



CITY OF MORRO BAY CITY COUNCIL AGENDA

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

Regular Meeting - Tuesday, June 26, 2018 Veterans Memorial Hall - 6:00 P.M. 209 Surf St., Morro Bay, CA

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

PUBLIC COMMENT PERIOD

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

To increase the effectiveness of the Public Comment Period, the following rules shall be followed:

- When recognized by the Mayor, please come forward to the podium and state your name and city of residence for the record. Comments are to be limited to three minutes.
- All remarks shall be addressed to Council, as a whole, and not to any individual member thereof.
- The Council respectfully requests that you refrain from making slanderous, profane or personal remarks against any elected official, commission and/or staff.
- Please refrain from public displays or outbursts such as unsolicited applause, comments or cheering.
- Any disruptive activities that substantially interfere with the ability of the City Council to carry out its meeting will not be permitted and offenders will be requested to leave the meeting.
- Your participation in City Council meetings is welcome and your courtesy will be appreciated.

A. CONSENT AGENDA

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

A-1 APPROVAL OF MINUTES FOR THE JUNE 4, 2018 CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-2 APPROVAL OF CORRECTED MINUTES FOR THE MAY 23, 2018, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-3 APPROVAL OF A NEW LICENSE AGREEMENT WITH MORRO BAY HARBOR FESTIVAL, INC FOR USE OF HARBOR DEPARTMENT'S STORAGE YARD IN THE FRONT STREET PARKING LOT; (HARBOR)

RECOMMENDATION: City Council approve a two-year License Agreement with Morro Bay Harbor Festival, Inc. that includes an option to extend for one two-year period, for use of a portion of the Harbor Department's storage yard in the Front Street parking lot.

- A-4 APPROVAL OF NEW LICENSE AGREEMENT WITH MORRO BAY HOOKERS BAITING SERVICE FOR USE OF A PORTION OF THE HARBOR DEPARTMENT STORAGE YARD LOCATED AT 1620 EMBARCADERO; (HARBOR)

RECOMMENDATION: City Council approve a two-year License Agreement with Lonnie Carter, doing business as "Morro Bay Hookers" baiting service, that includes an option to extend for one two-year period, for use of a portion of the Harbor Department's storage yard, located at 1620 Embarcadero.

- A-5 APPROVAL OF FISCAL YEAR 2018-19 COMBINED SALARY SCHEDULE AND JOB DESCRIPTION FOR CONSOLIDATED MAINTENANCE WORKER I; (FINANCE)

RECOMMENDATION: City Council adopt Resolution 48-18 approving the FY 2018-19 Combined Salary Schedule and job description for the Consolidated Maintenance Worker I position.

- A-6 SECOND READING AND ADOPTION OF ORDINANCE NO. 614 AMENDING SECTION 2.08.090 AND SUBDIVISION 3.22.120 B. OF THE MORRO MUNICIPAL CODE RELATING TO COUNCIL MEETING MINUTES AND TERMS OF THE CITIZENS OVERSIGHT COMMITTEE, RESPECTIVELY; (CITY ATTORNEY)

RECOMMENDATION: City Council waive reading of Ordinance 614 in its entirety and adopt Ordinance No. 614, amending Section 2.08.090 and Subdivision 3.22.120 B. of the Morro Municipal Code (MBMC) relating to Council timing for preparation of Council meeting minutes and terms of the Citizens Oversight Committee, respectively.

- A-7 ADOPTION OF RESOLUTION NO. 49-18 APPROVING A NEW 32-YEAR MASTER LEASE AGREEMENT BETWEEN THE CITY OF MORRO BAY AND THMT, INC. FOR LEASE SITE 122-123/122W-123W, AND EXTENSION OF 122W-123W, LOCATED AT 1205 EMBARCADERO (HARBOR HUT RESTAURANT); (HARBOR)

RECOMMENDATION: Council adopt Resolution No. 49-18, approving a new 32-year Master Lease Agreement for Lease Site 122-123/122W-123W, and Extension of 122W-123W, as proposed.

- A-8 ADOPTION OF RESOLUTION NO. 47-18 ESTABLISHING THE ANNUAL PROPOSITION 4 APPROPRIATIONS LIMIT FOR FISCAL YEAR 2018/19; (FINANCE)

RECOMMENDATION: City Council adopt Resolution No. 47-18, which sets the FY 18/19 appropriations limit at \$26,960,330.

- A-9 ADOPTION OF RESOLUTION NO. 50-18, APPROVING A 1-YEAR LEASE AGREEMENT WITH CIANO REAL ESTATE, INC. FOR PROPERTY LOCATED AT 781 MARKET STREET; (COMMUNITY DEVELOPMENT)

RECOMMENDATION: Council adopt Resolution No. 50-18, approving a 1-year Lease Agreement for the City property located at 781 Market Street (APN: 066-321-027).

- A-10 AGREEMENT WITH CHAMBER OF COMMERCE FOR IMPLEMENTATION OF THE ECONOMIC DEVELOPMENT STRATEGIC PLAN; (CITY MANAGER)

RECOMMENDATION: City Council authorize the City Manager, subject to the approval of the City Attorney, to sign an agreement with the Chamber of Commerce for economic development services as described in the 4MB Memorandum of Understanding and approve the expenditure by the City for a payment to the Chamber in the amount of \$30,000 for FY 2018/19, with monthly payments of \$2,500.

- A-11 APPROVAL OF VISITOR CENTER SERVICES CONTRACT AND LEASE AGREEMENT FOR CITY-OWNED PROPERTY LOCATED AT 695 HARBOR STREET; (CITY MANAGER)

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

B. PUBLIC HEARINGS

- B-1 DENIAL OF APPEALS OF AMENDMENT (A00-054) TO CONDITIONAL USE PERMIT (PRECISE PLAN NO. UP0-284) FOR 1001 FRONT ST TO ALLOW PERMANENT USE OF A 48SF SEASONAL KIOSK FOR VIRG'S LANDING; (COMMUNITY DEVELOPMENT)

RECOMMENDATION: Council adopt Resolution Nos. 51-18 and 52-18, making the necessary findings to deny both appeals and uphold the Planning Commission approval of Amendment No. A00-054 to Conditional Use Permit (Precise Plan UP0-284) for Virg's Landing kiosk located at 1001 Front Street.

- B-2 ADOPTION OF RESOLUTION NO. 53-18 DIRECTING THE LEVY OF ANNUAL ASSESSMENT FOR THE CLOISTERS LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT FOR FY 2018/19; (PUBLIC WORKS)

RECOMMENDATION: City Council conduct the final public hearing and adopt Resolution No. 53-18, approving the levy of the annual assessment for the Cloisters Landscaping and Lighting Maintenance Assessment District for FY 2018/19.

- B-3 ADOPTION OF RESOLUTION NO. 54-18 DIRECTING THE LEVY OF THE ANNUAL ASSESSMENT FOR THE NORTH POINT NATURAL AREA LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT FOR FY 2018/19; (PUBLIC WORKS)

RECOMMENDATION: City Council conduct the public hearing and approve the levy of the annual assessment for the North Point Natural Area Landscaping and Lighting Maintenance District by adopting Resolution No. 54-18.

C. BUSINESS ITEMS

- C-1 ONE WATER PLAN UPDATE AND PROVIDE DIRECTION AS DEEMED APPROPRIATE; (PUBLIC WORKS)

RECOMMENDATION: Staff recommends the following:

- a. **City Council consider the status report for the OneWater Plan;**
- b. **Provide any other direction as deemed appropriate by a majority of the Council.**

C-2 AWARD OF AGENCY OF RECORD CONTRACT FOR TOURISM MARKETING AND PUBLIC RELATIONS SERVICES FOR FISCAL YEARS 2018/19-2019/20; (TOURISM)

RECOMMENDATION: Council authorize the City Manager to enter into a two-year contract with Mental Marketing as the Agency of Record for marketing and public relations services to promote the destination, in a form approved by the City Attorney.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, July 10, 2018 at 6:00 p.m.** at the Veteran's Memorial Hall located at 209 Surf Street, Morro Bay, California.

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

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

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

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PRESENT: Jamie Irons Mayor
 Robert Davis Council Member
 Matt Makowetski Council Member
 Marlys McPherson Council Member

ABSENT: John Headding Council Member

STAFF: Scott Collins City Manager
 Joseph Pannone City Attorney
 Colin Tanner Special Labor Counsel (*via teleconference*)
 Dana Swanson City Clerk/Risk Manager
 Jennifer Callaway Finance Director
 Scot Graham Community Development Director

ESTABLISH QUORUM AND CALL TO ORDER

The meeting was called to order at 4:33 p.m. with all members present.

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

CLOSED SESSION PUBLIC COMMENT – Mayor Irons opened the meeting for public comment for items on the agenda.

Barbara Doerr, Morro Bay, spoke in support of Marla Jo Bruton-Sadowski and her concerns regarding the April 25th City Council Special Meeting.

Carole Truesdale, Morro Bay, implored the Council to assist Ms. Bruton-Sadowski.

Kathleen Quigley, Morro Bay, spoke in support of Ms. Bruton-Sadowski.

Scott Lawson, Morro Bay, spoke in support of Ms. Bruton-Sadowski.

Marla Jo Bruton Sadowski, Morro Bay, spoke regarding her concerns related to the April 25, 2018, City Council Special Meeting.

The Public Comment period was closed.

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

CS-1 CONFERENCE WITH LABOR NEGOTIATORS

City Designated Representative: Colin Tanner, Special Labor Counsel
Employee Organizations: Morro Bay Police Officers' Association

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

Property: 781 Market Avenue, APN 066-321-027
Property Negotiators: Ciano Real Estate, Frankie Ciano
Agency Negotiators: Scott Collins, City Manager, Scot Graham, Community Development Director and Joseph Pannone, City Attorney
Under Negotiation: Price and Terms

CS-3 CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9: 2 Matters involving alleged violations of the Brown Act submitted (i) by Linda Stedjee relating to the

October 24, 2017, Regular Council Meeting and (ii) by Marla Jo Bruton-Sadowski relating to the April 25, 2018, Special Council Meeting

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

ADJOURNMENT - The meeting adjourned at 5:50 P.M.

Recorded by:

Dana Swanson, City Clerk



AGENDA NO: A-3

MEETING DATE: June 26, 2018

Staff Report

TO: Honorable Mayor and City Council **DATE:** June 11, 2018

FROM: Eric Endersby, Harbor Director

SUBJECT: Approval of a New License Agreement with Morro Bay Harbor Festival, Inc. for Use of Harbor Department's Storage Yard in the Front Street Parking Lot

RECOMMENDATION

Staff recommends the City Council approve a two-year License Agreement with Morro Bay Harbor Festival, Inc. that includes an option to extend for one two-year period, for use of a portion of the Harbor Department's storage yard in the Front Street parking lot.

ALTERNATIVE

The City Council could elect not to renew the License Agreement, thus causing Harbor Festival, Inc., to seek an alternative storage site.

FISCAL IMPACTS

Annual revenue to the Harbor Department budget of \$468.00/year with annual CPI adjustments.

BACKGROUND

Due to their continued needs for storage, and by way of a license agreement with the City starting in 1996, Morro Bay Harbor Festival, Inc. (Harbor Festival) began using a majority of the Harbor Department's storage yard in the Front Street parking lot to store various equipment and materials. The yard is conveniently close to the festival site; and the Harbor Department's use and storage needs in the Front Street yard have decreased with the building of the Fisherman's and Harbor Department's Gear Storage yard at the end of the dirt extension of Embarcadero, making the Front Street yard a logical and convenient location for the Harbor Festival.

DISCUSSION

The current license agreement, between the City and Morro Bay and Harbor Festival, Inc. expires on June 30, 2018, and the Harbor Festival has requested to renew the agreement, allowing their continued use of the yard.

Staff is proposing the attached new License Agreement with the following highlights:

- Two-year term, with an option to extend, administratively, for one two-year period.
- Annual rent of \$468/year (\$39/month) with an annual CPI adjustment.
- Option for Harbor Festival to install alternate storage building (subject to normal permitting process), if City desires to remove the current outdated storage building.

CONCLUSION

Prepared By: EE

Dept Review: EE

City Manager Review: SC

City Attorney Review: JWP

Staff believes this new agreement provides for continuation of the Harbor Festival's mutually beneficial use of the Front Street storage yard and is recommending approval of this new license agreement.

ATTACHMENT

1. Draft License Agreement

TEMPORARY LICENSE AGREEMENT

FOR USE OF PUBLIC PROPERTY

The City of Morro Bay, a municipal corporation, (“Licensor”) hereby grants to Harbor Festival, Inc. (“Licensee”) a license (“this License”) for use of the real property located at the Harbor Storage Yard located at 1196 Front Street, Morro Bay, CA, illustrated on the attached Exhibit A (the “Premises”), subject to all the following terms and conditions:

1. **USE:** Subject to all the provisions of this License and only in recognition of the purpose set forth in this Paragraph, Licensee shall have permission to use of the Premises solely for:

- (a) storage of Harbor Festival booths, and
- (b) storage of related equipment and supplies.

NO storage of hazardous materials of any sort will be allowed, including but not limited to fuels, chemicals, paints, oils, etc.

The foregoing shall be defined as the “Permitted Uses.”

The parties agree Licensee’s use of the Premises for the Permitted Uses shall be exclusive of any other use or user, except that of Licensor, subject to Paragraph 20, below.

2. **LICENSOR REQUIREMENTS:** In connection with the Permitted Uses, Licensee shall comply with all applicable Federal, State and local laws rules and regulations, including payment of local business taxes, if applicable.
3. **EFFECTIVE DATE OF LICENSE:** This License shall be effective on the later of July 1, 2018, or upon the date it is signed on behalf of Licensor (the “Effective Date”).
4. **TERM:** The term of this License shall be for the period from the Effective Date, until June 30, 2020, (the “Term”) or termination pursuant to Paragraph 16, below.
5. **RENEWAL:** Upon expiration of this License Licensor’s Harbor Director may administratively execute one two-year renewal of this License (the “Extended Term”). The Extended Term shall be effective only if an amendment to this License is signed by Licensor’s Harbor Director, or designee and Licensee. If the Extended Term becomes effective, then the Extended Term shall expire on June 30, 2022 or termination pursuant to Paragraph 16, below.
6. **FEES:** Licensee shall pay to Licensor Thirty-nine Dollars (\$39.00) per month payable on the first of each month starting July 1, 2018 for this License (the “License Fee”).

On each July 1, commencing with July 2019, said the License Fee shall be increased in an amount equal to the increase in the Consumer Price Index for the 12-month Index average of the immediate preceding calendar year. The Consumer Price Index referred to herein is the Consumer Price Index (all items indexes, all urban consumers) for Los Angeles – Long Beach – Anaheim, California, compiled and published by the United States Department of Labor, Bureau of Labor Statistics, 1982-84 Base Year = 100. The base Consumer Price Index shall be the January 2018 data value of 261.235.

7. OPERATION COSTS: Licensee shall be responsible for all costs related to its use of the Premises, including the utilities used by Licensee for the Premises if utilities are present.
8. MAINTENANCE: Licensee shall be responsible to maintain the Premises in a clean and presentable manner and keep the area abutting the Premises free from waste, debris, trash and other rubbish. Upon termination this License for any reason, Licensee shall leave the Premises free from waste, debris, trash, pollution/spills and other rubbish and in a good condition, subject to normal wear and tear.
9. SIGNS: Any and all signs installed or used by Licensee that are visible to the public from outside the Premises shall not be installed or used without the prior written approval of Licensor's Harbor Director, and subject to all applicable Licensor zoning laws, rules and regulations and all required land use Licensor approvals and permits shall be obtained.
10. IMPROVEMENTS: Licensee shall not make any improvements to the Premises without prior approval from Licensor's Harbor Director. Upon termination of this License for any reason, any improvements of any kind installed by or on behalf of Licensee and left on Premises shall become the property of Licensor at no cost whatsoever, including any damages for condemnation, inverse condemnation or relocation benefits or loss of goodwill, however, Licensee and Licensor further agree that Licensor has the option and right to require Licensee to remove any improvements of any kind installed by or on behalf of Licensee upon the Premises at the termination of this License, however occurring, providing Licensor gives Licensee notice, in writing, no later than thirty days prior to termination of License. If Licensor exercises such option and Licensee fails to remove such improvements within sixty days after termination of License, Licensor shall have the right to have such improvements removed at expense of Licensee.

Licensee and Licensor agree Licensor may desire to remove current storage out building at any time during the term of this agreement. Licensee may replace storage capacity at Licensee's sole expense, including obtaining any necessary permits and subject to Licensor approval per this section.

11. **This paragraph intentionally omitted.**
12. LICENSEE OBLIGATIONS: Termination of this License shall not terminate Licensee's obligations pursuant to Paragraphs 13, 14, 15, 16, 17 and 18.

13. TAXABLE INTEREST: This License is not intended to create any interest in real property. If it is determined, by a governmental agency dually authorized to make such decision, this License creates any taxable interest, including, but not limited to, a possessory interest, then Licensee shall be solely responsible to pay such taxes to the extent such taxes are required by law to be paid.
14. HOLD HARMLESS: Licensee agrees to and hereby does hold harmless, indemnify and defend Licensor and its officers, agents and employees (“Indemnitees”) from any claim, judgment, liability, award, damages, loss or expense, including reasonable attorney’s fees and court costs, arising out of or related to the use of the Premises by Licensee, including, but not limited to, any hazardous materials releases; provided, that Licensee’s obligation to indemnify and hold harmless shall apply only to the extent Licensee, its officers, employees or agents caused the claim, loss or expense. For purposes of this License, hazardous materials shall mean any materials as defined by State or Federal laws.
15. INSURANCE: Without limiting the obligation set forth in the immediately preceding sentence, during the term of this License Licensee shall provide evidence of insurance as provided in Exhibit B.
16. NO LIENS ON PREMISES: Licensee shall not permit or suffer any mechanic’s or materialman’s or other lien of any kind or nature to be recorded or enforced against the Premises for any work done or materials furnished thereon at the instance of requirement of or on behalf of Licensee; and Licensee agrees to indemnify and hold harmless Licensor and the Premises against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with such work done, labor performed or material furnished in connection with Licensee’s use of the Premises.
17. RIGHT TO TERMINATE/NO DISPLACEMENT LIABILITY: Either party shall have the right to terminate this License, with or without cause, upon thirty-days’ (30-days’) written notice to the non-terminating party. Licensor shall not be liable (i) for any displacement or relocation benefits or expenses experienced by Licensee, (ii) for reimbursement for any improvements installed by Licensee or (iii) for any damages in condemnation, inverse condemnation, loss of goodwill or other legal or equitable bases resulting, directly or indirectly, from any action or inaction of or on behalf of Licensor that may be in any way connected with any termination of this License for any reason or any relocation of Licensee from the Premises for any reason. Upon termination of this License, Licensee shall no longer be responsible for any fees under this License, as specified in Paragraph 5 of this License.
18. GOVERNING LAW: The terms of this License shall be interpreted according to the laws of the State of California. If arises out of this License, then venue shall be in the Superior Court of San Luis Obispo County.
19. LITIGATION FEES: If either party commences action against the other party arising out of or in connection with this License, then the prevailing party shall be entitled to have and recover from the other party reasonable attorneys’ fees and costs of suit.

20. LICENSOR USE OF PREMISES: Licensor may use the Premises for storage and other municipal uses; provided, that such use shall not unreasonably interference with or prevent in any substantial way Licensee's ability to utilize the Premises for the purposed set forth herein; and provided, further, that Licensor shall be responsible for all operation costs and maintenance for the portion of the Premises it or Licensor uses or occupies. In addition, without any implied or expressed limitation on Licensor's authority and right to access and inspect the Premises in its governmental capacity, Licensor shall have the right to access at any time to the Premises for inspections.
21. TRANSFERABILITY AND ASSIGNABILITY: The License is neither transferable nor assignable by Licensee without the written consent of Licensor.
22. NOTICES: All notices given or required to be given pursuant to this License shall be in writing and may be given by personal delivery or by mail. Notice sent by mail shall be addressed as follows:

To Licensor:

City of Morro Bay
Attn: Harbor Director
1275 Embarcadero
Morro Bay, CA 93442

With Copy to:

Joseph W. Pannone
Aleshire & Wynder, LLP
2361 Rosecrans Avenue, Suite 475
El Segundo, CA 90245

To Licensee:

Harbor Festival, Inc.
895 Napa Street, Suite A
Morro Bay, CA 93442

23. ENTIRE AGREEMENT: This License (i) constitutes the entire agreement of the parties hereto relating to the use, operation and maintenance of the Premises and (ii) shall supersede prospectively from the date it is entered into any and all prior written or oral negotiations or agreements of the parties relating to the Premises. This License shall not be modified in any particular except by a written amendment duly executed by the parties.

LICENSEE

Dated: _____

Dated: _____

LICENSOR

Dated: _____

By: _____
Scott Collins, City Manager

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Joseph W. Pannone, City Attorney

EXHIBIT A
AERIAL OF PREMISES

(Immediately behind this page)

Exhibit A



**CITY OF MORRO BAY
EXHIBIT B**

INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of the Agreement, Licensee will maintain insurance in conformance with the requirements set forth below. Licensee will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Licensee agrees to amend, supplement or endorse the existing coverage to do so. Licensee acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to Licensor in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to Licensor.

Licensee shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office “Commercial General Liability” policy from CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

Business Auto Coverage on ISO Business Auto Coverage from CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If Licensee owns no vehicles, then this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Licensee or Licensee’s employees will use personal autos in any way on this project, then Licensee shall provide evidence of personal auto liability coverage for each such person.

Property Damage Insurance in an amount of not less than \$1,000,000 for damage to the property of each person on account of any one occurrence.

Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employer’s liability limits, if required.

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured’s liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to Licensor for injury to employees of Licensee, subcontractors or others involved in the Work. The scope of coverage provided is

subject to approval of Licensor following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

Insurance procured pursuant to these requirements shall be written by insurer that are admitted carriers in the state California and with an A.M. Bests rating of A- or better and a minimum financial size VII.

General conditions pertaining to provision of insurance coverage by Licensee. Licensee and Licensor agree to the following with respect to insurance provided by Licensee:

1. Licensee agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds Licensor, and its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992. Licensee also agrees to require all Licensees, and subcontractors to do likewise.
2. No liability insurance coverage provided to comply with this Agreement shall prohibit Licensee, or Licensee's employees, or agents, from waiving the right of subrogation prior to a loss. Licensee agrees to waive subrogation rights against Licensor regardless of the applicability of any insurance proceeds, and to require all Licensees and subcontractors to do likewise.
3. All insurance coverage and limits provided by Licensee and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to Licensor or its operations limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to Licensor and approved of in writing.
5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any Licensee or subcontractor.
6. All coverage types and limits required are subject to approval, modification and additional requirements by Licensor, as the need arises. Licensee shall not make any reductions in scope of coverage (e.g., elimination of contractual liability or reduction of discovery period) that may affect Licensor's protection without Licensor's prior written consent.

7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Licensee's general liability policy, shall be delivered to Licensor at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, Licensor has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by Licensor shall be charged to and promptly paid by Licensee or deducted from sums due Licensee, at Licensor's option.
8. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Licensee or any subcontractor, is intended to apply first and on a primary, noncontributing basis in relation to any other insurance or self insurance available to Licensor.
9. Licensee agrees to ensure that subcontractors, and any other party involved with the project who is brought onto or involved in the project by Licensee, provide the same minimum insurance coverage required of Licensee. Licensee agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Licensee agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to Licensor for review.
10. Licensee agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any Licensee, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to Licensor. If Licensee's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to Licensor. At the time Licensor shall review options with the Licensee, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
11. Licensor reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Licensee ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Licensee, Licensor will negotiate additional compensation proportional to the increase benefit to Licensor.
12. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.

13. Licensee acknowledges and agrees that any actual or alleged failure on the part of Licensor to inform Licensee of non-compliance with any insurance requirements in no way imposes any additional obligations on Licensor nor does it waive any rights hereunder in this or any other regard.
14. Licensee will renew the required coverage annually as long as Licensor, or its employees or agents face an exposure from operations of any type pursuant to this agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. Termination of this obligation is not effective until Licensor executes a written statement to that effect.
15. Licensee shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Licensee's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to Licensor within five days of the expiration of the coverages.
16. The provisions of any workers' compensation or similar act will not limit the obligations of Licensee under this agreement. Licensee expressly agrees not to use any statutory immunity defenses under such laws with respect to Licensor, its employees, officials and agents.
17. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
18. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.
19. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.
20. Licensee agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge Licensor or Licensee for the cost of additional insurance coverage required by this agreement. Any such provisions are to be deleted with reference to Licensor. It is not the intent of Licensor to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against Licensor for payment of premiums or other amounts with respect thereto.

21. Licensee agrees to provide immediate notice to Licensor of any claim or loss against Licensee arising out of the work performed under this agreement. Licensor assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve Licensor.



AGENDA NO: A-4

MEETING DATE: June 26, 2018

Staff Report

TO: Honorable Mayor and City Council

DATE: June 11, 2018

FROM: Eric Endersby, Harbor Director

SUBJECT: Approval of New License Agreement with Morro Bay Hookers Baiting Service for Use of a Portion of the Harbor Department Storage Yard Located at 1620 Embarcadero

RECOMMENDATION

Staff recommends the City Council approve a two-year License Agreement with Lonnie Carter, doing business as "Morro Bay Hookers" baiting service, that includes an option to extend for one two-year period, for use of a portion of the Harbor Department's storage yard, located at 1620 Embarcadero.

ALTERNATIVE

The City Council could elect not to renew the License Agreement, thus causing Morro Bay Hookers to seek an alternative site to conduct their baiting operations.

FISCAL IMPACTS

Annual revenue to the Harbor Department budget of \$1,092/year with annual CPI adjustments.

BACKGROUND

Since 2009, first South Bay Hookers, then Morro Bay Hookers, has provided a critical baiting service to local groundfish fishermen, as well as provided low-income part-time jobs. The work is often seasonal due to fishing closures and weather conditions. Since 2011, the Harbor Department has provided suitable yard space to this service by way of license agreements.

DISCUSSION

Mr. Carter's business currently provides baiting services to several local commercial fishermen, and has approximately five employees.

Staff is proposing the attached new License Agreement with the following highlights:

- 2-year term, with an option to extend, administratively, for one two-year period.
- Annual rent 1,092/year (\$91/month); with annual CPI adjustments.
- Leased area to encompass the eastern approximate three-quarters of the fenced yard, with retention of the western approximate one-quarter for Harbor Department use.

CONCLUSION

Staff believes this new agreement provides for continuation of this service critical to the commercial fishing fleet, while at the same time providing local jobs and utilizing suitable unused space at a rate commensurate with City and State leasing standards.

Prepared By: EE

Dept Review: EE

City Manager Review: SC

City Attorney Review: JWP

ATTACHMENT

1. Draft License Agreement

TEMPORARY LICENSE AGREEMENT

FOR USE OF PUBLIC PROPERTY

The City of Morro Bay, a municipal corporation, (“Licensor”) hereby grants to Kenneth Lonnie Carter, dba Morro Bay Hookers (“Licensee”) a license (“this License”) for use of the real property located in close proximity to the Harbor Storage Yard located at 1622 Embarcadero, Morro Bay, CA, illustrated on the attached Exhibit A (the “Premises”), subject to all the following terms and conditions:

1. USE: Subject to all the provisions of this License and only in recognition of the purpose set forth in this Paragraph, Licensee shall have permission to use of the Premises solely:
 - (a) operation of baiting business and
 - (b) storage of related equipment.

The foregoing shall be defined as the “Permitted Uses.”

The parties agree Licensee’s use of the Premises for the Permitted Uses shall be exclusive of any other use or user, except that of Licensor, subject to Paragraph 20, below.

2. LICENSOR REQUIREMENTS: In connection with the Permitted Uses, Licensee shall comply with all applicable Federal, State and local laws rules and regulations, including payment of local business taxes, if applicable.
3. EFFECTIVE DATE OF LICENSE: This License shall be effective on the later of July 1, 2018, or upon the date it is signed on behalf of Licensor (the “Effective Date”).
4. TERM: The term of this License shall be for the period from the Effective Date, until June 30, 2020, (the “Term”) or termination pursuant to Paragraph 16, below.
5. RENEWAL: Upon expiration of this License Licensor’s Harbor Director may administratively execute one two-year renewal of this License (the “Extended Term”). The Extended Term shall be effective only if an amendment to this License is signed by Licensor’s Harbor Director, or designee and Licensee. If the Extended Term becomes effective, then the Extended Term shall expire on June 30, 2022 or termination pursuant to Paragraph 16, below.
6. FEES: Licensee shall pay to Licensor Ninety-one Dollars (\$91.00) per month payable on the first of each month starting June 1, 2018 for this License (the “License Fee”).

On each July 1, commencing with July 2019, said the License Fee shall be increased in an amount equal to the increase in the Consumer Price Index for the 12-month Index average

of the immediate preceding calendar year. The Consumer Price Index referred to herein is the Consumer Price Index (all items indexes, all urban consumers) for Los Angeles – Long Beach – Anaheim, California, compiled and published by the United States Department of Labor, Bureau of Labor Statistics, 1982-84 Base Year = 100. The base Consumer Price Index shall be the January 2018 data value of 261.235.

7. OPERATION COSTS: Licensee shall be responsible for all costs related to its use of the Premises, including the utilities used by Licensee for the Premises if utilities are present.
8. MAINTENANCE: Licensee shall be responsible to maintain the Premises in a clean and presentable manner and keep the area abutting the Premises free from fishhooks, nets, trash, pollution/spills and other debris. Upon termination this License for any reason, Licensee shall leave the Premises free from fishhooks, nets, trash, pollution/spills and other debris and in a good condition, subject to normal wear and tear.
9. SIGNS: Any and all signs installed or used by Licensee that are visible to the public from outside the Premises shall not be installed or used without the prior written approval of Licensor's Harbor Director, and subject to all applicable Licensor zoning laws, rules and regulations and all required land use Licensor approvals and permits shall be obtained.
10. IMPROVEMENTS: Licensee shall not make any improvements to the Premises without prior approval from Licensor's Harbor Director. Upon termination of this License for any reason, any improvements of any kind installed by or on behalf of Licensee shall become the property of Licensor at no cost whatsoever, including any damages for condemnation, inverse condemnation or relocation benefits or loss of goodwill. Licensee and Licensor agree to cost-share on the maintenance, repair, and replacement of the chain link fence and gate enclosing the Premises on an equal basis.
11. **This paragraph intentionally omitted.**
12. LICENSEE OBLIGATIONS: Termination of this License shall not terminate Licensee's obligations pursuant to Paragraphs 13, 14, 15, 16, 17 and 18.
13. TAXABLE INTEREST: This License is not intended to create any interest in real property. If it is determined, by a governmental agency dually authorized to make such decision, this License creates any taxable interest, including, but not limited to, a possessory interest, then Licensee shall be solely responsible to pay such taxes to the extent such taxes are required by law to be paid.
14. HOLD HARMLESS: Licensee agrees to and hereby does hold harmless, indemnify and defend Licensor and its officers, agents and employees ("Indemnitees") from any claim, judgment, liability, award, damages, loss or expense, including reasonable attorney's fees and court costs, arising out of or related to the use of the Premises by Licensee, including, but not limited to, any hazardous materials releases; provided, that Licensee's obligation to indemnify and hold harmless shall apply only to the extent Licensee, its officers,

employees or agents caused the claim, loss or expense. For purposes of this License, hazardous materials shall mean any materials as defined by State or Federal laws.

15. INSURANCE: Without limiting the obligation set forth in the immediately preceding sentence, during the term of this License Licensee shall provide evidence of insurance as provided in Exhibit B.
16. NO LIENS ON PREMISES: Licensee shall not permit or suffer any mechanic's or materialman's or other lien of any kind or nature to be recorded or enforced against the Premises for any work done or materials furnished thereon at the instance of requirement of or on behalf of Licensee; and Licensee agrees to indemnify and hold harmless Licensor and the Premises against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with such work done, labor performed or material furnished in connection with Licensee's use of the Premises.
17. RIGHT TO TERMINATE/NO DISPLACEMENT LIABILITY: Either party shall have the right to terminate this License, with or without cause, upon thirty-days' (30-days') written notice to the non-terminating party. Licensor shall not be liable (i) for any displacement or relocation benefits or expenses experienced by Licensee, (ii) for reimbursement for any improvements installed by Licensee or (iii) for any damages in condemnation, inverse condemnation, loss of goodwill or other legal or equitable bases resulting, directly or indirectly, from any action or inaction of or on behalf of Licensor that may be in any way connected with any termination of this License for any reason or any relocation of Licensee from the Premises for any reason. Upon termination of this License, Licensee shall no longer be responsible for any fees under this License, as specified in Paragraph 5 of this License.
18. GOVERNING LAW: The terms of this License shall be interpreted according to the laws of the State of California. If arises out of this License, then venue shall be in the Superior Court of San Luis Obispo County.
19. LITIGATION FEES: If either party commences action against the other party arising out of or in connection with this License, then the prevailing party shall be entitled to have and recover from the other party reasonable attorneys' fees and costs of suit.
20. LICENSOR USE OF PREMISES: Licensor may use the Premises for storage and other municipal uses; provided, that such use shall not unreasonably interference with or prevent in any substantial way Licensee's ability to utilize the Premises for the purposed set forth herein; and provided, further, that Licensor shall be responsible for all operation costs and maintenance for the portion of the Premises it or Licensor uses or occupies. In addition, without any implied or expressed limitation on Licensor's authority and right to access and inspect the Premises in its governmental capacity, Licensor shall have the right to access at any time to the Premises for inspections.
21. TRANSFERABILITY AND ASSIGNABILITY: The License is neither transferable nor assignable by Licensee without the written consent of Licensor.

22. NOTICES: All notices given or required to be given pursuant to this License shall be in writing and may be given by personal delivery or by mail. Notice sent by mail shall be addressed as follows:

To Licensor:

City of Morro Bay
Attn: Harbor Director
1275 Embarcadero
Morro Bay, CA 93442

With Copy to:

Joseph W. Pannone
Aleshire & Wynder, LLP
2361 Rosecrans Avenue, Suite 475
El Segundo, CA 90245

To Licensee:

Kenneth Lonnie Carter
dba Morro Bay Hookers
875 Santa Ysabel, Apt. 8
Los Osos, CA 93402

23. ENTIRE AGREEMENT: This License (i) constitutes the entire agreement of the parties hereto relating to the use, operation and maintenance of the Premises and (ii) shall supersede prospectively from the date it is entered into any and all prior written or oral negotiations or agreements of the parties relating to the Premises. This License shall not be modified in any particular except by a written amendment duly executed by the parties.

LICENSEE

Dated: _____

LICENSOR

Dated: _____

By: _____
Scott Collins, City Manager

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Joseph W. Pannone, City Attorney

EXHIBIT A

AERIAL OF PREMISES

(Immediately behind this page)



**CITY OF MORRO BAY
EXHIBIT B**

INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of the Agreement, Licensee will maintain insurance in conformance with the requirements set forth below. Licensee will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Licensee agrees to amend, supplement or endorse the existing coverage to do so. Licensee acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to Licensor in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to Licensor.

Licensee shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office “Commercial General Liability” policy from CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

Business Auto Coverage on ISO Business Auto Coverage from CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If Licensee owns no vehicles, then this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Licensee or Licensee’s employees will use personal autos in any way on this project, then Licensee shall provide evidence of personal auto liability coverage for each such person.

Property Damage Insurance in an amount of not less than \$1,000,000 for damage to the property of each person on account of any one occurrence.

Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employer’s liability limits, if required.

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured’s liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to Licensor for injury to employees of Licensee, subcontractors or others involved in the Work. The scope of coverage provided is

subject to approval of Licensor following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

Insurance procured pursuant to these requirements shall be written by insurer that are admitted carriers in the state California and with an A.M. Bests rating of A- or better and a minimum financial size VII.

General conditions pertaining to provision of insurance coverage by Licensee. Licensee and Licensor agree to the following with respect to insurance provided by Licensee:

1. Licensee agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds Licensor, and its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992. Licensee also agrees to require all Licensees, and subcontractors to do likewise.
2. No liability insurance coverage provided to comply with this Agreement shall prohibit Licensee, or Licensee's employees, or agents, from waiving the right of subrogation prior to a loss. Licensee agrees to waive subrogation rights against Licensor regardless of the applicability of any insurance proceeds, and to require all Licensees and subcontractors to do likewise.
3. All insurance coverage and limits provided by Licensee and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to Licensor or its operations limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to Licensor and approved of in writing.
5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any Licensee or subcontractor.
6. All coverage types and limits required are subject to approval, modification and additional requirements by Licensor, as the need arises. Licensee shall not make any reductions in scope of coverage (e.g., elimination of contractual liability or reduction of discovery period) that may affect Licensor's protection without Licensor's prior written consent.

7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Licensee's general liability policy, shall be delivered to Licensor at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, Licensor has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by Licensor shall be charged to and promptly paid by Licensee or deducted from sums due Licensee, at Licensor's option.
8. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Licensee or any subcontractor, is intended to apply first and on a primary, noncontributing basis in relation to any other insurance or self insurance available to Licensor.
9. Licensee agrees to ensure that subcontractors, and any other party involved with the project who is brought onto or involved in the project by Licensee, provide the same minimum insurance coverage required of Licensee. Licensee agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Licensee agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to Licensor for review.
10. Licensee agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any Licensee, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to Licensor. If Licensee's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to Licensor. At the time Licensor shall review options with the Licensee, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
11. Licensor reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Licensee ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Licensee, Licensor will negotiate additional compensation proportional to the increase benefit to Licensor.
12. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.

13. Licensee acknowledges and agrees that any actual or alleged failure on the part of Licensor to inform Licensee of non-compliance with any insurance requirements in no way imposes any additional obligations on Licensor nor does it waive any rights hereunder in this or any other regard.
14. Licensee will renew the required coverage annually as long as Licensor, or its employees or agents face an exposure from operations of any type pursuant to this agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. Termination of this obligation is not effective until Licensor executes a written statement to that effect.
15. Licensee shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Licensee's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to Licensor within five days of the expiration of the coverages.
16. The provisions of any workers' compensation or similar act will not limit the obligations of Licensee under this agreement. Licensee expressly agrees not to use any statutory immunity defenses under such laws with respect to Licensor, its employees, officials and agents.
17. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
18. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.
19. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.
20. Licensee agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge Licensor or Licensee for the cost of additional insurance coverage required by this agreement. Any such provisions are to be deleted with reference to Licensor. It is not the intent of Licensor to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against Licensor for payment of premiums or other amounts with respect thereto.

21. Licensee agrees to provide immediate notice to Licensor of any claim or loss against Licensee arising out of the work performed under this agreement. Licensor assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve Licensor.



AGENDA NO:	A-5
MEETING DATE:	June 26, 2018

Staff Report

TO: Honorable Mayor and City Council **DATE:** June 8, 2018

FROM: Jennifer Callaway, Finance Director
Valerie Webb, Senior Accounting Technician

SUBJECT: Adoption of Resolution No. 48-18 Approving Fiscal Year 2018-19 Combined Salary Schedule and Job Description for Consolidated Maintenance Worker I

RECOMMENDATION

Following adoption of the Fiscal Year (FY) 2018-19 Operating Budget on June 12, 2018 staff recommends the City Council adopt Resolution 48-18 approving the FY 2018-19 Combined Salary Schedule and job description for the Consolidated Maintenance Worker I position.

ALTERNATIVES

No alternatives are being recommended at this time.

FISCAL IMPACT

There is no fiscal impact associated with the requested action. The attached salary schedule provides a 2% cost of living adjustment (“COLA”) which was approved in the FY 2018-19 budget for the impacted associations and is also reflected in the Resolutions provided separately for represented and unrepresented employees.

BACKGROUND/DISCUSSION

With the adoption of the FY 2018-19 Capital and Operating Budget, the Council authorized the addition of certain full-time positions, including Consolidated Maintenance Worker I, Property and Evidence Clerk and Records Clerk/Training Coordinator. Consolidated Maintenance Worker I, Property and Evidence Clerk and Records Clerk/Training Coordinator are new positions. Staff and SEIU have reached agreement on the Consolidated Maintenance Worker I position, both in terms of salary alignment and job description. The proposed job description for the Consolidated Maintenance Worker I has been reviewed internally by the respective department(s), Human Resources and the City Manager SEIU. All are in concurrence with the job description and salary range and provided. It is necessary to have approved job descriptions in place to begin recruitment for these positions.

City staff and SEIU continue to coordinate on the appropriate alignment for the Property and Evidence Clerk and Records Clerk/Training Coordinator positions. These will be brought back for formal council action in early July.

Prepared By: <u> JC </u>	Dept Review: <u> </u>
City Manager Review: <u> SC </u>	City Attorney Review: <u> JWP </u>

Salary Schedules

During previous labor negotiations, the City entered into agreement with SEIU, the Morro Bay Firefighters Association (MBFFA), confidential employees and by extension the Management, Department Heads and the City Manager for a 2% COLA increase, effective July 1, 2018, if certain economic triggers were met. These triggers were outlined in the respective Memorandums of Understanding (MOUs) and are defined below:

- Total major General Fund Revenues (property tax, sales tax, and Transient Occupancy Tax) meet or exceed the combined forecasted amount of \$9,406,194, with a contingency shortfall of \$71,000 below the forecast (matches 10-year forecast and FY 2017/18 budget adopted by Council).
- The CALPERS discount rate for FY18-19 does not drop below the rate announced in December 2016.
- The City does not become responsible for any significant unplanned General Fund expenditure(s) of more than \$300,000 in a fiscal year.

The MOU language also stipulates the timing of the 2018 COLA, stating that “If the City determines, based on revenues received as of June 1, 2018, that it is reasonable to assume the combined receipts will meet or exceed the General Fund revenue threshold, then the COLA will be effective July 1, 2018.

As of early June 2018, staff updated FY 2017/18 revenue estimates, forecasting fiscal year end major general fund revenues at \$9,402,535, just below the MOUs agreed trigger amount of \$9,406,194. Therefore, staff has determined that it is reasonable to expect that the revenue triggers will be met for fiscal year 2017/18 and the agreed upon 2% COLA should be effective July 1, 2018. Resolution No. 48-18 (Attachment 1) formally approves the FY 2018/19 Salary Schedule (Exhibit A to Attachment 1) incorporating the previously negotiated 2% COLA increases for all impacted employees, members of SEIU, MBFFA, Confidential, Management, Department Directors and the City Manager.

CONCLUSION

Staff recommends Council approve the referenced and attached Combined Salary Schedule and job descriptions. This action is consistent with approved FY18/19 budgeted figures, and Council action to add the noted positions.

ATTACHMENTS

1. Resolution No. 48-18 Approving the FY 2018/19 Combined Salary Schedule
2. Consolidated Maintenance Worker I Job Description

RESOLUTION NO. 48-18

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
APPROVING THE FISCAL YEAR 2018-2019 SALARY SCHEDULE**

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

WHEREAS, the California Public Employees' Retirement System (CalPERS), has requested all CalPERS employers list their compensation levels on one document, approved and adopted by the governing body, in accordance with 2 California Code of Regulations (CCR), section 570.5, and meeting all of the following requirements thereof:

1. Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;
2. Identifies the position title for every employee position;
3. Shows the pay rate for each identified position, which may be stated as a single amount or as multiple amounts within a range;
4. Indicates the time base, including, but not limited to, whether the time base is hourly, daily, bi-weekly, monthly, bi-monthly, or annually;
5. Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
6. Indicates an effective date and date of any revisions;
7. Is retained by the employer and available for public inspection for not less than five years; and
8. Does not reference another document in lieu of disclosing the pay rate; and

WHEREAS, the formal approval of the pay schedules requires that they are duly approved and adopted by the City Council, such as 2 CCR 570.5 regulation requires the adoption of the Salary Schedule for Fiscal Year 2018-19, incorporated in Exhibit A attached hereto.

NOW, THEREFORE, BE IT RESOLVED the City Council of the City of Morro Bay does hereby approve the Salary Schedules attached hereto as Exhibit A.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 26th day of June 2018, by the following vote:

AYES:
NOES:
ABSENT:

JAMIE L. IRONS, Mayor

ATTEST:

LORI M. KUDZMA, Deputy City Clerk

**CITY OF MORRO BAY
COMBINED SALARY SCHEDULE
FISCAL YEAR 2018-19**

TITLE	GROUP	STEP 1 Annual	STEP 2 Annual	STEP 3 Annual	STEP 4 Annual	STEP 5 Annual	STEP 6 Annual
ACCOUNT CLERK IN-TRAINING	S	31,824	33,415	35,086	36,840	38,682	
ACCOUNT CLERK I	S	38,474	40,398	42,418	44,538	46,765	
CONSOLIDATED MAINTENANCE WRK I	S	38,474	40,398	42,418	44,538	46,765	
OFFICE ASST. III	S	38,474	40,398	42,418	44,538	46,765	
OFFICE ASST. IV	S	41,596	43,676	45,860	48,153	50,560	
ACCOUNT CLERK II	S	43,215	45,376	47,645	50,027	52,528	
COLLECTION SYS OPERATOR II	S	43,215	45,376	47,645	50,027	52,528	
CONSOLIDATED MAINTENANCE WRK II	S	43,215	45,376	47,645	50,027	52,528	
WATER SYSTEM OPERATOR I	S	43,215	45,376	47,645	50,027	52,528	
WASTEWATER SYSTEMS OIT	S	43,215	45,376	47,645	50,027	52,528	
PERMIT TECHNICIAN	S	44,258	46,470	48,794	51,234	53,795	
ACCOUNT CLERK III	S	46,284	48,598	51,028	53,580	56,259	
COLLECTION SYS OPERATOR III	S	46,284	48,598	51,028	53,580	56,259	
CONSOLIDATED MAINTENANCE WRK III	S	46,284	48,598	51,028	53,580	56,259	
WASTEWATER SYSTEM OP I	S	46,284	48,598	51,028	53,580	56,259	
ADMINISTRATIVE TECHNICIAN	S	47,102	49,457	51,930	54,526	57,253	
PERMIT TECHNICIAN - CERTIFIED	S	47,102	49,457	51,930	54,526	57,253	
SUPPORT SERVICES TECHNICIAN	S	47,102	49,457	51,930	54,526	57,253	
MECHANIC	S	48,609	51,039	53,591	56,270	59,084	
LEGAL ASSISTANT/DEPUTY CITY CLERK	C	51,062	53,615	56,296	59,110	62,066	
WATER SYSTEM OPERATOR II	S	51,487	54,062	56,765	59,603	62,583	
WASTEWATER SYSTEMS OP II	S	51,487	54,062	56,765	59,603	62,583	
WWTP OPERATOR II	S	51,487	54,062	56,765	59,603	62,583	
SUPPORT SERVICES COORDINATOR	C	53,618	56,299	59,114	62,070	65,173	
HARBOR PATROL OFFICER	S	53,703	56,389	59,208	62,168	65,277	
CONSOLIDATED MAINT LW	S	53,858	56,551	59,379	62,348	65,465	

ENGINEERING TECHNICIAN III	S	53,858	56,551	59,379	62,348	65,465	
WATER SYSTEM OPERATOR III	S	54,061	56,764	59,603	62,583	65,712	
WASTEWATER SYSTEMS OP III	S	54,061	56,764	59,603	62,583	65,712	
WWTP OPERATOR II/LAB ANALYST	S	54,061	56,764	59,603	62,583	65,712	
RECREATION SUPERVISOR	S	55,057	57,810	60,700	63,735	66,922	
ASSISTANT PLANNER	S	55,400	58,170	61,079	64,133	67,339	
ASSISTANT CIVIL ENGINEER	S	57,613	60,494	63,519	66,694	70,029	
BUILDING INSPECTOR	S	57,613	60,494	63,519	66,694	70,029	
ENGINEERING TECHNICIAN IV	S	57,613	60,494	63,519	66,694	70,029	
WASTEWATER SYSTEMS LEADWORKER	S	57,613	60,494	63,519	66,694	70,029	
FIREFIGHTER	F	57,907	60,802	63,842	67,034	70,386	
HUMAN RESOURCES ANALYST	C	59,890	62,884	66,028	69,330	72,796	
SENIOR ACCOUNTING TECHNICIAN	C	59,890	62,884	66,028	69,330	72,796	
POLICE SUPPORT SERVICES MANAGER	M	59,890	62,884	66,028	69,330	72,796	
HARBOR BUSINESS COORD	S	59,970	62,968	66,117	69,422	72,894	
RECREATION COORDINATOR	S	59,970	62,968	66,117	69,422	72,894	
POLICE OFFICER	P	60,184	63,193	66,353	69,671	73,154	76,812
HARBOR PATROL SUPERVISOR	S	63,257	66,420	69,741	73,228	76,890	
FIRE ENGINEER	F	63,307	66,473	69,796	73,286	76,950	
ASSOCIATE CIVIL ENGINEER	S	64,476	67,699	71,084	74,639	78,371	
ASSOCIATE PLANNER	S	64,476	67,699	71,084	74,639	78,371	
BUILDING INSPECTOR/PLANS EXAMINER	S	64,476	67,699	71,084	74,639	78,371	
COLLECTION SYSTEM SUPERVISOR	S	64,476	67,699	71,084	74,639	78,371	
CONSOLIDATED MAINT FIELD SUPV	S	64,476	67,699	71,084	74,639	78,371	
WATER SYSTEM SUPERVISOR	S	64,476	67,699	71,084	74,639	78,371	
MANAGEMENT ANALYST	M	65,831	69,123	72,579	76,208	80,018	
POLICE DETECTIVE	P	63,194	66,354	69,671	73,155	76,813	80,653
POLICE SCHOOL RESOURCE OFFICER	P	63,194	66,354	69,671	73,155	76,813	80,653
POLICE SENIOR OFFICER	P	63,194	66,354	69,671	73,155	76,813	80,653
POLICE CORPORAL	P	63,781	66,970	70,318	73,834	77,526	81,402
FIRE CAPTAIN	F	72,772	76,410	80,231	84,242	88,455	
WASTEWATER SYSTEMS SUPV	S	74,146	77,853	81,746	85,833	90,125	
BUDGET/ACCOUNTING MANAGER	M	76,992	80,841	84,883	89,127	93,584	

SENIOR CIVIL ENGINEER	M	76,992	80,841	84,883	89,127	93,584	
CONSOLIDATED MAINTENANCE SUPT	M	76,992	80,841	84,883	89,127	93,584	
ENVIRONMENTAL PROGRAMS MANAGER	M	76,992	80,841	84,883	89,127	93,584	
INFORMATION SERVICES TECHNICIAN	M	76,992	80,841	84,883	89,127	93,584	
RECREATION SERVICES MANAGER	M	76,992	80,841	84,883	89,127	93,584	
SENIOR PLANNER	M	76,992	80,841	84,883	89,127	93,584	
TOURISM MANAGER	M	76,992	80,841	84,883	89,127	93,584	
POLICE SERGEANT	P	75,057	78,810	82,750	86,888	91,232	95,793
PLANNING MANAGER	M	84,693	88,927	93,374	98,042	102,945	
CITY CLERK / RISK MANAGER	M	85,105	89,360	93,828	98,519	103,445	
FIRE MARSHAL	F	86,386	90,706	95,241	100,003	105,003	
COMMUNITY DEVELOPMENT MANAGER	M	99,812	104,802	110,043	115,545	121,322	
UTILITY DIVISION MANAGER	M	99,812	104,802	110,043	115,545	121,322	
WASTEWATER DIVISION MANAGER	M	99,812	104,802	110,043	115,545	121,322	
POLICE COMMANDER	M	109,861	115,354	121,122	127,178	133,537	
DEPUTY CITY MANAGER	E	122,339	128,455	134,878	141,622	148,703	
COMMUNITY DEVELOPMENT DIRECTOR	E	122,339	128,455	134,878	141,622	148,703	
FINANCE DIRECTOR	E	122,339	128,455	134,878	141,622	148,703	
PUBLIC WORKS DIRECTOR	E	126,901	133,246	139,908	146,903	154,249	
ADMINISTRATIVE SERVICES DIRECTOR	E	126,901	133,246	139,908	146,903	154,249	
HARBOR DIRECTOR	E	129,268	135,731	142,518	149,643	157,126	sworn
FIRE CHIEF	E	129,268	135,731	142,518	149,643	157,126	sworn
POLICE CHIEF	E	129,268	135,731	142,518	149,643	157,126	sworn
ASSISTANT CITY MANAGER	E	131,912	138,508	145,433	152,705	160,340	
CITY MANAGER	E	171,044	175,320	179,703	184,195	188,800	

Updated 6/20/18

Effective FY 2018/19

CITY OF MORRO BAY

CONSOLIDATED MAINTENANCE WORKER I

DEFINITION

Under direct or general supervision, performs a variety of unskilled and semi-skilled tasks in the construction, repair, installation, and maintenance of streets, parks, and facility maintenance and to do related work as required.

DISTINGUISHING CHARACTERISTICS

This is the entry level of class in the Consolidated Maintenance Worker series. Initially under close supervision, incumbents with basic maintenance experience learn City infrastructure, systems, and facilities, use of tools and equipment, and a wide variety of practices and procedures. As knowledge, background, and skills increase, promotion to the next higher-level classification may be reasonably expected. Advancement in the series to a Consolidated Maintenance Worker II classification can occur based on demonstrated performance of the required knowledge, skills and abilities, and the recommendation of the department head.

ESSENTIAL DUTIES & RESPONSIBILITIES

FACILITY MAINTENANCE

1. General services and maintenance of city owned facilities to include custodial work, routine repairs, painting, carpets, and floors.
2. Picks up trash, sweeps walks, entrances and adjacent facility grounds.
3. Moves furniture, does meeting setups (chairs, tables, sound systems).
4. May assist with electrical and plumbing of city owned facilities.
5. Assists with performing maintenance on custodial equipment including buffers, vacuum cleaners, etc.
6. Stocks cleaning supplies.
7. May be required to be on-call in event of emergency on weekends or in the evening.
8. Performs related duties as required.

PARKS AND STREETS

1. Assists with removing and replacing road material, such as asphalt.
2. May assist using premix asphalt to repair streets and gutters.
3. Measures, lays out, and paints crosswalks, curbs, stop and center lines.
4. Assists with paint striping to paint solid or broken center lines
5. Patrols for drainage problems and cleans clogged storm drain basins.
6. Cleans and performs routine maintenance on equipment, mowers and vehicles used in the course of work.

CONSOLIDATED MAINTENANCE WORKER I

7. Plants and transplants, removes, fertilizes, cultivates, waters, and sprays flowers; and assists with pruning, trimming and spraying shrubs and trees.
8. Mows, trims, waters and fertilizes lawns and other grass areas.
9. Assists in repairing and maintaining irrigation systems.
10. Assists in applying herbicides and pesticides.
11. May be required to be on-call in event of emergency on weekends or in the evening.
12. Performs related duties as required.

QUALIFICATIONS

Knowledge of:

General maintenance and repair materials; tools and equipment used in general maintenance work; basic safety precautions and procedures.

Ability to:

- Safely and effectively perform unskilled and semi-skilled work on streets, parks and facility maintenance and repair assignments
- Safely and effectively operate hand and power tools.
- Learn basic plumbing, electrical and carpentry maintenance techniques.
- Read, write, and maintain routine records at the level to successfully perform required duties.
- Safely and effectively operate and/or learn to operate automotive and /or specialized equipment as assigned.
- Learn the practices, procedures, and techniques pertaining to assigned area.
- Understand and follow oral and written instructions.
- Deal tactfully and courteously with the public as required by assignment.
- Meet the physical requirements necessary to safely and effectively perform required duties.
- Establish and maintain effective work relationships with those contacted in the performance of required duties.

Education and Experience:

Any combination of training and experience that would provide the required knowledge, skills, and abilities is qualifying. A way to obtain the required qualifications would be:

Equivalent to the completion of the twelfth (12th) grade. One (1) year of general maintenance experience related to the area of assignment is desirable.

CONSOLIDATED MAINTENANCE WORKER I

- Possession of a valid Class “C” California driver’s license.

PHYSICAL DEMANDS

Must possess mobility to work in the field; strength, stamina, and mobility to perform medium to heavy physical work, to work in confined spaces and around machines, to climb and descend ladders, to operate carried hand and power tools and construction equipment, and to operate a motor vehicle and heavy equipment and visit various City sites; vision to read printed materials and a computer screen; and hearing and speech to communicate in person and over the telephone or radio. The job involves fieldwork requiring frequent walking in operational areas to identify problems or hazards. Finger dexterity is needed to access, enter, and retrieve data using a computer keyboard or calculator and to operate above-mentioned tools and equipment. Positions in this classification bend, stoop, kneel, reach, and climb to perform work and inspect work sites. Employees must possess the ability to lift, carry, push, and pull materials and objects weighing up to 100 pounds, or heavier weights with the use of proper equipment.

WORK ENVIRONMENT

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Employees work in the field and are exposed to loud noise levels, cold and hot temperatures, inclement weather conditions, road hazards, vibration, confining workspace chemicals, mechanical and/or electrical hazards, and hazardous physical substances and fumes. Employees may interact with upset staff and/or public and private representatives and contractors in interpreting and enforcing departmental policies and procedures.

SELECTION GUIDELINES

Formal application, rating of education and experience, oral interview and reference check; job related tests may be required.

The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to the position.

The job description does not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change.

Approved by the Morro Bay City Council on xxxx xx, 2018.

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AGENDA NO: A-6

MEETING DATE: June 26, 2018

Staff Report

TO: Honorable Mayor and City Council

DATE: June 19, 2018

FROM: Joseph Pannone, City Attorney

SUBJECT: Second Reading and Adoption of Ordinance No. 614 Amending Section 2.08.090 and Subdivision 3.22.120 B. of the Morro Municipal Code relating to Council Meeting Minutes and Terms of the Citizens Oversight Committee, respectively

RECOMMENDATION

Staff recommends the City Council waive reading of Ordinance 614 in its entirety and adopt Ordinance No. 614, amending Section 2.08.090 and Subdivision 3.22.120 B. of the Morro Municipal Code (MBMC) relating to Council timing for preparation of Council meeting minutes and terms of the Citizens Oversight Committee, respectively.

BACKGROUND/DISCUSSION

At the May 8, 2018 City Council meeting, the Council amended its Policies and Procedures Manual to change the timing for preparation of the minutes for Council meetings and the terms of the Oversight Board Members (also known as the Citizen Finance Advisory Committee). Those changes require similar changes to two provisions of the MBMC that deal with those same matters, in order to maintain consistency of policy.

Regarding preparation of minutes for Council meetings, the Council directed the following language be incorporated as Section 1.4.7 of the Council Policies & Procedures:

“As soon as reasonably possible following each Council meeting, but not later than the second regular meeting after, the City Clerk shall include a copy of the minutes, thereof, as a Consent Item for the agenda of a regular Council meeting.”

The proposed language in Ordinance No. 614 for MBMC Section 2.08.090 is somewhat less prescriptive, thereby allowing this and future Councils to set expectations with policy language adopted by Resolution in the Council Policies & Procedures.

Ordinance No. 614 makes those changes to codify the revisions the Council made to its Policies and Procedures Manual. The changes to the MBMC are set forth below, with additions being double underlined and deletions being ~~stricken~~.

2.08.090 – Copy of minutes.

As soon as reasonably possible ~~Immediately~~ following each council meeting, the city clerk shall include a copy of the minutes, thereof, as a Consent Item for the to each member of the city council in their agenda packets for of a regular council ~~the following~~ meeting. Thereafter, the

Prepared By: LK

Dept Review: _____

City Manager Review: _____

City Attorney Review: JWP

reading of those such-minutes by the city clerk at that the following meeting may be dispensed with by a majority vote of the members present, as evidenced by the council's approval of those minutes

3.22.120 B. Committee Membership. The committee shall have seven citizen-members appointed by the city council for staggered four six-year terms ~~with initially three members serving three years, and four members serving six years~~. Appointees shall be residents of the city; however, no member of the committee shall be an elected official. Each unanticipated vacancy shall be filled only for the duration of the unexpired term for that vacancy.

CONCLUSION

Staff recommends the City Council adopt Ordinance No. 614, by reading the number and title only.

ATTACHMENT

1. Draft Ordinance No. 614

ORDINANCE NO. 614

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, AMENDING SECTION 2.08.090 OF THE MORRO BAY MUNICIPAL CODE (MBMC) REGARDING THE PREPARATION OF MINUTES FOR COUNCIL MEETINGS AND SUBDIVISION 3.22.120 B OF THE MBMC REGARDING TERMS OF THE CITIZENS OVERSIGHT COMMITTEE

THE CITY COUNCIL
City of Morro Bay, California

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

SECTION 1: Section 2.08.090 of the Morro Bay Municipal Code (MBMC) is hereby amended, in its entirety, to read, as follows:

2.08.090 – Copy of minutes.

As soon as reasonably possible ~~Immediately~~ following each council meeting, the city clerk shall include a copy of the minutes, thereof, as a Consent Item for the to each member of the city council in their agenda packets for of a regular council the following meeting. Thereafter, the reading of those such minutes by the city clerk at that the following meeting may be dispensed with by a majority vote of the members present, as evidenced by the council's approval of those minutes.

SECTION 2: Subdivision 3.22.120 B. of the MBMC is hereby amended, in its entirety, to read, as follows:

3.22.120 B. Committee Membership. The committee shall have seven citizen-members appointed by the city council for staggered four ~~six~~ year terms ~~with initially three members serving three years, and four members serving six years.~~ Appointees shall be residents of the city; however, no member of the committee shall be an elected official. Each unanticipated vacancy shall be filled only for the duration of the unexpired term for that vacancy.

SECTION 3. This Ordinance shall take effect 30 days after its adoption. The City Clerk, or her duly appointed deputy, shall attest to the adoption of this Ordinance and shall cause this Ordinance to be published and posted in the manner required by law.

INTRODUCED at a regular meeting the of the City Council of Morro Bay, held on the 12th day of June 2018, by motion of Council Member Heading, seconded by Council Member Davis.

PASSED AND ADOPTED on the ___ day of _____, 2018, by the following vote:

AYES:
NOES:
ABSENT:

JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

JOSEPH W. PANNONE, City Attorney

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AGENDA NO: A-7

MEETING DATE: June 26, 2018

Staff Report

TO: Honorable Mayor and City Council

DATE: June 15, 2018

FROM: Eric Endersby, Harbor Director

SUBJECT: Adoption of Resolution No. 49-18 Approving a New 32-Year Master Lease Agreement Between the City of Morro Bay and THMT, Inc. for Lease Site 122-123/122W-123W, and Extension of 122W-123W, Located at 1205 Embarcadero (Harbor Hut Restaurant)

RECOMMENDATION

Staff recommends Council adopt Resolution No. 49-18, approving a new 32-year Master Lease Agreement for Lease Site 122-123/122W-123W, and Extension of 122W-123W, as proposed.

ALTERNATIVE

Council may elect not to approve Resolution No. 49-18 for the proposed lease agreement, and direct staff accordingly.

FISCAL IMPACT

Modest positive fiscal impact is expected once the new dock space is constructed as-proposed and rented to vessels and/or charter operators, which will produce 10% of gross sales/revenues as-stipulated in the new lease. This lease site has consistently produced significant percent gross sales revenues for the City under THMT's ownership, and is expected to continue doing so.

BACKGROUND

The original 20-year lease for this site was inaugurated in 1998, and with a 5-year extension granted in 2009 for certain improvements completed under Amendment #1 to the lease, expires June 30, 2023.

In November, 2012, this lessee and the lessees at Great American Fish Company and what was then Virg's Landing (now Morro Bay Landing) obtained an amended joint Coastal Commission permit to renovate and redevelop the three existing leased facilities, including all the docks, slips and gangways spanning all the sites and including several structures. With regard to the Harbor Hut site, the permit includes new commercial docks, slips and associated structures. Public benefit improvements of the combined project include public access to the combined eight-foot wide "headfloat" dock to span the distance from the North T-Pier through Morro Bay Landing, gangways, and ADA compatible access.

As with all City waterfront lease agreements, significant tenant-completed improvements are negotiated to generally garner increases in the subject lease agreement's term, or for a new lease altogether, so the tenant can adequately amortize the cost of the improvements over time. A new lease or lease amendment, and commensurate additional lease term, is typically negotiated and

Prepared By: EE

Dept Review: EE

City Manager Review: SC

City Attorney Review: JWP

executed after a tenant has undertaken the time, risk and expense to complete Concept Plan approval for their proposed project, with said project being memorialized into the new lease/amendment as a requirement to be completed, and timeline performance parameters in which to complete it.

THMT has obtained Concept Plan approval and is currently in the final stages of permit amendments with the Coastal Commission and the City for the dock/slip project. Those improvements, however, were previously never incorporated into a lease amendment as improvements warranting a lease extension as is normal practice.

In addition, THMT's fair share contribution requirement of \$45,543 towards the HarborWalk improvements fronting the lease site that were constructed by the City approximately five years ago will be due and payable now that it is memorialized in the new lease. THMT's costs are somewhat higher than neighboring lessees as the HarborWalk takes a longer path skirting around the Harbor Hut/Lil Hut site than other sites.

DISCUSSION

Over the past ~two years, City staff and THMT have worked to globally memorialize the permitted dock and completed HarborWalk projects into a new long-term lease, commensurate with the level of investment by THMT and the direction and input received from the City Council over several closed sessions to consider the matter.

The new lease is on the standard "modern" City lease format.

Of particular note in the new proposed lease:

1. Section 1.01 Term: 32-year lease term predicated on: (i) the 5 years left on the current lease's term, and 27 additional years for, (ii) developing the site to fuller use and revenue potential through completion of dock/slip improvement project in the water lease area, (ii) completion of significant structural repair improvements to the underpinnings of the Harbor Hut building, decks and other structures including headwalls, pilings and piling caps and associated items, and, (iii) fair share contribution to the HarborWalk improvements completed by the City. In sum, investment in these improvements will amount to approximately \$500,000.
2. Section 2.01: Annual Minimum Rent: minimum rent of \$60,000/year, which will be significantly exceeded by percent gross rents at current revenues earned at the site.
3. Section 2.02: CPI Adjustment to Annual Minimum Rent: standard annual CPI adjustments based on previous year's CPI compared to current year's.
4. Section 2.03: Calculation of New Annual Minimum Rent: standard five-year reappraisal and rent-setting in fiscal year 2023/2024, and every five years thereafter, based on 8% of the appraised value of the property or 75% of the average of the past five-years' total rent paid (also standard). This will "true-up" the annual minimum rent to the first five years' revenue track record on the site under the new lease with the added dock improvements.
5. Section 2.04 Percentage Rent: restaurant (Harbor Hut) 3%, take-out (Lil Hut) 5%, liquor 10%, beer/wine 5%, retail sales/service 5%, slips/tie-up 10%, vessel ticket sales and sales/services rendered on vessels 5%.

6. Section 3.01 Permitted Uses: (i) food service (dining room and take-out), (ii) sale of alcoholic beverages, (iii) berthing of vessels, (iv) ticket and charter sales, (v) other uses subject to any approvals required under the City's Conditional, Minor or Temporary Use Permit processes.
7. Section 13.01 Rescission of Old Lease: rescinds existing lease that has five years left on its term.
8. Section 13.02 Completion of Improvements: (i) dock/slip improvements as described in Conditional Use and Coastal Development Permits currently issued by the timelines proscribed, and (ii) structural improvement repairs as outlined in Land/Sea Interface inspection report conducted in 2016, by the timelines proscribed in the report.
9. Section 13.03 Lease Restriction: memorializes the Coastal Commission's permit terms and conditions in the lease, as required by the Coastal Commission.

CONCLUSION

THMT is currently a tenant in good standing and has a proven track record of lease and property management to date. Since acquiring the lease in 2009, THMT has steadily increased lease site gross revenues, and hence revenues to the City, by approximately 27%, adjusted for inflation. THMT has a good project to bring the lease site to full-utilization. In addition, since taking over ownership, THMT has invested over \$145,000 in repairs, upgrades and other improvements over those years, including new stamped concrete entryways, new metal roofing and patio covers, new interior energy-efficient lighting and electrical upgrades, new grease trap and main sewer line, interior remodeling and fire sprinkler repairs, among others. Finally, in the future, THMT will be undertaking additional improvement maintenance and upgrades, including a new HVAC system, tiki tower remodel, patio area decking and wall improvements, and kitchen prep and pantry remodels, at significant cost and investment to be determined.

Therefore, staff is recommending adoption of Resolution No. 49-18, approving a new 32-year Master Lease Agreement for Lease Site 122-123/122W-123W, and Extension of 122W-123W as-proposed and agreed-upon by THMT. This lease and lease term are commensurate with other leases and/or amendments granted in the Measure D zone on other sites for improvement investment on those sites.

ATTACHMENTS

1. Resolution 49-18
2. Proposed new Master Lease Agreement
3. Overhead view of lease site

RESOLUTION NO. 49-18

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING A 32-YEAR MASTER LEASE AGREEMENT FOR
LEASE SITE 122-123/122W-123W, AND EXTENSION OF 122W-123W
BETWEEN THE CITY OF MORRO BAY AND THMT, INC., LOCATED AT 1205
EMBARCADERO**

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

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

WHEREAS, THMT, Inc. (Troy and Heather Leage) has been the lessee of Lease Site 122-123/122W-123W, and Extension of 122W-123W, since 2009 and is a tenant in good standing; and

WHEREAS, THMT is proposing to continue to operate the site, and to complete improvements to the site consisting of new docks/slips, significant structural repairs and improvements and has contributed its fair share costs of the HarborWalk; and

WHEREAS, in accordance with the City's Master Lease Policy, the City and lessee have agreed to a new 32-year lease agreement for Lease Site 122-123/122W-123W, and Extension of 122W-123W located at 1205 Embarcadero.

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

1. The attached new Master Lease Agreement for Lease Site 122-123/122W-123W, and Extension of 122W-123W is hereby approved.
2. The Mayor is hereby authorized to execute said Master Lease Agreement.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 26th day of June, 2018 on the following vote:

AYES:

NOES:

ABSENT:

Jamie L. Irons, Mayor

ATTEST:

Lori M. Kudzma, Deputy City Clerk

L E A S E

by and between

the CITY OF MORRO BAY

("CITY")

and

THMT, Inc. ("TENANT")

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L E A S E

This Lease is made and entered into by and between the CITY OF MORRO BAY, a municipal corporation of the State of California herein called CITY, and THMT, Inc., a California corporation, herein called TENANT (sometimes referred to, individually, as the Party or collectively, as the "Parties").

WITNESSETH

WHEREAS, the State of California granted certain tide and submerged lands located within the CITY limits of CITY to the County of San Luis Obispo and to its successors, being Chapter 1076, Statutes of 1947, as amended by Chapter 413, Statutes of 1955, Chapter 1874, Statutes of 1957, and Chapter 70, Statutes of 1960, first extraordinary session; which Statutes may be amended from time to time by the Legislature of the State of California; all of which Statutes are expressly recognized and agreed to be in full force and effect by the Parties hereto; and

WHEREAS, the Parties hereto recognize and agree on July 17, 1964, CITY succeeded to all of the right, title and interest of the County of San Luis Obispo in and to all of the tide and submerged lands conveyed to said County by the State of California pursuant to the above mentioned acts; and

WHEREAS, judgment has been entered on October 14, 1968, in the case of CITY, Plaintiff, versus County of San Luis Obispo, and State of California, Defendants, by the Superior Court of the State of California in and for the County of San Luis Obispo, #30417, adjudging and decreeing, among other things, that the title to said tide and submerged lands so conveyed by the State of California to the County of San Luis Obispo in trust, as set forth above, passed automatically to CITY upon the date of its incorporation as a CITY on the 17th day of July, 1964; and

WHEREAS, TENANT accepts this Lease with full knowledge there is no warranty of title in and to the within described premises by CITY to TENANT; and

WHEREAS, in order to develop and improve Morro Bay Harbor and to assist in carrying out the provisions of the tideland grant as aforesaid, and in order to provide facilities for the accommodation of those using Morro Bay Harbor, CITY desires to lease to TENANT the within described property upon the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the covenants to be performed and the rental to be paid by TENANT to CITY, CITY leases to TENANT, and TENANT leases from CITY, all of the following premises (herein collectively referred to as the "Premises") in CITY, County of San Luis Obispo, State of California, described as follows: Lease Site 122-123/122W-123W and Extension of Lease Site 122W-123W (the "Premises").

The Premises is delineated on Parcel Map of CITY No. 68-30, which map was recorded on October 10, 1968, in Book 3, Page 10 of Parcel Maps in the Office of the County Recorder, San Luis Obispo County, California. A copy of the Map is attached hereto as Exhibit A and made a part hereof by reference.

Article 1 FIXED TERM

Section 1.01 Term.

The term of this Lease shall be a period of thirty-two years, commencing July 1, 2018, (the "Commencement Date") and terminating, without notice, on July 1, 2050, unless sooner terminated as herein provided (the "Term").

Section 1.02 No Extensions.

The Term shall not be extended nor shall this Lease be renewed, except as provided by Section 13.03. Other than as permitted by Section 13.03, any requests for continued use of the Premises after the Term, including as may be extended pursuant to Section 13.03, shall be treated as an application for a new lease and shall require appropriate application to CITY with all required supporting information and documents, CITY'S City Council approval and the execution of a new CITY lease, containing the then most current terms, covenants, conditions and rent schedules.

Section 1.03 Hold Over.

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

Section 1.04 Replacement.

As of the Commencement Date, this Lease shall extinguish and replace every prior lease between CITY and TENANT respecting the Premises, if any. Any right or interest held by the TENANT pursuant to any existing lease with respect to the Premises which is not granted pursuant to this Lease shall be extinguished as of the Commencement Date of this Lease.

Article 2 RENT

Section 2.01 Annual Minimum Rent.

TENANT agrees to pay to CITY a minimum guaranteed annual rental for the use and occupancy of the Premises, in an initial amount of \$60,000.00 per year (the "Annual Minimum Rent"), payable in advance in monthly installments on the 1st of each month each year during the term of the Lease starting July 1, 2018. All Rent, including the Annual Minimum Rent and the Percentage Rent, shall be paid in lawful money of the United States of America, without offset or deduction and shall be paid to CITY at City Hall located at 595 Harbor Street, Morro Bay, California, or at such other place or places CITY may from time to time designate by written notice delivered to TENANT.

Section 2.02 CPI Adjustment to Annual Minimum Rent.

(1) The Parties agree, commencing July 1, 2019, as of every July 1 following the Commencement Date (each, a "CPI Adjustment Date"), except as outlined in section 2.03 hereof, the Annual Minimum Rent shall be adjusted in direct proportion to any upward or downward movement in the Consumer Price Index for January 1, 2018 which is hereby agreed to be 261.235 (Base Index). The percentage adjustment for any given year shall be based on the monthly average Index for the calendar year immediately preceding the CPI Adjustment Date as compared with the Base Index. The Consumer Price Index referred to herein is the Consumer Price Index (all items indexes, all urban consumers) for Los Angeles – Long Beach - Anaheim, California, compiled and published by the United States Department of Labor, Bureau of Labor Statistics, 1982-84 Base Year = 100 (the "Index")

(2) The Annual Minimum Rent shall be adjusted as of each CPI Adjustment Date, and will remain in effect as adjusted until the next CPI Adjustment Date. As an illustration only, if the Base Index (Jan. 1, 1999 CPI) is 166.1 and the monthly average CPI for 2000 is 171.6, then the percentage increase is equal to 3.31%. Therefore, the Annual Minimum Rent would be increased by 3.31% as of July 1, 2001, and would continue at that rate through June 30, 2002.

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

Section 2.03 Calculation of New Annual Minimum Rent.

Starting with calculation of the New Annual Minimum Rent for the 2023/2024 Fiscal Year, and then at the end of each five-year period thereafter, a new Annual Minimum Rent shall be calculated for the following five-year period (each, a "Subsequent Rental Period") as follows:

(1) The Annual Minimum Rent shall be subject to adjustment by appraisal for the 2023/2024 Fiscal Year, and then every five years thereafter (each, an "Appraisal Adjustment Date"). CITY, at its own cost and expense, shall retain an independent qualified appraiser for determination of the fair market value of said premises. Not more than nine months prior to each Appraisal Adjustment Date, CITY shall provide written notice to TENANT of the pending appraisal and the appraiser selected by CITY to determine the fair market value of the Premises, excluding fixtures and improvements unless such are expressly included in the description of the leasehold hereinabove. If TENANT does not reject CITY's appraiser in writing and within thirty days after CITY's notice of its determination, then the Annual Minimum Rent for the Subsequent Rental Period shall be in the amount determined by CITY as outlined in this Section 2.03. If TENANT rejects CITY's appraiser within thirty days following CITY's notice to TENANT, then within fifteen days after such thirty-day period, each party, at its own cost, shall select an independent professionally designated appraiser who is a member of the American Institute of Real Estate Appraisers, or the Society of Real Estate Appraisers with a designation of MAI (Member of American Institute), SRPA (Senior Real Estate Analysis), to appraise the fair market value of the Premises. CITY may rely on its original appraisal, or select a new appraiser, at its cost. If a party does not appoint an appraiser within fifteen days after the other party has given notice of the name of its appraiser, then the single appraiser appointed shall be the sole appraiser. Each appraiser shall conduct an independent appraisal within thirty days after appointment. If the Parties are unable to agree on the Annual Minimum Rent for the Subsequent Rental Period within thirty days after receiving the appraisal(s), then each Party shall select one member of a three-member committee. The two so selected members shall select the third member, and that committee shall by majority vote select one or the other of the appraisals. The Annual Minimum

Rent determined on the basis of the selected appraisal shall be final and binding and all costs associated with the three-member committee shall be paid equally by CITY and TENANT.

(2) In the event the appraisal process is not concluded on or before the Appraisal Adjustment Date, the Annual Minimum Rent shall be adjusted retroactively to such Appraisal Adjustment Date as set out hereinbelow when said appraisal process is completed.

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

(4) The new Annual Minimum Rent for the five-year period commencing on each Appraisal Adjustment Date shall be the greater amount of seventy-five percent of the average of the total yearly Rent payable during the previous five-year period (as set out in subparagraph 2.03 (3), above) or eight percent of the fair market value of the Premises (as established in subparagraph 2.03 (1), above.) The new Annual Minimum Rent shall be divided by two to determine the semiannual payments and shall be paid by TENANT to CITY on the first of each January and July thereafter. This new Annual Minimum Rent shall be adjusted each following year in proportion to any increase in the Consumer Price Index as set out in Section 2.02 of this Lease. The base index shall be adjusted upon each Calculation of new Annual Minimum Rent as set out in this section so that the Base index for CPI adjustment shall be the Consumer Price Index for January 1 of the year of the calculation of new Annual Minimum Rent.

Section 2.04 Percentage Rent.

(1) In addition to the Annual Minimum Rent, TENANT agrees to pay to CITY, at the time and in the manner hereinafter specified as additional Rent for the use and occupancy of the Premises, a percentage of TENANT'S Gross Sales, as detailed in Exhibit B, attached hereto, less the amount of the Minimum Rent paid for the reporting period pursuant to this Lease (the "Percentage Rent").

(2) The term "Gross Sales," as used herein, shall mean (subject to the exceptions and authorized deductions as hereinafter set forth): (i) the total selling price and the total gross amount received by TENANT from all rentals, merchandise sold and services rendered in, on or from the Premises by TENANT, its sublessees, licensees, or concessionaires, both for cash and on credit including, but not limited to, rentals of dockage space, leasing and servicing operations and ticket sales, and if on credit whether or not payment be actually made therefore, all charges for services, alterations or repairs made in or upon the Premises, (ii) the gross amount received by TENANT for merchandise sold pursuant to orders received in the Premises, though filled elsewhere and (iii) the gross amount received by TENANT from any and all other sources of income derived from the business conducted upon the Premises.

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

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

(4) TENANT shall keep or cause to be kept full, complete, and accurate records, and books of account in accordance with accepted accounting practices showing the total amount of Gross Sales, as defined herein, made each calendar month in, on or from the Premises. TENANT shall keep said records and books of account within San Luis Obispo County and shall notify CITY in advance of their location at all times. Furthermore, TENANT shall at the time of sale and in the presence of the customer cause the full selling price of each piece of merchandise, each rental received and each service rendered in, on or from the Premises to be recorded in a cash register or cash registers that have cumulative totals and are sealed in accordance with standard commercial practices. Those records, books of account and cash register tapes, including any sales tax reports that TENANT may be required to furnish any government or governmental agency, shall at all reasonable times be open to the inspection of CITY, CITY'S auditor, or other authorized representative or agent of CITY. TENANT consents to the release of sales tax information to CITY and on demand will furnish to CITY a copy of the sales tax reports, quarterly reports and any audit reports of sales for confidential internal use of CITY in determining Gross Sales for TENANT. TENANT consents and authorizes CITY to request such information directly from the State Board of Equalization or other state agency with which sales tax information is filed.

(5) By July 31 of each year, TENANT shall furnish CITY with a statement, to be certified by TENANT as current, true and accurate, which shall set forth the Gross Sales of each department, sublease, licensee and concession operating, on or from the Premises for the previous twelve calendar-months, ending June 30, just concluded, and the authorized deductions, if any, therefrom; and with it TENANT shall pay to CITY the amount of the Percentage Rent which is due to CITY as shown thereby. If TENANT shall at any time cause an audit of sales of

TENANT'S business to be made by a public accountant, then TENANT shall furnish CITY with a copy of said audit without cost or expense to CITY. CITY may, once in any twelve-month period, cause an audit of the business of TENANT to be made by a public accountant of CITY'S own selection. TENANT shall, upon receiving written notice of CITY'S desire for such an audit deliver and make available all such books, records and cash register tapes to the public or certified public accountant selected by CITY. Furthermore, TENANT shall promptly on demand reimburse CITY for the full cost and expense of said audit, if the audit discloses the questioned statement or statements understated Gross Sales by five percent (5%) or more but less than ten percent. In the event an audit performed at CITY'S request discloses TENANT understated Gross Sales by less than 5%, the cost of such audit shall be paid by CITY. In the event any audit or other review of records discloses that the amounts reported as Gross Sales was understated by TENANT by ten percent or more, CITY shall not only be entitled to recover from TENANT all costs of audit and review but shall also be entitled to recover from TENANT a penalty equal to two times the Percentage Rent due pursuant to this Lease on such unreported amounts. Whenever any audit discloses Gross Sales were understated by any amount, TENANT shall immediately pay the additional Percentage Rent therein shown to be payable by TENANT to CITY, together with interest at the Default Rate thereon, from the date the Percentage Rent was payable until the date paid.

(6) CITY shall be entitled at any time within five (5) years after the receipt of any such Percentage Rent payment, to question the sufficiency of the amount thereof and/or the accuracy of the statement or statements furnished by TENANT to justify the same. For the purpose of enabling CITY to check the accuracy of any such statement or statements, TENANT shall, for that period of five (5) years after submission to CITY of any such statement, keep all of TENANT'S records, including sales tax returns, all cash register tapes and other data which in any way bear upon or are required to establish in detail TENANT'S Gross Sales and shall upon request make the same available to CITY for examination.

Section 2.05 Reimbursements.

If TENANT fails to perform any term or covenant of this Lease, then CITY may, but is not obligated to, perform such term or covenant, and TENANT shall reimburse CITY for the costs incurred by CITY for such performance as additional Rent hereunder. As an illustration and not as a limitation, if TENANT fails to procure the insurance required by this Lease, then CITY may, but is not obligated to, obtain such insurance, with the cost of the premiums, plus 5%, being due to CITY upon demand as additional Rent.

Section 2.06 **Penalty and Interest.**

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

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

Article 3 USE OF PREMISES

Section 3.01 **Permitted Uses.**

The Premises shall, during the term of this Lease, be used only for the purpose of operating and conducting thereon and therein food service, both dining room and take-out, sale of alcoholic beverages, berthing of vessels, ticket and charter sales and for uses normally incidental thereto and directly allied to such uses, subject to any approvals required under the CITY's Conditional, Minor or Temporary Use Permit processes, or as those permits may be amended.

Section 3.02 **Unauthorized Use.**

TENANT agrees to conduct and allow only those uses authorized in Sections 3.01 and 13.02 at the Premises. Any unauthorized use of the Premises shall constitute a breach of this Lease and shall, at the option of CITY, terminate this Lease.

Section 3.03 **Operation of Business - Hours of Operation.**

Failure to actively and diligently conduct the business authorized herein constitutes a breach of this Lease and shall, at the option of CITY, terminate this Lease.

(1) TENANT shall during the term of this Lease conduct business of the nature specified in Section 3.01 of this Lease on the Premises in an efficient and diligent manner and keep the Premises open for the conduct of business continuously and without interruption for at least six hours each day of the year, except one day each week and legal holidays. This provision shall not apply if the Premises shall be closed and the business of TENANT is temporarily shut down for a period not to exceed fourteen calendar days in any calendar year to make necessary repairs, maintenance or other construction deemed necessary by TENANT. This provision shall not

apply if the Premises shall be closed and the business of TENANT is temporarily shut down as authorized or required by CITY'S City Manager or on account of strikes, walkouts, or causes beyond the control of TENANT or for not more than three days out of respect to the memory of an officer, employee, or close relative of any officer or employee of TENANT.

(2) TENANT shall operate TENANT'S business on the Premises with due diligence and efficiency and in like manner as comparable businesses operated in CITY or the coastal area of San Luis Obispo County, so as to produce the maximum amount of Gross Sales and gross receipts from services which may be produced from TENANT'S business; and TENANT at all times shall carry on Premises, a stock or merchandise of such size, character, and quality as is reasonable, designed to produce the maximum return to TENANT, when the sale of merchandise is a permitted use under this Lease.

Section 3.04 Competition.

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

Section 3.05 Hazardous Materials.

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

a contractor duly licensed to haul hazardous waste and shall use only a duly licensed disposal site approved by TENANT'S liability insurer.

(2) TENANT shall promptly notify CITY of: (i) any enforcement, cleanup or other regulatory action taken or threatened by any governmental or regulatory authority with respect to the presence of any Hazardous Material on the Premises or the migration thereof from or to other property, (ii) any demands or claims made or threatened by any party against TENANT or the Premises relating to any loss or injury resulting from any Hazardous Material on or from the Premises, and (iii) any matters where TENANT is required by applicable law to give a notice to any governmental or regulatory authority respecting any Hazardous Material on the Premises. CITY shall have the right (but not the obligation) to inspect the Premises, to take such remedial action on the Premises, as CITY may deem appropriate, and to join and participate, as a party, in any legal proceedings or actions affecting the Premises initiated in connection with any environmental, health or safety law.

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

Section 3.06 Tidelands Trust.

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

Section 3.07 **Compliance with Law.**

TENANT shall, at no cost to CITY, comply with all of the requirements of all local, municipal, county, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, and shall faithfully observe in the use of the Premises all local, municipal and county ordinances, rules, regulations and orders and state and federal statutes, rules, regulations and orders now in force or which may hereafter be in force (collectively, "Legal Requirements"); provided, that TENANT shall not be required to comply with any Legal Requirement imposed by CITY, after the commencement date of this Lease, that would substantially deprive TENANT of a material benefit under this Lease, unless such Legal Requirement has been imposed or required by a county, state or federal authority; and provided further, however, that the Parties understand and agree this Lease does not, itself, provide any vested rights to TENANT or any its successors or assigns, regarding CITY'S adoption of any new or amended land use regulations that may be apply to the Premises. The judgment of any court of competent jurisdiction, or the admission of TENANT in any action or proceeding against TENANT, whether CITY be a party thereto or not, TENANT has violated any such Legal Requirement in the use of the Premises shall be conclusive of that fact, as between CITY and TENANT.

Section 3.08 **Waste or Nuisance.**

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

Section 3.09 **Use by CITY.**

(1) Subject to TENANT's rights hereunder to possession of the Premises, CITY may grant licenses to, or otherwise authorize, other persons and entities permitting uses of the Morro Bay Harbor.

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

Article 4 CONSTRUCTION, ALTERATION AND REPAIRS

Section 4.01 Construction Approval.

(1) TENANT shall not make or permit any other person to make any alterations or structural additions or structural modifications to the Premises or to any structure thereon or facility appurtenant thereto if the cost thereof shall exceed Ten Thousand Dollars (\$10,000), without the prior written consent of CITY. The consent to be obtained pursuant to this Section 4.01(1) shall be requested from CITY'S Harbor Director, or CITY'S designee. If the Harbor Director or any future successor to the duties of the Harbor Director, or CITY'S designee, gives such consent to proceed, it is understood that such consent is given by CITY only in its capacity as the landlord under this Lease and not as the permit-issuing authority. TENANT remains obligated to obtain any needed building permits and comply with all applicable planning processes.

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

Section 4.02 Construction Bond.

(1) Prior to the commencement of any construction the cost of which is greater than the amount of One Hundred Thousand Dollars (\$100,000), TENANT shall file with the CITY'S City Clerk a final detailed Civil Engineer's, Registered Architect's or Licensed and Bonded General Contractor's estimate of the cost of construction and installation of improvements on the Premises. Said estimate must be submitted to CITY'S City Engineer for approval. TENANT shall file with CITY'S City Clerk a faithful performance bond, in a form and issued by a corporate surety company satisfactory to CITY, in an amount satisfactory to CITY, but not in excess of one hundred percent of the final detailed cost estimate, securing the faithful performance of TENANT or its contractor in the completion of said construction.

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

(3) In lieu of the above referenced bonds, TENANT may post cash deposits or may make other mutually satisfactory arrangements to guarantee the completion of construction projects. In the event the contractor bonds the project, CITY may be named as additional indemnitee to comply with these requirements.

Section 4.03 Mechanics' Liens.

At all times during the term of this Lease, TENANT shall keep the Premises and all buildings, installations and other improvements now or hereafter located on the Premises free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Premises. TENANT further agrees to at all times, save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with any improvement, repairs, or alterations on the Premises, and the cost of defending against such claims, including reasonable attorneys' fees. If TENANT fails to pay and discharge or cause the Premises to be released from such liens or claim of liens within ten days after the filing of such lien or levy, then TENANT shall upon written notification be required to immediately deposit with CITY a bond conditioned for payment in full of all claims on which said lien or levy has been filed. Such bond shall be acknowledged by TENANT as principal and by a company or corporation, licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety. The beneficiary of any security instrument which instrument is on record with CITY, shall have the right to file such a bond on behalf of TENANT. CITY shall have right to post and keep posted on the Premises notices of non-responsibility and any other notices that may be provided by law or which CITY may deem proper for the protection of CITY and Premises from such liens. TENANT shall give CITY notice at least twenty days prior to commencement of any work on the Premises to afford CITY the opportunity to post such notices.

Section 4.04 Ownership of Improvements.

The Parties agree CITY has the option and right to require TENANT to remove all buildings, structures, installations, improvements of any kind or other property belonging to or placed upon the Premises by TENANT at the termination of this Lease, however occurring, providing CITY gives notice, in writing, no later than thirty days prior to the termination of the Lease, of its decision to require such improvements be removed. The Parties agree if CITY exercises its option, then at the termination of this Lease, however occurring, TENANT shall have sixty days thereafter to remove all buildings, structures, facilities, installations, improvements and other property belonging to TENANT from the Premises. If CITY exercises such option and TENANT fails to remove all such improvements and other property within sixty

days after the termination of this Lease, then CITY shall have the right to have any or all such improvements and other property removed at the expense of TENANT. If CITY does not exercise its option to remove (or require the removal of) the improvements and other property, then title to such improvements and other property shall vest in CITY and TENANT shall not remove same.

Article 5 LEASEHOLD MORTGAGES

Tenant shall not mortgage, securitize or hypothecate the leasehold interest in whole or any part without the prior written approval of CITY as evidenced by a resolution of CITY'S City Council.

Article 6 REPAIRS, MAINTENANCE AND RESTORATION

Section 6.01 Maintenance by TENANT.

At all times during the term of this Lease, TENANT shall, at TENANT'S own cost and expense, keep and maintain all improvements now or hereafter on the Premises in good order and repair and in a safe and clean condition. Furthermore, TENANT shall, at TENANT'S own cost and expense, maintain at all times during the term of this Lease the whole of the Premises in a clean, sanitary, neat and orderly condition. CITY may, at the sole option of CITY, clean and clear the Premises, at TENANT'S cost and expense, in the event TENANT fails to clean and clear the Premises in accordance with this Section to the satisfaction of CITY after fifteen-days' written notice to TENANT from CITY of CITY'S intent to exercise this option.

Section 6.02 Seawalls and Revetment.

TENANT understands and agrees by entering into this Lease TENANT is taking and accepting the improvements, pilings, bulkheads, seawalls, revetment, piers, posts and any structures or other improvements located in the water portion of the Premises (the "Seaside Improvements") in their AS-IS condition and without any express or implied warranty of condition or usability by CITY. With that understanding, at all times during the term of this Lease, TENANT shall, at TENANT'S own cost and expense, repair, maintain, replace and rebuild ("Repairs") as necessary, the Seaside Improvements. Further, TENANT, at TENANT'S own cost and expense, shall, as often as reasonably needed to properly meet the obligations set forth in this Section 6.02, conduct maintenance surveys to locate and determine needed Repairs and as soon as possible, thereafter, commence and complete Repairs deemed necessary by each survey. CITY, at TENANT'S costs, may, but is not required to, have one or more of those surveys conducted if TENANT fails to obtain a survey within thirty days after CITY provides a

written demand that a survey be completed, if CITY, in its discretion, decides to transmit that demand. No default of this Lease will result due to the failure to obtain a survey with or without a written demand. However, if a survey is obtained, then a material breach of this Lease will result if Seaside Improvements are not completed as recommended by a survey.

Section 6.03 Legal Requirements.

At all times during the term of this Lease, TENANT, at no cost to CITY, shall:

- (1) Make all alterations, additions, or repairs to the Premises or the improvements or facilities on the Premises required by any Legal Requirements (as defined in Section 3.07, above) now or hereafter made or issued;
- (2) Observe and comply with all Legal Requirements now or hereafter made or issued respecting the Premises or the improvements or facilities located thereon;
- (3) Obtain all required permits pursuant to the Morro Bay Municipal Code or State law prior to the initiation of any repair or maintenance activity; and
- (4) Indemnify, defend and hold harmless CITY and each of its officers and employees and the property of CITY, including the Premises, from any and all liability, loss, damages, fines, penalties, claims and actions resulting from TENANT'S failure to comply with and perform the requirements of this section.

Section 6.04 Failure to Repair.

In the event failure to repair results in a hazardous or unsafe condition, CITY shall have the right and option, but not the obligation, to close and prohibit access to the unsafe portion of the Premises until such repairs are completed and accomplished and the Premises rendered safe for public use. In addition, if TENANT fails to repair any hazardous or unsafe condition within ten days after written notice thereof from CITY, then CITY shall have the right, but not the obligation, to perform such repair at TENANT'S expense. TENANT shall reimburse CITY for any such repair undertaken by CITY, promptly upon CITY'S demand, as additional Rent. Failure by CITY to enforce any of the provisions of this Article shall not constitute a waiver of those provisions and CITY may at any time enforce all of the provisions of this Article, requiring all necessary repairs, rebuilding or replacement.

Section 6.05 Inspection by CITY.

CITY or CITY'S agents, representatives, or employees may enter the Premises at all reasonable times for the purpose of inspecting the Premises to determine whether TENANT is complying with the terms of this Lease and for the purpose of doing other lawful acts that may

be necessary to protect CITY'S interest in the Premises under this Lease or to perform CITY'S duties under this Lease.

Section 6.06 TENANT'S Duty to Restore Premises.

(1) Except as provided in Section 6.07, below, if at any time during this Lease, any improvements now or hereafter on the Premises are destroyed in whole or in part by the elements, or any other cause not the fault of TENANT or CITY, then this Lease shall continue in full force and effect and TENANT, at TENANT'S own cost and expense, shall repair and restore the damaged or destroyed improvement(s) according to the original plan thereof or according to such modified plans therefore as shall be approved in writing by CITY. The work of permitting, repair and restoration shall be commenced by TENANT within one hundred eighty days after the damage or destruction occurs shall be pursued with due diligence, and shall be completed not later than one year after the work is commenced, unless the Parties mutually agree, in writing, to an extension. In all other respects, the work of repair and restoration shall be done in accordance with the requirements for construction work on the Premises set forth in Article 4 of this Lease. Any failure by TENANT either to commence or to complete repair and restoration as required by this Section 6.06 shall be a material default under this Lease.

(2) Any and all insurance proceeds that become payable at any time during the term of this Lease because of damage to or destruction of any improvements on the Premises shall be paid to TENANT and applied by TENANT toward the cost of repairing and restoring the damaged or destroyed improvements in the manner required by this Section 6.06, or, if this Lease is terminated, then applied as provided in Section 6.07. Except as set forth in Section 6.08 below, TENANT'S obligation to restore pursuant to this Section shall exist whether or not funds are available from insurance proceeds.

Section 6.07 Termination of Lease for Destruction.

(1) Notwithstanding the provisions of Section 6.06 of this Lease, TENANT shall have the option of terminating this Lease as provided in this Section 6.07 if:

(a) During the Term of this Lease, any improvements now or hereafter on the Premises are so damaged or destroyed by the elements or any cause not the fault of TENANT or CITY, that they cannot be repaired and restored as required by Section 6.06 of this Lease at a cost not exceeding thirty-five percent of the cost of replacing all improvements if they had been totally destroyed at the time of such damage; or

(b) During the last ten years of the term of this Lease, any improvements now or hereafter on the Premises are so damaged or destroyed by the elements or any cause not the fault

of TENANT or CITY, that they cannot be repaired and restored as required by Section 6.06 of this Lease at a cost not exceeding fifteen percent of the cost of replacing all improvements if they had been totally destroyed at the time of such damage.

(2) TENANT may exercise its right to terminate pursuant to this Section 6.07 by providing written notice to CITY within one hundred eighty days following damage or destruction as described herein. Such termination shall be effective on the last day of the calendar month following the month in which TENANT provides its notice.

(3) If TENANT fails to commence or complete repair and restoration as required by Section 6.06, then CITY shall have all rights and remedies with respect to TENANT's default, including, but not limited to, termination of this Lease pursuant to Article 11.

(4) If this Lease is terminated as a result of damage or destruction, then any insurance proceeds received with respect to the improvements shall be applied or distributed in the following order:

(a) first, to the demolition of the improvements and removal of all demolition debris; then

(b) to any accrued and unpaid Rent as of the effective date of the termination; then

(c) to each Lender under a Leasehold Encumbrance, in order of lien priority, an amount not to exceed the amount due under such Leasehold Encumbrance; then

(d) to CITY, an amount equal to the present value, as of the date of termination, of the total Annual Minimum Rent for the remainder of the Term; then

(e) the remaining proceeds, if any, to TENANT.

Section 6.08 Destruction Due to Risk Not Covered by Insurance.

Notwithstanding anything to the contrary in Section 6.06 of this Lease, TENANT shall have the right to terminate this Lease at any time if the improvements on the Premises are damaged or destroyed by a casualty for which TENANT is not required under this Lease to carry insurance and the cost to repair or restore such improvements exceeds fifty percent of the fair market value of all the improvements on the Premises immediately prior to the damage or destruction.

Article 7 INDEMNITY AND INSURANCE

Section 7.01 Indemnity Agreement.

(1) TENANT shall indemnify, defend and hold harmless CITY, and the property of CITY (including the Premises and any improvements now or hereafter on the Premises), and each of CITY'S officers, officials, employees and volunteers from any and all liability, claims, loss, damages, and expenses, including reasonable attorney's fees and litigation expenses ("Damages"), resulting from any act or omission relating to this Lease of TENANT or any of its officers, employees, agents, representatives, subtenants, contractors, subcontractors or anyone for whom TENANT may be liable, specifically including, without limitation, any liability, claim, loss, damage, or expense arising by reason of:

(a) The death or injury of any person, including TENANT or any person who is an employee or agent of TENANT, or by reason of the damage to or destruction of any property, including property owned by TENANT or by any person who is an employee or agent of TENANT, from any cause whatever while such person or property is in or on the Premises or in any way connected with the Premises or with any of the improvements or personal property on the Premises;

(b) The death or injury of any person, including TENANT or any person who is an employee or agent of TENANT, or by reason of the damage to or destruction of any property, including property owned by TENANT or any person who is an employee or agent of TENANT, caused or allegedly caused by either (i) the condition of the Premises or any improvement placed on the Premises by TENANT, or (ii) any act or omission on the Premises by TENANT or any person in, on, or about the Premises with or without the permission and consent of TENANT;

(c) Any work performed on the Premises or materials furnished to the Premises at the instance or request of TENANT or any person or entity acting for or on behalf of TENANT;
or

(d) TENANT'S failure to perform any provision of this Lease or to comply with any Legal Requirement imposed on TENANT or the Premises.

(2) TENANT'S obligations pursuant to this Section to indemnify and hold harmless apply only to the extent TENANT or any of its officers, employees, agents, representatives, subtenants, contractors or subcontractors or anyone for whom TENANT may be liable caused Damages.

Section 7.02 Liability Insurance.

During the term of this Lease, TENANT shall maintain at its cost Commercial General Liability insurance with coverages at least as broad as ISO Forms labeled "City of Morro Bay Insurance requirements for Lessees," Certificate of Insurance – City of Morro Bay", and "Additional Insureds – Managers or Lessors of Premises" attached hereto as Exhibit C and made a part hereof as may be updated or changed from time to time at the sole discretion of the CITY, insuring against claims for bodily injury (including death), property damage, contractual liability, personal injury and advertising injury occurring on the Premises or from operations located in any part of the Premises. Such insurance shall afford protection in amounts no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage, provided that if insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Premises or the general aggregate limit shall be twice the occurrence limit stated in this Section. All liability insurance carried by TENANT hereunder shall name CITY, its officers, officials, employees and volunteers as additional insureds, and shall be primary insurance with respect to such additional insureds. TENANT shall include all its subtenants as insureds under TENANT's liability policies or shall furnish separate certificates and endorsements for each subtenant. All coverages for subtenants shall comply with all requirements of this Article Seven.

Section 7.03 Worker's Compensation.

TENANT shall maintain at TENANT'S own expense and keep in full force and effect during the term of this Lease, Worker's Compensation Insurance as provided by law. Said insurance shall contain a waiver of subrogation rights against CITY. TENANT shall also maintain employer's liability insurance with minimum coverage of \$1,000,000 per accident for bodily injury or disease.

Section 7.04 Property Insurance.

TENANT shall, at its cost, at all times during the term of this Lease keep all improvements and other structures on the Premises, as well as any and all additions, improvements and betterments thereto, insured for one hundred percent of their full replacement cost with no co-insurance provision against loss or destruction by the perils covered by "all risk" (excluding earthquake) property damage insurance policies. Any loss payable under such insurance shall be payable to TENANT, CITY, and any Lender under a Leasehold Encumbrance pursuant to Article 5 of this Lease, as their interests may appear, and such proceeds shall be used and applied in the manner required by Article 6 of this Lease.

Section 7.05 Additional Coverage.

TENANT shall also maintain, at its expense, the insurance described in this Section 7.05.

(1) If TENANT has (or is required by any Legal Requirement to have) a liquor license and is selling or distributing alcoholic beverages on the Premises, then TENANT shall maintain liquor liability coverage in appropriate amounts. TENANT shall require any subtenant who has (or is required by any Legal Requirement to have) a liquor license and who is selling or distributing alcoholic beverages on the Premises, to maintain such coverage.

(2) TENANT shall maintain "all risk" (excluding earthquake) property damage insurance covering TENANT's personal property located at the Premises, in amounts not less than the full replacement value of such personal property. CITY shall have no interest in the proceeds of such insurance.

(3) TENANT shall, at TENANT's own expense, obtain and maintain any additional insurance coverages that CITY may reasonably require. As illustration only and not as a limitation, in appropriate circumstances such additional insurance may include increased general liability limits, business interruption coverage, business automobile liability, boiler and machinery insurance and/or builder's risk insurance. However, TENANT shall not be required to maintain additional coverages that are in excess of those typically maintained by similarly situated tenants in the Morro Bay area.

Section 7.06 General Requirements.

Except as specifically provided to the contrary, all the insurance required pursuant to this Article Seven shall be subject to the requirements of this Section 7.06.

(1) Maintenance of proper insurance coverage is a material element of this Lease and failure to maintain or renew coverage or to provide evidence of coverage and/or renewal may be treated by the CITY as a material breach of contract. TENANT shall forward CITY'S specifications and forms to TENANT'S insurance agent for compliance.

(2) CITY may at any time require TENANT to increase the minimum coverage limits for insurance required by this Lease, but every such increase shall be reasonable under the circumstances.

(3) All policies shall be issued by insurance companies authorized to issue such insurance in California, with an A.M. Best's rating of no less than A:VII.

(4) Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, either: the insurer shall reduce or eliminate such deductibles or

self-insured retentions as respects CITY, its officers, officials, employees and volunteers; or the TENANT shall provide a financial guarantee satisfactory to CITY guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(5) Each insurance policy required by this Lease shall be endorsed to state that coverage shall not be cancelled or reduced, except after thirty-days' prior written notice by certified mail, return receipt requested, has been given to CITY.

(6) TENANT shall furnish CITY with certificates and amendatory endorsements effecting the coverage required by this Lease. The endorsements shall be on forms provided by CITY or on other than CITY's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by CITY before use of the Premises, and promptly following any renewal or replacement. CITY reserves the right at any time to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

(7) TENANT'S insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be excess of TENANT'S insurance and shall not contribute with it.

Section 7.07 No Subrogation.

TENANT agrees that in the event of loss due to any of the perils for which it has agreed to provide insurance, TENANT shall look solely to its insurance for recovery. TENANT hereby grants to the CITY, on behalf of any insurer providing insurance to either TENANT or CITY with respect to TENANT'S occupancy of the Premises, a waiver of any rights to subrogation which any such insurer of said TENANT may acquire against the CITY by virtue of the payment of any loss under such insurance. Each insurance policy required under this Lease including those insuring TENANT against claims, expense, or liability for injury to persons or property shall provide that the insurer shall not acquire by subrogation any right to recovery which TENANT has expressly waived in writing prior to the occurrence of the loss.

Section 7.08 TENANT'S Waiver.

TENANT hereby waives any right of recovery against CITY for each claim, expense, liability, or business interruption, or other loss, except where caused by CITY'S active negligence or willful misconduct. TENANT agrees, to the extent TENANT fails to acquire insurance, TENANT shall not have any claim against CITY for any loss that results from a risk or peril that would have been included in such insurance.

Section 7.09 **Insurance Not a Limit.**

The insurance requirements of this Article 7 are independent of, and do not limit or modify, TENANT'S indemnification and other obligations pursuant to this Lease.

Article 8 TAXES AND FEES

Section 8.01 **TENANT to Pay Taxes.**

TENANT shall pay, before delinquency, all taxes and assessments levied upon or assessed to TENANT on the Premises by reason of this Lease or of any equipment, appliances, improvement, or other development of any nature whatsoever, erected, installed, or maintained by TENANT or by reason of the business or other activity of TENANT upon or in connection with the Premises. TENANT shall be solely responsible to pay all possessory interest taxes applicable to the Premises.

Section 8.02 **TENANT to Pay License and Permit Fees.**

TENANT shall pay any fees imposed by law for licenses or permits for any business or activities including construction by TENANT upon the Premises.

Section 8.03 **Utilities.**

TENANT shall pay, or cause to be paid, and hold harmless CITY and the property of CITY, including the Premises, from all charges for the furnishing of gas, water, electricity, telephone service, and for other public utilities to the Premises during the term of this Lease and for the removal of garbage and rubbish from the Premises during the term of this Lease.

Article 9 CONDEMNATION

Section 9.01 **Total Condemnation.**

If title and possession to all of the Premises is permanently taken for any public or quasi-public use under any statute, or by the right of eminent domain, then this Lease shall terminate on the date that possession of the Premises is taken, and both CITY and TENANT shall thereafter be released from all obligations, including Rent, all of which shall be prorated to the date of termination, except those specified in Section 9.02 of this Lease.

Section 9.02 **Condemnation Award.**

Any compensation or damages awarded or payable because of the permanent taking of all or any portion of the Premises by eminent domain shall be allocated between CITY and TENANT as follows:

(1) All compensation or damages awarded or payable for the taking by eminent domain of any land that is part of the Premises shall be paid to and be the sole property of CITY free and clear of any claim of TENANT or any person claiming rights to the Premises through or under TENANT.

(2) All compensation or damages awarded or payable which is specifically attributed by the taking party to the "good will" of TENANT'S business shall be paid to and be the sole property of TENANT.

(3) All compensation or damages awarded or payable because of any improvements constructed or located on the portion of the Premises taken by eminent domain where only a portion of the Premises is taken by eminent domain, and TENANT is not entitled to or does not terminate this Lease, shall be applied in the manner specified in Section 9.04 toward the replacement of such improvements with equivalent new improvements on the remaining portions of the Premises.

(4) All compensation or damages awarded or payable because of any improvements constructed or located on the portion of the Premises taken by eminent domain where this Lease is terminated because of the taking by eminent domain, whether all or only a portion of the Premises is taken by eminent domain, shall be allocated between CITY and TENANT as follows:

(a) That percentage of the compensation or damages awarded or payable because of the improvements that equals the percentage of the full term of this Lease that has, at the time of the taking, not expired shall belong to and be the sole property of TENANT.

(b) That percentage of the compensation or damages awarded or payable because of the improvements that equals the percentage of the full term of this Lease that has, at the time of the taking, expired shall belong to and be the sole property of CITY.

(c) The term "time of taking" as used in this Section shall mean 12:01 a.m. of the date that the agency or entity exercising the eminent domain power, takes, title, or the date that it takes physical possession of the portion of the Premises, whichever shall first occur.

(5) Any severance damages awarded or payable because only a portion of the Premises is taken by eminent domain shall be the sole and separate property of CITY.

Section 9.03 Termination for Partial Taking.

If, during the term of this Lease, title and possession of only a portion of the Premises is taken for any public or quasi-public use under any statute, or by right of eminent domain, then

TENANT may, at TENANT'S option, terminate this Lease by serving written notice of termination on CITY within ninety days after TENANT has been deprived of actual physical possession of the portion of the Premises taken for such public use. This Lease shall terminate on the first day of the calendar month following the calendar month in which the notice of termination described in this section is served on CITY. On termination of this Lease pursuant to this Article, all subleases and subtenancies in or on the Premises or any portion of the Premises created by TENANT under this Lease shall also terminate and the Premises shall be delivered to CITY free and clear of all such subleases and subtenancies; provided, however, that CITY may, at CITY'S option, by mailing written notice to a subtenant allow any subtenant to attorn to CITY and continue such subtenant's occupancy on the Premises as a TENANT of CITY. On termination of this Lease pursuant to this section, however, both CITY and TENANT shall be released from all obligations under this Lease, except those specified in Section 9.02 of this Lease.

Section 9.04 Rent Abatement for Partial Taking.

If, during the term of this Lease, title and possession of only a portion of the Premises is taken under the power of eminent domain by any public or quasi-public agency or entity and TENANT does not terminate this Lease, then this Lease shall terminate as to the portion of the Premises taken under eminent domain on the date actual physical possession of the portion taken by eminent domain is taken by the agency or entity exercising the eminent domain power. Furthermore, the Rent payable under this Lease shall, as of that time be reduced in the same proportion of the Premises taken by eminent domain bears to the full value of the Premises at that time; provided, however, that TENANT shall make a good faith effort to replace any improvements or facilities with equivalent new facilities on the remaining portion of the Premises and do all other acts at TENANT'S own cost and expense required by the eminent domain taking to make the remaining portion of the Premises fit for the use specified in this Lease.

Section 9.05 Conveyance in Lieu of Eminent Domain.

A voluntary conveyance by CITY, with the consent of TENANT, of title to all or a portion of the Premises to a public or quasi-public agency or entity in lieu of and under threat by such agency or entity to take the same by eminent domain proceedings shall be considered a taking of title to all or such portion of the Premises under the power of eminent domain subject to the provisions of this Article.

Section 9.06 Temporary Taking.

If the possession of the Premises or any portion thereof should be taken under the power of eminent domain by any public or quasi-public agency or entity for a limited period not extending beyond the term of this Lease, then this Lease shall not terminate (except as provided in this Section 9.06) and TENANT shall continue to perform all its obligations hereunder, except only to the extent that TENANT is prevented from performing such obligations by reason of such taking. TENANT shall be entitled to receive the entire amount of compensation or damages awarded because of such temporary taking. If a temporary taking extends for more than thirty-six months, then TENANT shall have the right to terminate this Lease, and TENANT shall be entitled to receive, out of the compensation or damages awarded because of such temporary taking, the amount that is attributable to the period of time up until the effective date of TENANT'S termination of this Lease.

Article 10 ASSIGNMENT AND SUBLEASING

Section 10.01 No Assignment Without CITY'S Consent.

Except as provided in this Article 10, TENANT shall not assign or otherwise transfer this Lease, any right or interest in this Lease, or any right or interest in the Premises or any of the improvements that may now or hereafter be constructed or installed on the Premises without the express written consent of CITY evidenced by resolution first had and obtained. Any assignment or transfer by TENANT without the prior written consent of CITY, whether it be voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of CITY, terminate this Lease. A consent by CITY to one assignment shall not be deemed to be a consent to any subsequent assignment of this Lease by TENANT. CITY shall not unreasonably nor arbitrarily withhold its approval to the assignment or transfer of this Lease to an assignee who is financially reliable and qualified to conduct the business for which this Lease was granted. It is mutually agreed TENANT'S qualifications are a part of the consideration for granting of this Lease and said party does hereby agree to maintain active control and supervision of the operation conducted on the Premises.

Section 10.02 Change of Ownership as Assignment.

For purposes of this Article 10, the following transactions will be deemed to be assignments or transfers:

- (1) If TENANT is a partnership or limited liability company:

(a) A change in ownership effected voluntarily, involuntarily, or by operation of law, within a twelve-month period, of twenty-five percent or more of the partners or members or twenty-five percent or more of the partnership or membership interests; or

(b) The dissolution of the partnership or limited liability company without its immediate reconstitution.

(2) If TENANT is a closely held corporation (i.e., one whose stock is not publicly held and not traded through an exchange or over the counter):

(a) The sale or other transfer, within a twelve-month period, of more than an aggregate of twenty-five percent of the voting shares of TENANT (other than to immediate family members by reason of gift or death); or

(b) The dissolution, merger, consolidation, or other reorganization of TENANT.

Section 10.03 Application for Assignment.

A condition of an assignment shall be TENANT shall file with the CITY an application to assign the leasehold prepared by the prospective assignee. Concurrently with filing the application, TENANT shall pay a reasonable fee associated with the cost of processing said application, in cash or certified or cashier's check to enable CITY adequately to investigate the proposed assignee's qualifications as a permitted assignee. CITY shall not be required to account for the use of the sum paid. If the proposed assignee's net worth on the date of assignment is not sufficient to reasonably guarantee successful operation of the Premises in compliance with all applicable CITY, County, State and federal requirements, then CITY may withhold approval of the assignment or condition it upon TENANT'S guarantee of such assignee's obligations hereunder for such period as CITY deems advisable. Net worth shall mean the amount by which the total of all assets shall exceed the total of all liabilities as determined in accordance with general accepted accounting principles as approved by CITY'S auditor, or other authorized representative or agent.

Section 10.04 Probate Transfer of Assignment.

If TENANT is an individual, then nothing herein contained will prevent the transfer of this Lease by will, or by operation of law under the intestacy provisions of the California Probate Code as it may be amended from time to time. Probate sale of the leasehold interest will not be permitted without the consent of the CITY, evidenced by resolution, first had and obtained.

Section 10.05 No Sublease Without CITY'S Consent.

TENANT shall not sublease the whole nor any part of the Premises, or license, permit, or otherwise allow any other person (the employees of TENANT excepted) to occupy or use the Premises, or any portion thereof, without the prior written consent of CITY'S Harbor Director, or any future successor to the duties of CITY'S Harbor Director. A consent to one subletting, occupation, licensing or use shall not be deemed to be a consent to any subsequent subletting, occupation, licensing or use by another person. Any sublease or license without CITY'S written consent shall be void, and shall at CITY'S option, terminate this Lease. CITY shall not unreasonably nor arbitrarily withhold its consent to sublet to one who is qualified and financially reliable. CITY'S consent to any occupation, use, or licensing shall be in CITY'S sole and absolute discretion. Notwithstanding any provisions herein to the contrary, the terms "assignment," "subletting," "occupation," or "use," shall not be construed or interpreted to mean or include the temporary, short term renting or leasing of boat slips, motel, hotel, or apartment accommodations on the premises.

Section 10.06 Subtenant Subject to Lease Terms.

Any and all subleases shall be expressly made subject to all the terms, covenants, and conditions of this Lease. In no event shall the term of any sublease extend beyond the term of this Lease. Subject to Section 10.09, termination of this Lease prior to the expiration of this Lease term shall also terminate any and all subleases. A breach of the terms of this Lease by a subtenant shall constitute a breach on the part of TENANT and shall subject both the subtenant and TENANT to all the remedies provided to CITY herein and by law. Failure by any subtenant to report Gross Sales or to pay Percentage Rent due from subtenant shall constitute a breach of this lease. TENANT hereby agrees to and does guarantee payment of such Percentage Rent due by a subtenant under the terms of this lease.

Section 10.07 Consent Form Agreement.

Prior to any consent by CITY to any sublease hereof, TENANT shall cause to be executed between TENANT and any subtenant an agreement making the CITY a third party beneficiary, in a form acceptable to CITY, whereby the subtenant agrees to be bound by all of the terms, covenants and conditions of this Lease. Further, it is agreed by TENANT any default by the subtenant of any of the terms, covenants and conditions of this Lease shall be deemed to be violations by TENANT of this Lease and that all remedies of CITY for such violation, including termination of this Lease, shall immediately be enforceable by CITY against TENANT. TENANT shall apply any and all monies received from any subtenant first to the payment of obligations of the subtenant to CITY.

Section 10.08 **TENANT and Guarantor Remain Liable.**

Prior to approval by CITY to any sublease hereof, TENANT shall agree to be primarily and jointly and severally liable to CITY for all obligations due CITY by any subtenant, including the payment of rents, and TENANT shall agree CITY may proceed directly against TENANT for any obligation owing CITY by the subtenant. If this Lease is guaranteed, then neither the sublease nor CITY'S approval thereof shall release the guarantor from its obligations pursuant to the guaranty.

Section 10.09 **Nondisturbance.**

On the terms set forth below, CITY may enter into agreements with subtenants providing that in the event of any termination of this Lease prior to the expiration date, CITY will not terminate or otherwise disturb the rights of the subtenant under such sublease, but will instead honor such sublease as if such agreement had been entered into directly between Landlord and such subtenant, conditioned upon such subtenant's agreement to attorn to Landlord and full performance of all obligations under the sublease in question ("Non-Disturbance Agreement"). CITY agrees to execute a Non-Disturbance Agreement in connection with a particular sublease provided that Tenant provides CITY with a copy of the sublease, and the Non-Disturbance Agreement is customary in form and substance and otherwise reasonably acceptable to CITY.

Article 11 DEFAULT AND TERMINATION

Section 11.01 **Abandonment by TENANT.**

If TENANT breaches this Lease and abandons all or any part of the Premises prior to the scheduled expiration of the term of this Lease, then CITY may continue this Lease in effect by not terminating TENANT'S right to possession of the Premises, in which event CITY shall be entitled to enforce all CITY'S rights and remedies under this Lease including the right to recover the Rent specified in this Lease as it becomes due under this Lease.

Section 11.02 **Termination for Breach by TENANT.**

All covenants and agreements contained in this Lease are declared to be conditions to this Lease and to the term hereby demised to TENANT. If TENANT fails to perform any covenant, condition, or agreement contained in this Lease, except for payment of any Rent or other monetary amount due, and such failure is not cured within thirty days after written notice thereof is served on TENANT, then CITY may terminate this Lease immediately, and in the event of such termination, TENANT shall have no further rights hereunder and TENANT shall thereupon forthwith remove from the Premises and shall have no further right or claim thereto and CITY

shall immediately thereupon have the right to re-enter and take possession of the Premises, subject only to appropriate legal process.

Section 11.03 Termination for Failure to Pay Rent.

If any payment of Rent is not made as herein provided and such failure to pay is not cured within three days after written notice thereof is served on the TENANT, then CITY shall have the option to immediately terminate this Lease; and in the event of such termination, TENANT shall have no further right or claim thereto and CITY shall immediately thereupon have the right to re-enter and take possession of the Premises, subject only to appropriate legal process.

Section 11.04 Lender May Cure Default.

CITY shall afford the Lender under any Leasehold Encumbrance of record with CITY, as provided in Article 5 of this Lease, the right to cure any default by TENANT of the covenants, conditions, or agreements hereof.

Section 11.05 Damages for Breach.

If TENANT defaults in the performance of any covenant, condition or agreement contained in this Lease and the default be incurable or not be cured within the time period set forth hereinabove, then CITY may terminate this Lease and:

(1) Bring an action to recover from TENANT:

(a) The worth at the time of award of the unpaid rent which had been earned at the time of termination of the Lease;

(b) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination of the Lease until the time of award exceeds the amount of rental loss that TENANT proves could have been reasonably avoided;

(c) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss that TENANT proves could be reasonably avoided; and

(d) Any other amount necessary to compensate CITY for all detriment proximately caused by TENANT'S failure to perform its obligations under this Lease; and

(2) Bring an action, in addition to or in lieu of the action described in subparagraph (1) of this Section, to re-enter and regain possession of the Premises in the manner provided by the laws of unlawful detainer of the State of California then in effect.

Section 11.06 **Cumulative Remedies.**

The remedies available to CITY in this Article shall not be exclusive but shall be cumulative with and in addition to all remedies now or hereafter allowed by law or elsewhere provided in this Lease.

Section 11.07 **Waiver of Breach.**

The waiver by CITY of any breach by TENANT of any of the provisions of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach by TENANT either of the same or a different provision of this Lease.

Section 11.08 **Surrender of Premises.**

On expiration or sooner termination of this Lease, TENANT shall surrender the Premises, and, subject to Section 4.04, all improvements in or on the Premises, and all facilities in any way appertaining to the Premises, to CITY in good, safe, and clean condition, reasonable wear and tear excepted.

Article 12 MISCELLANEOUS

Section 12.01 **Notices.**

Any and all notice or demands by or from CITY to TENANT, or TENANT to CITY, shall be in writing. They shall be served either personally, or by registered or certified mail. Any notice or demand to CITY may be given to:

Harbor Director
1275 Embarcadero
Morro Bay, CA 93442

with a copy to:

City Manager of the City of Morro Bay
City Hall
595 Harbor Street
Morro Bay, CA 93442

Any notice or demand to TENANT may be given at:

THMT, Inc.
Troy and Heather Leage
PO Box 1257
Morro Bay, CA 93443

Such addresses may be changed by written notice by either party to the other party.

Section 12.02 **Governing Law and Jurisdiction.**

This Lease, and all matters relating to this Lease, shall be governed by the laws of the State of California in force at the time any need for interpretation of this Lease or any decision concerning this Lease arises. CITY and TENANT consent to exclusive personal and subject matter jurisdiction in the Superior Court of the State of California in and for the county where the Premises are located, and each party waives any claim that such court is not a convenient forum. Each party hereby specifically waives the provisions of California Code of Civil Procedure Section 394, and any successor statute thereto.

Section 12.03 **Binding on Successors.**

Subject to the provisions herein relating to assignment and subletting each and all of the terms, conditions, and agreements herein contained shall be binding upon and inure to the benefit of the successors and assigns of any and all of the Parties; and all of the Parties shall be jointly and severally liable hereunder.

Section 12.04 **Partial Invalidity.**

If any provision of this Lease is held by a court of competent jurisdiction to be either invalid, void, or unenforceable, then the remaining provisions of this Lease shall remain in full force and effect unimpaired by the holding.

Section 12.05 **Sole and Only Agreement.**

This Lease, including all exhibits incorporated by reference, constitutes the sole and only agreement between CITY and TENANT respecting the Premises and the leasing of the Premises to TENANT. Any other agreements or representations respecting the Premises and their leasing to TENANT by CITY, which are not expressly set forth in this Lease, are null and void. The lease terms herein specified correctly set forth the obligations of CITY and TENANT as of the date of this Lease. No modification, amendment, or alteration of this Lease shall be valid unless it is in writing and signed by both parties.

Section 12.06 Modification.

This Lease shall not be modified except pursuant to a written agreement executed by CITY'S Mayor and City Clerk pursuant to prior CITY's City Council approval. Notwithstanding CITY'S City Council approval, no agreement shall become effective until such agreement is in fact executed by CITY'S Mayor and City Clerk. TENANT understands this Lease may not be modified by oral statements by any person representing CITY, including CITY'S Mayor and City Clerk. TENANT specifically agrees not to rely on oral statements, purported oral waivers, or purported oral modifications and agrees not to rely upon purported written modifications unless they meet the requirements of this paragraph and are approved in writing pursuant to formal City Council action and a subsequent written modification signed by CITY'S Mayor and City Clerk. If the title of any person authorized to act for CITY under this Lease shall be changed during the term of this Lease, then the person who succeeds to substantially the same responsibilities with respect to CITY shall have the authority to act for CITY under this Lease.

Section 12.07 Time of Essence.

Time is expressly declared to be the essence of this Lease.

Section 12.08 Memorandum of Lease for Recording.

CITY and TENANT shall, at the request of either at any time during the term of this Lease, execute a memorandum or "short form" of this Lease, which shall describe the Parties, set forth a description of the Premises, specify the Term, and incorporate this Lease by reference.

Article 13 SPECIAL PROVISIONS PECULIAR TO THIS LEASE SITE

The following provisions apply to this Lease site only:

Section 13.01 Rescission of Old Lease

CITY and TENANT understand and agree this Lease rescinds and revokes the previous lease between CITY and TENANT more particularly described as that certain lease originally assigned to TENANT and commencing July 1, 1998 for the Premises, including all amendments made thereto.

Section 13.02 Completion of Improvements

TENANT must complete improvements to the Premises with minimum hard and soft construction costs of \$400,000.00, including shared costs with adjacent tenant at Lease Site 124-128/124W-128W & 113W (currently operating as Morro Bay Landing), as follows:

1. Complete the water lease dock and slip improvements as outlined in Coastal Development Permit (CDP) No. 3-08-025-A1 and Conditional Use Permit No. UPO-058 (the "Slip Improvements") as follows:
 - A. A complete application for building permits for the Dock and Slip Improvements must be filed with CITY no later than July 31, 2018.
 - B. Payment of all building permits fees and building permits issued no later than May 31, 2019.
 - C. Commencement of construction of the Dock and Slip Improvements must commence no later than sixty days after CITY, in its governmental capacity, has issued the building permit. For purposes of this provision, commence shall mean when TENANT has expended at least \$40,000 on hard construction costs for the project.
 - D. Construction of the Dock and Slip Improvements must be completed, as evidenced by CITY'S issuance, in its governmental capacity, of a certificate of occupancy, or final inspection approval, as applicable, no later than one year after building permits are issued.
2. Complete structural improvements to Premises as outlined in inspection report by Land/Sea Interface dated August 23, 2016, in accordance with the timeline stipulated in the report, but in no case later than December 31, 2021.

In addition, it is recognized and documented TENANT's obligation toward TENANT's share of the HarborWalk improvements completed by CITY abutting the Premises is \$45,543 and due and payable on terms mutually acceptable to TENANT and CITY.

Section 13.03 Lease Restriction

In consideration of the issuance of Coastal Development Permit Nos. 3-08-025-A1 and 3-12-044, TENANT and CITY agree all of the terms and conditions of CDP 3-08-025-A1 and 3012-044, as amended, are conditions of the Lease. TENANT and CITY agree not to modify or

amend any portion of this Lease consisting of the conditions of the amended CDP's or that would contradict the terms and conditions of the amended CDP's without the prior written approval of the Executive Director of the Coastal Commission.

Section 13.04 Construction of Improvements

TENANT acknowledges TENANT'S construction of any and all proposed improvements of the Premises requires, but may not be limited to, obtaining a permit from the California Coastal Commission, U.S. Army Corps of Engineers, and a CITY Building Permit. It is TENANT'S obligation to fully investigate the issues and costs in obtaining those permits. Failure to obtain any and all required permits and approvals for said construction shall not be a reason for failure to comply with any of the obligations of this Lease. TENANT further acknowledges construction of TENANT'S improvements may require repair or replacement of all or portions of the docks, existing buildings, revetments, access ways, sidewalks, drainage systems and other current improvements on the Premises to the standards of CITY'S City Engineer and TENANT agrees to meet those standards through review and revision of final Building Plans prior to issuance of a Building Permit for the construction of improvements on the Premises.

During construction of all improvements contemplated in this Lease, TENANT shall take all measures to:

- A. Avoid any pollution of the atmosphere or littering of land or water by or originating in or about the Premises or caused by TENANT'S construction activities,
- B. Keep the noise level on the Premises to a minimum so persons in the neighborhood will be able to comfortably enjoy business and facilities in the area,
- C. Prevent any pollutants, including but not limited to petroleum products, from entering Morro Bay waters,
- D. Avoid negative impacts on surrounding businesses,
- E. Prohibit storage of materials or equipment on public property and avoid parking or traffic delays or impairment without prior consent of CITY and

F. Keep the construction site in a sightly, orderly, and safe manner at all times.

EXECUTED on _____, 2018, at _____,
_____ County, California.

CITY OF MORRO BAY

THMT, Inc. a California corporation

By: _____
Jamie L. Irons, Mayor

By: _____
Troy Leage, it's President

ATTEST:

By: _____
Heather Leage, it's Secretary

Dana Swanson, City Clerk

APPROVED AS TO FORM:

Joseph W. Pannone, City Attorney

EXHIBIT A

COPY OF PARCEL MAP

(IMMEDIATELY BEHIND THIS PAGE)

EXHIBIT B

PERCENTAGE RENTS

FOOD SERVICE	Restaurant, Dining Room	3%
	Snack Bar, Delicatessen	5%
	Fast Food, Convenience Food	5%
	Bar/Lounge, Liquor	10%
	Bar/Lounge, Beer & Wine	5%
RETAIL SALES & SERVICE	Tenant/Subtenant	5%
VESSELS	Tie-up, Pier/Fixed Piles	10%
	Tie-up, Slips/Floating Docks	10%
	Ticket Sales	5%
	Sales Aboard Vessels	5%
OTHER SALES NOT LISTED SPECIFICALLY		10%

EXHIBIT C

CITY OF MORRO BAY

595 Harbor St.
Morro Bay, CA 93442
(805) 772-6200
FAX (805) 772-7329

INSURANCE REQUIREMENTS FOR LESSEES (NO AUTO RISKS)

Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance (for lessees with employees).
3. Property insurance against all risks of loss to any tenant improvements or betterments.

Minimum Limits of Insurance

Lessee shall maintain limits no less than:

1. General Liability: **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.
3. Property Insurance: Full replacement cost with no coinsurance penalty provision.

City of Morro Bay
Insurance Requirements for Lessees

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Lessee shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions

The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of ownership, maintenance or use of that part of the premises leased to the Lessee.
2. The Lessee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty-days' prior written notice by certified mail, return receipt requested, has been given to the City.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

Verification of Coverage

Lessee shall furnish the City with original certificates and amendatory **endorsements** effecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the City **before** use of City premises. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

City of Morro Bay
Insurance Requirements for Lessees

Sub-lessee

Lessee shall include all sub-lessees as insureds under its policies or shall furnish separate certificates and endorsements for each sub-lessee. All coverages for sub-lessees shall be subject to all of the requirements stated herein.

City of Morro Bay
Insurance Requirements for Lessees

Reproduction of Insurance Services Office, Inc. Form

INSURER: ISO Form CG 20 11 11 85 (Modified)
POLICY NUMBER: Commercial General Liability
ENDORSEMENT NUMBER:

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED -- MANAGERS OR LESSORS OF PREMISES

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

1. Designation of Premises (Part Leased to You):
2. Name of Person or Organization (Additional Insured): City of Morro Bay
3. Additional Premium:

(If no entry appears above, the information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the person or organization shown in the schedule.

Modifications to ISO form CG 20 11 11 85:

1. The Insured scheduled above includes the Insured's elected or appointed officers, officials, employees and volunteers.
2. This insurance shall be primary as respects the Insured shown in the schedule above, or if excess, shall stand in an unbroken chain of coverage excess of the Named Insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the Insured scheduled above shall be in excess of this insurance and shall not be called upon to contribute with it.
3. The insurance afforded by this policy shall not be canceled except after thirty days prior written notice by certified mail return receipt requested has been given to the City.

Signature-Authorized Representative

Address

CG 20 11 11 85 Insurance Services Office, Inc. Form (Modified)





AGENDA NO: A-8
MEETING DATE: June 26, 2018

Staff Report

TO: Honorable Mayor and City Council **DATE:** June 4, 2018
FROM: Jennifer Callaway, Finance Director
SUBJECT: Adoption of Resolution No. 47-18 Establishing the Annual Proposition 4 Appropriations Limit for the Fiscal Year 2018/19

RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 47-18, which sets the FY 18/19 appropriations limit at \$26,960,330.

FISCAL IMPACT

None

SUMMARY

State law requires the adoption of an annual appropriations limit, which restricts the growth of tax-funded programs and services by limiting the appropriation of proceeds of taxes. As permitted by law, the City has chosen to use the most advantageous factor in calculating this limit for the City of Morro Bay, which for FY 18/19 is the County of San Luis Obispo population growth, and the California Per Capita Personal Income ("CPCPI"). For FY 18/19, the City of Morro Bay continues to remain well under its appropriations limit.

BACKGROUND:

Proposition 4, more commonly known as the Gann Initiative, was approved by the California electorate in November 1979. It is intended to restrict growth of tax-funded programs and services by limiting the appropriation of the proceeds of taxes to the 1978/79 base year limit, as adjusted annually for changes in population and inflation. Proceeds of taxes, in excess of the appropriations limit, with some exceptions, must be returned to the taxpayers by refund or reduction in tax rates, unless an extension of the limit is approved by majority popular vote. Proceeds of taxes include tax revenues and investment earnings, related to those tax revenues, proceeds from licenses and users/charges to the extent that they exceed the cost to cover those services, and discretionary tax funds used for contingency, emergency, unemployment, reserve and retirement sinking funds, trust, or similar funds.

In June 1990, the California voters approved Proposition 111, amending the Gann Initiative to provide local agencies with the option of using either the city or county population change percentage (whichever is greater). Another provision of the amendment states the Gann limit would be triggered only if tax proceeds exceed the limit for two consecutive fiscal years.

Prepared By: JC Dept Review: JC
City Manager Review: SC City Attorney Review: JWP

Additionally, the proposition requires an annual review of the appropriations limit calculation by a qualified independent auditor, in conjunction with the annual financial audit.

Government Code subdivision 7910(a) states: "Each year, the governing body of each local jurisdiction shall, by resolution, establish its appropriations limit and make other necessary determinations for the following fiscal year, pursuant to Article XIII B of the California Constitution, at a regularly scheduled meeting or noticed special meeting. Fifteen days prior to the meeting, documentation used in the determination of the appropriations limit and other necessary determinations shall be available to the public. The determinations made pursuant to this section are legislative acts."

Staff prepared the documentation on June 4, 2018, and it is and has been available at City Hall, upon request.

DISCUSSION:

According to the estimates received from the California Department of Finance office, the population of Morro Bay decreased by -0.12 percent between January 1, 2017 and January 1, 2018, while the San Luis Obispo County population increased by 0.35 percent for that same time period. It is most advantageous for the City to use the larger of the two percentages, which is the County population growth factor this year. The CPCPI increased by 3.67 percent. Applying these factors results in:

Prior year limit		\$25,915,210
Multiply by CPCPI change	x	1.0367
Multiply by SLO County in population	x	<u>1.0035</u>
Equals	=	<u>\$26,960,330</u>

The FY 17/18 budget estimate of revenues from the proceeds of taxes is \$13,575,732, which is well below the appropriations limit by \$13,193,598 or 49%.

The calculation of estimated proceeds of taxes for FY 18/19 is shown in detail in Attachment 2.

The calculation of FY 18/19 Appropriations Limit is shown in Attachment 3, along with a historical listing of prior year limits.

Attachment 4 is a copy of the California Department of Finance's change in population estimates between January 1, 2017, and January 1, 2018 and the California Department of Finance's cover letter and published CPCPI price factor.

ATTACHMENTS

1. Resolution No. 47-18 Establishing the Annual Proposition 4 Appropriations Limit for FY 2018/19
2. Calculation of the Estimated Proceeds of Taxes for FY 2018/19
3. Calculation of FY 2018/19 Appropriations Limit
4. California Department of Finance Published CPCPI and Population Estimates

RESOLUTION NO. 47-18

**RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF MORRO BAY, CALIFORNIA,
ESTABLISHING THE ANNUAL PROPOSITION 4
APPROPRIATIONS LIMIT FOR THE FISCAL YEAR 2018/18**

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

WHEREAS, Article XIII B of the California Constitution restricts the appropriation of tax proceeds that the City receives in any given fiscal year; and

WHEREAS, the City has calculated the FY 18/19 appropriations limit, in accordance with the provisions of Article XIII B of the California Constitution; and

WHEREAS, Proposition 111 of June 1990 requires an annual election of the methodology used in the calculation of the current year appropriations limit.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, to adopt Resolution No. 47-18, which accepts the calculation of the FY 18/19 appropriations limit, as prepared by the Morro Bay Finance Department, and establishes the FY 18/19 appropriations limit at \$26,960,330.

PASSED AND ADOPTED, by the City Council of the City of Morro Bay, at a regular meeting thereof held on the 26th day of June 2018, by the following vote:

AYES:
NOES:
ABSENT:

JAMIE L. IRONS, Mayor

ATTEST:

LORI M. KUDZMA, Deputy City Clerk

**CITY OF MORRO BAY
APPROPRIATION LIMIT DOCUMENTATION
FISCAL YEAR 2018/19**

	General	District Trans Tax	MBTBID	CTMD	GFER	GF Fac Maint	Special Gas Tax	CDBG	Traffic Safety	SLESF COPS	Transit	LTF Roads	LTF Bikepaths	Water Ops
Property taxes	4,310,261	-	-	-	-	-	-	-	-	-	-	-	-	-
Other taxes:														
Sales tax	1,964,510	1,083,000	-	-	-	-	-	-	-	-	-	-	-	-
Franchises fees	531,799	-	-	-	-	-	-	-	-	-	-	-	-	-
Other	3,901,335	-	836,135	365,393	-	-	-	-	-	-	-	-	-	-
Licenses/permits	92,859	-	-	-	-	-	-	-	-	-	-	-	-	-
Revenue from other agencies:														
Intergovernmental	50,380	-	-	-	-	-	465,103	-	-	100,000	273,604	-	9,448	-
State/County grants	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Federal grants	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Use of money and property:														
Interest	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Rent	389,600	-	-	-	-	-	-	-	-	-	-	-	-	-
Fines/Forfeitures	5,511	-	-	-	-	-	-	-	10,000	-	-	-	-	-
Charges for services	1,435,473	-	-	-	-	-	-	-	-	-	42,100	-	-	5,814,501
Other revenues	43,005	-	161,000	-	-	-	-	-	-	-	-	73,292	-	-
	12,724,733	1,083,000	997,135	365,393	-	-	465,103	-	10,000	100,000	315,704	73,292	9,448	5,814,501

	Sewer Ops	Harbor Ops	Risk Management	Special Assessmt LMD	Special Assessmt Cloisters	MB/CSD WWTF	Gov Impact	Unfunded Leaves	State Park Marina	Housing In-Lieu	Water Accum	Sewer Accum	Harbor Accum	TOTAL ESTIMATED REVENUES
Property taxes	-	-	-	-	-	-	-	-	-	-	-	-	-	4,310,261
Other taxes:														
Sales tax	-	-	-	-	-	-	-	-	-	-	-	-	-	3,047,510
Franchises fees	-	-	-	-	-	-	-	-	-	-	-	-	-	531,799
Other	-	-	-	8,619	148,944	-	-	-	-	-	-	-	-	5,260,426
Licenses/permits	-	-	-	-	-	-	-	-	-	-	-	-	-	92,859
Revenue from other agencies:														
State	-	-	-	-	-	-	-	-	-	-	-	-	250,000	1,148,535
State/County grants	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Federal grants	-	33,000	-	-	-	-	-	-	-	-	-	-	-	33,000
Use of money and property:														
Interest	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Rent	-	-	-	-	-	-	-	-	-	-	-	-	-	389,600
Fines/Forfeitures	-	-	-	-	-	-	-	-	-	-	-	-	-	15,511
Charges for services	6,719,876	1,968,255	1,582,835	-	-	2,209,233	142,500	-	86,500	-	67,500	41,115	-	20,109,888
Other revenues	-	-	-	-	-	-	-	30,000	-	-	-	-	-	307,297
	6,719,876	2,001,255	1,582,835	8,619	148,944	2,209,233	142,500	30,000	86,500	-	67,500	41,115	250,000	35,246,686

**CITY OF MORRO BAY
APPROPRIATION LIMIT DOCUMENTATION
FISCAL YEAR 2018/19**

PROCEEDS OF TAXES CALCULATION

APPROPRIATION LIMIT CALCULATION

		[1] PROCEEDS OF TAXES	PROCEEDS OTHER THAN TAXES	TOTAL ESTIMATED REVENUES	YEAR	[2] CALIFORNIA PCPI CHANGE	[3] POPULATION CHANGE	LIMIT
PROPERTY TAXES	\$	4,310,261		\$ 4,310,261	1978-79	BASE YEAR		\$ 3,046,393
OTHER TAXES		8,307,936	531,799	8,839,735	1979-80	10.17%	1.38%	3,402,527
PERMITS			92,859	92,859	1980-81	10.53%	0.26%	3,770,591
REVENUE FROM AGENCIES					1981-82	9.12%	1.39%	4,171,660
STATE		1,148,535		1,148,535	1982-83	6.79%	2.04%	4,545,796
STATE/COUNTY GRANTS		-	-	-	1983-84	2.35%	1.81%	4,736,835
FEDERAL GRANTS		-	33,000	33,000	1984-85	4.74%	1.75%	5,048,185
USE OF MONEY & PROPERTY					1985-86	3.74%	1.62%	5,321,826
INTEREST		-	-	-	1986-87	2.30%	4.12%	5,668,530
RENT			389,600	389,600	1987-88	3.04%	2.93%	6,011,990
FINES & FORFIETURES			15,511	15,511	1988-89	3.93%	3.83%	6,487,570
CHARGES FOR SERVICES			20,109,888	20,109,888	1989-90	4.98%	3.92%	7,077,629
OTHER REVENUES			307,297	307,297	1990-91	4.21%	4.59%	7,714,137
		<u>\$ 13,766,732</u>	<u>\$ 21,479,954</u>	<u>\$ 35,246,686</u>	1991-92	4.14%	3.04%	8,277,721
					1992-93	-0.64%	1.00%	8,306,991
					1993-94	2.72%	1.86%	8,691,654
					1994-95	0.71%	1.40%	8,875,912
					1995-96	4.72%	1.60%	9,443,573
					1996-97	4.67%	2.31%	10,112,922
					1997-98	4.67%	2.06%	10,803,250
					1998-99	4.15%	2.70%	11,555,378
					1999-2000	4.53%	2.28%	12,354,234
					2000-01	4.91%	2.46%	13,279,663
					2001-02	7.82%	1.60%	14,547,223
					2002-03	-1.27%	1.80%	14,620,998
					2003-04	2.31%	1.32%	15,156,198
					2004-05	3.28%	1.15%	15,833,334
					2005-06	5.26%	1.19%	16,864,495
					2006-07	3.96%	0.73%	17,660,315
					2007-08	4.42%	0.96%	18,617,934
					2008-09	4.29%	1.12%	19,634,110
					2009-10	0.62%	1.01%	19,955,375
					2010-11	-2.54%	0.87%	19,617,710
					2011-12	2.51%	1.09%	20,329,315
					2012-13	3.77%	0.47%	21,194,880
					2013-14	5.12%	0.52%	22,395,914
					2014-15	-0.23%	0.09%	22,364,513
					2015-16	3.82%	0.78%	23,399,944
					2016-17	5.37%	0.77%	24,846,376
					2017-18	3.69%	0.59%	25,915,210
					2018-19	3.67%	0.35%	26,960,330
					PROCEEDS OF TAXES			<u>13,766,732</u>
					PROCEEDS OF TAXES UNDER APPROPRIATION LIMIT			<u>\$ 13,193,598</u>

[1] Per City of Morro Bay FY 18/19 Adopted Annual Budget, total *All Funds Revenues* less transfers.

[2] Per State Department of Finance (per capita personal income); FY 18/19 = 3.67%

[3] Per State Department of Finance (population growth of City or County, whichever is greater); FY 17/18 MB = -0.12%; SLO County = 0.35%



May 2018

Dear Fiscal Officer:

Subject: Price Factor and Population Information

Appropriations Limit

California Revenue and Taxation Code section 2227 requires the Department of Finance to transmit an estimate of the percentage change in population to local governments. Each local jurisdiction must use their percentage change in population factor for January 1, 2018, in conjunction with a change in the cost of living, or price factor, to calculate their appropriations limit for fiscal year 2018-19. Attachment A provides the change in California's per capita personal income and an example for utilizing the price factor and population percentage change factor to calculate the 2018-19 appropriations limit. Attachment B provides the city and unincorporated county population percentage change. Attachment C provides the population percentage change for counties and their summed incorporated areas. The population percentage change data excludes federal and state institutionalized populations and military populations.

Population Percent Change for Special Districts

Some special districts must establish an annual appropriations limit. California Revenue and Taxation Code section 2228 provides additional information regarding the appropriations limit. Article XIII B, section 9(C) of the California Constitution exempts certain special districts from the appropriations limit calculation mandate. The code section and the California Constitution can be accessed at the following website: <http://leginfo.legislature.ca.gov/faces/codes.xhtml>.

Special districts required by law to calculate their appropriations limit must present the calculation as part of their annual audit. Any questions special districts have on this requirement should be directed to their county, district legal counsel, or the law itself. No state agency reviews the local appropriations limits.

Population Certification

The population certification program applies only to cities and counties. California Revenue and Taxation Code section 11005.6 mandates Finance to automatically certify any population estimate that exceeds the current certified population with the State Controller's Office. **Finance will certify the higher estimate to the State Controller by June 1, 2018.**

Please Note: The prior year's city population estimates may be revised.

If you have any questions regarding this data, please contact the Demographic Research Unit at (916) 323-4086.

MICHAEL COHEN
Director
By:

AMY M. COSTA
Chief Deputy Director

Attachment

- A. **Price Factor:** Article XIII B specifies that local jurisdictions select their cost of living factor to compute their appropriation limit by a vote of their governing body. The cost of living factor provided here is per capita personal income. If the percentage change in per capita personal income is selected, the percentage change to be used in setting the fiscal year 2018-19 appropriation limit is:

Per Capita Personal Income

Fiscal Year (FY)	Percentage change over prior year
2018-19	3.67

- B. Following is an example using sample population change and the change in California per capita personal income as growth factors in computing a 2018-19 appropriation limit.

2018-19:

Per Capita Cost of Living Change = 3.67 percent
Population Change = 0.78 percent

Per Capita Cost of Living converted to a ratio: $\frac{3.67 + 100}{100} = 1.0367$

Population converted to a ratio: $\frac{0.78 + 100}{100} = 1.0078$

Calculation of factor for FY 2018-19: $1.0367 \times 1.0078 = 1.0448$

Fiscal Year 2018-19

Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Alameda				
Alameda	0.37	77,173	77,456	78,863
Albany	2.18	18,646	19,053	19,053
Berkeley	0.97	120,700	121,874	121,874
Dublin	4.66	58,777	61,514	63,241
Emeryville	-0.01	11,995	11,994	11,994
Fremont	0.66	233,893	235,439	235,439
Hayward	0.36	161,455	162,030	162,030
Livermore	1.06	90,454	91,411	91,411
Newark	3.94	45,668	47,467	47,467
Oakland	0.31	427,503	428,827	428,827
Piedmont	0.08	11,309	11,318	11,318
Pleasanton	3.20	76,748	79,201	79,201
San Leandro	0.25	87,376	87,598	87,598
Union City	0.02	72,975	72,991	72,991
Unincorporated	0.19	148,547	148,823	148,895
County Total	0.84	1,643,219	1,656,996	1,660,202

*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

Fiscal Year 2018-19

Attachment B
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January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Alpine				
Unincorporated	-0.17	1,156	1,154	1,154
County Total	-0.17	1,156	1,154	1,154

*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

Fiscal Year 2018-19

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County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Amador				
Amador	-2.11	190	186	186
Ione	-2.51	4,138	4,034	8,058
Jackson	-1.72	4,761	4,679	4,679
Plymouth	-0.79	1,010	1,002	1,002
Sutter Creek	-1.04	2,505	2,479	2,479
Unincorporated	-2.41	22,167	21,633	21,690
County Total	-2.18	34,771	34,013	38,094

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Fiscal Year 2018-19

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January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Butte				
Biggs	0.00	1,913	1,913	1,913
Chico	1.04	91,398	92,348	92,348
Gridley	0.10	6,930	6,937	6,937
Oroville	0.76	18,008	18,144	18,144
Paradise	1.31	26,228	26,572	26,572
Unincorporated	-0.27	81,926	81,707	81,707
County Total	0.54	226,403	227,621	227,621

*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

Fiscal Year 2018-19

Attachment B
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January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total Population</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Calaveras				
Angels City	0.32	4,108	4,121	4,121
Unincorporated	-0.08	40,981	40,949	41,036
County Total	-0.04	45,089	45,070	45,157

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Fiscal Year 2018-19

Attachment B
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January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Colusa				
Colusa	-0.26	6,257	6,241	6,241
Williams	1.86	5,365	5,465	5,465
Unincorporated	-0.35	10,428	10,392	10,392
County Total	0.22	22,050	22,098	22,098

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Attachment B
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January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Contra Costa				
Antioch	0.70	112,280	113,061	113,061
Brentwood	2.70	61,383	63,042	63,042
Clayton	0.78	11,342	11,431	11,431
Concord	0.68	128,282	129,159	129,159
Danville	0.79	44,048	44,396	44,396
El Cerrito	1.07	24,674	24,939	24,939
Hercules	0.50	26,185	26,317	26,317
Lafayette	0.94	25,416	25,655	25,655
Martinez	0.70	37,831	38,097	38,097
Moraga	0.74	16,866	16,991	16,991
Oakley	1.52	41,116	41,742	41,742
Orinda	0.98	19,012	19,199	19,199
Pinole	0.71	19,101	19,236	19,236
Pittsburg	1.83	71,342	72,647	72,647
Pleasant Hill	0.35	34,944	35,068	35,068
Richmond	0.77	110,114	110,967	110,967
San Pablo	0.67	31,383	31,593	31,593
San Ramon	1.58	81,354	82,643	82,643
Walnut Creek	0.15	70,558	70,667	70,667
Unincorporated	0.25	171,998	172,429	172,513
County Total	0.88	1,139,229	1,149,279	1,149,363

*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

Fiscal Year 2018-19

Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total Population</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Del Norte				
Crescent City	-0.37	4,033	4,018	6,590
Unincorporated	-1.21	20,804	20,553	20,631
County Total	-1.07	24,837	24,571	27,221

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Fiscal Year 2018-19

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January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total Population</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
El Dorado				
Placerville	0.70	10,568	10,642	10,642
South Lake Tahoe	3.91	21,068	21,892	21,892
Unincorporated	0.82	154,490	155,764	155,865
County Total	1.17	186,126	188,298	188,399

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Fiscal Year 2018-19

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County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Fresno				
Clovis	3.03	110,532	113,883	113,883
Coalinga	0.81	12,518	12,620	16,791
Firebaugh	0.81	8,047	8,112	8,112
Fowler	2.45	6,092	6,241	6,241
Fresno	0.87	533,333	537,972	538,330
Huron	0.38	7,274	7,302	7,302
Kerman	2.31	14,743	15,083	15,083
Kingsburg	1.45	12,215	12,392	12,392
Mendota	2.96	11,704	12,051	12,051
Orange Cove	2.05	9,279	9,469	9,469
Parlier	1.37	15,283	15,493	15,493
Reedley	1.41	26,023	26,390	26,390
Sanger	1.52	26,249	26,648	26,648
San Joaquin	0.59	4,095	4,119	4,119
Selma	0.64	24,585	24,742	24,742
Unincorporated	1.05	167,529	169,281	170,183
County Total	1.24	989,501	1,001,798	1,007,229

*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

Fiscal Year 2018-19

Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Glenn				
Orland	1.12	7,844	7,932	7,932
Willows	-0.03	6,066	6,064	6,064
Unincorporated	-0.16	14,724	14,700	14,800
County Total	0.22	28,634	28,696	28,796

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Fiscal Year 2018-19

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January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Humboldt				
Arcata	0.05	18,388	18,398	18,398
Blue Lake	-1.61	1,301	1,280	1,280
Eureka	-0.52	26,500	26,362	26,362
Ferndale	-0.44	1,373	1,367	1,367
Fortuna	0.28	12,008	12,042	12,042
Rio Dell	-0.21	3,355	3,348	3,348
Trinidad	1.49	335	340	340
Unincorporated	-0.45	72,988	72,662	72,865
County Total	-0.33	136,248	135,799	136,002

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Fiscal Year 2018-19

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County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total Population</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Imperial				
Brawley	1.11	27,116	27,417	27,417
Calexico	1.15	40,732	41,199	41,199
Calipatria	1.79	3,678	3,744	7,488
El Centro	1.99	45,413	46,315	46,315
Holtville	2.39	6,349	6,501	6,501
Imperial	5.62	18,341	19,372	19,372
Westmorland	2.02	2,279	2,325	2,325
Unincorporated	0.17	36,142	36,202	40,007
County Total	1.68	180,050	183,075	190,624

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Fiscal Year 2018-19

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County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Inyo				
Bishop	-0.38	3,937	3,922	3,922
Unincorporated	-0.03	14,561	14,557	14,655
County Total	-0.10	18,498	18,479	18,577

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Fiscal Year 2018-19

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County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Kern				
Arvin	1.80	21,312	21,696	21,696
Bakersfield	1.12	382,570	386,839	386,839
California City	-0.36	12,462	12,417	14,875
Delano	1.07	44,209	44,680	53,276
Maricopa	2.21	1,131	1,156	1,156
McFarland	1.62	13,230	13,444	15,105
Ridgecrest	1.37	27,688	28,066	28,822
Shafter	3.98	17,937	18,650	19,271
Taft	0.82	6,706	6,761	9,482
Tehachapi	2.05	8,627	8,804	12,299
Wasco	2.36	22,177	22,700	27,691
Unincorporated	0.70	310,418	312,576	315,289
County Total	1.07	868,467	877,789	905,801

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Fiscal Year 2018-19

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County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total Population</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Kings				
Avenal	0.57	8,899	8,950	13,053
Corcoran	0.49	12,756	12,818	21,450
Hanford	1.21	57,482	58,176	58,176
Lemoore	0.82	25,681	25,892	25,892
Unincorporated	0.99	26,037	26,294	33,091
County Total	0.97	130,855	132,130	151,662

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Fiscal Year 2018-19

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January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total Population</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Lake				
Clearlake	-1.45	16,151	15,917	15,917
Lakeport	0.18	5,125	5,134	5,134
Unincorporated	1.31	43,376	43,944	44,030
County Total	0.53	64,652	64,995	65,081

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Fiscal Year 2018-19

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January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total Population</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Lassen				
Susanville	2.84	8,380	8,618	14,954
Unincorporated	1.62	14,636	14,873	15,957
County Total	2.06	23,016	23,491	30,911

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January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Los Angeles				
Agoura Hills	0.10	20,858	20,878	20,878
Alhambra	0.28	86,420	86,665	86,665
Arcadia	0.34	57,506	57,704	57,704
Artesia	0.07	16,695	16,706	16,792
Avalon	0.18	3,860	3,867	3,867
Azusa	0.70	49,606	49,954	49,954
Baldwin Park	0.32	76,463	76,708	76,708
Bell	0.08	36,297	36,325	36,325
Bellflower	0.28	77,466	77,682	77,682
Bell Gardens	0.19	42,971	43,051	43,051
Beverly Hills	0.18	34,443	34,504	34,504
Bradbury	0.09	1,068	1,069	1,069
Burbank	0.11	107,029	107,149	107,149
Calabasas	0.47	24,183	24,296	24,296
Carson	0.37	93,453	93,799	93,799
Cerritos	0.07	50,025	50,058	50,058
Claremont	0.42	36,293	36,446	36,446
Commerce	0.05	13,061	13,067	13,067
Compton	0.12	99,751	99,872	99,872
Covina	0.21	48,901	49,006	49,006
Cudahy	0.06	24,328	24,343	24,343
Culver City	0.03	39,847	39,860	39,860
Diamond Bar	0.38	57,245	57,460	57,460
Downey	0.42	113,670	114,146	114,146
Duarte	0.06	21,999	22,013	22,013
El Monte	0.22	116,942	117,204	117,204
El Segundo	0.04	16,777	16,784	16,784
Gardena	0.42	60,987	61,246	61,246
Glendale	1.90	201,705	205,536	205,536
Glendora	0.48	52,452	52,703	52,703
Hawaiian Gardens	0.28	14,625	14,666	14,666
Hawthorne	0.07	88,706	88,772	88,772
Hermosa Beach	-0.06	19,684	19,673	19,673
Hidden Hills	-0.42	1,900	1,892	1,892
Huntington Park	0.08	59,425	59,473	59,473
Industry	0.00	437	437	437
Inglewood	0.07	113,476	113,559	113,559
Irwindale	2.55	1,414	1,450	1,450

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County City	Percent Change	--- Population Minus Exclusions ---		Total Population
	2017-2018	1-1-17	1-1-18	1-1-2018
La Canada Flintridge	0.22	20,638	20,683	20,683
La Habra Heights	0.02	5,453	5,454	5,454
Lakewood	0.07	81,126	81,179	81,179
La Mirada	0.06	49,558	49,590	49,590
Lancaster	0.20	156,617	156,931	161,485
La Puente	0.11	40,640	40,686	40,686
La Verne	0.27	33,169	33,260	33,260
Lawndale	0.08	33,580	33,607	33,607
Lomita	0.27	20,659	20,715	20,715
Long Beach	0.20	477,551	478,498	478,561
Los Angeles	0.82	4,018,598	4,051,443	4,054,400
Lynwood	0.17	71,895	72,015	72,015
Malibu	0.14	12,939	12,957	12,957
Manhattan Beach	0.08	35,961	35,991	35,991
Maywood	0.08	28,021	28,044	28,044
Monrovia	0.13	38,735	38,787	38,787
Montebello	0.29	64,142	64,327	64,327
Monterey Park	0.14	62,154	62,240	62,240
Norwalk	0.23	106,485	106,735	107,546
Palmdale	0.16	158,658	158,905	158,905
Palos Verdes Estates	0.08	13,508	13,519	13,519
Paramount	0.16	55,909	56,000	56,000
Pasadena	0.70	143,379	144,388	144,388
Pico Rivera	0.14	64,170	64,260	64,260
Pomona	0.63	154,718	155,687	155,687
Rancho Palos Verdes	0.22	42,611	42,706	42,723
Redondo Beach	0.11	68,602	68,677	68,677
Rolling Hills	0.05	1,938	1,939	1,939
Rolling Hills Estates	0.06	8,106	8,111	8,111
Rosemead	0.60	54,940	55,267	55,267
San Dimas	0.10	34,471	34,507	34,507
San Fernando	0.17	24,560	24,602	24,602
San Gabriel	0.34	40,781	40,920	40,920
San Marino	0.13	13,255	13,272	13,272
Santa Clarita	0.58	215,348	216,589	216,589
Santa Fe Springs	0.65	18,172	18,290	18,335
Santa Monica	0.12	92,305	92,416	92,416
Sierra Madre	0.12	10,973	10,986	10,986
Signal Hill	1.68	11,555	11,749	11,749
South El Monte	0.09	20,864	20,882	20,882

*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County	Percent Change	--- Population Minus Exclusions ---		Total
		2017-2018	1-1-17	1-1-18
City				
South Gate	0.09	98,047	98,133	98,133
South Pasadena	0.08	26,026	26,047	26,047
Temple City	0.48	36,236	36,411	36,411
Torrance	0.06	149,157	149,245	149,245
Vernon	0.00	209	209	209
Walnut	1.01	30,151	30,457	30,457
West Covina	-0.04	108,289	108,245	108,245
West Hollywood	2.53	35,818	36,723	36,723
Westlake Village	0.06	8,353	8,358	8,358
Whittier	0.29	87,117	87,369	87,369
Unincorporated	0.24	1,053,811	1,056,312	1,057,162
County Total	0.51	10,221,926	10,274,346	10,283,729

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Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Madera				
Chowchilla	1.69	12,085	12,289	18,835
Madera	1.62	65,172	66,225	66,225
Unincorporated	0.76	73,277	73,834	73,834
County Total	1.21	150,534	152,348	158,894

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Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total Population</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Marin				
Belvedere	0.19	2,131	2,135	2,135
Corte Madera	4.30	9,625	10,039	10,039
Fairfax	0.01	7,533	7,534	7,534
Larkspur	0.21	12,325	12,351	12,351
Mill Valley	0.05	14,956	14,963	14,963
Novato	0.01	54,255	54,263	54,551
Ross	-0.12	2,536	2,533	2,533
San Anselmo	0.14	12,982	13,000	13,000
San Rafael	-0.02	60,661	60,651	60,651
Sausalito	-0.11	7,234	7,226	7,226
Tiburon	0.01	9,647	9,648	9,648
Unincorporated	-0.01	65,314	65,306	69,255
County Total	0.17	259,199	259,649	263,886

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Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Mariposa				
Unincorporated	-0.14	18,055	18,030	18,129
County Total	-0.14	18,055	18,030	18,129

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Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Mendocino				
Fort Bragg	0.85	7,449	7,512	7,512
Point Arena	2.52	437	448	448
Ukiah	2.12	15,889	16,226	16,226
Willits	0.71	5,092	5,128	5,128
Unincorporated	-0.40	60,064	59,822	59,985
County Total	0.23	88,931	89,136	89,299

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Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total Population</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Merced				
Atwater	1.80	30,684	31,235	31,235
Dos Palos	3.42	5,491	5,679	5,679
Gustine	1.59	5,782	5,874	5,874
Livingston	2.55	13,972	14,328	14,328
Los Banos	2.44	40,009	40,986	40,986
Merced	0.93	85,953	86,750	86,750
Unincorporated	1.93	92,060	93,841	95,125
County Total	1.73	273,951	278,693	279,977

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Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Modoc				
Alturas	0.84	2,844	2,868	2,868
Unincorporated	0.24	6,640	6,656	6,744
County Total	0.42	9,484	9,524	9,612

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Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total Population</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Mono				
Mammoth Lakes	0.13	8,305	8,316	8,316
Unincorporated	0.98	5,322	5,374	5,506
County Total	0.46	13,627	13,690	13,822

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Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total Population</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Monterey				
Carmel-By-The-Sea	0.16	3,744	3,750	3,750
Del Rey Oaks	-0.06	1,693	1,692	1,692
Gonzales	-0.07	8,593	8,587	8,587
Greenfield	-0.05	18,016	18,007	18,007
King City	0.53	14,802	14,880	14,880
Marina	1.27	22,143	22,424	22,424
Monterey	0.11	24,586	24,614	28,323
Pacific Grove	-0.07	15,671	15,660	15,660
Salinas	0.16	161,521	161,784	161,784
Sand City	4.51	377	394	394
Seaside	0.28	30,173	30,258	34,270
Soledad	1.65	17,176	17,459	26,246
Unincorporated	0.44	106,239	106,702	107,264
County Total	0.35	424,734	426,211	443,281

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Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total Population</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Napa				
American Canyon	1.24	20,733	20,990	20,990
Calistoga	0.30	5,318	5,334	5,334
Napa	0.26	80,198	80,403	80,403
St Helena	0.59	6,082	6,118	6,118
Yountville	0.99	2,014	2,034	2,874
Unincorporated	-3.71	25,251	24,315	25,575
County Total	-0.29	139,596	139,194	141,294

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Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Nevada				
Grass Valley	0.05	13,035	13,041	13,041
Nevada City	-0.19	3,232	3,226	3,226
Truckee	2.52	16,271	16,681	16,681
Unincorporated	0.20	66,001	66,130	66,207
County Total	0.55	98,539	99,078	99,155

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Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	Percent Change	--- Population Minus Exclusions ---		Total
	2017-2018	1-1-17	1-1-18	1-1-2018
Orange				
Aliso Viejo	3.11	50,384	51,950	51,950
Anaheim	0.16	356,485	357,067	357,084
Brea	0.25	44,776	44,890	44,890
Buena Park	0.08	83,926	83,995	83,995
Costa Mesa	0.30	114,816	115,156	115,296
Cypress	0.55	49,704	49,978	49,978
Dana Point	0.51	33,897	34,071	34,071
Fountain Valley	0.01	56,916	56,920	56,920
Fullerton	0.50	143,499	144,214	144,214
Garden Grove	0.06	176,784	176,896	176,896
Huntington Beach	0.33	201,981	202,648	202,648
Irvine	3.40	267,097	276,176	276,176
Laguna Beach	0.26	23,248	23,309	23,309
Laguna Hills	-0.03	31,829	31,818	31,818
Laguna Niguel	0.14	65,288	65,377	65,377
Laguna Woods	0.13	16,575	16,597	16,597
La Habra	0.64	62,451	62,850	62,850
Lake Forest	1.72	83,414	84,845	84,845
La Palma	0.09	15,933	15,948	15,948
Los Alamitos	0.03	11,860	11,863	11,863
Mission Viejo	0.00	95,985	95,987	95,987
Newport Beach	1.13	86,207	87,182	87,182
Orange	0.69	140,981	141,952	141,952
Placentia	-0.03	52,772	52,755	52,755
Rancho Santa Margarita	0.06	49,301	49,329	49,329
San Clemente	0.82	65,009	65,543	65,543
San Juan Capistrano	0.37	36,624	36,759	36,759
Santa Ana	0.12	337,843	338,247	338,247
Seal Beach	-0.11	25,428	25,399	25,984
Stanton	-0.08	39,500	39,470	39,470
Tustin	0.06	82,291	82,344	82,344
Villa Park	0.12	5,944	5,951	5,951
Westminster	0.13	94,353	94,476	94,476
Yorba Linda	0.49	68,781	69,121	69,121
Unincorporated	2.32	126,342	129,278	129,278
County Total	0.69	3,198,224	3,220,361	3,221,103

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Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total Population</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Placer				
Auburn	0.72	14,507	14,611	14,611
Colfax	0.14	2,147	2,150	2,150
Lincoln	1.17	48,028	48,591	48,591
Loomis	0.65	6,780	6,824	6,824
Rocklin	3.63	64,487	66,830	66,830
Roseville	1.90	134,650	137,213	137,213
Unincorporated	0.66	112,574	113,313	113,313
County Total	1.66	383,173	389,532	389,532

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Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total Population</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Plumas				
Portola	-0.46	2,171	2,161	2,161
Unincorporated	-0.20	17,647	17,612	17,612
County Total	-0.23	19,818	19,773	19,773

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Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Riverside				
Banning	0.36	31,170	31,282	31,282
Beaumont	3.22	46,730	48,237	48,237
Blythe	1.11	13,416	13,565	19,389
Calimesa	3.61	8,567	8,876	8,876
Canyon Lake	1.25	10,882	11,018	11,018
Cathedral City	0.91	54,250	54,744	54,791
Coachella	0.80	45,273	45,635	45,635
Corona	1.05	166,819	168,574	168,574
Desert Hot Springs	1.35	29,347	29,742	29,742
Eastvale	1.78	63,720	64,855	64,855
Hemet	0.91	82,417	83,166	83,166
Indian Wells	0.45	5,549	5,574	5,574
Indio	1.44	86,632	87,883	87,883
Jurupa Valley	2.31	103,661	106,054	106,054
Lake Elsinore	1.41	62,342	63,220	63,365
La Quinta	1.48	40,605	41,204	41,204
Menifee	2.62	89,552	91,902	91,902
Moreno Valley	1.64	204,285	207,629	207,629
Murrieta	1.56	111,793	113,541	113,541
Norco	0.40	24,086	24,183	26,761
Palm Desert	1.37	52,058	52,769	52,769
Palm Springs	1.16	47,157	47,706	47,706
Perris	0.68	77,311	77,837	77,837
Rancho Mirage	0.86	18,579	18,738	18,738
Riverside	0.83	323,131	325,801	325,860
San Jacinto	1.23	47,560	48,146	48,146
Temecula	1.02	112,040	113,181	113,181
Wildomar	1.13	35,882	36,287	36,287
Unincorporated	1.77	378,894	385,598	385,953
County Total	1.40	2,373,708	2,406,947	2,415,955

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Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total Population</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Sacramento				
Citrus Heights	0.31	87,460	87,731	87,731
Elk Grove	1.24	170,011	172,116	172,116
Folsom	1.31	72,570	73,521	78,447
Galt	2.46	25,393	26,018	26,018
Isleton	1.95	821	837	837
Rancho Cordova	1.05	73,441	74,210	74,210
Sacramento	1.43	494,266	501,344	501,344
Unincorporated	0.77	584,317	588,798	588,798
County Total	1.08	1,508,279	1,524,575	1,529,501

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Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
San Benito				
Hollister	0.67	36,458	36,703	36,703
San Juan Bautista	-0.95	1,891	1,873	1,873
Unincorporated	-0.10	18,530	18,512	18,512
County Total	0.37	56,879	57,088	57,088

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Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
San Bernardino				
Adelanto	-0.02	34,603	34,597	35,293
Apple Valley	0.87	73,349	73,984	73,984
Barstow	0.54	23,888	24,018	24,411
Big Bear Lake	2.00	5,404	5,512	5,512
Chino	1.03	80,677	81,511	86,757
Chino Hills	4.61	79,498	83,159	83,159
Colton	0.45	53,482	53,724	53,724
Fontana	0.92	210,071	212,000	212,000
Grand Terrace	0.26	12,492	12,524	12,524
Hesperia	1.32	93,590	94,829	94,829
Highland	1.10	54,167	54,761	54,761
Loma Linda	0.16	23,824	23,862	23,946
Montclair	0.80	39,012	39,326	39,326
Needles	-0.12	5,183	5,177	5,177
Ontario	1.39	175,157	177,589	177,589
Rancho Cucamonga	0.79	175,282	176,671	176,671
Redlands	0.49	70,851	71,196	71,196
Rialto	0.55	106,455	107,041	107,041
San Bernardino	0.49	218,521	219,590	221,130
Twentynine Palms	3.52	17,679	18,301	27,046
Upland	0.10	76,937	77,017	77,017
Victorville	0.01	119,958	119,971	123,701
Yucaipa	0.61	54,317	54,651	54,651
Yucca Valley	0.38	21,752	21,834	21,834
Unincorporated	1.14	300,371	303,791	311,659
County Total	0.95	2,126,520	2,146,636	2,174,938

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Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
San Diego				
Carlsbad	1.27	113,179	114,622	114,622
Chula Vista	0.81	265,053	267,206	267,503
Coronado	0.51	17,087	17,174	21,683
Del Mar	0.89	4,284	4,322	4,322
El Cajon	0.27	105,276	105,557	105,557
Encinitas	0.85	62,625	63,158	63,158
Escondido	0.33	150,978	151,478	151,478
Imperial Beach	0.44	28,041	28,163	28,163
La Mesa	0.46	60,980	61,261	61,261
Lemon Grove	0.46	26,710	26,834	26,834
National City	1.61	56,404	57,311	62,257
Oceanside	0.39	176,666	177,362	177,362
Poway	0.44	49,986	50,207	50,207
San Diego	1.33	1,382,202	1,400,617	1,419,845
San Marcos	1.60	94,258	95,768	95,768
Santee	0.99	56,434	56,994	56,994
Solana Beach	0.56	13,860	13,938	13,938
Vista	0.44	102,933	103,381	103,381
Unincorporated	0.53	469,739	472,206	513,123
County Total	0.95	3,236,695	3,267,559	3,337,456

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January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
San Francisco				
San Francisco	1.14	873,756	883,723	883,963
County Total	1.14	873,756	883,723	883,963

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Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
San Joaquin				
Escalon	1.06	7,479	7,558	7,558
Lathrop	3.78	23,384	24,268	24,268
Lodi	1.84	65,911	67,121	67,121
Manteca	2.52	79,349	81,345	81,345
Ripon	1.81	15,565	15,847	15,847
Stockton	1.11	309,249	312,667	315,103
Tracy	1.65	91,051	92,553	92,553
Unincorporated	1.50	150,137	152,386	154,949
County Total	1.57	742,125	753,745	758,744

*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

Fiscal Year 2018-19

Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total Population</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
San Luis Obispo				
Arroyo Grande	0.21	17,874	17,912	17,912
Atascadero	0.06	29,949	29,966	31,147
El Paso De Robles	-0.01	31,562	31,559	31,559
Grover Beach	-0.24	13,593	13,560	13,560
Morro Bay	-0.12	10,516	10,503	10,503
Pismo Beach	0.29	8,209	8,233	8,233
San Luis Obispo	0.27	46,424	46,548	46,548
Unincorporated	0.69	115,853	116,650	120,639
County Total	0.35	273,980	274,931	280,101

*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
San Mateo				
Atherton	0.49	7,100	7,135	7,135
Belmont	0.16	27,343	27,388	27,388
Brisbane	0.77	4,656	4,692	4,692
Burlingame	0.29	30,207	30,294	30,294
Colma	-0.99	1,516	1,501	1,501
Daly City	0.12	107,733	107,864	107,864
East Palo Alto	0.65	30,718	30,917	30,917
Foster City	0.61	33,287	33,490	33,490
Half Moon Bay	1.47	12,456	12,639	12,639
Hillsborough	1.35	11,389	11,543	11,543
Menlo Park	1.32	34,649	35,107	35,268
Millbrae	0.25	22,796	22,854	22,854
Pacifica	0.20	38,342	38,418	38,418
Portola Valley	0.42	4,747	4,767	4,767
Redwood City	0.13	86,271	86,380	86,380
San Bruno	0.26	45,965	46,085	46,085
San Carlos	0.73	29,681	29,897	29,897
San Mateo	0.99	103,465	104,490	104,490
South San Francisco	0.49	66,752	67,082	67,082
Woodside	0.54	5,593	5,623	5,623
Unincorporated	0.58	65,450	65,828	65,828
County Total	0.50	770,116	773,994	774,155

*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

Fiscal Year 2018-19

Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Santa Barbara				
Buellton	3.79	5,098	5,291	5,291
Carpinteria	0.05	13,697	13,704	13,704
Goleta	1.03	31,622	31,949	31,949
Guadalupe	3.58	7,341	7,604	7,604
Lompoc	-0.11	41,106	41,059	43,599
Santa Barbara	0.60	94,224	94,787	94,807
Santa Maria	0.46	107,978	108,470	108,470
Solvang	2.09	5,653	5,771	5,771
Unincorporated	1.38	137,325	139,214	142,262
County Total	0.86	444,044	447,849	453,457

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Fiscal Year 2018-19

Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Santa Clara				
Campbell	0.76	42,372	42,696	42,696
Cupertino	0.02	60,079	60,091	60,091
Gilroy	0.50	55,336	55,615	55,615
Los Altos	0.20	31,298	31,361	31,361
Los Altos Hills	1.79	8,417	8,568	8,568
Los Gatos	0.50	30,448	30,601	30,601
Milpitas	0.72	74,327	74,865	74,865
Monte Sereno	2.89	3,528	3,630	3,630
Morgan Hill	1.91	43,680	44,513	44,513
Mountain View	0.78	80,897	81,527	81,527
Palo Alto	0.40	69,424	69,699	69,721
San Jose	0.82	1,042,782	1,051,316	1,051,316
Santa Clara	3.25	125,528	129,604	129,604
Saratoga	0.52	31,271	31,435	31,435
Sunnyvale	1.85	150,599	153,389	153,389
Unincorporated	0.37	86,267	86,587	87,666
County Total	0.99	1,936,253	1,955,497	1,956,598

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Fiscal Year 2018-19

Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total Population</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Santa Cruz				
Capitola	-0.07	10,570	10,563	10,563
Santa Cruz	0.43	66,170	66,454	66,454
Scotts Valley	-0.01	12,196	12,195	12,195
Watsonville	-0.02	53,447	53,434	53,434
Unincorporated	0.06	134,036	134,123	134,218
County Total	0.13	276,419	276,769	276,864

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Fiscal Year 2018-19

Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total Population</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Shasta				
Anderson	0.22	10,240	10,263	10,263
Redding	0.14	91,082	91,210	91,357
Shasta Lake	0.09	10,134	10,143	10,143
Unincorporated	-0.06	66,448	66,409	66,508
County Total	0.07	177,904	178,025	178,271

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Fiscal Year 2018-19

Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total Population</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Sierra				
Loyalton	-0.39	760	757	757
Unincorporated	0.29	2,443	2,450	2,450
County Total	0.12	3,203	3,207	3,207

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Fiscal Year 2018-19

Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total Population</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Siskiyou				
Dorris	-1.93	985	966	966
Dunsmuir	-0.47	1,688	1,680	1,680
Etna	-0.80	750	744	744
Fort Jones	-1.47	750	739	739
Montague	0.35	1,423	1,428	1,428
Mount Shasta	-1.11	3,423	3,385	3,385
Tulelake	1.14	966	977	977
Weed	0.22	2,763	2,769	2,769
Yreka	0.47	7,803	7,840	7,840
Unincorporated	-0.11	24,040	24,014	24,084
County Total	-0.11	44,591	44,542	44,612

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Fiscal Year 2018-19

Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total Population</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Solano				
Benicia	0.17	27,452	27,499	27,499
Dixon	1.13	19,674	19,896	19,896
Fairfield	0.80	111,254	112,140	116,156
Rio Vista	3.32	8,893	9,188	9,188
Suisun City	0.14	29,152	29,192	29,192
Vacaville	1.85	91,024	92,708	98,977
Vallejo	0.34	118,851	119,252	119,252
Unincorporated	0.45	18,757	18,841	19,633
County Total	0.86	425,057	428,716	439,793

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Fiscal Year 2018-19

Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total Population</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Sonoma				
Cloverdale	1.62	8,988	9,134	9,134
Cotati	3.53	7,453	7,716	7,716
Healdsburg	2.59	11,757	12,061	12,061
Petaluma	1.70	61,657	62,708	62,708
Rohnert Park	2.61	42,490	43,598	43,598
Santa Rosa	0.24	178,064	178,488	178,488
Sebastopol	2.12	7,624	7,786	7,786
Sonoma	2.87	11,072	11,390	11,390
Windsor	2.07	27,492	28,060	28,060
Unincorporated	-3.72	147,002	141,540	142,391
County Total	-0.22	503,599	502,481	503,332

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Fiscal Year 2018-19

Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total Population</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Stanislaus				
Ceres	1.20	47,755	48,326	48,326
Hughson	3.68	7,463	7,738	7,738
Modesto	0.71	214,181	215,692	215,692
Newman	2.88	11,471	11,801	11,801
Oakdale	2.23	22,816	23,324	23,324
Patterson	1.27	22,395	22,679	22,679
Riverbank	1.24	24,934	25,244	25,244
Turlock	0.45	74,392	74,730	74,730
Waterford	0.83	9,074	9,149	9,149
Unincorporated	1.25	115,495	116,941	116,941
County Total	1.03	549,976	555,624	555,624

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Fiscal Year 2018-19

Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Sutter				
Live Oak	1.11	8,685	8,781	8,781
Yuba City	0.18	67,160	67,280	67,280
Unincorporated	0.49	21,074	21,177	21,177
County Total	0.33	96,919	97,238	97,238

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Fiscal Year 2018-19

Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total Population</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Tehama				
Corning	-0.34	7,541	7,515	7,515
Red Bluff	0.01	13,856	13,858	13,858
Tehama	-0.46	432	430	430
Unincorporated	0.28	41,943	42,061	42,236
County Total	0.14	63,772	63,864	64,039

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Fiscal Year 2018-19

Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Trinity				
Unincorporated	0.01	13,535	13,537	13,635
County Total	0.01	13,535	13,537	13,635

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Fiscal Year 2018-19

Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Tulare				
Dinuba	0.75	24,687	24,873	24,873
Exeter	0.68	11,094	11,169	11,169
Farmersville	0.39	11,399	11,443	11,443
Lindsay	0.91	13,043	13,162	13,162
Porterville	1.23	59,781	60,518	60,798
Tulare	2.15	64,591	65,982	65,982
Visalia	1.80	133,841	136,246	136,246
Woodlake	0.97	7,711	7,786	7,786
Unincorporated	0.10	144,155	144,300	144,375
County Total	1.10	470,302	475,479	475,834

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Fiscal Year 2018-19

Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total Population</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Tuolumne				
Sonora	0.29	4,876	4,890	4,890
Unincorporated	-0.10	47,186	47,140	49,850
County Total	-0.06	52,062	52,030	54,740

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Fiscal Year 2018-19

Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total Population</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Ventura				
Camarillo	0.54	68,370	68,741	68,741
Fillmore	0.97	15,800	15,953	15,953
Moorpark	0.98	36,684	37,044	37,044
Ojai	0.50	7,641	7,679	7,679
Oxnard	0.49	205,489	206,499	206,499
Port Hueneme	0.11	21,631	21,654	23,929
San Buenaventura	0.17	111,026	111,211	111,269
Santa Paula	0.25	31,061	31,138	31,138
Simi Valley	0.38	128,274	128,760	128,760
Thousand Oaks	0.54	129,502	130,196	130,196
Unincorporated	-0.33	96,189	95,875	97,865
County Total	0.36	851,667	854,750	859,073

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Fiscal Year 2018-19

Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total Population</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Yolo				
Davis	0.98	68,040	68,704	68,704
West Sacramento	1.03	53,610	54,163	54,163
Winters	2.27	7,130	7,292	7,292
Woodland	0.94	59,863	60,426	60,426
Unincorporated	2.18	30,030	30,685	30,685
County Total	1.19	218,673	221,270	221,270

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Fiscal Year 2018-19

Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018 and Total Population, January 1, 2018

County City	<u>Percent Change</u>	<u>--- Population Minus Exclusions ---</u>		<u>Total</u>
	2017-2018	1-1-17	1-1-18	1-1-2018
Yuba				
Marysville	0.46	11,829	11,883	11,883
Wheatland	0.87	3,467	3,497	3,497
Unincorporated	0.18	57,124	57,225	59,347
County Total	0.26	72,420	72,605	74,727

*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

Attachment C
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018

County	<u>Percent Change</u> 2017-18	<u>--- Population Minus Exclusions ---</u> 1-1-17	<u>1-1-18</u>
Alameda			
Incorporated	0.90	1,494,672	1,508,173
County Total	0.84	1,643,219	1,656,996
Alpine			
Incorporated	0.00	0	0
County Total	-0.17	1,156	1,154
Amador			
Incorporated	-1.78	12,604	12,380
County Total	-2.18	34,771	34,013
Butte			
Incorporated	0.99	144,477	145,914
County Total	0.54	226,403	227,621
Calaveras			
Incorporated	0.32	4,108	4,121
County Total	-0.04	45,089	45,070
Colusa			
Incorporated	0.72	11,622	11,706
County Total	0.22	22,050	22,098
Contra Costa			
Incorporated	0.99	967,231	976,850
County Total	0.88	1,139,229	1,149,279
Del Norte			
Incorporated	-0.37	4,033	4,018
County Total	-1.07	24,837	24,571
El Dorado			
Incorporated	2.84	31,636	32,534
County Total	1.17	186,126	188,298

*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

Attachment C
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018

County	<u>Percent Change</u> 2017-18	<u>--- Population Minus Exclusions ---</u> 1-1-17	<u>1-1-18</u>
Fresno			
Incorporated	1.28	821,972	832,517
County Total	1.24	989,501	1,001,798
<hr/>			
Glenn			
Incorporated	0.62	13,910	13,996
County Total	0.22	28,634	28,696
<hr/>			
Humboldt			
Incorporated	-0.19	63,260	63,137
County Total	-0.33	136,248	135,799
<hr/>			
Imperial			
Incorporated	2.06	143,908	146,873
County Total	1.68	180,050	183,075
<hr/>			
Inyo			
Incorporated	-0.38	3,937	3,922
County Total	-0.10	18,498	18,479
<hr/>			
Kern			
Incorporated	1.28	558,049	565,213
County Total	1.07	868,467	877,789
<hr/>			
Kings			
Incorporated	0.97	104,818	105,836
County Total	0.97	130,855	132,130
<hr/>			
Lake			
Incorporated	-1.06	21,276	21,051
County Total	0.53	64,652	64,995
<hr/>			
Lassen			
Incorporated	2.84	8,380	8,618
County Total	2.06	23,016	23,491
<hr/>			

*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

Attachment C
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018

County	<u>Percent Change</u> 2017-18	<u>--- Population Minus Exclusions ---</u>	
		1-1-17	1-1-18
Los Angeles			
Incorporated	0.54	9,168,115	9,218,034
County Total	0.51	10,221,926	10,274,346
<hr/>			
Madera			
Incorporated	1.63	77,257	78,514
County Total	1.21	150,534	152,348
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Marin			
Incorporated	0.24	193,885	194,343
County Total	0.17	259,199	259,649
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Mariposa			
Incorporated	0.00	0	0
County Total	-0.14	18,055	18,030
<hr/>			
Mendocino			
Incorporated	1.55	28,867	29,314
County Total	0.23	88,931	89,136
<hr/>			
Merced			
Incorporated	1.63	181,891	184,852
County Total	1.73	273,951	278,693
<hr/>			
Modoc			
Incorporated	0.84	2,844	2,868
County Total	0.42	9,484	9,524
<hr/>			
Mono			
Incorporated	0.13	8,305	8,316
County Total	0.46	13,627	13,690
<hr/>			
Monterey			
Incorporated	0.32	318,495	319,509
County Total	0.35	424,734	426,211
<hr/>			

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Attachment C
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018

County	<u>Percent Change</u> 2017-18	<u>--- Population Minus Exclusions ---</u> 1-1-17	<u>1-1-18</u>
Napa			
Incorporated	0.47	114,345	114,879
County Total	-0.29	139,596	139,194
<hr/>			
Nevada			
Incorporated	1.26	32,538	32,948
County Total	0.55	98,539	99,078
<hr/>			
Orange			
Incorporated	0.63	3,071,882	3,091,083
County Total	0.69	3,198,224	3,220,361
<hr/>			
Placer			
Incorporated	2.08	270,599	276,219
County Total	1.66	383,173	389,532
<hr/>			
Plumas			
Incorporated	-0.46	2,171	2,161
County Total	-0.23	19,818	19,773
<hr/>			
Riverside			
Incorporated	1.33	1,994,814	2,021,349
County Total	1.40	2,373,708	2,406,947
<hr/>			
Sacramento			
Incorporated	1.28	923,962	935,777
County Total	1.08	1,508,279	1,524,575
<hr/>			
San Benito			
Incorporated	0.59	38,349	38,576
County Total	0.37	56,879	57,088
<hr/>			
San Bernardino			
Incorporated	0.91	1,826,149	1,842,845
County Total	0.95	2,126,520	2,146,636
<hr/>			

*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

Attachment C
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018

County	<u>Percent Change</u> 2017-18	<u>--- Population Minus Exclusions ---</u> 1-1-17	<u>1-1-18</u>
San Diego			
Incorporated	1.03	2,766,956	2,795,353
County Total	0.95	3,236,695	3,267,559
<hr/>			
San Francisco			
Incorporated	1.14	873,756	883,723
County Total	1.14	873,756	883,723
<hr/>			
San Joaquin			
Incorporated	1.58	591,988	601,359
County Total	1.57	742,125	753,745
<hr/>			
San Luis Obispo			
Incorporated	0.10	158,127	158,281
County Total	0.35	273,980	274,931
<hr/>			
San Mateo			
Incorporated	0.50	704,666	708,166
County Total	0.50	770,116	773,994
<hr/>			
Santa Barbara			
Incorporated	0.62	306,719	308,635
County Total	0.86	444,044	447,849
<hr/>			
Santa Clara			
Incorporated	1.02	1,849,986	1,868,910
County Total	0.99	1,936,253	1,955,497
<hr/>			
Santa Cruz			
Incorporated	0.18	142,383	142,646
County Total	0.13	276,419	276,769
<hr/>			
Shasta			
Incorporated	0.14	111,456	111,616
County Total	0.07	177,904	178,025
<hr/>			

*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

Attachment C
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018

County	<u>Percent Change</u> 2017-18	<u>--- Population Minus Exclusions ---</u> 1-1-17	<u>1-1-18</u>
Sierra			
Incorporated	-0.39	760	757
County Total	0.12	3,203	3,207
<hr/>			
Siskiyou			
Incorporated	-0.11	20,551	20,528
County Total	-0.11	44,591	44,542
<hr/>			
Solano			
Incorporated	0.88	406,300	409,875
County Total	0.86	425,057	428,716
<hr/>			
Sonoma			
Incorporated	1.22	356,597	360,941
County Total	-0.22	503,599	502,481
<hr/>			
Stanislaus			
Incorporated	0.97	434,481	438,683
County Total	1.03	549,976	555,624
<hr/>			
Sutter			
Incorporated	0.28	75,845	76,061
County Total	0.33	96,919	97,238
<hr/>			
Tehama			
Incorporated	-0.12	21,829	21,803
County Total	0.14	63,772	63,864
<hr/>			
Trinity			
Incorporated	0.00	0	0
County Total	0.01	13,535	13,537
<hr/>			
Tulare			
Incorporated	1.54	326,147	331,179
County Total	1.10	470,302	475,479

*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

Attachment C
Annual Percent Change in Population Minus Exclusions*
January 1, 2017 to January 1, 2018

County	<u>Percent Change</u> 2017-18	<u>--- Population Minus Exclusions ---</u>	
		1-1-17	1-1-18
Tuolumne			
Incorporated	0.29	4,876	4,890
County Total	-0.06	52,062	52,030
<hr/>			
Ventura			
Incorporated	0.45	755,478	758,875
County Total	0.36	851,667	854,750
<hr/>			
Yolo			
Incorporated	1.03	188,643	190,585
County Total	1.19	218,673	221,270
<hr/>			
Yuba			
Incorporated	0.55	15,296	15,380
County Total	0.26	72,420	72,605
<hr/>			

*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.



AGENDA NO: A-9

MEETING DATE: June 26, 2018

Staff Report

TO: Honorable Mayor and City Council

DATE: June 12, 2018

FROM: Scot Graham, Community Development Director

SUBJECT: Adoption of Resolution No. 50-18 Approving a 1-Year Lease Agreement with Ciano Real Estate, Inc. for property located at 781 Market Street.

RECOMMENDATION

Council adopt Resolution No. 50-18, approving a 1-year Lease Agreement for the City property located at 781 Market Street (APN: 066-321-027).

ALTERNATIVES

The City Council could choose not to approve the lease agreement and direct staff to either alter the agreement in a manner agreed upon by a majority of Council or the Council may choose to not lease the space to Ciano Real Estate, Inc.

FISCAL IMPACT

With approval of the contract the City would receive \$1,000.00 a month rent for the twelve-month term of the lease, for a total of \$12,000.00.

BACKGROUND

The 781 Market Street property is owned by the City and formerly housed DiStasio's Restaurant and wine bar. The DiStasio's lease terminated on February 15, 2018 leaving the building vacant. As Council is aware, the City is actively marketing the subject property for redevelopment along with the City-owned parking lot below the 781 Market building and the City-owned temporary parking lot at the corner of Market and Pacific.

The process to identify a qualified party to purchase/lease and redevelop the property is underway and is likely to take 2 – 3 years for purchase and permitting. Given the 2 – 3 year timeline, it makes sense for City to pursue lease of the building on a limited term basis. Leasing the property provides the following benefits: income generation, property is occupied and maintained by future lessee's.

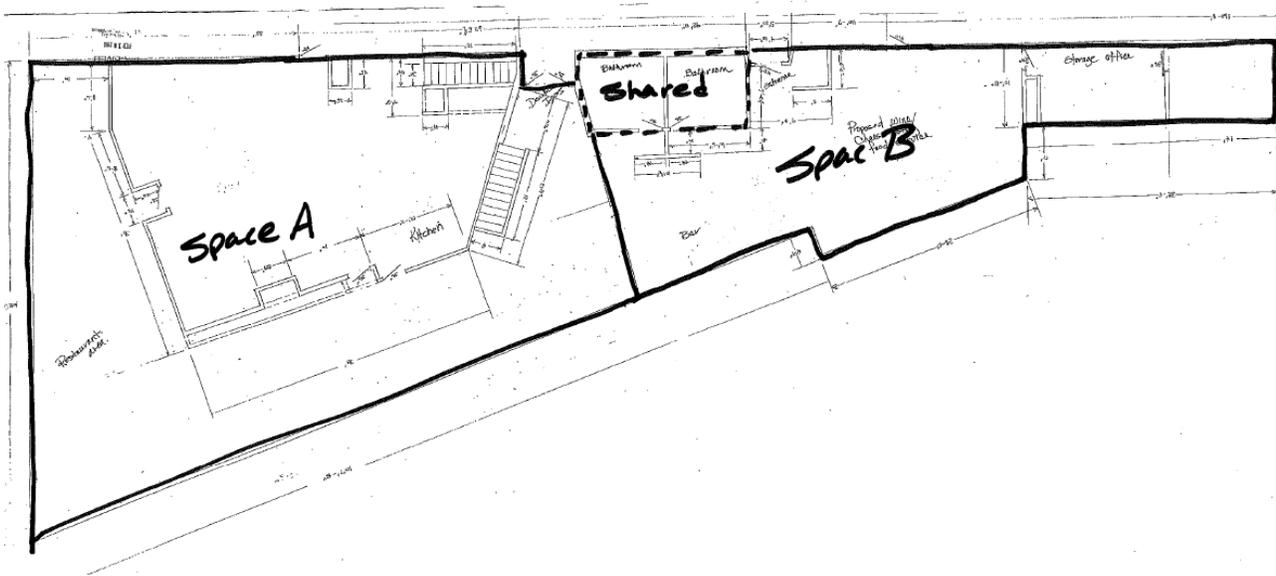
The building has two floors, but given the lower floor is inaccessible from an Americans with Disabilities Act (ADA) standpoint (no elevator or ramp), staff does not propose to lease the lower floor. The upper floor contains the former restaurant space and the wine bar area with shared bathroom facilities. The upper floor totals approximately 5,220 square feet with approximately 1,413 square feet allocated to the wine bar area and 3,807 square feet allocated to the restaurant space and bathrooms. See Figure below depicting upper floor building layout.

Prepared By: SG

Dept Review: SG

City Manager Review: SC

City Attorney Review: JWP



DISCUSSION

Staff has been approached by Frankie Ciano, of Ciano Real Estate, to lease the restaurant area (Space A) for use as a Real Estate office. The office use would be generally limited to the area previously occupied by restaurant seating. Mr. Ciano does not propose remodel of the kitchen area into additional office space. The Ciano Real Estate business is growing and the space they currently occupy, at 360 Morro Bay Blvd., is insufficient to house the growing staff. Mr. Ciano is aware of the City's plans to redevelop the property and views the lease space as an opportunity to help grow his business in the short term (2 – 3 years) and to see if the increase in staffing levels is sustainable.

Mr. Ciano has provided cost estimates for painting, flooring and remodel work that total just under \$35,000.00. Given the investment that is necessary to make the space usable for his Real Estate business, combined with the short-term nature of the lease (year-to-year), the initial one-year term is proposed at \$1,000.00 per month. Staff has had discussions with Mr. Ciano regarding rents for future years and there is mutual agreement to increase the rent to \$2,000.00 per month after the first year, assuming Mr. Ciano continues to lease the space beyond the initial year term. Extending the lease term beyond the initial year will require a future lease amendment.

CONCLUSION

Ciano Real Estate desires to enter into a 1-year lease agreement with the City of Morro Bay for lease of Space A in the existing City owned 781 Market Building. Having tenants occupy the building while the City pursues sale/lease and redevelopment of the property will serve to generate income for the City and will ensure the property is maintained and not left to deteriorate while the City pursues redevelopment opportunities. Staff, therefore, recommends Council adopt Resolution 50-18, approving a new 1-year Lease Agreement with Ciano Real Estate for lease of Space A within the 781 Market Street building.

ATTACHMENTS

1. Resolution No. 50-18
2. Ciano Real Estate Lease Agreement

RESOLUTION NO. 50-18

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING A 1-YEAR LEASE AGREEMENT FOR
LEASE SPACE A AT 781 MARKET STREET BETWEEN THE CITY OF MORRO BAY
AND
CIANO REAL ESTATE INC.**

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

WHEREAS, the City of Morro Bay is the lessor of the property at 781 Market Street, in the City of Morro; and

WHEREAS, Ciano Real Estate Inc. is proposing to operate a Real Estate Office in Space A of the 781 Market Street Building; and

WHEREAS, the City and lessee have agreed to a new 1-year lease agreement, with options to extend the term to 50 years, for a portion of the located at 781 Market Street identified as Space A.

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

1. The attached new Lease Agreement for of Space A in the 781 Market Street Building Lease is hereby approved.
2. The Mayor is hereby authorized to execute said Lease Agreement.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 26th day of June, 2018 on the following vote:

AYES:
NOES:
ABSENT:

Jamie L. Irons, Mayor

ATTEST:

Lori M. Kudzma, Deputy City Clerk

COMMERCIAL LEASE AGREEMENT

By and Between

**CITY OF MORRO BAY,
a municipal corporation**

“Landlord”

and

**Ciano Real Estate, Inc.,
a California corporation**

“Tenant”

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Exhibit A Description and Depiction of Premises

COMMERCIAL LEASE AGREEMENT

THIS COMMERCIAL LEASE AGREEMENT (“**Lease**”) is made effective this 27th day of June, 2018, by and between the CITY OF MORRO BAY, a municipal corporation (“**Landlord**”), and Ciano Real Estate, Inc., a California corporation (“**Tenant**”). Landlord and Tenant are sometimes individually referred to as a “**Party**” and jointly as the “**Parties**.”

RECITALS:

A. Landlord owns, certain real property located in the City of Morro Bay, County of San Luis Obispo, as follows: (i) that certain real property, commonly identified as 781 Market Street, Morro Bay (APN 066-321-027), improved as a restaurant building containing two separate lease space areas and shared bathroom facilities identified as “Space A” and “Space B” on the Attached Exhibit A, with adjacent landscape areas.

The portion of the restaurant building identified as Space A, along with shared use of the bathrooms, as described and depicted on the attached Exhibit A, is the subject of this Commercial Lease Agreement, and is also referred to as the “**Premises**.”

B. The Premises are located in Landlord’s downtown (“**Downtown Area**”).

C. Tenant is a corporation, currently operating a real estate business “Ciano Real Estate Inc.

D. The Parties desire to enter into a written lease agreement and to confirm the rights and obligations of both Parties therein. Pursuant to the terms of this Lease, Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the Premises, for Tenant’s sole exclusive use.

NOW, THEREFORE, in consideration of the above Recitals and the mutual promises of the Parties set forth in this Lease, Landlord and Tenant hereby agree as follows:

1. LEASE OF PREMISES; CONDITION OF PREMISES.

- 1.1. **Lease.** Landlord hereby leases to Tenant and Tenant hereby hires from Landlord the Premises (as defined in the Recitals incorporated herein) solely for the uses specified in Section 4.
- 1.2. **Condition of Premises.** Tenant acknowledges it has and shall accept the Premises from Landlord in its “AS IS” condition without representation or warranty. Tenant has inspected the premises and is aware of its condition. Pursuant to California Civil Code Section 1938, Tenant is advised that the Premises have not undergone an inspection by a Certified Access Specialist, and, therefore, Landlord is not aware if the Premises comply with the applicable construction-related accessibility standards pursuant to Civil Code Section 55.53.

2. EFFECTIVE DATE; TERM.

- 2.1. **Effective Date.** This Lease shall be deemed effective as of June 27, 2018 (“**Effective Date**”). All other Tenant’s rights and obligations under this Lease shall commence as of the Effective Date.
- 2.2. **Term.** The term of this Lease shall commence on the Effective Date for a fixed term of one year, and terminate without notice on June 26, 2019 (“**Term**”), unless otherwise amended by the Parties pursuant to Sections 2.4 and 30.15.
- 2.3. **Right to Terminate.** Tenant shall have the right to terminate this Lease at any time within the Term upon providing Landlord at least sixty (60) days’ written notice to Landlord.
- 2.4. **Exclusive Right to Negotiate Extension.** If Tenant has not been in default of any of its obligations under this Lease during the previous six months of the original Term (as defined in Section 2.2), then Tenant shall have the right (but not the obligation) to enter into a ninety-day period of exclusive negotiation with Landlord to extend this Lease upon mutually acceptable terms (including, but not limited to, rent payments) for an additional period up to one year (“**ENA Right**”). Tenant must exercise the ENA Right by sending a written notice to Landlord specifying its exercise of the ENA Right, which notice must be delivered to Landlord not less than 90 days prior to the expiration of the original Term (“**ENA Notice**”). Within fifteen business days after receipt of the ENA Notice, Tenant and Landlord will meet to begin negotiations for an amendment to this Lease to extend the Term. If prior to the end of the Term the Parties agree to an extension and other modifications, then such terms shall be effective only if this Lease is amended in accordance with Section 30.15. If the Parties do not agree to that amendment, then this Lease shall terminate without further notice at the end of the Term.

3. RENT & PERFORMANCE STANDARD.

- 3.1. **Monthly Rent.** Tenant agrees to pay One Thousand Dollars (\$1,000) on a monthly basis, in advance, due no later than the 10th day of month for which rent is being paid (“**Rent**”). The first payment shall be due July 10, 2018.
- 3.2. **Performance Standards.** As material consideration for this Lease, Tenant covenants to comply with the following requirement (the “**Performance Standard**”): diligently maintain and repair the Premises, in compliance with Section 7.1.
- 3.3. **Payment of Rent.** All Rent and all other monetary obligations to be paid by Tenant to Landlord shall be in lawful money of the United States of America at the address specified in Section 30.13, or such other address as Landlord shall notify Tenant in writing.
- 3.4. **Late Payment.** Any payment of any sum to be paid by Tenant, not paid within ten days after its due date, shall be subject to a ten percent late charge.
- 3.5. **Security Deposit.** Tenant is not required to provide, and has not provided, a security deposit to Landlord.

4. USES.

4.1. Authorized Uses; Minimum Program Requirements & Reporting Obligations.

4.1.1. Authorized Uses. Tenant shall use the Premises solely as a commercial real estate office. As material consideration for this Lease, Tenant agrees to use the Premises and conduct all its business operations on the Premises under the designation of a real estate office, currently named “Ciano Real Estate.” No other name shall be used with respect to the Premises without the prior written consent of Landlord, which may be granted or withheld in its sole discretion.

4.2. Prohibited Uses. Tenant shall not use, or permit the Premises, or any part thereof, to be used for any purpose or purposes other than those express uses specified in Section 4.1.1.

Tenant shall not sell or permit to be displayed, performed, sold, kept, or used in or about the Premises any conduct which may be prohibited by standard forms of fire insurance policies.

Tenant shall not violate any and all requirements, pertaining to the use of the Premises, of any insurance organization or company necessary for the maintenance of reasonable fire and public liability insurance, covering the buildings within the Premises and appurtenances.

Tenant shall not allow any animals on the Premises except service dogs as defined in federal and state law.

Tenant shall not permit smoking or vaping on any portion of the Premises.

Tenant shall not commit, or suffer to be committed, any waste upon the Premises, or any nuisance or other act or thing which may disturb the quiet enjoyment of any other tenant or occupant of the Premises or any adjacent Premises. Tenant shall not conduct or permit to be conducted any sale by auction in, upon or from the Premises, whether said auction be voluntary, involuntary, pursuant to any assignment for the payment of creditors, or pursuant to any bankruptcy or other solvency proceeding nor display any “going out of business” or similar sign.

Tenant shall not engage in any activity in, on or about the Premises that violates any Environmental Law, and shall promptly, at Tenant’s sole cost and expense, take all investigatory and/or remedial action required or ordered by any governmental agency or Environmental Law for clean-up and removal of any contamination involving any Hazardous Material created or caused directly or indirectly, by Tenant. The term “Environmental Law” shall mean any federal, state or local law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environmental conditions on, under or about the Premises, including, without limitation, (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), 42 U.S.C. Sections 9601, et seq.; (ii) the Resource Conservation and Recovery Act of

1976 (“RCRA”), 42 U.S.C. Sections 6901, et seq.; (iii) California Health and Safety Code Sections 25100, et seq.; (iv) the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5, et seq.; (v) California Health and Safety Code Section 25359.7; (vi) California Health and Safety Code Section 25915; (vii) the Federal Water Pollution Control Act, 33 U.S.C. Sections 1317, et seq.; (viii) California Water Code Section 13000, et seq.; and (ix) California Civil Code Section 3479, et seq., as such laws are amended and the regulations and administrative codes applicable thereto. The term “Hazardous Material” includes, without limitation, any material or substance which is (i) defined or listed as a “hazardous waste”, “extremely hazardous waste”, “restrictive hazardous waste”, “or “hazardous substance” or considered a waste, condition of pollution or nuisance under the Environmental Laws; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos; and/or (iv) substances known by the State of California to cause cancer and/or reproductive toxicity. It is the intent of the Parties hereto to construe the terms “Hazardous Materials” and “Environmental Laws” in their broadest sense. Tenant shall provide all notices required pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5, et seq. Tenant shall provide prompt written notice to Landlord of the existence of Hazardous Materials on the Premises and all notices of violation of the Environmental Laws received by Tenant. Notwithstanding the foregoing, Tenant is not responsible for the remediation or removal of any Hazardous Materials which Tenant did not directly or indirectly cause to be placed at the Premises.

4.3. Abandonment. Tenant shall not vacate or abandon the Premises at any time during the Term of this Lease. Upon termination of this Lease for any reason, any personal property belonging to Tenant and left on the Premises shall be deemed to be abandoned, at the option of Landlord, shall become the property of Landlord.

5. REAL ESTATE TAXES. Tenant shall pay any and all real property taxes applicable to Tenant’s possessory interest in the Premises. All such payments shall be made at least ten days prior to the due date of the applicable installment. Tenant shall promptly (at least five days prior to the due date) furnish Landlord with satisfactory evidence that such taxes have been paid. If any such taxes to be paid by Tenant shall cover any period of time after the expiration or earlier termination of the Term hereof, Tenant’s share of such taxes shall be equitably prorated to cover only the period of time within the tax fiscal year that this Lease is in effect, and Tenant may apply to the County for reimbursement of any overpayments after such proration. Notwithstanding anything above to the contrary, to the extent any assessment is levied against the Premises payable in installments, Tenant shall pay all installments coming due and payable during the Term of this Lease.

Tenant acknowledges that although Landlord is a municipal entity exempt from real property taxes, Tenant’s possessory interest under this Lease may be subject to real property taxation.

Upon request, Landlord agrees to work with Tenant to assist in providing information to the County Tax Assessor to reduce the valuation of Tenant’s possessory interest in the Premises. Landlord provides no assurance to Tenant that it will be successful in such efforts and that Tenant may be required to pay real property taxes.

6. **PERSONAL PROPERTY TAXES.** During the Term, Tenant shall pay prior to delinquency all taxes assessed against the levied upon fixtures, furnishings, equipment and all other personal property owned by Tenant (excluding Landlord's personal property) located in the Premises, and when possible Tenant shall cause said fixtures, furnishings, equipment and other personal property to be assessed and billed separately from Landlord's personal property. In the event any or all of Tenant's fixtures, furnishings, equipment and other personal property shall be assessed and taxed with Premises, Tenant shall pay its share of such taxes within ten (10) days after delivery to Tenant by Landlord of a statement in writing setting forth the amount of such taxes applicable to Tenant's property.

7. **MAINTENANCE AND REPAIRS.**

7.1. **Maintenance and Repair by Tenant.** Except the specific maintenance obligations of Landlord as set forth in Section 7.2, Tenant shall at all times during the Term, and at Tenant's sole cost and expense, keep, maintain and repair the Premises in good and sanitary order, condition, and repair. Such maintenance obligations shall include, but not be limited to, any equipment installed by Tenant, furnishings (such as seating, carpeting and drapes, mirrors, and interior repainting) and landscaping.

Tenant shall also hire a cleaning service/custodian, who shall keep the Premises in good and sanitary order on a daily basis.

Tenant shall maintain a written record to evidence the regular performance of maintenance and upkeep of the facility consistent with the maintenance standards.

Upon termination of this Lease, the Premises shall be surrendered in a good, clean and sanitary condition except for reasonable use and wear. Tenant agrees to surrender the Premises in its original condition, together with all additional improvements or alternations which have been approved by Landlord and installed by Tenant pursuant to Section 8.1. If Landlord wants to reserve the right to require Tenant to remove any such additional improvements upon the expiration or earlier termination of this Lease, Landlord must reserve such right in its notice of approval. If Tenant is required to remove any improvements from the Premises upon termination of this Lease, Tenant shall do so at Tenant's sole cost and expense, and Tenant will repair any damage to the Premises caused by such removal. Tenant shall promptly notify Landlord in writing of any condition in the Premises that require repairs by Landlord ("**Repair Notice**") which shall be made by Landlord as set forth in Section 7.2.

Tenant acknowledges that Tenant's maintenance obligations under this Section are material consideration to Landlord for this Lease and, therefore, this Section 7.1 shall be construed liberally for the protection and preservation of the Premises.

7.2. **Limited Maintenance and Repair by Landlord.** Landlord shall only be responsible to maintain in good repair and in compliance with all applicable laws, ordinances and regulations, at Landlord's sole cost and expense, **only** (i) the physical structure of the Premises, such as the structural elements, roof, plumbing, water heating system,

electrical systems, HVAC equipment and exterior painting, and (ii) subject to the financial limitations set forth below.

Notwithstanding the foregoing, Landlord shall not be required to make repairs necessitated by reason of (i) the negligence or willful misconduct of Tenant, or any of Tenant's staff, volunteers, students, contractors, invitees, subtenants, patrons or customers; (ii) by reason of the failure of Tenant to perform or observe and promptly report to Landlord any conditions the repair of which are Landlord's responsibility; or (iii) by reason of the failure of Tenant to perform or observe the conditions or agreements in this Lease, or caused by unauthorized alterations, additions or improvements made by Tenant or anyone claiming under Tenant (collectively the "**Tenant Caused Damages**"). Tenant shall be solely responsible, at its sole cost and expense to repair any Tenant Caused Damages.

Upon receipt of a Repair Notice, Landlord shall have a reasonable period of time (not to exceed five business days) to commence said repairs. Upon commencement of repairs, Landlord shall use reasonable efforts to diligently complete same. Tenant and Landlord shall jointly conduct an annual inspection of the Premises every March to aid Landlord in determining if any repairs by Landlord may be necessary.

Any renovation work performed by Landlord to the Premises shall not unreasonably interfere with Tenant's operations.

Notwithstanding the foregoing, Landlord's repair obligations are **specifically limited** in that Landlord shall not be required to make repairs the cost of which exceeds the Rent actually received by Landlord from Tenant as set forth below. During the Term, Landlord shall maintain a cumulative on-going record of all Rent received by Landlord ("**Landlord Repair Fund**"). Any repairs and maintenance costs incurred by Landlord under this Section 7.2 shall reduce the Landlord Repair Fund. If at any time when a repair or maintenance item which is Landlord's responsibility under this Section 7.2, Landlord shall only be obligated to make such repair to the extent that the current balance of the Landlord Repair Fund is sufficient to pay the cost of such repair. However, if the repair item is critical for Tenant's operation of the Premises, then Landlord shall promptly make such repair but the cost of such shall reduce the Landlord Repair Fund. If Landlord elects, in its sole discretion, to make repairs notwithstanding the foregoing limitations, such election shall not be deemed a waiver of this limitation with respect to future repairs and the cost of such repairs shall reduce the Landlord Repair Fund.

8. ALTERATIONS

8.1 To Premises. Tenant shall not make any alterations to the Premises, or any part thereof, without the prior written consent of Landlord. If Tenant wishes to make additional improvements to the Premises, Tenant shall notify Landlord in writing specifying in reasonable detail the proposed alterations and the cost thereof. Within fifteen days after receiving such notice from Tenant, Landlord shall send written notice to Tenant indicating whether Landlord approves or disapproves of the contemplated improvements. The City Manager may act on behalf of Landlord for approvals or disapprovals under this Section. Landlord's approval shall not be unreasonably withheld and any disapproval shall be in writing and shall explain the reasons for the denial. However, as a condition to granting its approval to any of the improvements, Landlord may require Tenant to provide Landlord with reasonably satisfactory evidence of Tenant's financial ability to pay for the costs of the improvements and may require a completion bond be provided to Landlord or other security reasonably acceptable to Landlord. Any such alterations shall comply with all applicable laws and regulations. All improvements (excluding minor improvements as determined by Landlord) which are approved by Landlord shall be under the supervision of a licensed architect or structural engineer (at Tenant's cost) and made in accordance with plans and specifications approved in writing by Landlord prior to the commencement of such work. All work shall be done in a good and workmanlike manner, diligently prosecuted to completion and completed in compliance with Section 12. All such improvements shall immediately be deemed a part of the Premises and may not be removed by Tenant. Prior to commencing any work of improvement hereunder, Tenant shall notify Landlord so that Landlord can post and record an appropriate Notice of Non-Responsibility.

9. **COMPLIANCE WITH LAWS.** Except as to the specific obligations of Landlord under Section 7.2, Tenant shall, at its sole cost and expense, comply with all of the requirements of all municipal, state and federal authorities now in force or which may hereafter be in force pertaining to the use of the Premises, and shall faithfully observe in said use all municipal ordinances, including, but not limited to, the general plan and zoning ordinances, state and federal statutes, or other governmental regulations now in force or which shall hereinafter be in force. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any such order or statute in said use, shall be conclusive of that fact as between Landlord and Tenant.

10. INSURANCE.

10.1. Landlord to Provide Property Insurance. Landlord shall maintain, at Landlord's sole cost and expense, fire, and excess coverage insurance throughout the term of this Lease, on all buildings and improvements located on the Premises (and fixtures thereto), in an amount equal to one hundred percent of the replacement value of the Premises, together with such other insurance, coverages and endorsements as Landlord may determine in its sole discretion. Tenant hereby waives any right of recovery from Landlord, its officers and employees, and Landlord hereby waives any right of loss or damage (including consequential loss) resulting from any of the perils insured against as a result of said insurance.

10.2. Tenant's Insurance Obligations.

10.2.1. Liability Insurance. During the entire term of this Lease, Tenant shall, at Tenant's sole cost and expense, for the mutual benefit of Landlord and Tenant, maintain comprehensive general liability insurance insuring against claims for bodily injury, death or property damage occurring in, upon or about the Premises, written on a per occurrence basis in an amount not less than either (i) a combined single limit of Five Million Dollars (\$5,000,000) for bodily injury, death, and property damage or (ii) bodily injury limits of Five Hundred Thousand Dollars (\$500,000) per person, One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) products and completed operations and property damage limits of Two Hundred Fifty Thousand Dollars (\$250,000) per occurrence and One Million Dollars (\$1,000,000) in the aggregate.

10.2.2. Worker's Compensation Insurance. Tenant shall, at Tenant's sole cost and expense, maintain a policy of worker's compensation insurance in an amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both Tenant and Landlord against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Tenant in the course of conducting Tenant's business in the Premises.

10.2.3. Business Automobile Coverage Insurance. Tenant shall, at Tenant's sole cost and expense, for the mutual benefit of Landlord and Tenant, maintain Business Auto Coverage on ISO Business Auto Coverage from CA 00 01 including symbol 1 (Any Auto) or the exact equivalent, with combined single limits of liability not less than One Million Dollars (\$1,000,000) per accident. If Tenant owns no vehicles, then this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Tenant or Tenant's employees will use personal autos in any way for the operation of any business on the Premises, then Tenant shall provide evidence of personal auto liability coverage for each such person.

10.2.4. General Provisions. All of the policies of insurance required to be procured by Tenant pursuant to this Section 10.2 shall be primary insurance and shall name Landlord, its employees and agents as additional insureds. All policies shall waive all rights of subrogation and provide that said insurance may not be amended or canceled without providing thirty-days' prior written notice by registered mail to Landlord. Within ten business days after execution of this Lease by the last Party to sign, and at least thirty days prior to the expiration of any insurance policy, Tenant shall provide Landlord with certificates of insurance and full copies of the insurance policies evidencing the mandatory insurance coverages written by insurance companies acceptable to Landlord, licensed to do business in

California and rated A:VII or better by Best's Insurance Guide. Landlord may require an increase in the coverage and/or the types of coverage from time to time upon written notice to Tenant. Each of the Parties, on behalf of their respective insurance companies insuring such property of either Landlord or Tenant against such loss, waive any right of subrogation that it may have against the other.

11. INDEMNIFICATION. Tenant shall indemnify, protect, defend and hold harmless the Premises, Landlord and its managers, officers, directors, members, employees, agents, contractors, partners and lenders, from and against any and all claims, and/or damages, costs, liens, judgments, penalties, permits, reasonable attorneys' and consultant's fees, expenses and/or liabilities arising out of, involving, or in dealing with, the occupancy of the Premises by Tenant, the conduct of Tenant's business, any act, omission or neglect of Tenant, its officers, directors, members, employees, agents or contractors, and out of any breach by Tenant in the performance in a timely manner of any obligation on Tenant's part to be performed under this Lease, except for matters which are the result of Landlord's gross negligence, intentional wrongful acts, or in default of this Lease. The foregoing shall include, but not be limited to, all costs of the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not (in the case of claims made against Landlord) litigated and/or reduced to judgment. In case any action or proceeding is brought against Landlord by reason of any of the foregoing matters, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord and Landlord shall cooperate with Tenant in such defense. Landlord need not have first paid any such claim in order to be so indemnified. In addition, Landlord may require Tenant to pay Landlord's attorneys' fees and costs in defending against or participating in such claim, action or proceeding if Landlord shall decide, in its exercise of reasonable judgment, it is unsatisfied with the representation of its interest by Tenant or its counsel.

Landlord shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Tenant, Tenant's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, earthquake, flood, terrorism, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other any other cause, whether the said injury or damage results from conditions arising upon the Premises or from other source or places except if such injury or damage is the result of the gross negligence or willful misconduct of Landlord or Landlord's employees, contractors or agents.

12. NO LIENS. Tenant shall keep the Premises, free from any liens arising out of any work performed, material furnished, or obligation incurred by Tenant or alleged to have been incurred by Tenant. If Tenant shall fail to pay any charge for which a mechanic's lien claim and suit to foreclose the lien have been filed, and shall not have obtained the release of said lien from the property subject to such lien, Landlord may (but shall not be so required to) pay said claim and any costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from Tenant to Landlord, together with interest at the rate prescribed in Section 30.6, on the amount of the mechanic's lien claim.

13. SIGNS. Tenant shall not place or permit to be placed any signs upon the exterior or in the windows of the Premises without Landlord's prior written consent. Any sign installed without such approval shall be immediately removed by Tenant and, if said sign is not removed by Tenant within three days of written notice from Landlord to Tenant, then Landlord may remove and destroy said sign without Tenant's approval and without any liability to Tenant. Tenant shall not modify or alter any of the signs without the prior written approval of the City Manager for Landlord, which approval shall not be unreasonably withheld or delayed. Landlord shall reply to any proposed alteration within fourteen days from submission. Any revision shall comply with the Morro Bay Municipal Code requirements related to signage prior to any revisions actually being made to the signs. Tenant shall maintain the signs in good condition and repair at all times during the entire term at its sole cost and expense.

14. UTILITIES.

14.1. Tenant's Responsibilities. Tenant shall pay, before delinquency, all charges for water, gas, heat, electricity, power, sewer, telephone service, solid waste collection and all other services and utilities used in, upon, or about the Premises by Tenant or any of its subtenants, licensees, or concessionaires during the entire term of this Lease. Tenant shall pay such fees, assessments or charges as may be levied for the operation, maintenance and service of such facilities and shall comply with reasonable rules and regulations established from time to time for use thereof. Tenant shall insure that trash and debris produced by the activities on Premises do not accumulate on the Premises.

15. ENTRY AND INSPECTION. Tenant shall permit Landlord and its employees and agents to enter into and upon the Premises at all reasonable times for the purpose of inspecting the same, or for the purpose of making repairs, alterations or additions or performing the improvements to any portion of said building(s), including the erection and maintenance of such scaffolding, canopy, and fences as may be required, or for the purpose of posting notices of non-responsibility for alterations, additions or repairs, or for the purpose of placing upon the Premises any usual or ordinary signs for public safety as determined by Landlord. Landlord shall be permitted to do any of the above without any rebate of Rent and without any liability to Tenant for any loss of occupation or quiet enjoyment of the Premises thereby occasioned. Landlord shall make reasonable efforts to coordinate times for any repairs deemed necessary with Tenant to reduce to the extent practicable any interference with Tenant's use of the Premises. Tenant shall permit Landlord, at any time within ninety (90) days prior to the expiration of the Term, to place upon the Premises any usual or ordinary "For Lease" or "For Sale" signs, and during such ninety-day period, Landlord or its agents may, during normal business hours, enter upon said Premises and exhibit the same to prospective tenants or purchasers.

16. DAMAGE AND DESTRUCTION.

16.1. Notice to Landlord. Tenant shall give prompt notice to Landlord in case of any fire or other damage to the Premises.

- 16.2. Partial Casualty to Premises.** If the Premises shall be damaged by any casualty including, but not limited to, civil unrest, vandalism, a fire, flood or earthquake, such that (i) the cost of replacement or repair of the Restaurant is less than or equal to fifty percent of the total replacement cost thereof; or (ii) the cost of replacement or repair of damage to the Restaurant, and any other structures comprising the Premises, when aggregated together is less than or equal to fifty percent of the total replacement cost thereof, then Landlord shall promptly repair and restore the same to substantially the condition thereof immediately prior to said damage or destruction. If insurance proceeds are forthcoming, Landlord shall not be obligated to commence the restoration and/or repair until Landlord has received said insurance proceeds. Landlord shall take all reasonable steps necessary so as to obtain such insurance proceeds promptly so as to prevent delay in restoring and/or repairing the Premises to its prior condition.
- 16.3. Substantial Damage to Premises.** If the Premises shall be damaged or destroyed by any casualty (or the other matters described above), such that (i) the cost of replacement or repair of the Premises exceeds one years rent; or (ii) the cost of replacement or repair of damage to the Premises, and any of the other structures comprising the Premises, when aggregated together exceeds on years rent total, then Landlord may elect to either replace or repair the damage as aforesaid, cancel this Lease by written notice of cancellation given to Tenant within ninety days after the date of the casualty, or allow Tenant to cause repairs to be made to City standards. This Lease shall cease and terminate twenty days following Tenant's receipt of Landlord's cancellation notice, and Tenant shall vacate and surrender the Premises to Landlord in accordance with the terms of this Lease.
- 16.4. Reconstruction.** In the event of any reconstruction of the Premises under this Section 16, Landlord shall be obligated to reconstruct the Premises only to the extent of the condition of the Premises prior to the damage.
- 16.5. Rent Abatement.** In the event that any casualty to the Premises is such that operations are impossible or impractical during the reconstruction as determined by Tenant, Tenant shall be entitled to abatement of the Rent for actual number of business days closed based on a pro-rata ratio of the total days in the month.
- 16.6. Termination.** Upon any termination of this Lease under any of the provisions of this Section 16, the Parties shall be released thereby without further obligations to the other Party coincident with the surrender of possession of the Premises to Landlord, except for obligations which have theretofore accrued and be then unpaid, and except for Tenant's obligations under Section 11.
- 16.7. Determination of Percentage of Damage or Destruction.** If either Landlord or Tenant contends that the percentage of the damage or destruction referred to above exceeds one year's rent total and the other Party disagrees, the determination of the percentage shall be made in writing by a senior officer of the insurance company that is to make insurance proceeds available for replacement or repair. If said insurance company elects not to render such a determination in a timely manner, or no

determination is rendered for any other reason, then, in such event, upon fifteen-days' prior written notice to Tenant, Landlord's determination shall be deemed the agreed upon determination of the damage or destruction.

17. ASSIGNMENT AND SUBLETTING.

17.1. Assignment and Subletting. Tenant shall not sublet the Premises or assign this Lease without the prior written consent of Landlord. Landlord shall not unreasonably withhold its consent to an assignment or sublease to a proposed assignee or subtenant. In no event shall Landlord be required to approve of any assignment or sublease which would result in a violation of any other agreements to which Landlord is a party and/or for which all of the following criteria are not met:

- a. The proposed assignee or subtenant has submitted to Landlord financial statements showing that the proposed assignee's or subtenant's financial condition, including net worth and liquidity, is equal to or greater than Tenant's financial condition;
- b. The proposed assignee or subtenant is morally and financially responsible; and
- c. Tenant is not in default in the payment of Rent or the performance of any obligations under this Lease.

Any such assignment shall be subject to all of the terms and conditions of this Lease, including, but not limited to, the use restrictions, and the proposed assignee or subtenant shall assume the obligations of Tenant under this Lease in writing in form satisfactory to Landlord. The proposed assignee or subtenant shall simultaneously provide to Landlord an estoppel certificate in the form described in Section 21. Consent by Landlord to one assignment or subletting shall not be deemed to be consent to any subsequent assignment or subletting. Any assignment or subletting without the prior written consent of Landlord shall be void, shall constitute a material breach of this Lease, and shall, at the option of Landlord, terminate this Lease. Neither this Lease nor any interest therein shall be assignable as to the interest of Tenant by operation of law.

Landlord shall be under no obligation to consider a request for its consent to an assignment or sublease until Tenant shall have submitted in writing to Landlord a request for Landlord's consent to such assignment or sublease, a history of the proposed assignee's or subtenant's business experience and financial viability and such other information as required by Landlord to verify that the criteria set forth herein are met.

18. DEFAULT AND REMEDIES; TERMINATION.

18.1. Default by Tenant. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

- (i) Failure to pay any Rent or other monetary payment required hereunder to Landlord within five days after receiving notice from Landlord of Tenant's failure to pay any such obligation when due under this Lease.
- (ii) Failure to perform any provision of this Lease (other than the payment of money), if the failure to perform is not cured within thirty days after receiving written notice of the default from Landlord. If the default cannot be reasonably cured within thirty days, Tenant shall not be in default of this Lease if Tenant commences to cure the default within the thirty-day period and diligently and in good faith continues to cure the default.
- (iii) Failure of Tenant to meet or comply with the Performance Standard.
- (iv) Vacation or abandonment of the Premises by Tenant.
- (v) Making a general assignment for the benefit of creditors.
- (vi) Filing of a voluntary petition in bankruptcy or the adjudication of Tenant as a bankrupt.
- (vii) Appointment of a receiver to take possession of all or substantially all the assets of Tenant located at the Premises or of Tenant's leasehold interest in the Premises.
- (viii) Filing by any creditor of Tenant of an involuntary petition in bankruptcy which is not dismissed within sixty (60) days after filing.
- (ix) Attachment, execution or other judicial seizure of all or substantially all of the assets of Tenant or Tenant's leasehold where such an attachment, execution or seizure is not discharged within sixty (60) days.

In the event of any such default or breach by Tenant, Landlord may at any time thereafter, without further notice or demand, rectify or cure such default, and any sums expended by Landlord for such purposes shall be paid by Tenant to Landlord upon demand and as additional Rent hereunder. In the event of any such default or breach by Tenant, Landlord shall have the right to continue the lease in full force and effect and enforce all of its rights and remedies under this Lease, including the right to recover the Rent as it becomes due under this Lease or Landlord shall have the right at any time thereafter to elect to terminate the Lease and Tenant's right to possession thereunder. Upon such termination, Landlord shall have the right to recover from Tenant:

- (a) The worth at the time of award of the unpaid Rent which had been earned at the time of termination;
- (b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of

award exceeds the amount of such Rent loss that Tenant proves could have been reasonably avoided; and

(c) The worth at the time of award of the amount by which the unpaid Rent for the balance of the term after the time of award exceeds the amount of such Rent loss that Tenant proves could be reasonably avoided.

The “worth at the time of award” of the amounts referred to in subparagraphs (a), b), and (c) above shall be computed by allowing interest (or by discounting in the case of subparagraph (c)) at three percent over the prime rate, but in no event greater than the maximum rate permitted by law.

“Rent” shall include all sums payable pursuant to this Lease on a regular basis; including reimbursement of real estate taxes and any similar amounts. The payment shall be computed on the basis of the average monthly amount thereof accruing during any preceding twelve-month period selected by Landlord, except that if it becomes necessary to compute such Rent before such a twelve-month period has occurred, then such Rent shall be computed on the basis of the average monthly amount hereof accruing during such shorter period.

Such efforts as Landlord may make to mitigate the damages caused by Tenant’s breach of this Lease shall not constitute a waiver of Landlord’s right to recover damages against Tenant hereunder.

Notwithstanding any of the foregoing, the breach of this Lease by Tenant, or an abandonment of the Premises by Tenant, shall not constitute a termination of this Lease, or of Tenant’s right of possession hereunder, unless and until Landlord elects to do so, and until such time Landlord shall have the right to enforce all of its rights and remedies under this Lease, including the right to recover rent, and all other payments to be made by Tenant hereunder, as they become due. Failure of Landlord to terminate this Lease shall not prevent Landlord from later terminating this Lease or constitute a waiver of Landlord’s right to do so.

18.2. No Waiver. Acceptance of any payment under this Lease shall not be deemed a waiver of any default or a waiver of any of Landlord’s remedies.

18.3. Landlord’s Default. Except as may be elsewhere expressly provided in this Lease, Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty days after written notice by Tenant to Landlord, specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord’s obligation is such that more than thirty days are required for performance then Landlord shall not be deemed in default if Landlord commences performance within the thirty (30) day period and thereafter diligently prosecutes the same to completion.

18.4. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity, except Tenant i) cannot seek money damages or pursue an action in law; and

ii) is instead limited to bringing a proceeding in the nature of specific performance, injunctive relief or mandamus, or any other action in equity.

18.5. Termination.

18.5.1. The Parties acknowledge that this Lease shall be terminated immediately at the occurrence of any of the following events:

- a. By expiration of the Lease;
- b. By mutual agreement of both Parties; or
- c. In the case of casualty as provided for in Section 16.6.

18.5.2. The Parties acknowledge that this Lease may be terminated by Landlord upon five-days' written notice if Tenant fails to meet the Performance Standard.

18.5.3. Except as set forth in Section 2.3, termination of this Lease shall not extinguish Tenant's obligations to pay Rent or its other obligations including indemnification of Landlord.

19. SURRENDER OF PREMISES. The voluntary or other surrender of the Premises by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subleases or licensees, or may, at the option of Landlord, operate as an assignment to it of any or all of such subleases or licenses.

20. FORCE MAJEURE. If either Party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations or other cause without fault and beyond the control of the Party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, nothing in this Section 20 shall excuse Tenant from the prompt payment of any Rent.

21. ESTOPPEL CERTIFICATE. Tenant shall, at any time and from time to time upon not less than twenty-days prior notice from Landlord, execute, acknowledge and deliver to Landlord a statement in writing certifying that this Lease is unmodified and is in full force and effect, and the dates to which the Rent has been paid, and stating whether or not to the best knowledge that Landlord is in default under this Lease, and, if in default, specifying in reasonable detail each such default, and such other matters as Landlord may reasonably request, it being intended that any such statement delivered by Tenant may be relied upon by Landlord or any prospective purchaser of the fee or any prospective mortgagee or encumbrancer thereof.

If Landlord desires to refinance or transfer the Premises, then Tenant agrees to deliver to Landlord or any lender or transferee designated by Landlord such financial information

concerning Tenant as may be reasonably required by such lender or transferee and is reasonably available to Tenant. All such financial information shall be received by Landlord in confidence.

- 22. SUBORDINATION.** The rights of Tenant shall be and are subject and subordinate at all times to the lien of any mortgage now or hereafter in force against the Premises, and Tenant shall promptly execute and deliver such further instruments subordinating this Lease to the lien of any such mortgage as shall be requested by Landlord.
- 23. CONDEMNATION.** In the event a condemnation or transfer in lieu thereof results in a taking of any substantial and/or material portion of the Premises, Landlord or Tenant may, upon written notice given to the other Party within thirty days after such taking or transfer in lieu thereof, terminate this Lease. In connection therewith, Landlord and Tenant acknowledge that:
- a. Landlord (acting as the City of Morro Bay) possesses the power to take the Premises through eminent domain proceedings; and
 - b. The business to be conducted by Tenant upon the Premises is not a viable business without financial assistance from Landlord, therefore if Tenant must vacate the Premises, it will be extremely impractical, if not impossible, for Tenant to operate its business elsewhere.

Therefore, upon such termination Tenant shall have the right to claim and recover from Landlord and/or the condemning authority only the amount equal to the value of any improvements installed by Tenant. Tenant shall **not** receive any value related to the leasehold value of the property which shall be paid solely to Landlord.

- 24. USE OF LANDLORD'S NAME.** Tenant shall not use Landlord's name for advertising or promotion without Landlord's prior written consent which may be granted or withheld in its sole discretion.
- 25. TRADE FIXTURES.** Tenant has the right to use the Landlord's personal property located on the Premises but Tenant shall, at its own cost and expense, install and equip the Premises with all furniture, fixtures, trade fixtures, equipment and personal property reasonably required for the operation of Tenant's business. Any and all fixtures and appurtenances installed by Tenant shall conform with the requirements of all applicable laws and regulations. All furniture, equipment, and trade fixtures installed by Tenant shall remain the property of Tenant during the Term of this Lease but Tenant shall not be remove any trade fixtures during the Term hereof without Landlord's prior written consent, which may be provided by the City Manager on behalf of the Landlord, and which consent may be withheld or granted in Landlord's sole discretion. On termination of this Lease, Tenant may, provided Tenant is not in default of this Lease, remove at its own expense all trade fixtures, equipment and its personal property. At termination of this Lease, if Tenant has left any merchandise, furniture, equipment, signs, trade fixtures or other personal property in the Premises, Landlord may give Tenant written notice to remove such property. In the event such property is not removed within fifteen days after the date of said notice, Landlord may

dispose of said property in any manner whatsoever and Tenant hereby waives any claim or right to said property or any proceeds derived from the sale thereof. Any damage to the Premises resulting from the installation or removal of any of said trade fixtures or equipment shall be repaired by Tenant at Tenant's sole cost and expense.

26. QUIET ENJOYMENT. As long as Tenant is not in default under this Lease, Tenant shall have quiet enjoyment of the Premises during the Term.

27. HOLDOVER. Tenant has no right to retain possession of the Premises or any part thereof beyond the expiration or earlier termination of this Lease. Any holding over after the expiration of the term of this Lease, with the consent of Landlord, express or implied, shall be construed to be a tenancy from month to month, cancelable upon thirty-days' written notice, and at a monthly rent equal to two hundred percent of the rent set forth in Section 3.1 and upon terms and conditions as existed during the last month of the Term.

28. NOTICE AND WAIVER REGARDING RELOCATION, GOODWILL, PROPERTY INTEREST AND CONDEMNATION

28.1. Tenant knowingly and voluntarily acknowledges and agrees upon its vacation of the Premises at the end of the Lease term, upon the sooner termination thereof for any reason, or vacation, of the Premises under any circumstances, in no event shall Tenant be entitled or shall Landlord, including its employees, agents and assignees, be required to provide any relocation benefits, compensation for loss of goodwill, or assistance under any applicable federal, state, or local laws or regulations including without limitation, the Uniform Relocation Assistance Laws, California Government Code Section 7260 et seq. Further, Tenant being fully informed of any and all of its rights and obligations and all laws and regulations (including without limitation, the Uniform Relocation Assistance Laws, California Government Code Section 7260 et seq.) in connection therewith fully waives, releases and rejects any and all relocation assistance and benefits relating to or in any respect connected with Tenant vacating the Premises.

28.2. Tenant knowingly and voluntarily acknowledges and agrees upon its vacation of the Premises at the end of the Term, upon the sooner termination thereof for any reason, or vacation, of the Premises under any other circumstances, in no event shall Tenant be entitled or shall Landlord be required to provide any compensation or consideration to Tenant for the leasehold interest of Tenant, improvements pertaining to realty, personal property, fixtures and equipment, pre-condemnation damages, severance damages or interest and litigation expenses, whether based on condemnation, inverse condemnation or any other reason. Upon vacation of the Premises or termination of the Lease, Tenant knowingly waives and surrenders any claims or rights to the leasehold interest, improvements pertaining to realty, personal property, fixtures and equipment, pre-condemnation damages, severance damages or interest and litigation expenses.

29. MISCELLANEOUS.

- 29.1. **Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their successors and assigns and be governed by the laws of the State of California. Any litigation between the Parties hereto concerning this Lease shall be initiated in the Superior Court of the State of California for the County of San Luis Obispo.
- 29.2. **Partial Invalidity.** If any term, covenant, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereof.
- 29.3. **Successors in Interest.** The covenants herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all the Parties hereto, and each and all, including the Party making the assignment, shall be jointly and severally liable hereunder.
- 29.4. **No Oral Agreements.** This Lease covers in full each and every agreement of every kind or nature whatsoever between the Parties hereto concerning this Lease, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein, and there are no oral agreements. Tenant acknowledges that no representations or warranties of any kind or nature not specifically set forth herein have been made by Landlord or its employees, agents or representatives.
- 29.5. **Interest.** Any sum due to Landlord under this Lease shall bear simple interest from and after its due date at a rate equal to ten percent (10%) per month until paid to Landlord, but not in excess of the maximum rate permitted by law.
- 29.6. **Authority.** Each individual executing this Lease on behalf of Tenant represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of Tenant and that this Lease is binding upon Tenant in accordance with its terms.
- 29.7. **Time.** Time is of the essence of this Lease.
- 29.8. **Consistency.** Each provision herein shall be interpreted so as to be consistent with every other provision.
- 29.9. **Relationship of Parties.** The relationship of the Parties is that of Landlord and Tenant, and it is expressly understood and agreed that Landlord does not in any way or for any purpose become a partner of Tenant in the conduct of Tenant's business or otherwise, or a joint venture with Tenant.
- 29.10. **Non-Discrimination.** Tenant herein covenants by and for Tenant, Tenant's successors, heirs, executors, administrators and assigns, and all persons claiming under or through Tenant, and this Lease is made and accepted upon and subject to the following conditions: that there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry, in the leasing, subleasing, transferring,

use, occupancy, tenure or enjoyment of the Premises, nor shall the Tenant, or any person claiming under or through Tenant, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, Tenants, subtenants, subtenants or vendees of the Premises.

29.11. Non-Collusion. No official, officer, or employee of Landlord has any financial interest, direct or indirect, in this Lease, nor shall any official, officer, or employee of Landlord participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interest found to be "remote" or non interest pursuant to California Government Code Sections 1091 and 1091.5. Tenant represents and warrants that (i) it has not paid or given, and will not pay or give, to any third party including, but not limited to, Tenant or any of its officials, officers, or employees, any money, consideration, or other thing of value as a result or consequence of obtaining this Lease; and (ii) it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any official, officer, or employee of Landlord, as a result or consequence of obtaining this Lease. Tenant is aware of and understands that any such act(s), omission(s) or other conduct resulting in the payment of money, consideration, or other thing of value will render this Lease void and of no force or effect.

29.12. Notices. Wherever in this Lease it shall be required or permitted that notice and demand be given or served by either Party to this Lease to or on the other, such notice or demand shall be given or served in writing and shall not be deemed to have been duly given or served unless in writing, and personally served or forwarded by certified mail, postage prepaid, addressed as specified below. Either Party may change the address set forth below by written notice by certified mail to the other. Any notice or demand given by certified mail shall be effective one (1) day subsequent to mailing.

Landlord: City of Morro Bay
Attn: City Manager
595 Harbor Street
Morro Bay, CA 94585

With a copy to: Aleshire & Wynder, LLP
Attn: Joseph W. Pannone, City Attorney
Continental Park Terrace, Suite 475
2361 Rosecrans Avenue
El Segundo, CA 90245-4916

Tenant: Ciano Real Estate, Inc.
Attn: Frankie Ciano
360 Morro Bay, Blvd.
Morro Bay, California 93442

- 29.13. Not an Offer.** The submission of this Lease and any ancillary documents to Tenant shall not constitute an offer to lease, and Landlord shall have no obligation of any kind, express or implied, to lease the Premises to Tenant until Landlord has approved, executed and returned to Tenant a fully signed copy of this Lease.
- 29.14. Amendments.** This Lease may be modified or amended only in writing executed by both Parties and approved by Landlord in accordance with applicable law.
- 29.15. Exhibits.** Exhibit A is attached hereto and incorporated herein by reference.
- 29.16. Acknowledgement of Content.** Each Party acknowledges that they have read and fully understand the contents of this Lease and have had an opportunity to consult with an attorney regarding the same. This Lease represents the entire and integrated agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral.

- Signatures on next page -

IN WITNESS WHEREOF, the Parties have duly executed this Lease on the day and year first above written in Morro Bay, California.

LANDLORD:

CITY OF MORRO BAY,
a municipal corporation

By: _____
Scott Collins, City Manager

_____, 2018

ATTEST:

Dana Swanson, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Joseph W. Pannone, City Attorney

TENANT:

CIANO REAL ESTATE, INC., a
California corporation

By: _____
Frankie Ciano, owner

_____, 2018

By: _____

Its _____

_____, 2018

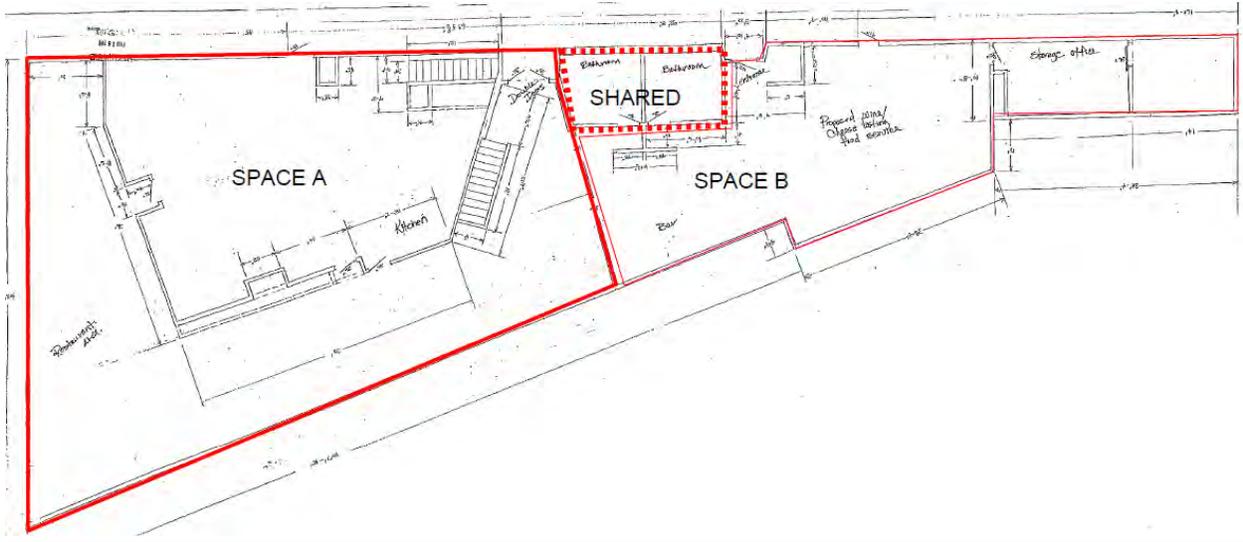
(Attach Notary Acknowledgements for
Tenant)

EXHIBIT A

DESCRIPTION AND DEPICTION OF PREMISES

The Premises consist of Space A and shared use of the bathrooms as depicted on the figure below.

(APN: 066-321-027)





AGENDA NO: A-10

MEETING DATE: June 26, 2018

Staff Report

TO: Honorable Mayor and City Council

DATE: June 20, 2018

FROM: Scott Collins – City Manager

SUBJECT: Agreement with Chamber of Commerce for Implementation of the Economic Development Strategic Plan

RECOMMENDATION

Staff recommends the City Council authorize the City Manager, subject to the approval of the City Attorney, to sign an agreement with the Chamber of Commerce for economic development services as described in the 4MB Memorandum of Understanding and approve the expenditure by the City for a payment to the Chamber in the amount of \$30,000 for FY 2018/19, with monthly payments of \$2,500.

ALTERNATIVES

No alternatives are recommended.

FISCAL IMPACT

There is no additional fiscal impact related to this recommendation. City Council approved a \$30,000 allocation for this program in the FY 2018/19 Adopted Budget.

BACKGROUND/DISCUSSION

City Council adopted the Economic Development Strategic Roadmap (Roadmap) in March 2017, which is intended to serve as a “roadmap to guide economic development initiatives and actions which could have the most direct impact on improving the City of Morro Bay’s economic growth.” The City and business community invested significant resources into developing the Roadmap, understanding the importance of creating economic sustainability in the face of some significant local economic challenges including the closure of the Morro Bay Power Plant in 2013. In response to those challenges, the Roadmap focuses on enhancing existing efforts to maximize Morro Bay strengths and opportunities, and mitigating or changing perceived and real constraints to business growth. Thus, the Roadmap highlights key efforts the City and partners, in particular the Chamber of Commerce (Chamber), can undertake to achieve economic vitality for Morro Bay.

Implementation of the Roadmap has been slow to materialize, due to a number of constraints, including staffing levels and turnover of leadership at the City. Understanding the importance of stimulating economic growth and putting the Roadmap to good use, in early 2018, City Council identified implementation of the Roadmap as a top priority in its goal setting process.

Since that time, City and Chamber staff have discussed various options for implementing the Roadmap. Chamber Executive Director, Erica Crawford researched other communities that have strong partnerships between chambers and municipalities and identified a successful model in

Prepared By: SC

Dept Review: _____

City Manager Review: SC

City Attorney Review: JWP

Chico, California. That model brings together key organizations, such as the university, workforce development agencies, etc. Combining the collective strengths of the individual organizations into a coordinated team allows for a broad service delivery to the business community.

At the same time, City and Chamber staff met with business owners in the four economic centers in Morro Bay (Downtown, Embarcadero, North Morro Bay and Quintana) to discuss the Roadmap and particular action items such wayfinding and branding. Business owners expressed interest in the wayfinding effort and for continuing to participate in dialogue with the City and Chamber to help facilitate improvement of the conditions for doing business in Morro Bay, including looking at issues like parking.

From those discussions, City and Chamber determined the recommended course of action is to pursue a formal partnership. Called 4MB, for the four economic centers in Morro Bay, the Chamber proposes to deliver a business outreach and assistance program to the City (see attachment 1). The program will focus on workforce development and job placement, self-employment trainings, business resource fairs, business mentorship and general interactions with business owners. The goal of the program is to increase private sector investment, grow and retain jobs, and improve communication between the City and business community.

Within the 4MB MOU (exhibit A to the attached draft agreement), key partners (Chamber, CalPoly, Mission Community Services Corporation, Eckerd Connects, Economic Vitality Corporation, Cuesta College, SCORE, and MB High School) and roles are identified and metrics of success are defined. In the immediate term, the Chamber will assist the City in developing branding and wayfinding to help residents and visitors navigate to key destination points in the City and between the four economic centers. City staff believes that program will help implement key components of the Roadmap and use the existing business services assets in the community to drive economic vitality, as has proven true in other communities with similar programs.

City Council approved a \$30,000 allocation for this effort through the FY 2018/19 Approved Budget. The funds will be used to pay the Chamber for coordination, and the various partners a stipend for their participation in 4MB. Staff recommends Council authorize the City Manager to sign an agreement with the Chamber of Commerce for economic development services as described in the draft agreement and 4MB MOU, in a form approved by the City Attorney.

The Chamber Board approved their participation in the agreement. If approved, then the Chamber and City will begin the 4MB efforts as soon as early July 2018. The calendar of events/meetings for 4MB is attached. The agreement stipulates the types of data that will be collected to measure outputs of the effort. Regular reports will be provided to the Chamber Board and City Council, with a full evaluation scheduled prior to the FY 2019/20 Budget adoption.

CONCLUSION

The Chamber is able to execute a key component of the Roadmap, and a formalized agreement between the City and Chamber provides a method to formalize those efforts. A full evaluation of 4MB will be completed prior to next year's budget, so Council and the Chamber Board can make an informed decision about continuing this effort into future years.

ATTACHMENTS

- 1) Draft agreement with Chamber of Commerce, 4MB MOU as exhibit
- 2) 2018 Schedule of Proposed Activities for 4MB

**AGREEMENT
BY AND BETWEEN THE CITY OF MORRO BAY
AND THE MORRO BAY CHAMBER OF COMMERCE
ECONOMIC DEVELOPMENT SERVICES FOR FISCAL YEAR 2018-2019**

This AGREEMENT is made and entered into by and between the City of Morro Bay, a municipal corporation (hereinafter called “City”), and the Morro Bay Chamber of Commerce, a California non-profit corporation (hereinafter called “Chamber”).

WHEREAS, City and Chamber will benefit from viable and vibrant business retention, expansion and development within City’s jurisdictional boundaries;

WHEREAS, Chamber and City have worked together for several years to attempt to achieve that viable and vibrant business community; and

WHEREAS, Chamber and City desire to continue and enhance those efforts through renewed focused efforts and City funding.

NOW, THEREFORE, the parties agree as follows:

Section 1. Intent

City and Chamber recognize the strength and successes of collaboration and cooperation. It is the intent of this Agreement to reflect a formalized cooperative agreement between the two parties to further the business climate in City’s jurisdiction in an effective and efficient manner. This Agreement describes the scope of services Chamber will provide with funding provided by City during City’s 2018/2019 Fiscal Year (FY). This Agreement is not intended to be all-inclusive of all efforts between the parties regarding economic development, but does set forth the parties’ understanding of the use of the Funding.

Section 2. Funding and Use of Funding.

A. For City’s FY 2018-2019 (the “Period”), City shall provide Thirty Thousand Dollars (\$30,000.00) (the “Funding”) to Chamber from City’s General Fund with a monthly payment of Two Thousand Five Hundred Dollars (\$2,500.00) for expenditures for the following services and activities:

1. Chamber, through its Executive Director, and City, through its City Manager (or his designee) shall meet regularly, at mutually convenient times, to collaborate and coordinate economic development strategies.
2. Chamber shall agree to notify the City as soon as possible regarding any business success or needs or other relevant updates.
3. Chamber shall use best efforts to meet the following performance metrics (the “Performance Matrix”):

Deliverable	Annual Target
Business Walk	12
Focus Group	12
Commercial Property Owner Reception	4
Economic Center Forum	4
Demand-Driven Workshop	11
Business Resource Fair	2

4. Chamber and City shall implement the provisions of the 4MB MOU, attached hereto as Exhibit A and incorporated herein by this reference, (the “MOU”); provided, that if there is any conflict between this Agreement and the MOU, then this Agreement shall prevail.

Section 3. Other Activities

A. Chamber shall also do the following:

1. Ensure no funding provided by City shall be used to support activities that generally serve and benefit only Chamber membership or programs not directly related to the economic development program described in this Agreement;
2. Operate the program hereunder for the general public good for the promotion of business, industry, and trade within City;
3. Make its books and financial records, concerning the funds expended under this Agreement, available to City for inspections, review and audit; and
4. Establish and maintain an accounting system in accordance with generally accepted accounting principles and standards. The system shall detail all costs chargeable to City under this Agreement and shall substantiate all such costs, and comply with any applicable State and Federal standards.

B. Chamber shall not use City funding for any of the following:

1. Attempting to influence legislation;
2. Organizing or engaging in protests, petitions, boycotts, or strikes;
3. Assisting, promoting or deterring union organizing;

4. Impairing existing contracts for services or collective bargaining agreements;
5. Engaging in partisan political activities or other activities designed to influence the outcome of an election to any public office;
6. Participating in, or endorsing, events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected officials;
7. Engaging in religious instruction; conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization; or
8. Any other activity prohibited by any law, rule or regulation or City cannot legally perform or participate in.

Section 4. Payments.

Chamber shall submit written requests for each monthly payment to be used for expenditures based on Chamber's adopted budgets. City shall provide payment to Chamber, upon approval of the request by the City's Finance Director. City shall use its best efforts to make payment to Chamber within 25 days after receipt of a request.

Section 5. Reports.

A. Chamber shall present quarterly updates (September/December/March/June) to the City Council at a regularly scheduled City Council meeting on the status of its efforts to include:

1. Data that measure Chamber's success reflective of the Performance Matrix;
2. City businesses that received direct assistance from Chamber for business retention or expansion;
3. Prospective businesses Chamber talked with about relocating to or opening in City; and
4. The persons relied on to support the work of this Agreement.

B. Chamber shall provide City with an annual report reviewed by a Certified Public Accountant, itemizing how Chamber expended City's payment specified in Section 2. Such report shall provide separately detailed accounts for each program funded by City, and be due no later than 6 months after the end of the Period. **This provision shall survive the termination of this Agreement.**

Section 6. Ownership of Work Product.

A. Unless otherwise agreed upon in writing, all reports, documents, or other written or visual

material or any other material in any media, including any images, taglines, logos, or other media created or developed by Chamber or any third party contracted by Chamber, in the performance of this Agreement, if paid in whole by the funding provided by this Agreement (“Work Product”) shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. All Work Product shall be considered to be “works made for hire,” and all such Work Product and any and all intellectual property rights arising from their creation, including, but not limited to, all copyrights and other proprietary rights, shall be and remain the property of City without restriction or limitation upon their use, duplication or dissemination by City. Chamber shall not obtain or attempt to obtain copyright protection as to any of the Work Products.

B. It is understood and agreed Chamber currently owns exclusively intellectual property rights to its name, committee and event titles, and logos, which will be utilized in the performance of this Agreement, (“Chamber Property”). Chamber reserves all rights, title and interest in Chamber Property, and hereby grants City a revocable, nonexclusive, license to the use of Chamber Property to the extent it becomes incorporated into, and inseparable from, the Work Product.

C. **This section shall survive termination of this Agreement.**

Section 7. Assignment. This Agreement shall not be assigned by Chamber without the written consent of City.

Section 8. Independent Contractor.

At all times during the term of this Agreement, Chamber shall be independent contractors and Chamber, their officers, employees and agents shall not be employees of City.

Section 9. Personnel.

Chamber represents it has, or will secure at its own expense, all personnel required to perform the services under this Agreement. Chamber shall be solely responsible for the work performed by third party contractors, including timely performance and payment.

Section 10. Term.

This Agreement shall remain in full force and effect from July 1, 2018 until June 30, 2018, unless terminated earlier as provided in Section 11 of this Agreement.

Section 11. Termination of Agreement.

City or Chamber may terminate this Agreement at any time, with or without cause, upon thirty-days’ written notice to the other party. In the event of such termination, City shall pay Chamber for all costs and obligations reasonably incurred by Chamber in satisfactorily performing its services under this Agreement prior to the date of termination, and such payment shall be in full satisfaction of City’s obligations hereunder. City shall not be obligated to pay additional funds after issuance or receipt of such notice.

Section 12. Notice.

Whenever it shall be necessary for any party to serve notice on another respecting this Agreement, such notice shall be served by certified mail, postage prepaid, to the addresses below, unless and until a different address may be furnished in writing by any party:

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

To Chamber: Morro Bay Chamber of Commerce
695 Harbor Street
Morro Bay, CA 93442

Such notices shall be deemed to have been served within seventy-two hours after the same has been deposited in the United States Post Office by certified mail. This shall be valid and sufficient service of notice for all purposes.

Section 13. Insurance.

A. Chamber shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Comprehensive General Liability Insurance with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by Chamber.

B. Chamber agrees to maintain in force at all times during the performance of work under this Agreement workers' compensation and employer's liability insurance as required by law.

C. Chamber shall require each of its sub-consultants or sub-contractors to maintain insurance coverage, which meets all of the requirements of this Agreement unless otherwise determined by the City's Risk Manager.

D. The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+; VII in the latest edition of Best's Insurance Guide.

E. If Chamber fails to keep the aforesaid insurance in full force and effect, then City shall notify Chamber it is a breach of this Agreement and Chamber has three days to cure such breach. If such breach is not cured by Chamber as required in this paragraph, then City may terminate this Agreement or, if insurance is available at a reasonable cost, then City may take out the necessary insurance and pay, at Chamber's expense, the premium thereon.

F. At all times during the term of this Agreement, Chamber shall maintain on file with City's Risk Manager a certificate or certificates of insurance on the form required by City, showing the aforesaid policies are in effect in the required amounts. Chamber shall, prior to commencement of work under this Agreement, file with the Risk Manager such certificate or certificates. The policies of insurance required by this Agreement shall contain an endorsement naming City, its officers,

employees and agents as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty-days' prior written notice to City, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

G. The insurance provided by Chamber shall be primary to any coverage available to City. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

H. Any deductibles or self-insured retentions must be declared to and approved by City prior to commencing work under this Agreement.

Section 14. Indemnification.

Chamber shall defend, indemnify, and hold harmless City, its officials, officers, employees, volunteers and agents serving as independent contractors in the role of City officials (collectively "Indemnitees") from any and all claims, demands, causes of action, costs, including reasonable attorney's fees and court costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, ("Damages") in any manner arising out of or incident to any act or omission of Chamber or any of its employees or its agents in connection with the performance of this Agreement, including without limitation the payment of all consequential damages and reasonable attorney's fees and other related costs and expenses, except for such loss or damage arising from the sole negligence or willful misconduct of any of the Indemnitees; provided, that the obligation to indemnify and hold harmless is only to the extent Chamber or its officers, employees or agents cause the Damages. All duties of Chamber under this Section shall survive termination of this Agreement.

Section 15. Extent of Agreement.

This Agreement represents the entire and integrated Agreement between the parties on the matters included herein and supersedes any and all prior negotiations, representations or agreements, instrument signed by all parties to this Agreement.

Section 16. Severability.

Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the XXXX day of XXXXX 2018, at Morro Bay, California.

CITY OF MORRO BAY

MORRO BAY CHAMBER OF COMMERCE

By: _____
SCOTT COLLINS
City Manager

By: _____

Its _____

Attest:

By: _____

Its _____

DANA SWANSON,
City Clerk

DRAFT

EXHIBIT A

4MB MOU

(Attached immediately behind this page)

DRAFT



Memorandum of Understanding

Public-Private Economic Development Partnership

Rev June 7, 2018

Purpose. This document outlines private sector delivery of a business outreach and assistance program to the City of Morro Bay. This program is intended to retain and expand existing business and to recruit new industry and development to the City. In the immediate term, this program will deliver consensus-derived branding in each of Morro Bay's four economic centers and wayfinding (directional) signage content and placement to navigate between them.

The 4MB Business Outreach and Assistance Program (4MB) to be delivered by the Morro Bay Chamber of Commerce and the 4MB team will provide demand-driven workforce development and job placement, self-employment trainings, business resource fairs, one-to-one and group business mentorship, and frequent scheduled interaction between business persons, commercial property owners, and city staff. The overall goal of the program is to increase private sector investment, grow and retain jobs, and improve communication between the City of Morro Bay and the business community.

This MOU is necessary to:

- Articulate that the Morro Bay Chamber of Commerce is willing to work with the City of Morro Bay to implement recommendations set forth in the council-adopted Economic Development Strategic Plan.
- Clearly define the deliverables and metrics of the Program.

This MOU sets forth the following agreements:

- Morro Bay Chamber of Commerce will begin plan implementation no later than 30 days after adoption of this MOU.
- City of Morro Bay will name a city ombudsman/project lead.
- City of Morro Bay will designate one City Councilperson as champion for each of the four economic centers of Morro Bay.

- City of Morro Bay will commit to fund allocation of \$30,000 for Chamber/4MB to deliver this new program to all Morro Bay businesses.
- Morro Bay Chamber of Commerce will be the fiduciary agent for 4MB.
- 4MB partners/advisors are: City of Morro Bay, Morro Bay Chamber of Commerce, Mission Community Services Corporation (MCSC), Eckerd Connects, SCORE, Cal Poly CIE Small Business Development Center (Cal Poly CIE SBDC), Economic Vitality Corporation (EVC), Cuesta Workforce Economic Development, Cal Poly Career Services, and Morro Bay High School.
- Progress will be reported out monthly to City Council and one annual written report will be delivered to City of Morro Bay.

Parties. The participants working directly with the City of Morro Bay staff and elected officials are the Morro Bay Chamber of Commerce, MCSC, Eckerd Connects, SCORE, Cal Poly CIE SBDC, EVC, Cuesta College Workforce Economic Development, Cal Poly Career Services, and Morro Bay High School.

Above participants are entering into this Memorandum of Understanding on delivery of services, goals, and budget allocation to support outreach and assistance services deployed throughout the City of Morro Bay.

Scope of Work.

1. Business Outreach

*see attached calendar

The overall goal of business outreach is to make contact with every business and commercial property owner in Morro Bay over the course of one year either personally, in group forums, or with a leave-behind containing contact information. 4MB will complete three business walks, three focus groups, one commercial property owner reception, and one economic center forum in each of North Morro Bay, Embarcadero, Downtown, and Quintana over twelve months. Direct outreach to commercial property owners by Chamber CEO, City ombudsman, and select 4MB team members will derive from a comprehensive list of property owner. 4MB triage services will be employed to business owner/operators experiencing immediate hardship due to staffing deficits, lease termination, or sudden financial strain. All 4MB partners will engage business owners with their programs and services at a business resource fair to take place twice in FY 2018/19. Finally, 4MB will conduct a resident-focused survey to gauge business demand in each district to inform private sector investment.

Metrics to be reported monthly to City Council will include:

- Number of businesses and commercial property owners contacted in walks, focus groups, receptions, and forums
- Number of walk volunteers
- Actionable items and response
- Real-time reporting on branding, gateway and wayfinding
- Leads on development projects

2. Business Assistance

4MB employs a team approach to maximize positive impact on local businesses. The Morro Bay Chamber of Commerce and its partners will share their resources and data with one another and the City to deliver direct business services. 4MB will deliver:

1. One multi-week business training course per quarter.
2. One business resource fair per four months.
3. Clear pathways for job seekers to connect with employers.
4. Pathway to funding for employers to upskill existing workers.
5. Free access to a broad range of business mentors for one-to-one and group consulting.

Metrics to be reported to City Council will include:

- Attendees per workshop, training, and resource fair.
- New client acquisition for one-to-one and group business consultancy, number of mentoring sessions per client, number of new or updated business or marketing plans completed.
- Survey findings on relevance/utilization/satisfaction of services rendered to workshop and training attendees and mentoring clients.
- Number of job seekers matched to employers.
- Number of workers upskilled to higher wage jobs.
- Quantity and type of services provided to employers, number of hirings, employer/worker retention.

Definitions.

Business Walk -

Held monthly. Purpose is to engage business operators in their establishments and ask about business conditions. Non-sales and non-regulatory walks. Conducted rain or shine by Chamber volunteers, City staff and representatives, and 4MB partners when available. Postcard invitations to the following week's focus group will be left at each business during the walk.

Focus Group -

Held monthly. Purpose is to define district branding, discuss storefront and streetscape improvements, gateway improvements, development opportunities, and points of interest for wayfinding signage. Facilitated by the Chamber of Commerce. Attended by businesses in the economic center's working group, City ombudsman, City public safety staff, and City Council representative.

Commercial Property Owner Reception -

Held quarterly. Purpose is to introduce redevelopment opportunities in the district. Facilitated by Chamber of Commerce, City ombudsman and City Community Development Department. Attended by commercial property owners from the economic center, City ombudsman, and City Council representative.

Economic Center Forum -

Held quarterly. Purpose is to report out progress made on action items from district Focus Group discussions and Commercial Property Owner Receptions. Facilitated by Chamber of Commerce and City Community Development Department. Attended by district business and commercial property owners, City ombudsman, City Council representatives and 4MB team members.

Business Resource Fair -

Held semi-annually. Purpose is to provide education on and access to 4MB team partners' programs and services under one roof.

Term.

This MOU is in effect for the duration of the contract with the City of Morro Bay.

Termination.

Any participating organization may terminate their participation in this MOU, without cause, by giving thirty day (30) written notice to the remaining participants. After a termination is finalized, any remaining funds will be distributed equally among the remaining team participants.

Modification.

Any participating organization may request modifications or additions to this MOU. Any changes to this MOU will require the approval of all participating organization's approval before enactment.

{Signatures on Next Page}

IN WITNESS WHEREOF, the parties to this MOU have executed this MOU by their duly authorized representatives on the dates of their signatures.

Morro Bay Chamber of Commerce Date

MCSC Date

Cal Poly CIE SBDC Date

SCORE Date

Cuesta College Workforce Economic Development Date

Cal Poly Career Services Date

EVC Date

Morro Bay High School Date

Eckerd Connects Date



2018

2019

- BUSINESS WALK
- FOCUS GROUP
- 4MB TEAM MEETING
- WORKSHOP TRAINING
- ECONOMIC CENTER FORUM
- CITY COUNCIL REPORTS
- COMMERCIAL PROPERTY OWNER RECEPTION
- BUSINESS RESOURCE FAIR



JULY							AUGUST						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
1	2	3	4	5	6	7				1	2	3	4
8	9	10	11	12	13	14	5	6	7	8	9	10	11
15	16	17	18	19	20	21	12	13	14	15	16	17	18
22	23	24	25	26	27	28	19	20	21	22	23	24	25
29	30	31					26	27	28	29	30	31	

SEPTEMBER							OCTOBER						
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9	10	11	12	13	14	15	14	15	16	17	18	19	20
16	17	18	19	20	21	22	21	22	23	24	25	26	27
23	24	25	26	27	28	29	28	29	30	31			
30													

NOVEMBER							DECEMBER						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
						1							1
2	3	4	5	6	7	8	2	3	4	5	6	7	8
9	10	11	12	13	14	15	9	10	11	12	13	14	15
16	17	18	19	20	21	22	16	17	18	19	20	21	22
23	24	25	26	27	28	29	23	24	25	26	27	28	29
30							30	31					

JANUARY							FEBRUARY							
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12	13	14	15	16	17	18	10	11	12	13	14	15	16	
19	20	21	22	23	24	25	17	18	19	20	21	22	23	
26	27	28	29	30	31		24	25	26	27	28			

MARCH							APRIL						
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9	10	11	12	13	14	15	14	15	16	17	18	19	20
16	17	18	19	20	21	22	21	22	23	24	25	26	27
23	24	25	26	27	28	29	28	29	30				
30	31												

MAY							JUNE						
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9	10	11	12	13	14	15	9	10	11	12	13	14	15
16	17	18	19	20	21	22	16	17	18	19	20	21	22
23	24	25	26	27	28	29	23	24	25	26	27	28	29
30	31						30						

BUSINESS WALKS

Held monthly. Purpose is to engage business operators in their establishments and ask about business conditions. Non-sales and non-regulatory walks. Conducted rain or shine by Chamber volunteers, City staff and representatives, and 4MB partners when available. Postcard invitations to the following week's focus group will be left at each business during the walk.

FOCUS GROUPS

Held monthly. Purpose is to define district branding, discuss storefront and streetscape improvements, gateway improvements, development opportunities, and points of interest for wayfinding signage. Facilitated by the Chamber of Commerce. Attended by businesses in the economic center's working group, City ombudsman, City public safety staff, and City Council representative.

COMMERCIAL PROPERTY OWNER RECEPTIONS

Held quarterly. Purpose is to introduce redevelopment opportunities in the district. Facilitated by Chamber of Commerce, City ombudsman and City Community Development Department. Attended by commercial property owners from the economic center, City ombudsman, and City Council representative.

ECONOMIC CENTER FORUMS

Held quarterly. Purpose is to report out progress made on action items from district Focus Group discussions and Commercial Property Owner Receptions. Facilitated by Chamber of Commerce and City Community Development Department. Attended by district business and commercial property owners, City ombudsman, City Council representatives and 4MB team members.

BUSINESS RESOURCE FAIRS

Held semi-annually. One in October, one in March. Purpose is to provide education on and access to 4MB team partners' programs and services under one roof.

DISCUSSION

The terms of the renewed Visitor Services agreement are substantially the same as the current year agreement, including a provision that allows the parties to agree to a renewal for an additional year at the same City contribution. The term also includes the City's payment to the Chamber of \$50,000 for the services the Chamber provides. The \$50,000 expenditure was approved by City Council through the FY 2018/19 Budget.

In addition, City and Chamber staff have renegotiated a new lease for the Chamber to continue to be located at 695 Harbor Street. The new lease tracks the provisions of the current lease. The new lease is only for one year, due to the Chamber's desire for flexibility regarding future funding issues.

The Chamber Board has approved the extension of the lease and Visitor Center agreements (attached letter).

The basics of the contract include requirements for the Visitor Center to:

- Be open to the public all days with the exception of Thanksgiving Day, Christmas Day, and New Year's Day;
- Be open at least 7 hours specifically for Visitor Center services, and host visitors during times outside of Visitor Center hours when the Chamber is open to the public;
- Include at least one ADA-accessible unisex restroom facility for public use, or one must be available for public use within 150 feet of the Visitor Center;
- Be within walking distance of the Morro Bay Transit Center;
- Include one phone line dedicated to Visitor Center purposes;
- Have only City-approved signage posted onsite. Major signage on the facility will be City-approved and be at the expense of the City. Any other signage will be City-approved and at the expense of the Chamber;
- Include on-site wireless Internet access for visitors at all times the Visitor Center is open to the public;
- Include an Internet-enabled computer terminal accessible to visitors at all times the Visitor Center is open to the public;
- Have some form of limited visitor information on the exterior of the Visitor Center available to the public who may not want to enter the Visitor Center, or when the Visitor Center is otherwise closed to the public; and
- The visitor's guide produced by Morro Bay Tourism will continue to be provided at the Visitor Center.

The Chamber is required to submit quarterly reports related to the activities of the Visitor Center, track referrals to hotels and other facilities and vendors, provide stellar customer service and be subject to financial inspection, review and audit.

CONCLUSION

Staff believes the Chamber of Commerce has managed the Visitor Center well and has created strong partnerships, better synchronization, and control of efforts related to business retention and expansion, business recruitment, and tourism. Staff recommends Council approval of the agreements.

ATTACHMENTS

1. Letter Requesting Visitor Center Agreement Extension
2. Visitor Center Services Agreement
3. 695 Harbor Street Lease Agreement

City of Morro Bay

595 Harbor Street

Morro Bay, CA 93442

23rd April, 2018

Subject: Morro Bay Visitor Center Agreement and Chamber Lease Extension

This letter is regarding to the Morro Bay Visitor Center Agreement extension as set forth in Section 2 of existing agreement between the City of Morro Bay and the Morro Bay Chamber of Commerce. We are ready to extend this agreement for a period of one year, to commence July 1, 2018 and terminate on June 30, 2019. We accept the maximum amount of \$50,000 for the additional term, payable in monthly installments.

We will continue to execute all Covenants of the agreement, originally entered into on the 25th day of August, 2015.

The Morro Bay Chamber of Commerce looks forward to continuing to provide visitor information services on behalf of the City of Morro Bay, its businesses, and its residents, for the Fiscal Year 2018/2019.

Thank you,



Erica D. Crawford

President/CEO

Morro Bay Chamber of Commerce

695 Harbor Street

Morro Bay, CA 93442

805-772-4467

Morro Bay Visitor Center Agreement

This Agreement is made and entered into this 26th day of June, 2018 by and between the City of Morro Bay, a municipal corporation, hereinafter referred to as "the City" and the Morro Bay Chamber of Commerce, a California non-profit corporation, hereinafter referred to as "the Chamber."

WHEREAS, the City recognizes continued development of the community is vital, and therefore, wishes to provide for a coordinated effort to encourage, promote, and foster the economic advantages as a vibrant tourist and recreational center; and

WHEREAS, a Morro Bay Visitor Center (the "Center") is the welcoming face to Morro Bay visitors, and it is crucial the Center be the cheerleader for the entire destination that is Morro Bay; and

WHEREAS, the Chamber has experience, together with available facilities, to provide visitor center services, necessary to enhance the economic development and vitality for the City; and

WHEREAS, it is in the interest of the community for the Chamber to provide and perform services to facilitate the welcoming and hospitality of visitors to the City, in a manner designed to promote the unique character, heritage and special attributes of the community and enhance the economic vitality of the City; and

WHEREAS, the City and the Chamber agree those goals can best be accomplished through the operation of a Visitor Center by the Chamber, under the terms and conditions outlined hereinafter, making use of funds provided, pursuant to this contract, by the City for operations of the Visitor Center.

Now, therefore, in consideration of the covenants and conditions stated herein, and in consideration of the mutual benefits that will accrue to each of the parties hereto, as well as to the public good of all the citizens of Morro Bay, the parties have agreed, and do hereby agree, as follows:

- 1) The foregoing recitals are true and correct, and constitute accurate statements of the facts herein.
- 2) The term of this Agreement shall commence on July 1, 2018 and terminate on June 30, 2019 (the "Term"). The City and the Chamber may, by mutual written agreement no later than 60 days prior to expiration of the Term, extend this Agreement for one additional year beyond the Term.
- 3) The maximum amount due and payable during the Term is \$50,000. The City shall pay said amounts to the Chamber in monthly increments, in advance, for each contract month. Such funds are to be expended only under the terms, conditions and restrictions, and for the purposes specifically set forth in this Agreement. If this Agreement is extended pursuant to Paragraph 2), above, then the City shall pay an additional \$50,000, for that additional year and incrementally as stated herein

- 4) The Chamber shall provide qualified and competent staff, for the successful implementation of this Agreement.
- 5) The Chamber shall maintain a Visitor Center at 695 Harbor Street suitable for the conduct of visitor information services. The Center must:
 - a. Be open to the public every day with the exception of Thanksgiving Day, Christmas Day, and New Year's Day, or those times when the City faces an emergency or disaster warranting closure of the Center,
 - b. Be open at least 7 hours specifically for Visitor Center services, normally 10am to 5pm, and will also host visitors during times outside of Visitor Center hours when the Chamber is open to the public,
 - c. Include at least one ADA-accessible unisex restroom facility for public use or one must be available for public use within 150 feet of the Visitor Center,
 - d. Be within walking distance of the Morro Bay Transit Center,
 - e. Include one phone line dedicated to Visitor Center purposes,
 - f. Have only City-approved signage posted onsite. Main signage on the facility will be City-approved and be at the expense of the City. Any other on-site signage will be City-approved and at the expense of the Chamber. The City shall be responsible for all offsite signage directing the public to the location of the Visitor Center,
 - g. Include on-site wireless Internet access for visitors at all times the Visitor Center is open to the public,
 - h. Include an Internet-enabled computer terminal accessible to visitors at all times the Visitor Center is open to the public,
 - i. Have some form of limited visitor information on the exterior of the Visitor Center available to the public who may not want to enter the Visitor Center, or when the Visitor Center is otherwise closed to the public and
 - j. Be open to facilitate contact with news media representatives, and to disseminate news releases and promotions information, in a professional manner, for various media, general public, and visitor information needs, based on information provided by the City/TBID, with City approval.
- 6) The Chamber shall provide extended hours for tourist peak season from May to September, opening 9am to 5pm and provide Visitor Center kiosk services at the Main Street Market during summer months. The Chamber shall evaluate and upgrade technology as needed at the Visitor Center and continue to improve the mobile functions of the website sufficient to provide visitors with quick access to pertinent information.
- 7) The Chamber shall respond promptly to all requests, including during high volume periods, of information requests including telephone calls and E-mails. The Chamber shall maintain a voicemail system during closed office hours to receive messages for visitor information requests.
- 8) The Chamber shall coordinate services for prospective visitor groups, to include referrals to motels, rental facilities, caterers, entertainment and other services. Said referrals will be tracked and recorded. The Chamber shall provide promotional publication materials for visitors that specify recreational opportunities, campgrounds, art galleries and other services. The visitor's guide produced by the Morro Bay Tourism Bureau will continue to be provided at the Visitor Center.

- 9) The Chamber shall ensure no funds provided by the City will be used to support activities not directly related to the Visitor Center. Nothing in this contract, however, shall prevent the City from specifically funding new projects as proposed by the Chamber.
- 10) The Chamber shall submit written and oral quarterly reports to the City Manager or his/her designee regarding visitor information and promotional activities, and quarterly reports of the same to the City Council, excluding monthly expenditures and invoice information, which will be managed by administrative staff. Those reports need not be lengthy, but should be specific as to the following:
 - a. Number of visitors to the Visitor Center.
 - b. The type and quantity of materials dispensed from the Visitor Center.
 - c. Summary of telephone and email information requests received.
 - d. The type and quantity of any special materials distributed to groups.
 - e. The number of visitor site referrals made.
 - f. Detailed report of Visitor Center monthly expenditures.
 - g. Copies of invoices to support charges.
- 11) Failure to provide such quarterly reports will be considered by the City as possible grounds for termination of this Agreement.
- 12) The Chamber agrees to make all Visitor Center books and financial records, or any other books and financial records concerning the funds expended under this Agreement, available to the City for inspection, review and audit. The Chamber will, at no expense to the City, provide an annual report and accounting of expenditures of the funds covered by this Agreement. The Finance Director shall work with the Chamber to perform a detailed financial review at the end of each City-Fiscal Year, which will be presented to the City Manager.
- 13) The Chamber agrees all persons working for the Chamber under this Agreement shall in no way be considered employees of the City; and any liability, which might arise under the Worker's Compensation Law of the State of California due to any injury of any employee of the Chamber, shall be the sole liability of the Chamber. The Chamber shall, throughout the period of this Agreement, maintain in full force and effect, a policy of worker's compensation insurance meeting statutory limits of Labor Code covering all its employees and volunteers. Said policy shall include a waiver of subrogation against City, its officers, agents, employees and volunteers.
- 14) The Chamber shall not use any monies received under this Agreement for the endorsement, opposition or participation in any political or lobbying activity involved in the support or opposition to any candidate for public office or proposed ballot measure.
- 15) The Chamber agrees to indemnify, defend and hold harmless City, and its officers, employees, and agents, from any and all claims, suits, demands and causes of action and costs, including reasonable attorney's fees and court costs ("Damages"), resulting from this Agreement; provided, that the obligation to indemnify and hold harmless shall only be to the extent Damages are caused by the Chamber or any of its officers, employees, agents or contractors.

- 16) The Chamber shall obtain and maintain, in full force and effect during the term of the Agreement, a \$1,000,000 general liability insurance policy specifically naming City as primary additional insured against claims and demands resulting from any act or omission by the Chamber or any of its officers, employees, agents or contractors related to this Agreement. Said insurance policy shall provide for thirty-days' notice of cancellation to the City. Within ten days after the date of execution of this Agreement by both parties, the Chamber shall submit to the City evidence of such insurance.
- 17) Notwithstanding any other representation, oral or written, between the parties, including any and all agents or representatives thereof, the Chamber is at all times during the term of this Agreement acting as a free and independent contractor, and shall not be an employee or an agent of the City.
- 18) Except as the City may authorize in writing, the Chamber shall have no authority, express or implied to act on behalf of then City in any capacity whatsoever as an agent. The Chamber shall have no authority, express or implied, pursuant to this Agreement, to bind City to any obligations whatsoever.
- 19) The Chamber shall not enter into any contract or agreement that will create a conflict of interest with its duties to the City under this Agreement. No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his/her personal interests or the interests of any corporation, partnership, of association in which he is directly or indirectly interested. The Chamber warrants it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.
- 20) The Chamber represents and warrants to City the Chamber has, and shall maintain at all time during the term of this Agreement, at its sole cost and expense, all business licenses, permits, qualifications and approvals of whatsoever nature which are legally required for the Chamber to provide the service hereunder.
- 21) The Chamber shall perform all services required pursuant to this Agreement in a manner and according to the standards observed by a competent practitioner of the profession in which the Chamber is engaged. All products and services of any nature which the Chamber provides to the City and to visitors to the Visitor Center shall conform to the standards of a quality normally observed by licensed, competent organizations practicing in the Chamber's profession.
- 22) The Chamber shall devote such time to the performance of services as may be reasonably necessary for the satisfactory performance of the Chamber's obligations pursuant to this Agreement. Neither party shall be considered in default of this Agreement to the extent performances are prevented or delayed by any cause, present or future, which is beyond the reasonable control of the non-performing party. The Chamber agrees to assign only competent personnel according to the reasonable and customary standards of training and experience in the relevant field to perform services pursuant to this Agreement.
- 23) During the term of this Agreement if the Chamber is dissolved, disbanded, or otherwise ceases

to function in a manner described in this Agreement, then all funds attributable to the City and equipment purchased out of funds provided by the City shall revert to ownership of the City. For the purpose of this provision, the Chamber shall maintain a written record of, and include as part of each annual report, a listing of capital equipment that has been purchased with the funds provided by the City.

- 24) No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligations pursuant to this Agreement shall be void and of no effect.
- 25) The Chamber agrees to comply with all fair employment practice laws of the State and Federal government. The Chamber covenants and agrees for itself, its successors, its assigns and every successor in interest, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, medical condition, disability, marital status, ancestry or national origin in the provision of any services to be provided by the Chamber hereunder, nor shall the Chamber or any person claiming under or through the Chamber establish or permit any such practice or practices of discrimination or segregation in the provision of any services to be provided by the Chamber hereunder.
- 26) The failure of either party to abide by any term of this Agreement shall constitute a default under this Agreement. If either party fails to cure any such default within five (5) days after receiving notice from the other party of such default, then this Agreement may be terminated by giving ten-days' written notice of such termination. Upon any such termination, the final monthly payment to be paid under Paragraph 3, above, shall be adjusted on a pro rata basis, based on a 30-day month, to the date of such termination, and if applicable, the Chamber shall immediately return to the City any amounts previously paid by the City for any period subsequent to the date of such termination.
- 27) In addition to termination pursuant to Paragraph 29), above, this Agreement may be terminated in whole or in part at any time by either party hereto upon thirty-days' written notice to the other as identified below. In the event of any termination of this Agreement, all rights and obligations of both parties hereto, except for Paragraph 18), including without limitation the monthly payment from City to the Chamber hereunder, shall terminate as of the date of such termination (and the final monthly payment shall be adjusted on a pro rata basis to the date of such termination).
- 28) This document represents the entire understanding between the parties and supersedes all prior negotiations, representations or agreements, either written or oral regarding the subject matter hereof, including, but not limited to that lease agreement the parties entered into and was effective in October, 2015. This Agreement may only be amended in writing signed by both parties.
- 29) If any provision of this Agreement is deemed to be legally void or unenforceable, then all remaining provisions shall survive and be enforceable. This Agreement shall in all respects be governed by the laws of the State of California.
- 30) In the event suit is brought for the enforcement, or interpretation, of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees.

In Witness Whereof, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

CITY OF MORRO BAY

MORRO BAY CHAMBER OF COMMERCE

By: _____
Scott Collins
City Manager

By: _____
Erica Crawford
Director of Operations

By: _____
Cyndee Edwards
Chamber Board President

Attest:

Dana Swanson
City Clerk

Approved As To Form:

Joseph W. Pannone,
City Attorney

Lease Agreement

AGREEMENT

This lease agreement (“this Lease”) is made and entered by and between the CITY OF MORRO BAY, a municipal Corporation hereinafter referred to as “LESSOR.” and THE MORRO BAY CHAMBER OF COMMERCE, a California non-profit corporation hereinafter referred to as “LESSEE.”

RECITALS

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

WHEREAS, LESSEE is organized to encourage a strong local economy and quality of life by promoting commerce, sound government, and an informed membership and community; and

WHEREAS, comprised of local business leaders, LESSEE has special knowledge and experience to promote economic and business development, including business attraction and retention programs, for the benefit of LESSOR; and

WHEREAS, LESSOR and LESSEE have mutual interests in enhancing the economic growth and vitality of the community; and

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

NOW, THEREFORE, IT IS AGREED AS FOLLOWS;

1. LEASE: LESSOR hereby leases to LESSEE and LESSEE agrees to accept from LESSOR the lease of the portions of the Leased Premises as described in Section 4., below.
2. RENT: During the term on this Lease, LESSEE agrees to pay on or before January 1, 2019 the sum of \$1.00, payable in advanced per fiscal year as rent for the use of the Leased Premises.
3. TERM: The term of this Lease shall commence on July 1, 2018 and terminate without notice on June 30, 2019, unless sooner terminated as a herein provided term (the “Term”). Any holdover of possession of the Leased Premises by LESSEE beyond the Term shall constitute a month-to-month tendency on the same terms and conditions of this Lease and LESSEE agrees to vacate the Leased Premises upon thirty-days’ (30-days’) prior written notice from LESSOR.
4. LEASED PREMISES: The Leased Premises for purpose of this Lease shall include only those portions of Leased Premises that include the office now used, as of the effective

date of this Lease, by LESSOR'S director, the office used, as of the effective date of this Lease, by the Chamber's accountant and administrative assistant, and the front foyer space, all of which are shown on Exhibit A. In addition, LESSEE shall have access to and use of, but not control of, common areas including both bathrooms, the conference room, hallways, entranceways and the kitchen.

5. **USE OF LEASED PREMISES:** LESSEE shall use the Leased Premises solely for the purpose of operation of Chamber-business, including, but not limited to, (i) promoting all businesses and services in the City on behalf of the community, regardless if said business is a member of the Chamber and (ii) providing qualified and competent staff, for the successful implementation of this Agreement. In addition LESSEE shall operate the City of Morro Bay Visitor Center (the "Visitor Center"), as outlined in that separate Visitor Center agreement, attached for reference as Exhibit A.
6. **FIXTURES AND ALTERATIONS:** LESSEE shall not make or cause to be made any alterations, additions or improvements, of a substantial nature or make any structural changes in the building (the "Improvements") without first notifying LESSOR and obtaining prior written approval from LESSOR for the Improvements. In the event the Improvements include any structural change, LESSEE shall supply to LESSOR plans and specifications for such work, and obtain prior written approval. LESSEE shall be responsible for all costs associated with any of the Improvements. All permits necessary for the Improvements, excluding improvements related to Visitor Center services, shall be at LESSEE'S expense and obtained prior to any work any of on the Improvements.
7. **ITEMS INSTALLED BY LESSEE:** All decorations and additions and any of the Improvements in the Lease Premises, except for structural changes, made by LESSEE shall remain the property of LESSEE for the term of this Lease or any extension or renewal thereof. Upon expiration of this Lease, or any renewal term thereof, LESSEE shall remove all decorations and additions and those portions of the Improvements that are LESSEE property, and restore the Leased Premises, ordinary wear and tear excepted, to its condition at the time of original occupancy, unless written approval is obtained by LESSOR to allow such decorations, additions or the Improvements to remain.
8. **SECURITY:** LESSOR agrees to provide locks on doors of the Leased Premises to be used exclusively by LESSEE for its use and for Visitor Center services, and to provide keys for access to Leased Premises. LESSOR shall also provide new access to the Leased Premises at the rear entrance for others to access the Leased Premises without access to Leased Premises.
9. **MAINTENANCE:** LESSOR shall be responsible for the overall interior and exterior maintenance of the Leased Premises, except that LESSOR shall have no duty, obligation, or liability whatever to care for or maintain or rebuild the Leased Premises or surrounding grounds except at its sole discretion. LESSEE shall be responsible for routine janitorial and maintenance of the Leased Premises.

10. SURRENDER OF LEASED PREMISES: At the expiration of the tenancy hereby created, LESSEE shall surrender the Leased Premises in the same condition as the Leased Premises were upon delivery of possession thereto under this Lease, reasonable wear and tear excepted, and damage by unavoidable casualty not within the reasonable control of LESSEE excepted, and shall surrender all keys for the Leased Premises to LESSOR. LESSEE shall thereupon remove all its fixtures, and any alterations or improvements as provided above before surrendering the Leased Premises and shall repair any damage to the Leased Premises caused thereby. LESSEE's obligation to observe or perform this covenant shall survive the expiration or other termination of the term of this lease.
11. INSURANCE: LESSEE shall, during the full term of this lease, keep in full force and effect an appropriate policy of liability and property damage insurance with respect to the Leased Premises in the minimum amounts of \$1,000,000 each. The policies shall name LESSOR and its officers, employees and representatives as additional insureds and shall contain a clause the insurer will not cancel or change the insurance without first giving LESSOR 10-days' prior written notice. LESSEE shall exhibit to LESSOR, at any time upon demand, a certificate of insurance, or other evidence of insurance, and shall keep such policies in effect during the full term of this Lease or any extensions thereof.
12. FIRE, EXTENDED COVERAGE: LESSEE agrees to purchase and maintain, during the full term of this Lease or any extensions thereof, a policy of fire, extended coverage, insurance, which policy shall not be less than 100% of the replacement value of the Leased Premises. The cost of such insurance shall be at the sole cost of LESSEE.
13. INDEMNIFICATION: LESSEE agrees to indemnify, defend and hold harmless LESSOR, its offices, directors and agents, from and against any and all claims, actions, damages, liability, expenses, costs and reasonable attorney's fees resulting or related to any loss of life, personal injury or damage to property, or any other liability, arising out of any occurrence related to the Leased Premises or the occupancy or use by LESSEE of the Leased Premises or any part thereof, occasioned wholly or in part by any act or omission of LESSEE, its agents, contractors, employees, servants, lessees or concessionaires, or for any act or omission by LESSOR in furtherance of the interests of LESSEE for any reason in connection with this Lease.
14. UTILITIES & TAXES: LESSEE shall be responsible for and promptly pay 30 percent of all charges for heat, water, gas, electricity or any other utility used or consumed on the Leased Premises, including any deposits demanded by any utility, based on the previous Fiscal Year average monthly cost for all identified utilities. LESSEE shall pay the aforementioned rate plus an annual Cost of Living Adjustment based on the July CPI-U from the Los Angeles-Riverside-Orange County area beginning with the City's FY 18-19 Budget Year. LESSEE agrees to pay, at its sole cost and expense, any possessory interest tax that may be assessed as a result of this Lease.
15. ASSIGNMENT AND SUB-LETTING: LESSEE will not assign this lease, in whole or in part, nor sub-let all or any part of the Leased Premises.

16. GOVERNMENTAL REGULATIONS: LESSEE shall at LESSEE's sole cost and expense, comply with all of the requirements of all county, municipal, state, federal and other applicable government authorities, now in force, or which may hereafter be in force, pertaining to the Leased Premises, and shall faithfully observe in the use of the Leased Premises all municipal and county ordinances, and all state and federal statutes now, or which may hereafter be, in force.
17. DESTRUCTION OF LEASED PREMISES: If the Leased Premises shall be damaged or destroyed by fire, the elements, unavoidable accidents or other casualty, then all insurance proceeds payable by reason thereof shall be applied to the repair, reconstruction and renovation of Leased Premises.
18. CONDEMNATION: In the event any or all of the Leased Premises are taken, in whole or in part, through the exercise of any power of eminent domain exercised by any state, federal or local municipality (including LESSOR) having the power thereof, any sums paid by such condemning authority shall be paid to LESSOR.
19. DEFAULT: In the event of any failure of LESSEE to perform any of the terms, conditions or covenants of this Lease to be observed or performed by LESSEE for more than 30 days after written notice of such default shall have been given to LESSEE, or if LESSEE shall abandon the Leased Premises, then LESSOR, besides other rights or remedies it may have, shall have the immediate right of reentry and may remove all persons and properties from the Leased Premises without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby.
20. ENTIRE AGREEMENT: This Lease, and any exhibits attached hereto and forming a part hereof set forth all the covenants, promises, agreements, conditions and understanding between the parties concerning the Leased Premises, including, but not limited to, that certain lease agreement the parties entered into and was effective October, 2015, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them, other than or herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this lease shall be binding upon either party unless reduced to writing and signed by both.
21. NOTICE: Any notice, demand, request or other instrument which may be required to be given under this lease shall be deemed delivered when sent by ordinary United States Mail, postage prepaid, addressed to LESSOR care of its City Manager, or LESSEE care of its then acting President.
22. PARTIAL INVALIDITY: If any term, covenant or condition of this lease, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this lease, or the application of such term, covenant or condition to persons or circumstances other than those to which it is held invalid, or

unenforceable, shall not be affected thereby; and each term, covenant or condition of this lease shall be valid and be enforced to the fullest extent permitted by law. If the length, term or duration of this Lease, in any way is in violation of any statute, law or Constitution or is invalid for any reason whatsoever, then this Lease shall be deemed a lease from year to year, and all other provisions hereunder shall remain the same.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this 26th day of June 2017, at Morro Bay, California

CITY OF MORRO BAY

MORRO BAY CHAMBER OF COMMERCE

By: _____
Scott Collins
City Manager

By: _____
Erica Crawford
Director of Operations

By: _____
Cyndee Edwards
Chamber Board President

Attest:

DANA SWANSON
City Clerk

Approved As To Form:

JOSEPH W. PANNONE
City Attorney

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AGENDA NO: B-1

MEETING DATE: June 26, 2018

Staff Report

TO: Honorable Mayor and City Council

DATE: June 12, 2018

FROM: Cindy Jacinth, Senior Planner

SUBJECT: Denial of Appeals of Amendment (A00-054) to Conditional Use Permit (Precise Plan No. UP0-284) for 1001 Front St to Allow Permanent Use of a 48sf Seasonal Kiosk for Virg's Landing

RECOMMENDATION

Council adopt Resolution Nos. 51-18 and 52-18, making the necessary findings to deny both appeals and uphold the Planning Commission approval of Amendment No. A00-054 to Conditional Use Permit (Precise Plan UP0-284) for Virg's Landing kiosk located at 1001 Front Street.

ALTERNATIVES

Alternative 1. The City Council could uphold the appeal by Dustin Tardiff on behalf of Wade Gavin, Patriot Sportfishing, and reverse the Planning Commission's CUP amendment approval thereby disallowing placement of a kiosk at 1001 Front Street.

Alternative 2. The City Council could uphold the appeal filed by the Applicant, Giovanni deGarimore, and modify the Planning Commission's CUP amendment approval as conditioned and remove or modify conditions imposed by the Planning Commission.

Alternative 3. The City Council could move to uphold both appeals and remand the project back to the Planning Commission for review of revised project as directed by Council.

FISCAL IMPACT

The project is located in the Coastal Appeals Jurisdiction and, therefore, there is no fee required to file an appeal for land use decisions. Cost for staff time necessary to evaluate the appeal, prepare the staff report, conduct noticing and attend Council hearing are paid by the City's General Fund. Those expenditures and the proposed land use entitlements create negligible fiscal impacts to the overall City economy. The kiosk serves to support the Virg's Landing business by providing customer information, ticket sales, and dock loading assistance to their 3 boats docked at City lease site 102W.

BACKGROUND

The proposed project as further described in the Planning Commission (PC) staff report (online link below) would allow the Virg's Landing sportfishing business, which is located at 1169 Market Street and has its three sportfishing boats docked at 1001 Front Street, to place a 48-square-foot seasonal kiosk (April 1 to November 1) with daily hours ranging from as early as 9 a.m. to as late as 3 p.m. (Planning condition 1, Attachment D). The kiosk was proposed on private property at 1001 Front on

Prepared By: CJ

Dept Review: SG

City Manager Review: SC

City Attorney Review: JWP

the east side of the lot between the parking lot fence and the public sidewalk with a condition to relocate the kiosk (Attachment E). *Note: A portion of 1001 Front Street is City lease site 102/102W, which is limited to the west side of the property and is not part of the subject land use entitlement.*

The kiosk project was previously permitted through Director authority (Morro Bay Municipal Code (MBMC) section 17.30.050 A. 5.), as a 6-month temporary use permit (UP0-471), which was captured on Google mapping imagery in 2017 and is shown below as it existed during that six-month period. After the temporary use permit expired, the Applicant removed the kiosk, and sought Planning Commission approval for a permanent seasonal use.



On April 17, 2018, the PC held a duly noticed public hearing to consider an amendment to the Conditional Use Permit Precise Plan UP0-284 for 1001 Front Street to allow permanent use of a 48sf seasonal kiosk for Virg's Landing. The PC's review considered the permit history of UP0-284 approved on May 16, 2012, the associated coastal development permit approved by the Coastal Commission on April 12, 2012 (CDP 3-11-031), as well as previous approvals for kiosk placement approved by the Community Development Director on June 2, 2016 and April 21, 2017. The PC discussion covered review of public access, the aesthetics of the kiosk, signage, and the kiosk location. The hearing also included discussion regarding the lack of activity at the kiosk when it was permitted with a TUP. The Applicant has stated due to extenuating circumstances, Virg's was not able to fully utilize the TUP approval and, thus, the kiosk was placed on-site, but not occupied during the 6-month TUP period. Staff concern regarding approving any further TUPs was the kiosk was in effect operating as off-site signage in that there were no employees manning the booth nor operating it as the TUP described.

At the conclusion of the public hearing, the PC approved the project with conditions. (Attachment D). The PC added six additional conditions noted as 6-11. which included relocating the proposed kiosk location to inside the parking lot versus outside, improving public access by repainting the pathway along the west side of the lot and ensuring the Beach Street public access gate remained open except during active fish unloading activities.

APPEALS:

On April 27, 2018, the City received two appeals of the PC approval of A00-054. One appeal was filed by Dustin Tardiff on behalf of Wade Gavin, Patriot Sportfishing (Attachment B), which requests the PC decision be overturned and the project denied. The other appeal was filed by Giovanni deGarimore (Attachment C), which appeals specifically PC conditions 7 through 11 requesting they be modified. The appeals are paraphrased below with corresponding staff response.

Appeal #1 filed by Dustin Tardiff on behalf of Wade Gavin:

This appeal requests the Council deny the approval by PC or in the alternative Virg's Landing be required, as a waterfront business, to pay percentage rents to alleviate the burden it imposes on the waterfront, and it be denied pending renegotiation of the lease under which Virg's Landing and Giovanni's Fish Market operates.

Appellant Claim #1: The grounds for appeal are stated in Attachment B. The Appellant argues Virg's Landing is a commercial fishing business that pays no money to support waterfront services and does not pay percentage rents. The Tidelands Trust pays for maintenance, administration, parking, harbor patrol, and other services benefitting waterfront business. Giovanni's Fish Market pays nothing into the Tidelands Trust and yet benefits from services. Virg's Landing possesses an unfair economic advantage and now receives a further benefit by the instant PC decision.

Staff response: The Virg's Landing kiosk location, as proposed and as conditioned by the PC, is not located on a City lease site, but rather private property, and, therefore, not subject to pay percentage rents. Furthermore, the portion of property at 1001 Front Street is part of a City lease site (#102/102W, located along the waterside) and is referred to as a 1960's era "Pipkin lease," which predates percentage rents leases. The Pipkin lease is due to expire on September 30, 2018, at which time the City will enter into a modern lease with a percentage rents requirement, for that area within the lease site boundaries.

Appellant Claim #2: The kiosk will provide additional marketing, signage, and added burden upon the waterfront without having Virg's Landing having any responsibility to contribute to the maintenance thereof. The PC's approval of the CUP in this matter is tantamount to an improper subsidization of one local business over all others and to the detriment of its competitors.

Staff response: The approval of the CUP amendment by the PC was done pursuant to MBMC section 17.60.030. The PC review of a private business proposing a visitor-serving use on private property is consistent with the allowable uses for the zone district and in conformance with the General Plan and certified local coastal program.

Appellant Claim #3: Virg's Landing has previously set up the same kiosk, under a temporary use permit, for a trial period prior to applying for the instant CUP. During that time, the kiosk was never manned. It instead operated as additional signage in violation of Morro Bay's signage requirements

Staff response: This is discussed in the 4-17-18 PC staff report. Under the previous TUP approved on 4-21-17, the kiosk was observed by staff not being used, which was acknowledged by the Applicant at the PC hearing. Due to business circumstances, they were not able to staff the kiosk as intended before the TUP expired. To ensure the kiosk is used as described in the approval, Planning Condition 1 requires an employee to be present during Virg's Landing hours of operation.

Appellant Claim #4: The TUP for the kiosk approved during summer of 2017 was on the condition it be removed by September 2017. Virg’s Landing failed and refused to remove kiosk as required; and it took two months of repeated demands from the City and community until the kiosk was removed.

Staff response: Planning Condition 1 of the TUP (UP0-471) stated the kiosk approval was for 6 months from “date of permit issuance.” The building permit for the kiosk (B-31474) was issued on June 7, 2017. When the permit expired, the kiosk was initially removed from the street frontage to a location further west into the lot on the wharf area, before it was eventually moved off the site.

Appellant Claim #5: A TUP should operate as a “test run” of sorts. It should meet conditions imposed in the TUP. Virg’s Landing has proven unreliable and based on past conduct, the instant CUP should not have been approved.

Staff response: The PC discussed the lack of performance during the 6-month TUP in order to determine how effective having a kiosk would be for its intended use. The PC added condition 11, which states the CUP amendment is valid for only one year with the PC intent for the Applicant to come back in a year for PC review as discussed during the hearing. Though the condition as written by staff after the meeting did not originally state that, the clerical error in the PC Resolution 12-18 has since been corrected to reflect that direction.

Appellant Claim #6: The “tuff shed’ appearance is against the General Plan of Morro Bay, unsightly and not in conformity with the waterfront’s appearance.

Staff response: Although the shell of the kiosk is a “tuff shed,” the shed has been designed with a nautical theme, including blue and white color, decorative marine gear, and an fish identification chart for educational purposes. PC review included discussion of aesthetics and conditioned the kiosk to be relocated either inside the parking lot or to have the fence line moved east of the proposed kiosk location, even if it caused loss of a parking space (Planning Conditions 9 and 10).

Appellant Claim #7: The physical location will cause an unacceptable blockage of foot traffic and burden on parking. Virg’s Landing will benefit further if allowed to operate a kiosk.

Staff response: The kiosk is an 8 x 6 foot shed. As shown on the site plan, it is located on private property and conditioned to avoid encroachment into the public right-of-way (Planning Conditions 2 and 3) and the CUP amendment is valid for only one year. Use impacts are expected to be negligible and the hours of operation are listed as part time to further avoid use conflicts.

Appeal #2 filed by Giovanni deGarimore:

This appeal submitted by Applicant’s Agent, Cathy Novak Consulting requests the Council modify the PC conditions 7 through 11 or provide greater clarity (Attachment C).

Appellant claim for Condition 7 regarding Beach Street Public Access Gate Entrance: The Appellant claims the gates are closed for security of the fishing gear, wharf operations and for public safety at night. Employees arrive at 7:30 a.m. and requiring the gate be opened at dawn every morning places an undue burden on business employee staffing, as well as the gate closure is for security and public safety while employees are not on-site.

Staff response: PC discussion centered around providing open public access through the site as

conditioned by both the Conditional Use Permit (UP0-284) and the Coastal Development Permit (CDP 3-11-031). The condition does allow for closure during active fish unloading activities to ensure safety of public lateral access. An image of the gate shown to the PC is below.



Appellant claim for Condition 8 regarding Public access compliance: Appellant is requesting modification of this condition to provide clarity on intent to comply. The CDP requires public access be provided and maintained through the site. The Applicant has installed temporary bollards with chain near the walk up window to the Fish Market at the southwest corner of the property to designate a queuing line for customers on one side and to have the other side of the access path clear to allow the public to access around the building leading to the waterside of the site.

Staff response: The Planning Condition 8 states the Applicant shall comply with condition 1a of CDP No. 3-11-031, which is the associated 2012 CDP for Giovanni's Fish Market approved under City CUP Precise Plan UP0-284. The Precise Plan CUP as approved in 2012 did not specifically call out public access near the walk-up order window. The PC condition is simply requiring, if the public access in this area has changed since 2012 then it be consistent as approved by the PC on May 16, 2012. Staff has observed no inconsistencies from the 2012 approvals to the current configuration, but to ensure preservation of public access, staff supports the condition as written. See image below.



Appellant claim for Condition 9 regarding Kiosk location: Based on several hardship reasons, the Appellant is requesting modification to this condition, which requires the kiosk be relocated (Attachment C). The hardship reasons are 1) placing the kiosk inside the fence line will require reconfiguration of the kiosk Dutch door and window, which is intended to serve visitors. Placing the kiosk inside the fence line will require a greater setback to allow for the ADA ramp and create a visual barrier uninviting to the public. 2.) The intention of the kiosk is to place it in a visible location for pedestrians and for vehicular traffic coming down from Beach Street from the tackle shop. 3.) It is not feasible to change the kiosk design for location of door and window. 4.) Placing the kiosk on north or south end of the parking lot hides the kiosk from public view and if relocated would make it difficult for visitors to access, 5.) The mid-section of the site has frequent semis and other large trucks entering for the commercial fishing business, queuing for fish loading and unloading. 6.) The rolling gate location cannot be modified. The current gate locations are in place so the large semi and other delivery trucks can park on-site and close gates when it becomes a hazard. 7.) Two parking spaces would need to be removed to site the kiosk because of the size and area needed for ADA ramp. 8) Other alternative kiosk locations were explored; however fishing activities, marine fueling, and public access limit the kiosk from being installed elsewhere.

Staff response: The Appellant is emphasizing in this argument primarily the need for the kiosk to be placed close to the sidewalk for visibility to customers and to avoid placement inside the parking lot in order not to impact the commercial fishing operations or required public access. Both of those issues were discussed at length during the PC meeting. The City's sign ordinance prohibits off-site signage; the kiosk effectively functions as an off-site sign. Planning Condition 1 was added to ensure the kiosk would be used as proposed, which is for an employee to be present for ticket sales, and provide information. Furthermore, the PC discussion also included the suggestion of an idea to pursue a sign exception application to allow signage for Virg's Landing in lieu of a physical kiosk. The PC's concern was aesthetically the kiosk would be too visible so close to the sidewalk, and, thus, the approval was intended to either move the kiosk westward whether inside the parking lot or relocating the fence. Additionally, after the PC meeting, staff suggested the applicant add signage to the property frontage identifying the business as being present on site; however, the Applicant was

not interested in pursuing that solution.

Appellant claim for Condition 10: Utilize on-site parking for kiosk: The Appellant is requesting this condition be modified as it relates to the existing parking lot area. The Appellant addresses in the appeal concern by the Coastal Commission regarding removal of on-site parking spaces. The Appellant states it does not make sense to remove existing parking spaces when an alternate location exists that would not require removal of parking spaces. In addition, the private parking lot was created to reduce parking impacts in the area.

Staff response: As discussed above, the PC discussed the concern at the meeting regarding the kiosk being used as off-site signage as was observed in 2017 when the kiosk was placed on-site under the temporary use permit approval when the kiosk was unmanned with no employee present. The PC discussion included concern regarding both signage and aesthetics. Relocating the kiosk elsewhere on the lot was discussed in reference to applying for a parking in-lieu fee waiver. The precise plan approval (UP0-284), which the kiosk project seeks to amend, included the planning approvals for the parking lot, which is covered by the CDP.

Appellant claim for Condition 11: Permit valid for one year: The Appellant is requesting a modification of this condition to provide clarity the permit will be reviewed after one year and does not require filing of a new application if the kiosk is in compliance with the permit.

Staff response: The PC has authority to review conditional use permits after issuance and has conditioned other projects to come forward for review. Those projects are reviewed as a status update and are typically placed as a new business item on the agenda. The MBMC does not require a new application for those types of conditions. The PC intended for the Applicant to come back in a year to review the project for compliance with the conditions of approval, since under the previous temporary use permit, there was no activity with the kiosk to determine how well the kiosk use would function. PC Resolution 12-18, as signed after the meeting, originally stated the permit was valid for one year, though the direction of the PC at the hearing was to have the Applicant return for review within one year. Resolution 12-18 has been corrected to reflect that direction (Attachment F).

CONCLUSION:

The PC in reviewing this amendment to a Conditional Use Permit considered both the kiosk proposal, the history associated with the 2017 Temporary Use Permit approval and lack of use, as well as the original Conditional Use Permit application with the associated requirements for public access. Although there was general support for the Virg's Landing business, the PC was less supportive of placing a kiosk near the public sidewalk that for a majority of hours in a week would be unoccupied by a Virg's Landing employee. The kiosk was primarily unoccupied during the 2017 TUP and the PC did not support approving the kiosk to function as off-site signage. In order to address those concerns, the 4-17-18 PC approval for placing the kiosk only permits placement if the kiosk is relocated from its proposed location adjacent the sidewalk or the fencing is relocated to place the kiosk on the inside of the fenced parking lot (Planning Condition 9). The Precise Plan CUP (UP0-284) requires bayside lateral access along the length of the property at 1001 Front Street, which limits the kiosk from being placed along the west side of the property.

The first appeal filed by Wade Gavin argues the PC approval should be overturned and denied because by approving the kiosk project, it provides an unfair advantage to Virg's Landing that is not equivalent to other similar businesses and the business is not paying its fair share of percentage rents

required for a waterfront location. That claim is inaccurate in that, the kiosk location is on private property and, pursuant to MBMC 17.60, an application to the City was filed for establishment of a kiosk use consistent with General Plan and Local Coastal Program policies and code requirements. The Virg's Landing sportfishing fleet, which is docked on City lease site properties, is a sub-tenant of Giovanni deGarimore who is the master leaseholder for City lease sites 102/102W (on the west side of the property only). This City lease site has a valid lease agreement, which predates the City's current practice of percentage rents requirements and, therefore, is not applicable to the proposed kiosk project. The PC made findings for approval of the Precise Plan amendment via PC Resolution 12-18 as conditioned (Attachment E) and staff supports this conditional approval.

The second appeal filed by Giovanni deGarimore, the property owner, requests modification of the PC conditions in order to provide greater clarity on the project's amendment approval. The modification request argues it is infeasible to relocate the kiosk, but provides no substantive evidence to counter the direction provided by the Planning Commission. The Planning Commission made findings based on concern for off-site signage, aesthetics, and public access and staff supports the PC's approval.

Staff recommends the City Council deny both appeals and adopt Resolution Nos. 51-18 and 52-18.

ATTACHMENTS:

- A – Council Resolution No. 51-18
- B – Council Resolution No. 52-18
- C – Appeal filed by Dustin Tardiff for Wade Gavin, received April 27, 2018
- D – Appeal filed by Giovanni deGarimore, received April 27, 2018
- E – PC Permit amendment A00-054 to UP0-284
- F – PC Resolution No. 12-18
- G – Approved Kiosk plans dated April 2, 2018

Online documents:

4-17-18 Planning Commission meeting, Staff report & attachments for 1001 Front, Agenda Item B-1
<http://www.morro-bay.ca.us/DocumentCenter/View/11893/4-17-18-PC-staff-report-and-attachments>

RESOLUTION NO. 51-18

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA DENYING AN APPEAL OF THE PLANNING COMMISSION APPROVAL OF AMENDMENT #A00-054 TO PRECISE PLAN CONDITIONAL USE PERMIT (UP0-284) FOR PLACEMENT OF A SEASONAL KIOSK FOR THE VIRG'S LANDING BUSINESS AT 1001 FRONT STREET.

WHEREAS, the Planning Commission of the City of Morro Bay conducted a public hearing at the Morro Bay Veteran's Hall, 209 Surf Street, Morro Bay, California, on April 17, 2018, for the purpose of considering an Amendment (A00-054) to the Precise Plan approval of Conditional Use Permit #UP0-284 ("the Project"); and

WHEREAS, on April 17, 2018, the Planning Commission of the City of Morro Bay adopted Resolution 12-18 to approve an amendment (A00-054) to Precise Plan Conditional Use Permit (UP0-284); and

WHEREAS, on April 27, 2018, an appeal of the Planning Commission action to approve the project was filed with the City of Morro Bay by Dustin Tardiff on behalf of Wade Gavin specifically requesting the City Council overturn the Planning Commission's approval and deny the project; and

WHEREAS, the City Council conducted a public hearing at the Morro Bay Veteran's Hall, 209 Surf Street, Morro Bay, California, on June 26, 2018, to consider an appeal of the Planning Commission's approval of the project, located in an area within the original jurisdiction of the California Coastal Commission; and

WHEREAS, notices of said public hearing were made at the time and in the manner required by law; and

WHEREAS, the City Council has duly considered all evidence, including the recommendations made by the Planning Commission, the testimony of the Appellants, the testimony of the business owner, and the evaluation and recommendations by staff, presented at said hearing.

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

Section 1: Findings upholding the Planning Commission Approval

- A. The Amendment (A00-054) to Precise Plan Conditional Use Permit for Project UP0-284 was approved in a manner consistent with the City's General Plan, Local Coastal Program and Zoning Ordinance.
- B. The Virg's Landing Kiosk is located on private property at 1001 Front Street and is a subtenant of the property owner, Giovanni deGarimore with that portion of 1001 Front St which is within the boundaries of City lease site 102/102W located on the waterside and not part of the Virg's Landing kiosk location as shown on project plans reviewed by the Planning Commission on April 17, 2018.

- C. The six conditions added by the Planning Commission at the April 17, 2018 meeting were added to address issues of public access, business performance, location, and aesthetics which found for approval as conditioned. The project conditions as added were thoroughly discussed and clearly articulated at the end of the hearing.

Section 2: Findings. Based upon all the written and oral testimony and evidence presented to the Council at and for the above public hearing, the City Council makes the findings as included in Resolution 52-18.

Section 3. Action. The City Council does hereby deny the appeal filed on April 27, 2018 by Dustin Tardiff on behalf of Wade Gavin and uphold the Planning Commission approval of Amendment #A00-054 to Precise Plan Conditional Use Permit #UP0-284 located at 1001 Front Street subject to the conditions as included in Council Resolution 52-18.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on this 26th day of June, 2018, on the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

JAMIE L. IRONS, Mayor

ATTEST

LORI KUDZMA, Deputy City Clerk

RESOLUTION NO. 52-18

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA DENYING AN APPEAL OF THE PLANNING COMMISSION APPROVAL OF AMENDMENT #A00-054 TO PRECISE PLAN CONDITIONAL USE PERMIT (UP0-284) FOR PLACEMENT OF A SEASONAL KIOSK FOR THE VIRG'S LANDING BUSINESS AT 1001 FRONT STREET.

WHEREAS, the Planning Commission of the City of Morro Bay conducted a public hearing at the Morro Bay Veteran's Hall, 209 Surf Street, Morro Bay, California, on April 17, 2018, for the purpose of considering an Amendment (A00-054) to the Precise Plan approval of Conditional Use Permit #UP0-284 ("the Project"); and

WHEREAS, on April 17, 2018, the Planning Commission of the City of Morro Bay adopted Resolution 12-18 to approve an amendment (A00-054) to Precise Plan Conditional Use Permit (UP0-284); and

WHEREAS, on April 27, 2018, an appeal of the Planning Commission action to approve the project was filed with the City of Morro Bay by Giovanni deGarimore specifically requesting the City Council modify conditions seven (7) through eleven (11); and

WHEREAS, the City Council conducted a public hearing at the Morro Bay Veteran's Hall, 209 Surf Street, Morro Bay, California, on June 26, 2018, to consider an appeal of the Planning Commission's approval of the project, located in an area within the original jurisdiction of the California Coastal Commission; and

WHEREAS, notices of said public hearing were made at the time and in the manner required by law; and

WHEREAS, the City Council has duly considered all evidence, including the recommendations made by the Planning Commission, the testimony of the Appellants, the testimony of the business owner, and the evaluation and recommendations by staff, presented at said hearing.

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

Section 1: Findings upholding the Planning Commission Approval

- A. The Amendment (A00-054) to Precise Plan Conditional Use Permit for Project UP0-284 was approved in a manner consistent with the City's General Plan, Local Coastal Program and Zoning Ordinance.
- B. Conditions 7-11 added by the Planning Commission at the April 17, 2018 meeting were added to address issues of business performance, location, and aesthetics which found for approval as conditioned. The project conditions as added were thoroughly discussed and clearly articulated at the end of the hearing.
- C. Condition 11 added by the Planning Commission at the April 17, 2018 meeting required that the conditional use permit amendment be valid for one year only. Based on content of the

Planning Commission deliberation, the condition is modified to require a review of the conditional use permit after one year as a new business item.

Section 2: Findings. Based upon all the written and oral testimony and evidence presented to the Council at and for the above public hearing, the City Council makes the following findings:

California Environmental Quality Act (CEQA)

- A. That for purposes of the California Environmental Quality Act, Case No. A00-054 is exempt under Class 11, Section 15311 for accessory structures where seasonal or temporary placement of items such as a kiosk are allowed and will have no potentially significant environmental impacts. Furthermore, none of the exemptions to this Categorical Exemption set forth in CEQA Guidelines Section 15300.2 apply to this project.

Conditional Use Permit Findings

- A. The project will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood in that signage is an allowed and appropriate use in the Waterfront zoning district.
- B. The project will not be injurious or detrimental to property and improvements in the neighborhood and the general welfare of the City in that the proposed kiosk supports the waterfront commercial use which is consistent with the allowable uses on the waterfront.

Waterfront Master Plan Findings

- A. The proposed project makes a positive contribution to the visual and public accessibility to the bay while increasing and maintaining commercial fishing industry:
 - 1. Meets the Waterfront plan height limit and maximum building coverage, bulk, and scale requirements in that the proposed project does not exceed development standards for the waterfront zoning district.
 - 2. The proposed project provides the amenities identified in the WF Plan, facilitates pedestrian visual and physical access to the waterfront, and takes advantage of outward views and characteristics of the topography in that the information kiosk is small scaled and does not impede pedestrian access, and at 48 square feet in size does not impact views which provides for better bay views. It preserves and enhances the views as seen around the kiosk.
 - 3. The project does not worsen or block more views, it does not block view corridors or intrude into pedestrian access areas. It takes advantage of outward views and characteristics of the topography in that the project proposes a information/ticket sales kiosk that is small scaled and proposed at 7'6" in height.
 - 4. The proposed project makes a positive contribution to the working fishing village character and quality of the Embarcadero area in that the new project provides information for whale-watching, and includes a fish identification chart for general public information to the public.

5. The project contains the elements of harmony, continuity, proportion, simplicity, and balance, and its appearance matches its function and the uses proposed in that the new kiosk is designed to provide a nautical theme with articulation that is consistent with the character of the waterfront.
6. The proposed project does not diminish, either directly or by cumulative impact of several similar projects, the use, enjoyment, or attractiveness of adjacent buildings on the property and is in keeping with the style, massing, materials, scale, and use of its surroundings.

Section 3. Action. The City Council does hereby deny the appeal filed on April 27, 2018 by Giovanni deGarimore and uphold the Planning Commission approval of Amendment #A00-054 to Precise Plan Conditional Use Permit #UP0-284 located at 1001 Front Street subject to the following conditions:

STANDARD CONDITIONS

1. This permit is granted for the land described in the staff report dated June 12, 2018, for the project at 1001 Front depicted on plans dated April 2, 2018 on file with the Community Development Department, as specifically modified by these conditions of approval, and more specifically described as follows: Site development, including all buildings and other features, shall be located and designed substantially as shown on Planning Commission approved plans submitted for UP0-284, unless otherwise specified herein.
2. Inaugurate Within Two Years: Unless the construction or operation of the structure, facility, or use is commenced not later than two (2) years after the effective date of this Resolution and is diligently pursued, thereafter, this approval will automatically become null and void; provided, however, that upon the written request of the applicant, prior to the expiration of this approval, the applicant may request up to two extensions for not more than one (1) additional year each. Any extension may be granted by the City's Community Development Director, upon finding the project complies with all applicable provisions of the Morro Bay Municipal Code (the "MBMC"), General Plan and certified Local Coastal Program Land Use Plan (LCP) in effect at the time of the extension request.
3. Changes: Minor changes to the project description and/or conditions of approval shall be subject to review and approval by the Community Development Director. Any changes to this approved permit determined, by the Director, not to be minor shall require the filing of an application for a permit amendment subject to Planning Commission review.
4. Compliance with the Law: (a) All requirements of any law, ordinance or regulation of the State of California, the City, and any other governmental entity shall be complied with in the exercise of this approval, (b) This project shall meet all applicable requirements under the MBMC, and shall be consistent with all programs and policies contained in the LCP and General Plan for the City.
5. Hold Harmless: The applicant, as a condition of approval, hereby agrees to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by

the City, or from any claim to attack, set aside, void, or annul this approval by the City of the applicant's project; or applicants failure to comply with conditions of approval. Applicant understands and acknowledges the City is under no obligation to defend any legal actions challenging the City's actions with respect to the project. This condition and agreement shall be binding on all successors and assigns.

6. Compliance with Conditions: The applicant's establishment of the use or development of the subject property constitutes acknowledgement and acceptance of all Conditions of Approval. Compliance with and execution of all conditions listed hereon shall be required prior to obtaining final building inspection clearance. Deviation from this requirement shall be permitted only by written consent of the Director or as authorized by the Planning Commission. Failure to comply with any of these conditions shall render this entitlement, at the discretion of the Director, null and void. Continuation of the use without a valid entitlement will constitute a violation of the MBMC and is a misdemeanor.
7. Compliance with Morro Bay Standards: This project shall meet all applicable requirements under the MBMC, and shall be consistent with all programs and policies contained in the LCP and General Plan of the City.
8. Conditions of Approval: The Findings and Conditions of Approval shall be included as a full-size sheet in the Building Plans.

Fire Department Conditions:

1. Three-foot clearance shall be maintained around the circumference of all fire suppression appliances.

Planning Conditions:

1. Inspection: The applicant shall comply with all City conditions of approval and an employee or Virg's Landing representative shall be present at the kiosk during the following hours of operation:

Month	Day	Hours
April – May	Weekends only & special events	10am – 2pm
June – September	Monday – Thursday Friday – Sunday	10am – 2pm 9am – 3pm
October - November	Weekends only & special events	10am – 2pm

2. The northeast corner of the information kiosk/booth shall be no closer than 3 feet to the back of the sidewalk.
3. The applicant shall maintain sidewalk clearance at all times for accessibility of pedestrians. Kiosk booth items shall not encroach on the sidewalk or public right of way. This permit only allows the kiosk to take place on the private property at 1001 Front Street.

4. Queue: The window on the east side of the kiosk shall not be used for customer service. The line shall be formed westward and shall not encroach into the sidewalk, public right of way, or vehicular path of travel.
5. The approval for placement of the kiosk is allowed only between April 1 through November 30 annually. Kiosk shall be moved off-site on or before December 1 annually and placed no sooner than April 1 of each year.

Planning Commission conditions:

Planning conditions 6-11 added by Planning Commission on April 17, 2018

6. The public lateral access pathway shall be repainted to improve visibility of public access.
7. The Beach Street public access gate entrance shall be open from dawn to dusk, but may be closed during active fish unloading activities that render public lateral access dangerous consistent with Coastal Development Permit 3-11-031.
8. The applicant shall demonstrate compliance with condition of approval 1a of Coastal Development Permit No. 3-11-031 related to the southern public access area which is the public area adjacent to and near the walk-up order window for Giovanni's Fish Market. In addition, this public access area shall be consistent with the Precise Plan (UP0-284) approved by Planning Commission on May 16, 2012.
9. The proposed kiosk location shall be either moved inside the fence line on Front Street or the fence shall be moved to the property line with the kiosk structure inside the parking lot, subject to meeting other project site requirements.
10. The applicant may utilize an onsite parking space, within the existing parking lot, for placement of the kiosk, subject to review and approval by the Community Development Director.
11. This permit to be reviewed for compliance with the conditions of approval by the Planning Commission within one year of kiosk installation.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on this 26th day of June, 2018, on the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

JAMIE L. IRONS, Mayor

ATTEST

LORI M. KUDZMA, Deputy City Clerk



CITY OF MORRO BAY

Public Services Department
Planning Division

955 Shasta Avenue
Morro Bay, CA 93442
(805) 772-6577

APPEAL FORM

In CCC Appeals Jurisdiction?

YES – No Fee
 NO – Fee Paid: Yes No

Project Address being appealed: 1001 Front Street, Morro Bay, CA	
Appeal from the decision or action of (governing body or City officer): <input type="checkbox"/> Administrative Decision <input checked="" type="checkbox"/> Planning Commission <input type="checkbox"/> City Council	
Appeal of action or specific condition of approval: Case No. A00-054 (Amending UP0-284)	
Permit number and type being appealed (ie. coastal permit, use permit, tentative subdivision): Conditional Use Permit	
Date decision or action rendered: April 17, 2018	
Grounds for the appeal (attach additional sheets as necessary): PLEASE SEE ATTACHMENT	
Requested relief or action: That conditional approval of Case No. A00-054 be reversed and denied in its entirety or in the alternative that Virg's Landing be required to pay percentage rents to alleviate the burden it imposes on the Morro Bay waterfront and for the services it utilizes, or in the alternative, that it be denied pending renegotiation of the lease under which Virg's Landing and Giovanni's Fish Market operates so long as the net result of those renegotiations is the requirement that Virg's Landing pay percentage rents as a waterfront business.	
Appellant (please print): Dustin Tardiff on behalf of Wade Gavin	Phone: 805-471-3959
Address: PO Box 1446, San Luis Obispo, CA 93401	
Appellant Signature: _____ Date: 04/27/2018	

FOR OFFICE USE ONLY	
Accepted by:	Date appeal filed:
Appeal body:	Date of appeal hearing:

Attachment to Appeal Form for Project address 1001 Front Street, Morro Bay, CA:

Grounds for Appeal:

Applicant, Virg's Landing is a commercial fishing business that operates and launches out of the Morro Bay waterfront. Due to a somewhat complicated loophole in the leasing arrangement along the waterfront, Virg's Landing is the only commercial fishing establishment in Morro Bay that pays no money to support waterfront services. In other words, Virg's Landing does not pay percentage rents.

All businesses along the Morro Bay waterfront are required to pay a percentage of their revenue to the City of Morro Bay via the Tidelands Trust. The Tidelands Trust pays for the maintenance, administration, parking, harbor patrol, and a variety of other services benefiting the businesses operating on the waterfront. Virg's Landing, which holds a lease through Giovanni's Fish Market, pays absolutely nothing into the Tidelands Trust yet is able to benefit by utilizing all the services provided by that money nonetheless. Virg's Landing already possesses an unfair economic advantage over its competitors by receiving the same benefits paid for by the percentage rent revenue that every other waterfront business is required to pay without paying for it at all and is now receiving a further benefit by the instant Planning Commission decision.

The kiosk will provide additional marketing, signage, and added burden upon the waterfront without having Virg's Landing having any responsibility to contribute to the maintenance thereof. The planning commission's approval of the CUP in this matter is tantamount to an improper subsidization of one local business over all others and to the detriment of its competitors.

Additionally, Virg's Landing has previously set up the same kiosk, under a temporary use permit, for a trial period prior to applying for the instant CUP. During that time, it is undisputed that the kiosk was virtually never manned. The kiosk instead operated as additional signage in violation of Morro Bay's signage requirements and restrictions. This kiosk will operate in the same way.

That same TUP for the kiosk was approved during the Summer of 2017 on the condition that it be removed by September 2017. Virg's Landing failed and refused to remove the kiosk as required. It wasn't until two (2) months of repeated demands from the City of Morro Bay and community pressure that the kiosk was finally removed.

A TUP should operate as a "test run" of sorts. A subsequent CUP or more permanent approval should be forthcoming only on the meeting of the conditions imposed in the TUP or, at least, substantial compliance. Virg's Landing has proven unreliable in the past and based on past conduct, the instant CUP should not have been approved.

Attachment C

In addition, the “tuff shed” appearance is against the general plan of Morro Bay insofar as it is unsightly and not in conformity with the waterfront’s appearance.

In addition, the physical location will cause an unacceptable blockage of foot traffic and an additional burden on parking. Again, without Virg’s Landing being responsible for being any portion of the amenities from which it currently benefits and will benefit further if allowed to operate a kiosk on the waterfront in addition to its current operation.

RECEIVED

APR 27 2018



CITY OF MORRO BAY

City of Morro Bay
Community Development Dept.

APPEAL FORM

Public Services Department
Planning Division

955 Shasta Avenue
Morro Bay, CA 93442
(805) 772-6577

In CCC Appeals Jurisdiction?

YES – No Fee
 NO – Fee Paid: Yes No

Project Address being appealed: 1001 Front Street	
Appeal from the decision or action of (governing body or City officer): <input type="checkbox"/> Administrative Decision <input checked="" type="checkbox"/> Planning Commission <input type="checkbox"/> City Council	
Appeal of action or specific condition of approval: Appeal of Planning Conditions added by Planning Commission on April 17, 2018 #'s 7 to 11	
Permit number and type being appealed (ie. coastal permit, use permit, tentative subdivision): Amendment (#A00-054) to Conditional Use Permit (Precise Plan#UP0-284)	
Date decision or action rendered: April 17, 2018	
Grounds for the appeal (attach additional sheets as necessary): See attached sheet.	
Requested relief or action: Modification of conditions listed above. See attached sheet.	
Appellant (please print): Giovanni DeGarimore	Phone: 772-1276
Address: 1001 Front St., Morro Bay, CA 93442	
Appellant Signat <u>r</u>	Date: <u>4/26/18</u>

FOR OFFICE USE ONLY

Accepted by:	Date appeal filed:
Appeal body:	Date of appeal hearing:

RECEIVED

APR 27 2018

City of Morro Bay
Community Development Dept.

Appeal of added by Planning Commission on April 17, 2018 - #'s 7 to 11
1001 Front Street

Condition #7: Beach Street public access gate entrance:

Request modification to have gate open during regular business hours.

The gates are closed for security of the fishing gear, wharf operations and for public safety at night. The gates are opened each morning when the employees arrive approximately 7:30 a.m. Requiring that gate be opened prior to the arrival of the employees at their normal operation hours places and undue hardship on the applicant since he would need to hire an employee to come to work at least an hour earlier than normally required. Since the gate is closed for security and public safety while employees are not on site, it is detrimental to have the site open without some on-site supervision.

Condition #8: Public access compliance:

Request modification of condition to provide clarity on intent to comply with permit conditions.

The applicant believes that he is currently in compliance with the conditions for the Coastal CDP and City CUP. The CDP requires access be provided and maintained through the site. The applicant has installed temporary bollards with straps to keep the customers lined up for the take out window clear of the access path leading around the waterside of the site. There is not an express City CUP condition that requires anything different than the Coastal Commission approved plan so therefore the City requirement is also in compliance.

Condition #9: Kiosk location:

Request modification to location of kiosk and allow the kiosk to be installed in the area proposed by the applicant.

The proposed kiosk location is within private property boundaries and placed in a strategic location that is the most accessible to the public. Placing the kiosk beyond the fence line or moving the fence is will create several hardships.

1. The kiosk was designed and constructed so that the Dutch door to serve the visitors is on the south side and the window on the east side can be seen by the public to let them know they can freely walk up to inquire about the fishing and whale watching trips. Placing the kiosk inside the fence line in the same configuration as proposed will require that it is setback from the fence line approximately 5' to 6' to allow for the ADA ramp leading to the door. This places the kiosk further from the public view and provides a visual barrier that is not inviting to the public.
2. The intention of the kiosk is to place it in a location for visibility by pedestrians on the Embarcadero and vehicular traffic that is coming down Beach Street from the tackle shop.
3. It is not feasible to change the design of the kiosk for the location of the door and window.
4. Placing the kiosk either on the north or south end of the parking lot further hides the kiosk from public view when visitors are walking from the opposite directions. In addition, if the kiosk is placed at the southern side, the door and access ramp will be pushed towards the existing building making it difficult for visitors to access the kiosk.

Attachment D

5. The mid-section of the site is difficult as will since the area needs to be kept clear at time when there are several semi and other large trucks entering, queuing for loading and exiting during fish unloading or other operations.
6. The rolling gate locations cannot be modified. The gate locations are in place so that the large semi and other delivery trucks can be pulled on-site and the gates closed when it becomes a public safety hazard for the operations.
7. At least two parking spaces will need to be removed to site the kiosk because of the overall size including the ADA ramp.
8. Other alternative locations for the kiosk were explored however there are limitations from fishing activities/operations, marine fueling and public access that prevent the installation of the kiosk.

Condition #10: Utilize on-site parking for kiosk:

Request modification as it relates to condition #9 to allow kiosk outside the existing parking lot area.

Recently the Coastal Commission has expressed concern for the removal of on-site parking spaces with other waterfront projects so it is expected that the Coastal Commission may raise a concern with the removal of parking spaces on-site.

In addition, public comment was received by the Planning Commission regarding parking. To remove parking existing parking spaces to accommodate the kiosk where there is a feasible location to install the kiosk without any parking space reduction doesn't make sense.

Last, the applicant went through great measures to create an on-site parking lot with the original project to reduce parking impacts in the area. This parking lot is a private parking lot however, Giovanni's does not chase visitors that are not going to the businesses out of the lot and therefore is providing space to the public as well.

Condition #11: Permit valid for one year:

Request modification of condition to provide clarity that the permit will be reviewed after one year however, a new application is not required if the Planning Commission finds that the kiosk is compliance with the permit issued and can continue with the use.



CITY OF MORRO BAY
COMMUNITY DEVELOPMENT DEPARTMENT
955 Shasta Avenue
Morro Bay, CA 93442

April 24, 2018

Giovanni DeGarimore
1001 Front St
Morro Bay, CA 93442

SUBJECT: Case No.: A00-045 Permit
Amendment (Precise UP0-284)

SITE: 1001 Front Street, APN 066-033-004

Dear Mr. DeGarimore,

At its regular meeting on April 17, 2018 the City of Morro Bay Planning Commission conditionally approved your request for a Conditional Use Permit Amendment #A00-054 to Precise Plan #UP0-284 for installation of a information/ticket sales kiosk for Virg's Landing at 1001 Front Street as further conditioned in Planning Commission Resolution 12-18. This action does not constitute a building permit. Any further processing of this project must be initiated by the applicant, subject to the applicable rules and regulations of the Morro Bay Municipal Code. ***Please be advised that you must return the enclosed Acceptance of Conditions form, signed, to this department or the action is null and void.***

Note because your project is within the original jurisdiction of the California Coastal Commission, you will be required to obtain a Coastal Development Permit, or waiver as applicable prior to building permit issuance.

Also find enclosed the Notice of Exemption (NOE) for your project. The City of Morro Bay no longer files notices of exemptions. You may file the Notice of Exemption with the County Clerks' office located in the County Government Building in San Luis Obispo. The filing fee is \$50.00 and the County requires the original Notice of Exemption and at least one copy. Section 15062 (d) of the The California Environmental Quality Act (CEQA) provides:

"The filing of a Notice of Exemption and the posting on the list of notices start a 35 day statute of limitations period on legal challenges to the agency's decision that the project is exempt from CEQA. If a Notice of Exemption is not filed, a 180 day statute of limitations will apply."

If you have any questions, please let me know at 772-6577.

Sincerely,

Scot Graham
Community Development Director

By:  Cindy Jacinth, Senior Planner
enc: NOE, Permit, Findings, Resolution 12-18, and Acceptance of Conditions Form

e-copy: Cathy Novak Consulting, Denise DeCock



CITY OF MORRO BAY
 COMMUNITY DEVELOPMENT DEPARTMENT
 955 Shasta Avenue
 Morro Bay, CA 93442

**CONDITIONAL USE PERMIT
 AMENDMENT**

CASE NO: A00-054

THIS PERMIT IS HEREBY APPROVED AND ISSUED FOR:

SITE ADDRESS: 1001 FRONT STREET

APPLICANT: Giovanni DeGarimore,

APN/LEGAL: # 066-033-004

DATE APPROVED: April 17, 2018 APPROVED BY: Planning Commission

CEQA DETERMINATION: Exempt under Class 11c, Section 15311 for accessory structures where placement of seasonal items such as a kiosk is allowed.

DESCRIPTION OF APPROVAL: Amendment of Precise Plan CUP #UP0-284 to allow permanent use of a 48sf seasonal kiosk for the Virg's Landing business on private property at 1001 Front Street. Kiosk to provide information and sell tickets for the Virg's sportfishing and whale watching fleet as well as provide special event information to tourists. Kiosk size is 8 x 6 foot and seasonal use limited between the months of April through November as conditioned in PC Resolution 12-18.

THIS APPROVAL IS BASED UPON THE ATTACHED FINDINGS AND IS VALID ONLY IF CONDITIONS (ATTACHED) ARE MET AND ONLY AFTER THE APPLICABLE APPEAL PERIOD. Failure to comply with the conditions of this permit shall, at the discretion of the Community Development Director pursuant to Municipal Code Section 17.60.150, render this entitlement null and void.

YOUR PROPERTY IS LOCATED IN THE CITY OF MORRO BAY JURISDICTION. THERE IS AN APPEAL PERIOD OF TEN (10) CALENDAR DAYS, WITHIN WHICH TIME YOUR PERMIT IS APPEALABLE TO THE CITY COUNCIL. THIS PROPERTY IS LOCATED WITHIN THE ORIGINAL JURISDICTION OF THE CALIFORNIA COASTAL COMMISSION, WHICH RETAINS AUTHORITY FOR ISSUANCE OF COASTAL DEVELOPMENT PERMITS AND RELATED COMPLIANCE REVIEW.

YOUR PROPERTY IS LOCATED IN THE COASTAL COMMISSION APPEALS JURISDICTION: THE FOLLOWING COASTAL COMMISSION APPEAL PERIOD APPLIES TO YOUR PROJECT: This City decision is appealable to the California Coastal Commission pursuant to the California Public Resource Code, Section 30603. The applicant or any aggrieved person may appeal this decision to the Coastal Commission within TEN (10) *Working days* following Commission receipt of this notice. Appeals must be in writing and should be addressed to: California Coastal Commission, 725 Front Street, Ste.300, Santa Cruz, CA 95060, 831-427-4863. If you have any questions, please call the City of Morro Bay Community Development Dept, 772-6261.

ATTEST: *Charitz* DATE: 4-24-18

THIS IS A DISCRETIONARY APPROVAL AND DOES NOT CONSTITUTE A BUILDING PERMIT



CITY OF MORRO BAY
 COMMUNITY DEVELOPMENT DEPARTMENT
 955 Shasta Avenue
 Morro Bay, CA 93442

NOTICE OF EXEMPTION

TO: San Luis Obispo Co. Clerk
 County Government Center
 San Luis Obispo CA 93401

FROM: City of Morro Bay
 Community Development Department
 955 Shasta Avenue
 Morro Bay, CA 93442

Office of Planning & Research
 1400 Tenth Street
 Sacramento, CA 95814

Project Title: Virgs Landing Information/Ticket Sales Kiosk

Project Location - Specific: 1001 Front St., Morro Bay, CA 93442 (APN 066-033-004)

Project Location - City: MORRO BAY **County:** SAN LUIS OBISPO

Description

of Project: Amendment of Precise Plan CUP #UP0-284 to allow permanent use of a 48sf seasonal kiosk for the Virg's Landing business on private property at 1001 Front Street. Kiosk to provide information and sell tickets for the Virg's sportfishing and whale watching fleet as well as provide special event information to tourists. Kiosk size is 8 x 6 foot and seasonal use limited between the months of April through November as conditioned in PC Resolution 12-18..

Name of Public Agency Approving the Project: CITY OF MORRO BAY, 955 SHASTA AVE, MORRO BAY, CA 93442, CONTACT: cjacinth@morrobayca.gov, CINDY JACINTH

Name of Person or Agency Carrying Out Project: Giovanni DeGarimore, 1001 Front St., Morro Bay, CA 93442; sales@giovanisfishmarket.com.

Exempt Status: (Check One)

Reasons why project is exempt: Exempt under Class 11c, Section 15311 for accessory structures where placement of seasonal items such as a kiosk is allowed.

- Ministerial (Sec. 21080(b)(1); 15268); Categorical Exemption: Type and Section Number: 15311 Class 11(c)
- Declared Emergency (Sec. 21080(b)(3); 15269(a)) _____
- Declared Emergency (Sec. 21080(b)(3); 15269(a)) Statutory Exemption Code No. _____

Lead Agency: City of Morro Bay, 955 Shasta Ave, Morro Bay, CA 93442

Contact Person: Cindy Jacinth, Senior Planner Phone: 805-772-6577 cjacinth@morrobayca.gov

Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Certification: I hereby certify that the public agency has made the above finding and that the project is categorically exempt from CEQA.

Signature: *Cindy Jacinth* Title: Senior Planner Date: 4/25/2018

APPLICANT'S ACCEPTANCE
OF
CONDITIONS OF APPROVAL

CASE NO. A00-054 / (AMEND UP0-284)

SITE LOCATION: 1001 FRONT STRRET,
APN #066-003-004

APPLICANT NAME: Giovanni DeGarimore

APPROVAL BODY: Community Development Director
 Zoning Administrator
 Planning Commission
 City Council

DATE OF ACTION: 4-17-2018 – VIA PLANNING COMMISSION RESOLUTION 12-18

I, _____ the undersigned, have read and
(APPLICANT'S NAME - PLEASE PRINT)

reviewed the conditions of approval imposed by the Approval Body in its action

approving Case Number: A00-054

I UNDERSTAND AND ACCEPT SAID CONDITIONS AND AGREE TO FULLY COMPLY WITH THEM.

APPLICANT'S SIGNATURE

DATE:

RESOLUTION NO. PC 12-18

A RESOLUTION OF THE MORRO BAY PLANNING COMMISSION APPROVING A
AMENDMENT (A00-054) TO PRECISE PLAN CONDITIONAL USE PERMIT (UP0-284)
FOR PLACEMENT OF A SEASONAL KIOSK FOR THE VIRG'S LANDING BUSINESS
AT 1001 FRONT STREET

WHEREAS, the Planning Commission of the City of Morro Bay conducted a public hearing at the Morro Bay Veteran's Hall, 209 Surf Street, Morro Bay, California, on April 17, 2018, for the purpose of considering approval of an amendment (#A00-054) to Precise Plan Conditional Use Permit #UP0-284; and

WHEREAS, notices of said public hearing were made at the time and in the manner required by law; and

WHEREAS, the Planning Commission has duly considered all evidence, including the testimony of the applicant, interested parties, and the evaluation and recommendations by staff, presented at said hearing.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Morro Bay as follows:

Section 1: Findings. Based upon all the evidence, the Commission makes the following findings:

California Environmental Quality Act (CEQA)

A. That for purposes of the California Environmental Quality Act, Case No. A00-054 is exempt under Class 11, Section 15311 for accessory structures where seasonal or temporary placement of items such as a kiosk are allowed and will have no potentially significant environmental impacts. Furthermore, none of the exemptions to this Categorical Exemption set forth in CEQA Guidelines Section 15300.2 apply to this project.

Conditional Use Permit Findings

- A. The project will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood in that signage is an allowed and appropriate use in the Waterfront zoning district.
- B. The project will not be injurious or detrimental to property and improvements in the neighborhood and the general welfare of the City in that the proposed kiosk supports the waterfront commercial use which is consistent with the allowable uses on the waterfront.

Waterfront Master Plan Findings

- A. The proposed project makes a positive contribution to the visual and public accessibility to the bay while increasing and maintaining commercial fishing industry:
1. Meets the Waterfront plan height limit and maximum building coverage, bulk, and scale requirements in that the proposed project does not exceed development standards for the waterfront zoning district.
 2. The proposed project provides the amenities identified in the WF Plan, facilitates pedestrian visual and physical access to the waterfront, and takes advantage of outward views and characteristics of the topography in that the information kiosk is small scaled and does not impede pedestrian access, and at 48 square feet in size does not impact views which provides for better bay views. It preserves and enhances the views as seen around the kiosk.
 3. The project does not worsen or block more views, it does not block view corridors or intrude into pedestrian access areas. It takes advantage of outward views and characteristics of the topography in that the project proposes a information/ticket sales kiosk that is small scaled and proposed at 7'6" in height.
 4. The proposed project makes a positive contribution to the working fishing village character and quality of the Embarcadero area in that the new project provides information for whale-watching, and includes a fish identification chart for general public information to the public..
 5. The project contains the elements of harmony, continuity, proportion, simplicity, and balance, and its appearance matches its function and the uses proposed in that the new kiosk is designed to provide a nautical theme with articulation that is consistent with the character of the waterfront.
 6. The proposed project does not diminish, either directly or by cumulative impact of several similar projects, the use, enjoyment, or attractiveness of adjacent buildings on the property and is in keeping with the style, massing, materials, scale, and use of its surroundings.

Architectural Consideration

- A. As required by Ordinance Section 17.48.200 the Planning Commission finds that the architectural treatment and general appearance of the proposed kiosk structure is in keeping with the character of the surrounding areas, is compatible with any design

themes adopted by the city, and is not detrimental to the orderly and harmonious development; of the city or to the desirability of investment of occupation in the area.

Section 2. Action. The Planning Commission does hereby approve an Amendment (A00-054) to Precise Plan Conditional Use Permit (UP0-284) for property located at 1001 Front Street subject to the following conditions:

STANDARD CONDITIONS

1. This permit is granted for the land described in the staff report dated April 11, 2018 for the Virg's Landing Kiosk at 1001 Front depicted on plans date stamped April 2, 2018, on file with the Community Development Department, as modified by these conditions of approval. The kiosk shall be located and designed substantially as shown on Planning Commission approved plans submitted for A00-054, unless otherwise specified herein.
2. Inaugurate Within Two Years: Unless the construction or operation of the structure, facility, or use is commenced not later than two (2) years after the effective date of this Resolution and is diligently pursued, thereafter, this approval will automatically become null and void; provided, however, that upon the written request of the applicant, prior to the expiration of this approval, the applicant may request up to two extensions for not more than one (1) additional year each. Any extension may be granted by the City's Community Development Director (the "Director"), upon finding the project complies with all applicable provisions of the Morro Bay Municipal Code (the "MBMC"), General Plan and certified Local Coastal Program Land Use Plan (LCP) in effect at the time of the extension request.
3. Changes: Minor changes to the project description and/or conditions of approval shall be subject to review and approval by the Community Development Director. Any changes to this approved permit determined, by the Director, not to be minor shall require the filing of an application for a permit amendment subject to Planning Commission review.
4. Compliance with the Law: (a) All requirements of any law, ordinance or regulation of the State of California, the City, and any other governmental entity shall be complied with in the exercise of this approval, (b) This project shall meet all applicable requirements under the MBMC, and shall be consistent with all programs and policies contained in the LCP and General Plan for the City.
5. Hold Harmless: The applicant, as a condition of approval, hereby agrees to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of the applicant's project; or Applicant's failure to comply with conditions of approval. Applicant understands and acknowledges the City is under

no obligation to defend any legal actions challenging the City’s actions with respect to the project. This condition and agreement shall be binding on all successors and assigns.

6. Compliance with Conditions: The applicant’s establishment of the use or development of the subject property constitutes acknowledgement and acceptance of all Conditions of Approval. Compliance with and execution of all conditions listed hereon shall be required prior to obtaining final building inspection clearance. Deviation from this requirement shall be permitted only by written consent of the Director or as authorized by the Planning Commission. Failure to comply with any of these conditions shall render this entitlement, at the discretion of the Director, null and void. Continuation of the use without a valid entitlement will constitute a violation of the MBMC and is a misdemeanor.

7. Compliance with Morro Bay Standards: This project shall meet all applicable requirements under the MBMC, and shall be consistent with all programs and policies contained in the LCP and General Plan of the City.

Fire Condition:

1. Three foot clearance shall be maintained around the circumference of all fire suppression appliances.

Planning Condition:

1. An employee or Virg’s Landing representative shall be present at the kiosk during the following hours of operation:

Month	Day	Hours
April – May	Weekends only & special events	10am – 2pm
June – September	Monday – Thursday Friday – Sunday	10am – 2pm 9am – 3pm
October - November	Weekends only & special events	10am – 2pm

2. The northeast corner of the information kiosk/booth shall be no closer than 3 feet to the back of the sidewalk.

3. The applicant shall maintain sidewalk clearance at all times for accessibility of pedestrians. Kiosk booth items shall not encroach on the sidewalk or public right of way. This permit only allows the kiosk to take place on the private property at 1001 Front Street.

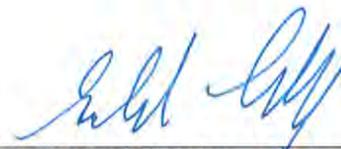
4. Queue: The window on the east side of the kiosk shall not be used for customer service. The line shall be formed westward and shall not encroach into the sidewalk, public right of way, or vehicular path of travel.
5. The approval for placement of the kiosk is allowed only between April 1 through November 30 annually. Kiosk shall be moved off-site on or before December 1 annually and placed no sooner than April 1 of each year.

Planning conditions 6-11 added by Planning Commission on April 17, 2018

6. The public lateral access pathway shall be repainted to improve visibility of public access.
7. The Beach Street public access gate entrance shall be open from dawn to dusk, but may be closed during active fish unloading activities that render public lateral access dangerous consistent with Coastal Development Permit 3-11-031.
8. The applicant shall demonstrate compliance with condition of approval 1a of Coastal Development Permit No. 3-11-031 related to the southern public access area which is the public area adjacent to and near the walk-up order window for Giovanni's Fish Market. In addition, this public access area shall be consistent with the Precise Plan (UP0-284) approved by Planning Commission on May 16, 2012.
9. The proposed kiosk location shall be either moved inside the fence line on Front Street or the fence shall be moved to the property line with the kiosk structure inside the parking lot, subject to meeting other project site requirements.
10. The applicant may utilize an onsite parking space, within the existing parking lot, for placement of the kiosk, subject to review and approval by the Community Development Director.
11. This permit to be reviewed for compliance with the conditions of approval by the Planning Commission within one year of kiosk installation.

PASSED AND ADOPTED by the Morro Bay Planning Commission at a regular meeting thereof held on a motion by Chairperson Luhr and seconded by Commissioner Lucas this 17th day of April, 2018 on the following vote:

AYES: Lucas, Sadowski, Barron, Ingraffia, Luhr
NOES:
ABSENT:
ABSTAIN:



Gerald Luhr, Chairperson

ATTEST



Scot Graham, Planning Secretary

The foregoing resolution was passed and adopted this 17th day of April, 2018.

RESOLUTION NO. PC 12-18

A RESOLUTION OF THE MORRO BAY PLANNING COMMISSION APPROVING A
AMENDMENT (A00-054) TO PRECISE PLAN CONDITIONAL USE PERMIT (UP0-284)
FOR PLACEMENT OF A SEASONAL KIOSK FOR THE VIRG'S LANDING BUSINESS
AT 1001 FRONT STREET

WHEREAS, the Planning Commission of the City of Morro Bay conducted a public hearing at the Morro Bay Veteran's Hall, 209 Surf Street, Morro Bay, California, on April 17, 2018, for the purpose of considering approval of an amendment (#A00-054) to Precise Plan Conditional Use Permit #UP0-284; and

WHEREAS, notices of said public hearing were made at the time and in the manner required by law; and

WHEREAS, the Planning Commission has duly considered all evidence, including the testimony of the applicant, interested parties, and the evaluation and recommendations by staff, presented at said hearing.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Morro Bay as follows:

Section 1: Findings. Based upon all the evidence, the Commission makes the following findings:

California Environmental Quality Act (CEQA)

A. That for purposes of the California Environmental Quality Act, Case No. A00-054 is exempt under Class 11, Section 15311 for accessory structures where seasonal or temporary placement of items such as a kiosk are allowed and will have no potentially significant environmental impacts. Furthermore, none of the exemptions to this Categorical Exemption set forth in CEQA Guidelines Section 15300.2 apply to this project.

Conditional Use Permit Findings

- A. The project will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood in that signage is an allowed and appropriate use in the Waterfront zoning district.
- B. The project will not be injurious or detrimental to property and improvements in the neighborhood and the general welfare of the City in that the proposed kiosk supports the waterfront commercial use which is consistent with the allowable uses on the waterfront.

Waterfront Master Plan Findings

- A. The proposed project makes a positive contribution to the visual and public accessibility to the bay while increasing and maintaining commercial fishing industry:
1. Meets the Waterfront plan height limit and maximum building coverage, bulk, and scale requirements in that the proposed project does not exceed development standards for the waterfront zoning district.
 2. The proposed project provides the amenities identified in the WF Plan, facilitates pedestrian visual and physical access to the waterfront, and takes advantage of outward views and characteristics of the topography in that the information kiosk is small scaled and does not impede pedestrian access, and at 48 square feet in size does not impact views which provides for better bay views. It preserves and enhances the views as seen around the kiosk.
 3. The project does not worsen or block more views, it does not block view corridors or intrude into pedestrian access areas. It takes advantage of outward views and characteristics of the topography in that the project proposes a information/ticket sales kiosk that is small scaled and proposed at 7'6" in height.
 4. The proposed project makes a positive contribution to the working fishing village character and quality of the Embarcadero area in that the new project provides information for whale-watching, and includes a fish identification chart for general public information to the public..
 5. The project contains the elements of harmony, continuity, proportion, simplicity, and balance, and its appearance matches its function and the uses proposed in that the new kiosk is designed to provide a nautical theme with articulation that is consistent with the character of the waterfront.
 6. The proposed project does not diminish, either directly or by cumulative impact of several similar projects, the use, enjoyment, or attractiveness of adjacent buildings on the property and is in keeping with the style, massing, materials, scale, and use of its surroundings.

Architectural Consideration

- A. As required by Ordinance Section 17.48.200 the Planning Commission finds that the architectural treatment and general appearance of the proposed kiosk structure is in keeping with the character of the surrounding areas, is compatible with any design

themes adopted by the city, and is not detrimental to the orderly and harmonious development; of the city or to the desirability of investment of occupation in the area.

Section 2. Action. The Planning Commission does hereby approve an Amendment (A00-054) to Precise Plan Conditional Use Permit (UP0-284) for property located at 1001 Front Street subject to the following conditions:

STANDARD CONDITIONS

1. This permit is granted for the land described in the staff report dated April 11, 2018 for the Virg's Landing Kiosk at 1001 Front depicted on plans date stamped April 2, 2018, on file with the Community Development Department, as modified by these conditions of approval. The kiosk shall be located and designed substantially as shown on Planning Commission approved plans submitted for A00-054, unless otherwise specified herein.
2. Inaugurate Within Two Years: Unless the construction or operation of the structure, facility, or use is commenced not later than two (2) years after the effective date of this Resolution and is diligently pursued, thereafter, this approval will automatically become null and void; provided, however, that upon the written request of the applicant, prior to the expiration of this approval, the applicant may request up to two extensions for not more than one (1) additional year each. Any extension may be granted by the City's Community Development Director (the "Director"), upon finding the project complies with all applicable provisions of the Morro Bay Municipal Code (the "MBMC"), General Plan and certified Local Coastal Program Land Use Plan (LCP) in effect at the time of the extension request.
3. Changes: Minor changes to the project description and/or conditions of approval shall be subject to review and approval by the Community Development Director. Any changes to this approved permit determined, by the Director, not to be minor shall require the filing of an application for a permit amendment subject to Planning Commission review.
4. Compliance with the Law: (a) All requirements of any law, ordinance or regulation of the State of California, the City, and any other governmental entity shall be complied with in the exercise of this approval, (b) This project shall meet all applicable requirements under the MBMC, and shall be consistent with all programs and policies contained in the LCP and General Plan for the City.
5. Hold Harmless: The applicant, as a condition of approval, hereby agrees to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of the applicant's project; or Applicant's failure to comply with conditions of approval. Applicant understands and acknowledges the City is under

no obligation to defend any legal actions challenging the City’s actions with respect to the project. This condition and agreement shall be binding on all successors and assigns.

6. Compliance with Conditions: The applicant’s establishment of the use or development of the subject property constitutes acknowledgement and acceptance of all Conditions of Approval. Compliance with and execution of all conditions listed hereon shall be required prior to obtaining final building inspection clearance. Deviation from this requirement shall be permitted only by written consent of the Director or as authorized by the Planning Commission. Failure to comply with any of these conditions shall render this entitlement, at the discretion of the Director, null and void. Continuation of the use without a valid entitlement will constitute a violation of the MBMC and is a misdemeanor.

7. Compliance with Morro Bay Standards: This project shall meet all applicable requirements under the MBMC, and shall be consistent with all programs and policies contained in the LCP and General Plan of the City.

Fire Condition:

1. Three foot clearance shall be maintained around the circumference of all fire suppression appliances.

Planning Condition:

1. An employee or Virg’s Landing representative shall be present at the kiosk during the following hours of operation:

Month	Day	Hours
April – May	Weekends only & special events	10am – 2pm
June – September	Monday – Thursday Friday – Sunday	10am – 2pm 9am – 3pm
October - November	Weekends only & special events	10am – 2pm

2. The northeast corner of the information kiosk/booth shall be no closer than 3 feet to the back of the sidewalk.

3. The applicant shall maintain sidewalk clearance at all times for accessibility of pedestrians. Kiosk booth items shall not encroach on the sidewalk or public right of way. This permit only allows the kiosk to take place on the private property at 1001 Front Street.

4. Queue: The window on the east side of the kiosk shall not be used for customer service. The line shall be formed westward and shall not encroach into the sidewalk, public right of way, or vehicular path of travel.
5. The approval for placement of the kiosk is allowed only between April 1 through November 30 annually. Kiosk shall be moved off-site on or before December 1 annually and placed no sooner than April 1 of each year.

Planning conditions 6-11 added by Planning Commission on April 17, 2018

6. The public lateral access pathway shall be repainted to improve visibility of public access.
7. The Beach Street public access gate entrance shall be open from dawn to dusk, but may be closed during active fish unloading activities that render public lateral access dangerous consistent with Coastal Development Permit 3-11-031.
8. The applicant shall demonstrate compliance with condition of approval 1a of Coastal Development Permit No. 3-11-031 related to the southern public access area which is the public area adjacent to and near the walk-up order window for Giovanni's Fish Market. In addition, this public access area shall be consistent with the Precise Plan (UP0-284) approved by Planning Commission on May 16, 2012.
9. The proposed kiosk location shall be either moved inside the fence line on Front Street or the fence shall be moved to the property line with the kiosk structure inside the parking lot, subject to meeting other project site requirements.
10. The applicant may utilize an onsite parking space, within the existing parking lot, for placement of the kiosk, subject to review and approval by the Community Development Director.
11. This permit to be reviewed for compliance with the conditions of approval by the Planning Commission within one year of kiosk installation.

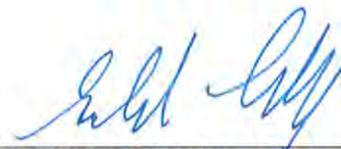
PASSED AND ADOPTED by the Morro Bay Planning Commission at a regular meeting thereof held on a motion by Chairperson Luhr and seconded by Commissioner Lucas this 17th day of April, 2018 on the following vote:

AYES: Lucas, Sadowski, Barron, Ingraffia, Luhr

NOES:

ABSENT:

ABSTAIN:



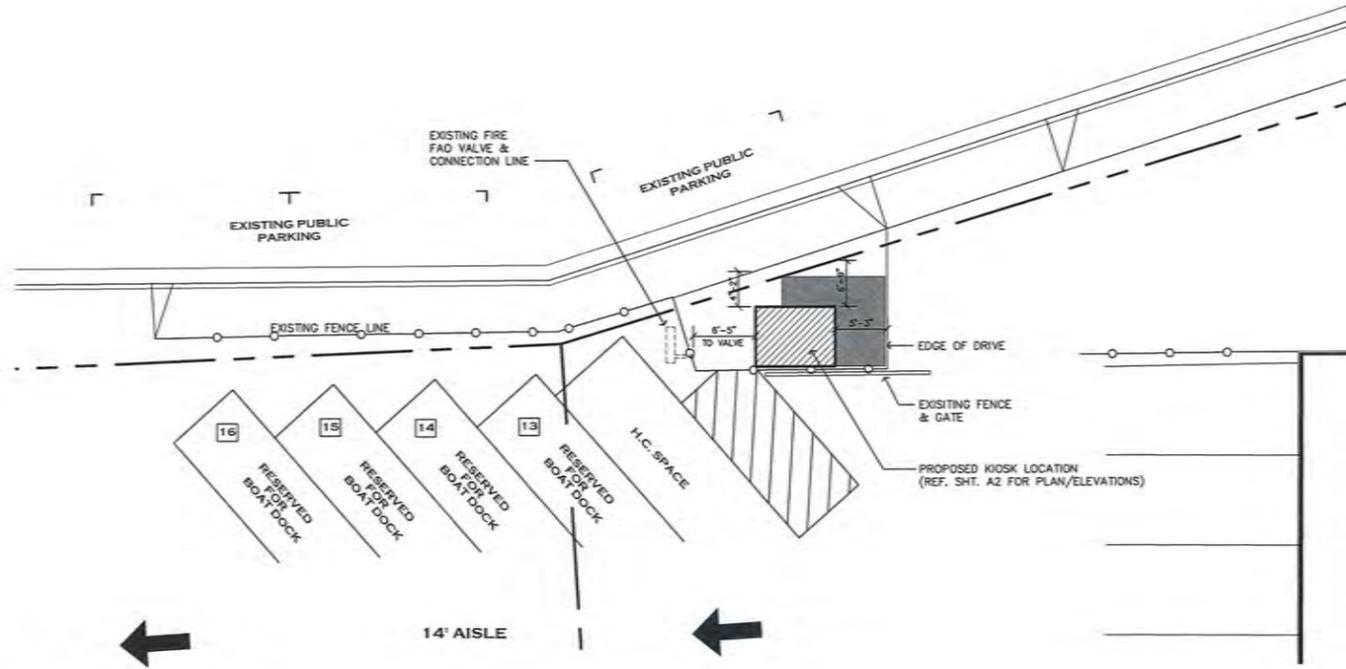
Gerald Luhr, Chairperson

ATTEST



Scot Graham, Planning Secretary

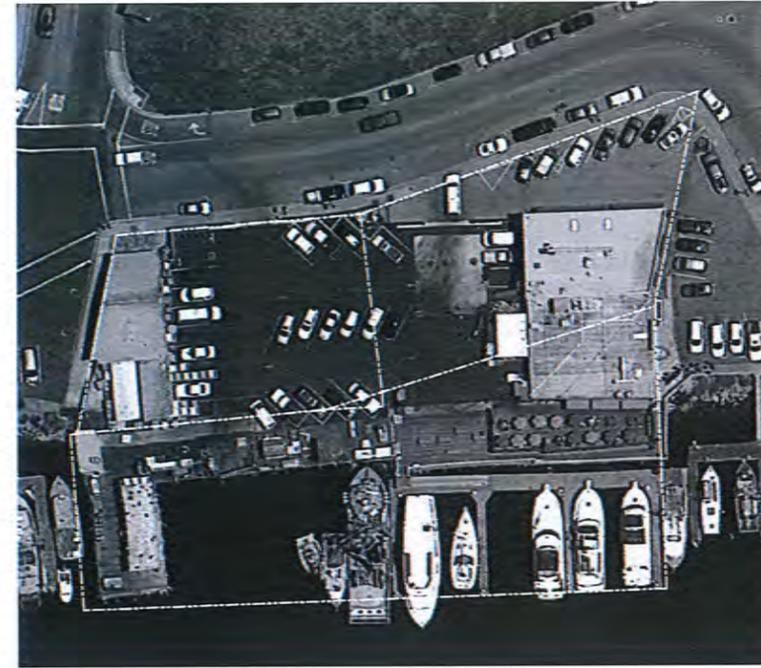
The foregoing resolution was passed and adopted this 17th day of April, 2018.



KIOSK LAYOUT

SCALE: 1/8" = 1'-0"

City of Morro Bay
 Planning Commission Approval
 Project #(s) ACW 024 (UPD 284)
 Approved as Submitted PC RESO 12-18
 X Approved with Changes
 Approval Date: 4-17-18
 Planner: [Signature]



SITE PHOTO

GENERAL NOTES

THE CONTACT INFORMATION SHALL BE POSTED ON SITE

CONTACT COORDINATOR SHALL BE VIRGS SPORTFISHING 805-772-1222

ALL BE COMPLETED IN A GOOD WORKMANSHIP MANNER ALL WORK SHALL COMPLY WITH CITY OF MORRO BAY, CODES AND REQUIREMENTS & CONDITIONS OF APPROVAL

VIRG'S KIOSK

The purpose of the kiosk is an information booth to provide information and sell tickets for the Virg's sportfishing and whale watching fleet and be used for special events to provide information to the tourists. The Virg's staff will be there early in the morning to assist any sportfishing passengers and direct them to the tackle shop, parking and to help with the boat loading. The Virg's staff will man the booth during the day time for information and ticket sales and be available in the afternoon for unloading. It is proposed that the kiosk will operate with the following hours depending upon the fishing season:
 April to May: Weekends only & special events from 10 am to 2 pm
 June to September: Monday - Thursday from 10 am to 2 pm & Friday - Sunday from 9 am to 3 pm
 October to November: Weekends only & special events from 10 am to 2 pm

GENERAL INFORMATION

A. ANY DAMAGE, AS A RESULT OF CONSTRUCTION OPERATIONS FOR THIS PROJECT, TO CITY FACILITIES, I.E. CURB/BERM, STREET, SEWER LINE, WATER LINE, OR ANY PUBLIC IMPROVEMENTS SHALL BE REPAIRED AT NO COST TO THE CITY OF MORRO BAY.

B. NO WORK SHALL OCCUR WITHIN (OR USE OF) THE CITY'S RIGHT OF WAY WITHOUT AN ENCROACHMENT PERMIT. ENCROACHMENT PERMITS ARE AVAILABLE AT THE CITY OF MORRO BAY PUBLIC WORKS OFFICE LOCATED AT 955 SHASTA AVE. THE ENCROACHMENT PERMIT SHALL BE ISSUED CONCURRENTLY WITH THE BUILDING PERMIT.

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C. P. PARKER ARCHITECT

CHRISTOPHER P. PARKER ARCHITECT
 630 QUINTANA RD. #330
 MORRO BAY, CA 93442
 (805) 772-5700

STAMPS



CONSULTANTS

PROJECT

WATERFRONT KIOSK FOR VIRG'S SPORTFISHING

1001 FRONT STREET
 MORRO BAY, CA 93442

DRAWING PHASE

CONSTRUCTION DOCUMENTS

Project No.	10-103
Drawn By	CPP
Dwg. Date	03/29/18
Updated	-
Scale	AS NOTED

REVISIONS

SHEET TITLE

SITE PLANS GENERAL NOTES

SHEET NO.

A1



AGENDA NO: B-2
MEETING DATE: June 26, 2018

Staff Report

TO: Honorable Mayor and City Council **DATE:** June 18, 2018
FROM: Rob Livick, PE/PLS – Public Works Director/City Engineer
SUBJECT: Adoption of Resolution No. 53-18 Directing the Levy of the Annual Assessment for the Cloisters Landscaping and Lighting Maintenance Assessment District for FY 2018/19

RECOMMENDATION

Staff recommends the City Council conduct the final public hearing and adopt Resolution No. 53-18, approving the levy of the annual assessment for the Cloisters Landscaping and Lighting Maintenance Assessment District for FY 2018/19.

ALTERNATIVE

Not adopt Resolution No. 53-18 and provide alternative specific direction for staff.

FISCAL IMPACT

By adopting Resolution No. 53-18, \$148,944 will be collected through an assessment of all parcel owners in the Cloisters subdivision for the Cloisters Landscape and Lighting Maintenance Assessment District for the maintenance of the Cloisters Park and Open Space.

SUMMARY

At the May 8, 2018, City Council meeting, Council adopted Resolution No. 23-18 approving the Engineer’s Report describing the annual maintenance to be completed at the Cloisters Park and Open Space, and declaring the City’s intent to levy an annual assessment to finance this maintenance. The assessment, projected at \$1,241.20 per assessable lot in the Cloisters subdivision, will be collected by the County Assessor. As part of the assessment process, the City ordered the preparation of an Engineer’s report, adopted a resolution of intention to levy an assessment, set June 26, 2018, as the public hearing date on the proposed levy of assessment.

BACKGROUND/DISCUSSION

Up until 2015, this required public hearing was advertised as a “protest hearing,” where those in the assessment district could file protests to the continuation. State law does not require a protest hearing, so long as there are no increases in the assessment. Currently, there are no proposed increases to the assessment amount.

In 2004, the Court determined, due to a lawsuit filed by three Cloisters residents, there are many special benefits associated with the Cloisters Landscape and Lighting Maintenance Assessment District. The Cloisters lots directly benefit from the Cloisters open space and close proximity of the public park, bicycle pathway, right of way landscaping, Environmentally Sensitive Habitat restoration areas and coastal access. There was also created, and reserved in favor of each owner in the Cloisters development, easements for view, open space, scenic, passive recreation

Prepared By: RL Dept Review: RL
City Manager Review: SC City Attorney Review: JWP

and coastal access across the entirety of LOTS 121, 122 and 123, which shall not be developed with any improvements or structures, unless necessary and proper for the restoration and maintenance of the Environmentally Sensitive Habitat Area. The Court determined further special benefits include: improved aesthetic appeal of nearby parcels, improved dust control, enhanced adaptation of the urban environment within the natural environment, improved erosion resistance, improved drainage and flood control, enhanced crime deterrence and aid to police protection, increased nighttime safety on roads and highways, improved visibility for pedestrians and motorists, improved ingress and egress to property, reduced vandalism and other criminal acts and damage to improvements or property, improved traffic circulation, reduced nighttime accidents, and special enhancement to property value resulting from the above benefits.

The Court also determined the City does not need, nor is it required, to prepare an annual redetermination of the separation of special and general benefits. The Court specially held:

“When the special assessment district was formed the owner of all of the parcels consented to its formation. Moreover, the owner did not object to the amount of the assessment, which the City based upon the cost of the special benefits being conferred on the properties within the assessment district, nor to the specific amount allocated to each parcel as its proportionate share. Because express consent to the amount and allocation of the assessment was given by petitioners’ predecessor, and petitioner’s purchased their properties with actual or constructive knowledge of the amount of the assessment, it is too late for them now to withdraw the consent and attack the amount of the assessment.”

Staff continues to recognize the importance of proper maintenance of the Cloisters Park and Open Space, which are generally outlined in the Engineer’s Report, but has a difficult time meeting the expectations of some residents. Due to resource limitations, the City, for several years, has not been able to staff the maintenance of the Cloisters Assessment District area with two plus full-time employees assigned solely to that area. This fiscal year the staffing for the Assessment District will not be less than the equivalent of one full-time employee. Staff will continue to utilize various means to inform Cloisters’ residents of upcoming meetings and various upcoming maintenance tasks, including meetings, email to the Cloisters Yahoo group, the City’s web based “Notify Me” and the “Doodle Poll” app.

Staff will continue methods for increasing efficiency and optimizing maintenance efforts. Savings from annual maintenance performance will be allocated to deferred maintenance/capital projects. Projects anticipated for FY 18/19 include the complete redesign and potential overhaul of the landscaping, which is at or near its expected lifespan, to a more drought tolerant type and to require a lower level of ongoing maintenance along with the replacement and continued repair of the Environmentally Sensitive Habitat Area fencing. Should Council continue this assessment, staff will bring forward a revision to the City’s capital project program in the first Quarter of FY18/19.

CONCLUSION

Staff recommends continuation of the assessment of the property owners within the Cloisters Lighting and Maintenance Assessment District to help fund the City’s maintenance of the Cloisters Park and Open Space. Staff will continue communicating with the owners to enhance our relationships and to allow for noticing of upcoming events which may impact their residences.

ATTACHMENT

1. Resolution No. 53-18

RESOLUTION NO. 53-18

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

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

WHEREAS, on May 8, 2018, the City Council adopted Resolution No. 23-18 declaring the Council’s intent to levy an assessment for the annual maintenance of the Cloisters Park and Open Space within the Cloisters Landscaping and Lighting Maintenance Assessment District (the “District”) and approving the Engineers Report; and

WHEREAS, a public hearing for to the levy of the annual assessment of the District was scheduled for June 26, 2018, at 6:00 p.m. in the Veteran’s Memorial Building; and

WHEREAS, notices regarding the proposed assessment listing the date, time and location of the public hearing were published in the local newspaper; and

WHEREAS, the City Council did take public testimony from all interested parties as to the levy of the annual assessment for the District on June 26, 2018, at the Veteran’s Memorial Building.

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

1. The annual levy for the maintenance of the District, generally located as shown on Exhibit “A,” attached hereto, is hereby ordered and the assessment of \$148,944 to be equally distributed per assessable parcel for the Fiscal Year 2018/19 is hereby confirmed.

2. Adoption of this Resolution shall constitute the levy of an assessment for the Fiscal Year 2018/19 and the City Clerk shall file the diagram and assessment with the County of San Luis Obispo Auditor.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held this 26th day of June 2018 by the following roll call vote:

AYES:
NOES:
ABSENT:

JAMIE L. IRONS, MAYOR

ATTEST:

LORI M. KUDZMA, DEPUTY CITY CLERK

EXHIBIT A
 CLOISTERS
 LANDSCAPING AND LIGHTING
 MAINTENANCE ASSESSMENT DISTRICT
 DISTRICT BOUNDARY DIAGRAM

The boundary diagrams for the District have previously been submitted to the City Clerk in the format required under the 1972 Act and, by reference, are hereby made part of this Report. The boundary diagrams are available for inspection at the office of the City Clerk during normal business hours. The following diagram provides an overview of the District.





AGENDA NO: B-3

MEETING DATE: June 26, 2018

Staff Report

TO Honorable Mayor and City Council **DATE:** June 18, 2018

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

SUBJECT: Adoption of Resolution No. 54-18 Directing the Levy of the Annual Assessment for the North Point Natural Area Landscaping and Lighting Maintenance Assessment District for FY 2018/19

RECOMMENDATION

Staff recommends the City Council conduct the public hearing and approve the levy of the annual assessment for the North Point Natural Area Landscaping and Lighting Maintenance District by adopting Resolution No. 54-18.

ALTERNATIVES

Not adopt Resolution No. 54-18 and provide specific direction for staff.

FISCAL IMPACT

By adopting Resolution No. 54-18, \$5,645 will be collected through an assessment of all parcel owners in the North Point subdivision for the maintenance of the North Point Natural Area.

BACKGROUND/DISCUSSION

At the May 8, 2018, City Council meeting, the Council adopted Resolution No. 24-18 approving the Engineer’s Report describing the annual maintenance to be completed at the North Point Natural Area, and declaring the City’s intent to levy an annual assessment to finance the maintenance. The assessment, projected at \$564.50 per assessable lot in the North Point subdivision, will be collected by the County Assessor.

The approved Engineer’s Report estimated of costs for maintenance of the North Point Natural Area. The cost estimates are based on the maintenance standards currently used in existing parks and open space areas within Morro Bay. The estimate for maintenance of the North Point Natural Area is \$5,645 or \$564.50 per parcel for fiscal year 2018/19.

Personnel costs, as well as supplies and services, have risen in the last several years. However, due to the small acreage, natural landscaping and little irrigation in the North Point Natural Area, the assessment amount collected is currently adequate to cover the costs of maintenance.

As part of the assessment process, the City adopted a resolution of intention to levy an assessment that set June 26, 2018 as the public hearing date on the proposed levy of assessment. The required noticing was published in the local newspaper per State requirements. The Council must hold a public hearing before considering the continuing the levy of the annual assessment.

CONCLUSION

Staff recommends continuation of the assessment of the property owners within the North Point

Prepared By: <u>rl</u>	Dept Review: <u>RL</u>
City Manager Review: <u>SC</u>	City Attorney Review: <u>JWP</u>

Natural Area Lighting and Maintenance Assessment District to help fund the City's maintenance of that open space area. Staff will continue to reanalyze and provide the efforts needed to maintain the natural area.

ATTACHMENT

1. Resolution No. 54-18

RESOLUTION NO. 54-18

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

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

WHEREAS, on May 8, 2018, the City Council adopted Resolution No. 24-18 declaring the Council’s intent to levy an assessment for the annual maintenance of the North Point Natural Area Landscaping and Lighting Maintenance Assessment District (the “District”) and approving the Engineers Report; and

WHEREAS, a public hearing regarding the levy of the annual assessment of the District was scheduled for June 26, 2018 at 6:00 p.m. in the Veteran’s Memorial Building; and

WHEREAS, notices regarding the proposed assessment listing the date, time and location of the protest hearing were published in the local newspaper; and

WHEREAS, the City Council did take public testimony from all interested parties as to the levy of the annual assessment for the District on June 26, 2018, at the Veteran’s Memorial Building.

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

1. The annual levy for the maintenance of the District generally located as shown on Exhibit “A” attached hereto is hereby ordered and the assessment of \$5,645 to be equally distributed per assessable parcel for the Fiscal Year 2018/19 is hereby confirmed.

2. Adoption of this Resolution shall constitute the levy of an assessment for the Fiscal Year 2017/18 and the City Clerk shall file the diagram and assessment with the County of San Luis Obispo Auditor.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting held this 26th day of June, 2018 by the following roll call vote:

AYES:
NOES:
ABSENT:

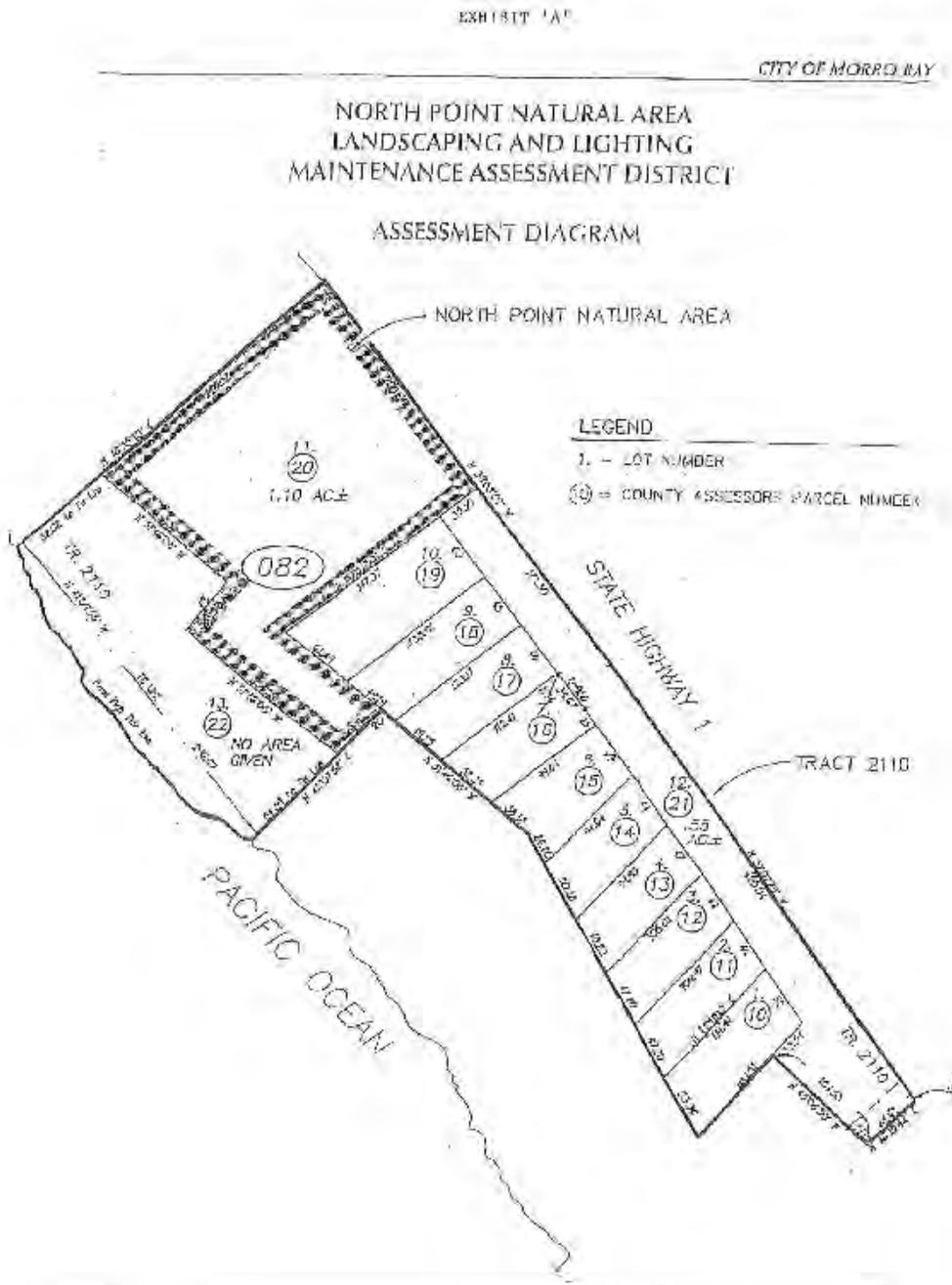
JAMIE L. IRONS, Mayor

ATTEST:

LORI M. KUDZMA, Deputy City Clerk

EXHIBIT A
 CLOISTERS
 LANDSCAPING AND LIGHTING
 MAINTENANCE ASSESSMENT DISTRICT
 DISTRICT BOUNDARY DIAGRAM

The boundary diagrams for the District have previously been submitted to the City Clerk in the format required under the 1972 Act and, by reference, are hereby made part of this Report. The boundary diagrams are available for inspection at the office of the City Clerk during normal business hours. The following diagram provides an overview of the District.





AGENDA NO: C-1

MEETING DATE: June 26, 2018

Staff Report

TO: Honorable Mayor and City Council **DATE:** June 20, 2018

FROM: Damaris Hanson – Environmental Programs Manager
Rob Livick, PE/PLS – Public Works Director/City Engineer
Eric Casares, PE – WRF Program Manager

SUBJECT: OneWater Plan Update and Provide Direction as Deemed Appropriate

RECOMMENDATION

Staff recommends the following:

- a. City Council consider the status report for the OneWater Plan;
- b. Provide any other direction as deemed appropriate by a majority of the Council.

ALTERNATIVES

No alternatives are recommended.

FISCAL IMPACT

No additional fiscal impact is proposed within this update. All work is proceeding within the City's fiscal year budget for the OneWater Plan.

BACKGROUND

Since 1992, the City of Morro Bay has received most of its potable water supply from the State Water Project. Over the last five years, State Water has made up approximately 91-percent of the City's annual water supply, with the remaining coming from the Morro Creek groundwater after treatment for nitrate removal through the City's Brackish Water Reverse Osmosis (BWRO) treatment plant. While State Water has been a stable source of water for Morro Bay to date, there are concerns about relying on one source for water and the interruptibility of State Water in the face of sustained droughts, equipment failures and emergency disruptions (such as earthquakes). With the uncertainty of the reliability of that supply, the City began development of the OneWater Plan in May 2017. The OneWater Plan has two main components:

- Identify a suite of alternative water supply options to allow for diversification of the City's portfolio; and
- Update the City's existing water, collection system, and stormwater master plans.

In addition, the OneWater Plan will support the City's Water Reclamation Facility (WRF) Project by identifying collection system repair and replacement projects to reduce Infiltration and Inflow (I/I) of stormwater into the sewer collection system and mitigate the peak hour flow that must be conveyed by the new pump station and reduce the design hydraulic capacity of the Water Reclamation Facility (WRF). The water supply evaluation will also include an Indirect Potable Reuse (IPR) option that will be evaluated along with other supply options, validating the current preferred WRF Project.

Prepared By: rl

Dept Review: _____

City Manager Review: SC

City Attorney Review: JWP

Most recently in May 2018, Carollo made a presentation to Council (staff report attached) on the final water and collection system capital improvement programs (CIPs) Those CIPs are necessary to understand the combined water and sewer rates as the City undertakes a rate study to support the WRF Program.

Water Supply Evaluation

Carollo began the water supply evaluation task for the OneWater Plan with a site evaluation of the City's existing desalination and BWRO facility to determine its ability to play a role in the City's regular supply. The site evaluation found the BWRO facility was in good condition and the reverse osmosis (RO) racks and recently upgraded electrical components could continue to be used. However, due to the age and condition of the existing ocean water desalination facility components, many, if not all, of those components will need to be replaced if that supply option were to play a role in the City's future supply.

Using growth assumptions from the City's new General Plan that is currently under development, future water demands for the 20-year planning horizon were determined. Based on the information from the site visits and future demands, six water supply options have been developed. Those options are summarized in the following table:

No.	Option	Water Supply Availability ¹
1	Substantial reliance on State Water allocation	1,313 AFY
2	Full utilization of the Morro Basin wells	581 AFY
3	Stream flow augmentation in Chorro Creek to allow for utilization of the Chorro Basin wells	1,142 AFY
4	Groundwater Injection of treated advanced treated (purified) wastewater and indirect potable reuse (IPR)	943 or 1,200 AFY
5	Ocean desalination	645 AFY
6	Direct potable reuse (DPR)	923 AFY

Along with those options, Carollo and City staff has developed a set of evaluation criteria that will be used to screen those options and determine the optimal water supply make-up for the City. The evaluation criteria categories include:

- Economic
- Natural Hazards
- Resiliency
- Environmental
- Implementation

To solicit public input into the evaluation process, Carollo developed a questionnaire that was distributed to members of the City Council, Public Works Advisory Board (PWAB), and staff asked participants to assign a value of 1 to 10 for each of the evaluation criteria. The scoring for all participants was normalized and used to weight the evaluation criteria.

DISCUSSION

Survey Results

¹ One Acre-Foot per Year (AFY) = 893 Gallons per Day

The questionnaire that was sent to City Council and PWAB resulted in the following weighting for the nine criteria developed by City staff for screening different water supply alternatives. Responses were received from ten members of City Council and PWAB.

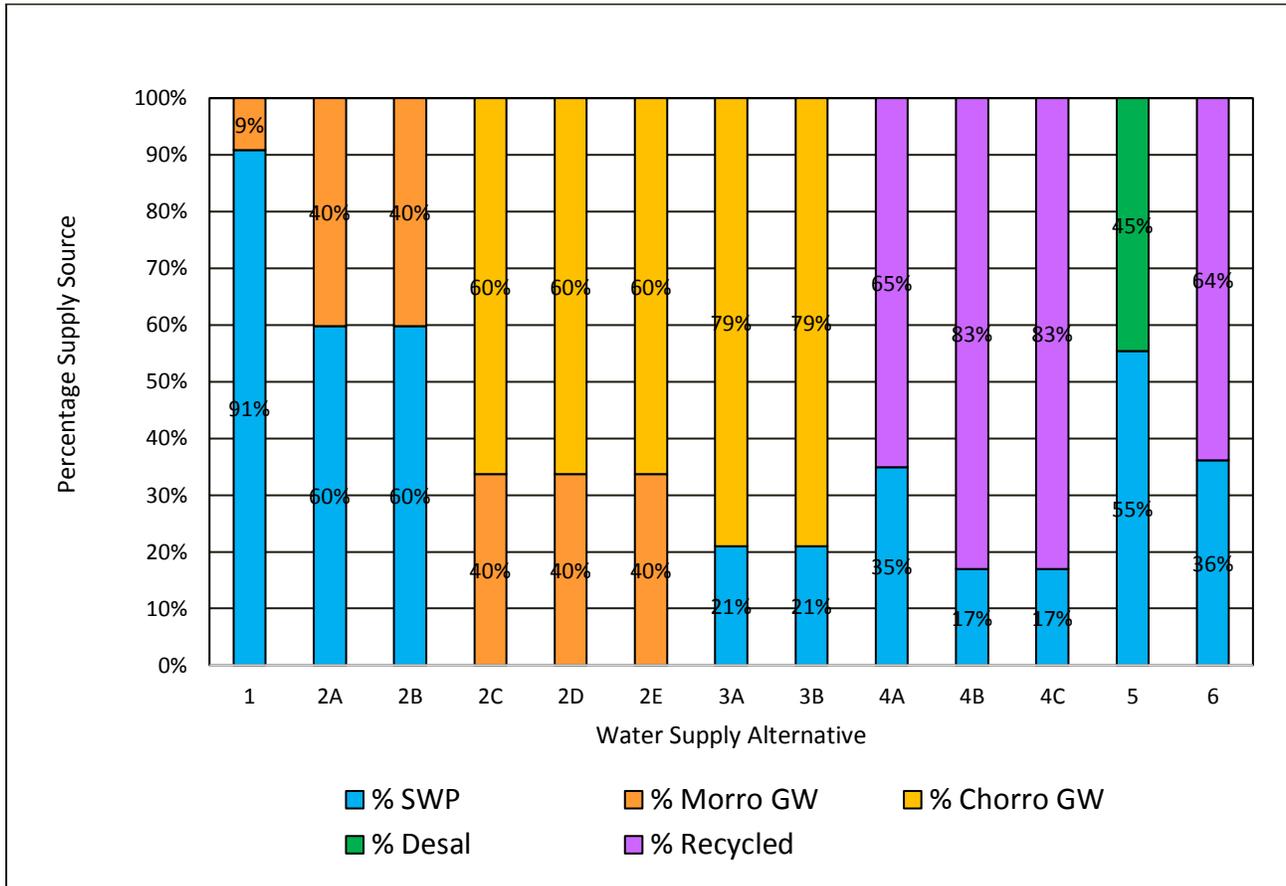
Weighting Factors	
Evaluation Criteria	Weighting
Unit Cost	1.22
Drought Resiliency	1.17
Earthquake Resiliency	1.00
Flood Vulnerability	1.10
Local Supply Offset	1.17
Energy Requirements	0.98
Constructability	1.09
Regulatory and Institutional Complexity	1.03
Quality Consistency	1.24

Among the most important considerations for individuals that were polled were unit cost, drought resiliency, local supply offset, and consistency in water quality. The table below shows the weighted scoring for these four categories.

Alternative	Description	Unit Cost	Drought Resiliency	Local Supply Offset	Quality Consistency
1	State Water	3.7	3.5	1.2	6.2
2A	GW - Morro (Salinity Removal)	3.7	5.9	3.5	6.2
2B	GW - Morro (Nitrate Removal)	3.7	5.9	3.5	6.2
2C	GW - Morro/Chorro (Salinity Removal)	3.7	4.7	5.9	6.2
2D	GW - Morro/Chorro (Nitrate Removal)	3.7	4.7	5.9	6.2
2E	GW - Morro/Chorro (Tailored Treatment)	3.7	4.7	5.9	6.2
3A	Chorro Stream Flow Augmentation	3.7	5.9	5.9	6.2
3B	Chorro Stream Flow Augmentation (Nitrate Removal)	2.4	5.9	5.9	6.2
4A	IPR	2.4	5.9	4.7	1.2
4B	IPR (Salinity Removal)	1.2	5.9	5.9	6.2
4C	IPR (Nitrate Removal)	1.2	5.9	4.7	6.2
5	Desalination	2.4	5.9	3.5	6.2
6	DPR	2.4	5.9	4.7	6.2

Recognizing that none of those supply alternatives have the ability to supply the City's anticipated future demand of 1,445 acre-feet/year over the planning period (2040) alone, staff created water

supply portfolio options consisting of two different supply sources. The make-up of each option is shown below:



The table below shows the average unit cost of water and the drought resiliency associated with each water supply portfolio.

Alternative	Description	Unit Cost (\$/acre-feet/year)	Drought Resiliency
1	State Water	\$1,553	46%
2A	GW - Morro (Salinity Removal)	\$1,551	65%
2B	GW - Morro (Nitrate Removal)	\$1,426	65%
2C ¹	GW - Morro/Chorro (Salinity Removal)	\$1,652 (\$2,900)	67%
2D ¹	GW - Morro/Chorro (Nitrate Removal)	\$1,089 (\$2,228)	67%
2E ¹	GW - Morro/Chorro (Tailored Treatment)	\$1,472 (\$2,684)	67%
3A	Chorro Stream Flow Augmentation	\$1,640	88%
3B	Chorro Stream Flow	\$2,110	88%

Alternative	Description	Unit Cost (\$/acre-foot/year)	Drought Resiliency
	Augmentation (Nitrate Removal)		
4A	IPR	\$2,101	79%
4B	IPR (Salinity Removal)	\$2,758	90%
4C	IPR (Nitrate Removal)	\$2,801	90%
5	Desalination	\$2,169	68%
6	DPR	\$1,972	79%

Note:
1. If Chorro Creek flow less than 1.4 cubic feet per second (i.e., no pumping from Chorro basin), then unit cost includes supplementing supply with State Water.

Summary of Major Conclusions

- While IPR has a higher unit cost compared to groundwater and State Water, it provides a local drought-resistant source of supply for the community.
- The City could solely rely on groundwater (combined Morro and Chorro basins) at a comparable cost to State Water, but those supplies can be impacted by drought and water rights issues.
- No single water supply alternative has the capacity to serve the City's entire future demands.
- The costs for IPR, DPR, and desalination are comparable.
- The combination of retirement of debt associated with the Chorro Valley Pipeline and Coastal Branch combined with the anticipated impacts from the California Water Fix (\$16.7 Billion) will result in minimal changes to the long-term costs of State Water for Morro Bay.
- The City's existing seawater desalination facility has reached the end of its useful life. In order for it to become a regular long-term water supply source, a new facility would need to be built in an area outside of the influence of coastal hazards.
- In order for groundwater from either the Morro or Chorro basins to become part of the City's regular long-term supply, a new treatment facility would need to be built in an area outside of the influence of coastal hazards.
- Augmentation of stream flow in Chorro Creek with treated effluent from the new WRF would eliminate drought resiliency concerns, but is impacted by water quality and permitting complexity (i.e., potable reuse, nitrate loading, etc.).
- The capacity of IPR could be further increased to offset State Water usage (in excess of 65% of the City's build-out water demand), but could require additional treatment for nitrates or seawater intrusion that result in significant increases in costs. Additional hydrogeological studies will be done to determine just how much water can be attracted following IPR without triggering the need for post-treatment.

Schedule

With this update, Carollo and staff have made a total of three public presentations to Council focusing on the various components of the OneWater Plan:

- January 23, 2018 - Overview of Water Supply Evaluation and Infrastructure Planning Tasks
- May 22, 2018 - Final Water and Collection System Capital Improvement Programs
- June 26, 2018 - Findings of the Water Supply Evaluation

Staff plans to bring the Final OneWater Plan Report to Council in September 2018 for consideration

and adoption.

CONCLUSION

Considering the risks of drought and unanticipated outages inherent to State Water, the permitting challenges associated with desalination and Chorro Creek stream flow augmentation, and drought, water rights, and water quality issues affecting the City's local groundwater supply, potable reuse is the best option for the City to diversify its water portfolio and move towards water independence. The OneWater Plan documents the strengths, weaknesses, and costs associated with those various water supply options and will help shape the make-up of the City's future water supply to meet the goals first adopted by Council in 2016. In addition to addressing water supply, the OneWater Plan identifies the necessary capital and maintenance improvements for the City's water, storm water, and wastewater systems and informs the General Plan and Local Coastal Plan update regarding water and wastewater resources to accommodate future growth. Finally, the costs in the water and collection system CIPs will be incorporated into the rate study that is currently being developed to support the WRF Program.

ATTACHMENTS

1. Link to: [OneWater Update, May 22, 2018, Item C-1, Page 31](#)
2. Questionnaire Responses

FEB 23 2018

City of Morro Bay
Public Works Department

Table 1

Criteria	Unit Cost																		
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Flood Vulnerability Criteria Range

Flood-Vulnerability	Vulnerability Criteria
Minimal	Suseptible to local pooling from 2% event Contains on site run-off storage w/ discharge, no pooling Contains private on site storm drainage, no hydraulic impacts Not suseptible to effects of sea level rise Not suseptible to tsunami threats
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High	Within 0.2% annual event flood plain Does not affect FEMA base flood elevation Suseptible to damage from 0.2% event
Extreme	Within 1% annual event flood plain Affects FEMA BFE, increase flood risk on local level Suseptible to damage from 1.0% annual event Suseptible to damage from sea level rise inundation Suseptible to damage from tsunami waves

From a scale of 1 to 10, how important is Flood Vulnerability as an project evaluation criteria?

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Less			Moderate				More		
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Steve Skively

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From a scale of 1 to 10, how important is Regulatory and Institutional Complexity as an project evaluation criteria?										
<i>Please Circle One:</i>										
Less			Moderate				More			
1	2	3	4	5	6	7	8	9	10	

Table 9

Criteria	Quality Consistency										
Description	Quality consistency represents the water quality of the produced water from each project. Quality is the standard set by drinking water regulations to be categorized safe for consumption. The levels of meeting water quality criteria are classified as the project yield always meeting regulations to infrequently meeting regulations on the high and low side respectively.										
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John Erwin
Wife

Table 1

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Criteria	Drought Resiliency												
Description	Drought resiliency is defined as the project's ability to provide water for consumption during drought years. This value is calculated as the ratio between project yields from a normal and drought year. $\text{Drought Resiliency Ratio} = \frac{\text{Project Yield During Drought Year}}{\text{Project Yield During Normal Year}}$												
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Table 3

Criteria	Earthquake Resiliency
Description	Earthquake resiliency is defined as the ability of the project to withstand earthquakes while maintaining the ability to deliver water after a major earthquake. The earthquake resilience evaluation criteria takes into consideration the immediate response to an earthquake, duration the project would be offline if succumbed to damage, project redundancy, construction methods, and proximity to major active geological features.

Earthquake Resiliency Criteria Range

Earthquake Resiliency	Resilience Criteria
High Resiliency	Project is highly unlikely to be damaged during an earthquake Water is likely to be delivered within 4 hours after an earthquake Project is local and does not stretch across multiple geologic features Project is new construction up to modern standards Project has significant distributed supply facilities and redundancy
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From a scale of 1 to 10, how important is Earthquake Resiliency as an project evaluation criteria?

Please Circle One:

Less		Moderate						More	
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Table 4

Criteria	Flood Vulnerability
Description	Flood vulnerability is defined as the ability of the project to withstand the affects of multiple flooding events, sea level rise, and tsunami run up. Vulnerability from annual flooding events is categorized as potential damage to the project resulting from a significant event. The risk of potential damage outlined by the limits of flood inundation provided by FEMA display various storm event inundation boudaries which differentiate levels of vulnerability ranging from minimal to extreme. Projects suseptible to tsunami run up fall within the California Department of Conservation tsunami limits. Sea level rise limits were defined by a 6-foot sea level rise model provided by NOAA Office for Coastal Management.

Flood Vulnerability Criteria Range

Flood Vulnerability	Vulnerability Criteria
Minimal	Suseptible to local pooling from 2% event Contains on site run-off storage w/ discharge, no pooling Contains private on site storm drainage, no hydraulic impacts Not suseptible to effects of sea level rise Not suseptible to tsunami threats
Low	Suseptible to moderate local pooling from 2% event for < 24 hours Decreases on-site flood pooling with storm water BMPs Surface conveyance system with minimal hydraulic impacts
Average	Suseptible to moderate flooding from 2% event, outside of 1% plain Suseptible to major pooling on site for > 24 hours No damage from 1% event Flood protected from sea level rise inundation Flood protected from tsunami wave threats
High	Within 0.2% annual event flood plain Does not affect FEMA base flood elevation Suseptible to damage from 0.2% event
Extreme	Within 1% annual event flood plain Affects FEMA BFE, increase flood risk on local level Suseptible to damage from 1.0% annual event Suseptible to damage from sea level rise inundation Suseptible to damage from tsunami waves

From a scale of 1 to 10, how important is Flood Vulnerability as an project evaluation criteria?

Please Circle One:

Less		Moderate						More	
1	2	3	4	5	6	7	8	9	10

Table 5

Criteria	Local Supply Benefit												
Description	Local supply benefit is defined as the ability of a project to provide the City of Morro Bay's future water demand with only local supply water, not including any imported water. This criteria is calculated as follows: $\text{Local Supply Benefit} = \frac{\text{Annual Project Yield (normal year)}}{\text{City Future Demand}}$												
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Table 6

Criteria	Energy Requirements																		
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Definition										
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Stu Skiff

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Criteria	Unit Cost																		
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Criteria	Flood Vulnerability	
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Less			Moderate				More			
1	2	3	4	5	6	7	8	9	10	

Table 1

Jan - RWAB

Criteria	Unit Cost																		
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Less	Moderate	More																	
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Table 2

Criteria	Drought Resiliency												
Description	<p>Drought resiliency is defined as the project's ability to provide water for consumption during drought years. This value is calculated as the ratio between project yields from a normal and drought year.</p> $\text{Drought Resiliency Ratio} = \frac{\text{Project Yield During Drought Year}}{\text{Project Yield During Normal Year}}$												
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Table 3

Criteria	Earthquake Resiliency
Description	Earthquake resiliency is defined as the ability of the project to withstand earthquakes while maintaining the ability to deliver water after a major earthquake. The earthquake resilience evaluation criteria takes into consideration the immediate response to an earthquake, duration the project would be offline if succumbed to damage, project redundancy, construction methods, and proximity to major active geological features.

Earthquake Resiliency Criteria Range

Earthquake Resiliency	Resilience Criteria
High Resiliency	Project is highly unlikely to be damaged during an earthquake Water is likely to be delivered within 4 hours after an earthquake Project is local and does not stretch across multiple geologic features Project is new construction up to modern standards Project has significant distributed supply facilities and redundancy
Moderate Resiliency	Project is unlikely to be damaged during an earthquake Water is likely to be delivered within 3 to 4 weeks after an earthquake Project is local and does not stretch across multiple geologic features Project is newer construction up to modern standards Concept has distributed water supply facilities and some redundancy
Very Fragile	Project is highly likely to be damaged during an earthquake Project is likely to be out of service \geq 3 months after earthquake Project spans across multiple geologic features Project was constructed over 20 years ago Concept includes long stretches of pipelines without redundancy

From a scale of 1 to 10, how important is Earthquake Resiliency as an project evaluation criteria?

Please Circle One:

Less		Moderate						More	
1	2	3	4	5	6	7	8	9	10

(Note: The number 9 in the scale above is circled in blue in the original image.)

Table 4

Criteria	Flood Vulnerability
Description	Flood vulnerability is defined as the ability of the project to withstand the affects of multiple flooding events, sea level rise, and tsunami run up. Vulnerability from annual flooding events is categorized as potential damage to the project resulting from a significant event. The risk of potential damage outlined by the limits of flood inundation provided by FEMA display various storm event inundation boundaries which differentiate levels of vulnerability ranging from minimal to extreme. Projects susceptible to tsunami run up fall within the California Department of Conservation tsunami limits. Sea level rise limits were defined by a 6-foot sea level rise model provided by NOAA Office for Coastal Management.

Flood Vulnerability Criteria Range	
Flood Vulnerability	Vulnerability Criteria
Minimal	Susceptible to local pooling from 2% event Contains on site run-off storage w/ discharge, no pooling Contains private on site storm drainage, no hydraulic impacts Not susceptible to effects of sea level rise Not susceptible to tsunami threats
Low	Susceptible to moderate local pooling from 2% event for < 24 hours Decreases on-site flood pooling with storm water BMPs Surface conveyance system with minimal hydraulic impacts
Average	Susceptible to moderate flooding from 2% event, outside of 1% plain Susceptible to major pooling on site for > 24 hours No damage from 1% event Flood protected from sea level rise inundation Flood protected from tsunami wave threats
High	Within 0.2% annual event flood plain Does not affect FEMA base flood elevation Susceptible to damage from 0.2% event
Extreme	Within 1% annual event flood plain Affects FEMA BFE, increase flood risk on local level Susceptible to damage from 1.0% annual event Susceptible to damage from sea level rise inundation Susceptible to damage from tsunami waves

From a scale of 1 to 10, how important is Flood Vulnerability as an project evaluation criteria?

Please Circle One:

Less		Moderate						More	
1	2	3	4	5	6	7	8	9	10

Table 5

Criteria	Local Supply Benefit												
Description	Local supply benefit is defined as the ability of a project to provide the City of Morro Bay's future water demand with only local supply water, not including any imported water. This criteria is calculated as follows: $\text{Local Supply Benefit} = \frac{\text{Annual Project Yield (normal year)}}{\text{City Future Demand}}$												
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Criteria	Energy Requirements																		
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Table 7

Criteria	Constructability										
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From a scale of 1 to 10, how important is Regulatory and Institutional Complexity as an project evaluation criteria?										
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From a scale of 1 to 10, how important is Unit Cost as an project evaluation criteria?																			
Please Circle One:																			
Less	Moderate	More																	
1	2	3	4	5	6	7	8	9	10										

Table 2

Criteria	Drought Resiliency												
Description	<p>Drought resiliency is defined as the project's ability to provide water for consumption during drought years. This value is calculated as the ratio between project yields from a normal and drought year.</p> $\text{Drought Resiliency Ratio} = \frac{\text{Project Yield During Drought Year}}{\text{Project Yield During Normal Year}}$												
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Please Circle One:													
Less	Moderate	More											
1	2	3	4	5	6	7	8	9	10				

Table 3

Criteria	Earthquake Resiliency
Description	Earthquake resiliency is defined as the ability of the project to withstand earthquakes while maintaining the ability to deliver water after a major earthquake. The earthquake resilience evaluation criteria takes into consideration the immediate response to an earthquake, duration the project would be offline if succumbed to damage, project redundancy, construction methods, and proximity to major active geological features.

Earthquake Resiliency Criteria Range

Earthquake Resiliency	Resilience Criteria
High Resiliency	Project is highly unlikely to be damaged during an earthquake Water is likely to be delivered within 4 hours after an earthquake Project is local and does not stretch across multiple geologic features Project is new construction up to modern standards Project has significant distributed supply facilities and redundancy
Moderate Resiliency	Project is unlikely to be damaged during an earthquake Water is likely to be delivered within 3 to 4 weeks after an earthquake Project is local and does not stretch across multiple geologic features Project is newer construction up to modern standards Concept has distributed water supply facilities and some redundancy
Very Fragile	Project is highly likely to be damaged during an earthquake Project is likely to be out of service \geq 3 months after earthquake Project spans across multiple geologic features Project was constructed over 20 years ago Concept includes long stretches of pipelines without redundancy

From a scale of 1 to 10, how important is Earthquake Resiliency as an project evaluation criteria?

Please Circle One:

Less		Moderate						More	
1	2	3	4	5	6	7	8	9	10

Table 4

Criteria	Flood Vulnerability
Description	Flood vulnerability is defined as the ability of the project to withstand the affects of multiple flooding events, sea level rise, and tsunami run up. Vulnerability from annual flooding events is categorized as potential damage to the project resulting from a significant event. The risk of potential damage outlined by the limits of flood inundation provided by FEMA display various storm event inundation boudaries which differentiate levels of vulnerability ranging from minimal to extreme. Projects suseptible to tsunami run up fall within the California Department of Conservation tsunami limits. Sea level rise limits were defined by a 6-foot sea level rise model provided by NOAA Office for Coastal Management.

Flood Vulnerability Criteria Range

Flood Vulnerability	Vulnerability Criteria
Minimal	Suseptible to local pooling from 2% event Contains on site run-off storage w/ discharge, no pooling Contains private on site storm drainage, no hydraulic impacts Not suseptible to effects of sea level rise Not suseptible to tsunami threats
Low	Suseptible to moderate local pooling from 2% event for < 24 hours Decreases on-site flood pooling with storm water BMPs Surface conveyance system with minimal hydraulic impacts
Average	Suseptible to moderate flooding from 2% event, outside of 1% plain Suseptible to major pooling on site for > 24 hours No damage from 1% event Flood protected from sea level rise inundation Flood protected from tsunami wave threats
High	Within 0.2% annual event flood plain Does not affect FEMA base flood elevation Suseptible to damage from 0.2% event
Extreme	Within 1% annual event flood plain Affects FEMA BFE, increase flood risk on local level Suseptible to damage from 1.0% annual event Suseptible to damage from sea level rise inundation Suseptible to damage from tsunami waves

From a scale of 1 to 10, how important is Flood Vulnerability as an project evaluation criteria?

Please Circle One:

Less			Moderate				More		
1	2	3	4	5	6	7	8	9	10

Table 9

Criteria	Quality Consistency									
Description	Quality consistency represents the water quality of the produced water from each project. Quality is the standard set by drinking water regulations to be categorized safe for consumption. The levels of meeting water quality criteria are classified as the project yield always meeting regulations to infrequently meeting regulations on the high and low side respectively.									
Quality Consistency Criteria Range										
	Meets Water Quality Regulations									
	Always Exceeds Quality Regulations									
	Generally Meets Quality Regularly									
	Infrequently Meets Quality Regulations									
From a scale of 1 to 10, how important is Quality Consistency as an project evaluation criteria?										
<i>Please Circle One:</i>										
Less		Moderate						More		
1	2	3	4	5	6	7	8	9	10	

Damaris Hanson

From: Marlys McPherson
Sent: Thursday, February 22, 2018 9:35 AM
To: Damaris Hanson
Subject: Re: OneWater Plan Water Supply Evaluation Criteria Ranking Input

Hi Damaris,

Thank you for the reminder. Here's my input (ratings) of the criteria:

1. Unit Cost = 8
2. Drought Resiliency = 9
3. Earthquake Resiliency = 5
4. Flood Vulnerability = 5
5. Local Supply Benefit = 7
6. Energy Requirements = 7
7. Constructability = 5
8. Regulatory and Institutional Complexity = 4
9. Quality Consistency = 9

Marlys

From: Damaris Hanson
Sent: Tuesday, February 20, 2018 9:09 AM
To: Council; PWAB
Cc: Rob Livick; Eric Casares
Subject: RE: OneWater Plan Water Supply Evaluation Criteria Ranking Input

Good Morning City Council and PWAB members,

Thank you to those who have returned the water supply evaluation criteria ranking.

Sending a reminder to those who have not yet returned your ranking input, if you could do so by the end of this week (Friday, February 23) we would greatly appreciate your input.

If you have any questions on the ranking criteria, please let me know.

Thank you,
Damaris Hanson
CPESC QSD QSP
Environmental Programs Manager
City of Morro Bay
955 Shasta Ave.

Damaris Hanson

From: John Headding
Sent: Friday, February 23, 2018 5:43 PM
To: Damaris Hanson
Subject: Re: OneWater Plan Water Supply Evaluation Criteria Ranking Input

Here are my responses:

Question #: ranking

- 1) 10
- 2) 8
- 3) 7
- 4) 7
- 5) 9
- 6) 7
- 7) 8
- 8) 8
- 9) 9

Thank you for the opportunity to read these criteria.

Sent from my iPhone
Dr. John Headding
Council member
Morro Bay, CA. 93442
805-909-9785

On Feb 20, 2018, at 9:09 AM, Damaris Hanson <dhanson@morrobayca.gov> wrote:

Good Morning City Council and PWAB members,

Thank you to those who have returned the water supply evaluation criteria ranking.

Sending a reminder to those who have not yet returned your ranking input, if you could do so by the end of this week (Friday, February 23) we would greatly appreciate your input.

If you have any questions on the ranking criteria, please let me know.

Thank you,

Damaris Hanson

CPESC QSD QSP

Environmental Programs Manager
City of Morro Bay
955 Shasta Ave.
Morro Bay, CA 93442

dhanson@morrobayca.gov
Phone: (805) 772-6265
Fax: (805) 772-6268

Table 1

Criteria	Unit Cost										
Description	Unit cost of water supply for a project is calculated as:										
	$Unit\ Cost = \frac{Ammortized\ Capital\ Cost + Annual\ O\&M\ Cost}{Total\ Annual\ Yield}$										
Unit cost includes both amortized capital cost and operation and maintenance (O&M) costs utilizing typical inflation rates, interest rates, and life expectancies to the calculation. As a ratio to the project yield, the unit costs is a representation of the cost of water production per each project alternative.											
Unit Cost Criteria Range											
	Definition			From		To					
	Very Low			\$ -		\$ 500.00					
	Low			\$ 500.00		\$ 1,000.00					
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From a scale of 1 to 10, how important is Unit Cost as an project evaluation criteria?											
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Less		Moderate						More			
1	2	3	4	5	6	7	8	9	10		

Table 2

Criteria	Drought Resiliency									
Description	Drought resiliency is defined as the project's ability to provide water for consumption during drought years. This value is calculated as the ratio between project yields from a normal and drought year.									
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Drought Resiliency Criteria Range										
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From a scale of 1 to 10, how important is Drought Resiliency as an project evaluation criteria?										
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Less		Moderate						More		
1	2	3	4	5	6	7	8	9	10	

Table 3

Criteria	Earthquake Resiliency										
Description	Earthquake resiliency is defined as the ability of the project to withstand earthquakes while maintaining the ability to deliver water after a major earthquake. The earthquake resilience evaluation criteria takes into consideration the immediate response to an earthquake, duration the project would be offline if succumbed to damage, project redundancy, construction methods, and proximity to major active geological features.										
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	Very Fragile	Project is highly likely to be damaged during an earthquake Project is likely to be out of service ≥ 3 months after earthquake Project spans across multiple geologic features Project was constructed over 20 years ago Concept includes long stretches of pipelines without redundancy									
From a scale of 1 to 10, how important is Earthquake Resiliency as an project evaluation criteria?											
<i>Please Circle One:</i>											
Less			Moderate				More				
1	2	3	4	5	6	7	8	9	10		

Table 4

Criteria	Flood Vulnerability									
Description	Flood vulnerability is defined as the ability of the project to withstand the affects of multiple flooding events, sea level rise, and tsunami run up. Vulnerability from annual flooding events is categorized as potential damage to the project resulting from a significant event. The risk of potential damage outlined by the limits of flood inundation provided by FEMA display various storm event inundation boudaries which differentiate levels of vulnerability ranging from minimal to extreme. Projects suseptible to tsunami run up fall within the California Department of Conservation tsunami limits. Sea level rise limits were defined by a 6-foot sea level rise model provided by NOAA Office for Coastal Management.									
Flood Vulnerability Criteria Range										
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	Low	Suseptible to moderate local pooling from 2% event for < 24 hours Decreases on-site flood pooling with storm water BMPs Surface conveyance system with minimal hydraulic impacts								
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	High	Within 0.2% annual event flood plain Does not affect FEMA base flood elevation Suseptible to damage from 0.2% event								
	Extreme	Within 1% annual event flood plain Affects FEMA BFE, increase flood risk on local level Suseptible to damage from 1.0% annual event Suseptible to damage from sea level rise inundation Suseptible to damage from tsunami waves								
From a scale of 1 to 10, how important is Flood Vulnerability as an project evaluation criteria?										
<i>Please Circle One:</i>										
Less			Moderate				More			
1	2	3	4	5	6	7	8	9	10	

Table 5

Criteria	Local Supply Benefit									
Description	Local supply benefit is defined as the ability of a project to provide the City of Morro Bay's future water demand with only local supply water, not including any imported water. This criteria is calculated as follows: $\text{Local Supply Benefit} = \frac{\text{Annual Project Yield (normal year)}}{\text{City Future Demand}}$									
Local Supply Benefit Criteria Range										
	Local Supply Benefit		Range							
	Very High Benefit		Greater than 75% offset							
	High Benefit		50 to 75% offset							
	Average Benefit		25 to 50% offset							
	Low Benefit		10 to 25% offset							
	Minimal/No Benefit		Less than 10% offset							
From a scale of 1 to 10, how important is Local Supply Benefit as an project evaluation criteria?										
<i>Please Circle One:</i>										
Less		Moderate						More		
1	2	3	4	5	6	7	8	9	10	

Table 6

Criteria	Energy Requirements									
Description	Energy requirements are defined as the amount of power used per unit of water processed. Measured in kilowatt-hour per acre-foot. The total annual energy consumption per unit of supply is the metric for greenhouse gas emissions and associated climate change impacts.									
Energy Requirements Criteria Range										
	Energy Impact		From	To						
			(kWh/ac-ft)	(kWh/ac-foot)						
	Very Low Impact		-	1,000						
	Low Impact		1,000	2,000						
	Moderate Impact		2,000	3,000						
	High Impact		3,000	4,000						
	Very High Impact		4,000	5,000						
From a scale of 1 to 10, how important is Energy Requirements as an project evaluation criteria?										
<i>Please Circle One:</i>										
Less		Moderate						More		
1	2	3	4	5	6	7	8	9	10	

Table 7

Criteria	Constructability								
Description	Constructability is evaluated based on the the complexity in constructing the project. Projects with multiple locations (outside the fence), dangerous or limited access or special construcion requirements are termed as difficult. Projects with local locations (inside the fence), no access limitations, and standard construction are defined as straight forward.								
Constructability Criteria Range									
	Constructability	Constructability Criteria							
	Very Straight-Forward	Nearly all project components are located inside the fence No underground utilities Expected to be significantly less complicated to construct							
	Straight-Forward	Project oponents are located both inside and outside the fence Less than 1 miles of underground utilities Expected to be less complicated to construct							
	Typical	Project components are located both inside and outside the fence 1 to 3 miles of underground utilities Project is expected to have typical construction concerns							
	Difficult	Most project components are located outside the fence 3 to 5 miles of underground utilities Project will be difficult to construct							
	Very Difficult	Nearly all project components are located outside the fence Greater than 5 miles of underground utilities Project will be extremely difficult to construct							
From a scale of 1 to 10, how important is Constructability as an project evaluation criteria?									
<i>Please Circle One:</i>									
Less			Moderate				More		
1	2	3	4	5	6	7	8	9	10

Table 8

Criteria	Regulatory and Institutional Complexity								
Description	Regulatory and institutional complexity is defined as how difficult a project would be to permit or meet an agency requirements. Projects range from low to high complexity categorizing their ability to be permittable based on environmental, drinking water, construction, and a wide range of various regulatory standards.								
Regulatory and Institutional Complexity Criteria Range									
	Definition								
	Low Complexity Averde Complexity High Complexity								
From a scale of 1 to 10, how important is Regulatory and Institutional Complexity as an project evaluation criteria?									
<i>Please Circle One:</i>									
Less			Moderate				More		
1	2	3	4	5	6	7	8	9	10

Table 9

Criteria	Quality Consistency									
Description	Quality consistency represents the water quality of the produced water from each project. Quality is the standard set by drinking water regulations to be categorized safe for consumption. The levels of meeting water quality criteria are classified as the project yield always meeting regulations to infrequently meeting regulations on the high and low side respectively.									
Quality Consistency Criteria Range										
			Meets Water Quality Regulations							
			Always Exceeds Quality Regulations							
			Generally Meets Quality Regularly							
			Infrequently Meets Quality Regulations							
From a scale of 1 to 10, how important is Quality Consistency as an project evaluation criteria?										
<i>Please Circle One:</i>										
Less			Moderate				More			
1	2	3	4	5	6	7	8	9	10	10



AGENDA NO: C-2

MEETING DATE: June 26, 2018

Staff Report

TO: Honorable Mayor and City Council

DATE: June 21, 2018

FROM: Jennifer Little, Tourism Manager

SUBJECT: Award of Agency of Record Contract for Tourism Marketing and Public Relations Services for Fiscal Years 2018/19 – 2019/20

RECOMMENDATION

Council authorize the City Manager to enter into a two-year contract with Mental Marketing as the Agency of Record for marketing and public relations services to promote the destination, in a form approved by the City Attorney.

ALTERNATIVES

None recommended.

FISCAL IMPACT

It is estimated a 3% TBID annual assessment for FY 2018/19 will generate \$836,135 in Tourism Business Improvement District (TBID) assessment revenues to be used to promote tourism for Morro Bay. Those assessment revenues, along with an estimated City General Fund Contribution of \$157,000 and estimated \$4,000 of advertising revenue would generate revenue sources totaling \$997,135 for FY 2018-19.

The new two-year contract will fold in all elements of paid advertising to be managed under Mental Marketing giving a total annual budget of \$449,000 (broken out in the table below). That total amount was previously presented to Council as part of the FY 2018/19 Proposed Budget. As an added value, Mental Marketing has reduced its mark-up from the industry standard of 15% down to 12%, providing \$66,000 in additional funds to be used to directly influence visitors through paid media.

Agency Fees	
Creative	\$30,000
Management	\$30,000
Public Relations	\$70,000
Social media	\$30,000
Digital Media Buy	\$270,000
Outdoor Board	\$9,000
Digital Production	\$10,000
	\$449,000

BACKGROUND/DISCUSSION

Prepared By: SM/JL

Dept Review: JL

City Manager Review: SC

City Attorney Review: JWP

The City of Morro Bay is currently under contract with Mental Marketing located in Atascadero, CA, to serve as our Agency of Record. Having an Agency of Record has assisted the City with its tourism branding and advertising and more efficiently and effectively wading through the current numerous modes and means of getting the City's message out. That contract is set to expire June 30, 2018. The current contract includes management of public relations, media placement, social media channels and creative with an annual budget of \$410,000. Prior to July 2016, tourism was managed by the Morro Bay Tourism Bureau, which contracted with two agencies simultaneously to provide those services.

A request for proposal (RFP) for Agency of Record was published earlier this year. Staff formed a stakeholder committee to review the dozen proposals received. The committee, which included several hoteliers, City staff and business representatives, reviewed the RFPs and recommended the top five agencies to present for TBID Board review on May 17, 2018. The five finalists were given 30 days to prepare for the May TBID presentations. Each group was given 20 minutes to present, plus 10 minutes for Board questions. Upon final review of all 5 presented, the TBID Board recommended entering into a two-year contract with Mental Marketing, with a 6-month review to take place at the TBID meeting on January 17, 2019.

Over the past several years Mental Marketing has grown brand awareness and media demand for Morro Bay through the following efforts:

- Gave public relations context to Morro Bay starting in 2014 and 2015
- In 2016 built a marketing and public relations narrative:
 - Creating awareness that MB saved small fleet commercial fisheries
 - Focused on coastal family destination
 - Built the platform to focus us as a multigenerational destination
 - Focus group booking with place destination wedding/honeymoon/romantic location
 - Culture, adventure, dining and lodging for any budget
- Developed the first visiting journalist/influencer program, which has received national accolades
- Built relationships with Visit CA and SLO CAL for national and international visitors

The attached agency overview provides a snapshot of Mental Marketing's goals and strategy for Morro Bay over the next two years. As noted therein, the plan is to integrate with existing Tourism efforts, such as the City logo and tagline, as well as forthcoming efforts, like the development of a new website and a long-term Tourism Strategic Plan in FY 2018-19 to improve Morro Bay's positioning as a world class vacation destination. In addition, Mental Marketing is committed to working with Tourism staff and the firm selected to develop the Tourism Strategic Plan to enhance reporting to the TBID Advisory Board and City Council to demonstrate effectiveness of our marketing efforts.

CONCLUSION

Staff recommends City Council authorize the City Manager to enter into an agreement with Mental Marketing for a two-year contract as the Agency of Record for Morro Bay, subject to the City Attorney's review and approval of the contract.

ATTACHMENT

1. Mental Marketing Agency Overview – Evolving the Brand Together
2. Draft Agency of Record Contract for Tourism Marketing and Public Relations Services with Mental Marketing



MORRO BAY
PUT LIFE ON COAST



Evolving the Brand Together

June 13, 2018

Success in
Years of
Change

Tourism
ROI/KPIs

Brand
Campaign

Why
Mental?



Success Through Years of Change

2014-15/15-16

GREW BRAND AWARENESS & MEDIA DEMAND

- Gave PR context to Morro Bay starting in 2014
- Built marketing and PR narrative:
 - ✓ MB saved small fleet commercial fishing community
 - ✓ Value oriented coastal family destination
 - ✓ Multigenerational destination
 - ✓ Destination wedding/honeymoon/romantic location
 - ✓ Culture, adventure, dining and lodging for any budget
- Developed first visiting journalist/influencer program
- Built relationships with Visit CA and SLO CAL
- Recent Morro Bay story about 70 lb octopus went viral!!

Success in
Years of
Change

Success Through Years of Change

2016-17/17-18

INTEGRATED PR & MARKETING EFFORTS

- Effective crisis management programs addressing fires, mud slides, rain and multiple road closures
- Fine tuned focus on higher income audiences
- Drove shoulder season & mid-week bookings to grow TOT
- Created compression to bolster RevPAR and ADR
- Pushed new passport programs & events thru direct response
- Continue robust visiting journalist program
- Logo/tagline approved by city council

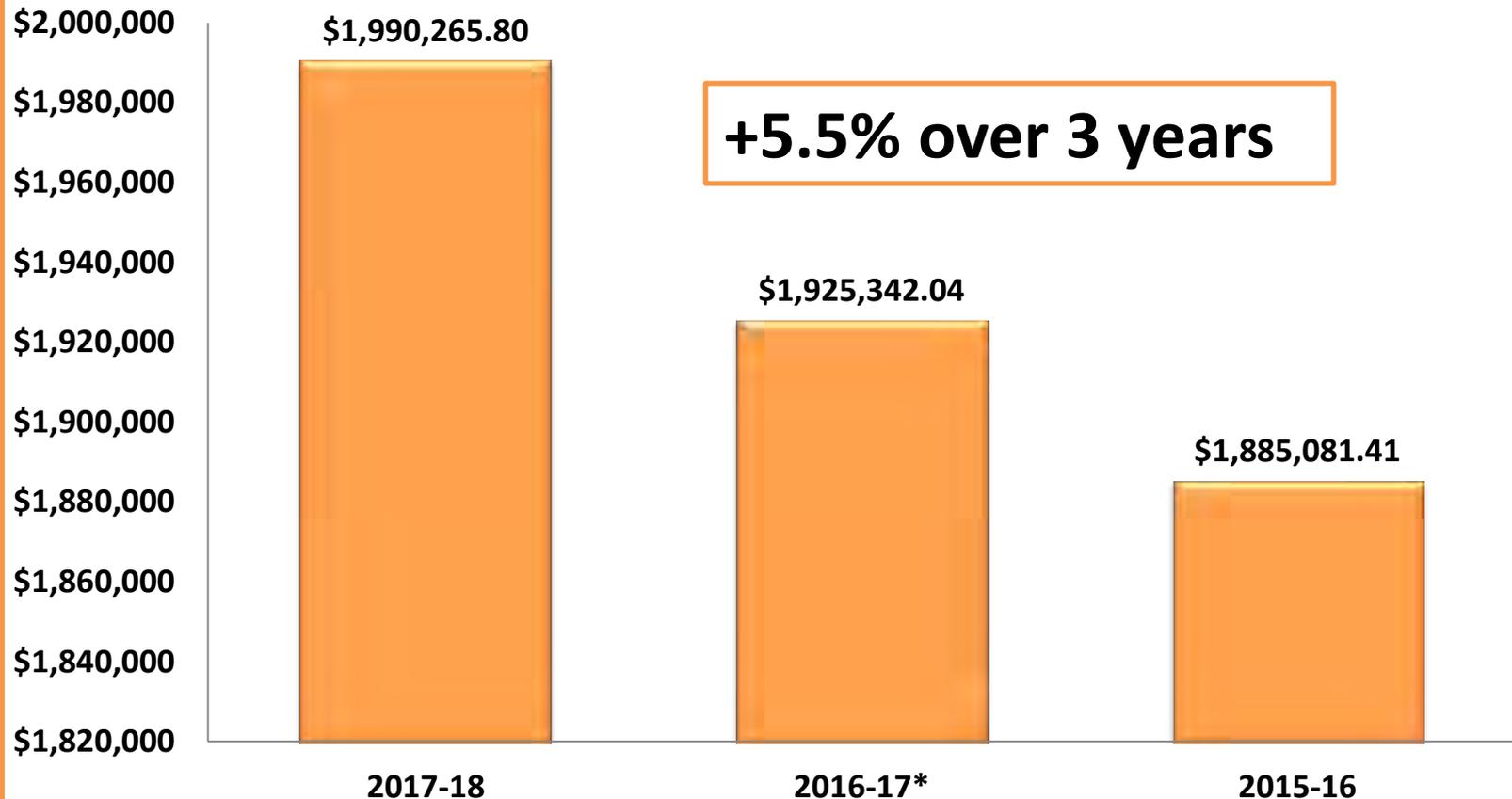
Success in
Years of
Change



MORRO BAY
PUT LIFE ON COAST

Fiscal Year-Over-Year (YOY) Transient Occupancy Tax (TOT)

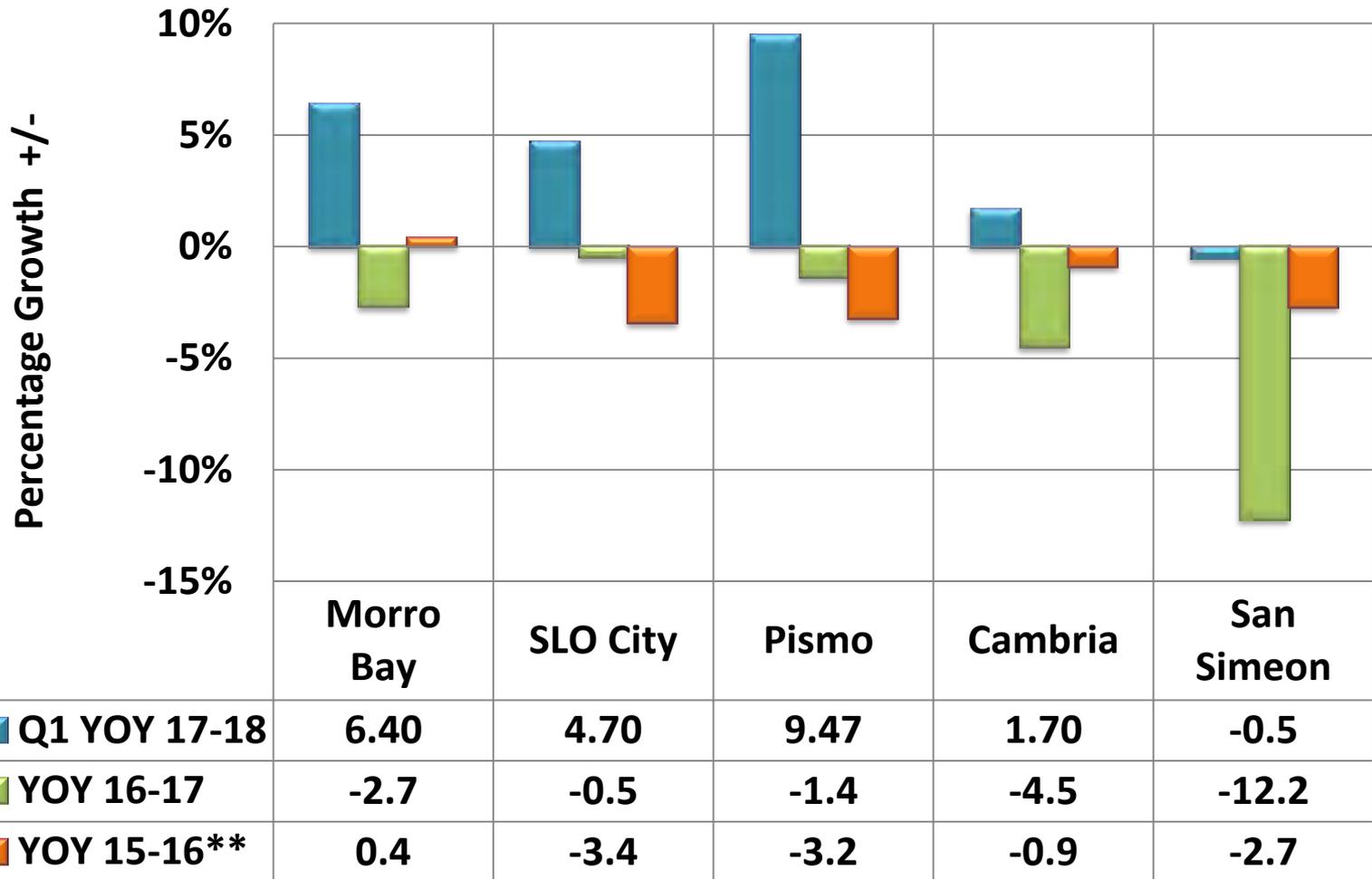
Q1 - Q3 (July – March)



**Morro Bay City Tourism started fiscal 2016-17*

Occupancy*

Year-Over-Year (YOY)

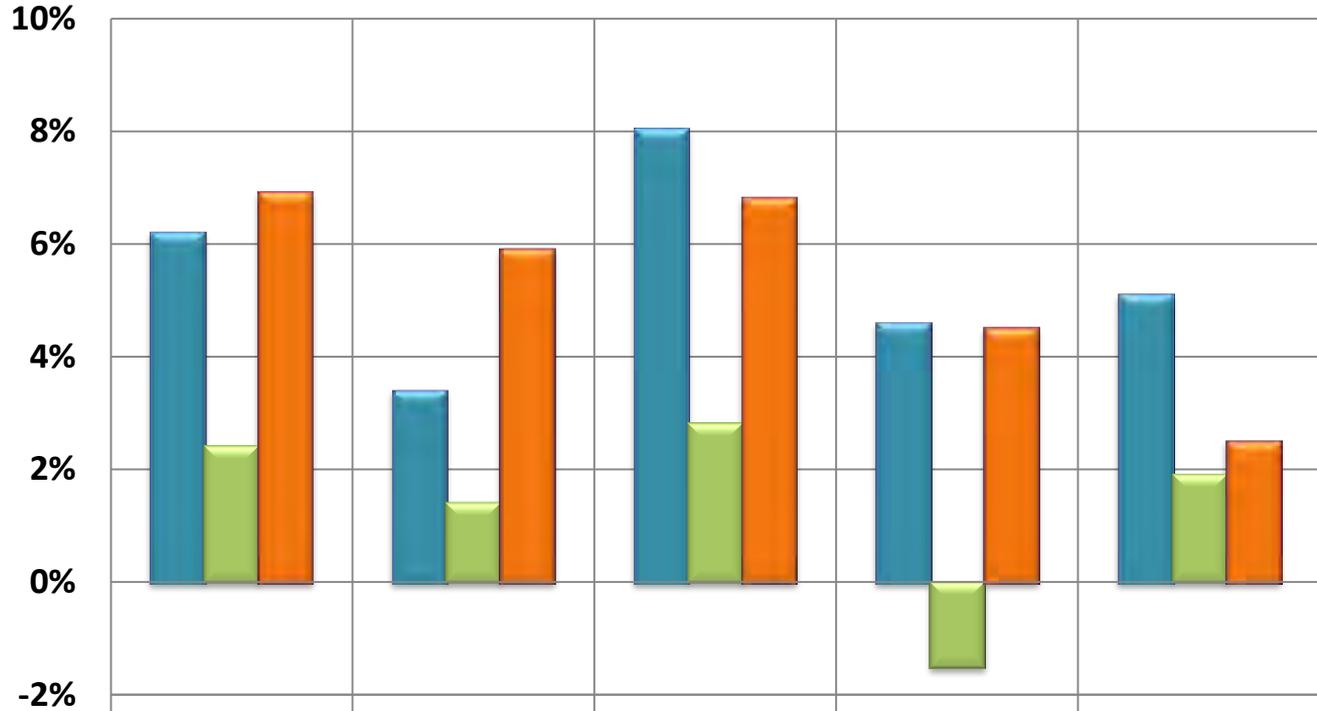


*STR report data provided by visit SLOCAL is calculated on a calendar year

**Morro bay city tourism took over July of this calendar year

Average Daily Rate* Year-Over-Year (YOY)

Percentage Growth +/-



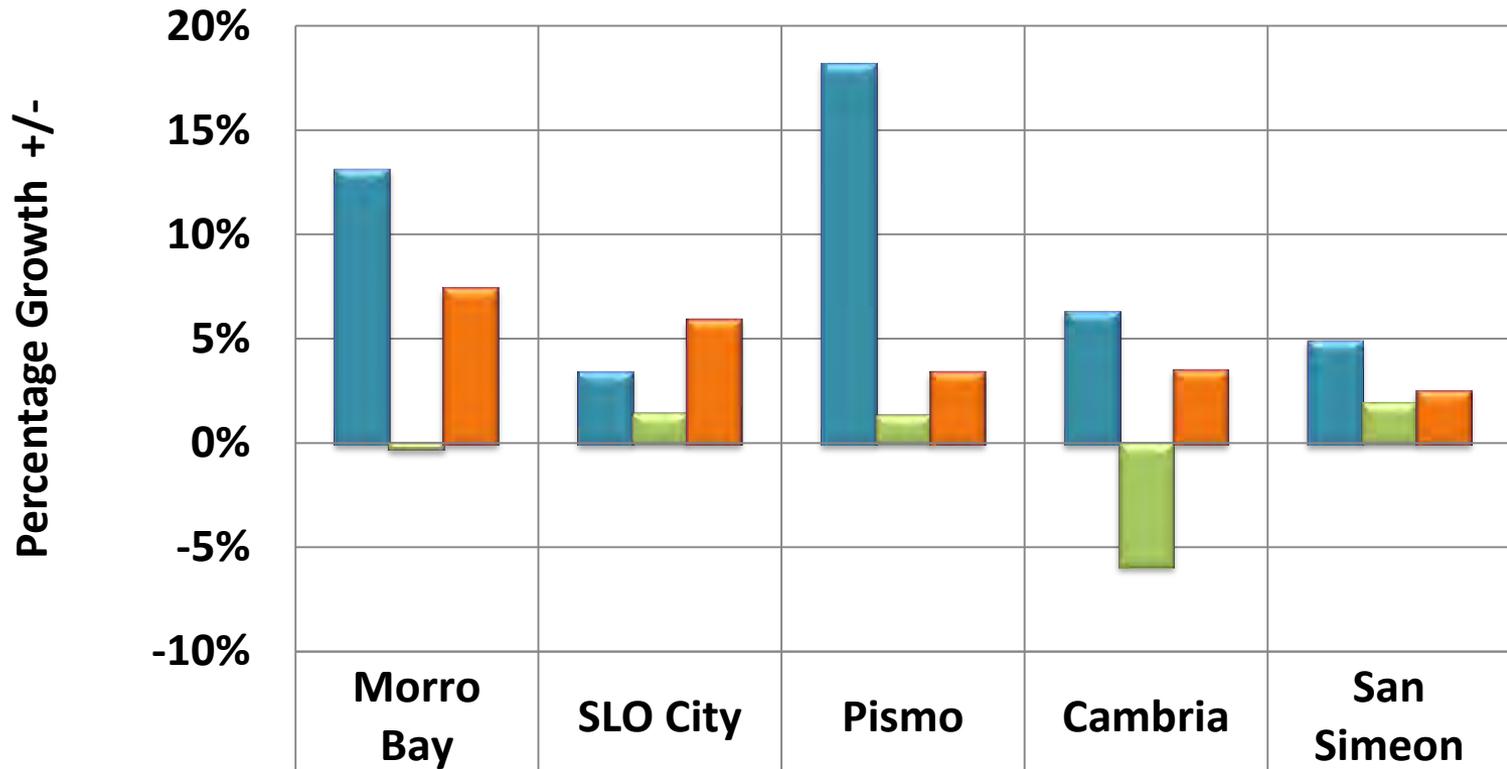
■ Q1 YOY 17-18
■ YOY 16-17
■ YOY 15-16**

	Morro Bay	SLO City	Pismo	Cambria	San Simeon
Q1 YOY 17-18	6.2	3.4	8.0	4.6	5.1
YOY 16-17	2.4	1.4	2.8	-1.5	1.9
YOY 15-16**	6.9	5.9	6.8	4.5	2.5

**STR report data provided by visit SLOCAL is calculated on a calendar year*

***Morro bay city tourism took over July of this calendar year*

Revenue Per Available Room* (RevPAR) Year-Over-Year (YOY)

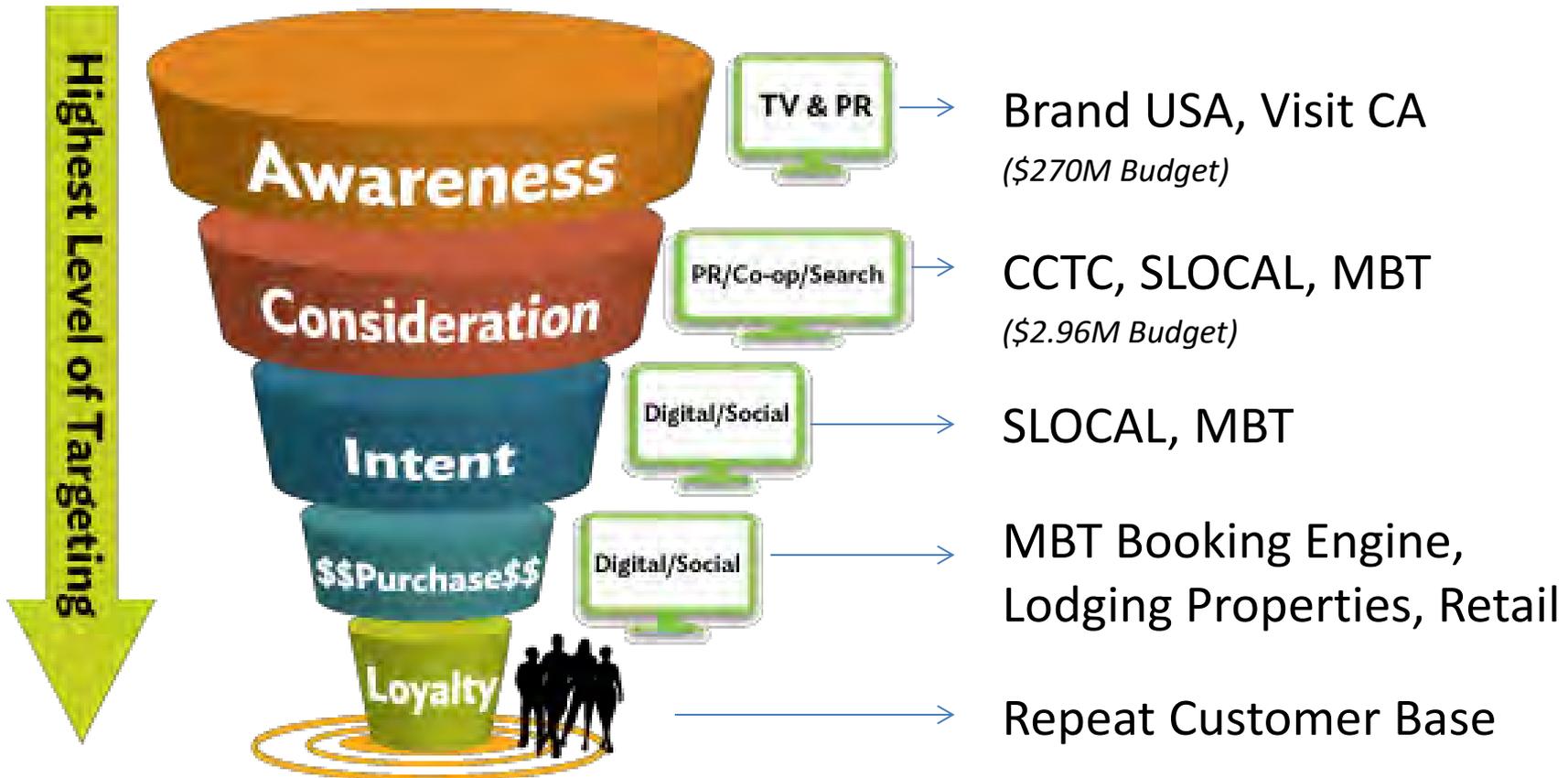


	Morro Bay	SLO City	Pismo	Cambria	San Simeon
Q1 YOY 17-18	13.1	3.4	18.13	6.3	4.9
YOY 16-17	-0.3	1.4	1.3	-5.9	1.9
YOY 15-16**	7.4	5.9	3.4	3.5	2.5

*STR report data provided by visit SLOCAL is calculated on a calendar year

**Morro bay city tourism took over July of this calendar year

MORRO BAY & TOURISM PARTNERS TOTAL \$273M IN ANNUAL SPENDING



Tourism
ROI/KPIs

Tourism Key Performance Indicators (KPIs) & Return On Investment (ROI)

CURRENT INDUSTRY STANDARD KPIs:

- **Tourism/Lodging KPIs:** City TOT, Occ, ADR and RevPAR
- **Owned Media:** Website Data, Jack Rabbit Referrals, Organic Search/SEO
- **Paid Media:** Digital & Social Media Impressions, Clicks, Conversions
- **Earned Media:** Public Relations Influence, Social Influence, SEO influence, Ad/Publicity Value

Tourism
ROI/KPIs

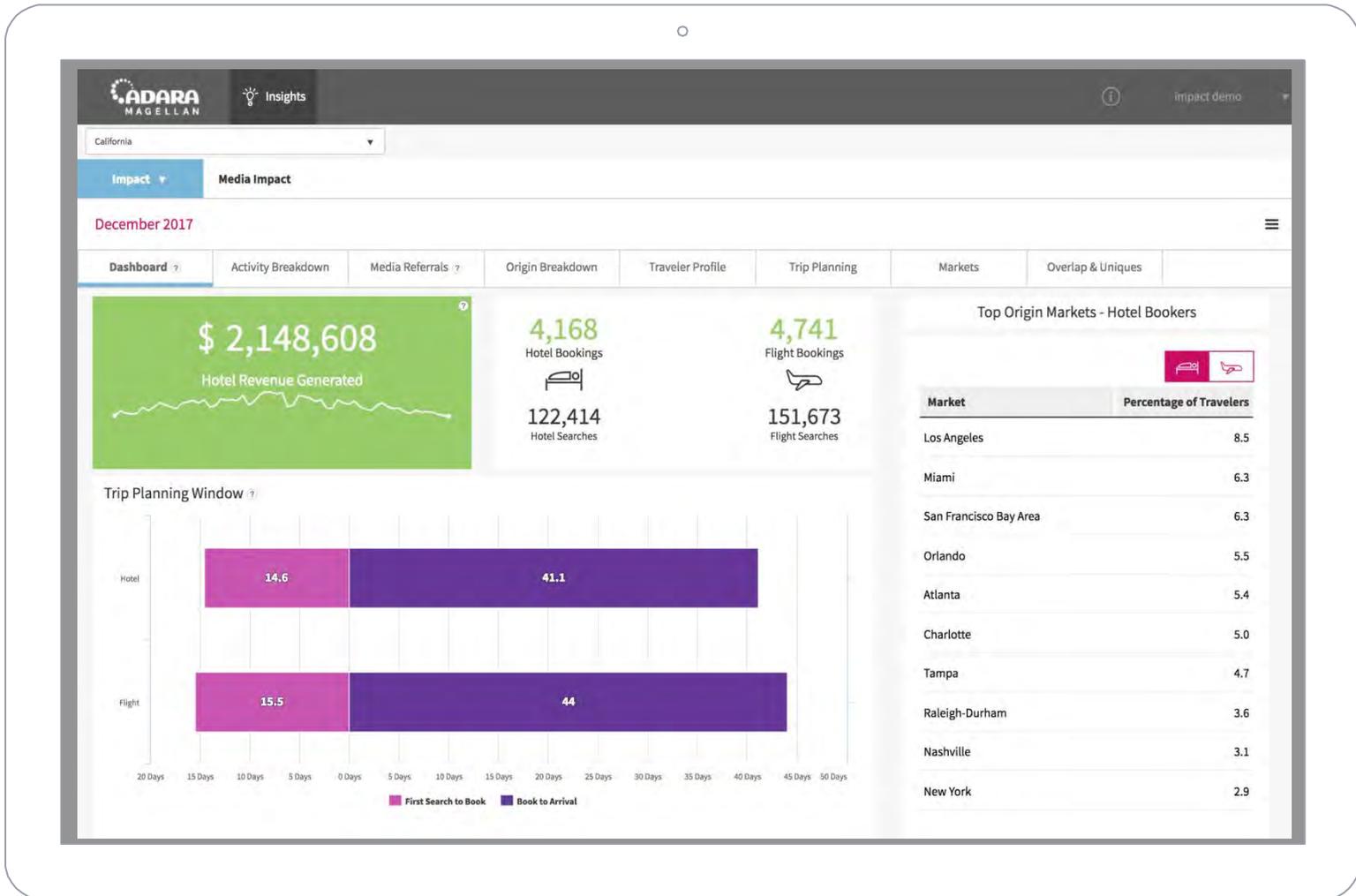
What's Next?

ADARA MEDIA IMPACT ANSWERS ROI QUESTIONS:

- What is the campaign spend/bookings/revenue connection?
- What web/email content is driving bookings?
- What geographic regions drive revenue?
- Who is booking and what are their profiles?
- What ADR comes from what region?
- Where are they booking if they are not booking here?

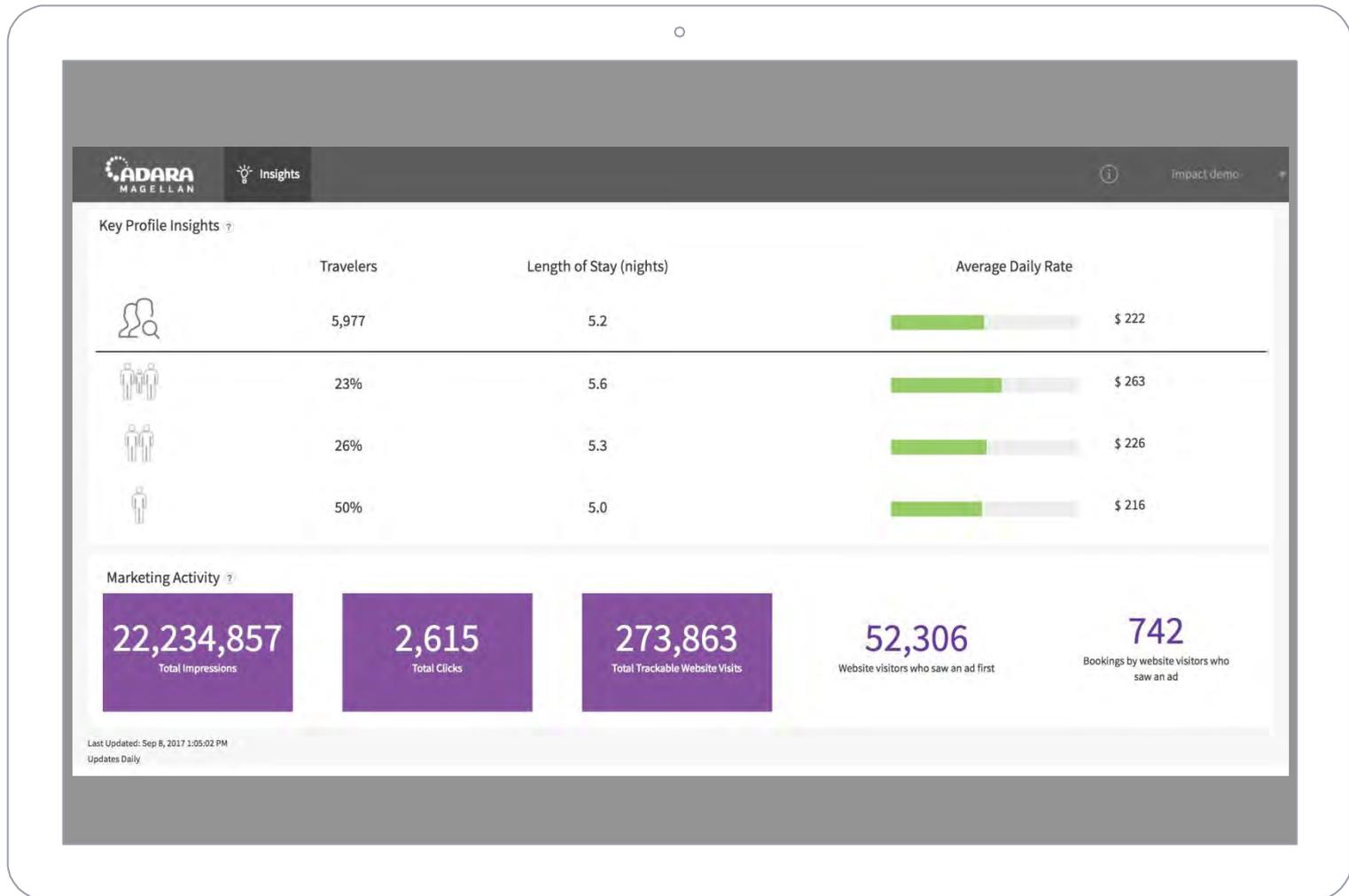
Tourism
ROI/KPIs

ADARA Media Impact Dashboard



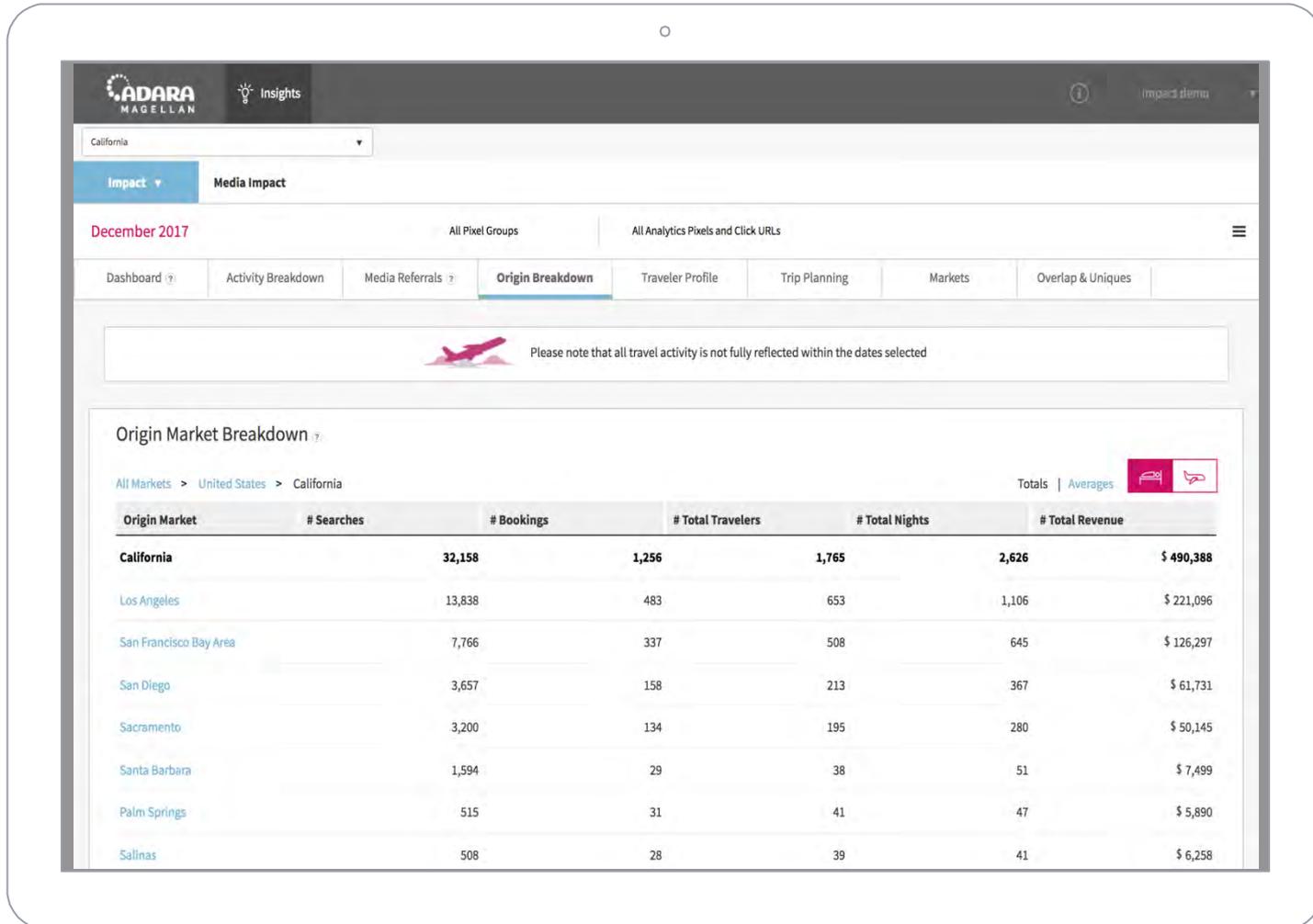
Tourism
ROI/KPIs

ADARA Media Impact Dashboard (cont.)



Tourism
ROI/KPIs

ADARA Market Origin Breakdown



Tourism
ROI/KPIs

Morro Bay Tourism Brand Strategy

2018-19

BRAND CAMPAIGN & STRATEGIC PLAN FOCUS

- City general plan is almost complete
- SLOCAL working on 20 – 30 yr. strategic plan
- MBT is primed to develop 5 – 10 yr. strategic plan
- Experience working with strategic planners
- Morro Bay poised to launch new brand strategy
- Incorporate that brand strategy into all PR, social, & digital efforts, including new website development

Brand
Campaign

Morro Bay Tourism Brand Strategy

BRAND PROMISE

- **Put Life on Coast** is a promise that Morro Bay offers a slower pace, small town charm, and the calm yet vibrant feeling that the ocean brings
- Vacations are a personal thing, and family is everything
- The two go perfect together, especially when you **Put Life on Coast**

Brand
Campaign

Morro Bay Tourism Brand Strategy

BRAND STORY

- MB's tourism family welcomes every family at every stage of life, all shapes and sizes, young, old, human or canine
- Because when family is everything, you gotta **Put Life on Coast**
- Personal touch from intent-to-book, to experiences that enhance visitors' stay

Brand
Campaign

**Multi
Generational
Travelers:
Gen X, Millennials**



Family Rule #1
FAMILY IS EVERYTHING.
Morro Bay Has Everything For Your Family

Morro Bay is one big happy family. And we're ready to welcome yours, at every stage of life, all shapes and sizes, young, old, human or canine. From hiking to biking, kayaking to fishing, bird watching to wine tasting, Morro Bay has something for everyone. Because, when family is everything, you gotta Put Life On Coast!



MORRO BAY
PUT LIFE ON COAST
www.morrobay.org

Brand
Campaign

Family Rule #94

FAMILIES CHANGE OVER TIME.

At Every Stage, Have The Time Of Your Life In Morro Bay



Morro Bay is one big happy family. And we're ready to welcome yours, at every stage of life, all shapes and sizes, young, old, human or canine. From hiking to biking, kayaking to fishing, bird watching to wine tasting, Morro Bay has something for everyone. Because, if you're gonna make time for family, you gotta Put Life On Coast!



MORRO BAY
PUT LIFE ON COAST
www.morrobay.org

Baby Boomers

Brand
Campaign

Family Rule #72

FIDO TRAVELS WITH FAMILY.

Morro Bay Is Fido Friendly



Morro Bay is one big happy family. And we're ready to welcome yours, at every stage of life, all shapes and sizes, young, old, human or canine. From hiking to biking, kayaking to fishing, bird watching to wine tasting, Morro Bay has something for everyone. Because, when Fido is in the house, you gotta Put Life on Coast!



MORRO BAY
PUT LIFE ON COAST
www.morrobay.org

Millennials w/kids

Brand
Campaign

Morro Bay Tourism Brand Strategy

PERSONALIZED DIGITAL BRAND ADS



**Families
Have a Whale
of a Time
in Morro Bay.**

[click for deals](#)



**Morro Bay
Offers
Adventure
at Every Turn**

[click for deals](#)

Brand
Campaign

Morro Bay Tourism Brand Strategy

PUT LIFE ON COAST PODCAST

Brand
Campaign

WHY A PODCAST?

- Podcasts are fully mainstream
Advertising up 85% to \$220M in 2017
- Millennials are leading the way
- Podcasters are more affluent
- 75% of NPR listeners took action
- **Notable:** Visit CA launched its first podcast on Monday 5/14



MAY 2018
Insights
visit
California

'CALIFORNIA NOW PODCAST'
First-of-its-kind podcast delivers
insights into only-in-California
experiences

WHY MENTAL?

- A strong, successful, working relationship with community & MBT
- Bring tourism specific KPI/ROI metrics to next level
- Quickly adapt fresh approaches and new brand
- Experience working with strategic partners
- Boots on the ground daily, flexible, timely
- Ready to launch new brand campaign July 1
- Our lives are on coast 😊

Thank you for your vote of support today

Why
Mental?

CITY OF MORRO BAY

AGREEMENT FOR CONSULTANT SERVICES

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

1. TERM

This Agreement shall commence on July 1, 2018, and shall remain and continue in effect until tasks described herein are completed, but in no event later than June 30, 2020, unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

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

3. PERFORMANCE

Consultant shall at all times faithfully, competently and to the best of their ability, experience, and talent, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement. Consultant shall have a 6-month review by the Morro Bay Tourism Business Improvement District Board.

4. CITY MANAGEMENT

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

5. PAYMENT

(a) City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit A, attached hereto and incorporated herein by this reference as though set forth in full, and based upon actual time spent on the above tasks. That amount shall not exceed Eight Hundred Ninety-eight Thousand Dollars and No Cents (\$898,000.00) for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

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

(c) Consultant will submit invoices monthly for actual services performed. In addition, Media Placement invoices will be submitted with an Insertion Order and reconciled upon media invoices reviewed for actual media spend. Media invoice will include an audit of all media placed and used with reconciliation audit. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days after receipt of each invoice as to all non-disputed fees. If City disputes any of Consultant's fees, then it shall give written notice to Consultant within fifteen (15) days after receipt of an invoice of any disputed fees set forth on the invoice.

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

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

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

7. DEFAULT OF CONSULTANT

(a) Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date Consultant is notified of default and can terminate this Agreement immediately by written

notice to Consultant. If such failure by Consultant to make progress in the performance for work hereunder arises out of causes beyond Consultant's control, and without fault or negligence of Consultant, then it shall not be considered a default.

(b) If the City Manager of his/her delegate determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, then he/she shall cause to be served upon Consultant a written notice of the default. Consultant shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that Consultant fails to cure its default within such period of time, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. OWNERSHIP OF DOCUMENTS

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

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

9. INDEMNIFICATION

(a) Indemnification for Professional Liability. When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including reasonable attorney's fees and costs to the extent same are caused by any negligent act, error or omission of Consultant, its officers, agents, employees or subconsultants (or

any entity or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this agreement. City agrees to hold harmless and indemnify Consultant from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising out of or in any way connected with the modification, misinterpretation, misuse or reuse by others of the computer files or any other document provided by Consultant under this Agreement.

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

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

10. INSURANCE

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

11. INDEPENDENT CONSULTANT

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

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

12. LEGAL RESPONSIBILITIES

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

13. UNDUE INFLUENCE

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

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

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

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

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

(b) Consultant shall promptly notify City if Consultant, or any of its officers, employees, agents, or subconsultants are served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder or with respect to any project or property located within City. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate with City by providing the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

16. NOTICES

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

To City:City of Morro Bay
595 Harbor Street
Morro Bay, CA 93442
Attention: Tourism Manager

To Consultant:Mental Marketing, Inc.
9185 Arvine Ct.
Atascadero, CA 93422
Attention: William Stansfield, Jr.

17. ASSIGNMENT

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

18. LICENSES

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

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

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

21. CONTENTS OF PROPOSAL

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

22. AUTHORITY TO EXECUTE THIS AGREEMENT

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

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

CITY OF MORRO BAY

CONSULTANT

By: _____
Scott Collins,
City Manager

By: _____
William Stansfield, Jr.,
President, COO

Attest:

By: _____
Mark Elterman, CEO

Dana Swanson, City Clerk

Approved As To Form:

Joseph W. Pannone, City Attorney

DRAFT

Exhibit A
2018/20 Budget and Consultant Fees

Consultant Services

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

12-month Fiscal Year 2018/19 Budget

The 'Estimated Total' budget below will be performed within a 12-month cycle on a 'not to exceed' basis as described in this Agreement. The final approved strategic marketing plan will establish detailed budgets for projects requested and assigned by City.

Agency Fees
Creative \$30,000
Management \$30,000
Public Relations \$70,000
Social media \$30,000
Digital Media Buy \$270,000
Outdoor Board \$9,000
Digital Production \$10,000
Total not to exceed \$449,000

Year two of this contract will not exceed the total of year one, \$449,000, without written approval of City Manager, subject to the provisions of Subdivision 5. (b) of this Agreement.

Calculation of Consultant Fees

Consultant fees are based on blended hourly rate of \$125. All hard costs paid directly to vendors, such as photography, videography and illustrations, by Consultant are marked up 12%. City pre-approved travel expenses are billed at cost. City will incur all direct costs associated with pre-approved journalist visits such as travel, lodging, meals, activities and events. Consultant receives a 12% commission on all paid advertising gross billings. Commissions are part of the total yearly budget.

[See Subdivision 5(c)].