$79.4 M	2.7%	ⓐ	Estimated cost within 5% of target budget	Estimated cost > 5% above target budget	Estimated cost > 10% above target budget
1.2: Conveyance Facilities Costs	Conveyance Facilities Projected Cost at Completion versus the Baseline Budget (budget as of 03/31/20)	\$31.3 M	\$32.5 M	3.6%	ⓐ	Estimated cost within 5% of target budget	Estimated cost > 5% above target budget	Estimated cost > 10% above target budget
1.3: Recycled Water Facilities Costs	Off Site Injection Facilities Projected Cost at Completion versus the Baseline Budget (budget as of 03/31/20)	\$5.6 M	\$5.8 M	4.4%	ⓐ	Estimated cost within 5% of target budget	Estimated cost > 5% above target budget	Estimated cost > 10% above target budget
1.4: General Project Costs	General Project Projected Cost at Completion versus the Baseline Budget (budget as of 03/31/20)	\$11.7 M	\$12.9 M	10.7%	ⓒ	Estimated cost within 5% of target budget	Estimated cost > 5% above target budget	Estimated cost > 10% above target budget
2: Program Manager Earned Value	Ratio of Program Manager Earned Value to Actual Invoiced Cost-to-Date (as of 03/31/20)	1.00	1.07	0.07	ⓐ	>= 1.00	0.99 to 0.90	< 0.90
3: Schedule Performance Index <sup>(1)</sup>	Ratio of Planned Percent Complete to Actual Percent Complete (as of 03/31/20)	1.00	0.94	-0.06	ⓑ	>=1.00	0.99 to 0.80	<0.80
4: Conveyance Pipeline Installed	Feet of conveyance pipeline installed (thru 03/31/20)	18,500 LF	0.0 LF	0.0%	ⓐ	<= 5%	> 5% and <=7.5%	> 7.5%
5: Compliance Date Countdown	Days Remaining to Compliance Date (as of 03/31/20)	1,064 days	832 days	-258 days	ⓑ	<= 365 days	364 days and 180 days	> 179 days



## Section 3

# PROJECT COSTS

### 3.1 Project Budget

The overall budget status for the Project is summarized in Table 5. The top half of the table provides a summary of total estimated Project costs, including original and current estimated costs for the entire Project. The bottom half of Table 5 shows the total amount of work currently under contract and provides a summary of total charges.

Table 5 WRF Project Overall Budget Status (thru March 2020)

Summary of Total WRF Project Cost	
Original Baseline WRF Project Budget <sup>(1)</sup>	\$125,941,000
Current Fiscal Year WRF Project Budget (as of 6/30/19) <sup>(2)</sup>	\$125,884,000
Current WRF Project Budget (as of 03/31/20) <sup>(3)</sup>	\$130,599,000
Budget Percent Change (Current versus Fiscal Year)	3.7%
Total Expenditures for March 2020	\$1,999,000
Total Expenditures to Date (thru 03/31/20 invoices)	\$19,508,000
Percent of Current WRF Project Budget Expended	14.9%
Summary of Contracted Work	
Total Contracted Amount	\$80,126,000
Percent of Current WRF Project Budget Contracted	61.4%
Total Contracted Amount Expended	\$16,838,000
Percent of Contracted Amount Expended	17.3%
Remaining WRF Project Contracted Amount	\$63,288,000

Notes:

- (1) Developed in June 2018 as the basis of the approved rate surcharge that took effect in July 2019.
- (2) The budget for the Project is reviewed on an annual basis at the end of each fiscal year (June 30th) and is used as the basis of performance for the Project for the upcoming fiscal year.
- (3) The Project budget is reconciled on a quarterly basis and compared to the current fiscal year budget (i.e., September 30th, December 31st, and March 31st)

### 3.2 Project Cash Flow

Figure 1 presents the projected and actual expenditures for the Project through March 2020 compared to the Fiscal Year 2019/2020 budget developed at the end of Q4 Fiscal Year 2018/2019. The line graph shows the cumulative values for the Project and the bars show the discrete monthly values. Actual and budgeted expenditures from 2013 to the end of Fiscal Year 2018/2019 have been combined to improve readability. Milestones have been added to the cumulative fiscal year budget and cumulative forecasted expenditures to show changes in the Project schedule that have occurred between development of the fiscal year budget from June 2019 and the current, reconciled budget developed at the end of December 2019. The milestone corresponds to the substantial completion of the WRF, which coincides with the City

being in compliance with the TSO issued by the Regional Water Quality Control Board (RWQCB) in June 2018. While, the compliance with the TSO has been delayed several months due to consultation with the USFWS, completion of construction of the injection wells has been impacted more significantly due to property acquisition.

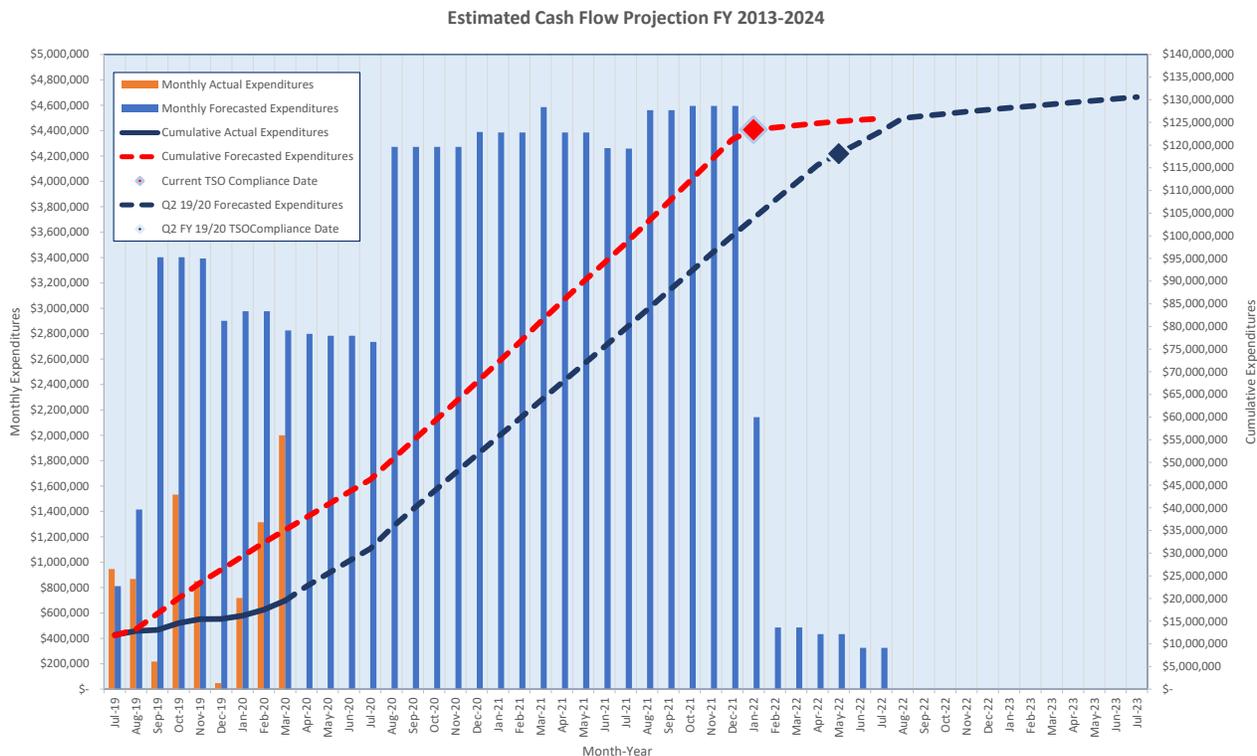


Figure 1 Project Cash Flow Projections and Actual Expenditures

A breakdown of the current Q3 Fiscal Year 2019/2020 budget by fiscal year is included in Table 6.

Table 6 WRF Project Cost Fiscal Year Projections

Project	Actual Expenditures to Date	Remainder FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	Total Project
General Project	\$9,154,000	\$826,000	\$1,159,000	\$876,000	\$876,000	\$73,000	\$12,967,000
WRF	\$8,159,000	\$7,524,000	\$29,298,000	\$29,540,000	\$4,840,000	\$0	\$79,360,000
Conveyance Facilities	\$1,807,000	\$271,000	\$16,116,000	\$14,252,000	\$0	\$0	\$32,446,000
Recycled Water Facilities	\$388,000	\$121,000	\$740,000	\$377,000	\$3,875,000	\$325,000	\$5,826,000
<b>Total</b>	<b>\$19,508,000</b>	<b>\$8,742,000</b>	<b>\$47,313,000</b>	<b>\$45,045,000</b>	<b>\$9,591,000</b>	<b>\$398,000</b>	<b>\$130,599,000</b>

Notes:

(1) Cost includes the total anticipated cost for each element of the Project.

### 3.3 Project Cost Summary

Table 7 summarizes the cost-to-date and contracted amounts for each of the elements of the Project. This table also provides the current cost estimate for each project. Detailed information on the individual elements of the Project is provided in Section 7 of this Report.

Table 7 WRF Project Cost Summary (through December 2019)

Project	Actual Expenditures to Date	Total Contracted Cost	Contract Expended to Date (%)	Total Project Cost (Est.) <sup>(1)</sup>	Cost Expended to Date (%)
General Project	\$6,504,000	\$8,781,000	74.1	\$12,967,000	50.2
WRF	\$8,221,000	\$68,935,000	11.9	\$79,360,000	10.4
Conveyance Facilities	\$1,807,000	\$2,052,000	88.1	\$32,446,000	5.6
Recycled Water Facilities	\$307,000	\$358,000	85.8	\$5,826,000	5.3
<b>Total<sup>(2)</sup></b>	<b>\$16,839,000</b>	<b>\$80,126,000</b>	<b>21.0</b>	<b>\$130,599,000</b>	<b>12.9</b>

Notes:

(1) Cost includes the total anticipated cost for each element of the Project.

(2) Actual total expenditures are equal to \$19,508,000 (Table 6), but includes \$2,000,000 of City costs (i.e., labor, expenses, etc.)

### 3.4 Detailed Project Costs

The following tables show the detailed costs to date for active contracts for each element of the Project.

Table 8 General Project Activities Cost Summary (through March 2020)

Consultant / Contractor	Actual Expenditures to Date	Total Contracted Cost	Contract Expended to Date (%)
ESA	\$412,080	\$412,920	99.8
Far Western	\$124,212	\$260,922	47.6
Kestrel	\$197,488	\$219,872	89.8
Bartle Wells Associates	\$65,580	\$100,800	65.1
JoAnn Head Land Surveying	\$97,693	\$102,644	95.2
JSP Automation	\$21,778	\$63,500	34.3
Carollo Engineers, Inc. <sup>(1)</sup>	\$2,271,204	\$4,281,916	53.0
<b>Total</b>	<b>\$3,190,034</b>	<b>\$5,442,574</b>	<b>58.6.8</b>

Notes:

(1) Total estimate at completion for Program Management/Construction Management is projected at \$9.8 million.

Table 9 WRF Cost Summary (through March 2020)

Consultant / Contractor	Actual Expenditures to Date	Total Contracted Cost	Contract Expended to Date (%)
Overland Contracting	\$8,158,699	\$68,934,509 <sup>(1)</sup>	11.8
<b>Total</b>	<b>\$8,158,699</b>	<b>\$68,870,572</b>	<b>9.0</b>

Notes:

(1) Cost includes final value for Amendment No. 1 of \$1,636,060 and the original contract value of \$67,234,512.

(2) Cost includes final value for Amendment No. 2 of \$63,937 and the original contract value of \$67,234,512.

Table 10 Conveyance Facilities Cost Summary (through March 2020)

Consultant / Contractor	Actual Expenditures to Date	Total Contracted Cost	Contract Expended to Date (%)
Water Works Engineers (WWE)	\$1,807,054	\$2,052,387	88.0
<b>Total</b>	<b>\$1,807,054</b>	<b>\$2,052,387</b>	<b>88.0</b>

Table 11 Recycled Water Facilities Cost Summary (through March 2020)

Consultant / Contractor	Actual Expenditures to Date	Total Contracted Cost	Contract Expended to Date (%)
GSI	\$458,103	\$508,947	90.0
Middle Earth	\$6,570	\$6,810	96.5
<b>Total</b>	<b>\$393,590</b>	<b>\$515,757</b>	<b>76.3</b>

### 3.5 Change Orders

In May 2019, City staff and the Program Manager presented seventeen (17) potential change orders (PCOs) with a total value of \$1.9 million for the WRF to the Water Reclamation Facility Citizens Advisory Committee (WRFCAC) and the City Council. The City Council approved these PCOs and authorized City staff to update the design-build team's contract and associated guaranteed maximum price (GMP). Since that time, the City and Program Manager have worked with the design-build team to value engineer Change Order No. 10 and reduce the cost by more than \$200,000. The City therefore amended the value for Amendment No. 1 to \$1,636,060 that was executed by the City in January 2020.

During Q3 FY 2019/2020 the City Manager authorized PCO No. 65, which was required to bring the design-build agreement in compliance with the appropriate prevailing wage rates (i.e., Davis-Bacon) required by the WIFIA and Clean Water State Revolving Fund (CSWRF) programs.

While no new change orders were approved in Q3 FY 2019/2020, the City and Program Manager have been negotiating several PCOs with the design-build team that will be brought to the Public Works Advisory Board (PWAB) and City Council in May 2020. The eighteen (18) approved change orders are summarized in Table 12 and 13.

Table 12 Summary of Approved Change Orders (Amendment No. 1)

Contract	Change Order No.	Description	Value
WRF	01	New Sodium Hypochlorite Feed for Plant Water	\$78,576
WRF	02	Change Architecture of Operations Building	\$(21,623)
WRF	03	Headworks Odor Control	\$18,422
WRF	04	Remove Canopy and Monorail at membrane bioreactor (MBR)	\$(185,434)
WRF	05	Consolidate Chemical Facilities	\$218,978
WRF	06	Modify Chemical Piping	\$(15,856)
WRF	07	Remove Solids Dumpster Lid	\$14,543
WRF	08	Add SAFE Equalization Tank	\$504,116
WRF	09	Instrumentation and Control Changes	\$75,266
WRF	10	Revise Maintenance Building Layout and Size	\$516,583
WRF	11	Influent Piping and Metering	\$411,766
WRF	12	Install Outdoor-Rated Positive Displacement Blowers at BNR Facility	\$(58,210)
WRF	13	Remove Bypass of Coarse Screens	\$(37,137)
WRF	14	SAFE Diversion Box Additions	\$58,304
WRF	15	Size Dewatering as a Building in the Future	\$30,983
WRF	16	Stairs for the Coarse Screens and Grit Basins (total of 4)	\$52,870
WRF	17	Indirect Potable Reuse (IPR) Product Water Tank Bypass	\$(26,087)
<b>Total</b>			<b>\$1,636,060</b>

Table 13 Summary of Approved Change Orders (Amendment No. 2)

Contract	Change Order No.	Description	Value
WRF	65	Davis-Bacon Wage Increases	\$63,937
<b>Total</b>			<b>\$63,937</b>

### 3.6 Reimbursement from Funding Agencies

In 2017, the City was awarded a \$10.3 million planning loan from the CWSRF program. To date, the City has made three reimbursement requests that will exhaust the planning loan. A summary of these requests are summarized in Table 14.

Table 14 Summary of Reimbursement Requests

Agency	Description	Date	Value
State Water Board	CWSRF Planning Loan	December 2018	\$289,595
State Water Board	CWSRF Planning Loan	November 2019	\$6,431,925
State Water Board	CWSRF Planning Loan	December 2019	\$3,860,506
<b>Total</b>			<b>\$10,582,026</b>

## Section 4

# PROJECT SCHEDULE

A summary of the Project schedule is presented in Figure 2. The light blue bars for each major task represent the planned progress based on the baseline schedule. The dark blue bars represent the current actual progress through March 2020. For each major line item, the schedule performance index (SPI) has been provided as well as an overall SPI for the entire Project. The SPI is a ratio of the planned percent complete versus the current actual percent complete. A SPI of greater than 1.00 indicates that the Project is on or ahead of schedule and a SPI of less than 1.00 indicates the Project is running behind the planned schedule.

### 4.1 Project Milestones

In June 2018, the City received a TSO from the RWQCB. The TSO requires the City to comply with a time schedule that will, within five years of adoption, allow the City to achieve full compliance with biochemical oxygen demand (BOD) and total suspended solids (TSS) final effluent limitations established in Order No. R3-2017-0050. In addition to the final compliance date, a number of intermediate milestones are provided in Table 3 (Compliance Schedule) of the TSO. Presented in Table 15 are the milestones in the TSO.

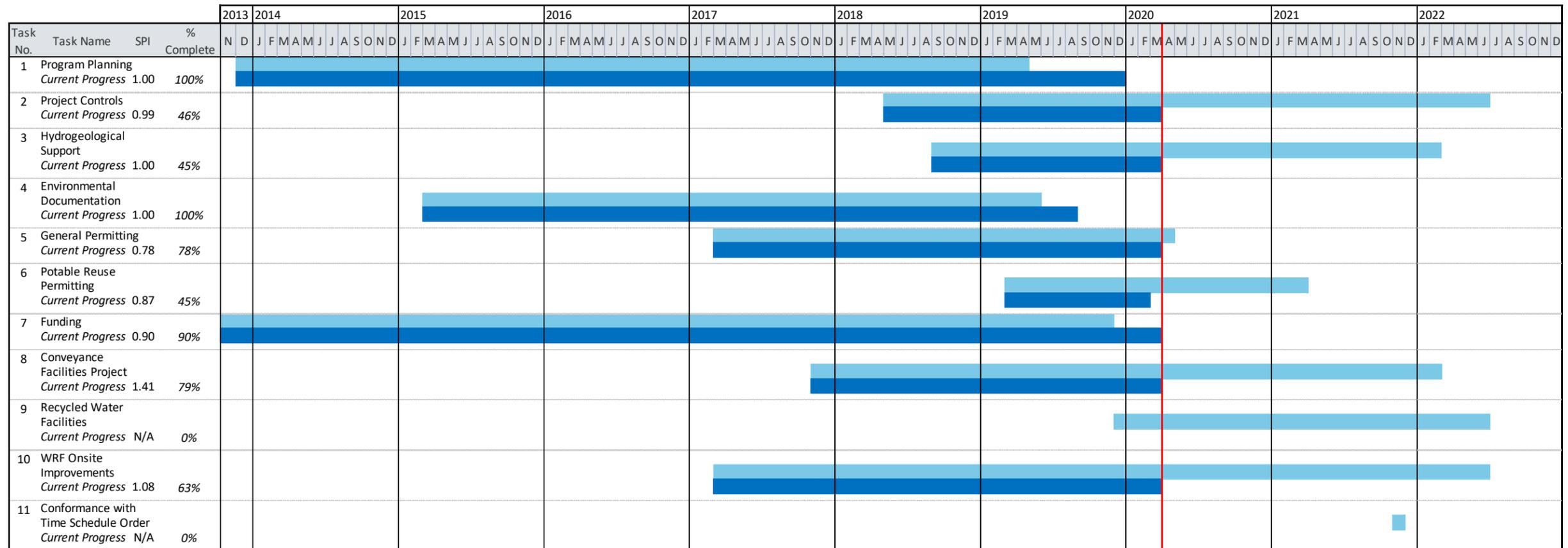
Table 15 Time Schedule Order Milestone Summary

Required Actions	Compliance Due Date	Planned Compliance Date	Actual Compliance Date
Release of Public Draft EIR	March 30, 2018	-	March 30, 2018
Release of Updated Rate Study	June 30, 2018	-	July 05, 2018
Proposition 218 Hearing	August 30, 2018	-	September 11, 2018
Certification of Final EIR	June 30, 2018	-	August 14, 2018
Award of Contract for WRF	September 30, 2018	-	October 23, 2018
Develop, Implement, and Submit Pollution Prevention Plan (PPP) for BOD and TSS	December 01, 2018	TBD <sup>(1)</sup>	-
Award of Contract for Construction of Conveyance Facilities	November 30, 2019	September 21, 2020	-
Completion of WRF Improvements with Completion Report	December 30, 2022	June 15, 2022	-
Full compliance with final effluent limitations	February 29, 2023	June 15, 2022	-

Notes:

(1) The City and Program Manager have noted this requirement in the previous quarterly progress reports sent to the RWQCB (as required by the TSO). The City has requested that the Enhanced Source Control Program required as part of the Title 22 Engineer's Report be considered acceptable for this requirement in lieu of the PPP identified in the TSO.





Project SPI: 0.94  
 Program % Complete: 70%

Baseline Schedule  
 Actual Progress-To-Date

Figure 2 Project Summary Schedule



An expanded milestone schedule has also been developed for outstanding Project activities.

Table 16 Expanded Milestone Schedule

Milestone	Baseline Schedule due Date	Planned Completion Date
<b><u>General Project</u></b>		
Compliance with the TSO <sup>(1)</sup>	November 11, 2021	June 15, 2022
<b><u>Water Reclamation Facility</u></b>		
Begin Construction	August 08, 2019	March 20, 2020
Deliver 90 Percent Design	October 24, 2019	March 31, 2020
Substantial Completion	November 11, 2021	June 15, 2022
Final Completion	June 09, 2022	February 06, 2023
<b><u>Conveyance Facilities</u></b>		
Deliver 90 Percent Design	October 15, 2019	February 10, 2020
Deliver 100 Percent Design	December 17, 2019	June 19, 2020
Bid Advertisement	February 21, 2020	June 22, 2020
Award Construction Contract	May 08, 2020	September 21, 2020
Substantial Completion	September 17, 2021	March 29, 2022
Final Completion	November 19, 2021	May 21, 2022
<b><u>Recycled Water Facilities</u></b>		
Select Preferred Injection Area	May 28, 2019	May 22, 2020
Deliver 30 Percent Design	August 04, 2020	October 01, 2021
Deliver 60 Percent Design	November 10, 2020	January 07, 2022
Deliver 90 Percent Design	February 16, 2021	April 15, 2022
Deliver 100 Percent Design	April 27, 2021	June 24, 2022
Award Construction Contract	July 21, 2021	August 18, 2022
Substantial Completion	April 21, 2022	July 21, 2023
Final Completion	June 21, 2022	September 15, 2023

Notes:

(1) The TSO requires compliance with full secondary treatment by February 28, 2023.



## Section 5

# DESIGN AND PROCUREMENT

### 5.1 Design Status

No new design contracts for the Project were executed in Q3 Fiscal Year 2019/2020. A summary of the existing design contracts is included in Table 17 below.

Table 17 Procurement Status (through March 2020)

Project Name	Current Contract Amount	Amount Expended	30%	60%	90%	100%	Final
WRF	\$8,158,699	\$68,934,509	✓	✓	✓	NA	NA
Conveyance Facilities	\$1,869,707 <sup>(1)</sup>	\$1,018,473	✓	✓	✓		
Recycled Water Facilities	\$0	\$0					

Notes:

(1) The total value of the Water Works Engineers is \$2,052,387, but includes \$182,680 for re-engineering services during construction.

### 5.2 Procurement

No design or design-build contract procurements were performed in Q3 FY 2019/2020. Table 18 presents a summary of the procurement activity for the Project.

Table 18 Procurement Status (through March 2020)

Project Name	Circulate Request for Proposals	Proposal Opening Date	Council Award Date	Notice to Proceed Date	Consultant
WRF	January 24, 2018	May 8, 2018	October 23, 2018	November 01, 2018	Overland Contracting (Filanc-Black & Veatch)
Conveyance Facilities	January 31, 2017	March 8, 2017	November 14, 2017	November 15, 2017	Water Works Engineers
Recycled Water Facilities	Design Engineer to be Selected in 2020				



## Section 6

# CONSTRUCTION STATUS

### 6.1 Construction Summary

During Q3 Fiscal Year 2019/2020, construction began for the WRF. Table 19 presents a summary of project construction progress and costs through December 2019.

Table 19 Project Construction Costs

Project Name	Amount Expended	Initial Contract Amount	Current Contract Amount	% Change in Contract Amount
WRF	\$8,158,699	\$67,234,512	\$68,934,509	2.5
Conveyance Facilities	\$0	\$0	\$0	0
Recycled Water Facilities	\$0	\$0	\$0	0
<b>Construction Total</b>	<b>\$0</b>	<b>\$67,234,512</b>	<b>\$68,934,509</b>	<b>2.5</b>

### 6.2 Upcoming Traffic Control

#### 6.2.1 Planned Impacted Areas

As the Conveyance Facilities component of the Project has not yet started construction, no traffic control activities are planned at this time.

#### 6.2.2 Hours of Planned Lane/Road Closures

As the Conveyance Facilities component of the Project has not yet started construction, no lane or road closures are planned at this time.

### 6.3 Construction Safety

The City issued a notice to proceed to the design-build contractor for the WRF on March 20, 2020 in the midst of a shelter in place order for the County of San Luis Obispo as a response to the COVID-19 pandemic. As an essential infrastructure project under County Order (11.c.1), construction has been allowed to continue during this time. Safety is the first priority for the City, Program Manager, and contractor, and the following measures have been implemented to maintain worker safety and minimize the risk to the surrounding community including:

- Program Manager instructed the design-build team to update their Illness and Injury Prevention Plan (IIPP) to include provisions for COVID-19.
- Program Manager sent the Los Angeles Building and Safety COVID-19 Guidance for Construction Sites to the design-build team. This manual is being looked to as a model for best practices in the industry.

It should be noted that all of the Filanc field staff are currently living in the same house in Morro Bay, essentially isolating together, which could explain why a group of worker may be seen congregating together.

The Project safety goal is zero reportable incidents. There has been a total of zero reported incidents through March 2020.

## Section 7

# OTHER PROGRAM ACTIVITIES

### 7.1 Public Outreach

Through Q3 Fiscal Year 2019/2020, contact has been made with approximately 80 businesses along the Conveyance Facilities alignment, including one-on-one meetings and pop-ins to drop-off Project information. The purpose of the one-on-one meetings is to give businesses a status update and gather business access and operations information that can help inform the development of construction work restrictions and traffic handling requirements. In addition, two meetings have been held with the Morro Bay Chamber of Commerce (MBCC) and member businesses to discuss traffic control handling approaches.

Important information gathered includes parking information, driveway access and off-street circulation, large delivery/pick up vehicle scheduling, hours of operation and peak business times, types of customer traffic (appointments and walk-ins, vehicle and pedestrian) and point of contact verification. Information gathered from the business outreach was compiled by the Program Manager to incorporate the construction work restrictions and traffic handling requirements for into the Conveyance Facilities design. A series of alignment maps and an overview presentation was developed to visually communicate the traffic handling planning and work restriction information.

In March 2020, communications were developed and distributed to announce the execution of the WIFIA loan. Seven news articles were placed based on the WIFIA news release.

In April 2020, the Program Manager is planning to launch a new website as an online hub of project documents, informational materials and construction information.

### 7.2 Permitting Activities

Permit compliance is an important aspect of the Project. The current permitting activities include:

- Division of Drinking Water (DDW).
  - Continued developing the Enhanced Source Control Program (ESCP) required by the DDW for potable reuse projects.
- USFWS.
  - Completed the Section 7 consultation with the USFWS for the CRLF with receipt of the Final BO, which allowed the City to sign the loan agreement and CWSRF to complete their environmental review.
- Caltrans
  - Continued working with Caltrans to obtain the encroachment permit necessary to construct the Conveyance Facilities pipelines.

- CDFW.
  - Submitted formal notification to CDFW for the erosional feature located on the WRF site. The City maintains that this erosional feature is not a water of the state and should not be a jurisdictional feature.
  - Began working on the formal notification necessary to obtain a stream bed alteration agreement for the Conveyance Facilities component of the Project.

### 7.3 Funding Status

- Execution of a \$61.7 million loan agreement with the EPA's WIFIA program.
- Completion of the CWSRF staff's environmental review allowing the City to begin construction of the WRF.
- Continued to support CWSRF's technical, legal, and financial reviews. The City anticipates signing a loan agreement with CWSRF by the end of 2020.
- Submitted a feasibility study for the United States Bureau of Reclamation (USBR) Title XVI Grant Program. The City plans to have an approved feasibility study and be eligible for the Title XVI Grant Program in 2020. The program will fund up to half of the total project costs not to exceed \$20 million.

### 7.4 City Operations Activity

The current City Operations activities include:

- Significant City Operations activities are not anticipated until start-up of the WRF begins in October 2021.

## Section 8

# PROJECT DETAILS

### 8.1 Water Reclamation Facility

#### 8.1.1 Design/Build

In October 2018, the City executed a contract with Overland Contracting consisting of a joint venture of Filanc and Black & Veatch (i.e., design-build team) for design and construction of the WRF located at the South Bay Boulevard site. The WRF will be delivered using the design-build process.

#### 8.1.2 Project Scope

The scope of this element of the Project includes a preliminary, secondary, and advanced treatment facilities. The secondary treatment processes will consist of a MBR and have the ability to exceed the anticipated discharge requirements for the City's new National Pollution Discharge Elimination System (NPDES) permit. The advanced treatment facilities include RO and Ultraviolet Advanced Oxidation Process (UVAOP). Purified water from the advanced treatment facilities will be injected into the Lower Morro Groundwater Basin.

#### 8.1.3 Current Progress

The design-build team delivered the 90-percent design deliverable at the end of March 2020. The design-build team will incorporate the City's comments on the 90-percent design deliverable and submit an issued for construction (IFC) set of plans and specifications in May 2020. Upcoming Activities

Construction at the South Bay Boulevard site began in late March 2020.

#### 8.1.4 Project Challenges

Access to part of the South Bay Boulevard site is currently being impacted by the ongoing process with CDFW.

Table 20 WRF Performance Measures

Performance Measures	Target	Current	Status
Construction Cost <sup>(1),(2)</sup>	\$67.2M	\$68.9M	
Construction Contingency <sup>(3),(4), (5)</sup>	\$6.2M	\$7.5M	

Notes:

- (1) Project budget and current contract amount (≤5% over target = Green, between 5% and 10% over target = Yellow, >10% over target = Red).
- (2) The GMP includes costs for both design and construction of the WRF.
- (3) Project budget and current amount (≤50% of target = Green, between 0% and 50% of target = Yellow, ≤0% of target = Red).
- (4) The Program Manager initially allocated \$6.2 million for contingency for the WRF component of the project. With execution of Amendment No. 1 and 2, \$1.7 million has been moved from contingency to the GMP leaving \$4.5 million in contingency.

(5) In anticipation of approximately \$6.0 million in additional PCOs that will be considered by the City Council in May 2020, the City and Program Manager are recommending the addition of \$2.9 million to contingency for the Project.

Table 21 WRF Construction Summary

Schedule			
Request for Bid / Bid Advertisement	January 24, 2018		
Bid Opening Date	May 08, 2018		
Contract Award / Council Award Date	October 23, 2018		
Notice to Proceed for Construction	NA		
Original Final Completion Date	June 09, 2022		
Original Duration (Non-Working Days)	1,316		
Days Changed by Change Order	0		
Actual Final Completion Date (including Non-Working Days)	October 27, 2022		
Schedule Percent Complete	29.6%		
Budget			
Engineer's Estimate (Construction Cost + 10% Construction Contingency)	\$73,475,845		
Award Amount (including Design Cost)	\$67,234,512		
Change Order Total	\$1,699,997		
Current Contract Value	\$68,934,509		
Percent Change	2.5%		
Work Completed			
Actual Cost -to-Date	\$8,158,699		
Percent Complete (Percent Expended)	11.8%		
Construction Oversight Statistics			
	PCOs	COs	NOPCs
Total Received	74	N/A	3
Total Approved	N/A	17 <sup>(1)</sup>	2 <sup>(2)</sup>
Total Pending	24	N/A	1
Average Turnaround (calendar days)	N/A	N/A	N/A

Acronym List:

PCO – Proposed Change Order; CO – Change Order; NOPC – Notice of Potential Claim

Notes:

(1) 17 PCOs have been approved and are reflected in Amendment No. 1 and 2 to the design-build agreement.

(2) Two (2) notice of potential claims are addressed with the PCOs.

## 8.2 Conveyance Facilities

### 8.2.1 Designer

In November 2017, the City executed a contract with WWE for design and engineering support for the facilities necessary to connect the existing WWTP and the new WRF.

### 8.2.2 Contractor

This element of the Project is being delivered via a conventional design-bid-build procurement process. The Conveyance Facilities are currently under design and will begin construction in the summer of 2020.

### 8.2.3 Project Scope

The Conveyance Facilities originally included the design of approximately 3.5 miles of pipelines and a lift station located near the existing WWTP. The pipelines include two raw wastewater force mains and a wet weather/brine discharge force main. Several changes to the Conveyance Facilities have occurred since the contract was executed with WWE including the addition of a second, smaller lift station near the intersection of Main Street and Highway 1 and the addition of the potable reuse transmission main to either the east or west injection site.

### 8.2.4 Current Progress

In February 2020, WWE delivered the 90 percent design submittal. WWE is currently incorporating comments to the 90-percent design deliverable and plans to complete the design in May 2020.

### 8.2.5 Upcoming Activities

With submission of the final design in May 2020, the City will soon be advertising this element of the Project.

### 8.2.6 Project Challenges

The City continues to work with PG&E and Vistra to secure the easements necessary to construct the pipelines in the City’s existing bike path and replace the force main from Lift Station 2.

Table 22 Conveyance Facilities Performance Measures

Performance Measures	Target	Current	Status
Construction Cost <sup>(1)</sup>	\$0.0M	\$0.0M	
Construction Contingency <sup>(2)</sup>	\$2.5M	\$0.0M	
Number of Feet of Pipelines Constructed <sup>(2)</sup>	18,500 LF	0 LF	
Number of Days of Full Road Closures <sup>(1)</sup>	0 Days	0 Days	
Number of Hours of Night Work	0 Hours	0 Hours	

Notes:

- (1) Project budget and current contract amount (≤5% over target = Green, between 5% and 10% over target = Yellow, >10% over target = Red).
- (2) Project budget and current amount (≤50% of target = Green, between 0% and 50% of target = Yellow, ≤0% of target = Red).

Table 23 Conveyance Facilities Summary

Schedule					
Request for Bid / Bid Advertisement	NA				
Bid Opening Date	NA				
Contract Award / Council Award Date	NA				
Notice to Proceed for Construction	NA				
Original Final Completion Date	NA				
Original Duration (Non-Working Days)	NA				
Days Changed by Change Order	0				
Actual Final Completion Date (including Non-Working Days)	NA				
Schedule Percent Complete	0%				
Budget					
Engineer's Estimate (Construction Cost + 10% Construction Contingency)	\$26,692,000				
Award Amount	\$0				
Change Order Total	\$0				
Current Contract Value	\$0				
Percent Change	0%				
Work Completed					
Actual Cost -to-Date	\$0				
Percent Complete (Percent Expended)	0%				
Length of Pipe Installed (actual to date / planned total)	0 LF / 18,500 LF				
Construction Management Statistics					
	RFIs	Submittals	PCOs	COs	NOPCs
Total Received	0	0	0	0	0
Total Responded To	0	0	0	0	0
Total Pending	0	0	0	0	0
Average Turnaround (calendar days)	0	0	N/A	N/A	N/A

Acronym List:

RFI – Request for Information; PCO – Proposed Change Order; CO – Change Order; NOPC – Notice of Potential Claim

## 8.3 Recycled Water Facilities

### 8.3.1 Designer

Procurement activities for the designer for the Recycled Water Facilities have not yet been started, but it is anticipated that design will begin in 2020 following completion of the Phase 1, Phase 2, and Phase 3 hydrogeological work by GSI.

### 8.3.2 Contractor

This element of the Project is being delivered via a conventional design-bid-build procurement process. The Recycled Water Facilities are currently under design and will begin construction in the spring of 2020.

### 8.3.3 Project Scope

Since the potable reuse pipeline from the WRF to the selected injection site was moved into WWE's scope for design of the Conveyance Facilities, this element of the Project consists primarily of full-scale injection wells at either the west or east injection sites.

### 8.3.4 Current Progress

Since beginning work in November 2018, GSI has completed several of the tasks necessary to inject purified water with a series of injection wells in the Lower Morro Groundwater Basin. To this end, GSI has:

- Installed groundwater monitoring devices in all of the City's active production wells and seawater wells.
- Utilized the numerical groundwater model of the Lower Morro Groundwater Basin for particle tracking and solute transport modeling.
- Characterized the Eastern (Narrows) area of the basin with cone penetration testing (CPT), characterized the hydrogeological characteristics of the Narrows area with installation of a monitoring well and conducting aquifer testing.
- Began coordination with Vistra for the evaluation of the western injection site through use of an injection well.
- Developed a draft report that recommends the Western injection area as the preferred injection location.
- Determined that the Morro Bay Mutual Water Company (MBMWC) well is not sufficient for use as a pilot injection well.

### 8.3.5 Upcoming Activities

On March 18, 2020, GSI delivered a technical memorandum summarizing the characterization of the Eastern and Western injection areas and confirming a preferred injection location. The City and Program Manager are reviewing the draft report and will be providing comments to GSI shortly. Once these comments have been incorporated, the results of the analysis will be brought to PWAB for review, likely in June 2020.

GSI's analysis indicates that the west injection area is preferred for the following reasons:

- Higher transmissivity exists in the Western area compared to the Narrows area.
- Retention times are longer from the Western area than from the Narrows area.
- Injection wells located in the Western project area would provide greater mitigation against seawater intrusion during dry periods.
- Western area is undeveloped, potentially resulting in fewer constructability issues.
- The potable reuse pipeline alignment is immediately adjacent to the Western area.

GSI recommends a longer-term pumping test using City wells, injection and tracer testing, and geophysical characterization of a bedrock ridge, and careful site-selection of potential injection well. While the numerical modeling results indicate that the Project is hydrogeologically feasible, the retention times, discussions between GSI and Program Manager indicate the Project would benefit from some additional modeling being done before drilling a pilot injection well and performing the injection testing. The City and Program Manager are working with GSI to initiate this modeling.

### 8.3.6 Project Challenges

Previously, access challenges for the Vistra property prevented GSI from accessing the MBMWC well to perform the pump testing and determine its feasibility for use as a pilot injection well. Now that the pump testing has been completed, and it has been determined that the well is not acceptable for pilot injection testing, the City will need to drill a new pilot injection well.

Table 24 Recycled Water Facilities Performance Measures

Performance Measures	Target	Current	Status
Construction Cost <sup>(1)</sup>	\$0.0M	\$0.0M	<span style="color: green;">●</span>
Construction Contingency <sup>(2)</sup>	\$0.3M	\$0.0M	<span style="color: green;">●</span>

Notes:

- (1) Project budget and current contract amount (≤5% over target = Green, between 5% and 10% over target = Yellow, >10% over target = Red).
- (2) Project budget and current amount (≤50% of target = Green, between 0% and 50% of target = Yellow, ≤0% of target = Red).

Table 25 Recycled Water Facilities Summary

Schedule					
Selection of the Injection Site	NA				
Request for Bid / Bid Advertisement	NA				
Bid Opening Date	NA				
Contract Award / Council Award Date	NA				
Notice to Proceed for Construction	NA				
Original Final Completion Date	NA				
Original Duration (Non-Working Days)	NA				
Days Changed by Change Order	0				
Actual Final Completion Date (including Non-Working Days)	NA				
Schedule Percent Complete	0%				
Budget					
Engineer's Estimate (Construction Cost + 10% Construction Contingency)	\$3,300,000				
Award Amount	\$0				
Change Order Total	\$0				
Current Contract Value	\$0				
Percent Change	0%				
Work Completed					
Actual Cost -to-Date	\$0				
Percent Complete (Percent Expended)	0%				
Work Completed					
	RFIs	Submittals	PCOs	COs	NOPCs
Total Received	0	0	0	0	0
Total Responded To	0	0	0	0	0
Total Pending	0	0	0	0	0
Average Turnaround (calendar days)	0	0	N/A	N/A	N/A

Acronym List:

RFI – Request for Information; PCO – Proposed Change Order; CO – Change Order; NOPC - Notice of Potential Claim

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Some of the questions submitted for Item B1 were restated or reworded. Below in Red are the questions or comments as submitted.

There were no inconsistencies between the wording of questions submitted and the wording in this document for Item B2

Item B1 – WRF Quarterly Update

**1. Quarterly Report (Section 7.3 – Funding) – When will the City receive the \$5M Clean Water State Revolving Fund (CWSRF) grant?**

Response: The City is working with State Water Resources Control Board (State Board) and they are currently performing their Technical, Legal, and Financial reviews. The State Board anticipates having a signed loan agreement by the end of calendar year 2020. The \$5 million grant would be provided at this time.

**2. When will the State Board reimburse the City for the \$10.3 million planning loan?**

Response: The State Board is currently working with the Program Manager to provide additional information to facilitate their review of Reimbursement Request No. 1 and No. 2.

**3. When does the City expect to submit the application for the Bureau of Reclamation grant? Any estimate of the City's chances? If the City is successful will it receive the full \$20M or something less?**

Response: The City's Feasibility Study should be approved in May 2020. It is uncertain whether funding will be made available for the program in 2020. However, the City would still be eligible in 2021 and in subsequent years when funding is available. The City cannot speculate on the chance of success. The program has some limitations on the amount of federal funding that a project can receive (up to 80 percent), which could impact the amount the City could receive from USBR since WIFIA and much of the CWSRF money is federal.

**4. Section 8.1.4 – Provide more detail regarding challenges with California Department Fish and Wildlife (CDFW) and the impacts on construction?**

Response: The City's Coastal Development Permit (CDP) required the City to get authorization from other agencies that could have jurisdiction for the project as part of Special Condition No. 13. While the City always anticipated receiving a stream bed alteration agreement (SAA) for the Conveyance Facilities component of the project from CDFW, the design of the WRF was done to avoid the need for a SAA or Section 401 and Section 404 permits. Since the CDP specifically identified CDFW, the Program Manager began coordination with them in July 2019 to get a letter confirming no permit was needed for the WRF. The only area at odds was an erosional feature that the City and determined to be non-jurisdictional in a 2019 report (KMA) and the United States Army Corps of Engineers (USACE) and Regional Water Quality Control Board (RWQCB) determined it was not a water of the state or of the United States. CDFW did not agree with this non-jurisdictional determination and the City is currently working with them through the notification process and will receive a SAA for the WRF. The contractor has therefore had to avoid the erosional feature during earthwork activities and will continue to avoid it until it receives the SAA.

5. **Table 2: Why is the contingency in note 1 not distributed among the 3 project elements? Doing so would eliminate inconsistencies in rest of report.**

**Question as Submitted: Table 2. Why is the contingency in note 1 not distributed among the 3 project elements? Doing so would eliminate inconsistencies in rest of report. For example if the \$7,506,000 WRF contingency were added to the WRF quarterly reconciliation of \$71,856,000 the WRF reconciliation would be \$79,362,000, which is the WRF table 6 projection. This would also make table 4 more indicative of where the project is with respect to the original cost estimate; it is not green.**

Response: The contingency could be shown either distributed among all the project elements or shown together. The way it is shown is consistent with the version of the report approved by the City Council. Footnote 1 is intended to clarify the components of the contingency.

6. **Table 4: With respect to the original cost estimate; it is not green.**

**Question as written. a. Table 4 This report should be revised to show comparisons to the “original baseline” costs for the 3 elements of the program, and not compared to the previous quarter’s cost estimates (which this report calls budgets)**

Response: The criteria in the table for green is within 5 percent of the current fiscal year budget (\$125.9 million). At a total estimate of \$130.6 million, it is 3.7 percent over the original budget (i.e., within 5 percent).

7. **Table 21: The engineer’s estimate +10% construction contingency to be \$74,474,845. However, that amount is 8% greater than the current contract value of \$68,934,509. None of these amounts are the same as in tables 2 or 3.**

Response: The value stated in the comment should be \$73,475,845. Therefore:

Table 21: \$73,475,845 (Engineer’s Estimate) = \$67,234,512 (Original Contract) + \$6,241,333 (10% contingency)

Table 2/3: When the budget was originally developed in summer 2018, the design-build contract value was split between design and construction to develop a more accurate cash flow and track spending: \$67,234,512 = \$62,414,000 (Construction) + \$4,820,512 (Design) and the value for the WRF component of the project was shown as \$62,414,000. The cost accounting since that time has been revised.

8. **Table 4: The column titled current (Q1 FY 19/20) vs baseline (Q4 18/19) is only showing performance for the last quarter. This chart should be changed to show Q1 FY19/20 vs the first baseline which was called target, or at least vs the quarterly reconciliation (Q3 FY18/19)? I expect the CC or anyone who reads the report would want to see comparisons of current cost projections as compared to the original baseline, not just last quarter’s reconciliation.**

Response: The table is intended to show current quarterly performance against the annual baseline (June 30, 2019). There is a typo in the column with the heading Q1 FY 19/20. It should be Q3 FY 19/20 (i.e., the latest quarter). Table 2 was added to show members of the public, advisory committees, and the City Council how the budget has been updated each quarter.

9. **Table 1: The challenges column for WRF includes “complete the permitting process with the CDFW”. My understanding is that this has been complete, and the NTP was issued March 20. This is not included as a completed task on the integrate program schedule as well.**

Response: The permitting process with CDFW was discussed in the response to Question 4 previously. This is separate from the permitting process with USFW that was completed in February 2020 and was required to sign the WIFIA loan, close the CWSRF environmental review, and issue the construction notice to proceed. The CDFW permitting process for the WRF is not represented anywhere in the schedule because until February 2020 it was not anticipated to be required.

10. **Table 3: Carollo EAC (estimate at complete) of \$9,839,000 was stated in a chart which supports the Carollo contract amendment 2, but not as a contract item. However, the amendment supporting material also includes statements for additional costs which raise the estimate at complete to \$10,475,394. The final completion of the WRF as stated in this report is Sep 2023 which is 5 months later than reported in Sep 2019 when the completion was to be April 2023. Carollo’s T&M contract’s EAC should increase from what was stated in their amendment 2 in Sep 2019.**

**Question as Submitted:**

**Table 3. a. Carollo EAC (estimate at complete) of \$9,839,000 was stated in a chart which supports the Carollo contract amendment 2, but not as a contract item. However, the amendment supporting material also includes statements on additional costs which raise the estimate at complete to \$10,475,394. The final completion of the WRF as stated in this report is Sep 2023 which is 5 months later than reported in Sep 2019 when the completion was to be April 2023. Carollo’s T&M contract’s EAC should increase from what was stated in their amendment 2 in Sep 2019.**

**b. WRF. Since this report states a \$7,506,000 contingency for the WRF contract for delays, PCOs, etc, and this item in table 3 is supposed to be the program manager’s estimate at complete the contingency should be added to the value of the current Filanc/Black & Veatch contract.**

Response: The Program Manager is doing everything they can to reduce their Program Management costs and reduce the total EAC. Even with the schedule changes, the current EAC is estimated at \$9.8 million based on current and planned expenditures.

11. **WRF: Since this report states a \$7,506,000 contingency for the WRF contract for delays, PCOs, etc., and this item in table 3 is supposed to be the program manager’s estimate at complete the contingency should be added to the value of the current Filanc/Black & Veatch contract.**

Response: The timing of the quarterly report and the City Council’s consideration of a number of PCOs complicates the way the budget is shown. If the City Council were to approve all of these change orders, \$6 million of the total contingency would shift to Filanc/Black & Veatch leaving \$1.5 million in contingency for the WRF.

**12. Table 4: This report should be revised to show comparisons to the “original baseline” costs for the 3 elements of the program, and not compared to the previous quarter’s cost estimates (which this report calls budgets).**

a. Table 4 This report should be revised to show comparisons to the “original baseline” costs for the 3 elements of the program, and not compared to the previous quarter’s cost estimates (which this report calls budgets)

Response: Per the response to Question 8, the table compares the re-baselined annual budget (June 30, 2019) to the current budget estimate. If the City Council chooses, the “dashboard” could be modified to show current vs. the original budget.

**13. Table 4: Either explain or remove the Row 3 (Program Manager’s earned value). Earned values should be lower than one for a project that is behind schedule and above cost regardless of the reasons. There are practice standards for earned value promulgated by the Program Management Institute. If Carollo is going to report “earned values” they should be reporting using industry standard practices.**

Response: Earned value is commonly used in the industry to compare the amount being invoiced (in this case by Carollo) vs. the percent complete (for the scope of services in the agreement). It does not refer to the performance of the contract, but rather Carollo’s contract performance.

**14. Table 7: This table should be removed because it is somewhat redundant with Table 3, and Table 7 is confusing because city, Carollo, and contingency costs are spread across the three program elements, and the composition of General Project is not shown.**

Response: Table 7 is intended to show the difference between total costs expended (Table 3) and those invoiced costs that are not from the City rather are attributed to other contracts (Table 7). With the addition of Table 3, Table 7 could be removed from the report by City Council since it is somewhat redundant.

**15. Table 17: WRF amount expended is not \$68,934,509. This must be a typo. Recommend this chart be deleted. Information found elsewhere in the report.**

Response: The amounts in the columns “Current Contract Amount” and the “Amount Expended” for the WRF were transposed. A total of \$8,158,699 has been expended.

**16. Table 21: Notice to Proceed for Construction was given on March 20, 2020, but chart states NA (What does NA mean?). This is also not documented as a finished task in the integrated program schedule.**

Response: Typo. NA should be replaced with March 20, 2020.

**17. Table 16: Stated WRF Final Completion Sep 15, 2023. Table 21 shows WRF actual completion date (including Non-working days) as Oct 27, 2022. Which is correct?**

Response. Table 16 shows the final completion for the WRF at February 06, 2023. This now matches Table 21. The revised first component of Table 21 is included below:

Schedule	
Request for Bid / Bid Advertisement	January 24, 2018
Bid Opening Date	May 08, 2018
Contract Award / Council Award Date	October 23, 2018
Notice to Proceed for Construction	March 20, 2020
Original Final Completion Date	June 09, 2022
Original Duration (Non-Working Days)	1,325
Days Changed by Change Order	242
Actual Final Completion Date (including Non-Working Days)	February 06, 2023
Schedule Percent Complete	33.5%

**18. An integrated program management schedule is a requirement in the Carollo contract (subtask 5.1 and task 4). In reviewing this integrated program management schedule it is apparent that it is not being used to help manage or oversee project progress, and is being used to document historical progress. The CFAC in its advisory role should review the integrated schedule, since schedule is a major factor for the cost of any project.**

Response: Subtask 8.2.2 (Schedule Management) of Amendment No. 2 states: PROGRAM MANAGER will establish the PROGRAM Baseline Schedule, including the schedule for each of the three (3) projects, and monitor the program and project schedules in relation to the baseline schedule for the duration of the PROGRAM. Schedules will be developed using Microsoft Project, updated at least monthly in coordination with individual Project Managers. The schedule will be published to the PMIS, integrated with the public outreach tools and with other reports. PROGRAM MANAGER will perform regular reviews of PROGRAM activities and schedule, and compare progress of critical path activities to the PROGRAM schedule. PROGRAM MANAGER will discuss schedule and critical path activities with the CITY at progress meetings and provide monthly schedule updates as part of the Program Monitoring and Reporting task and at monthly CITY Council meetings.

The City and Program Manager believe that an integrated program schedule has been developed, is updated on a regular basis (weekly), updated with Project Managers on a monthly basis (i.e., Water Works and Filanc/Black & Veatch), and provides monthly schedule updates in the monthly and quarterly reports.

**19. What is the status of the SRF Loan? What is the current assumption as to that rate? Will it lower the debt payments even more?**

**Context in question, but not included in stated question. Table 1 – ID 331 SWRCB Review of Remainder of Package (for SRF Loan) was to have started on 3/13/20, but has not started.**

Response: In regards to the status of the CWSRF process, please see the response to Question 1. The latest financial analysis completed by Bartle Wells Associates (BWA) assumes funding of the project from CWSRF at a rate of 1.7 percent (current rate + 0.30 percent). The current CWSRF rate is dictated by

resent bond sales and is at 1.4 percent (up about 0.10 percent since the last analysis was completed in fall 2019).

**20. At the last CFAC meeting we were advised the order of magnitude of the possible change orders for the Price Not Exceed contract was in the vicinity of \$2 M. We knew about the delay and we knew about the issues with Fish and Game at that time. What happened in the month to have this value be almost 3 times the estimate?**

Response: It was known at the end of 2019 that the delay costs alone would be \$2 million. This may have been where the reference to “\$2 million” reference originated. At the time, the cost for the permanent exclusion fencing was not known (\$856,000) and the discussion about modifications to the biological treatment facilities had just begun (\$743,000). A number of other PCOs were identified/developed around the end of 2019 with the development of the 90 percent deliverable.

**21. The issues with Vistra and PG&E have been addressed for over a year with apparently still no imminent resolution. This effort and the activity relationship is not shown on the WRF integrated schedule. Since this is so critical, it seems logical to include the major steps to resolve. Please explain in more detail the issues surrounding these properties and how reasonable it is they will be resolved so as to not trigger more delays/costs?**

Response: The situation with Vistra has been ongoing and due to the sensitivity of the issue, it has not been highlighted in detail in previous quarterly reports. Note, the project can be bid and construction can begin before all of the easements are obtained.

**22. I had understood the decision to eliminate the 100% design had been made? Has the decision been made and if so, why is this on the critical list? And since a deliverable of that contract upon design completion was to include a construction estimate, what is that estimate?**

**Context in question, but not included in stated question. The reason I ask about the new estimate is that since all other aspects of the Project have increased with advanced design, it would be reasonable this would have as well. Also, the construction requirements as will be presented to PWAB this week have what seem to be excellent, but likely onerous on the constructor to facilitate the construction with the least impact on our businesses.**

Response: The text in Table 1 has been updated to state “Elimination...” This decision was finalized since the last report. The project is being advanced from 90 percent to bid set. The bid set will include a final engineer’s estimate for bidding. In regards to the evolution of the cost estimate for the Conveyance Facilities:

Element		CDR	60% Cost Estimate	90% Cost Estimate
No Construction Contingency	Pipelines	\$ 12,954,256	\$ 12,399,091	\$ 12,510,909
	PS	\$ 8,132,990	\$ 7,971,818	\$ 8,043,636
	Conduit	\$ 403,920	\$ 424,545	\$ 429,091
	IPR(1)	\$ 3,087,593	\$ 3,220,909	\$ 3,250,000
	<b>Total</b>	<b>\$ 24,578,759</b>	<b>\$ 24,016,364</b>	<b>\$ 24,233,636</b>
Notes:				
(1) Assumed IPR (East) for CDR				

The new cost from the 90 percent submittal is included in the \$130.6 million current project budget.

23. **1.2 Quarterly Budget Revision: As with other monthly and quarterly reports, it is stated that the June 2018 Bartle Wells Associates Rate Study was based on an estimate of \$126 Million.**

**Question as submitted:** Section 7 on Page 7 of that reports states: “The WRF project is currently estimated to cost \$122.8 million including expenses incurred to date; the financial and rate projections are based on this amount.” This is reinforced with the various supporting financial tables such as Table 6a for the Base Case which resulted in the \$41 incremental increase to rates. I would stipulate that there is a \$126 M value on Page 7, but that is NOT the value used by BWA in determining the Rate increases.

**Question:** Why does Carollo continue to believe the Rates were based on \$126 M when clearly, they were based on \$122,807,000?

*Response:* The rate study assumed financing for a \$123 million project cost, and if the additional \$3 million in contingency was required, it would be paid in cash from the water and wastewater enterprise funds.

24. **Table 3: The Total cost of the Project stayed at approximately \$126 million and the contingency stayed at approximately \$7 million for 12 months and then in one month, this changed to \$130.6 million total with a probable \$1.6 million contingency. And with so many unknowns relative to the Injection, allowing only \$300,000 seems very low.**

*Response:* Please see the response to Question 20. In terms of the contingency for the Recycled Water Facilities, it is in line with the other components of the Project. The cost of three (3) injection wells is estimated at \$3 million. The contingency is 10 percent of the construction costs.

25. **Does the \$9.8 million estimate for Carollo costs reflect the schedule slippage and other potential slips if the easements are not obtained in a timely manner or the Injection part of the Project is not delivered in a timely manner?**

*Response:* Please see the response to Question 10 above.

26. **What was the Price index change supporting the escalation for the WRF.**

*Response:* As stated in the design-build contract, escalation should be determined based on the Engineer’s News Record (ENR) Construction Cost Index (CCI). During negotiations, the design-build team proposed to use their own internal cost indices information. They believe this is a more accurate representation of future costs (i.e., ENR is historical). Based on review by the Program Manager, the resulting escalation increase based on the use of the Black & Veatch indices was less than if we would have used ENR.

27. **Table 4: The metrics being used should be revisited. Basically this “Performance Chart” has continually suggested all is well. If everything is so well, how did we have a 6 month slip and a \$5 M cost increase. And this is to say nothing of what is happening to the Conveyance and Injection aspects of the Project.**

*Response:* The format, including the performance measures and criteria were presented to and accepted by the City Council. These items can be updated if directed by the City Council.

**28. Figure 1: The horizontal distance between the lines represents schedule slips. Given the importance of this forecast for the purpose of cash flow management, it is suggested this be updated and monitored closely.**

Response: Expenditures are tracked on a monthly basis and cash flow estimates are updated on a quarterly basis.

**29. What is the status of the reimbursements for the CWSRF loan?**

Response: Please see the response to Question 2 above.

**30. What is the status of the WIFIA loan requests and those actual reimbursements? What procedures have been put in place to improve the quality of WIFIA requests and the upcoming CWSRF requests?**

Response: To date, no reimbursement requests have been made for WIFIA funds. City and Program Management staff are currently working with WIFIA staff to determine the format for reimbursement requests. We are also working closely with the design-build team to develop a reimbursement format that is acceptable for CWSRF and WIFIA.

**31. Table 15: Since the compliance date for the Pollution Prevention Plan (PPP) was 12/1/2018 and not yet completed, what is the forecasted date, has there been an official exception proffered, and where is this on the Integrated Schedule?**

Response: The PPP is not shown in the integrated program schedule. As stated in Table 15, the Enhanced Source Control Program (ESCP) is taking the place of the PPP. This request has been made to the RWQCB in the quarterly update reports required by the time schedule order (TSO). The ESCP is included in the integrated program schedule and is tied to the completion of the Title 22 Engineering Report.

**32. Award of Conveyance contract was to be November 30, 2019 and that did not happen. The current schedule date for this appears to be 8/14/20 in the schedule and 9/21/2020 in the report. Please explain the difference. Have we received an exception for missing this date?**

Response: The current award date is September 21, 2020. Progress is conveyed to the RWQCB in the quarterly reports required by the TSO. These are available on the WRF website here:

<http://morrobaywrf.com/regional-water-quality-control-board-quarterly-reports/>

We have not made a formal exception request to the RWQCB.

**33. There is now approximately 8 months of float to the compliance date. Given our delays to date, it seems imperative to place additional emphasis on managing any possible further delays.**

Response: The City agrees with this observation. The goal continues to be keeping the construction of the Conveyance Facilities component of the project off the critical path and not allow it to impact the performance testing for the WRF.

**34. Table 16: The column title Planned Completion Date is confusing (e.g., March 20, 2020 is the "Planned Completion Date" to "Begin Construction" for the WRF).**

Response: Noted. The column header could be updated to reduce the possibility for confusion.

**35. *The Integrated Schedule seems to show the completion of the Conveyance facilities to be 4/22/22 and the start of functional testing for the WRF to be 2/14/22. It would help if we could see the activity relationships.***

Response: Noted. The substantial completion for the Conveyance Facilities is March 29, 2022. The seeding of the plant (precursor to 14-day acceptance testing) is scheduled for May 25, 2022. This represents 2 months of float between the completion of the Conveyance Facilities and the need to convey raw wastewater to start-up the WRF.

**36. *What is the meaning and value of the second column in the program schedule? What is the meaning of NA?***

Response: NA appears in the schedule for tasks that have no actual start or completion dates. The NA stands for “Not Applicable.”

Item B2 – General Fund Operating Budget

1. On page 2 of the staff report, last paragraph second to last sentence you state “...there will be service reduction impacts to the community, including delayed response and processing time.” Could you provide a couple of examples of areas where “delayed response and processing time” might affect the average resident?

Answer: We expect there to be less front counter hours at City Hall, as remaining staff will need some designated time to process payments, complete utility billing functions and process business license and TOT receipts. Also, we expect there to be some delayed response time from the public works field crews in responding to service requests and in the development review process. In addition, we have eliminated a significant amount of contract services, including services for City Trees and other facility and maintenance projects.

2. Services---The major reductions appear to be in Police, Fire and Public Works. What are a couple of examples of the largest services that have been discontinued?

Answer: The major reductions are in Public Works and Recreation. Public Works has lost a total of four full-time positions. Recreation has lost two full-time positions as recreation services are not permissible at this time and we are unclear what those services will look like in the future. At this point childcare is the primary service being offered by recreation as well as the coordination of the Morro Bay Cares program, particularly the volunteer group.

3. Why is one of the accomplishments for Public Works: “Oversight of the Water Reclamation Facility Program”? Wasn’t this funded by the WRF Project (part of the Capital Improvement Plan section of the Budget) and not the General Fund? And if not, why not?

Answer: We did not get a chance to update all of these in time for CFAC publication but Public Works was and continues to be involved in the project from an oversight perspective.

4. I didn't see the plan for the Capital Improvement Plan. We have collected at least \$15 M in 218 fees and have included \$11 M from 2018 forward in a 5-year timeframe for water and sewer upgrades. We have the ability to leverage unbelievably low interest rates to:
  - a. Address our aging infrastructure issue in a much more aggressive fashion
  - b. Retain employees who have the skill sets to transition to this work effort
  - c. Provide job opportunities for contractors in the area and hopefully residents of Morro Bay

Answer: We have been focused on the general fund budget given the COVID-19 pandemic. We are working on the other City funds and capital funds now.

ROCK SOLID TOGETHER -- A very well thought out and assembled plan.

1. Financial Impacts chart FY19/20
  - a. The Worst case is less than moderate for TOT. This must be a typo, but the total adds correctly? This is not the case for FY20/21

Answer: We will check into this and make sure figures are accurate.

2. What does extension of UDP for those laid off mean?

Answer: Those customers that are unemployed due to COVID-19 will be eligible to receive the 10% utility discount through the June billing cycle. Typically, the program is only offered to income qualifying customers.

3. ROCK SOLID TOGETHER: COUNCIL RECOMMENDATIONS
  - a. Why is putting a 1% sales tax increase on November's ballot not listed as being considered?

Answer: There has been no determination if a sales tax measure will be placed on the November ballot. The City continues with Join the Conversation discussions to identify community priorities and focusing efforts on recovery plan.

Enterprise Funds

1. Water, sewer, WWTF are not part of the general fund, but when are their budgets going to be reviewed?

Answer: We are working on those budgets now and hope to publish by the end of the week.

A couple of cosmetic corrections

1. Page C-45 Transfer Purpose and Budget Overview copied from 2019/20 without changes

Answer: Yes, we need to update this. Thank you, we were not able to complete all of these in time for publication.

2. Page C-94 Public Works Admin---The headcount chart at the bottom hasn't been updated for 2020/21.

Answer: Yes, we need to update this. Thank you, we were not able to complete all of these in time for publication.

**PWAB Questions and Staff Responses – 5/20/2020**

**1. Explain the difference between the line items, Notice of Proceed (\$1.22 million) and Escalation (\$1.23 million) in the Change Order detail that was outlined in Item B-2.**

Response: The design-build agreement, executed in October 2018, anticipated that the construction notice to proceed could be delayed for up to 12 months. Once the 12 months was exceeded (notice to proceed in March 2020, two change orders were required based on the Section 6.16 Compensable Cost Escalation).

6.16.1 – After the award of this Design-Build Agreement, the construction start date is anticipated to be delayed for up to twelve months until financing is approved. The Design/Build Entity will not be compensated for increases in pricing within that delay, unless the Engineering News-Record (ENR) Construction Cost Index (CCI) for San Francisco, CA exceeds 3.0% annual average for that twelve months (PCO No. 059).

6.16.2 – If the construction start date is delayed for any reason beyond 12 months after the award date of this Design-Build Agreement, the City and the Design/Build Entity will negotiate a mutually fair and reasonable adjustment to the Cost Plus with Guaranteed Not to Exceed Amount of the Design-Build Agreement based on the specific circumstances at the time (PCO No. 039).

**2. Of the PCOs that were included in the summary in the PWAB’s staff report (Item B-2, page 22/70) how much of the remaining PCO’s (\$2.28 million) can be attributed to the specifications (or lack thereof) that were included in the original Design/Build RFP?**

Response: The table below indicates those PCOs that can be attributed to a lack of detail in the RFP:

PCO No.	Description	Value
055	Notice of Dispute - PG&E Temporary Power	\$13,163
056	Impacts of Water Quality Changes	\$282,420
069	Third Party Inspection and Testing	\$100,000
<b>Total</b>		<b>\$395,583</b>

3. Provide additional detail on the PCOs that list Long-Term O&M Cost Saving, Operator Safety, and Improved Operations.

PCO No.	Description	Final PCO Cost	Primary Rationale
37	PLC/SCADA Software Uniformity (MBR, RO, and Headworks Only)	\$201,577	<p><b>Long-Term O&amp;M Cost Savings.</b></p> <ul style="list-style-type: none"> <li>• With the facilities automated operating systems using the same equipment and speaking the same computer language the complexity of the operating system is reduced allowing operators and maintenance staff to only need to learn one control system throughout the whole facility.</li> <li>• Outside service personnel will quickly be able to trouble shoot, repair, and provide support with a uniform system.</li> <li>• Providing computer automation uniformity in hardware and software reduces the amount of spare parts the facility must have in inventory.</li> </ul>
44	Tank Access Improvements	\$210,327	<p><b>Operator Safety</b></p> <ul style="list-style-type: none"> <li>• Initial design showed ladders and limited access to elevated structures that need to be checked and or monitored daily.</li> <li>• The DB team was unable to provide specific examples of other facilities or how equipment could be safely operated and maintained as designed.</li> </ul>
45	Maintenance Ceiling Revisions and Automated Roll-Up Door	\$21,009	<p><b>Improved Operations</b></p> <ul style="list-style-type: none"> <li>• Modifications were made to the laboratory and I&amp;C workshop ceilings (which reside in the maintenance shop) to allow for safe storage of spare parts and supplies on top of the rooms.</li> <li>• One automated roll up door was provided for the entire facility in the maintenance shop which will be used as a primary entry point.</li> </ul>
47	Changes to Furnishings and Residential Equipment	\$85,194	<p><b>Improved Operations</b></p> <ul style="list-style-type: none"> <li>• Refinement of listed furnishing such as computer workstations, fume exhaust hood, laboratory cabinetry, etc., modifications to the list was necessary to fit the buildings and workspaces designed by the DB team.</li> </ul>
50	Revisions to Water/Sewer Supply Storage Sheds	\$13,142	<p><b>Improved Operations</b></p> <ul style="list-style-type: none"> <li>• Change to provide acceptable access into each of the storage sheds. Each shed is sized 25ft *30ft with the only initial access being through a six-foot man door making the space use limited. A rollup garage door was added to each and the double man door was reduced to a single.</li> </ul>

52	Analyzer Relocation and Enclosures	\$76,555	<p style="text-align: center;"><b>Improved Operations</b></p> <ul style="list-style-type: none"> <li>• Online water quality analyzers were relocated to areas where multiple analyzers could be placed together to better assist with operations and maintenance compared to being spread throughout the facility.</li> <li>• Enclosures are utilized to protect the equipment from the elements providing greater longevity and improved operations through serviceability and operations in a consistent environment.</li> </ul>
67	BNR System Modifications	\$742,405	<p style="text-align: center;"><b>Improved Operations</b></p> <ul style="list-style-type: none"> <li>• One of the aeration system control modes proposed by the DB team had the potential advantage of reduced aeration requirements, as such the team sized the equipment associated with aeration taking advantage of this reduction.</li> <li>• At the time of design review the DB team could only reference one operational plant in the US which operates at a flow magnitude much larger than Morro Bay (189 mgd). That facility estimated that it was taking an additional 1 to 2 full time staff members to keep this type of control system operational.</li> <li>• The reduced size of the aeration equipment also made the other listed standard Dissolved Oxygen control mode unusable for control under all design conditions. While operating under this control mode the treated water would not meet the requirements for the next phase of advanced treatment needed for IPR use and would need to be discharged to the ocean.</li> </ul>
68	SAFE Equalization Settle Tank Drain Piping	\$62,215	<p style="text-align: center;"><b>Improved Operations</b></p> <ul style="list-style-type: none"> <li>• The piping change separates two distinct processes, solids dewatering and the draining of the SAFE Equalization tank. This modification will allow both events to take place independent of each other.</li> </ul>

# WATER RECLAMATION FACILITY

City of Morro Bay

Date: 03/19/2020

Project No.: 11100A.60

Prepared By: Anthony Cemo

Reviewed By: Eric Casares; Paul Amico

Subject: Morro Bay WRF Conveyance Facilities – Local Labor Preference Investigation

## Purpose

The purpose of this Project Memorandum is to examine nearby city governments local labor requirements with regards to public works and infrastructure project specifications. The content of this memorandum compiles recent project local labor requirements from four (4) different municipalities and provides a recommendation to the City of Morro Bay for implementing local labor requirements for the Conveyance Facilities component of the Water Reclamation Facility (WRF) Project. The WRF Project is being funded by State and Federal funds originating from the Environmental Protection Agency's (EPA's) Water Infrastructure Financing and Innovation Act (WIFIA) and State Water Resources Control (SWRCB) Clean Water State Revolving Fund (CWSRF).

## Background Information

Local labor is identified as labor provided by a contractor whom is located within the jurisdiction of the purchasing government or is actively participating in the local economy on a regular basis. For public works and infrastructure projects, city governments can require that a specific percentage of labor be from local subcontractors with a Project Labor Agreement (PLA) (i.e., community workforce agreement) or adopt a municipal code provision that stipulates the preference for local labor for specific project types. Regardless of the statutes adopted by a city government, it is not very common for a PLA to be implemented on a public works project.

## Local Labor Requirement Findings

The following sections describe examples of nearby cities to Morro Bay and their local labor requirements used for public works and infrastructure projects. Carollo is currently working with these municipalities on the subject projects.

### City of Fresno

The City of Fresno is designing a 66-inch diameter Sanitary Sewer Trunk Main to be realigned due to structural failures of the existing pipe walls. The project specifications use the City of Fresno's Contract and Bidding Documents. Division one of the City of Fresno Public Works Contract and Bidding Documents contain a Certification for Local Preference, this certificate references the City of Fresno Municipal Code Section 4-108(d) which states<sup>1</sup>:

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<sup>1</sup> <https://library.municode.com/ca/fresno>

## PROJECT MEMORANDUM

*"...local business" shall mean a business with a fixed primary or branch office either (i) within a twenty-five mile radius of Fresno City Hall, located at 2600 Fresno Street in the City of Fresno, or (ii) within the County of Fresno; and which fixed primary or branch office was established prior to the city inviting bids for the respective purchase...Local preference will be demonstrated by the total number of individuals a business employs within Fresno County..."*

This certification is not a requirement set by the city. However, it provides a means for the contractor to provide details of local employment to the city during the bid process to establish local preference and earn a project price differential to their bid price during the bidding process. It must be noted, that if a public works project is funded by State or Federal government, this type of bidder preference is not allowed.

### City of Sanger

The City of Sanger is currently constructing a 750,000 gallon welded steel water storage tank and a 4 million gallon per day (mgd) booster pump station. This project is currently being funded by the United State Economic Development Agency (EDA) (i.e., it is a federally-funded project). There are no local labor requirements for this project, however, similar to the City of Fresno, the City of Sanger municipal code also creates a percentage cost differential for local bidders applied by the Purchasing Manager. Municipal Code Section 2-220 outlines percentage factors used for local contractors making local labor more competitive. An excerpt from the Sanger municipal code is shown below<sup>2</sup>:

- 1) *One and one-half percent preference for a bid, offer, quotation, or proposal up to, but not to include, \$500,000;*
- 2) *One percent for a bid, offer, quotation, or proposal of \$500,000 up to, but not to include, \$1,000,000;*
- 3) *One-half percent for a bid, offer, quotation, or proposal of \$1,000,000 or more.*

Additionally, the City of Sanger also states that if a project is funded by a grant and/or government that prohibits local preference, the preferential percentage factors are not applicable.

### City of Paso Robles

The City of Paso Robles is currently designing a recycled water pipeline, storage reservoir, and booster pump station. This project is currently being funded by CWSRF and does not have local labor preferences. The City of Paso Robles municipal code does not contain local labor preferences or requirements for public works projects.

### City of Pismo Beach

In 2018, the City of Pismo Beach completed the design of a series of improvements to their sludge dewatering facilities. This project is also being funded by CWSRF and did not include local labor preferences. The City of Pismo Beach does not have local labor requirements listed in their municipal code for public works and infrastructure projects.

### City of Morro Bay

The City of Morro Bay Municipal Code Section 3.08.105 advises contractors to use local labor for public work contracts as outlined below<sup>3</sup>

*"...The prime contractor shall use good faith efforts to sub-contract the supply of materials and equipment to local business enterprises and to sub-contract services to businesses whose work force resides within Morro*

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<sup>2</sup> <https://library.municode.com/ca/sanger>

<sup>3</sup> [https://library.municode.com/ca/morro\\_bay](https://library.municode.com/ca/morro_bay)

## PROJECT MEMORANDUM

*Bay. The prime contractor shall submit evidence of such good faith efforts at the time of submission of bids. Good faith efforts may be evaluated by placing advertisements inviting proposals in local newspapers, sending request for proposals to local sub-contractors, or by demonstrating that no local sub-contractors are qualified to perform the work or supply the materials or equipment..."*

Similar to the cities of Fresno and Sanger, there is an exception to the local business policy if a project is funded by a government entity with laws or regulations that prohibit labor preferences. Therefore the local labor preferences cannot be applied to any components of the WRF Project public works project. The City of Morro Bay's Municipal code states the following on this matter:

*"Exceptions to Local Business Preference Policy. The preference set forth in this section shall not apply to the following purchases or contracts:*

- 1) Goods or services provided under a cooperative purchasing agreement.*
- 2) Purchases or contracts which are funded in whole or in part by a governmental entity and the laws, regulations, or policies governing such funding prohibit application of that preference.*
- 3) Purchases made or contracts let under emergency or noncompetitive situations.*
- 4) Application of the local business preference to a particular purchase, contract, or category of contracts for which the city council is the awarding authority may be waived at the city council's discretion."*

**Prepared by:**



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Anthony Cemo, PE

:ac

**DOCUMENT 00434**

**PROPOSED SUBCONTRACTORS FORM**

The listing of more than one subcontractor for each item of Work to be performed with the words "and/or" will not be permitted.

Bidder certifies that all Subcontractors listed are eligible to perform the Work.

A goal of City with respect to this Project is to foster employment opportunities for City residents and businesses. To that end, Contractor shall make continued reasonable efforts to cause all solicitations for full-time, part-time, new or replacement employment, needed for the construction, maintenance and repair of this Project, which is the subject of this Agreement, to be advertised in such a manner as to target local City residents and businesses. Such efforts are subject to City's Project Manager's prior written approval and shall be in addition to the DBE requirements. Contractor's subcontractors, of every tier related to this Project, shall also be required to comply with the foregoing. Contractor shall ensure all of its subcontracts relating to this Project, of every tier, include similar language and all those subcontractors adhere to these requirements. Nothing in this Section shall require Contractor or any of its subcontractors, at any tier, to offer employment to any individual who is not otherwise qualified for such employment. A violation of this provision by Contractor or any of its subcontractors, at any tier, shall be a material breach of this Agreement. In addition to any other remedy City has regarding a material breach of this Agreement, a violation of this provision shall also result in the assessment of liquidated damages of \$\_\_\_\_\_ per violation. Without limiting the generality of the foregoing, the provisions of this section are not intended, and shall not be construed, to benefit or be enforceable by any person whatsoever other than City.

Add additional sheets, if necessary, to list all Subcontractors.

If no Subcontractors are listed, it will be assumed that no Subcontractors are to be employed meeting the above conditions.

BIDDER

---

(Signature)

---

(Date)

<b>Work to be Performed</b>	<b>Contractor Name</b>	<b>License Type/Number</b>	<b>Percent of Total Contract</b>	<b>CA DIR Registration Number</b>
1.	Prime Contractor			
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				

<b>Work to be Performed</b>	<b>Contractor Name</b>	<b>License Type/Number</b>	<b>Percent of Total Contract</b>	<b>CA DIR Registration Number</b>
12.				
13.				
14.				

The Contractor is responsible to list the information for their proposed Project Manager, responsible for DIR compliance, in the space below provided and sign below.

<b>Contractor Project Manager Name</b>	<b>Title</b>	<b>E-mail address</b>	<b>Work phone number</b>

END OF DOCUMENT

# Item C-1 City Council

Water Reclamation Facility Quarterly Update, Potential Change  
Orders and Local Hire Provisions

May 26, 2020

MORRO BAY

**OUR WATER**

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# Recommendations

- Review and approve the potential change orders (PCOs)

# Status Update

# Current expenditures and revised budget

Project Element	Actual Expenditures to Date	Remaining Expenditures	Total Project Budget
General Program	\$9,154,000	\$3,810,000	\$12,964,000
WRF	\$8,159,000	\$63,696,000	\$71,856,000
Conveyance Facilities	\$1,807,000	\$28,181,000	\$29,989,000
Recycled Water Facilities	\$388,000	\$5,137,000	\$5,526,000
Contingency		\$10,263,000 <sup>(1)</sup>	\$10,264,000
<b>Total</b>	<b>\$19,508,000</b>	<b>\$111,087,000</b>	<b>\$130,599,000</b>

Notes:

(1) If all PCOs are approved by City Council (\$6.0 million), the remaining contingency would be \$4.2 million with \$1.5 million remaining for the WRF component of the Project.

# Impacts of revised budget on total cost

Scenario	2018 Rate Study	2019 Financial Plan Update	2020 Debt Service Projections
<b>Project Budget</b>	\$126,000,000	\$125,882,000	\$130,596,000
<b>Debt Proceeds</b>	\$95,175,000	\$97,000,000	\$101,714,000
<b>Total Debt Service Cost</b>	\$179,945,000	\$132,660,000	\$128,138,000
<b>Present Value of Total Debt Service Payments<sup>(1)</sup></b>	\$107,738,000	\$81,698,000	\$74,622,000
<b>Maximum Annual Debt Service Payment</b>	\$5,293,000	\$4,422,000	\$3,993,000

Notes:

(1) Present value is shown in current dollars and assumes a 3-percent discount rate.

# Potential Change Orders

# What is a PCO?

Suggested change to the WRF identified

Determination of material change in DB scope

Development of raw order of magnitude (ROM) cost

Decision made to move forward

Development of Draft PCO

Review of Draft PCO by Program Manager

Discussion of Comments

Development of Final PCO and Negotiation

# Summary of proposed PCOs

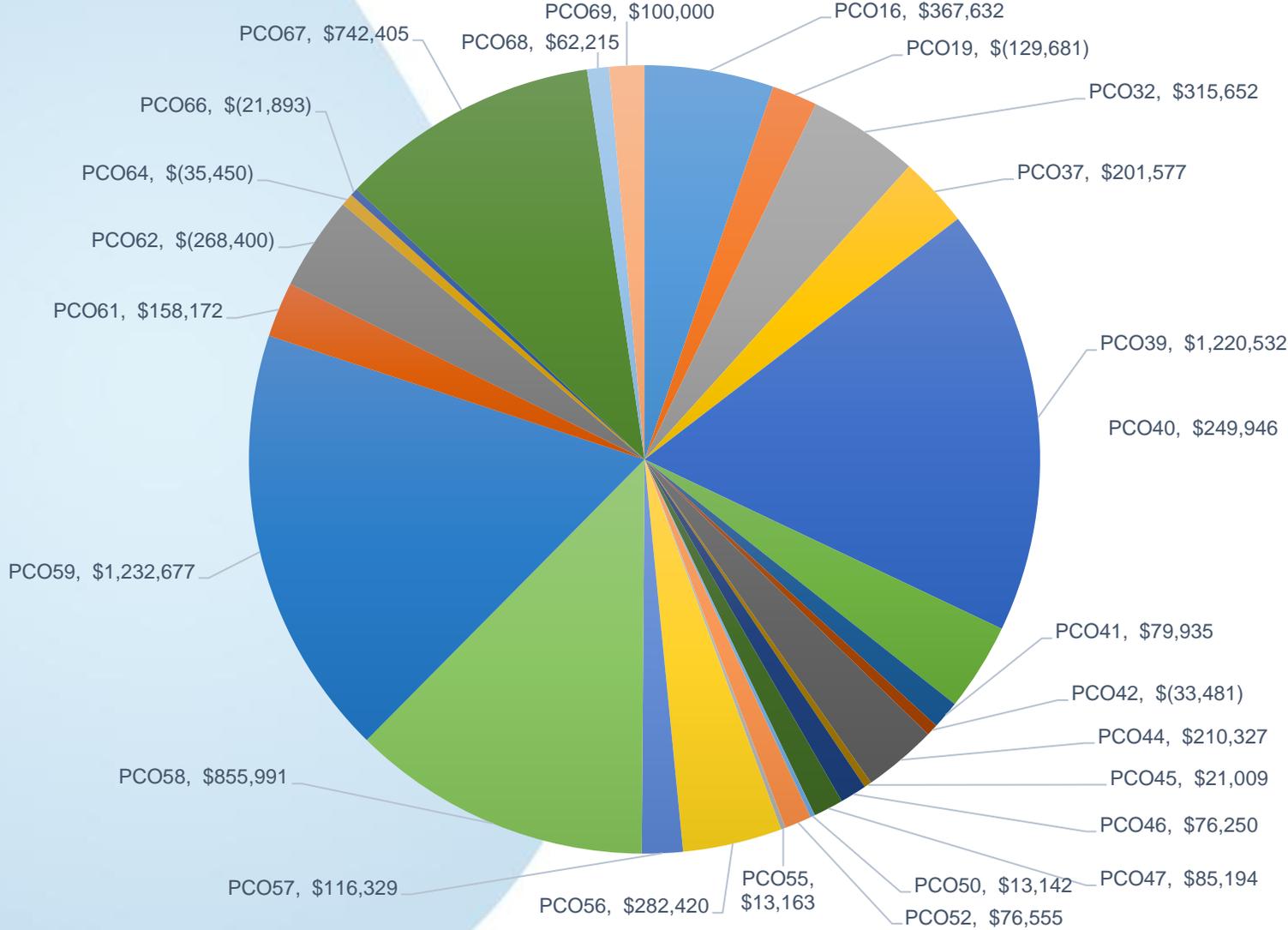
- Total 26 PCOs being considered
- Total cost impact of \$5,992,217
  - Cost increase = \$6,481,123
  - Cost savings = \$(488,905)
- Adoption of the PCOs would exceed the remaining contingency for the WRF component of the Project (\$4,541,338)

*PCOs will result in an increase in the total Project Budget*

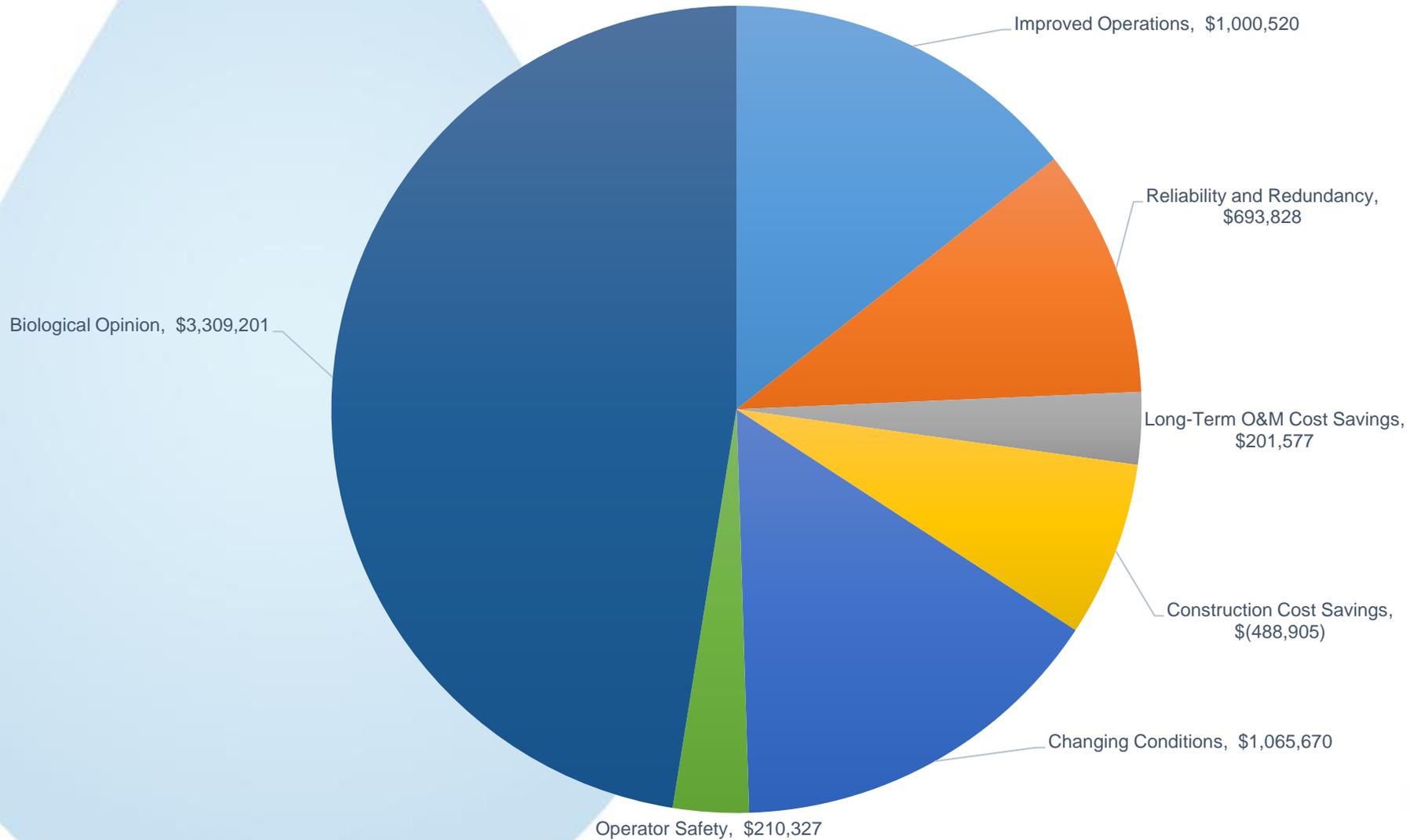
# Impacts on WRF contingency

DB Contract	Amendment Value	GMP	Contingency	Contingency Revision
Original Agreement	\$0	\$67,234,512	\$6,241,333	\$0
Amendment No. 1	\$1,636,059	\$68,870,571	\$4,605,274	\$0
Amendment No. 2	\$63,937	\$68,934,508	\$4,541,338	\$0
Amendment No. 3	\$5,992,217	\$74,926,725	\$(1,450,879)	\$2,900,000
<b>Total</b>			<b>\$1,449,121</b>	

# Breakdown of cost increases



# Cost increase categories



# Biological Opinion

# Biological opinion

- Initiated formal consultation with USFWS in December 2019 for the California Red Legged Frog
- Project financial impacts
  - Delay issuing the construction Notice to Proceed
  - Implementation of avoidance measures (temporary and permanent exclusion fencing)



# PCO 039 – NTP Delay

- Contract anticipated delay up to 1 year (October 23, 2019)
- NTP delayed until March 20, 2020
- Cost negotiated with the DB team:
  - Original = \$1,487,368
  - Final = \$1,220,532

**Cost = \$1,220,532**

# PCO 059 – Increased Escalation Costs

- Additional escalation calculated by the DB team from October 22, 2019 to March 20, 2020
- Escalation calculated based on specific Black & Veatch indices
  - Approach vetted by the Program Manager
  - Resulting increase less than if ENR was used

**Cost = \$1,232,677**

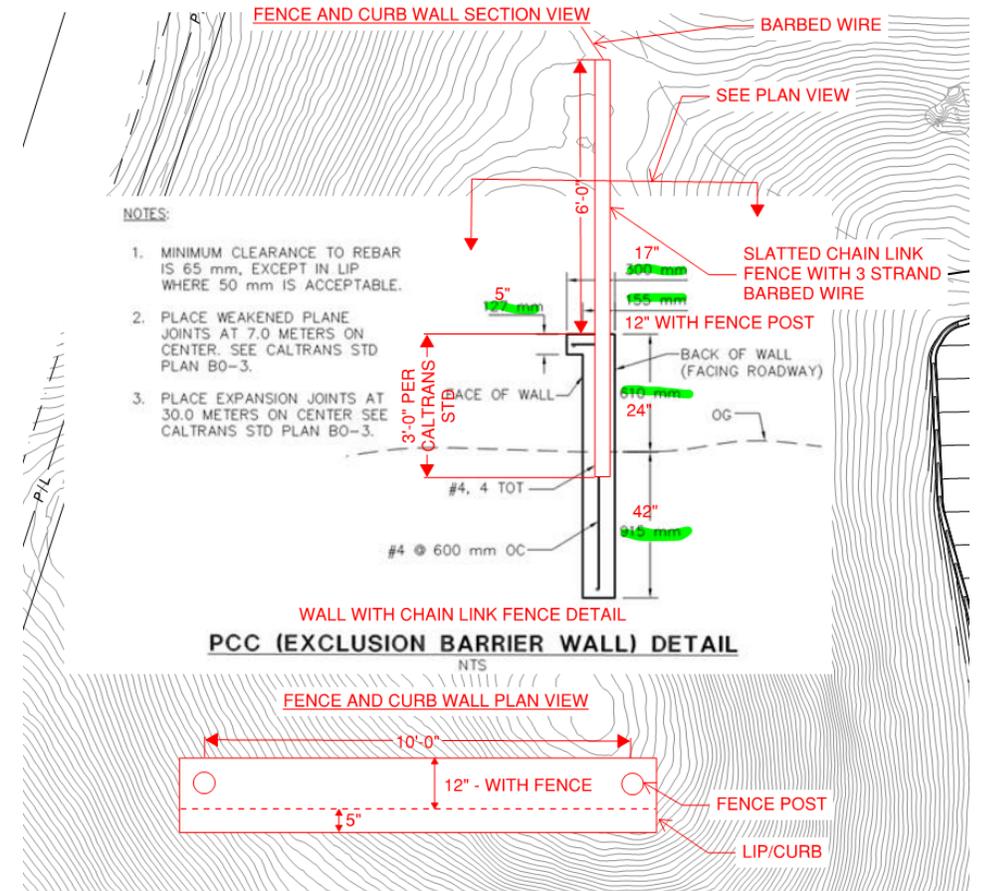
## 6.16 Compensable Cost Escalation

6.16.1 After the award of this Design-Build Agreement, the construction start date is anticipated to be delayed for up to twelve months until financing is approved. The Design/Build Entity will not be compensated for increases in pricing within that delay, unless the Engineering News-Record (ENR) Construction Cost Index (CCI) for San Francisco, CA exceeds 3.0% annual average for that twelve months.

# PCO 058 – Permanent Exclusion Fencing

*“The permanent fencing will include a concrete exclusion barrier along the eastern boundary of the site that extends 24 inches above grade. The top of the concrete exclusion barrier will include a six-inch lip that will serve as a climbing barrier for the California red-legged frog. Affixed to the top of the concrete exclusion barrier will be a six-foot chain link fence with privacy slats. The remaining perimeter of the site will include a six-foot chain link fence with privacy slats.”*

Cost = \$855,991



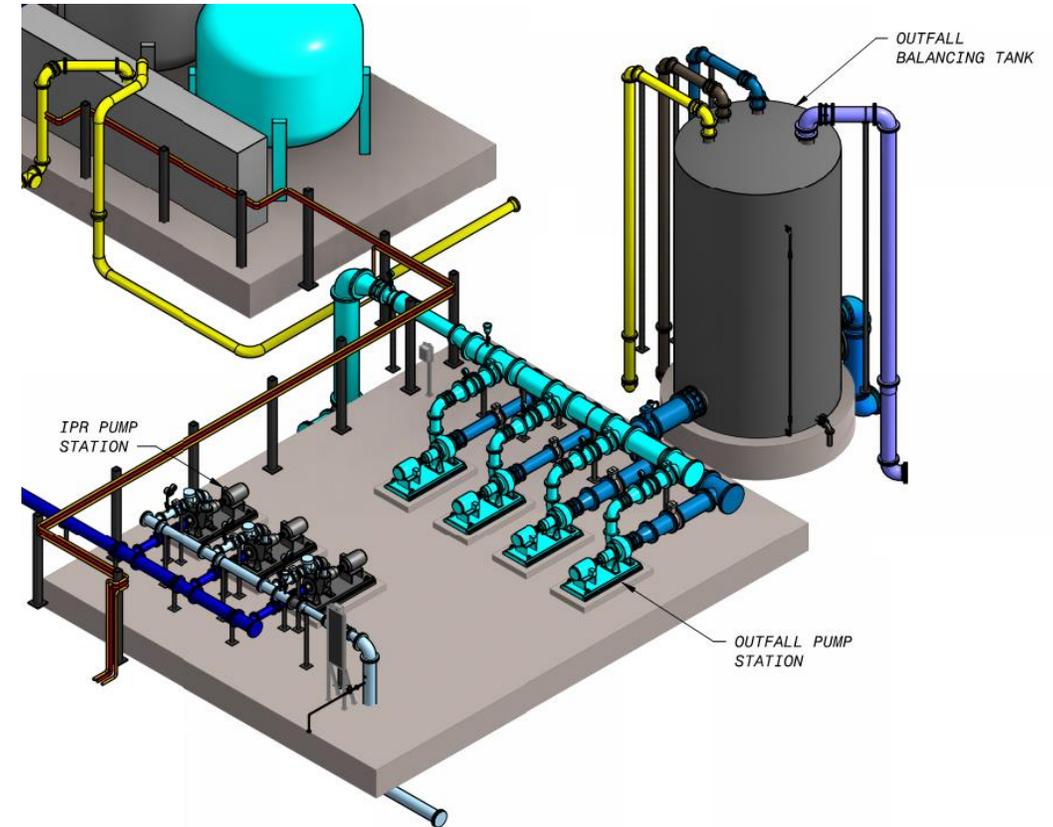


# Reliability and Redundancy

# PCO 016 – Outfall Pump Station Modification

- Design criteria
  - RFP: 7.17 mgd
  - Revised: 8.14 mgd
- Original design assumed purified water production during peak wet weather events
- Final design also needed to be coordinated with the Conveyance Facilities design

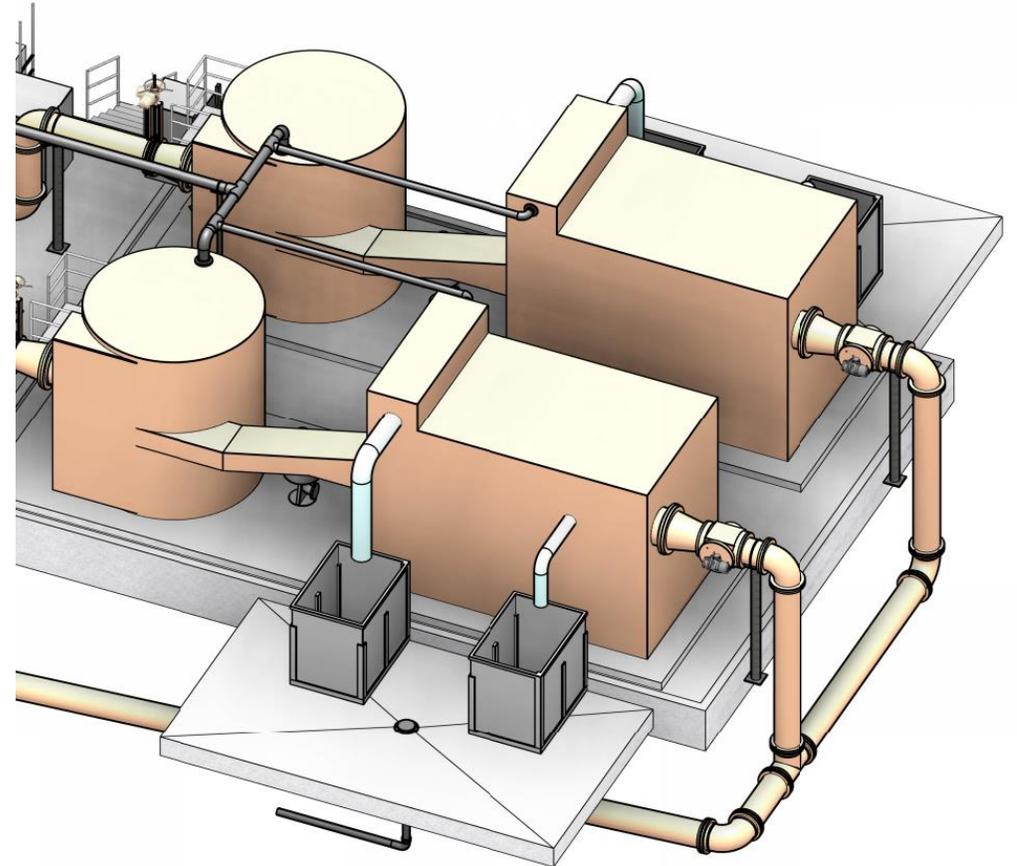
Cost = \$367,632



# PCO 040 – Headworks Valve Automation

- Facility is not manned continuously
- Automated valves allows for better unattended operation
- Provides protection against localized overflows

Cost = \$249,946

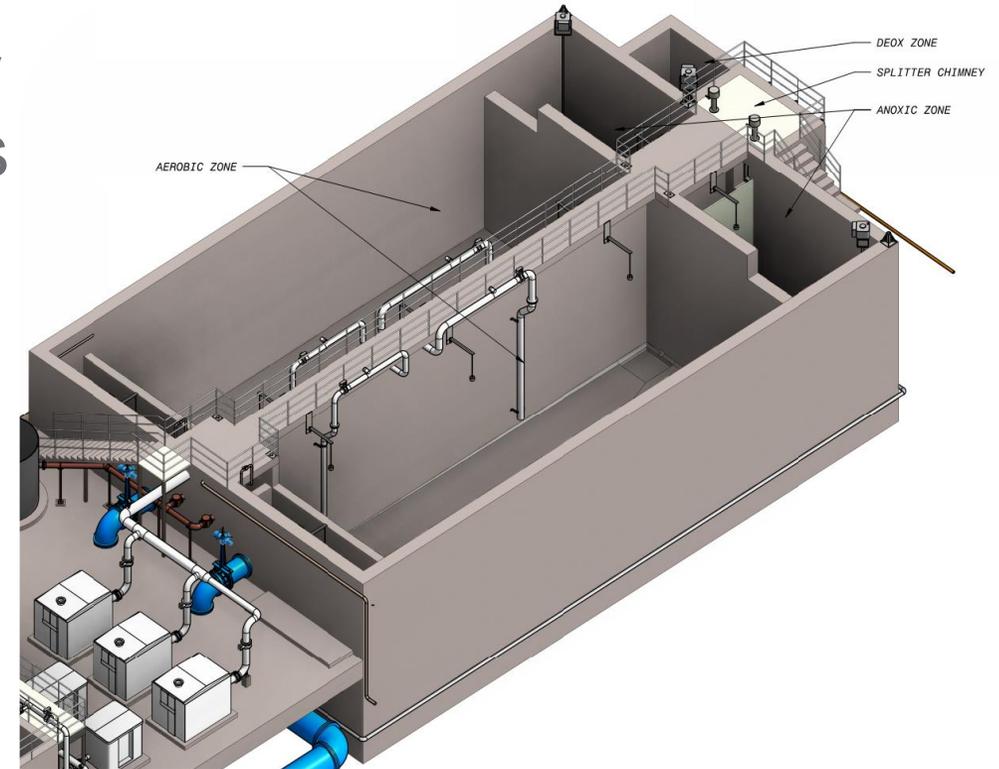


# Improved Operations

# PCO 067 – BNR System Modifications

- Alternative process control proposed by DB team to save capital and O&M costs
- Decision to change to a more conventional approach
- Necessary modifications
  - Larger blowers
  - Larger air piping
  - Additional fine bubble diffusers
  - Ammonia chemical feed system

Cost = \$742,405



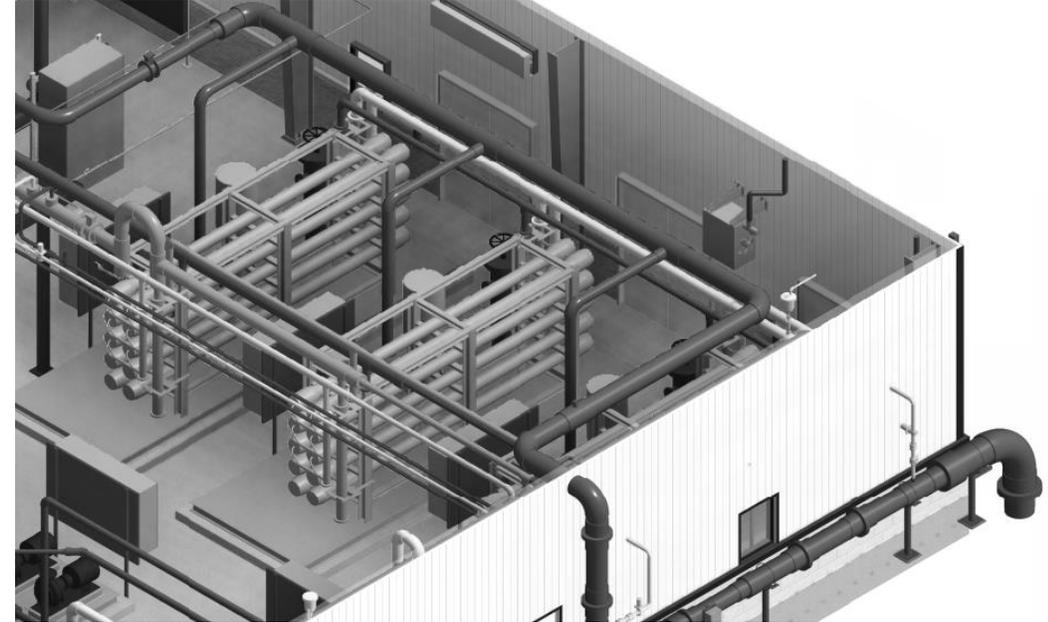
# Changing Conditions



# PCO 056 – Impacts of Water Quality Changes

- Significant, additional analysis required to investigate bromate impacts on UV-AOP system
- Revisions made to the RO system
  - Material upgrade from 316 to Duplex stainless steel
  - Increase feed and interstage pump sizes

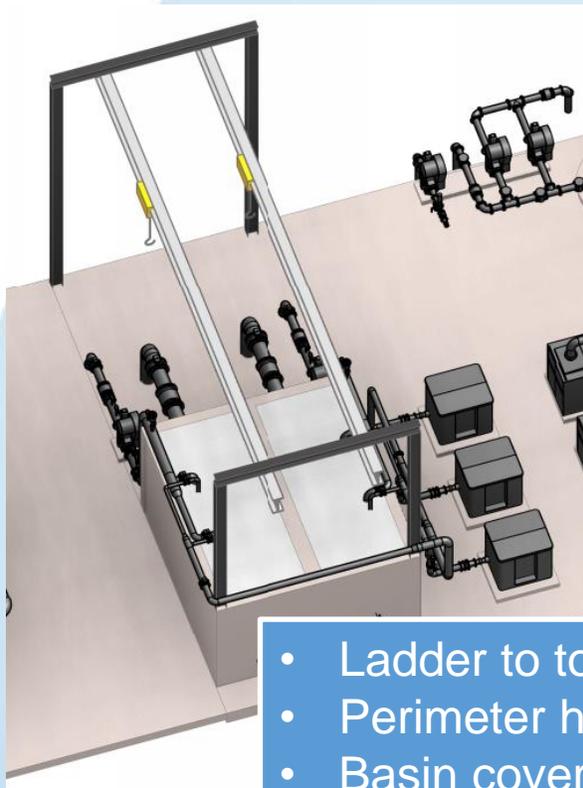
**Cost = \$282,420**



# Operator Safety

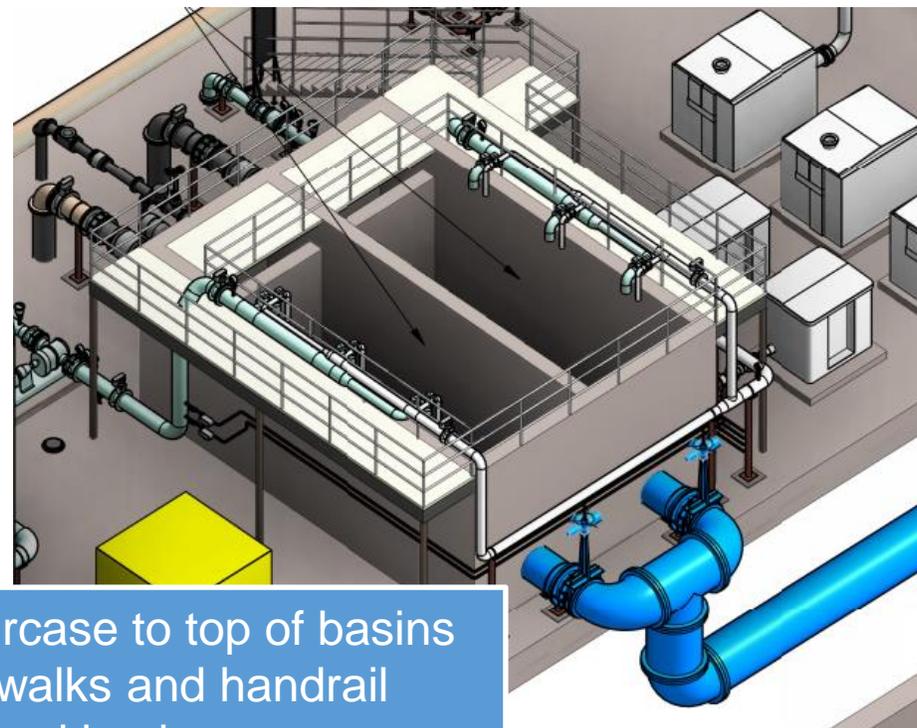
# PCO 044 – Tank Access Improvements

- Access improvements to MBR basins, SAFE System, and BNR basins



- Ladder to top of basins
- Perimeter handrail
- Basin covers

Cost = \$210,327



- Staircase to top of basins
- Catwalks and handrail around basins
- Basin covers

# Questions and Discussion

MORRO BAY  
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AGENDA NO: C-2

MEETING DATE: May 26, 2020

# Staff Report

**TO:** Honorable Mayor & City Council **DATE:** May 21, 2020

**FROM:** Eric Casares, PE – WRF Program Manager  
Paul Amico, PE – WRF Deputy Program Manager (Conveyance Facilities)  
Sarah Rossetto – WRF Public Outreach Lead  
Rob Livick, PE/PLS – City Engineer

**SUBJECT:** Review and Approve Construction Work Restrictions Developed for the Conveyance Facilities Component of the Water Reclamation Facility Project

## RECOMMENDATION

Council review and approve the construction work restrictions that have been developed for construction of the Conveyance Facilities component of the Water Reclamation Facility (WRF) Project.

## ALTERNATIVES

No alternatives are being presented.

## FISCAL IMPACT

There is no fiscal impact to the WRF Project budget.

## BACKGROUND

On November 06, 2017, the City selected Water Works Engineers, LLC (WWE) to provide Engineering Design Services for the new WRF Lift Station and Offsite Pipelines Project (Conveyance Facilities Project). WWE's engineering design services for the Conveyance Facilities Project include:

- Review and verification of the preliminary design criteria presented in the Draft WRF Master Plan
- Development of a Site Alternatives Study to finalize selection of the lift station site
- Preparation of a Concept Design Report (30-percent)
- Preparation of draft construction documents including plans, specifications and cost opinions at the 60 percent, 90 percent, and 100 percent completion milestones
- Preparation of final construction documents including plans, specifications and cost opinions

WWE's first major deliverable, the Draft Concept Design Report, was completed in late 2018 and was presented to the Water Reclamation Facility Citizen's Advisory Committee (WRFCAC) on December 17, 2018. The key objective of the Concept Design Report was identifying, developing, assessing, and recommending the following:

- Siting, design criteria, and project constraints for the WRF lift station(s)
- Alignment, design criteria, and project constraints for the offsite pipelines (sewer force mains, brine/effluent line, and communication conduit), as well as the IPR line

Prepared By: RL

Dept Review:

City Manager Review: SC

City Attorney Review: \_\_\_\_\_

WWE's alignment analysis began with five working alignments, which included:

- West Alignment
- East Alignment
- Embarcadero Alignment
- Hills Alignment (Little Morro Creek)
- Hills Alignment (Radcliff St)

The preliminary assessment began with identifying fatal flaws for each alignment option. As a result of the initial analysis, the following alignment options were not fatally flawed and were carried forward into the next phase of analysis. Both of these alignments utilize public right-of-way through the community from the existing wastewater treatment plant (WWTP) to the South Bay Boulevard WRF site. These included:

- West Alignment
- Embarcadero Alignment

Based on a comparison of non-cost factors, the Embarcadero and West alignments were generally comparable, but the West alignment was approximately \$2.5 to 3.0 Million less costly than the Embarcadero alignment. WWE's recommendation was to move forward with the design of the West alignment. A presentation, similar to the one given to WRFCAC, was made to the City Council on January 22, 2019. A follow-up presentation was made to City Council on February 13, 2019, so they could take formal action on the selection of the West alignment.

Beginning with the WRFCAC meeting and the presentation of the fatal flaws associated with the various alignment alternatives east of Highway 1, members of the public voiced their concerns about the impacts of construction along Main Street and Quintana Boulevard. City staff and the WRF Program Manager committed to working with local residents and business owners to understand their concerns and develop constraints that would be put on the contractor to minimize these impacts.

Since February 2019, the WRF Program Manager has made contact with about 80 businesses along the pipeline alignment, including one-on-one meetings and pop-ins to drop-off project information. The purpose of the one-on-one meetings was to give businesses a status update and gather business access and operations information that helped inform the development of construction work restrictions and traffic handling requirements. In addition, two meetings have been held with the Chamber of Commerce and Chamber member businesses to discuss traffic handling approaches.

Important information gathered includes parking information, driveway access and off-street circulation, large delivery/pick up vehicle scheduling, hours of operation and peak business times, types of customer traffic (appointments and walk-ins, vehicle and pedestrian) and point of contact verification. Information gathered from the business outreach was compiled by the WRF Program Manager who worked with WWE to incorporate the construction work restrictions and traffic handling requirements into the design. The WRF Program Manager's public outreach work has culminated in the development of a series of alignment maps (attached) that summarize the information that has been gathered. An overview presentation (attached) was also developed to visually communicate the traffic handling planning and work restriction information.

The Public Works Advisory Board (PWAB) reviewed the proposed construction work restrictions at its May 20, 2020, meeting. They received a full presentation from the project outreach team, and asked questions about impacts to local businesses, how many passes would have to be made along Quintana, and technical questions about the pipeline/conveyance component of the WRF Project. The PWAB Board did not provide a formal recommendation.

## **CONCLUSION**

The WRF Project and City staff believe the proposed construction work restrictions that have been developed for construction of the Conveyance Facilities will meet the needs of the business and residential community, while also helping provide a path for the WRF Project to proceed in a safe, expedient and efficient manner.

## **ATTACHMENTS**

1. [Work Zone 1 Map](#)
2. [Work Zone 2 Map](#)
3. [Work Zone 3, 4, 5, and 6 Map](#)
4. [Work Zone 7, 8, 9, and 10 Map](#)
5. [Work Zone 11, 12, 13, and 14 Map](#)
6. Meeting Presentation

# Item C-2

# City Council Meeting

Conveyance Facilities

Traffic Control and Construction Outreach

May 26, 2020

MORRO BAY

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# WRF Pipelines Next Steps

- Construction Bid Advertisement: Late April 2020
- Contract Award: July 2020
- Anticipated Notice to Proceed: August 2020
- Meet the Contractor: September 2020
- Anticipated Construction Start: October 2020
- Anticipated Construction Completion: April 2022

# What We've Heard

- Access is a must
- Several businesses
  - Have large truck deliveries and/or one ingress/egress
  - Require vehicle access (car repair shops)
- Atascadero Road – busy during summer (RV parks/motels); busy during school year with school traffic
- Quintana Road – busiest time of year is holiday season
- Request for night work
- Request for claim process

# Traffic Control: What We Expect

- One lane will be maintained for emergency access and local business traffic
- Business access will be maintained at all times; construction across driveways will be done outside of business hours (mornings or until 10 p.m.)
- Atascadero Road will likely be constructed starting in October 2020 (after summer peak traffic)
- No construction will be allowed on Main Street and Quintana Road from Nov. 1 to Jan. 15

# Helpful Definitions

- Soft road closure

The limits of a construction zone where local traffic will be let in with the use of flaggers

Sign will say “Road Closed to Thru Traffic”

- Hard road closure

The limits of a construction zone where no traffic can pass the barricade without contractor giving access

Barricades will extend the entire road width and a flagger will control entry into the work zone

- Local traffic

Traffic (business, residential or emergency) requiring access within the work zone

- Through traffic

Traffic passing through with no intention of visiting an address within the work zone

# Work Zone 1

Atascadero Road



## WORK ZONE 1 Atascadero Road

- Two-way traffic maintained
- Business access maintained

Estimated duration: 5-6 weeks

 Pump Station

 Pipelines

Main Street



**Work Zone 2**

Quintana Road



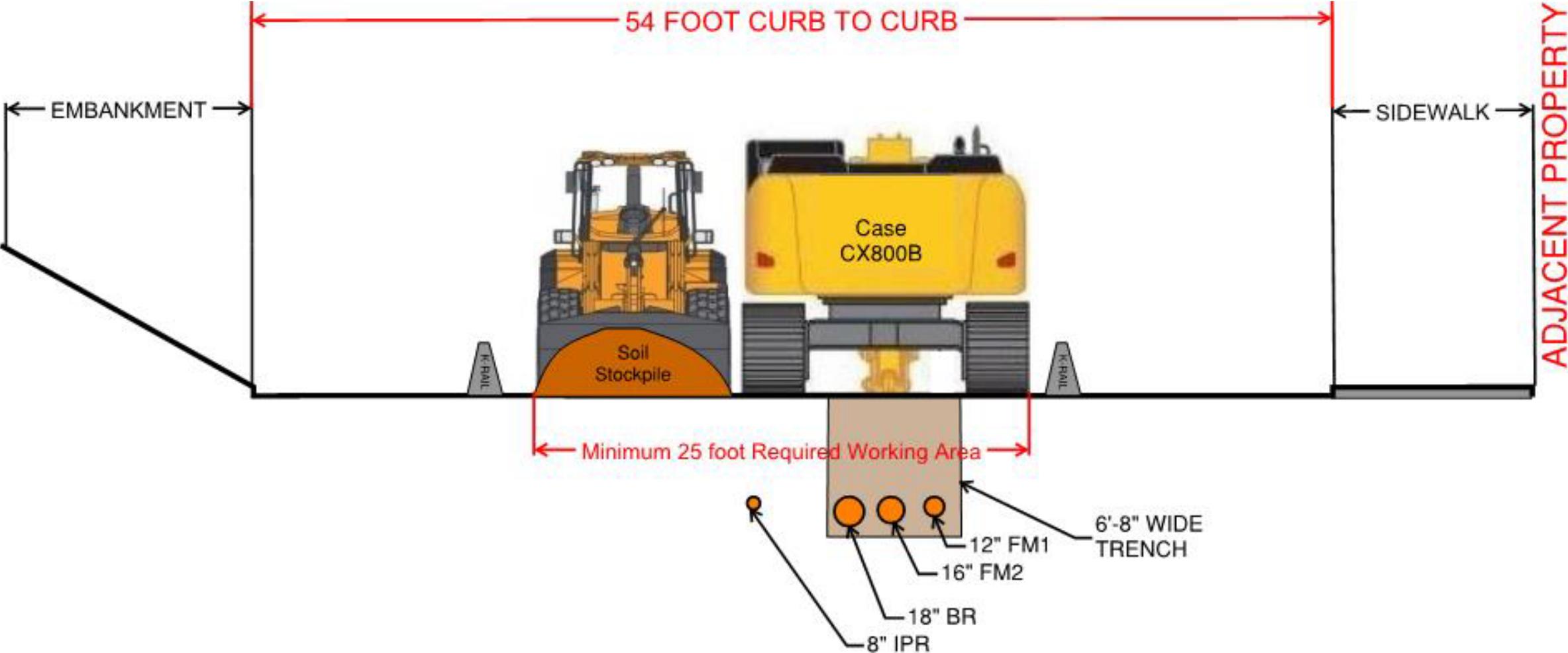
**WORK ZONE 2**  
**Main Street from unnamed road to Quintana Road**

- Two-way traffic maintained
- Business access maintained
- Driveway crossings and Quintana Way intersection will be constructed outside business hours and before 10 p.m.

Estimated duration: 5-6 weeks

	Pump Station
	Open During Construction
	Pipelines

# Work Zone Configuration Near Lemos



Work Zone 3

Work Zone 4

Work Zone 5

Work Zone 6



**WORK ZONES 3, 4, 5 AND 6  
Quintana to Roundabout**

- One-way local traffic maintained
- Traffic controlled by flaggers
- Through traffic will be detoured via Main Street and Dunes Street/Kennedy Way or via Kennedy Way, Shasta Street and Morro Bay Boulevard
- Business access maintained
- Driveway crossings will be constructed outside business hours and before 10 p.m.

Estimated duration: 18-22 weeks

 Open During Construction

 Pipelines

Main Street

Quintana Road

Kennedy Way

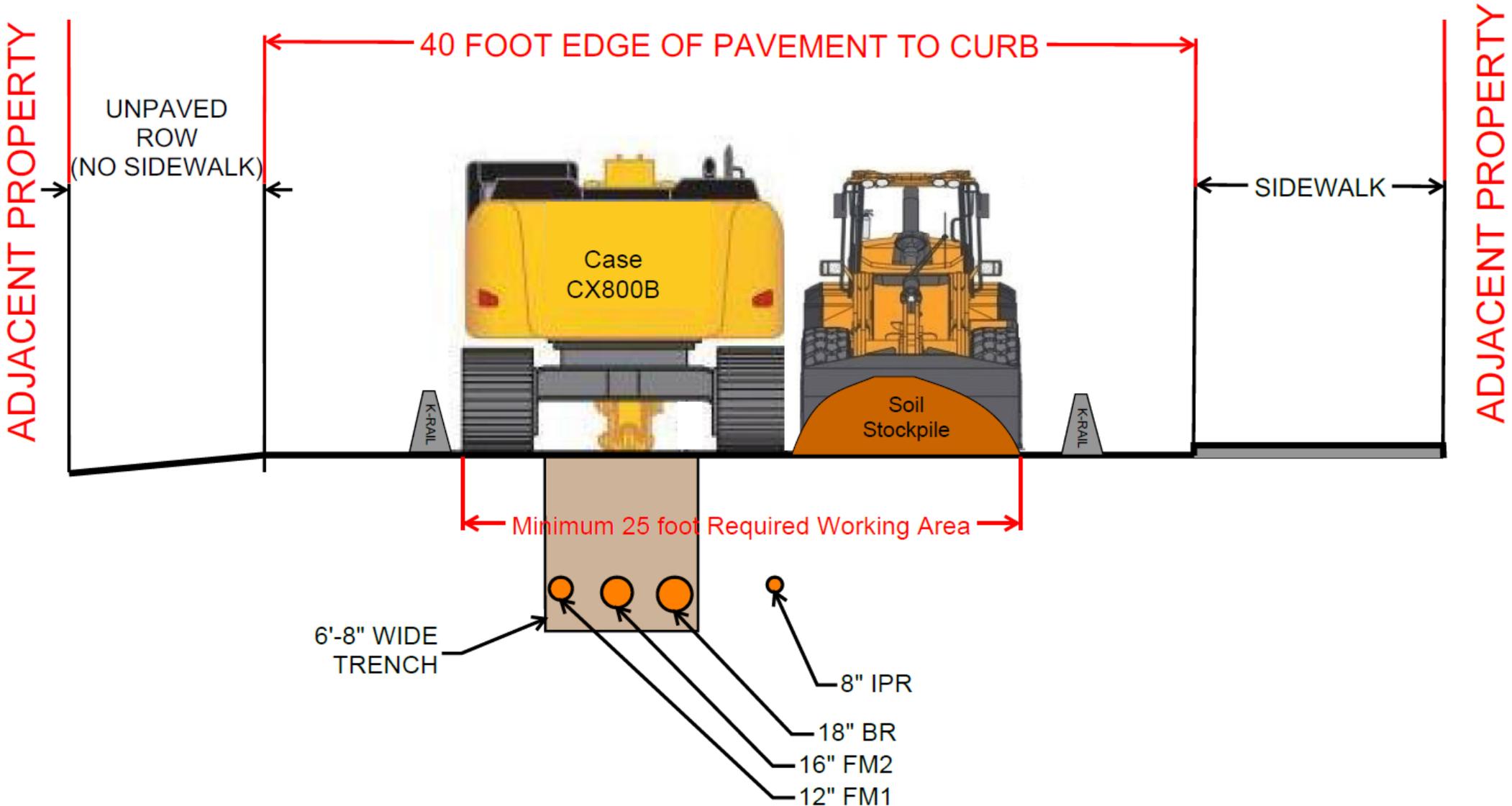


Morro Bay Boulevard

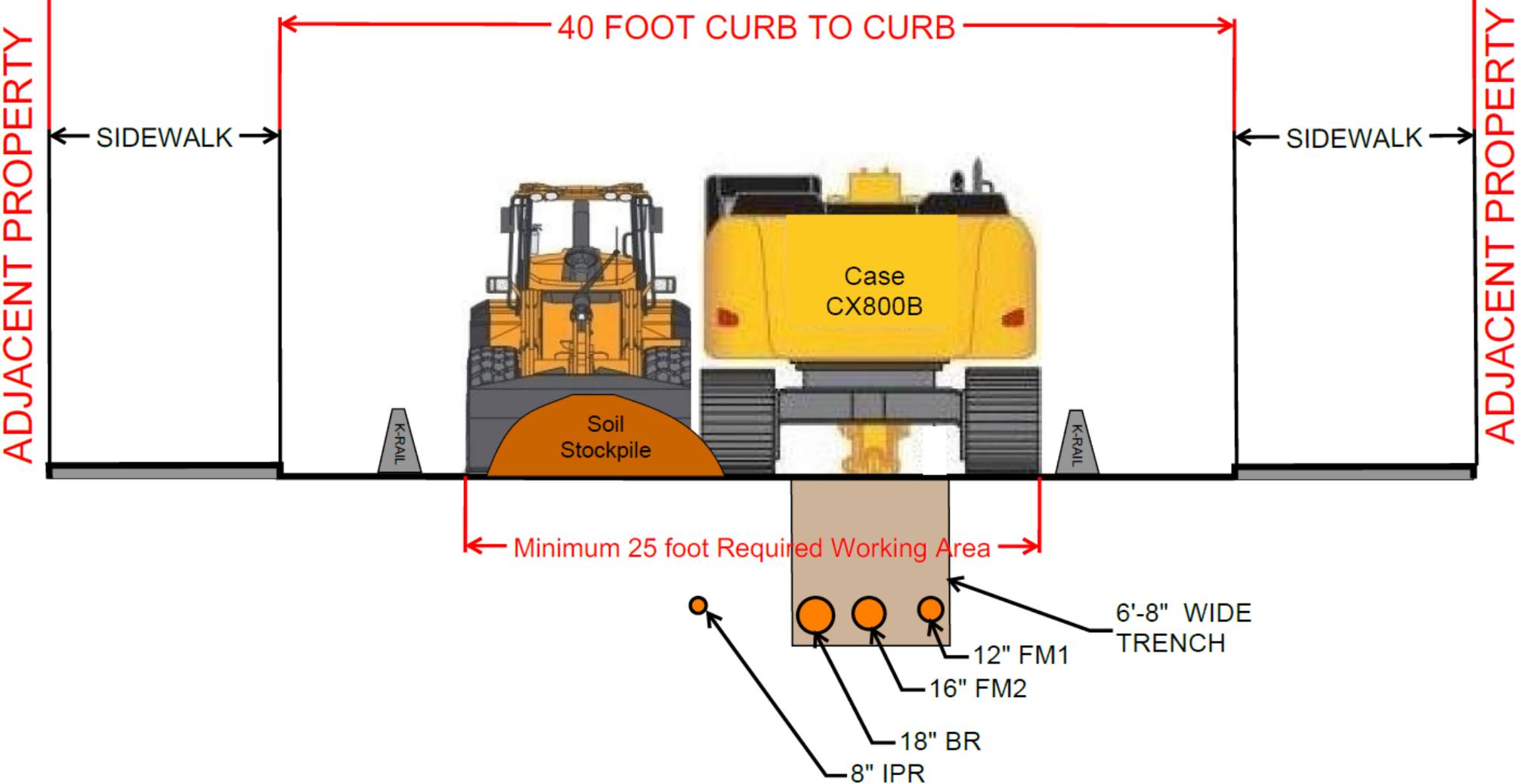
Shasta Street

Harbor Street

# Work Zone Configuration Near McDonald's



# Work Zone Configuration Near Urgent Care



 Open During Construction  
 Pipelines



WORK ZONES 7, 8, 9 AND 10  
**Roundabout to South Bay Boulevard**

- Roundabout and all businesses will remain accessible
- Traffic controlled by flaggers
- Intersection of Butte Avenue and Las Tunas: intersection will be closed but Quintana Road will be open to two-way traffic; local traffic will be detoured via Kings Avenue and Balboa Street to Butte Avenue
- Las Tunas to La Loma Avenue: One-way westbound traffic will be maintained; local traffic will be detoured on Allesandro Street; through traffic will be detoured to Highway 1
- Driveway crossings will be constructed outside business hours and before 10 p.m.

Estimated duration: 13-17 weeks



**Work Zone 7**

Quintana Road

**Work Zone 8**

Butte Avenue

Balboa Avenue

**Work Zone 9**

Allesandro Street

Kings Avenue

**Work Zone 10**

Bella Vista Drive

La Loma Avenue



WORK ZONES 11, 12,  
13 AND 14

### La Loma Avenue to South Bay Boulevard

- One-way access will be maintained for the church and mortuary either from South Bay Boulevard or Morro Bay Boulevard depending where active construction is occurring
- Between La Loma Avenue and South Bay Boulevard, through traffic on Highway 1 traffic will be detoured to Morro Bay Boulevard
- The configuration of work zones 13 and 14, including Highway 1 ramp closures, will be permitted through the California Department of Transportation (Caltrans)
- Access to Bayside Care Center and Casa De Flores will be maintained at all times during construction

Estimated duration: 16-20 weeks



WRF



Pipelines

# Construction Outreach: What You Can Expect

## Notifications

- Direct mailings
- Doorhangers/fliers
- Traffic advisories (media)
- Traffic app coordination (Waze/Google Maps)
- E-blasts
- Website updates
- Signage

## Meetings and Field Visits

- One-on-one meetings/business visits
- Group meetings (example: Chamber)
- Availability sessions
- Community meetings

# Construction Outreach: What You Can Expect

## Block-by-Block Traffic Control and Notifications

- One-on-one meetings/business visits
- Doorhanger/flier notification by contractor (one week in advance)
- Doorhanger/flier notification by contractor (24 hours in advance)
- Street resurfacing notice

# How We Can Support Businesses

- Collaborate with Chamber develop a “war chest guide”
- Develop signage (and clearly define detour routes)
- Provide information for Chamber and business marketing materials (newsletters, websites, etc.)
- Provide information for employee communications (bulletin boards, newsletters, etc.)
- Discuss creative solutions before AND during construction

# Construction Outreach Commitments

- Finding creative solutions to solving issues
- Partnering with the contractor to make sure they understand community needs
- Communicating proactively and clearly about what to expect
- Balancing access, safety and construction efficiency

# Contact Channels

[wrfinfo@morrobayca.gov](mailto:wrfinfo@morrobayca.gov)

877-MORROBAYH2O (877-667-7622)

[morrobaywrf.com](http://morrobaywrf.com)



MORRO BAY  
**OUR WATER**  
RELIABLE. CLEAN. FOR LIFE.

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AGENDA NO: C-3

MEETING DATE: May 26, 2020

## Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** May 18, 2020

**FROM:** Chris F. Neumeyer, City Attorney

**SUBJECT:** Introduction of Ordinance No. 633 to amend Chapter 5.50 (Commercial Cannabis Operations Regulatory Program) of Title 5 of the Morro Bay Municipal Code to Permit Certain Adult-Use Commercial Cannabis Uses (Retail Sales, Deliveries and (Wholesale) Distributor) and Authorize Community Development Director to Issue Administrative Regulations; and, General Discussion and Potential Direction to Staff on Authorized Commercial Cannabis Operations

### **RECOMMENDATION**

Staff recommends:

1. Council discuss, and then consider introduction for first reading by title only and with further reading waived, Ordinance No. 633: An Ordinance of the City Council of the City of Morro Bay, California, Amending Chapter 5.50 (Commercial Cannabis Operations Regulatory Program) of Title 5 of the Morro Bay Municipal Code to Permit Certain Adult-Use Commercial Cannabis Uses (Retail Sales, Deliveries and (Wholesale) Distributor) and to Authorize Community Development Director to Issues Administrative Regulations.
2. Council discuss, and provide potential direction to Staff on, authorized commercial cannabis operations in the City of Morro Bay.

### **FISCAL IMPACT**

The proposed ordinance amendment will allow the retail sale of adult-use cannabis by the two currently permitted medical cannabis retail operations. These additional sales would be subject to the local cannabis tax previously approved by the voters of Morro Bay.

At the November 6, 2018 general municipal election, the voters of Morro Bay approved a commercial cannabis tax ordinance. (Cal Const art XIII C, XIII A.) That voter approved ordinance provides for local taxation through Chapter 3.70 (Cannabis Tax) of the Morro Bay Municipal Code ("MBMC") of both existing commercial cannabis operations, as well as prospective operations (if authorized within the City of Morro Bay).

The voters approved a maximum commercial cannabis tax rate of ten percent of proceeds (MBMC § 3.70.020(A)), and twenty-five dollars per square foot for space utilized as cultivation area (MBMC § 3.70.020(B)). On May 14, 2019, Council passed Resolution No 30-19 to set the cannabis tax rate at 5% of proceeds. That tax rate is applicable to adult-use cannabis retail sales if such activity is authorized.

Prepared By: CFN

Dept Review: \_\_\_\_\_

City Manager Review: SC

City Attorney Review: CFN

If the City allows adult-use cannabis retail sales, the City is expected to realize greater cannabis tax revenues than presently anticipated from only medical cannabis retail sales. Any estimate of revenues is speculative. The City initially estimated that tax revenues to the City from two medical cannabis retail operations would annually be from \$25,000 to \$225,000. Allowing *both* medical and adult-use cannabis retail sales reasonably may double to triple the cannabis tax revenue to the City, generating anywhere from \$50,000 to \$675,000 in cannabis tax revenues from two cannabis retail operations. The middle range of this estimate is consistent with estimates provided by one of the two current medical cannabis retail permittees.

The City of Grover Beach (which allows medical and adult-use retail sales, manufacturing, testing, and indoor cultivation) is reported to have annually realized approximately \$950,000 in annual local tax receipts from all commercial cannabis activity, and that city is reported to expect in the future to annually receive perhaps \$1,300,000 or more in commercial cannabis tax revenues.

The present ordinance allows City regulatory and administrative costs associated with regulation of commercial cannabis operations to be recouped through City fees.

### **BACKGROUND**

California voters on November 8, 2016 approved Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”). Proposition 64, in conjunction with SB 94 (the Medicinal and Adult Use Cannabis Regulation and Safety Act, or “MAUCRSA”), created a state regulatory structure to permit commercial medical and adult-use cannabis businesses.

Following multiple Council meetings, public workshops and the work of a Council Cannabis Subcommittee (including Councilmembers Robert Davis and Marlys McPherson, City Directors and Chiefs), the City Council adopted Ordinance No. 612 to provide for a local commercial cannabis regulatory program.

That ordinance added Chapter 5.50 to Title 5 of the MBMC and at present authorizes two medical cannabis retail operations, medical cannabis (wholesale) distribution, and medical cannabis delivery.

Chapter 5.50 can be amended by City Council action to allow for existing medical cannabis retail operations to also engage in adult-use cannabis retail operations. Chapter 5.50 similarly can be amended to allow commercial cannabis cultivation (indoor and/or outdoor), testing (which is required by State law before retail sales occur) and manufacturing (e.g., edibles, lotions).

At present, the City has issued permits to two medical cannabis commercial retail operations. Conservative expectations are the two storefronts should open for retail storefront business within four to five months.

### **DISCUSSION**

On May 7, the Council Cannabis Subcommittee (consisting of Councilmembers Robert Davis and Marlys McPherson, City Manager Scott Collins, Community Development Director Scot Graham, Fire Department Chief Steve Knuckles, and Police Department Chief Jody Cox (represented by Commander Amy Watkins and Sergeant Tony Mosqueda)) met to discuss possible amendments to Chapter 5.50 of the MBMC concerning authorized commercial cannabis operations and any further revisions for recommendation to the City Council.

## **1. Proposed Ordinance Amendment**

The Council Cannabis Subcommittee recommends two amendments to Chapter 5.50 of the MBMC as concerns commercial cannabis operations, as outlined below. Both of these recommendations are provided for in proposed ordinance.

### **A. Authorize Adult-Use Cannabis Retail Sales by Two Current Medical Cannabis Retail Permittees and Adult-Use (Wholesale) Distribution and Delivery**

The Council Cannabis Subcommittee recommends that the two presently authorized commercial medical cannabis retail operations be permitted to also engage in commercial adult-use retail operations, and that (wholesale) distribution and delivery also be permitted to engage in adult-use cannabis operations.

The proposed ordinance amends Chapter 5.50 of the MBMC to permit such commercial activity. All regulations presently in Chapter 5.50 that apply to medical cannabis retail, (wholesale) distribution and delivery operations will equally apply to such adult-use commercial cannabis operations.

Given the vetting and oversight already required for medical cannabis operations, City staff has concluded that allowing for such adult-use cannabis commercial operations will not entail any additional substantial administrative costs or activity on behalf of the City.

### **B. Authorize Administrative Regulations Issued by Community Development Director**

The Council Cannabis Subcommittee also proposes that Chapter 5.50 of the MBMC be amended to authorize issuance of additional rules and regulations for the administration and implementation of Chapter 5.50 by the Community Development Director.

Section 5.50.150 (Administration) of Chapter 5.50 currently provides further “rules, regulations, procedures and standards for the administration and implementation of this chapter” must be enacted by resolution or ordinance from City Council. That section anticipates Council may delegate this authority to the Community Development Director by resolution.

The proposed ordinance amendment delegates such authority to the Community Development Director by amendment of Section 5.50.150. Once commercial cannabis operations are open for business, administrative and ordinance implementation issues may present themselves. This amendment will authorize the Community Development Director to address such issues. For example, issues concerning compliance with and implementation of signage requirements, security measures, or record keeping could arise.

## **2. Discussion and Possible Direction on Further Amendments**

The issue of whether to permit further commercial cannabis operations (in addition to retail sales, (wholesale) distribution, and delivery) within the City of Morro Bay was considered by the Council Cannabis Subcommittee.

The Council Cannabis Subcommittee conducted a preliminary review of the below topics and concluded they should be brought to the full Council for possible discussion and further direction (if any at the present) to staff.

The first issue considered was whether to permit more than two commercial cannabis shops. The related issue of so-called “cannabis lounges” was also discussed.

- A. Retail.** Chapter 5.50 authorizes the issuance of two permits for commercial (medical) cannabis retail operations. Council could direct staff to bring back an ordinance amendment to authorize the issuance of additional retail operation permits. Standing direction from Council is to assess whether to permit more retail operations *after* the current permittees are up and running and there is an experience and track record to evaluate.
  - **On-Site Consumption.** State law provides that a local jurisdiction may permit cannabis consumption on-site at a retail operation. (Business & Professions Code section 26200(g).) Some cities have authorized such “cannabis lounges.” This is a further matter the Council may want to consider.

The second issue considered was whether to permit more types of commercial cannabis operations. State law presently allows, in addition to the currently locally allowed (medical) retail, distribution and delivery operations, for cities to authorize:

- B. Testing.** The commercial cannabis industry is required by State law to conduct regular testing of cannabis before being sold at retail. To date, this has been one area of the commercial cannabis industry where supply reportedly has not met demand.
- C. Cultivation.** If the City were to authorize commercial cannabis cultivation, decisions such as outdoor vs. indoor cultivation, mixed-light operations, and plot sizes present themselves. The State of California has over 14 different types of cultivation license types. Additionally, whether there are available spaces in the City for cultivation would be an important issue to review. Some cultivators can make use of small footprints for indoor operations, so the City may be able to accommodate ambitious cultivation operators.
- D. Manufacturing.** The State of California allows the manufacturing of a wide variety of cannabis products, ranging from food products to lotions. Like cultivation, some manufacturers can operate with a small footprint. More detailed review of health and safety regulations is generally warranted by cities due to the nature of this activity.

If Council desires a more detailed discussion on one or more of these topics, the Council Cannabis Subcommittee could be requested to review further, staff could be directed to bring back to Council a more detailed report on these topics, or the topics could be postponed to an as yet determined agenda date (if at all).

### **CONCLUSION**

Staff recommends Council discuss the proposed ordinance and consider introducing it for first reading by title only and with further reading waived, and Council provide additional direction to staff as warranted on any further amendments to MBMC Chapter 5.50.

### **ATTACHMENT**

1. Proposed Ordinance No. 633

## ORDINANCE NO. 633

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, AMENDING CHAPTER 5.50 (COMMERCIAL CANNABIS OPERATIONS REGULATORY PROGRAM) OF TITLE 5 OF THE MORRO BAY MUNICIPAL CODE TO PERMIT CERTAIN ADULT-USE COMMERCIAL CANNABIS USES (RETAIL SALES, DELIVERIES AND (WHOLESALE) DISTRIBUTOR) AND TO AUTHORIZE COMMUNITY DEVELOPMENT DIRECTOR TO ISSUE ADMINISTRATIVE REGULATIONS**

**WHEREAS**, in 1996 California voters approved Proposition 215, the Compassionate Use Act (“CUA”), codified as Section 11362.5 of the Health and Safety Code, to exempt certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of cannabis for medical purposes; and

**WHEREAS**, in 2003 the California legislature enacted Senate Bill 420, the Medical Marijuana Program Act (“MMPA”), codified as Sections 11362.7, *et seq.*, of the Health & Safety Code, and as later amended, to clarify the scope of the Compassionate Use Act of 1996 relating to the possession and cultivation of cannabis for medical purpose, and to authorize local governing bodies to adopt and enforce laws consistent with its provisions; and

**WHEREAS**, in October 2015, the State of California adopted AB 266, AB 243, and SB 643, collectively referred to as the Medical Cannabis Regulation and Safety Act (“MCRSA”), which established a comprehensive regulatory and licensing scheme for commercial medical cannabis operations; and

**WHEREAS**, at the November 8, 2016 general election, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”) was approved by California voters as Proposition 64, which established a comprehensive regulatory and licensing scheme for commercial adult-use (recreational) cannabis operations, and which also legalized limited personal recreational cannabis use, possession, and cultivation; and

**WHEREAS**, on June 27, 2017 Governor Brown signed Senate Bill 94, the Medicinal and Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”), which merged the regulatory regimes of MCRSA and AUMA; and

**WHEREAS**, the MAUCRSA provides that the State of California will begin issuing licenses in 2018 for both medical and adult-use (recreational) cannabis businesses in 20 different categories, which are found in Section 26050 of the Business & Professions Code, and which categories include cannabis cultivation, manufacturer, testing, retailer, distributor, and microbusiness; and

**WHEREAS**, the MAUCRSA, Section 26200(a)(1) of the Business & Professions Code, provides that local jurisdictions may completely prohibit the establishment or operation of any or all of the 20 different medical and recreational business operations to be licensed by the state under Section 26050 of the Business & Professions Code; and

**WHEREAS**, the MAUCRSA, Section 26055(d) of the Business & Professions Code, provides that a state commercial cannabis license may not be issued to an applicant whose operations would violate the provisions of any local ordinance or regulation; and

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**WHEREAS**, the MAUCRSA, Section 26200(a)(1) of the Business & Professions Code, provides that local jurisdictions may adopt and enforce local ordinances to regulate any or all of the 20 different medical and adult-use business operations to be licensed by the state under Section 26050 of the Business & Professions Code, including, but not limited to, local zoning and land use requirements; and

**WHEREAS**, the MAUCRSA, Section 26201 of the Business & Professions Code, provides that any standards, requirements, and regulations regarding health and safety, environmental protection, testing, security, food safety, and worker protections established by the state for the 20 different medical and adult-use business operations to be licensed by the state under Business & Professions Code § 26050, shall be the minimum standards, and a local jurisdiction may establish additional standards, requirements, and regulations; and

**WHEREAS**, pursuant to the above-described express statutory authority and its police power, the City now desires to amend Chapter 5.50 (Commercial Cannabis Operations Regulatory Program) of Title 5 to permit certain commercial adult-use cannabis uses (retail sales, deliveries and (wholesale) distributor); and

**WHEREAS**, pursuant to the above-described express statutory authority and its police power, the City now desires to amend Chapter 5.50 (Commercial Cannabis Operations Regulatory Program) of Title 5 so as to expressly authorize the City's Community Development Director to issue administrative rules and regulations governing commercial cannabis uses within the City of Morro Bay; and

**WHEREAS**, this Ordinance is enacted, consistent with the Compassionate Use Act of 1996, the Medical Marijuana Program Act of 2003, the Medical Cannabis Regulation and Safety Act of 2015, the Adult Use of Marijuana Act of 2016, and the Medicinal and Adult Use of Cannabis Regulation and Safety Act of 2017, to protect, promote and maintain the public health, safety, and welfare of City residents and visitors in relation to cannabis related uses and activities; and

**WHEREAS**, pursuant to the above-described express statutory authority and the City's police power, the City has the authority to prohibit, permit and regulate any and all commercial cannabis activities (whether not-for-profit or for-profit) that may otherwise be permitted by the State of California under the MCRSA, the AUMA, and the MAUCRSA; and

**WHEREAS**, the City finds that this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to both the exemption provided by Section 26055(h) of the Business and Professions Code as well as Sections 15060(c)(3) and 15061(b)(3) of the CEQA Guidelines; and

**WHEREAS**, nothing in this Ordinance shall be construed to allow any person to engage in conduct that endangers others or causes a public nuisance;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA FINDS AND ORDAINS AS FOLLOWS:**

**SECTION 1. THE CITY COUNCIL OF THE CITY OF MORRO BAY HEREBY MAKES THE FOLLOWING FINDINGS:**

- A. The recitals set forth above are all true and correct and are incorporated herein.

- B. The regulation of commercial cannabis activities established by this Ordinance amendment are to protect and promote the public health, safety and welfare, and are enacted pursuant to the authority granted to the City by state law.

**SECTION 2. CHAPTER 5.50 (COMMERCIAL CANNABIS OPERATIONS REGULATORY PROGRAM) OF TITLE 5 (BUSINESS TAX CERTIFICATES AND REGULATIONS) OF THE MORRO BAY MUNICIPAL CODE IS HEREBY AMENDED TO READ AS FOLLOWS (NEW TEXT IN *BOLD ITALICS* AND DELETED TEXT IN ~~STRIKETHROUGH~~):**

**“CHAPTER 5.50 - COMMERCIAL CANNABIS OPERATIONS REGULATORY PROGRAM**

Sec. 5.50.010 - Purpose and intent.

Sec. 5.50.020 - Commercial cannabis operations prohibited without City permit.

Sec. 5.50.030 - Definitions.

Sec. 5.50.040 - Prohibited commercial cannabis operations.

Sec. 5.50.050 - Permitted commercial cannabis operations.

Sec. 5.50.060 - Commercial cannabis operation permit.

Sec. 5.50.070 - Applications for commercial cannabis operation permit.

Sec. 5.50.080 - Compliance review of commercial cannabis operation permit application.

Sec. 5.50.090 - Issuance of commercial cannabis operation permit.

Sec. 5.50.100 - Renewal of commercial cannabis operation permit.

Sec. 5.50.110 - General operating standards and restrictions.

Sec. 5.50.120 - Retail ~~(medical)~~ operating standards and restrictions.

Sec. 5.50.130 - Wholesale distribution ~~(medical)~~ operating standards and restrictions.

Sec. 5.50.140 - Delivery ~~(medical)~~ operating standards and restrictions.

Sec. 5.50.150 - Administration.

Sec. 5.50.160 - Fees.

Sec. 5.50.170 - Suspension and revocation.

Sec. 5.50.180 - Violations and penalties; public nuisance

Sec. 5.50.190 - Service of notices.

Sec. 5.50.200 - Prohibitions.

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Sec. 5.50.210 - Nonconforming use.

Sec. 5.50.220 - Severability.

**Sec. 5.50.010 - Purpose and intent.**

- A. The purpose of this chapter is to establish a comprehensive set of regulations with an attendant regulatory permit applicable to the operation of certain types of commercial cannabis operations, while simultaneously establishing an express prohibition on certain other types of commercial cannabis operations.
- B. The regulations for, and prohibitions on, specific types of commercial cannabis operations are enacted to preserve the public health, safety, and welfare of the residents and visitors of the City of Morro Bay, consistent with California’s Compassionate Use Act of 1996, California’s Medical Marijuana Program Act of 2003, the Adult Use of Marijuana Act of 2016 (AUMA) (Proposition 64), the Medicinal and Adult-Use Cannabis Regulation and Safety Act of 2017 (MAUCRSA) and all applicable state laws governing commercial cannabis activities.
- C. The issuance of a Commercial Cannabis Operation Permit shall constitute a revocable privilege and shall not create or establish any vested rights for the development or use of a property.
- D. This chapter and its regulations shall be known as the “Commercial Cannabis Operations Regulatory Program.”

**Sec. 5.50.020 - Commercial cannabis operation prohibited without City permit.**

It shall be unlawful to own, establish, operate, use, or permit the establishment or activity of a commercial cannabis operation, or to participate in commercial cannabis operations as an employee, contractor, agent, volunteer, or in any manner or capacity, other than as provided in this chapter and pursuant to both a current and valid City of Morro Bay Commercial Cannabis Operation Permit, as well as the equivalent state license for such commercial cannabis operation as provided for by Section 26050 of the Business & Professions Code, and as amended. The prohibition contained in this section shall include renting, leasing, or otherwise permitting a commercial cannabis operation to occupy or use a location, vehicle, or other mode of transportation.

**Sec. 5.50.030 - Definitions.**

As used in this chapter, the following words and phrases shall have the following meanings:

- A. “Adult use” (i.e., “recreational” or “non-medical”) refers to activity involving cannabis or cannabis products, which is restricted to adults 21 years of age and older and who do not possess a physician’s recommendation, in contrast to an activity involving medical cannabis or medical cannabis products.
- B. “Applicant” means a person who files an application for a permit under this chapter.
- C. “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or

purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. ‘Cannabis’ also means the separated resin, whether crude or purified, obtained from cannabis. ‘Cannabis’ does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

- D. “Cannabis concentrate” means cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product's potency. Resin from granular trichomes from a cannabis plant is a concentrate for purposes of this division. A cannabis concentrate is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.
- E. “Cannabis Permit Committee” is composed of the Fire Chief, Police Chief, Finance Director, City Attorney, and/or their designees.
- F. “Cannabis products” means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.
- G. “City Attorney” means the City of Morro Bay City Attorney, and includes his/her designee(s).
- H. “City Manager” means the City of Morro Bay City Manager, and includes his/her designee(s).
- I. “Commercial cannabis operation” includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale (including retail and wholesale) of cannabis and cannabis products; except, as applicable, as set forth in Chapter 9.06 (“Personal Cultivation of Cannabis”) of this Code or as preempted by state law.
- J. “Commercial Cannabis Operation Permit” shall mean a City of Morro Bay permit issued pursuant to the procedures provided for in this chapter and which shall allow the permit holder to operate a specific type of commercial cannabis operation in the City of Morro Bay subject to the requirements of this chapter, state law, and the specific permit.
- K. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
- L. “Day care center” means, as the term is understood by Section 26001(o) of the Business and Profession Code, and as may be amended, any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and school-age child care centers.
- M. “Delivery” means the commercial transfer of cannabis or cannabis products to a customer, and includes the use of any technology platform owned and controlled by the same person making such use.

- N. “Director” means the City of Morro Bay Community Development Director, and includes his/her designee(s).
- O. “Distribution” means the procurement, sale, and transport of cannabis and cannabis products between entities licensed for and/or engaged in commercial cannabis activities.
- P. “Distributor” means a person engaged in distribution.
- Q. “Edible” means cannabis product that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the Food and Agricultural Code. An edible cannabis product is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.
- R. “Employee” means any person (whether paid or unpaid) who provides regular labor or regular services for a commercial cannabis operation, including, but not limited to, at the location of a commercial cannabis operation. The term “employee” includes managers and owners as used in this chapter.
- S. “Extraction” means the process of obtaining cannabis concentrates from cannabis plants, including but not limited to through the use of solvents like butane, alcohol or carbon dioxide.
- T. “Finance Director” means the City of Morro Bay Finance Director, and includes his/her designee(s).
- U. “Fire Chief” means the City of Morro Bay Fire Department Chief, and includes his/her designee(s).
- V. “Identification card” has the same definition as provided for in Health and Safety Code section 11362.7(g), and as may be amended, defined as “a document issued by the [State Department of Health Services] that identifies a person authorized to engage in the medical use of cannabis and the person’s designated primary caregiver, if any.”
- W. “Labeling” means any label or other written, printed, or graphic matter upon cannabis or a cannabis product, upon its container or wrapper, or that accompanies any cannabis or cannabis product.
- X. “Location” means any parcel of land, whether vacant or occupied by a building, group of buildings, or accessory buildings, and includes the buildings, structures, yards, open spaces, lot width, and lot area.
- Y. “Lighting” means the act of illuminating as well as the effect achieved by the arrangement of lights.
- Z. “Live scan” means a system for inkless electronic fingerprinting and the automated background check developed by the California Department of Justice (DOJ) which involves digitizing fingerprints and electronically transmitting the fingerprint image data along with personal descriptor information to computers at the DOJ for completion of a criminal record check; or such other comparable inkless electronic fingerprinting and automated background check process as determined by the City Council.

- AA. “Manager” means an employee responsible for management and/or supervision of a commercial cannabis operation.
- BB. “Manufacture” or “manufacturing” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product; includes the activities of a manufacturer.
- CC. “Manufacturer” means a person that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container; includes the activity of manufacturing.
- DD. “Marijuana” has the same definition as provided for “cannabis” in this chapter.
- EE. “Medical” refers to activity involving medical cannabis or medical cannabis products, in contrast to an activity involving adult-use cannabis or adult-use cannabis products.
- FF. “Medical cannabis” or “medical cannabis product” means cannabis or a cannabis product used in compliance with state law for medical purposes, pursuant to the Compassionate Use Act (Health and Safety Code § 11362.5), the Medical Marijuana Program Act (Health and Safety Code §§ 11362.7, *et seq.*), and the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code §§ 26000, *et seq.*).
- GG. “Merit List” shall refer to the criteria listed in Section 5.50.090(C) of this chapter.
- HH. “Minor” means a person under twenty-one (21) years of age.
- II. “Owner” means the owner of a commercial cannabis operation.
- JJ. “Microbusiness” shall have the same definition as provided for in Section 26070 of the Business and Professions Code, and as may be amended.
- KK. “Nursery” means a person that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.
- LL. “Operations Officer(s)” shall refer to the Director, the Fire Chief, the Police Chief, the Finance Director and the City Manager, individually or collectively.
- MM. “Package” means any container or receptacle used for holding cannabis or cannabis products.
- NN. “Packaging” or “packages” means an activity involved with placing cannabis or cannabis products in a package.
- OO. “Park” means public land which has been designated for park or recreational activities, including but not limited to a park, playground, nature trails, swimming pool, athletic field, basketball court, tennis court, pedestrian or bicycle paths, beaches, open

space, or similar public land within the city or which is under the control, operation or management of the city recreation and parks department.

PP. “Permittee” means a person issued a Commercial Cannabis Operation Permit by the City of Morro Bay.

QQ. “Person” means any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit.

RR. “Person with an identification card” has the same definition as provided for in Health and Safety Code section 11362.7(c), and as may be amended, defined as “an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article.”

SS. “Physician’s recommendation” means a determination from a physician that a patient’s medical cannabis use is deemed appropriate and is recommended by the physician on the basis of the physician has determined that the patient’s health would benefit from the use of cannabis in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which cannabis provides relief, in strict accordance with the Compassionate Use Act of 1996 (Proposition 215), and as understood by Section 11362.5 of the Health and Safety Code.

TT. “Religious institution” means any church, synagogue, mosque, temple, or building which is used primarily for religious worship, religious education and related religious activities.

UU. “Police Chief” means the City of Morro Bay Police Chief, and includes his/her designee(s).

VV. “Police Department” means the City of Morro Bay Police Department.

WW. “Premises” means a single parcel of property. Where contiguous parcels are under common ownership or control, such contiguous parcels shall be counted as a single “premises.”

XX. “Primary caregiver” has the same definition as provided for in Section 11362.7(d) of the Health and Safety Code, and as may be amended, including being “the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person” A “primary caregiver” shall also meet the requirements of Health and Safety Code section 11362.7(e), and as may be amended, which provide that a “primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Sections 6922, 7002, 7050, or 7120 of the Family Code.”

YY. “Qualified Patient” has the same definition as provided for in Health and Safety Code section 11362.7(f), and as may be amended, defined as “a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.”

- ZZ. “Retailer” means a person engaged in the retail sale or delivery of cannabis or cannabis products to a customer.
- AAA. “School” means, as the term is understood by Section 26054(b) of the Business and Profession Code, and as may be amended, as a place of instruction in kindergarten or any grades 1 through 12.
- BBB. “Site” means the premises and actual physical location of a Commercial Cannabis Operation, as well as its accessory structures and parking areas.
- CCC. “Testing laboratory” or “testing” refers to a laboratory, facility, or entity that offers or performs tests on cannabis or cannabis products; includes the activity of laboratory testing.
- DDD. “Youth center” means, as the term is understood by Section 26001(av) of the Business and Profession Code, and as may be amended, any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.

**Sec. 5.50.040 - Prohibited commercial cannabis operations.**

- A. Commercial cannabis operations (including non-profit operations) within the City which involve the activities of cultivation, manufacturer, testing, ~~retail (adult use), distributor (adult use)~~, or microbusiness are prohibited, including but not limited to commercial cannabis activities licensed by the state license classifications listed below as provided in Business and Professions Code § 26050:
1. Type 1 = Cultivation; Specialty outdoor; Small.
  2. Type 1A = Cultivation; Specialty indoor; Small.
  3. Type 1B = Cultivation; Specialty mixed-light; Small.
  4. Type 1C = Cultivation; Specialty cottage; Small.
  5. Type 2 = Cultivation; Outdoor; Small.
  6. Type 2A = Cultivation; Indoor; Small.
  7. Type 2B = Cultivation; Mixed-light; Small.
  8. Type 3 = Cultivation; Outdoor; Medium.
  9. Type 3A = Cultivation; Indoor; Medium.
  10. Type 3B = Cultivation; Mixed-light; Medium.
  11. Type 4 = Cultivation; Nursery.
  12. Type 5 = Cultivation; Outdoor; Large.
  13. Type 5A = Cultivation; Indoor; Large
  14. Type 5B = Cultivation; Mixed-light; Large.
  15. Type 6 = Manufacturer 1.
  16. Type 7 = Manufacturer 2.
  17. Type 8 = Testing.
  - ~~18. Type 10 = Retailer (adult use / non-medical).~~
  - ~~19. Type 11 = Distributor (adult use / non-medical).~~
  18. Type 12 = Microbusiness.
- B. The prohibition provided by above subsection (A) includes any similar activities authorized

under new or revised state licenses, or any other state authorization, to allow any type, category or classification of cannabis commercial activities which involve the activities of cultivation, manufacturer, testing, ~~retail (adult use), distributor (adult use)~~, microbusiness, or similar operations (including non-profit, collective or cooperative operations).

**Sec. 5.50.050 - Permitted commercial cannabis operations.**

- A. Commercial cannabis operations (including non-profit operations) within the City which involve the activities of retail ~~(medical)~~ or distributor ~~(medical)~~ are allowed subject to issuance and maintenance of a valid and current City Commercial Cannabis Operation Permit, continuing adherence to this entire chapter and all applicable city and state regulations and laws, and issuance and maintenance of a valid and current equivalent state license type listed below, as provided for in Business and Professions Code § 26050:
  - 1. Type 10 = Retailer ~~(medical)~~.
  - 2. Type 11 = Distributor ~~(medical)~~.
- B. The requirements provided by above subsection (A) apply to any similar activities authorized under new or revised state licenses, or any other state authorization, to allow any type, category or classification of cannabis commercial activities which involve the activities of retail ~~(medical)~~, distribution ~~(medical)~~, or similar operations (including non-profit, collective or cooperative operations).

**Sec. 5.50.060 - Commercial cannabis operation permit.**

- A. Prior to initiating operation as a commercial cannabis operation and as a continuing requisite to conducting operations, the owner of a commercial cannabis operation shall obtain a regulatory permit from the City under the terms and conditions set forth in this chapter.
- B. Issuance of a Commercial Cannabis Operation Permit is governed by a three-step procedure (as provided for in more detail in Sections 5.50.080 and 5.50.090).
  - 1. The first step (as provided for in Section 5.50.080) is a review by the Director to determine whether an applicant meets the minimum qualifications for a Commercial Cannabis Operation Permit, such minimum qualifications being the requirements of this chapter, the Morro Bay City Code, and applicable state law. If the Director makes a positive determination, then the application will be deemed compliant, and eligible for review by the Cannabis Permit Committee as to whether the permit should issue.
  - 2. The second step (as provided for in Section 5.50.090) is a review by the Cannabis Permit Committee of the thoroughness of applicant's adherence to Merit List criteria specified in Section 5.50.090(C). Upon conclusion of this review, the Cannabis Permit Committee shall make a recommendation to the City Manager as to whether or not a permit should be issued. The recommendation shall articulate in writing reasons for the recommendation and refer to Merit List criteria.
  - 3. The third step (as provided for in Section 5.50.90) is review by City Manager of Cannabis Permit Committee recommendations, and then a decision on whether a permit will or will not be issued. The reasons for the decision shall be articulated in writing and refer to Merit List criteria specified in Section 5.50.090(C). The

decision shall be final and non-appealable.

- C. Commercial Cannabis Operation Permits issued pursuant to this chapter shall automatically expire one year from the date of issuance, unless provided for otherwise.
- D. Conditions necessary for the continuing validity of a Commercial Cannabis Operation Permit include:
  - 1. Strict adherence to each and every requirement of this chapter, as well as any requirements, including administrative regulations, adopted by the City pursuant to the authority of this chapter.
  - 2. Maintaining a current and valid state license under Section 26200 of the Business and Professions Code, and as amended. Revocation, suspension or expiration of the state license shall automatically invalidate the equivalent City Commercial Cannabis Operation Permit.
  - 3. Allowing Operations Officers to conduct reasonable inspections of the location of the commercial cannabis operation at the discretion of the City, including but not limited to inspection of security, inventory, and written records and files pertaining to the commercial cannabis operation, for the purposes of ensuring compliance with local and state law.
  - 4. Maintaining with the City current and valid contact information of the owner(s) and manager(s) of the commercial cannabis operation.
  - 5. Maintaining with the City current and valid contact information of a legal representative of the commercial cannabis operation.
  - 6. Transferable only if transferee successfully completes all of the requirements that a new applicant for a Commercial Cannabis Operation Permit would otherwise need to meet.

**Sec. 5.50.070 - Applications for commercial cannabis operation permit.**

- A. The owner of a proposed commercial cannabis operation shall file an application with the Director upon a form provided by the City and shall pay a filing fee as established by resolution adopted by the City Council, as may be amended from time to time. Applications will be accepted beginning on July 1, 2018.
- B. An application for a Commercial Cannabis Operation Permit shall include, but not be limited to, the following information:
  - 1. Business.
    - a. Activities. A general description of the proposed operation, including how the proposed operation will operate in compliance with this Code and state law, plans for handling cash and transporting cannabis and cannabis products to and from the premises, and the proposed use of all areas on the premises, including but not limited to specific activities, storage, lighting and signage.

- b. Security. A security plan detailing measures to the satisfaction of the Director that all applicable security-related requirements under State or local law, including but not limited to the requirements of Section 550.110(B), are and will be met.
- c. Development Agreement. Applicants seeking to enter into a development agreement with the City pursuant to Government Code sections 65864, *et seq.*, are encouraged to propose terms and conditions, including but not limited to applicant benefits, public outreach and education, community service, and payment of fees and other charges as mutually agreed.
- d. Odor Control. An odor control plan detailing odor control measures in accordance with Section 550.110(C), to the satisfaction of the Director.
- e. Ownership. A description of the statutory entity or business form that will serve as the legal structure for the applicant, the ownership structure of the applicant as filed with the California Secretary of State (e.g. limited liability company, joint partnership, S-Corporation) (an applicant that is a foreign corporation shall include in its application the certificate of qualification issued by the Secretary of State of California), and a copy of the entity's formation and organizing documents, including, but not limited to, articles of incorporation, certificate of amendment, statement of information, articles of association, bylaws, partnership agreement, operating agreement, and fictitious business name statement.
- f. Seller's Permit. The seller's permit number issued by the Board of Equalization or evidence that the applicant has applied for a seller's permit from the Board of Equalization, as applicable.
- g. Other Licenses and Permits. Identification of any other licenses or permits for commercial cannabis operations, whether for the City of Morro Bay or for any other licensing or permitting authority:
  - i. held currently by the applicant;
  - ii. pending approval for the applicant; or
  - iii. denied to, revoked from or suspended for the applicant.
- h. Physical. A general description of the proposed operation, including the street address, parcel number, the total square footage of the site, and the characteristics of the surrounding area.
- i. Floor plan. A scaled floor plan for each level of each building that is part of the business site, including the entrances, exits, walls, and operating areas. The floor plan must be professionally prepared by a licensed civil engineer or architect.
- j. Site plan. A scaled site plan of the business site, that will include at a minimum all buildings, structures, driveways, parking lots, landscape

areas, and boundaries. The site plan must be professionally prepared by a licensed civil engineer or architect.

k. Hours of Operation. Proposed hours and days of operation.

## 2. Individuals.

- a. Managers. The name, address, e-mail and phone number of any person who is managing or responsible for the commercial cannabis operation's activities.
- b. Community Outreach Manager. The name, e-mail and phone number of an employee designated as Community Outreach Manager, who will be responsible for outreach and communication with the surrounding community, including the neighborhood and nearby businesses.
- c. Employees. A list of the names of all current and prospective employees of the commercial cannabis operation, along with any other identifying information requested by the Director.
- d. Consent to Criminal Investigation. Written consent from all employees to fingerprinting and a criminal background investigation by the City, upon a form provided by the City, accompanied with payment of appropriate fees to City to cover the costs of performing such criminal background check. At the discretion of the City and in compliance with State law, the City may use live scan to perform criminal background checks.
- e. Identification. For each employee, a color photocopy of either a valid California Driver's License or equivalent identification approved by the Director.
- f. Land Owner. The name, address, e-mail and phone number of the owner and lessor of the real property upon which the commercial cannabis operation is to be conducted. In the event the applicant is not the legal owner of the property, the application must be accompanied by a notarized acknowledgement from the owner of the property that a commercial cannabis operation will be operated on his/her property.

## 3. Miscellaneous.

- a. Any additional application requirements specific to the type of Commercial Cannabis Operation Permit being sought, including but not limited to as provided for by this chapter.
- b. Evidence satisfactory to the Director of compliance with all local and state law requirements governing commercial cannabis operations.
- c. Evidence satisfactory to the Director of compliance with all applicable insurance requirements as provided for by this chapter, local law and state law. Minimum insurance levels shall be determined by the Director after an assessment of the risks posed by the commercial cannabis

operation, including provision for meeting the requirements of Section 5.50.080(D)(2).

- d. Authorization for the Director to seek verification of the information contained within the application.
- e. A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct.
- f. Any such additional and further information as is deemed necessary by the Director to administer this chapter.

**Sec. 5.50.080 - Compliance review of commercial cannabis operation permit application.**

- A. Upon receipt of a completed application and payment of all applicable fees, the Director shall investigate the information contained in the application to determine whether the applicant meets the minimum qualifications for a Commercial Cannabis Operation Permit. These minimum qualifications are the requirements of this chapter, the Morro Bay City Code, and applicable state law. If the Director makes a positive determination then the application will be deemed compliant and eligible for review as to whether the permit should issue pursuant to the provisions in Section 5.50.090.
- B. If the Director determines that the application is incomplete, the Director shall notify the applicant in writing explaining the reasons thereof within sixty (60) days of receipt of the application. Applicant shall have 30 days to submit a completed application, in accordance with the Director's notification. If the application is resubmitted as incomplete, it shall be deemed abandoned. The applicant may then resubmit a new application for a new review pursuant to the requirements of this section.
- C. Within ninety (90) days of receipt of the completed application, the Director shall complete the investigation, approve, conditionally approve, or deny the application as being in compliance with the requirements of this chapter, and so notify the applicant by United States mail, first class postage prepaid, addressed to the applicant at the address stated in the application.
- D. An applicant shall not be deemed compliant for purposes of review under Section 5.50.090, until and unless an applicant meets all of the following requirements:
  - 1. Provides written authorization to the Operations Officers to conduct reasonable unannounced inspections of the location of the commercial cannabis operation at the discretion of the City, including but not limited to inspection of security, inventory, and written records and files pertaining to the commercial cannabis operation, for the purposes of ensuring compliance with this chapter and all laws of the City and the State of California.
  - 2. Executes an agreement: to indemnify, defend and hold harmless (at the Commercial Cannabis Operation Permit holder's sole expense, the ability to do so demonstrated through proof of sufficient insurance coverage to the satisfaction of the City) the City, its elected officials, employees, agents, officers, and representatives, and each and all of them individually, from all liability or harm arising from or in connection with all claims, damages, attorney's fees, costs and allegations arising from or in any way related to the operation of the commercial cannabis operation; and, to

reimburse the City for any costs and attorney's fees that the City may be required to pay as a result of such action. The City may, at its sole discretion, participate at its own expense in the defense of any such action.

- E. Upon successfully completing the review process, the permit application shall be deemed compliant and eligible for review under Section 5.50.090, unless the Director finds:
  - 1. The applicant has made one or more false or misleading statements or omissions, either on the written application or during the application process; or
  - 2. A proposed location for the commercial cannabis operation is not allowed by state or local law, statute, ordinance, or regulation (including this Code); or
  - 3. The applicant has not satisfied each and every requirement of this chapter and Code; or
  - 4. The applicant is not in compliance with applicable state law, including, but not limited to, applicable requirements and minimum standards of the Adult Use of Marijuana Act of 2016 (AUMA) (Proposition 64), the Medicinal and Adult-Use Cannabis Regulation and Safety Act of 2017 (MAUCRSA) and any applicable State regulations.
- F. Based on the information set forth in the application and the Director's review, the Director may impose, as a condition of being deemed compliant and thereby eligible for review under Section 5.50.090, reasonable terms and conditions on the use of the permit, in addition to those specified in this chapter, to ensure the safe operation of the commercial cannabis operation, and to ensure the health, safety and welfare of the residents and visitors of the City of Morro Bay.
- G. At the Director's sole discretion, the time limits in this Section may be extended upon written notification from the Director to the applicant.

**Sec. 5.50.090 - Issuance of commercial cannabis operation permit.**

- A. Issuance of a Commercial Cannabis Operation Permit constitutes a revocable privilege and shall not create or establish any vested rights for the development or use of a property. The City may determine that it is in the best interests of the health, safety and welfare of the residents and visitors of the City of Morro Bay that no Commercial Cannabis Operation Permits are to be granted by the City.
- B. Upon determination by the Director that an applicant is compliant with the requirements of this chapter, the Morro Bay City Code, and applicable state law (and thereby eligible for review by the Cannabis Permit Committee to determine whether or not a City of Morro Bay Commercial Cannabis Operation Permit will be issued), the Director shall promptly prepare for the application a written Merit List for provision to the Cannabis Permit Committee.
- C. A Merit List shall detail and rank in writing the thoroughness of an applicant's adherence to the following criteria, as they relate to the maintenance and promotion of the health, safety and welfare of the residents and visitors of the City of Morro Bay:
  - 1. Operation plan for the business, including attention to community concerns about the impact of the business.
  - 2. Security plan for the business, including details for the non-diversion of cannabis

- or cannabis products to illegal uses.
  3. Health and safety plan for the business, including enhanced product and operations health and safety.
  4. Impact on the environment.
  5. Neighborhood compatibility.
  6. Employment opportunities for City of Morro Bay residents.
  7. Economic benefits to the City of Morro Bay.
  8. Community benefits to the City of Morro Bay.
  9. Experience of the operators, managers and employees.
  10. Capitalization of the business.
  11. Requirements of this chapter, this Code and applicable State law.
  12. Any additional criteria the Director determines is of benefit to making a determination of the applicant's commitment to the health, safety and welfare of the residents and visitors of the City of Morro Bay.
- D. The Cannabis Permit Committee shall determine in writing, within a reasonable amount of time after receipt from the Director of the Merit List, whether to recommend to the City Manager that the requested Commercial Cannabis Operation Permit shall be issued. The recommendation shall use the criteria contained within Section 5.50.090(C).
1. Factors to be considered shall include the written Merit List, as well as all pertinent evidence timely submitted (at the determination of the Cannabis Permit Committee) by the applicant, the public, and interested parties. No pre-determined weight shall be given to one criterion or another.
  2. Each application shall be considered in its totality with weight given to one criterion over another as determined appropriate by the Cannabis Permit Committee to further the maintenance and promotion of the health, safety and welfare of the residents and visitors of the City of Morro Bay.
  3. Upon conclusion of this review, the Cannabis Permit Committee shall make a recommendation to the City Manager as to whether or not a permit should be issued. The recommendation shall articulate reasons in writing for the recommendation and refer to Merit List criteria.
- E. The City Manager shall make a final determination in writing, within a reasonable amount of time after receipt from the Cannabis Permit Committee of a recommendation, whether the applicant shall be issued a Commercial Cannabis Operation Permit.
1. Factors to be considered shall include the written Merit List, as well as all pertinent evidence timely submitted (at the determination of the City Manager) by the applicant, the public, and interested parties. No pre-determined weight shall be given to one criterion or another.
  2. Each application shall be considered in its totality with weight given to one criterion over another as determined appropriate by the City Manager to further the maintenance and promotion of the health, safety and welfare of the residents and visitors of the City of Morro Bay.
  3. Notice of the written determination shall be provided promptly to the applicant upon final determination. The determination shall articulate reasons in writing for the final determination and refer to Merit List criteria. The determination shall be

final and not appealable.

- F. The City Manager may impose reasonable terms and conditions on the use of the permit, in addition to those specified in this chapter, to ensure the safe operation of the commercial cannabis operation, and to ensure the health, safety and welfare of the residents and visitors of the City of Morro Bay.
- G. As determined appropriate by the City, multiple qualified applications for Commercial Cannabis Operation Permits may be considered at the same time, for reasons including but not limited to comparison of applicants for limited permits using the criteria contained within Section 5.50.090(C). The permit process timelines provided by this chapter may be modified by the City to facilitate such review of multiple applications.

**Sec 5.50.100 - Renewal of commercial cannabis operation permit.**

- A. Issuance of a Commercial Cannabis Operation Permit constitutes a revocable privilege and shall not create or establish any vested rights for the development or use of a property. The City may determine through the procedures provided in this chapter that for reasons of the health, safety and welfare of the residents and visitors of the City of Morro Bay that a Commercial Cannabis Operation Permit will not be renewed.
- B. Commercial Cannabis Operation Permits issued pursuant to this chapter shall automatically expire one year from the date of issuance, unless specifically provided for otherwise by this chapter.
- C. The following procedures shall govern the process for the renewal of a Commercial Cannabis Operation Permit:
  - 1. A holder of a Commercial Cannabis Operation Permit may apply for the renewal of an existing permit no less than 60 days prior to the permit's expiration date upon a form provided by the City and shall pay a filing fee as established by resolution adopted by the City Council as amended from time to time.
  - 2. Renewal applications shall comply with all of the requirements in this chapter for applying for a new Commercial Cannabis Operation Permit. At the discretion of the City, renewal applications may consist of updating any changes to an original application or previous renewal application.
  - 3. The Director will review permit renewal applications and make a determination as to whether the commercial cannabis operation has remained in compliance with all the requirements of this chapter and State law during the prior term of the permit. If the Director makes a contrary determination, the application for a permit renewal shall be denied.
  - 4. If the Director determines the commercial cannabis operation has remained in compliance with all the requirements of this chapter and state law during the prior term of the permit, the permit renewal application shall then be subject to the requirements of Section 5.50.090 (including the attendant preparation of a Merit List applicable to the prior term's operations), and the Director shall provide to the Cannabis Permit Committee a written Merit List. The Cannabis Permit Committee shall then recommend to the City Manager in writing whether the permit should be renewed. The City Manager shall review the recommendation and then make a final

decision on whether to grant an application for a permit renewal. The decision shall be final and non-appealable.

5. If the holder of a Commercial Cannabis Operation Permit files a renewal application less than 60 days prior to expiration, the holder must provide a written explanation detailing the circumstances surrounding the late filing. The Director may deny the untimely application after review of the explanation. If the Director accepts the application, then the Director may elect to administratively extend the permit beyond the expiration date while the Director completes the renewal permitting process. Untimely applications for renewal which are nevertheless accepted by the Director pursuant to this section are subject to a late penalty.
- D. A Commercial Cannabis Operation Permit is immediately invalid upon expiration if the permit holder has not filed a timely and/or accepted renewal application and remitted all of the required renewal fees. In the event the permit is not renewed prior to expiration, the affected commercial cannabis operation shall cease operation upon the expiration of the permit and is thereafter considered to be unlawful.

#### **Sec. 5.50.110 - General operating standards and restrictions.**

A commercial cannabis operation shall operate in conformance with the following minimum standards, and such standards shall be deemed to be part of the conditions on the permit for a commercial cannabis operation to ensure that its operation is in compliance with California law and the Morro Bay Municipal Code, and to mitigate any potential adverse impacts of the commercial cannabis operation on the public health, safety or welfare.

Additional minimum standards may be adopted from time to time either by resolution or ordinance from the City Council, or by the Director (upon authorization by resolution from the City Council).

- A. State Standards. All state requirements and regulations that govern the operation of a commercial cannabis operation, including but not limited to ones related specifically to certain types of commercial cannabis operations, shall apply as minimum requirements and regulations and requirements for commercial cannabis operations within the City of Morro Bay, in addition to the requirements and regulations of this chapter and this Code.
- B. Security.
  1. General. All cannabis, cannabis products and cash present or kept at the premises shall be securely stored against both unauthorized access as well as theft.
  2. Security Cameras.
    - a. Security cameras shall be installed and maintained in good condition, with at least 30 days of digitally recorded documentation in a format approved by the Director and the Police Chief.
    - b. The camera and recording system must be of adequate quality, color rendition, and resolution to allow the identification of any individual present at the site of the commercial cannabis operation.
    - c. The cameras shall be in continuous use 24 hours per day, 7 days per week.

- d. The recording system must be capable of exporting the recorded video in standard MPEG formats to another common medium approved by the Director, such as DVD and/or a USB drive.
  - e. The areas to be covered by the security cameras include, but are not limited to, the storage areas, operation areas, all doors and windows, the parking lot, all exterior sides of the property adjacent to the public rights of way, and any other areas as determined by the Director and Police Chief.
  - f. Remote log-in information will be provided to the Operations Officers to allow them to view live and recorded security camera images remotely at any time.
3. Alarm System. The location of the commercial cannabis operation shall be alarmed with a centrally-monitored fire and burglar alarm system, and monitored by an alarm company properly licensed by the State of California Department of Consumer Affairs Bureau of Security and Investigative Services in accordance with California Business & Professions Code section 7590, *et seq.* and whose agents are properly licensed and registered under applicable law.
  4. Locked Entrances. All entrances into the building housing a commercial cannabis operation shall be locked from the exterior at all times with entry controlled by employees.
  5. Windows. All windows on the building that houses the commercial cannabis operation shall be secured against entry from the outside.
  6. No employee shall refuse, impede, obstruct or interfere with an inspection conducted pursuant to the authorizations provided by this chapter.

#### C. Odors.

1. A commercial cannabis operation shall have an air treatment system that ensures off-site odors shall not result from its activities.
2. This requirement at a minimum means that the commercial cannabis operation shall be designed to provide sufficient odor absorbing ventilation and exhaust systems so that any odor generated inside the location of the commercial cannabis operation is not detected outside the building, on adjacent properties or public rights-of-way, or within any other unit located within the same building as the commercial cannabis operation, if the use only occupies a portion of a building.

#### D. Authorizations.

1. The Operations Officers shall have the right to enter all areas of the commercial cannabis operation from time to time unannounced for the purpose of making reasonable inspections to observe and enforce compliance with this chapter and all laws of the City and State of California.
2. Recordings made by security cameras required pursuant to this chapter shall be made available to the Operations Officers upon verbal request; no search warrant or subpoena shall be needed to view the recorded materials.

## E. Records.

1. Commercial cannabis operations shall maintain on-site the following records either in paper or electronic form:
  - a. The full name, address, and telephone numbers of the owner and lessee of the property.
  - b. The name, date of birth, address, and telephone number of each employee of the commercial cannabis operation; the date each was hired; and the nature of each employee's participation in the commercial cannabis operation.
  - c. Copies of all required state licenses.
  - d. An inventory record documenting the dates and amounts of cannabis and cannabis products received at the site, the daily amounts of cannabis and cannabis products on the site, and the daily amounts of cannabis and cannabis products leaving the site for any reason, including but not limited to being sold, delivered, or distributed.
  - e. A written accounting of all expenditures, costs, revenues and profits of the commercial cannabis operation, including but not limited to cash and in-kind transactions.
  - f. A copy of all insurance policies related to the operation of the commercial cannabis operation.
  - g. A copy of the commercial cannabis operation's most recent year's financial statement and tax return.
  - h. Proof of a valid and current permit issued by the City in accordance with this chapter, and the equivalent State of California license to operate the commercial cannabis operation. Every commercial cannabis operation shall display at all times during business hours the City permit issued pursuant to the provisions of this chapter, and the equivalent State license, in a conspicuous place so that it may be readily seen by all persons entering the location of the commercial cannabis operation.
2. All records required to be maintained by the commercial cannabis operation must be maintained for no less than three (3) years and are subject to immediate inspection (consistent with requirements pertaining to patient confidentiality pursuant to applicable State and Federal law) upon a lawful written request by an Operation Officer.
3. A commercial cannabis operation shall report any loss, damage, or destruction of these records to the Operation Officers within twenty-four (24) hours of the loss, damage, or destruction.

## F. Site Management.

1. Commercial cannabis operations shall not result in a nuisance or adversely affect the health, welfare, or safety of nearby persons by creating dust, glare, heat, noise, noxious gases, odors, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or waste. The permittee shall promptly and diligently both prevent as well as eliminate conditions on the site of the commercial cannabis operation that constitute a nuisance.
2. The Commercial Cannabis Operation permittee shall maintain the exterior of the site, including any parking lots under the control of the permittee, free of litter, debris, and trash.
3. The Commercial Cannabis Operation permittee shall properly store and dispose of all waste generated on the site, including chemical and organic waste, in accordance with all applicable laws and regulations.
4. Notwithstanding any provisions of this code to the contrary, the Commercial Cannabis Operation permittee shall remove all graffiti from the site and parking lots under the control of the Commercial Cannabis Operation Permittee within 72 hours of its application.

G. State Board of Equalization Seller's Permit Required.

1. Commercial cannabis operations must obtain a Seller's Permit from the State Board of Equalization as applicable.
2. Such permit shall be displayed in a conspicuous place so that it may be readily seen by all persons entering the location of the commercial cannabis operation.

H. Employees.

1. All employees must submit to fingerprinting and criminal background checks by the City.
  - a. No employee convicted within the last ten years of a felony substantially related to the qualifications, functions or duties of an employee of a commercial cannabis operation (such as a felony conviction for distribution of controlled substances, money laundering, racketeering, etc.) shall be employed by a commercial cannabis operation, unless such employee has obtained a certificate of rehabilitation (expungement of felony record) under California law or under a similar federal statute or state law where the expungement was granted.
  - b. At the request of the commercial cannabis operation, the Director and Police Chief shall determine the applicability of this section to a potential employee within a reasonable period of time after a written request has been made to the Director and Police Chief for such determination.
2. All employees must possess a valid government issued (or equivalent) form of identification containing an identifying photograph of the employee, the name of the employee, the date of birth of the employee, and the residential address of the employee. Color copies of such identification shall be maintained at the location of the commercial cannabis operation. A valid California Driver's license will satisfy

this requirement.

I. Cannabis Transfer Between Permitted Operations Only.

A commercial cannabis operation shall not transfer cannabis or cannabis products to or from another commercial cannabis operation, unless both operations are in possession of all required state and local licenses and permits.

J. Commercial Cannabis Operation Signage.

1. Signs on the premises shall not obstruct the entrance or the video surveillance system. The size, location, and design of any signage must conform to the sign provisions in the Morro Bay Municipal Code.
2. Business identification signage shall be limited to that needed for identification only, consisting of a single window sign or wall sign that shall comply with the appropriate sign requirements within the applicable zoning district.

K. Prohibited Personal Activities.

1. Cannabis Use. No person shall smoke, ingest, or otherwise consume cannabis in any form on, or within 20 feet of, the site of the commercial cannabis operation.
2. Alcohol Use. No person shall possess, consume, or store any alcoholic beverage on the site of the commercial cannabis operation.

L. No Minors. No minor shall be an employee of, or participate in, a commercial cannabis operation in any capacity, including but not limited to, as a manager, employee, contractor, adviser, or volunteer.

M. Exterior Lighting. The exterior of the premises upon which the commercial cannabis operation is operated shall be equipped with and, at all times between sunset and sunrise, shall remain illuminated with fixtures of sufficient intensity and number to illuminate every portion of the property with an illumination level of not less than one foot-candle as measured at the ground level, including, but not limited to, landscaped areas, parking lots, driveways, walkways, entry areas, and refuse storage areas.

N. Building Design. A Commercial Cannabis Operation permittee must maintain the design of the buildings on the site in accordance with the plans that are approved by the City pursuant to this chapter and otherwise approved by the City. No permittee shall modify the buildings on the site contrary to the approved plans, without the approval of the Director.

O. Nuisance. The Commercial Cannabis Operation permittee shall take all reasonable steps to discourage and correct conditions that constitute a nuisance in parking areas, sidewalks, alleys and areas surrounding the premises and adjacent properties during business hours if related to the members of the subject commercial cannabis operation.

1. "Reasonable steps" shall include immediately calling the police upon observation of the activity, and requesting that those engaging in activities that constitute a nuisance or are otherwise illegal to cease those activities, unless personal safety would be threatened in making the request.

2. “Nuisance” includes but is not limited to disturbances of peace, open public consumption of cannabis, alcohol or controlled substances, excessive pedestrian or vehicular traffic, including the formation of any pedestrian lines outside the building, illegal drug activity, harassment of passersby, excessive littering, excessive loitering, illegal parking, excessive loud noises, especially late at night or early in the morning hours, lewd conduct or police detentions and arrests.
- P. Upon and after receiving possession of a Commercial Cannabis Operation Permit as provided for in this chapter, the Commercial Cannabis Operation Permit holder shall:
1. Immediately update the Director in writing upon the change in status of any of the information previously submitted to the City concerning the commercial cannabis operation, including but not limited to when there is any change in the address, email, phone number, or other identifying information, previously provided to the City in compliance with this chapter, for any owner, manager, community outreach manager, property owner, or legal representative of the commercial cannabis operation.
  2. Maintain continuing compliance with criminal background check requirements of this chapter by ensuring that:
    - a. upon the hiring, association or retention of an employee by the commercial cannabis operation, the requirements of Section 5.50.070(B)(2)(d) are immediately met for such employee by provision of appropriate documentation to the Director; and
    - b. the Director and Police Chief are immediately informed in writing of any felony conviction as described in Section 5.50.110(H)(1)(a) for any current employee.
  3. Maintain continuing compliance with all applicable insurance requirements, including, but not limited to, those imposed by City and this chapter.
- Q. Exemption. The regulations contained in this chapter shall not apply to a commercial cannabis operation engaged in the following uses, as long as such use complies strictly with applicable law, including this Code, regulating such use and the location of such use, including, but not limited to, Sections 11362.5, *et seq.* of the Health and Safety Code: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code; a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; and, a residential hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.

**Sec. 5.50.120 - Retail ~~(medical)~~ operating standards and restrictions.**

A commercial cannabis operation engaged in retail ~~(medical)~~ shall operate in conformance with both the General Operating Standards and Restrictions provided for in Section 5.50.110, as well as the following minimum standards, and such standards shall be deemed to be part of the conditions of the permit for a retail ~~(medical)~~ commercial cannabis operation to ensure that its operation is in compliance with California law and the Morro Bay Municipal Code, and to mitigate

any potential adverse impacts of the commercial cannabis operation on the public health, safety or welfare.

Additional minimum standards may be adopted from time to time either by resolution or ordinance from the City Council, or by the Director (upon authorization by resolution from the City Council).

- A. City Permit and State License. No person shall engage in retail ~~(medical)~~ without both a current and valid City Commercial Cannabis Operation Permit issued for retail ~~(medical)~~ as well as a current and valid equivalent state license as provided for under Section 26200 of the Business and Professions Code, and as may be amended.
- B. State Standards. All state requirements and regulations that govern retail ~~(medical)~~ operations, including but not limited to the regulations promulgated by the California Bureau of Cannabis Control within the Department of Consumer Affairs, and as may be amended, shall apply as minimum requirements and regulations and requirements for retail ~~(medical)~~ commercial cannabis operations within the City of Morro Bay, in addition to the requirements and regulations of this chapter and this Code.
- C. Location Restrictions.
  - 1. No retail ~~(medical)~~ operation shall locate or operate in any zone of the City of Morro Bay, other than in the central business (C-1) district, the general commercial (C-2) district, or the light industrial (M-1) district.
  - 2. No retail ~~(medical)~~ operation shall locate within six hundred (600) feet of a school, day care center, or youth center. The distance shall be measured as the horizontal distance measured in a straight line from the property line of one site to the property line of another site.
  - 3. No retail ~~(medical)~~ operation shall locate within one hundred (100) feet of a park. The distance shall be measured as the horizontal distance measured in a straight line from the property line of one site to the property line of another site.
  - 4. No retail ~~(medical)~~ operation shall locate within one hundred (100) feet from another retail ~~(medical)~~ operation. The distance shall be measured as the horizontal distance measured in a straight line from the property line of one site to the property line of another site.
- D. Number of Permits. No more than two permits shall be active and valid in the City at any one time. In the event less than two permits are active and valid in the City, in its sole discretion the City may accept permit applications pursuant to the provisions of this chapter.
- E. Renewal of Permits. Subject to the requirements of Section 5.50.100, the City in its sole discretion may elect to extend the term, of one of the two permits initially issued (or thereafter, to achieve staggered review of permit renewal applications), so that each year thereafter the City shall only review one request for a permit renewal.
- F. Customers. Retail ~~(medical)~~ operations shall only sell, dispense, or provide medical cannabis or medical cannabis products to a qualified patient with a written physician's recommendation, a person with an identification card, or a primary caregiver with written documentation attesting to lawful status as a primary caregiver; and, retail operations shall

only sell, dispense, or provide adult-use cannabis or adult-use cannabis products to individuals 21 years of age or older.

- G. Opaque Packaging. All cannabis or cannabis products sold to a customer shall be prohibited from leaving the site unless placed in opaque packaging which conceals the nature of the product from human vision.
- H. Dispensing and Storage Areas. Entrance to the dispensing area and any storage areas shall be locked at all times, and under the control of employees.
- I. Edibles.
1. All edible cannabis products available for sale must be clearly labeled as ~~medical~~ cannabis.
  2. No edible cannabis products shall be available for sale which are appealing to children or easily confused with commercially sold candy or foods that do not contain cannabis.
  3. All edible cannabis products shall be provided to customers with sufficient information to enable the informed consumption of the product, including the potential effects of the cannabis product and directions as to how to consume the cannabis product, as necessary.
  4. All edibles cannabis products for sale shall be marked with a universal symbol, as determined by the State Department of Public Health through regulation, pursuant to Section 26130(c)(7) of the Business and Professions Code.
- J. Interior Lighting. The premises within which the commercial cannabis operation is operated shall be equipped with and, at all times during which is open to the public, shall remain illuminated with overhead lighting fixtures of sufficient intensity to illuminate every place to which members of the public or portions thereof are permitted access with an illumination of not less than two foot-candles as measured at the floor level.
- K. Signs. A permittee shall display conspicuously in the lobby of the site the following signs, so that each sign may be readily seen by persons entering the site, and each sign must be at least 8 inches by 10 inches in size:
1. “Minors are prohibited from entering this site unless they are a qualified patient or a primary caregiver, and they are in the presence of their parent or legal guardian.”
  2. “Smoking, ingesting, or consuming cannabis on or within 20 feet of this site is prohibited.”
- L. No Recommendations On-site. Retail (~~medical~~) operations shall not have a physician or any person licensed to recommend medical cannabis for medical use, at the location of the commercial cannabis operation, to provide a recommendation or physician’s recommendation, for the use of medical cannabis.
- M. Sanitation. The permittee shall establish and implement written procedures that maintain the highest industry standards of sanitation and cleanliness for the operation so as to ensure cannabis and cannabis products sold to the public are free of harmful contaminants.

- N. Training. The permittee shall establish and implement written procedures that provide for the highest industry standards of training for employees.
- O. Prohibited Activities. No cannabis cultivation, testing or manufacturing shall occur at the location of the retail ~~(medical)~~ operation.
- P. No Alcohol. Retail ~~(medical)~~ operations shall not hold or maintain a license from the State Department of Alcoholic Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages.
- Q. No Lounge or Cafe. Retail ~~(medical)~~ operations shall not operate as a lounge, cafe or restaurant serving food or drinks for consumption on-site. There shall be no seating area, tables, couches, or chairs for the gathering or congregating of members.
- R. Age Restriction. Minors are prohibited from entering the location of the retail ~~(medical)~~ operation unless they are a qualified patient or a primary caregiver, and they are in the presence of their parent or legal guardian.
- S. Public Information. The permittee shall make available to customers a list of the rules and regulations governing medical and adult-use cannabis use and consumption within the City and recommendations on sensible medical and adult-use cannabis etiquette.

**Sec. 5.50.130 - Wholesale distribution ~~(medical)~~ operating standards and restrictions.**

A commercial cannabis operation engaged in distribution shall operate in conformance with both the General Operating Standards and Restrictions for all Commercial Cannabis Operations provided for in Section 5.50.110, as well as with the following minimum standards, and such standards shall be deemed to be part of the conditions of the permit for a distribution commercial cannabis operation to ensure that its operation is in compliance with California law and the Morro Bay Municipal Code, and to mitigate any potential adverse impacts of the commercial cannabis operation on the public health, safety or welfare.

Additional minimum standards may be adopted from time to time either by resolution or ordinance from the City Council, or by the Director (upon authorization by resolution from the City Council).

- A. City Permit and State License. No person shall engage in distribution without both a current and valid City Commercial Cannabis Operation Permit issued for distribution as well as a current and valid equivalent state license as provided for under Section 26200 of the Business and Professions Code, and as may be amended.
- B. State Standards. All state requirements and regulations that govern distribution operations, including but not limited to the regulations promulgated by the California Bureau of Cannabis Control within the Department of Consumer Affairs, and as may be amended, shall apply as minimum requirements and regulations and requirements for distribution commercial cannabis operations within the City of Morro Bay, in addition the requirements and regulations of this chapter and this Code.
- C. Location Restrictions.
  - 1. No distribution operation shall locate or operate in any zone of the City of Morro Bay, other than in the central business (C-1) district, the general commercial (C-2)

district, or the light industrial (M-1) district.

2. No distribution operation shall locate within six hundred (600) feet of a school, day care center, or youth center. The distance shall be measured as the horizontal distance measured in a straight line from the property line of one site to the property line of another site.
3. No distribution operation shall locate within one hundred (100) feet of a park. The distance shall be measured as the horizontal distance measured in a straight line from the property line of one site to the property line of another site.

D. Distribution Restrictions.

1. Distribution operations shall distribute cannabis and cannabis products only between licensed cannabis commercial operations.
2. Distribution operations shall not conduct retail sales of cannabis or cannabis products.
3. Distribution operations shall not distribute any cannabis or cannabis products to retail operations unless such cannabis or cannabis products has been properly tested and approved for retail sale pursuant to State law.
4. Upon demand by any Operation Officer a distributor shall make immediately available copies of any required shipping manifests as understood by Section 26070(f) of the Business and Professions Code.

E. Site Requirements. The site shall comply with the following requirements:

1. Visibility. Neither cannabis nor cannabis products shall be visible from the public right-of-way, the unsecured areas surrounding the buildings on the site, or the site's main entrance and lobby.
2. Main Entrance and Lobby. The site shall have a building with a main entrance that is clearly visible from the public street or sidewalk. The main entrance shall be maintained clear of barriers, landscaping, and other obstructions. Inside of the main entrance, there shall be a lobby to receive persons into the site and to verify whether they are allowed in the distribution commercial cannabis operation areas. Members of the general public shall not be allowed in the distribution commercial cannabis operation areas except for reasons of lawful business.
3. Secure Product. All cannabis and cannabis products at the site shall be kept in a secured manner at all times.
4. Transport Area. Each building with a storage area shall have an area designed for the secure transfer of cannabis from vehicles to the storage area.
5. Storage Area. Each building shall have adequate storage space for cannabis. The storage areas shall be separated from the main entrance and lobby, and shall be secured by a lock accessible only to employees of the permittee.

F. Sanitation. The permittee shall establish and implement written procedures that maintain

the highest industry standards of sanitation and cleanliness for the operation so as to ensure the distribution of cannabis and cannabis products free of harmful contaminants.

G. Training. The permittee shall establish and implement written procedures that provide for the highest industry standards of training for employees engaged in distribution operations.

H. Signs. A permittee shall display conspicuously in the lobby of the site the following signs, so that each sign may be readily seen by persons entering the site, and each sign must be at least 8 inches by 10 inches in size:

1. "This site is not open to the public."
2. "Retail sales of any goods and services is prohibited"
3. "Minors are prohibited from entering this site."
4. "Smoking, ingesting, or consuming cannabis on or within 20 feet of this site is prohibited."

I. Prohibited Activities.

1. No cannabis cultivation, manufacturing or testing shall occur at the site.
2. No retail sales of cannabis or cannabis products shall occur at the site.

J. Restricted Access.

1. The site shall be closed to the general public.
2. Minors are prohibited from entering the location of the site.

**Sec. 5.50.140 - Delivery ~~(medical)~~ operating standards and restrictions.**

A. Deliveries Allowed.

1. ~~Medical~~ Cannabis deliveries are allowed in the City subject to the requirements of this chapter and compliance with applicable state law.
2. ~~Adult use (recreational) cannabis deliveries in the City are prohibited.~~

B. Licenses and Permits. Deliveries of cannabis and cannabis products shall only occur within the City by a commercial cannabis operation properly licensed or permitted to engage in cannabis deliveries by both the State of California as well as the originating jurisdiction of the delivery.

C. Documentation Required for Deliveries.

1. During deliveries the person making the actual delivery shall maintain at all times on his or her person a physical copy of the delivery request being fulfilled, a government-issued identification of the delivery person with a photograph, a copy of the State license which authorizes the delivery activity, and any other license or permit required by the originating jurisdiction to engage in the delivery of cannabis

or cannabis products

2. Upon request made by any Operations Officer or law enforcement officer the person shall make these documents immediately available for review.

D. Business License. Commercial cannabis operations that conduct deliveries of cannabis or cannabis products to customers located in the City, regardless of the originating jurisdiction of the delivery, are required to have a valid and current City business license to engage in such commercial activity.

#### **Sec. 5.50.150 - Administration.**

Further rules, regulations, procedures and standards for the administration and implementation of this chapter may be adopted from time to time either by resolution or ordinance from the City Council, by the Director (~~upon authorization by resolution from the City Council~~), or as further provided by this chapter.

#### **Sec. 5.50.160 - Fees.**

An application fee set by resolution of the City Council shall be required for formal processing of every application made under this chapter. The City Council is authorized to pass resolutions to recover any and all fees and costs incurred by the administration and implementation of this chapter through an appropriate fee recovery mechanism to be imposed upon commercial cannabis operations.

#### **Sec. 5.50.170 - Suspension and revocation.**

- A. The Director is authorized to suspend and/or revoke a Commercial Cannabis Operation Permit issued pursuant to this chapter upon the determination through written findings of a failure to comply with any provision of this chapter, any permit condition, or any agreement or covenant as required pursuant to this chapter.
- B. The Director may suspend or revoke a Commercial Cannabis Operation Permit if any of the following occur, and the suspension or revocation shall be final:
  1. The Director determines that the commercial cannabis operation has failed to comply with any aspect of this chapter, any permit condition, or any agreement or covenant as required pursuant to this chapter; or
  2. The equivalent State license has been suspended or revoked by the State of California; or
  3. Operations cease for more than 180 calendar days (including during any change of ownership, if applicable); or
  4. Ownership is changed without securing a new Commercial Cannabis Operation Permit; or
  5. The commercial cannabis operation fails to maintain required security camera recordings; or
  6. The commercial cannabis operation fails to allow inspection of the security

recordings, the activity logs, the records, or of the site by Operations Officers pursuant to this chapter.

- C. Conditions (if any) of suspension or revocation are at the discretion of the Director and may include, but are not limited to, a prohibition on all owners, operators, managers and employees of the suspended or revoked commercial cannabis operation from operating within the City for a period of time set forth in writing and/or a requirement (when operations may resume, if at all, pursuant to the Director's determination) for the holder of the suspended or revoked permit to resubmit an application for a Commercial Cannabis Operation Permit pursuant to the requirements of this chapter.

**Sec. 5.50.180 - Violations and penalties; public nuisance.**

- A. Any violation of the provisions of this chapter is punishable as a misdemeanor or an infraction, at the discretion of the city prosecutor, pursuant to Chapter 1.16 of the Morro Bay City Code, except for as preempted by state law; and, any violation of the provisions of this chapter is subject to administrative citation, at the discretion of the City, pursuant to Chapter 1.03 of the Morro Bay City Code.
- B. Public nuisance abatement.
  - 1. Any commercial cannabis operation that is conducted in violation of any provision of this chapter is hereby declared to constitute a public nuisance and, as such, may be abated or enjoined from further operation, in accordance with the procedures set forth in Chapter 8.14 of the Morro Bay City Code.
  - 2. All costs to abate such public nuisance, including attorneys' fees and court costs, shall be paid by the person causing the nuisance, including the commercial cannabis operation permittee and the property owner where the nuisance is occurring.
- C. The remedies described in this section are not mutually exclusive. Pursuit of any one remedy shall not preclude city from availing itself of any or all available administrative, civil, or criminal remedies, at law or equity.
- D. Any violation of the provisions of this chapter shall constitute a separate offense for each and every day during which such violation is committed or continued.

**Sec. 5.50.190 - Service of notices.**

Any notice required by this chapter is deemed issued and served upon the earliest date that either: the notice is deposited in the United States mail, postage pre-paid, addressed to the most recent mailing address provided to the City pursuant to the requirements of this chapter; or, the date upon which personal service of the notice is provided to a responsible party.

**Sec. 5.50.200 - Prohibitions.**

- A. Any commercial cannabis operation in violation of The Adult Use of Marijuana Act, The Medicinal and Adult-Use of Cannabis Regulation and Safety Act, this chapter, or any other applicable State law is expressly prohibited.
- B. It is unlawful for any commercial cannabis operation in the City, or any agent, employee or representative of such commercial cannabis operation, to permit any breach of peace or



**SECTION 6. CERTIFICATION.** The City Clerk shall certify to the adoption of this ordinance, and shall cause the same to be posted and codified in the manner required by law.

**INTRODUCED** at a regular meeting of the City Council held on the \_\_\_\_ day of \_\_\_\_\_ 2020, by motion of \_\_\_\_\_ and seconded by \_\_\_\_\_.

**PASSED AND ADOPTED** on the \_\_\_\_ day of \_\_\_\_\_, 2020, by the following vote:

AYES:  
NOES:  
ABSENT:

\_\_\_\_\_  
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 633 was duly adopted by the City Council of the City of Morro Bay at a regular meeting of said Council on the \_\_\_\_ day of \_\_\_\_\_, 2020, and that it was so adopted by the following vote:

AYES:  
NOES:  
ABSENT:

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of the City of Morro Bay, California, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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DANA SWANSON, City Clerk