



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, March 23, 2021 – 5:30 P.M. Held Via Teleconference

ESTABLISH QUORUM AND CALL TO ORDER
MOMENT OF SILENCE
PLEDGE OF ALLEGIANCE
RECOGNITION
CLOSED SESSION REPORT
MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS
CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS
PRESENTATIONS

- Month of the Child and Child Abuse Prevention Proclamation
- Eckerd Connects Workforce Development Presentation

PUBLIC COMMENT

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

Public Participation:

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

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

Please click the link below to join the webinar:

- <https://us02web.zoom.us/j/82722747698?pwd=aWZpTzcwTHlRTk9xaTlmWVNWRFUQT09>
Password: 135692
- Or Telephone Attendee: 1 (408) 638-0968 or 1 (669) 900 6833 or 1 (346) 248 7799;
Webinar ID: 827 2274 7698; Password: 135692; Press *9 to "Raise Hand" for
Public Comment

A. CONSENT AGENDA

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

- A-1 APPROVAL OF MINUTES FOR THE MARCH 9, 2021, CITY COUNCIL MEETING;
(ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-2 APPROVAL OF MINUTES FOR THE MARCH 9, 2021, CITY COUNCIL SPECIAL
MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-3 APPROVAL OF MINUTES FOR THE MARCH 17, 2021, CITY COUNCIL SPECIAL
CLOSED SESSION MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-4 PROCLAMATION DECLARING APRIL 2021 AS FAIR HOUSING MONTH;
(ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-5 PROCLAMATION DECLARING APRIL 2021 AS MONTH OF THE CHILD AND CHILD
ABUSE PREVENTION MONTH; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

B. PUBLIC HEARINGS -NONE

C. BUSINESS ITEMS

- C-1 1. ADOPTION OF RESOLUTION NO. 12-21, AUTHORIZING THE MAYOR TO SIGN THE PURCHASE AND SALE AGREEMENT (PSA) FOR ACQUISITION OF TWO PARCELS APN: 065-022-011 AND APN: 073-075-016, MORE COMMONLY KNOWN AS DOG BEACH; AND, AND RELATED AUTHORIZATIONS. 2. ADOPTION OF RESOLUTION 13-21, AUTHORIZING STAFF TO SUBMIT AN APPLICATION TO LAFCO INITIATING DETACHMENT PROCEEDINGS FOR APN: 065-022-010, AND RELATED AUTHORIZATIONS. PROPERTY WOULD BE DETACHED FROM WITHIN CITY BOUNDARY RESULTING IN LOT BEING LOCATED WITHIN UNINCORPORATED COUNTY OF SAN LUIS OBISPO. PROPERTY IS OWNED BY THE CAYUCOS SANITARY DISTRICT (CSD). 3. ADOPTION OF RESOLUTION 14-21, AUTHORIZING STAFF TO SUBMIT A SPHERE OF INFLUENCE (SOI) AMENDMENT TO THE SAN LUIS OBISPO LOCAL AGENCY FORMATION COMMISSION (LAFCO) TO ADD 5 LOTS ABOVE PANORAMA DRIVE TO THE CITY'S SOI, PAYMENT OF ADDITIONAL STUDIES, AND DEVELOPMENT LIMITATIONS. APN: 073-075-002 AND PORTIONS OF APN 073-076-016 (LOTS 2, 8, 7 & 6). LOTS ARE OWNED BY CHEVRON.; (COMMUNITY DEVELOPMENT DEPARTMENT)

RECOMMENDATION: Staff recommends that the City Council: 1) Adopt Resolution No. 12-21, authorizing the Mayor to sign the PSA (subject to such non-substantive or minor modifications or amendments as may be necessary to complete the transaction, and subject to the City Attorney's approval as to form) for purchase of the two Dog Beach lots (APNs 065-022-011 & 073-075-016), payment of City's closing costs, and City Manager to negotiate and execute related and necessary instruments (in a form approved by the City Attorney) and take further actions, as may be reasonably necessary, to complete the transaction; 2) Adopt Resolution No. 13-21, authorizing Staff to submit an application to LAFCO initiating detachment proceedings for APN 065-022-010 removing the parcel from within City limits and returning it to the unincorporated area of the County of San Luis Obispo, and City Manager to take further actions, as may be reasonably necessary, for submission of a complete application; 3) Adopt Resolution No. 14-21, authorizing submission by Staff of an application for an SOI amendment to LAFCO adding the 5 lots above Panorama Drive owned by Chevron to the City's SOI, payment for any additional studies that may be needed for the application, and development limitations.

- C-2 REVIEW OPTIONS FOR IMPROVEMENTS TO PUBLIC TRASH AND RECYCLING RECEPTACLES AND PUBLIC RESTROOM MANAGEMENT IN THE EMBARCADERO AND MORRO ROCK PARKING LOT AREAS; (CITY MANAGER)

RECOMMENDATION: Staff recommends the City Council approve hiring additional part-time consolidated maintenance workers to assist with trash and public restroom service on the Embarcadero and Morro Rock parking lot areas during the peak season months between April through October 2021 and splitting the cost between the Tourism Business Improvement District ("TBID") Fund and General Fund, and provide additional recommendations as appropriate.

- C-3 CONSIDERATION OF RESOLUTION FOR 180-DAY WAIT PERIOD EXCEPTION FOR CALPERS RETIRED ANNUITANT / INTERIM FIRE CHIEF APPOINTMENT AND INTERIM FIRE CHIEF AGREEMENT – STEVEN KNUCKLES; (CITY MANAGER)

RECOMMENDATION: Staff recommend the City Council:1) Adopt Resolution No. 15-21 approving an exception to the 180-day waiting period for the position of Interim Fire Chief; and 2) Approve the Interim Fire Chief employment agreement between the City and Mr. Knuckles.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, April 13, 2021 at 5:30 p.m.** via teleconference.

THIS AGENDA IS SUBJECT TO AMENDMENT UP TO 72 HOURS PRIOR TO THE DATE AND TIME SET FOR THE MEETING. PLEASE REFER TO THE AGENDA POSTED AT CITY HALL FOR ANY REVISIONS OR CALL THE CLERK'S OFFICE AT 805-772-6205 FOR FURTHER INFORMATION.

MATERIALS RELATED TO AN ITEM ON THIS AGENDA SUBMITTED TO THE CITY COUNCIL AFTER DISTRIBUTION OF THE AGENDA PACKET ARE AVAILABLE FOR PUBLIC INSPECTION UPON REQUEST BY CALLING THE CITY CLERK'S OFFICE AT 805-772-6205.

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

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

PRESENT:	John Headding	Mayor
	Dawn Addis	Council Member
	Laurel Barton	Council Member
	Robert Davis	Council Member
	Jeff Heller	Council Member
ABSENT:	None	
STAFF:	Scott Collins	City Manager
	Chris Neumeyer	City Attorney
	Dana Swanson	City Clerk
	Katie Lichtig	Interim Finance Director
	Scot Graham	Community Development Director
	Jody Cox	Police Chief
	Eric Endersby	Harbor Director
	Rob Livick	City Engineer
	Cindy Jacinth	Senior Planner
	Sandra Martin	Budget & Accounting Manager
	Eric Casares	WRF Program Manager

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding called the meeting to order at 5:30 p.m., with all members present.

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

RECOGNITION – None

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

MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS

<https://youtu.be/6CWZgRZME2I?t=184>

CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS

<https://youtu.be/6CWZgRZME2I?t=1028>

PRESENTATIONS - None

PUBLIC COMMENT

<https://youtu.be/6CWZgRZME2I?t=1128>

Mayor Headding opened public comment; seeing none, the general public comment period was closed.

A. CONSENT AGENDA

<https://youtu.be/6CWZgRZME2I?t=1195>

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 JANUARY 12, 2021, CITY COUNCIL MEETING;
(ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 APPROVAL OF MINUTES FOR THE JANUARY 26, 2021, CITY COUNCIL MEETING;
(ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-3 APPROVAL OF MINUTES FOR THE FEBRUARY 23, 2021, CITY COUNCIL SPECIAL
MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-4 APPROVAL OF MINUTES FOR THE FEBRUARY 24, 2021, CITY COUNCIL SPECIAL
CLOSED SESSION MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

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

MOTION: Council Member Addis moved approval of all items on the Consent Agenda. The motion was seconded by Council Member Barton and carried 5-0 by roll call vote.

B. PUBLIC HEARINGS

B-1 REVIEW AND ADOPT FINAL FUNDING RECOMMENDATIONS FOR THE 2021
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM; (COMMUNITY
DEVELOPMENT)
<https://youtu.be/6CWZgRZME2I?t=1266>

Senior Planner Jacinth provided the report and responded to Council inquires.

Mayor Headding opened the Public Hearing.

Mayor Headding opened Public Comment; seeing none, the public comment period was closed.

The Public Hearing was closed.

MOTION: Council Member Addis moved to adopt Resolution No. 11-21 approving final funding recommendations for the 2021 Community Development Block Grant (CDBG) funds and forward recommendations to the San Luis Obispo County Board of Supervisors for inclusion with the other funding requests from the Urban County Consortium.

The funding recommendation is for three items: the Morro Bay Family Apartments project at \$81,129, the San Luis Obispo Municipal and County Supportive Housing Program project at \$8,637, and City Program

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Administration of \$4,190 for a total funding allocation of \$93,956 which is consistent with previously established City goals to support affordable housing. Additionally, staff recommends the City Council authorize the City Manager to make pro rata adjustments to the allocation based on the final funding amount from San Luis Obispo County based on the approval of the federal budget and HUD's final grant amount to the County. The motion was seconded by Council Member Davis and carried 5-0 by roll call vote.

C. BUSINESS ITEMS

C-1 PRESENTATION AND DISCUSSION OF THE FISCAL YEAR FISCAL YEAR 2019/20 COMPREHENSIVE ANNUAL FINANCIAL REPORT; (FINANCE DEPARTMENT)
<https://youtu.be/6CWZgRZME2I?t=1860>

Interim Finance Director Lichtig introduced Vanessa Burke of The Pun Group who provided the report and responded to Council inquires.

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

Betty Winholtz, Morro Bay, asked the auditor to confirm whether the report commented on effectiveness or efficiency with regard to use of City funds and, if a report or the auditor would be back at the end of the month regarding the business side of funding.

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

Ms. Burke and Ms. Lichtig responded to questions raised during public comment.

The Council did not take any formal action on this item.

C-2 WATER RECLAMATION FACILITY (WRF) PROJECT REVIEW AND APPROVAL OF CHANGE ORDERS; (PUBLIC WORKS DEPARTMENT)
<https://youtu.be/6CWZgRZME2I?t=5072>

Water Reclamation Facility Program Manager Casares provided the report and responded to Council inquires.

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

Betty Winholtz, Morro Bay, asked who Mr. Casares was referring to when he said, "the team decide to move forward," how often the new foundation for fencing would need to be replaced, and if the change order would cause visual impacts from Highway 1.

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

Mr. Casares responded to questions raised during public comment.

MOTION: Council Member Davis moved to authorize the City Manager to sign, Amendment No. 5 to the existing amended agreement with Filanc-Black & Veatch (i.e., DB team) for a total credit value of \$195,945. The motion was seconded by Council Member Addis and carried 5-0 by roll call vote.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

None

E. ADJOURNMENT

The meeting adjourned at 7:19 p.m.

Recorded by:

Dana Swanson
City Clerk

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

PRESENT:	John Headding	Mayor
	Dawn Addis	Council Member
	Laurel Barton	Council Member
	Robert Davis	Council Member
	Jeff Heller	Council Member

ABSENT: None

STAFF:	Scott Collins	City Manager
	Dana Swanson	City Clerk
	Katie Lichtig	Interim Finance Director
	Scot Graham	Community Development Director
	Jody Cox	Police Chief
	Eric Endersby	Harbor Director
	Cindy Jacinth	Senior Planner
	Rob Livick	City Engineer

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding established a quorum and called the meeting to order at 3:30 p.m. with all but Council Member Barton present. Council Member Barton joined the meeting at 3:31 p.m.

SPECIAL MEETING AGENDA ITEM:

- I. PLAN MORRO BAY: GENERAL PLAN / LOCAL COASTAL PROGRAM UPDATE
<https://youtu.be/L-FcToIMoLs?t=212>

Community Development Director Graham introduced the item and turned it over to Amy Sinshieimer of Placeworks, Inc. to present the report.

Mayor Headding opened public comments.
<https://youtu.be/L-FcToIMoLs?t=1148>

Sean Green, Morro Bay, spoke regarding lateral access Section 3.43, suggesting the language be revised to dictate 10’ lateral access along the bay and maximum angle of 45 degrees must be maintained from parcel to parcel or parcel to City right-of-way. If that were not feasible, he suggested the policy explicitly disallow the 5’ vertical pinch point. As an alternative, he suggested replacing the misclassification of lateral access with vertical access as its being applied to these pinch points.

Kristen Headland, Morro Bay, expressed concern regarding proposed density for the 3300 Panorama parcel and hoped when the Environmental Impact Report comes back there will be an open discussion about land use and traffic impacts in north Morro Bay.

Mayor Headding closed public comment.

The Council did not take any formal action on this item.

ADJOURNMENT

The meeting adjourned at 4:26 p.m.

Recorded by:

Dana Swanson
City Clerk

MINUTES - MORRO BAY CITY COUNCIL
SPECIAL CLOSED SESSION MEETING –
March 17, 2021 – 4:00 P.M.
TELECONFERENCE

AGENDA NO: A-3
MEETING DATE: March 23, 2021

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

PRESENT: John Headding Mayor
 Dawn Addis Council Member
 Laurel Barton Council Member
 Robert Davis Council Member
 Jeff Heller Council Member

ABSENT: None

STAFF: Scott Collins City Manager
 Chris Neumeyer City Attorney
 Colin Tanner Special Counsel
 Dana Swanson City Clerk
 Scot Graham Community Development Director
 Katie Lichtig Interim Finance Director

ESTABLISH QUORUM AND CALL TO ORDER

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

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

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

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

CS-1 CONFERENCE WITH REAL PROPERTY NEGOTIATOR – GOVERNMENT CODE SECTION 54956.8

Property: Assessor Parcel No. 066-112-007 (City owned parking lot at corner of Market and Pacific) and Assessor Parcel No. 066-321-028 (City owned parking lot on Embarcadero below Centennial Stair)

Property Negotiators: Laura Waltz and Chris Ferrante

Agency Negotiators: Scott Collins, City Manager; Scott Graham, Community Development Director and Chris Neumeyer, City Attorney

Under Negotiation: Price and Terms of Payment – Easement Acquisition

CS-2 CONFERENCE WITH LABOR NEGOTIATORS

A closed session will be held, pursuant to Government Code § 54957.6, with City negotiator and designated labor representative Colin Tanner, special labor counsel, regarding labor negotiations with employee organizations: 1) Morro Bay Firefighters’ Association, 2) Service Employee’s International Union - SEIU Local 620, and 3) Morro Bay Peace Officers’ Association.

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

ADJOURNMENT - The meeting adjourned at 5:06 p.m.

Recorded by:

Dana Swanson
City Clerk

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**A PROCLAMATION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY
DECLARING THE MONTH OF APRIL
“FAIR HOUSING MONTH”**

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

WHEREAS, the City of Morro Bay is joining with the United States Department of Housing and Urban Development (HUD) and other housing agencies in celebrating the anniversary of the National Fair Housing Law, Title VII of the Civil Rights Act of 1968.

WHEREAS, the City of Morro Bay encourages fair housing through its support for affordable housing both through housing rehabilitation programs and its affordable housing in-lieu program;

WHEREAS, discrimination in housing is against the law, no person shall be discriminated against because of race, color, religion, sex, handicaps, familial status, or national origin in the sale, rental, or advertising of dwelling, in the provisions of brokerages services, or in the availability of residential real estate related transactions;

WHEREAS, if any City resident believes he or she has been discriminated against, the resident should contact the Department of Fair Employment and Housing District Office at 1732 Palma Dr., #200, Ventura, CA 93003, (805) 654-4514 or online at www.dfeh.ca.gov. The Fair Housing Information Office helps to ensure that all residents of the City of Morro Bay and surrounding communities are treated fairly and that all the property owners and landlords abide by the letter and spirit of the Fair Housing Law. The Department of Fair Employment and Housing (DFEH) is responsible for enforcing state fair housing laws that make it illegal to discriminate because of a protected characteristic. The law applies to landlords, tenant screening companies, property management companies, real estate agents, home sellers, builders, mortgage lenders, and others. The law prohibits discrimination in all aspects of the housing business, including renting or leasing, sales, mortgage lending and insurance, advertising, practices such as restrictive covenants, and new construction; and

WHEREAS, the City of Morro Bay, the State of California, HUD and various local agencies are working together to ensure equal treatment of all citizens, we urge everyone to practice the Fair Housing Law.

NOW, THEREFORE, BE IT RESOLVED, the Morro Bay City Council is proclaiming the month of April as Fair Housing Month in the City of Morro Bay.

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the City of Morro Bay to be affixed this 23rd day of March, 2021

JOHN HEADDING, MAYOR
City of Morro Bay, California

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**A PROCLAMATION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY
DECLARING APRIL 2021 AS “MONTH OF THE CHILD”
AND “CHILD ABUSE PREVENTION MONTH”**

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

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

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

WHEREAS, in solidarity of the We Are The Care Initiative, we as a community of partners and leaders, envision a San Luis Obispo County where all families can find and afford quality care for their children, and where child care professionals are valued for their critical role in building a solid foundation for and children and families to thrive in the world; and

WHEREAS, a variety of virtual and safe outdoor activities hosted at www.sanluischildcare.org, honoring Month of the Child will provide an opportunity to acknowledge the dedication of individuals and organizations improving and enriching the lives of children and youth in our county; and raise the awareness of the community, employers and elected officials of the need to improve the quality, availability, and accessibility of programs supporting children; and

WHEREAS, Friday, April 2, 2021 commemorates #WearBlue4Kids Day, raising awareness for Child Abuse Prevention Month, and recognizing that each of us has a role to play in ensuring the safety of our children, and pledge our support for strategies that strengthen families and protect our young ones; and

WHEREAS, in this caring and connected county, we will, including and beyond the Month of the Child, continue to dedicate our efforts and our resources to investing in our community’s future by investing in and supporting our community’s children and youth;

NOW, THEREFORE, BE IT RESOLVED that the Morro Bay City Council is proclaiming April 2021 as the “Month of the Child” and “Child Abuse Prevention Month” and April 2, 2021 as “#WearBlue4Kids Day.”

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the City of Morro Bay to be affixed this 23rd day of March 2021.

JOHN HEADDING, MAYOR
City of Morro Bay, California

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AGENDA NO: C-1
MEETING DATE: March 23, 2021

Staff Report

TO: Honorable Mayor and City Council **DATE:** March 18, 2021

FROM: Scot Graham, Community Development Director

SUBJECT:

1. Adoption of Resolution No. 12-21, authorizing the Mayor to sign the Purchase and Sale Agreement (PSA) for acquisition of two parcels APN: 065-022-011 and APN: 073-075-016, more commonly known as Dog Beach; and, and related authorizations.
2. Adoption of Resolution 13-21, authorizing staff to submit an application to LAFCO initiating detachment proceedings for APN: 065-022-010, and related authorizations. Property would be detached from within City boundary resulting in lot being located within unincorporated County of San Luis Obispo. Property is owned by the Cayucos Sanitary District (CSD).
3. Adoption of Resolution 14-21, authorizing staff to submit a Sphere of Influence (SOI) amendment to the San Luis Obispo Local Agency Formation Commission (LAFCO) to add 5 lots above Panorama Drive to the City’s SOI, payment of additional studies, and development limitations. APN: 073-075-002 and portions of APN 073-076-016 (lots 2, 8, 7 & 6). Lots are owned by Chevron.

RECOMMENDATION

Staff recommends that the City Council:

1. Adopt Resolution No. 12-21, authorizing the Mayor to sign the PSA (subject to such non-substantive or minor modifications or amendments as may be necessary to complete the transaction, and subject to the City Attorney’s approval as to form) for purchase of the two Dog Beach lots (APNs 065-022-011 & 073-075-016), payment of City’s closing costs, and City Manager to negotiate and execute related and necessary instruments (in a form approved by the City Attorney) and take further actions, as may be reasonably necessary, to complete the transaction.
2. Adopt Resolution No. 13-21, authorizing Staff to submit an application to LAFCO initiating detachment proceedings for APN 065-022-010 removing the parcel from within City limits and returning it to the unincorporated area of the County of San Luis Obispo, and City Manager to take further actions, as may be reasonably necessary, for submission of a complete application.
3. Adopt Resolution No. 14-21, authorizing submission by Staff of an application for an SOI amendment to LAFCO adding the 5 lots above Panorama Drive owned by Chevron to the City’s SOI, payment for any additional studies that may be needed for the application, and development limitations.

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

ALTERNATIVES

1. Council could choose (i) to adopt some of the Resolutions noted above and not others, or (ii) not to adopt any of the Resolutions.
2. Council could provide direction to Staff for desired changes to any of the Resolutions.

FISCAL

The \$338,050 necessary to acquire the Property are being contributed to the City as follows: (i) \$150,000 from the State Coastal Conservancy, and (ii) \$188,050 from the Land Conservancy of San Luis Obispo County. City will be responsible for payment of certain standard closing costs as set forth in the purchase-sale agreement. City will pay related costs for submission of the various LAFCO applications.

BACKGROUND/INTRODUCTION

The City's purchase of Dog Beach along with the Sphere of Influence (SOI) amendment for the five (5) lots and Detachment of the CSD lot are part of a larger effort for the preservation of various parcels of Chevron property located to the north and east of the City of Morro Bay. For many years, the City has been involved in discussions with Chevron, Trust for Public Lands, the Cayucos Sanitary District (CSD), the Cayucos Land Conservancy, the Land Conservancy of San Luis Obispo County, Morro Bay Open Space Alliance, State Coastal Conservancy and San Luis Obispo County exploring various conservation options for several of the Chevron Estero Marine Terminal lots.

On January 28, 2020, the City Council authorized City Manager to execute a non-binding Memorandum of Understanding (MOU) (copy provided as Attachment 4) which addressed the matters specified below which are now subject to specific actions by the Council.

1. **City's Acquisition of Lot 6SW** (APN: 065-022-011, Southern portion of Dog Beach). Lot 6SW is currently owned by the CSD which acquired it from Chevron. The City has negotiated a purchase and sale agreement (PSA) with CSD to acquire Lot 6SW (and Lot 6NW as discussed in item 2 below) for a purchase price of \$338,050. Funds for the City's acquisition are coming from the following sources:
 - a. \$150,000 from the State Coastal Conservancy
 - b. \$188,050 from the Land Conservancy of San Luis Obispo County

When CSD acquired the Dog Beach Lots from Chevron, Chevron retained a right to reacquire the lots under certain circumstances. As this right to repurchase is on record title, the City would take the Lots subject to that right – unless Chevron amends title. Chevron has agreed to remove its repurchase right from record title if the City authorizes submittal of an application to LAFCO to amend the City's SOI to include five (5) lots above the Panorama area (Panorama Lots). The SOI amendment is discussed further under item 3 below.

2. **Acquisition by City of Lot 6NW** (APN 073-075-016, northern portion of Dog Beach). Lot 6NW is currently located in the County but is within the City's SOI. The reason to include Lot 6NW within the City's SOI was to facilitate its future annexation into the City for preservation of Dog Beach. Lot 6NW is currently owned by CSD and subject to the PSA.
3. **Amendment of the City's Sphere of Influence (SOI)** to include 5 lots located at Panorama Drive (APN: 073-075-002 and portions of APN 073-076-016 (Lots 2, 8, 7 & 6).

Resolution No. 14-21 is not proposing annexation of these lots into the City. These lots (Panorama Lots) are owned by Chevron, however, which at the present desires to annex them into the City in the future. Each Panorama Lot would accommodate one (1) single-family residence, for a total of no more than 5 homes on the 5 Panorama Lots. Furthermore, the residential structures would be restricted to the lower portion of each Panorama Lot leaving the remainder of the hillside above Panorama Drive undeveloped thus preserving the sight line.

Resolution 14-21 specifically limits the construction of only 1 single family residence on the lower portion of each Panorama Lot and permits associated access and infrastructure improvements. Development would be specifically limited to the yellow area of each Panorama Lot as identified on the map below.



The City's adoption draft of the General Plan/Local Coastal Program identifies the Panorama Lots as an area to be considered as future SOI.

- 4. Detachment of Lot 6NE (APN 065-022-010)** from within the City's boundary, resulting in Lot 6NE being under County jurisdiction. To effect the detachment of Lot 6NE requires (i) authorization by the Council for submittal of a formal application for detachment to LAFCO; and (ii) subsequent approval by LAFCO. Lot 6NE which is owned by CSD contains a sewer lift station operated by CSD. See Resolution 13-21 and attached map for location of the Lot 6NE.

General Plan Conformance

On May 19, 2020, the Planning Commission, adopted Resolution 12-20 (See Attachment 5) finding that (i) the Dog Beach Lots to be acquired pursuant to the PSA are appropriate for continued use as public open space, and (ii) the use and purpose of the Dog Beach Lots to be consistent with the City's General Plan in accordance with CA Govt. Section 65402(a).

CONCLUSION

The City, County of San Luis Obispo, Cayucos Land Conservancy, Land Conservancy of San Luis Obispo County, Supervisor Gibson's office, Trust for Public Land, Cayucos Sanitary District

and Chevron have all invested a significant amount of time and resources into bringing these items to the Council. Staff recommends that the Council adopt each Resolution.

ATTACHMENTS

1. Resolution No. 12-21, PSA (includes map of lots)
2. Resolution No. 13-21, authorization to submit detachment application to LAFCO (includes map of lot)
3. Resolution No. 14-21, authorization to submit SOI application to LAFCO (includes map of lots.
4. 2020 MOU
5. PC Resolution No. 12-20, General Plan Conformance finding

RESOLUTION NO. 12-21

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING THE ACQUISITION OF TWO PARCELS APN 065-022-011 AND
APN 073-075-016, MORE COMMONLY KNOWN AS DOG BEACH AND
AUTHORIZING THE MAYOR TO EXECUTE A PURCHASE AND SALE
AGREEMENT WITH THE CAYUCOS SANITARY DISTRICT AND FINDING
THE ACQUISITION IS EXEMPT FROM THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT**

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

WHEREAS, the City of Morro Bay and the Cayucos Sanitary District have negotiated a purchase and sale agreement (“PSA”) for the acquisition of APNs 065-022-011 and 073-075-016, more commonly known as “Dog Beach” (“Property”) for a purchase price of Three Hundred Thirty-Eight Thousand Five Hundred Dollars (\$338,050); and

WHEREAS, the funds necessary to acquire the Property are being contributed to the City as follows: (i) \$150,000 from the State Coastal Conservancy (“SCC”); and (ii) \$188,050 from the Land Conservancy of San Luis Obispo County; and

WHEREAS, as a condition to the SCC contribution, a restrictive covenant is to be recorded against the Property restricting its use for public uses (“Restrictive Covenant”); and

WHEREAS, although the funds are being contributed for the purchase price of the Property, City will be responsible for payment of certain standard closing costs as set forth in the PSA (“City’s Closing Costs”); and

WHEREAS, Government Code Section 37350 states that the City may purchase, lease, receive, hold and enjoy real and personal property and control and dispose of it for the common benefit; and

WHEREAS, Pursuant to California Government Code Section 65402(a), the Planning Commission of the City of Morro Bay conducted a hearing on May 19, 2020 and adopted Resolution 12-20 finding purchase of the Property for public purposes consistent with the City of Morro Bay General Plan; and

WHEREAS, the acquisition of the Property will be for public purposes; and

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

Section 1: Findings related to the California Environmental Quality Act

1. Pursuant to the California Environmental Quality Act, the project is categorically exempt under Section 15601(b)(3) of the guidelines consistent with the general rule that CEQA applies only to projects which have the potential for causing a

significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The activity in question is not a project, but instead is the purchase of property.

2. The exceptions to the categorical exemptions identified in Section 15300.2 of the guidelines do not apply.

Section 2: Findings related purchase.

1. The City Council authorizes the Mayor to execute the final PSA attached as Exhibit A to this Resolution, for purchase of the Property by the City consistent with the terms outlined in the Staff Report, subject to such non-substantive or minor modifications or amendments as may be necessary to complete the transaction contemplated hereby, and subject further to the City Attorney's approval as to form.
2. City Council authorizes the payment of the City's Closing Costs.
3. The City Manager or his designee shall negotiate and execute the Restrictive Covenant and such other instruments in a form approved by the City Attorney, and take any and all other actions, as may be reasonably necessary to complete the acquisition the Property and to close the escrow pursuant to the PSA. Without limiting the generality of the foregoing, the City Manager or his designee is hereby authorized to execute a certificate of acceptance to be attached to the grant deed conveying the Property to the City.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 23rd day of March 2021 on the following vote:

AYES:
NOES:
ABSENT:

John Heading, Mayor

ATTEST:

Dana Swanson, City Clerk

**AGREEMENT FOR PURCHASE AND SALE
OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS**

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS (“**Agreement**”) is made this ___ day of _____, 202__ by and between the CITY OF MORRO BAY, a California municipal corporation (“**Buyer**”), and CAYUCOS SANITARY DISTRICT, a political subdivision of the State of California (“**Seller**”).

RECITALS:

A. Seller is the fee owner of certain unimproved land consisting of approximately 15.26 acres located along the sea shore in the unincorporated area of the County of San Luis Obispo, State of California as legally described on Exhibit A-1 and depicted on Exhibit A-2 (“**Property**”). The Property is commonly referred to as “Dog Beach.” The Property is comprised of two (2) parcels which are separately identified on Exhibits A-1 and A-2 as Lot 6SW and Lot 6NW.

B. Seller acquired the Property from Chevron Land and Development Company, a Delaware corporation (“**Chevron**”) as follows: (i) Lot 6NW was acquired pursuant to that certain Grant Deed recorded on September 17, 2019 as Instrument No. 2019-039327 in the Official Records of San Luis Obispo County (“**Official Records**”); and (ii) Lot 6SW was acquired that certain Grant Deed recorded on September 17, 2019 as Instrument No. 2019-039329 in the Official Records (“**Grant Deeds**”) both of which contain certain provisions which purport to run with the land as covenants.

C. Seller acquired Lot 6SW subject to rights in favor of Chevron as contained in that certain Memorandum of Repurchase Rights/Options recorded September 17, 2019 as Instrument No. 2019-039330 in the Official Records (“**Repurchase Rights**”) which must be released of record prior to closing pursuant to documents acceptable to the Title Company (“**Chevron Release**”).

D. Seller, Buyer, Chevron and The Trust for Public Land, a California non-profit public benefit corporation (“**TPL**”), previously executed that certain Memorandum of Understanding dated January 31, 2020 as amended by that certain First Amendment to Memorandum of Understanding (collectively the “**MOU**”). Although the MOU is not contractually binding, the parties are working in good faith to accomplish the transaction reflected therein.

E. TPL has committed to provide One Hundred Eighty-Eight Thousand Fifty Dollars (\$188,050) of the funds for Buyer to acquire the Property (“**TPL Contribution**”).

F. Buyer will receive One Hundred Fifty Thousand Dollars (\$150,000) in grant funds from the State Coastal Conservancy (“**Conservancy Contribution**”). Buyer has agreed to execute and acknowledge in a form as required by the State Coastal Conservancy (“**Conservancy**”) an irrevocable offer to dedicate the property to the Conservancy which will contain covenants and restrictions on the use, encumbrance and transferring or conveying and which will be recorded against the Property immediately following Buyer’s acquisition of title (“**Conservancy Restriction Agreement**”) to secure the Conservancy’s interest.

G. Seller desires to sell to Buyer and Buyer agrees to buy, the Property upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and incorporating the Recitals, the parties hereto agree as follows:

TERMS AND CONDITIONS:

1. **PURCHASE AND SALE OF PROPERTY.** Pursuant to the terms and subject to the conditions of this Agreement, Buyer agrees to purchase from Seller and Seller agrees to sell to Buyer, the Property in its AS-IS, WHERE-IS, with ALL FAULTS condition.

2. **EFFECTIVE DATE; OPENING OF ESCROW.**

2.1 **Effective Date.** This Agreement shall be deemed effective upon the last to occur of: (i) execution of this Agreement by Seller after the approval of its Board; and (ii) execution of this Agreement by Buyer after approval of the City Council ("**Effective Date**").

2.2 **Opening of Escrow.** Within three (3) days after the Effective Date, the parties shall open an escrow (Escrow) with First American Title Insurance Company (Escrow Holder) Lisa A. Bertrand, 899 Pacific Street, San Luis Obispo, CA 93401 (805 786-2038; lbertrand@firstam.com) by causing an executed copy of this Agreement to be deposited with Escrow Holder which Escrow Holder shall sign and accept. Escrow shall be deemed opened upon the last to occur of ("**Opening of Escrow**"): (i) the executed copy of this Agreement; and (ii) the Deposit (defined in Section 3.2.a).

3. **PURCHASE PRICE; PAYMENT OF PURCHASE PRICE.**

3.1 **Purchase Price.** The purchase price of the Property is Three Hundred Thirty-Eight Thousand Fifty Dollars (\$338,050) ("**Purchase Price**") which is the purchase price paid by Seller to acquire the Property from Chevron. The Purchase Price has been affirmed as the fair market value as set forth in that certain third party appraisal dated May 15, 2019 prepared by Schenberger, Taylor, McCormick and Jecker, Inc.

3.2 **Payment of Purchase Price.**

a. **Deposit.** Within three (3) days of the Effective Date, Buyer shall deliver to Escrow Holder the sum of One Thousand Dollars (\$1,000) ("**Deposit**").

b. **Balance of Purchase Price.**

(i) TPL shall deliver the TPL Contribution to Escrow Holder in Good Funds (as defined below) at least one (1) business day prior to the Closing Date.

(ii) The State Coastal Conservancy shall deliver via state warrant for One Hundred Fifty Thousand Dollars (\$150,000) at least one (1) business day prior to the Closing Date.

(iii) Buyer shall deliver the balance of the Purchase Price to Escrow Holder in Good Funds at least one (1) business day prior to the Closing Date.

3.3 **Good Funds.** All funds deposited in Escrow shall be in "**Good Funds**" which means a wire transfer of funds, cashier's or certified check drawn on or issued by the offices of a financial institution located in the State of California.

4. **FUNDS AND DOCUMENTS REQUIRED FROM BUYER AND SELLER.**

4.1 **Seller.** Seller agrees that on or before 12:00 noon at least one (1) business day prior to the Closing Date, Seller will deposit (or cause to be deposited) with Escrow Holder such funds and other items and instruments (executed and acknowledged, if appropriate) as may be necessary in order for the Escrow Holder to comply with this Agreement, including without limitation:

- i. Grant Deed in the form of Exhibit B ("**Grant Deed**").
- ii. Chevron Release.
- iii. A Non-Foreign Affidavit as required by federal law.
- iv. Two (2) copies of an Assignment of Intangibles in the form of Exhibit C ("**Assignment**").
- v. An owner's affidavit and any other document, instrument or agreement necessary to consummate the transactions contemplated herein reasonably requested by the Title Company.
- vi. Such funds and other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

4.2 Buyer. Buyer agrees that on or before 12:00 noon at least one (1) business day prior to the Closing Date, Buyer will deposit (or cause to be deposited) with Escrow Holder all additional funds and/or documents (executed and acknowledged, if appropriate) which are necessary to comply with the terms of this Agreement, including without limitation:

- i. The balance of the Purchase Price.
- ii. Two (2) copies of the Assignment.
- iii. Conservancy Restriction Agreement executed by Buyer.
- iv. The executed Certificate of Acceptance Deed to be attached to the Grant Deed ("**Certificate of Acceptance**").
- v. Preliminary Change of Ownership Statement completed in the manner required in San Luis Obispo County ("**PCOR**").
- vi. Such funds and other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

4.3 Recordation, Filing, Completion and Distribution of Documents. Escrow Holder shall confirm that any documents signed in counterpart are matching documents and shall combine the signature pages thereof so as to create fully executed documents. Escrow Holder will cause the Chevron Release, the Grant Deed (with the Certificate of Acceptance attached) and Conservancy Restriction Agreement ("**Recording Documents**") to be recorded in that specific order in the Official Records of San Luis Obispo County so it can issue the Title Policy in accordance with Section 6.2. Promptly following Close of Escrow, Escrow Holder shall distribute Escrow Holder's final closing statement, conformed copies of all recorded documents, and the Assignment to the parties.

5. CLOSING DATE; TIME IS OF ESSENCE.

5.1 Closing Date. Escrow shall close upon the later to occur of: (i) thirty (30) days after the Effective Date, and (ii) ten (10) days after the Due Diligence Expiration Date ("**Closing Date**"). The terms "**Close of Escrow**" and/or "**Closing**" are used herein to mean the time Recording Documents are filed for recording by the Escrow Holder in the Official Records.

5.2 Possession. Upon the Close of Escrow, Seller shall deliver exclusive possession of the Property to Buyer.

5.3 Time is of Essence. Buyer and Seller specifically agree that time is of the essence under this Agreement.

5.4 Authority of District Manager. Seller by its execution of this Agreement agrees that its District Manager or his/her designee (who has been designated by District Manager's written notice delivered to Buyer and Escrow Holder) shall have the authority to execute documents on behalf of Seller including, but not limited to, issuing approvals, disapprovals and extensions. Any such approval, disapproval or extension executed by the District Manager or his/her designee shall be binding on Seller.

5.5 Authority of City Manager. Buyer by its execution of this Agreement agrees that its City Manager or his/her designee (who has been designated by City Manager's written notice delivered to Seller and Escrow Holder) shall have the authority to execute documents on behalf of Buyer including, but not limited to, issuing approvals, disapprovals and extensions. Any such approval, disapproval or extension executed by the City Manager or his/her designee shall be binding on Buyer.

6. TITLE POLICY.

6.1 Title Approval. Buyer has received that certain preliminary title report #6192204 issued by First American Title Insurance Company ("**Title Company**") (amended) dated as of May 1, 2020 ("**PTR**") and approves (i) PTR Exceptions 3 through 17, inclusive; Exceptions 18 & 19 but modified to only refer to the indemnity agreement in those deeds; and Exception 24 modified to provide coverage for the grant of water rights specified in the Grant Deed; (ii) the retained easements in the Grant Deed; (iii) the Conservancy Restriction Agreement; and (iii) any exceptions caused by Buyer (collectively the "**Approved Exceptions**"). Buyer's title approval also requires the following endorsements to be issued: (i) against surface right of entry; and (endorsements ALTA 9.1-06; 19-06; and 8.2-06 ("**Required Endorsements**").

6.2 Amendments to PTR. Upon the issuance of any amendment or supplement to the PTR which adds exceptions, Buyer shall have ten (10) days to approval or disapprove in writing any additional exception. If Buyer disapproves same, Seller shall have five (5) days to agree to cause the exception to be removed or endorsed by an endorsement reasonably acceptable to Buyer which endorsement shall be a Required Endorsements.

6.3 Title Policy. At the Close of Escrow, Escrow Holder shall furnish Buyer with an ALTA non-extended owner's policy of title insurance insuring title to the Property vested in Buyer with coverage in the amount of the Purchase Price showing only the Approved Exceptions together with the Required Endorsements ("**Title Policy**"). The cost of the Title Policy to Buyer shall be paid by Seller but Buyer shall be obligated pay for any additional endorsements except the Required Endorsements. If Buyer desires to obtain an ALTA extended coverage owner's title policy, Buyer shall deliver an ALTA survey, at Buyer's cost, to Title Company at least ten (10) days prior to the Closing Date and Buyer shall pay the additional cost for the extended coverage.

7. DUE DILIGENCE.

7.1 Due Diligence. Prior to the Effective Date, Seller has provided to Buyer a copy of that an Environmental Phase I Site Assessment dated February 20, 2020 issued by Haro Environmental ("**Phase I Report**"). Within two (2) days of the Effective Date, Seller shall deliver all

other information and reports regarding the Property in its possession to Buyer. Escrow Holder is directed to order the NHD Report as defined below. Buyer shall have the right at its cost to conduct such engineering, feasibility studies, soils tests, environmental studies and other investigations as Buyer, in its sole discretion, may desire, to permit Buyer to determine the suitability of the Property for Buyer's contemplated uses and to conduct such other review and investigation which Buyer deems appropriate. The Phase I Report, the NHD Report and all other documents delivered to Buyer are collectively hereinafter referred to as "**Disclosure Documents.**" Buyer acknowledges that any information and materials provided or to be provided by Seller with respect to the Property (including, without limitation, the Disclosure Documents) were obtained from a variety of sources and third parties, and that Seller has not made any independent investigation or verification of such information and materials, and that Seller, therefore, disclaims any representations or warranties as to the accuracy or the completeness of such information and materials but has delivered full and accurate copies of all such materials to Buyer prior to Opening of Escrow and, as of the Closing, is deemed to have assigned them to Buyer.

7.2 Due Diligence Expiration Date. Buyer shall have ten (10) days from receipt of the Disclosure Documents ("**Due Diligence Expiration Date**") to review and approve the condition of the Property and the Disclosure Documents. If Buyer disapproves the condition of the Property, Buyer must deliver to Seller written notice of such disapproval and its election to terminate this Agreement ("**Termination Notice**"). If Buyer does not deliver Termination Notice in the time and manner specified, Buyer shall be deemed to have approved the condition of the Property.

7.3 Natural Hazard Disclosure Report. Upon Opening of Escrow, Escrow Holder shall promptly order a commercial Natural Hazards Disclosure report for the Property from First American Natural Hazard Disclosures ("**NHD Report**") to be promptly delivered to Buyer for Buyer's approval.

8. Right to Enter the Property. As of the Effective Date, Seller grants Buyer, its agents and employees a limited license to enter upon the Property for the purpose of conducting engineering surveys, soil tests, investigations or other studies reasonably necessary to evaluate the condition of the Property, which studies, surveys, reports, investigations and tests shall be done at Buyer's sole cost and expense. Prior to entry onto the Property, Buyer shall (i) conduct all studies in a diligent, expeditious and safe manner and not allow any dangerous or hazardous conditions to occur on the Property during or after such investigation; (ii) comply with all applicable laws and governmental regulations; (iii) keep the Property free and clear of all materialmen's liens, lis pendens and other liens arising out of the entry and work performed under this provision; (iv) maintain insurance for an all-risk public liability insurance policy written on a per occurrence and not claims made basis in a combined single limit of not less than TWO MILLION DOLLARS (\$2,000,000) which insurance names Seller as additional insured; and (v) agree to defend, indemnify and hold the Seller harmless from all claims, liabilities, damages, losses, costs, expenses (including, without limitation, reasonable attorneys' fees), actions and causes of action arising out of any entry onto the Property by, or any Inspections or studies performed by Buyer, its agents, contractors or representatives.

9. CONDITIONS PRECEDENT TO CLOSE OF ESCROW.

9.1 Conditions to Buyer's Obligations. The obligations of Buyer under this Agreement are subject to the satisfaction or written waiver, in whole or in part, by Buyer of each of the following conditions precedent ("**Buyer's Conditions Precedent**"):

- i. Title Company will issue the Title Policy as specified in Section 6.3.
- ii. Chevron has delivered the Chevron Release to Escrow Holder.

- iii. The TPL Funds have been delivered to Escrow Holder to be applied to the Purchase Price.
- iv. The Conservancy Contribution has been delivered to Escrow Holder to be applied to the Purchase Price.
- v. The Conservancy Restriction Agreement has been delivered to Escrow Holder with authorization to record it.
- vi. Seller is not in default of its obligations under this Agreement.

9.2 Conditions to Seller's Obligations. The obligations of Seller under this Agreement are subject to the satisfaction or written waiver, in whole or in part, by Seller of the following conditions precedent:

- i. The balance of the Purchase Price has been delivered to Escrow Holder.
- ii. Chevron has delivered the Chevron Release to Escrow Holder with authorization to record it.
- iii. Escrow Holder holds and will deliver to Seller the instruments and funds accruing to Seller pursuant to this Agreement.
- iv. Buyer is not in default of its obligations under this Agreement.

10. LIQUIDATED DAMAGES. IF BUYER SHOULD DEFAULT UNDER THIS AGREEMENT, THEN BUYER AND SELLER AGREE THAT SELLER WILL INCUR DAMAGES BY REASON OF SUCH DEFAULT BY BUYER OR FAILURE OF ESCROW TO CLOSE ON OR BEFORE THE CLOSING DATE, WHICH DAMAGES SHALL BE IMPRACTICAL AND EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE, TO ASCERTAIN. BUYER AND SELLER, IN A REASONABLE EFFORT TO ASCERTAIN WHAT SELLER'S DAMAGES WOULD BE IN THE EVENT OF SUCH DEFAULT BY BUYER HAVE AGREED BY PLACING THEIR INITIALS BELOW THAT THE DEPOSIT SHALL BE DEEMED TO CONSTITUTE A REASONABLE ESTIMATE OF SELLER'S DAMAGES UNDER THE PROVISIONS OF SECTION 1671 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. IN THE EVENT OF AND FOR SUCH DEFAULT BY BUYER, THE DEPOSIT SHALL BE SELLER'S SOLE MONETARY REMEDY THEREFOR, UNLESS BUYER WRONGFULLY REFUSES TO CAUSE ESCROW HOLDER TO CANCEL THE ESCROW, IN WHICH INSTANCE SELLER SHALL ALSO BE ENTITLED TO ALL ACTUAL THIRD-PARTY COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED BY SELLER WHICH MAY RESULT FROM BUYER'S WRONGFUL FAILURE TO CANCEL THE ESCROW AND THIS AGREEMENT. THE FOREGOING LIMITATION OF DAMAGES SHALL NOT APPLY TO BUYER'S INDEMNITY OBLIGATIONS.



 Seller's Initials

 Buyer's Initials

11. SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS.

11.1. Representations and Warranties. Seller makes the following representations and warranties to Buyer, each of which is true in all respects as of the Effective Date and shall be true in all respects as of the Close of Escrow:

- (a) Seller has delivered complete copies of all documents regarding the Property which are in Seller's possession or control.

(b) Seller is not aware of any rights regarding the Property including, but not limited to, options, leases, etc. except as disclosed in the PTR.

(c) Seller has the power to execute, deliver and perform Seller's obligations under this Agreement including the documents to be executed and delivered by Seller pursuant to this Agreement.

11.2. Survival of Representations and Warranties. The representations and warranties in this Section 11 shall survive the Closing and delivery of the Grant Deed.

11.3. Breach. If a breach of a representation or warranty occurs before Closing and Buyer is aware of such a breach has occurred, the breach shall be grounds to terminate this Agreement.

11.4. Seller Covenants. Until Closing, Seller shall not do anything which would impair Seller's title to the Property. If Seller learns of any fact or condition which would cause any of the warranties and representations in this Section not to be true as of the Closing, Seller shall immediately give written notice of such fact or condition to Buyer.

12. CONDITION OF THE PROPERTY.

12.1. Limited Disclaimer of Warranties. Upon the Close of Escrow, Buyer shall acquire the Property in its "AS-IS, WHERE-IS with ALL FAULTS" condition without any representations and warranties except as specifically set forth in this Agreement and Buyer shall be responsible for any defects in the Property, whether patent or latent, including, without limitation, the physical, environmental and geotechnical condition of the Property, and the existence of any contamination, Hazardous Materials, vaults, debris, pipelines, or other structures located on, under or about the Property. Except as specifically set forth in this Agreement, Seller makes no other representation or warranty concerning the physical, environmental, geotechnical or other condition of the Property.

12.2. Hazardous Materials. Buyer understands and agrees that, in the event Buyer incurs any loss or liability concerning Hazardous Materials (as hereinafter defined) and/or underground storage tanks whether attributable to events occurring prior to or following the Closing, then Buyer may look to prior owners of the Property, but in no event shall Buyer look to or pursue Seller for any liability or indemnification regarding Hazardous Materials and/or underground storage tanks. Buyer, from and after the Closing, hereby waives, releases, remises, acquits and forever discharges Seller, and each of the entities constituting Seller, if any, of and from any and all Environmental Claims, Environmental Cleanup Liability and Environmental Compliance Costs, as those terms are defined below, and from any and all actions, suits, legal or administrative orders or proceedings, demands, actual damages, punitive damages, loss, costs, liabilities and expenses, which concern or in any way relate to the physical or environmental conditions of the Property, the existence of any Hazardous Material thereon, or the release or threatened release of Hazardous Materials there from, whether existing prior to, at or after the Closing. It is the intention of the parties pursuant to this release that any and all responsibilities and obligations of Seller, and any and all rights, claims, rights of action, causes of action, demands or legal rights of any kind of Buyer, its successors, assigns or any affiliated entity of Buyer, has against the Seller, arising by virtue of the physical or environmental condition of the Property, the existence of any Hazardous Materials thereon, or any release or threatened release of Hazardous Material there from, whether existing prior to, at or after the Closing, are by this release provision declared null and void and of no present or future force and effect as to the parties; provided, however, that no parties other than the Indemnified Parties (defined below) shall be deemed third party beneficiaries of such release.

In connection therewith, Buyer and each of the entities constituting Buyer, expressly agree to waive any and all rights which said party may have with respect to such released claims under Section 1542 of the California Civil Code which provides as follows:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

Buyer Initials _____

Seller Initials  _____

Buyer and each of the entities constituting Buyer, shall, from and after the Closing, defend, indemnify and hold harmless Seller, its directors, officers, officials, employees, agents and representatives (collectively, the “**Indemnified Parties**”) from and against any and all Environmental Claims, Environmental Cleanup Liability, Environmental Compliance Costs, and any other claims, actions, suits, legal or administrative orders or proceedings, demands or other liabilities resulting at any time from the physical and/or environmental conditions of the Property whether before or after the Closing or from the existence of any Hazardous Materials or the release or threatened release of any Hazardous Materials of any kind whatsoever, in, on or under the Property occurring at any time whether before or after the Closing, including, but not limited to, all foreseeable and unforeseeable damages, fees, costs, losses and expenses, including any and reasonable attorneys’ fees and environmental consultant fees and investigation costs and expenses, directly or indirectly arising there from, and including fines and penalties of any nature whatsoever, assessed, levied or asserted against any Indemnified Parties to the extent that the fines and/or penalties are the result of a violation or an alleged violation of any Environmental Law.

For purposes of this Agreement, the following terms shall have the following meanings:

“Environmental Claim” means any claim for personal injury, death and/or property damage made, asserted or prosecuted by or on behalf of any third party, including, without limitation, any governmental entity, relating to the Property or its operations and arising or alleged to arise under any Environmental Law.

“Environmental Cleanup Liability” means any cost or expense of any nature whatsoever incurred to contain, remove, remedy, clean up, or abate any contamination or any Hazardous Materials on or under all or any part of the Property, including the ground water hereunder, including, without limitation, (i) any direct costs or expenses for investigation, study, assessment, legal representation, cost recovery by governmental agencies, or ongoing monitoring in connection therewith and (ii) any cost, expense, loss or damage incurred with respect to the Property or its operation as a result of actions or measures necessary to implement or effectuate any such containment, removal, remediation, treatment, cleanup or abatement.

“Environmental Compliance Cost” means any cost or expense of any nature whatsoever necessary to enable the Property to comply with all applicable Environmental Laws in effect. “Environmental Compliance Cost” shall include all costs necessary to demonstrate that the Property is capable of such compliance.

“Environmental Law” means any federal, state or local statute, ordinance, rule, regulation, order, consent decree, judgment or common-law doctrine, and provisions and conditions of permits, licenses and other operating authorizations relating to (i) pollution or protection of the environment, including natural resources, (ii) exposure of persons, including employees, to Hazardous Materials or other products, raw materials, chemicals or other substances, (iii) protection of the public health

or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical sub-stances from industrial or commercial activities, or (iv) regulation of the manufacture, use or introduction into commerce of chemical substances, including, without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal.

“Hazardous Material(s)” is defined to include any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term “Hazardous Material” includes, without limitation, any material or substance which is: (i) petroleum or oil or gas or any direct or derivate product or byproduct thereof; (ii) defined as a “hazardous waste,” “extremely hazardous waste” or “restricted hazardous waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code; (iii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code; (iv) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Sections 25501(o) and (p) and 25501.1 of the California Health and Safety Code (Hazardous Materials Release Response Plans and Inventory); (v) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code (Underground Storage of Hazardous Substances); (vi) “used oil” as defined under Section 25250.1 of the California Health and Safety Code; (vii) asbestos; (viii) listed under Article 9 or defined as hazardous or extremely hazardous pursuant to Article 1 of Title 22 of the California Code of Regulations, Division 4, Chapter 30; (ix) defined as “waste” or a “hazardous substance” pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (x) designated as a “toxic pollutant” pursuant to the Federal Water Pollution Control Act, 33 U.S.C. §1317; (xi) defined as a “hazardous waste” pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq. (42 U.S.C. §6903); (xii) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et seq. (42 U.S.C. §9601); (xiii) defined as “Hazardous Material” or a “Hazardous Substance” pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; or (xiv) defined as such or regulated by any “Superfund” or “Superlien” law, or any other federal, state or local law, statute, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials, oil wells, underground storage tanks, and/or pipelines, as now, or at any time hereafter, in effect.

Buyer’s release and indemnification as set forth in the provisions of this Section shall survive the Closing and shall continue in perpetuity. Nothing herein shall limit Buyer’s rights to pursue any other prior owners who may be liable for any contamination or other matters affecting the Property and Seller shall cooperate with Buyer with respect to any such claim.

13. ESCROW PROVISIONS.

13.1 Escrow Instructions. Sections 1 through 6, 8, and 13 through 15, inclusive, constitute the escrow instructions to Escrow Holder. If required by Escrow Holder, Buyer and Seller agree to execute Escrow Holder’s standard escrow instructions, provided that the same are consistent with and do not conflict with the provisions of this Agreement. In the event of any such conflict, the provisions of this Agreement shall prevail. The terms and conditions in sections of this Agreement not specifically referenced above are additional matters for information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder’s general provisions directly from Escrow Holder and will execute such provision upon Escrow Holder’s request. To the extent that the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller agree to execute additional instructions, documents and forms provide by Escrow Holder that are reasonably necessary to close Escrow.

13.2 General Escrow Provisions. Escrow Holder shall deliver the Title Policy to the Buyer and instruct the San Luis Obispo County Recorder to mail (i) the Chevron Release and the Grant Deed to Buyer at the address set forth in Section 14 after recordation; and (ii) the recorded Conservancy Restriction Agreement to the Conservancy as set forth at the top of that document. All funds received in this Escrow shall be deposited in one or more general escrow accounts of the Escrow Holder with any bank doing business in Southern California, and may be disbursed to any other general escrow account or accounts. All disbursements shall be according to that party's instructions.

13.3 NO Proration of Real Property Taxes. As both parties are public agencies, no proration of real estate taxes shall be made. However, any real property taxes applicable to the Property for any reason shall be the sole responsibility of Seller.

13.4 Payment of Costs.

- a. **Cost Allocation.** Seller shall pay the costs for the Title Policy (non-extended ALTA owner's policy), all Required Endorsements, the cost of the NHD Report, and one-half (1/2) of the escrow costs ("**Seller's Charges**"). Buyer shall pay the cost of any additional endorsements to the Title Policy requested by Buyer or for ALTA extended coverage owner's policy (as provided in Section 6.3), one-half (1/2) of the escrow fees, and any charges incurred by Buyer's acts ("**Buyer's Charges**").

NOTE: No documentary transfer taxes are payable pursuant to R&T Code Section 11922. No recording fees are payable for any of the Recording Documents as all the parties are governmental agencies exempt under Govt Code Section 6103.

All other costs of Escrow not otherwise specifically allocated by this Agreement shall be apportioned between the parties in a manner consistent with the custom and usage of Escrow Holder.

- b. **Closing Statement.** At least two (2) business days prior to the Closing Date, Escrow Holder shall furnish Buyer and Seller with a preliminary Escrow closing statement which shall include each party's respective shares of costs. The preliminary closing statement shall be approved in writing by the parties. As soon as reasonably possible following the Close of Escrow, Escrow Holder shall deliver a copy of the final Escrow closing statement to each party.

13.5 Termination and Cancellation of Escrow. If Escrow fails to close due to a failure of a condition precedent, then the party in whose favor the condition precedent runs may elect to cancel this Escrow upon written notice to the other party and Escrow Holder. Upon cancellation, Escrow Holder is instructed to return (i) the funds in accordance with the foregoing provisions of this Agreement, and (ii) all documents then in Escrow to the respective depositor of the same with Escrow Holder. Cancellation of Escrow, as provided herein, shall be without prejudice to whatever legal rights Buyer or Seller may have against each other arising from the Escrow or this Agreement.

13.6 Information Report. Escrow Holder shall file and Buyer and Seller agree to cooperate with Escrow Holder and with each other in completing any report ("**Information Report**") and/or other information required to be delivered to the Internal Revenue Service pursuant to Internal Revenue Code Section 60451 regarding the real estate sales transaction contemplated by this Agreement, including without limitation, Internal Revenue Service Form 1099-B as such may be hereinafter modified or amended by the Internal Revenue Service, or as may be required pursuant to any regulation now or hereinafter promulgated by the Treasury Department with respect thereto.

Buyer and Seller also agree that Buyer and Seller, their respective employees and attorneys, and Escrow Holder and its employees, may disclose to the Internal Revenue Service, whether pursuant to such Information Report or otherwise, any information regarding this Agreement or the transactions contemplated herein as such party reasonably deems to be required to be disclosed to the Internal Revenue Service by such party pursuant to Internal Revenue Code Section 6045I, and further agree that neither Buyer nor Seller shall seek to hold any such party liable for the disclosure to the Internal Revenue Service of any such information.

13.7 No Withholding as Foreign Seller. Seller represents and warrants to Buyer that Seller is not, and as of the Close of Escrow will not be, a foreign person within the meaning of Internal Revenue Code Section 1445 or an out-of-state seller under California Revenue and Tax Code Section 18805 and that it will deliver to Buyer on or before the Close of Escrow a non-foreign affidavit on Escrow Holder's standard form pursuant to Internal Revenue Code Section 1445(b)(2) and the Regulations promulgated thereunder and a California Form 590-RE.

13.8 Brokerage Commissions. Seller and Buyer each represent and warrant to the other that no third party is entitled to a broker's commission and/or finder's fee with respect to the transaction contemplated by this Agreement. Buyer and Seller each agree to indemnify and hold the other parties harmless from and against all liabilities, costs, damages and expenses, including, without limitation, attorneys' fees, resulting from any claims or fees or commissions, based upon agreements by it, if any, to pay a broker's commission and/or finder's fee. The obligations under this provision shall survive Closing.

14. NOTICES. Any notice which either party may desire to give to the other party or to the Escrow Holder must be in writing and may be given by (i) personal delivery which will be deemed received the following day; (ii) by national overnight delivery service which will be deemed received the following business day; or (iii) by mailing the same by registered or certified mail, return receipt requested which will be deemed delivered three (3) days after depositing same in the mail, addressed to the party to whom the notice is directed as set forth below, or such other address and to such other persons as the parties may hereafter designate:

To Buyer: City of Morro Bay
150 S. Palm Avenue
Morro Bay, CA 92376
Attention: City Manager

With a Copy to: Aleshire & Wynder, LLP
18881 Von Karman Avenue, Suite 1700
Irvine, CA 92612
Attention: Chris Neumeyer, City Attorney

To Seller: Cayucos Sanitary District
200 Ash Avenue
P.O. Box 333
Cayucos, CA 93430
Attn: Rick Koon, District Manager

With a Copy to: Timothy J. Carmel
Carmel & Naccasha, LLP
1410 March Street
San Luis Obispo, CA 93401

To Escrow Holder: First American Title Insurance Company
899 Pacific Street
San Luis Obispo, CA 93401
Lisa A. Bertrand, Escrow Officer

15. GENERAL PROVISIONS.

15.1 Assignment. Neither party may assign this Agreement without the prior written consent of the other party. This Agreement shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective heirs, personal representatives, successors and assigns.

15.2 Attorney's Fees. In any action between the parties hereto, seeking enforcement of any of the terms and provisions of this Agreement or the Escrow, or in connection with the Property, the prevailing party in such action shall be entitled, to have and to recover from the other party its reasonable attorneys' fees and other reasonable expenses in connection with such action or proceeding, in addition to its recoverable court costs.

15.3 Governing Law; Venue. This Agreement shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement. The venue for any dispute shall be San Luis Obispo County.

15.4 No Waiver. No delay or omission by either party in exercising any right or power accruing upon the compliance or failure of performance by the other party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party of a breach of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof.

15.5 Amendments. Any amendment or modification to this Agreement must be in writing and executed by both parties.

15.6 Severability. If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument, or the application of such term, provisions, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

15.7 Merger. This Agreement and other documents incorporated herein by reference contain the entire understanding between the parties relating to the transaction contemplated hereby and all prior to contemporaneous agreements, understandings, representations and statements, oral or written (including the MOU) are merged herein and shall be of no further force or effect.

15.8 Construction. In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase or provision of this Agreement, no uncertainty or ambiguity shall be construed or resolved against a party under any rule of construction, including the party primarily responsible for the drafting and preparation of this Agreement. Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

15.9 Qualification and Authority. Each individual executing this Agreement on behalf of a party represents, warrants and covenants to the other party that (a) such person is duly authorized

to execute and deliver this Agreement on behalf of the party in accordance with authority granted under the organizational documents of such entity, and (b) the party is bound under the terms of this Agreement.

15.10 No Third Party Beneficiaries. This Agreement is only between the parties, and is not intended to be nor shall it be construed as being for the benefit of any third party.

15.11 Execution in Counterparts. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

15.12 Exhibits. Exhibits A-1, A-2, B and C attached hereto are incorporated herein by reference.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

NOTE: Parties must initial Sections 10 and 12.2.

SELLER:

CAYUCOS SANITARY DISTRICT, a political subdivision of the State of California

By: Robert B. Enns
Robert B. Enns, Board President

ATTEST:

Bild J. Koon
_____, Board Secretary

APPROVED AS TO FORM:

CARMEL & NACCASHA, LLP

By: _____
Timothy J. Carmel
District Counsel

ESCROW HOLDER ACCEPTANCE:

First American Title Insurance Company

By: _____
Lisa A. Bertrand, Escrow Officer

Dated: _____, 202__

BUYER:

CITY OF MORRO BAY, a California municipal corporation

By: _____
John Heading, Mayor

ATTEST:

Dana Swanson, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Christopher Neumeyer
City Attorney

to execute and deliver this Agreement on behalf of the party in accordance with authority granted under the organizational documents of such entity, and (b) the party is bound under the terms of this Agreement.

15.10 No Third Party Beneficiaries. This Agreement is only between the parties, and is not intended to be nor shall it be construed as being for the benefit of any third party.

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CAYUCOS SANITARY DISTRICT, a political subdivision of the State of California

By: Robert B. Enns
Robert B. Enns, Board President

ATTEST:

Bild J. Koon
Board Secretary

APPROVED AS TO FORM:

CARMEL & NACCASHA, LLP

By: Timothy J. Carmel
Timothy J. Carmel
District Counsel

ESCROW HOLDER ACCEPTANCE:

First American Title Insurance Company

By: _____
Lisa A. Bertrand, Escrow Officer

Dated: _____, 202__

BUYER:

CITY OF MORRO BAY, a California municipal corporation

By: _____
John Headding, Mayor

ATTEST:

Dana Swanson, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Christopher Neumeyer
City Attorney

EXHIBIT A-1

LEGAL DESCRIPTION OF PROPERTY

Real property in the unincorporated area and in the City of Morro Bay, County of San Luis Obispo, State of California, described as follows:

PARCEL 1 - Lot 6SW (APN 065-022-011)

That portion of the land described in Certificate of Compliances recorded November 2, 2012 in Document No. [2012063818](#) and Document No. [2012063819](#) in the County Recorder's Office, County of San Luis Obispo, State of California, described as follows:

Beginning at the intersection of the westerly line of the land described in the grant deed to the State of California recorded in [Book 1090 at Page 258](#) of Official Records in the County Recorder's Office of said County (State Highway One) with the southerly line of Lot 31 according to the map of the subdivision of said Rancho filed in Book A of Maps at Page 160 of Maps in the County Recorder's Office of said County; thence northerly along said westerly line to a point being North 11°23'26" West, a distance of 612.98 feet from the southerly terminus of the line described as Course No. 4 (North 11°23'26" West, 817.99 feet) in said grant deed to the State of California; thence leaving said westerly line, South 78°36'34" West, a distance of 187.20 feet more or less to the mean high water line of Estero Bay; thence, Southerly along said mean high water line to the southwest corner of said Lot 31; thence, northeasterly along the southerly line of said Lot 31 to the Point of Beginning.

EXCEPTING THEREFROM, its successive owners and assigns, together with the right to grant and transfer all or a portion of same to the extent reserved by Chevron Land and Development Company pursuant to certain Grant Deed recorded on September 17, 2019 as Instrument No. [2019039329](#) as follows:

To the extent owned by Grantor on the date hereof, all minerals, unprocessed, oil, gas, petroleum, other hydrocarbon substances and geothermal resources in or under or which may be produced from the Property and the perpetual right of exploring and prospecting for, and developing, producing, extracting, and taking said minerals, unprocessed oil, gas, petroleum, other hydrocarbon substances and geothermal resources from the Property by means of mines, shafts, tunnels, wells, derricks or other equipment from surface locations on adjoining or neighboring land or lying outside of the Property, including the right to whipstock or directionally drill and mine from lands other than the Property, and to bottom such whipstocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits of the Property, and to redrill, retunnel, equip, maintain, repair, deepen and operate any such wells or mines, it being understood, however, that the owner of such minerals, unprocessed oil, gas, petroleum, other hydrocarbon substances and geothermal resources, as set forth above, shall have no right to enter upon the surface of the Property nor to use any of the Property or any portion thereof above a plane parallel to and 500 feet below the surface of the Property for any of the purposes specified herein, as reserved by Chevron Pipe Line Company, a Delaware corporation in deed recorded August 15, 2019 as Instrument No. [2019-033391](#) of Official Records.

PARCEL 2: Lot 6NW (APN 073-075-016)

That portion of the land described in Certificate of Compliance's recorded November 2, 2012 in Document No. [2012-063818](#) and Document No. [2012-063819](#) in the County Recorder's Office, County of San Luis Obispo, State of California, described as follows:

Beginning at a point on the westerly line of the land described in the grant deeds to the State of California recorded in [Book 1090 at Page 258](#) of Official Records and [Book 1090 at Page 263](#) of Official Records in the County Recorder's Office of said County (State Highway One) being an arc distance of 696.64 feet from the northerly terminus of the curve described as Course No. 9 (curve to the left with a radius of 4879 feet through an angle of 11°45'32" for a distance of 1001.32 feet) in said grant deeds to the State of California;

First American Title
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thence, Leaving said westerly line, South 80°34'29" West, a distance of 26.67 feet;
thence, North 73°38'47" West, a distance of 36.70 feet;
thence, North 38°30'11" West a distance of 75.80 feet;
thence, North 80°39'34" West, a distance of 95.21 feet;
thence, South 72°39'00" West a distance of 106.64 feet more or less to the mean high water line of Estero Bay;
thence, Northerly along said mean high water line to the intersection with the westerly prolongation of the centerline of Toro Creek Road (County Road);
thence, Easterly along said centerline prolongation to the westerly line of the land described in said grant deeds to the State of California;
thence, Southerly along said westerly line to the Point of Beginning.

EXCEPTING THEREFROM, its successive owners and assigns, together with the right to grant and transfer all or a portion of same to the extent reserved by Chevron Land and Development Company pursuant to certain Grant Deed recorded on September 17, 2019 as Instrument No. [2019039327](#) as follows:

To the extent owned by Grantor on the date hereof, all minerals, unprocessed, oil, gas, petroleum, other hydrocarbon substances and geothermal resources in or under or which may be produced from the Property and the perpetual right of exploring and prospecting for, and developing, producing, extracting, and taking said minerals, unprocessed oil, gas, petroleum, other hydrocarbon substances and geothermal resources from the Property by means of mines, shafts, tunnels, wells, derricks or other equipment from surface locations on adjoining or neighboring land or lying outside of the Property, including the right to whipstock or directionally drill and mine from lands other than the Property, and to bottom such whipstocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits of the Property, and to redrill, retunnel, equip, maintain, repair, deepen and operate any such wells or mines, it being understood, however, that the owner of such minerals, unprocessed oil, gas, petroleum, other hydrocarbon substances and geothermal resources, as set forth above, shall have no right to enter upon the surface of the Property nor to use any of the Property or any portion thereof above a plane parallel to and 500 feet below the surface of the Property for any of the purposes specified herein, as reserved by Chevron Pipe Line Company, a Delaware corporation in deed recorded August 15, 2019 as Instrument No. [2019-033391](#) of Official Records.

EXHIBIT A-2

DEPICTION OF PROPERTY



EXHIBIT B
GRANT DEED

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Morro Bay
150 S. Palm Avenue
Morro Bay, CA 92376
Attention: City Manager

APNs _____
THE UNDERSIGNED DECLARES:
DOCUMENTARY TRANSFER TAX IS \$0 per R&T Code 11922

(Space Above This Line for Recorder's Office Use Only)
Exempt from Recording Fee per Gov. Code §6103

GRANT DEED

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the CAYUCOS SANITARY DISTRICT, a political subdivision of the State of California ("**Grantor**"), hereby grants to the CITY OF MORRO BAY, a municipal corporation ("**Grantee**"), all of its respective rights, title, and interest in the real property in the City of Morro Bay, County of San Luis Obispo, State of California, as more particularly described in Exhibit A attached hereto ("**Property**") together with all tenements, hereditaments, and appurtenances, including existing subsurface improvements, fixtures and including the rights to withdraw water as set forth in those certain Grant Deeds recorded September 17, 2019 as Instrument Nos. 2019039327 and 2019039329 in the Official Records of San Luis Obispo County.

RETAINED PIPELINE EASEMENTS IN GROSS

Easement 1 (Existing Pipeline):

Grantor (hereinafter "**Easement Holder**") retains and reserves (i) a permanent easement under and across the Property (hereinafter "**Burdened Property**") for the purpose of using, maintaining, operating, altering, repairing, replacing, inspecting and/or removing an existing underground sanitary discharge pipeline and accessing the pipeline ("**Existing Pipeline**") for an existing pipeline existing on the Property but not specifically locatable at this time ("**Existing Pipeline Easement**"); and (ii) a temporary easement ten (10) feet adjacent to the Pipeline Easement for construction purposes from time to time for reinstalling, maintaining and removing the Pipeline ("**Temporary Existing Easement**"). The Pipeline Easement and the Temporary Easement are sometimes jointly referred to herein as the "**Existing Easements**." At such time as the Pipeline is specifically locatable, the owner of the Property and the Easement Holder shall reasonably cooperate to amend the Easement to specify its location and to record same in the public records.

Easement 2 (New Pipeline Easement):

Grantor (hereinafter "**Easement Holder**") also retains and reserves (i) a permanent easement under and across the Property (hereinafter "**Burdened Property**") for the purpose of installing, constructing, using, maintaining, operating, altering, repairing, replacing, inspecting, reinstalling and/or removing an underground sanitary discharge pipeline ("**New Pipeline**") and accessing the Pipeline in the area legally described on Exhibit B and depicted on Exhibit B-1; and (ii) a temporary easement construction purposes from time to time for reinstalling, maintaining and

removing the New Pipeline ("**Temporary New Easement**"). The Existing Pipeline Easement, the Temporary Existing Easement, the New Pipeline Easement and the Temporary New Easement are sometimes collectively referred to herein as the "**Easements**." For purpose of these Easements, Grantee is herein referred to as the "**Property Owner**".

The Easements are in gross to Easement Holder.

Easement Holder shall have the use the Easements at such times as are reasonably necessary to, and solely for the purpose of, exercising the rights set forth herein. Easement Holder agrees to use due care in any use of the Easements and in the construction, installation, repair, replacement and maintenance of the Pipeline so as not to unreasonably disturb the use of Burdened Property. Easement Holder shall provide written notice prior to commencing construction of the Pipeline. Upon commencement of construction of the Pipeline, Easement Holder shall diligently prosecute the construction to completion as soon as practicable. All construction, installation, maintenance and repair pursuant to the rights granted herein, or which Easement Holder otherwise undertakes on Burdened Property shall be undertaken and completed, at Easement Holder's sole cost and expense, in accordance with all applicable laws, rules and regulations related to same, using best construction practices, and shall keep the area of the Easements in a good, clean and safe condition during the construction, installation, maintenance and repair activities, and the Burdened Property shall, upon completion of same be left in a neat, clean, and safe condition, and lien free. Easement Holder further agrees that at all times it shall keep and maintain the Pipeline in a good, clean, safe condition and repair, giving due regard at all times for their intended and actual use. Without limiting the effect of the foregoing, Easement Holder shall not unreasonably interfere with the Property Owner's use of the surface while utilizing the Easements. After completing any work, Easement Holder agrees to return the Easement area and any other part of Burdened Property affected by Easement Holder's work or exercise of any rights hereunder to the condition which existed immediately prior to such work.

Easement Holder agrees to indemnify, defend (by counsel selected by Easement Holder and reasonably acceptable to Grantor) and hold harmless Property Owner, and its agents, employees, invitees, licensees and contractors ("**Property Owner Parties**"), and each of their respective successors and assigns, from and against any and all proceedings, actions, claims, demands, obligations, damages (excluding consequential and indirect damages), costs, losses, expenses (including without limitation, reasonable attorneys' fees) and liabilities arising out of or incurred in connection with: (i) the exercise of the rights or obligations of Easement Holder or its agents, employees, invitees, licensees and contractors ("**Easement Holder Parties**") hereunder; (ii) the release of any hazardous substance on Burdened Property in connection with the acts or omissions of Easement Holder, or the Easement Holder Parties; and/or (iii) the entrance of the Easement Holder or Easement Holder Parties onto Burdened Property. If the Property Owner or any Property Owner Party is made a party to any action, proceeding, or litigation commenced by or against Easement Holder or as a result of the actions or omissions of Easement Holder or the Easement Holder Parties, then Easement Holder shall defend (by counsel selected by Easement Holder and reasonably acceptable to Property Owner), protect and hold the Property Owner harmless from and shall pay all costs, expenses and reasonable attorney's fees incurred by the Easement Holder in connection with such litigation. Notwithstanding anything to the contrary herein, Property Owner and Easement Holder agree that the preceding indemnification obligation expressly excludes, and in no event shall Easement Holder or the Easement Holder Parties have any responsibility or liability for, any proceedings, actions, claims, demands, obligations, damages, costs, losses, expenses, or liabilities arising out of or incurred in connection with any preexisting condition in, on, or of the Burdened Property (including, without limitation, any hazardous substances discovered during the exercise of rights under this Easement reservation which existed prior to Easement Holder's entrance upon Burdened Property, unless any such condition is exacerbated by Easement Holder's

work or other activities on the Burdened Property). However, Property Owner makes no representations or warranties of any type or kind whatsoever concerning the condition of the Easement area, its suitability for Easement Holder's intended use of same, or any other aspect of same, and Easement Holder hereby accepts same in its AS-IS, WHERE-IS, WITH ALL FAULTS condition, which acceptance is re-affirmed by Easement Holder each time it enters or otherwise makes use of the Easement area or any other portion of Burdened Property.

Property Owner shall not construct any permanent buildings or structures within the Easement area, but reserves the right to use the area of the Easements for any uses that will not unreasonably interfere with Easement Holder's use of the Easements.

The Easements are intended to run with the Burdened Property, and be binding upon the parties and successive owners of the Burdened Property.

All notices, requests, consents and other communications hereunder shall be in writing, shall be addressed to the receiving party's address set forth below or to such other address as a party may designate by notice hereunder, and shall be either (i) delivered by hand, (ii) sent by recognized overnight courier, or (iii) sent by registered or certified mail, return receipt requested, postage prepaid.

If to Property Owner:

City of Morro Bay
150 S. Palm Avenue
Morro Bay, CA 92376
Attention: City Manager

If to Easement Holder:

Cayucos Sanitary District
200 Ash Avenue
P.O. Box 333
Cayucos, CA 93430
Attn: Rick Koon

With a copy to:

Aleshire & Wynder, LLP
18881 Von Karman Avenue,
Suite 1700
Irvine, CA 92612
Attention: Chris Neumeyer,
City Attorney

With a copy to:

Timothy J. Carmel
Carmel & Naccasha, LLP
1410 March Street
San Luis Obispo, CA 93401

All notices, requests, consents and other communications hereunder shall be deemed to have been given (i) if by hand, at the time of the delivery thereof to the receiving party at the address of such party set forth above, (ii) if sent by overnight courier, on the next business day following the day such notice is delivered to the courier service, (iii) if made by electronic transmission, at the time that receipt thereof has been acknowledged by electronic confirmation or otherwise, or (iv) if sent by registered or certified mail, on the third (3rd) business day following the day such mailing is sent. The address of any party herein may be changed at any time by written notice to the parties and shall automatically be deemed modified upon transfer of the respective property as shown in the Official Records of San Luis Obispo County.

In the event that any action or proceeding is brought to enforce or interpret this Easement Agreement, then the prevailing party therein shall, in addition to such other relief as the court or mediator or other educator may decide it is entitled to, be entitled to receive an award of its attorneys' fees and costs, including those on appeal.

Exhibits A, B, and B-1, are attached hereto and incorporated by reference.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on its behalf as of the date written below.

Dated: _____, 202__

GRANTOR & EASEMENT HOLDER:

CAYUCOS SANITARY DISTRICT, a
political subdivision of the State of California

By: Robert B. Enns
Robert B. Enns, Board President

ATTEST:

Richard D. Koon
_____, Board Secretary

APPROVED AS TO FORM:

CARMEL & NACCASHA, LLP

By: _____
Timothy J. Carmel
District Counsel

Exhibits A, B, and B-1, are attached hereto and incorporated by reference.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on its behalf as of the date written below.

Dated: _____, 202__

GRANTOR & EASEMENT HOLDER:

CAYUCOS SANITARY DISTRICT, a
political subdivision of the State of California

By: Robert B Enns
Robert B. Enns, Board President

ATTEST:

Richard L. Koon
_____, Board Secretary

APPROVED AS TO FORM:

CARMEL & NACCASHA, LLP

By: Timothy J. Carmel
Timothy J. Carmel
District Counsel

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by CAYUCOS SANITARY DISTRICT, a political subdivision of the State of California ("**Grantor**"), by Grant Deed to the CITY OF MORRO BAY, a municipal corporation ("**City**"), is hereby accepted by the undersigned officer and agent of City and the City consents to the recording of the Grant Deed.

Signed and dated at _____, California on _____, 202__.

GRANTEE & PROPERTY OWNER

CITY OF MORRO BAY. a municipal corporation

By: _____
Scott Collins, City Manager

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Real property in the unincorporated area and in the City of Morro Bay, County of San Luis Obispo, State of California, described as follows:

PARCEL 1 - Lot 6SW (APN 065-022-011)

That portion of the land described in Certificate of Compliances recorded November 2, 2012 in Document No. [2012063818](#) and Document No. [2012063819](#) in the County Recorder's Office, County of San Luis Obispo, State of California, described as follows:

Beginning at the intersection of the westerly line of the land described in the grant deed to the State of California recorded in [Book 1090 at Page 258](#) of Official Records in the County Recorder's Office of said County (State Highway One) with the southerly line of Lot 31 according to the map of the subdivision of said Rancho filed in Book A of Maps at Page 160 of Maps in the County Recorder's Office of said County; thence northerly along said westerly line to a point being North $11^{\circ}23'26''$ West, a distance of 612.98 feet from the southerly terminus of the line described as Course No. 4 (North $11^{\circ}23'26''$ West, 817.99 feet) in said grant deed to the State of California; thence leaving said westerly line, South $78^{\circ}36'34''$ West, a distance of 187.20 feet more or less to the mean high water line of Estero Bay; thence, Southerly along said mean high water line to the southwest corner of said Lot 31; thence, northeasterly along the southerly line of said Lot 31 to the Point of Beginning.

EXCEPTING THEREFROM, its successive owners and assigns, together with the right to grant and transfer all or a portion of same to the extent reserved by Chevron Land and Development Company pursuant to certain Grant Deed recorded on September 17, 2019 as Instrument No. [2019039329](#) as follows:

To the extent owned by Grantor on the date hereof, all minerals, unprocessed, oil, gas, petroleum, other hydrocarbon substances and geothermal resources in or under or which may be produced from the Property and the perpetual right of exploring and prospecting for, and developing, producing, extracting, and taking said minerals, unprocessed oil, gas, petroleum, other hydrocarbon substances and geothermal resources from the Property by means of mines, shafts, tunnels, wells, derricks or other equipment from surface locations on adjoining or neighboring land or lying outside of the Property, including the right to whipstock or directionally drill and mine from lands other than the Property, and to bottom such whipstocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits of the Property, and to redrill, retunnel, equip, maintain, repair, deepen and operate any such wells or mines, it being understood, however, that the owner of such minerals, unprocessed oil, gas, petroleum, other hydrocarbon substances and geothermal resources, as set forth above, shall have no right to enter upon the surface of the Property nor to use any of the Property or any portion thereof above a plane parallel to and 500 feet below the surface of the Property for any of the purposes specified herein, as reserved by Chevron Pipe Line Company, a Delaware corporation in deed recorded August 15, 2019 as Instrument No. [2019-033391](#) of Official Records.

PARCEL 2: Lot 6NW (APN 073-075-016)

That portion of the land described in Certificate of Compliance's recorded November 2, 2012 in Document No. [2012-063818](#) and Document No. [2012-063819](#) in the County Recorder's Office, County of San Luis Obispo, State of California, described as follows:

Beginning at a point on the westerly line of the land described in the grant deeds to the State of California recorded in [Book 1090 at Page 258](#) of Official Records and [Book 1090 at Page 263](#) of Official Records in the County Recorder's Office of said County (State Highway One) being an arc distance of 696.64 feet from the northerly terminus of the curve described as Course No. 9 (curve to the left with a radius of 4879 feet through an angle of $11^{\circ}45'32''$ for a distance of 1001.32 feet) in said grant deeds to the State of California;

thence, Leaving said westerly line, South 80°34'29" West, a distance of 26.67 feet;
thence, North 73°38'47" West, a distance of 36.70 feet;
thence, North 38°30'11" West a distance of 75.80 feet;
thence, North 80°39'34" West, a distance of 95.21 feet;
thence, South 72°39'00" West a distance of 106.64 feet more or less to the mean high water line of Estero Bay:
thence, Northerly along said mean high water line to the intersection with the westerly prolongation of the centerline of Toro Creek Road (County Road);
thence, Easterly along said centerline prolongation to the westerly line of the land described in said grant deeds to the State of California;
thence, Southerly along said westerly line to the Point of Beginning.

EXCEPTING THEREFROM, its successive owners and assigns, together with the right to grant and transfer all or a portion of same to the extent reserved by Chevron Land and Development Company pursuant to certain Grant Deed recorded on September 17, 2019 as Instrument No. [2019039327](#) as follows:

To the extent owned by Grantor on the date hereof, all minerals, unprocessed, oil, gas, petroleum, other hydrocarbon substances and geothermal resources in or under or which may be produced from the Property and the perpetual right of exploring and prospecting for, and developing, producing, extracting, and taking said minerals, unprocessed oil, gas, petroleum, other hydrocarbon substances and geothermal resources from the Property by means of mines, shafts, tunnels, wells, derricks or other equipment from surface locations on adjoining or neighboring land or lying outside of the Property, including the right to whipstock or directionally drill and mine from lands other than the Property, and to bottom such whipstocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits of the Property, and to redrill, retunnel, equip, maintain, repair, deepen and operate any such wells or mines, it being understood, however, that the owner of such minerals, unprocessed oil, gas, petroleum, other hydrocarbon substances and geothermal resources, as set forth above, shall have no right to enter upon the surface of the Property nor to use any of the Property or any portion thereof above a plane parallel to and 500 feet below the surface of the Property for any of the purposes specified herein, as reserved by Chevron Pipe Line Company, a Delaware corporation in deed recorded August 15, 2019 as Instrument No. [2019-033391](#) of Official Records.

EXHIBIT B
LEGAL DESCRIPTION OF NEW PIPELINE EASEMENT

That certain real property in the unincorporated area of the County of San Luis Obispo, State of California legally described as follows

The northerly 300.00 feet of the easterly 20.00 feet of the land described in the grant deed to Cayucos Sanitary District recorded September 17, 2019 in Document No. 2019-039327 in the County Recorder's Office, County of San Luis Obispo, State of California.

The land described is shown graphically on Exhibit B herein attached.



08/04/2020



EXHIBIT B-1
DEPICTION OF NEW PIPELINE EASEMENT

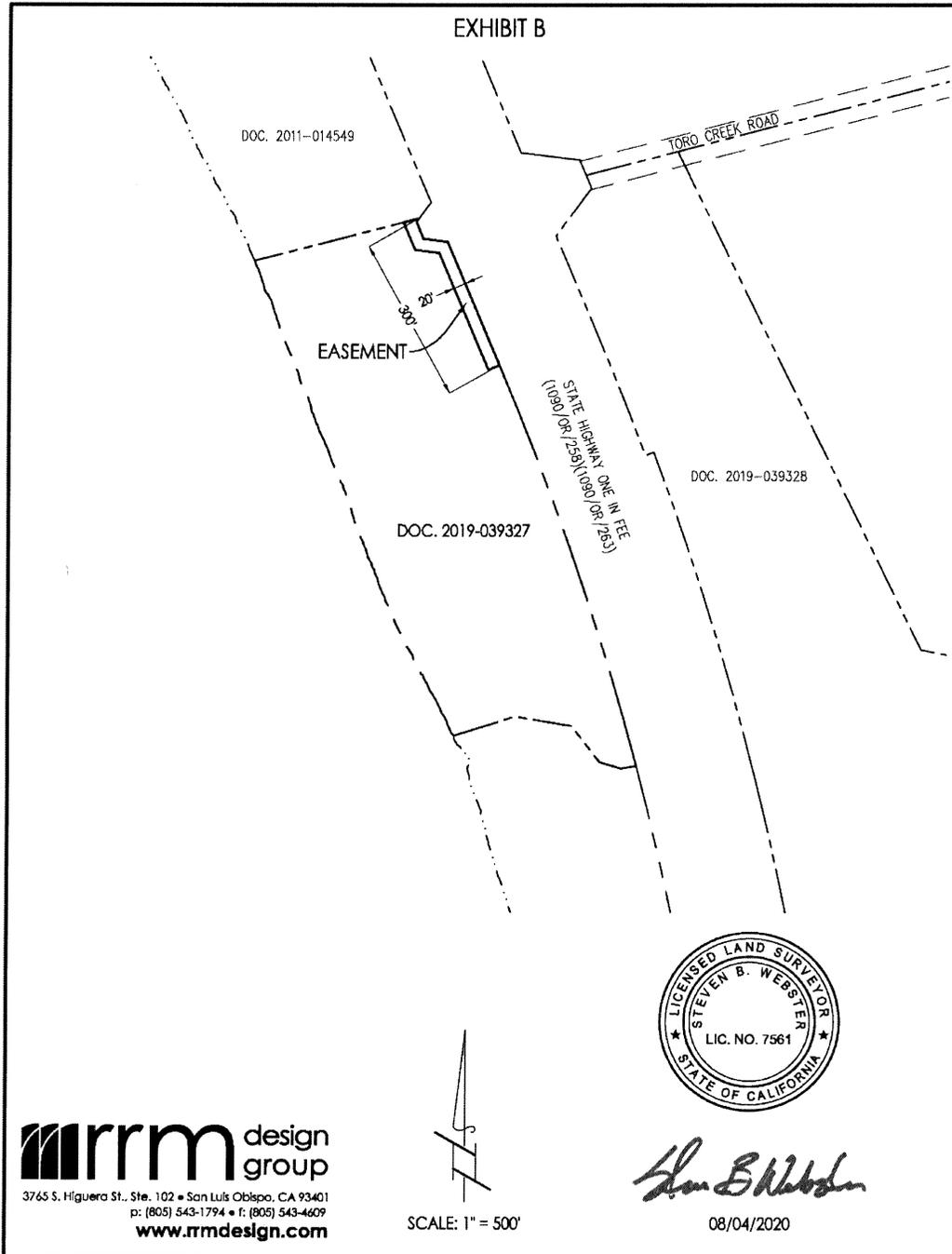


EXHIBIT C

ASSIGNMENT

THIS ASSIGNMENT OF INTANGIBLES is made this ____ day of _____, 202__ by and between CAYUCOS SANITARY DISTRICT, a political subdivision of the State of California ("**Assignor**"), and CITY OF MORRO BAY, a California municipal corporation ("**Assignee**").

RECITALS:

- A. Assignor, as seller, and Assignee, as buyer, have executed that that certain Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions dated _____, 202__ ("**PSA**") for the sale of that certain real property as legally described on Exhibit A hereto ("**Property**").
- B. Assignor may have certain intangible rights in connection with the Property, including, but not limited to, various easements, licenses, permits, air rights, rights of way, water rights and similar rights (collectively, the "**Intangibles**").
- C. Assignor hereby desires to assign to Assignee all of its right, title, and interest in and to the Intangibles, to the extent such right, title and interest may exist and is assignable by Assignor.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein below set forth, the parties hereto agree as follows:

- 1. Effective upon Assignee acquiring title to the Property ("**Effective Date**"), Assignor assigns and transfers to Assignee all of Assignor's right, title, and interest in and to the Intangibles, to the extent such right, title, and interest may exist and is assignable by Assignor and Assignee accepts the assignment.
- 3. This Assignment is binding upon and shall inure to the benefit of Assignor and Assignee and their respective successors and assigns.
- 4. This Assignment may be executed in counterparts, which taken together shall constitute one and the same instrument.
- 5. Assignor agrees to execute any additional documents as may be required to effect the intent of this Agreement.

IN WITNESS WHEREOF, the parties hereto have entered into this Assignment of Intangibles as of the date first set forth above.

ASSIGNOR:

CAYUCOS SANITARY DISTRICT, a political subdivision of the State of California

By: Robert B. Enns
Robert B. Enns, Board President

ATTEST:

Richard D. Koon
_____, Board Secretary

APPROVED AS TO FORM:

CARMEL & NACCASHA, LLP

By: _____
Timothy J. Carmel
District Counsel

ASSIGNEE:

CITY OF MORRO BAY, a California municipal corporation

By: _____
John Headding, Mayor

ATTEST:

Dana Swanson, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Christopher Neumeyer
City Attorney

EXHIBIT C

ASSIGNMENT

THIS ASSIGNMENT OF INTANGIBLES is made this ____ day of _____, 202__ by and between CAYUCOS SANITARY DISTRICT, a political subdivision of the State of California ("**Assignor**"), and CITY OF MORRO BAY, a California municipal corporation ("**Assignee**").

RECITALS:

- A. Assignor, as seller, and Assignee, as buyer, have executed that that certain Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions dated _____, 202__ ("**PSA**") for the sale of that certain real property as legally described on Exhibit A hereto ("**Property**").
- B. Assignor may have certain intangible rights in connection with the Property, including, but not limited to, various easements, licenses, permits, air rights, rights of way, water rights and similar rights (collectively, the "**Intangibles**").
- C. Assignor hereby desires to assign to Assignee all of its right, title, and interest in and to the Intangibles, to the extent such right, title and interest may exist and is assignable by Assignor.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein below set forth, the parties hereto agree as follows:

- 1. Effective upon Assignee acquiring title to the Property ("**Effective Date**"), Assignor assigns and transfers to Assignee all of Assignor's right, title, and interest in and to the Intangibles, to the extent such right, title, and interest may exist and is assignable by Assignor and Assignee accepts the assignment.
- 3. This Assignment is binding upon and shall inure to the benefit of Assignor and Assignee and their respective successors and assigns.
- 4. This Assignment may be executed in counterparts, which taken together shall constitute one and the same instrument.
- 5. Assignor agrees to execute any additional documents as may be required to effect the intent of this Agreement.

IN WITNESS WHEREOF, the parties hereto have entered into this Assignment of Intangibles as of the date first set forth above.

ASSIGNOR:

CAYUCOS SANITARY DISTRICT, a political subdivision of the State of California

By: Robert B. Enns
Robert B. Enns, Board President

ATTEST:

Beth D. Koon
Board Secretary

APPROVED AS TO FORM:

CARMEL & NACCASHA, LLP

By: Timothy J. Carmel
Timothy J. Carmel
District Counsel

ASSIGNEE:

CITY OF MORRO BAY, a California municipal corporation

By: _____
John Heading, Mayor

ATTEST:

Dana Swanson, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Christopher Neumeyer
City Attorney

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

Real property in the unincorporated area and in the City of Morro Bay, County of San Luis Obispo, State of California, described as follows:

PARCEL 1 - Lot 6SW (APN 065-022-011)

That portion of the land described in Certificate of Compliances recorded November 2, 2012 in Document No. [2012063818](#) and Document No. [2012063819](#) in the County Recorder's Office, County of San Luis Obispo, State of California, described as follows:

Beginning at the intersection of the westerly line of the land described in the grant deed to the State of California recorded in [Book 1090 at Page 258](#) of Official Records in the County Recorder's Office of said County (State Highway One) with the southerly line of Lot 31 according to the map of the subdivision of said Rancho filed in Book A of Maps at Page 160 of Maps in the County Recorder's Office of said County; thence northerly along said westerly line to a point being North 11°23'26" West, a distance of 612.98 feet from the southerly terminus of the line described as Course No. 4 (North 11°23'26" West, 817.99 feet) in said grant deed to the State of California; thence leaving said westerly line, South 78°36'34" West, a distance of 187.20 feet more or less to the mean high water line of Estero Bay; thence, Southerly along said mean high water line to the southwest corner of said Lot 31; thence, northeasterly along the southerly line of said Lot 31 to the Point of Beginning.

EXCEPTING THEREFROM, its successive owners and assigns, together with the right to grant and transfer all or a portion of same to the extent reserved by Chevron Land and Development Company pursuant to certain Grant Deed recorded on September 17, 2019 as Instrument No. [2019039329](#) as follows:

To the extent owned by Grantor on the date hereof, all minerals, unprocessed, oil, gas, petroleum, other hydrocarbon substances and geothermal resources in or under or which may be produced from the Property and the perpetual right of exploring and prospecting for, and developing, producing, extracting, and taking said minerals, unprocessed oil, gas, petroleum, other hydrocarbon substances and geothermal resources from the Property by means of mines, shafts, tunnels, wells, derricks or other equipment from surface locations on adjoining or neighboring land or lying outside of the Property, including the right to whipstock or directionally drill and mine from lands other than the Property, and to bottom such whipstocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits of the Property, and to redrill, retunnel, equip, maintain, repair, deepen and operate any such wells or mines, it being understood, however, that the owner of such minerals, unprocessed oil, gas, petroleum, other hydrocarbon substances and geothermal resources, as set forth above, shall have no right to enter upon the surface of the Property nor to use any of the Property or any portion thereof above a plane parallel to and 500 feet below the surface of the Property for any of the purposes specified herein, as reserved by Chevron Pipe Line Company, a Delaware corporation in deed recorded August 15, 2019 as Instrument No. [2019-033391](#) of Official Records.

PARCEL 2: Lot 6NW (APN 073-075-016)

That portion of the land described in Certificate of Compliance's recorded November 2, 2012 in Document No. [2012-063818](#) and Document No. [2012-063819](#) in the County Recorder's Office, County of San Luis Obispo, State of California, described as follows:

Beginning at a point on the westerly line of the land described in the grant deeds to the State of California recorded in [Book 1090 at Page 258](#) of Official Records and [Book 1090 at Page 263](#) of Official Records in the County Recorder's Office of said County (State Highway One) being an arc distance of 696.64 feet from the northerly terminus of the curve described as Course No. 9 (curve to the left with a radius of 4879 feet through an angle of 11°45'32" for a distance of 1001.32 feet) in said grant deeds to the State of California;

thence, Leaving said westerly line, South 80°34'29" West, a distance of 26.67 feet;
thence, North 73°38'47" West, a distance of 36.70 feet;
thence, North 38°30'11" West a distance of 75.80 feet;
thence, North 80°39'34" West, a distance of 95.21 feet;
thence, South 72°39'00" West a distance of 106.64 feet more or less to the mean high water line of Estero Bay;
thence, Northerly along said mean high water line to the intersection with the westerly prolongation of the centerline of Toro Creek Road (County Road);
thence, Easterly along said centerline prolongation to the westerly line of the land described in said grant deeds to the State of California;
thence, Southerly along said westerly line to the Point of Beginning.

EXCEPTING THEREFROM, its successive owners and assigns, together with the right to grant and transfer all or a portion of same to the extent reserved by Chevron Land and Development Company pursuant to certain Grant Deed recorded on September 17, 2019 as Instrument No. [2019039327](#) as follows:

To the extent owned by Grantor on the date hereof, all minerals, unprocessed, oil, gas, petroleum, other hydrocarbon substances and geothermal resources in or under or which may be produced from the Property and the perpetual right of exploring and prospecting for, and developing, producing, extracting, and taking said minerals, unprocessed oil, gas, petroleum, other hydrocarbon substances and geothermal resources from the Property by means of mines, shafts, tunnels, wells, derricks or other equipment from surface locations on adjoining or neighboring land or lying outside of the Property, including the right to whipstock or directionally drill and mine from lands other than the Property, and to bottom such whipstocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits of the Property, and to redrill, retunnel, equip, maintain, repair, deepen and operate any such wells or mines, it being understood, however, that the owner of such minerals, unprocessed oil, gas, petroleum, other hydrocarbon substances and geothermal resources, as set forth above, shall have no right to enter upon the surface of the Property nor to use any of the Property or any portion thereof above a plane parallel to and 500 feet below the surface of the Property for any of the purposes specified herein, as reserved by Chevron Pipe Line Company, a Delaware corporation in deed recorded August 15, 2019 as Instrument No. [2019-033391](#) of Official Records.

RESOLUTION NO. 13-21

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
REQUESTING THE LOCAL AGENCY FORMATION COMMISSION TAKE
PROCEEDINGS FOR THE DETACHMENT OF CERTAIN PROPERTY FROM
THE CITY INTO THE COUNTY OF SAN LUIS OBISPO**

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

WHEREAS, the City of Morro Bay (“City”) desires to initiate a proposal pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code Section 5600 et seq.) (“Act”) for detachment from the City of certain territory identified by APN 065-022-010 (“Property) and annex it to the County of San Luis Obispo (County); and

WHEREAS, the Property proposed for detachment is owned by Cayucos Sanitary District (CSD) and includes sewer infrastructure improvements operated by the CSD; and

WHEREAS, the Property is located at the northern boundary of the City and is surrounded on three sides by real property located in County jurisdiction; and

WHEREAS, the CSD desires to have the Property removed from City jurisdiction and returned to the County to simplify permitting processes for their wastewater infrastructure; and

WHEREAS, the CSD is actively constructing their own wastewater treatment plant and will no longer be discharging to the jointly owned wastewater treatment plant located on Atascadero Road within the City;

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

Section 1: Findings related to the California Environmental Quality Act (CEQA)

1. Pursuant to the California Environmental Quality Act, the project is categorically exempt pursuant to (1) Section 15601(b)(3) of the guidelines consistent with the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA; (2) Section 15378(b)(5) of the CEQA Guidelines, as the actin is an organization or administrative activity of a government that will not result in direct or indirect physical changes in the environment.
2. The exceptions to the categorical exemptions identified in Section 15300.2 of the guidelines do not apply.

Section 2: Submission of Application.

The City Council directs Staff to submit an application to the San Luis Obispo Local Agency Formation Commission ("SLO LAFCO") initiating the detachment of the Property as shown on Exhibit A of this Resolution from the City as set forth in this Resolution, pursuant to the provisions of the Act and authorizes the City Manager, or his designee, to prepare and execute the necessary SLO LAFCO application documents, conduct investigations and file such application, as necessary and appropriate.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 23rd day of March 2021 on the following vote:

AYES:

NOES:

ABSENT:

John Heading, Mayor

ATTEST:

Dana Swanson, City Clerk



073-092

CSD Lot for Proposed for Detachment

073/092

073/075

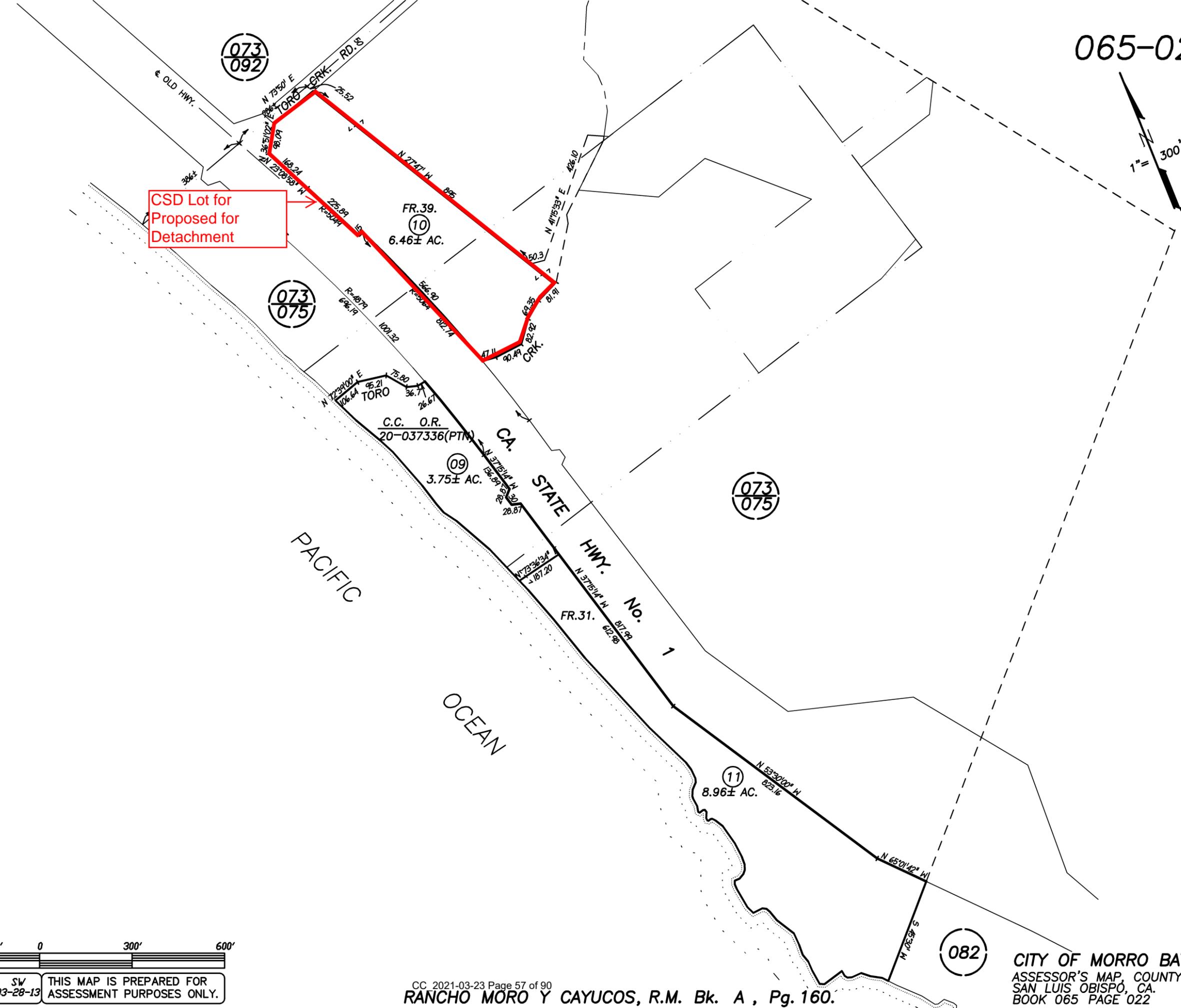
073/075

082

REVISIONS	
I.S.	DATE
13-133	03-28-13
NA	11-09-16
20-127	02-24-20
NA	09-10-20
NA	11-19-20

150' 0 300' 600'

SW 03-28-13 THIS MAP IS PREPARED FOR ASSESSMENT PURPOSES ONLY.



RESOLUTION NO. 14-21

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA REQUESTING THE LOCAL AGENCY FORMATION COMMISSION TAKE PROCEEDINGS FOR THE AMENDMENT OF THE SPHERE OF INFLUENCE

THE CITY COUNCIL City of Morro Bay, California

WHEREAS, the City of Morro Bay (“City”) desires to initiate a proceeding pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code Section 5600 et seq.) (“Act”) for amending the Sphere of Influence; and

WHEREAS, the real property proposed for inclusion in the City’s Sphere of Influence (“SOI”) consists of 5 parcels (APN: 073-075-002 and portions of APN 073-076-016 (Lots 2, 8, 7 & 6)) and is owned by Chevron and is uninhabited and a map of the boundaries of the territory is attached hereto as Exhibit (“Chevron Lots”); and

WHEREAS, the principal reason for the proposed SOI amendment is to protect the hillsides which serve as the backdrop of the City from significant development; and

WHEREAS, the following agency or agencies would be affected by the proposed SOI amendment: the City of Morro Bay and the County of San Luis Obispo; and

WHEREAS, the City has included the SOI amendment area (Chevron Lots) in its General Plan/Local Coastal Program Update as future SOI and has considered the change in the Final Environmental Impact Report (FEIR) associated with the document; and

WHEREAS, the City Council of the City desires that the Local Agency Formation Commission (LAFCO) of San Luis Obispo County assume Lead Agency status responsible for compliance with the California Environmental Quality (CEQA) regarding the subject sphere of influence application, with the understanding that the City shall pay for any additional studies that may be needed beyond those addressed in the City FEIR associated with the General Plan/Local Coastal Program update;

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

Section 1. Submission of Application.

The City Council hereby directs Staff to submit an application to the San Luis Obispo Local Agency Formation Commission (SLO LAFCO) initiating the sphere of influence amendment for the Chevron Lots and requests SLO LAFCO to take actions necessary for the sphere of influence designation for the Chevron Lots as authorized and in the manner provided by the Act (“Application”).

Section 2. Payment of Additional Studies.

The City Council agrees that it will pay for any additional studies that may be needed for the Application.

Section 3. Development Limitations Applicable to Chevron Lots effected by the SOI Amendment.

1. Upon any future annexation of the Chevron Lots subject of the SOI amendment request, development on each Chevron Lot shall be limited to the "Potential Building Area" identified on the map attached to this Resolution as Exhibit A, which generally conforms to the 200-foot contour interval.

2. Upon any future annexation of the Chevron Lots, development of each Chevron Lot subject of the SOI amendment, shall be limited to one single family home (being a total of 5 single family homes on the Chevron Lots) together with associated access and infrastructure improvements.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 23rd day of March 2021 on the following vote:

AYES:
NOES:
ABSENT:

John Headding, Mayor

ATTEST:

Dana Swanson, City Clerk

ESTERO - PANORAMA LOTS			
LOT	APN	AREA	ACRES
33	073-075-002	Potential Building Area	6.3
		Total Lot Area	34.3
34	073-076-016	Potential Building Area	4.3
		Total Lot Area	33.5
36	073-076-016	Potential Building Area	14.8
		Total Lot Area	47.0
38	073-076-016	Potential Building Area	7.8
		Total Lot Area	40.7
40	073-076-016	Potential Building Area	10.4
		Total Lot Area	57.4

NOTES

1. Potential Building Area as shown includes constraints such as landslides per the County GIS Maps, easements, steep slopes, difficult access, etc.
2. Actual residence locations will be sited within the Potential Building Areas after field inspections and surveys.
3. Lot Line Adjustments may be needed to provide a residence location on each lot within the Potential Building Area.



Panorama Lots
SAN LUIS OBISPO COUNTY, CA

Potential Building Area



- Existing Lot Boundary
- City of Morro Bay Boundary
- Coastal Zone Boundary
- Limit Line - Potential Building Area
- Potential Building Area

NOTES/SOURCES

1. Aerial photo and parcel data from Cannon.
2. Contour interval is 100-feet.
3. Other data from County of San Luis Obispo.
4. This map is for illustrative purposes only.



MEMORANDUM OF UNDERSTANDING

Chevron Estero Marine Terminal, Lot 6SW

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

RECITALS

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

The Parties agree as follows:

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

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

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

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

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

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

TPL

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

By: _____
Its: _____

CSD

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

By: _____
Its: _____

CHEVRON

Chevron Land and Development Company, a Delaware Corporation

By: _____
Its: _____

MORRO BAY

City of Morro Bay, a municipal corporation

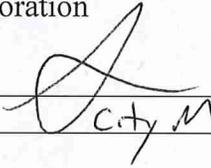
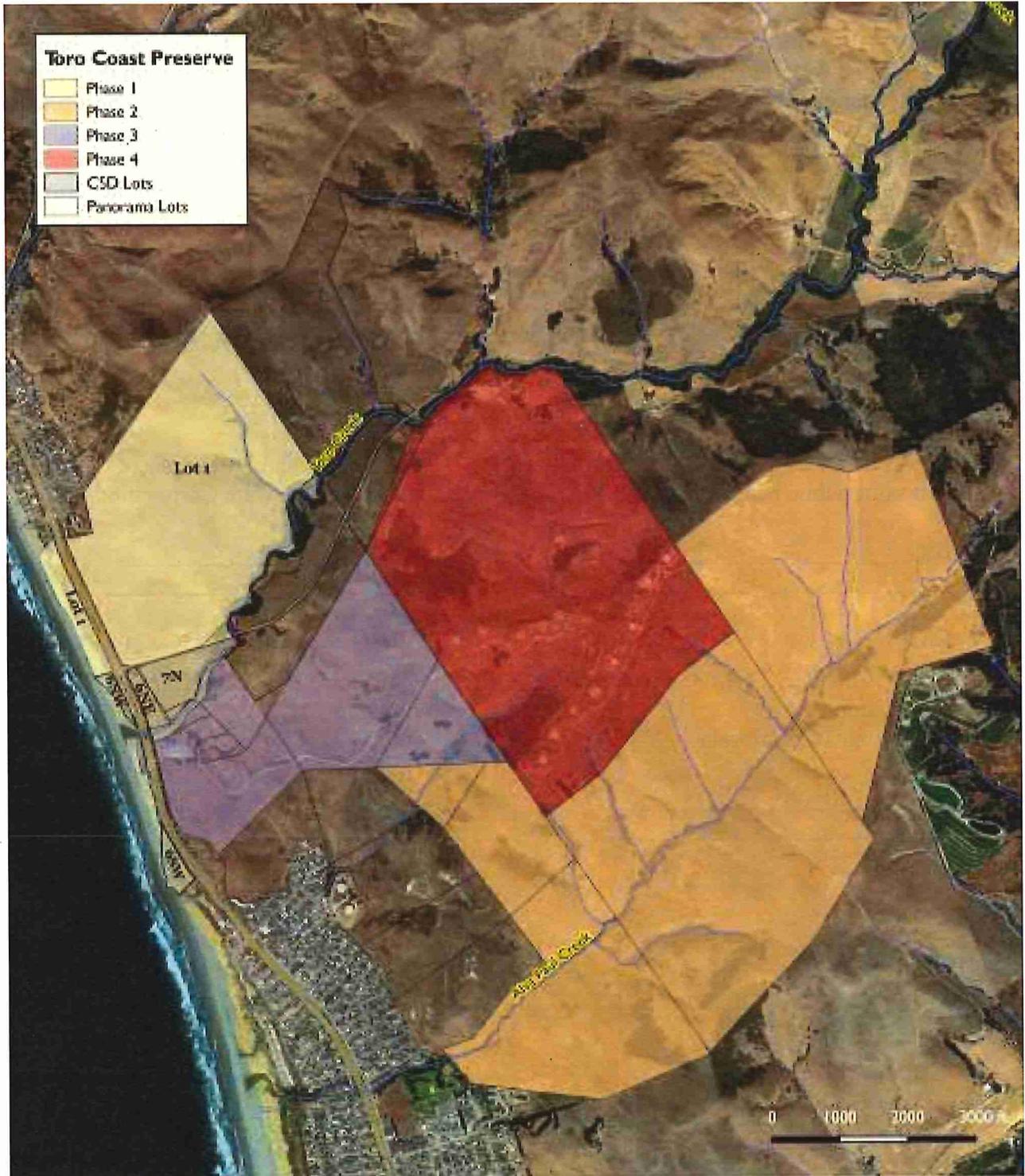
By:  1/31/2020
Its: City Manager

Exhibit A



Toro Coast Preserve

SAN LUIS OBISPO COUNTY, CALIFORNIA



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

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TPL

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

By: 

Its: Director of Transactions, California

CSD

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

By: _____
Its: _____

CHEVRON

Chevron Land and Development Company, a Delaware Corporation

By: _____
Its: _____

MORRO BAY

City of Morro Bay, a municipal corporation

By: _____
Its: _____

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

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

TPL

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

By: _____
Its: _____

CSD

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

By: Robert B. Zuns
Its: Board President

CHEVRON

Chevron Land and Development Company, a Delaware Corporation

By: _____
Its: _____

MORRO BAY

City of Morro Bay, a municipal corporation

By: _____
Its: _____

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

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

TPL

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

By: _____
Its: _____

CSD

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

By: _____
Its: _____

CHEVRON

Chevron Land and Development Company, a Delaware Corporation

By: *Paul M. Lutz*
Its: *Real Property Officer*

MORRO BAY

City of Morro Bay, a municipal corporation

By: _____
Its: _____

RESOLUTION NO. PC 12-20

A RESOLUTION OF THE MORRO BAY PLANNING COMMISSION
FINDING THAT THE ACQUISITION OF TWO LOTS PROPOSED FOR
PURCHASE BY THE CITY OF MORRO BAY IS CONSISTENT WITH THE
MORRO BAY GENERAL PLAN

WHEREAS, the Planning Commission of the City of Morro Bay (the “City”) conducted a hearing on May 19, 2020 for the purpose of considering General Plan conformance related to City future purchase of two vacant lots owned by the Cayucos Sanitary District; APN: 073-075-016; and portion of APN: 065-022-008 and

WHEREAS, the Planning Commission desires the beach properties to continue to be open to the public and available to dog owners and their dogs into the future as there are few beach’s in the County of San Luis Obispo, where dogs are allowed; and,

WHEREAS, pursuant to California Government Code Section 65402(a), the Planning Commission shall determine that the proposed acquisition of property for public purposes is in conformance with the adopted General Plan; and,

WHEREAS, the Planning Commission has duly considered all evidence, including public testimony, testimony of 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) Findings

1. Pursuant to the California Environmental Quality Act, the project is categorically exempt under Section 15601(b)(3) of the guidelines consistent with the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The activity in question is not a project, but instead is the purchase of property.
2. The exceptions to the categorical exemptions identified in Section 15300.2 of the guidelines do not apply.

Section 2. Finding. The Planning Commission of the City of Morro Bay has evaluated the suitability of the lots for continued use as public open space and finds the use consistent with the adopted City Morro Bay General Plan.

Section 3. Action. The Planning Commission does hereby find that the acquisition of the Dog Beach lots is in conformance with the adopted City of Morro Bay General Plan.

PASSED AND ADOPTED by the Morro Bay Planning Commission at a regular meeting thereof held on this 19th day of May, 2020 on the following vote:

AYES: *Lucas, Stewart, Barron, Ingraffia + Luhr*

NOES:

ABSENT:

ABSTAIN:



Gerry Luhr, Chairperson

ATTEST



Scot Graham, Planning Secretary

The foregoing resolution was passed and adopted this 19th day of May, 2020.

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AGENDA NO: C-2

MEETING DATE: March 23, 2021

Staff Report

TO: Honorable Mayor and City Council

DATE: March 17, 2021

FROM: Scott Collins, City Manager

SUBJECT: Review Options for Improvements to Public Trash and Recycling Receptacles and Public Restroom Management in the Embarcadero and Morro Rock Parking lot Areas

RECOMMENDATION

Staff recommends the City Council approve hiring additional part-time consolidated maintenance workers to assist with trash and public restroom service on the Embarcadero and Morro Rock parking lot areas during the peak season months between April through October 2021 and splitting the cost between the Tourism Business Improvement District (“TBID”) Fund and General Fund, and provide additional recommendations as appropriate.

ALTERNATIVES

The City Council could choose to not provide funding for the part-time position or modify the recommendation with a higher or lower contribution from the TBID Fund and General Fund.

FISCAL IMPACT

Approval of the recommendation would result in an overall \$15,000 to \$25,000 impact to the City in calendar year 2021, with up to \$10,000 coming from the TBID Fund to cover the remainder of Fiscal Year 2020/2021 (April through June 2021) and the remainder of funds coming from the General Fund for July through October 2021.

BACKGROUND

Morro Bay has experienced a significant growth in the number of visitors over the past decade as measured by hotelier receipts and Transient Occupancy Tax (TOT) revenue. By way of example, since Fiscal Year 2008/2009, TOT receipts have increased by a staggering 93% overall. This growth translates into a stronger local tourism industry, with hotels/motels, RV Parks, vacation rentals, restaurants, retail, and other tourist serving businesses seeing an increase in their overall revenue. The trickle-down effect of tourism growth also provides increased revenues to the City. Those revenues help fund the City’s core services provided to our community members and visitors alike, including 24-hour emergency response, street improvements, code enforcement, upkeep of parks, facility maintenance, etc.

During the COVID-19 pandemic and restrictions on indoor dining, a significantly higher number of individuals order take-out food beginning last summer and continuing through this year. This put added pressure on the City’s trash system, particularly in the Embarcadero, Coleman Beach and

Prepared By: SC

Dept Review: _____

City Manager Review: SC

City Attorney Review: _____

Morro Rock parking lot areas.

The increased number of visitors coupled with the COVID-19 restrictions and related changes in consumer patterns, has created challenges for our local services and infrastructure. This is particularly true in tourist service areas, and no truer than in the Embarcadero and Morro Rock Beach areas. In that combined area, the City provides 63 public trash/recycling bins and 6 public restrooms (several lease sites on the waterfront also have public restrooms, and those are managed by tenants of those lease sites). During the peak tourist season (late May to early October), the more several trash/recycling receptacles and the more heavily used restrooms were impacted as thousands of visitors were using the same area simultaneously. The physical manifestation of this impact includes, at times, overflowing trash cans near the water, intermittent service disruptions, and untidy conditions in the heavily used public restrooms (in particular, the Morro Rock parking lot).

As the City and TBID continues their work of implementing the Tourism Strategic Plan and recovering from the COVID-19 pandemic, we have a responsibility to manage impacts on core services, such as public restrooms and trash, in such a way that preserves our quality of life, our local environment, while encouraging future visits to Morro Bay.

To that end, over the past several summers, the Public Works Department instituted schedule modifications and completed projects to address this important concern. Those efforts include:

- Increased Consolidated Maintenance staff hours on the weekend shifts, to allow for more maintenance time in the Embarcadero/Morro Rock area when the City experiences the greatest number of visitors.
- Added regular sized and ADA accessible porta-potties at the Morro Rock parking lot during summer months, to alleviate pressure on the regular restrooms there.
- Increased restroom cleanings to 4 times per day at each restroom along the Embarcadero and Morro Rock area (up from 2 to 3 cleanings per day).
- Launched the “Trash Hero” program to increase awareness about litter and bring positive attention to those community members and visitors who help keep our City clean.
- Add several larger roll-off dumpsters in key locations, which has helped reduce the amount of litter in the area.
- Posted signs in public restrooms with contact information to alert the City of any critical maintenance needs in the restroom and surrounding area.
- Assigned both Harbor Patrol and Consolidated Maintenance staff to check for overflowing trash cans along the Embarcadero (particularly on the weekends after the Saturday garbage pick-up), when they are available to do so.
- Replumbed the Morro Rock restroom, to account for greater flushing load. There have been no reported backup issues since then.
- Coated the floor surface of the public restrooms with epoxy to improve drainage and reduce odors and staining.

DISCUSSION

While the City has made strides to improve restroom and trash service, some issues remain and the continuing specter of outdoor dining for this upcoming peak season means we have more work to do. Of key concern is litter from overflowing trash cans on the Embarcadero and Morro Rock parking lot.

Public Trash and Recycling Bins and Pick-up

The City contracts with Morro Bay Garbage for pick-up of the vast majority of the public trash and

recycling bins, with 6 days per week service (Monday through Saturday) and no Sunday pickup during the summer peak season. The trash issue arises typically late in the day on Saturday and into Sunday as trash and recyclables accumulate with no pickup occurring until Monday morning. On busy summer weekends this can lead to several overflowing trash and recycling bins in heavy foot traffic and public dining areas. City staff working in the Embarcadero on those days (Consolidated Maintenance and Harbor Patrol staff) are typically very busy with their regular duties and thus cannot be relied upon to service the trash and recycling bins on a consistent basis.

Improvement Recommendation

Last summer the City inquired with Morro Bay Garbage to add a Sunday pick up day. However, Morro Bay Garbage cannot fulfill this request because there are an insufficient number of Morro Bay commercial customer pick ups to warrant hiring a driver for Sundays only and the landfill does not operate on Sundays in the county. The City would be required to front the cost for an entire full-time equivalent position for just picking up those trash and recycling bins on Sundays (a significant cost) and convince the landfill to operate on Sundays. At this time, that is not a realistic expectation.

Another option the City could pursue is to hire additional temporary maintenance workers for the peak season weekends (Friday through Sunday) to service the trash and recycling bins and pick up litter. Staff estimates this would cost the City approximately \$15,000 - \$25,000 in total for work between April through October. Currently, the City has budgeted three staff members to cover weekend shifts. Staff recommends adding position(s), with the TBID Fund covering the expenses for the new position(s) for the remainder of FY 2020/2021 (April – June) up to \$10,000 and the City General Fund covering the remaining peak months of 2021 (July – October). City staff are also looking into purchasing an alternative vehicle that can circumvent weekend waterfront traffic to get to and from various trash receptacles and restrooms more efficiently compared to years past. Those vehicles are estimated to cost between \$15,000 to \$20,000 each. Staff will bring forward more information on this option as a verbal report during the March 23, 2021 Council meeting.

Embarcadero/Morro Rock Public Restrooms

As noted above, the City's Consolidated Maintenance team (in Public Works Department) manages six public restrooms in the Embarcadero/Rock areas. The waterfront lease sites add another 12 public restrooms, which are all privately managed. The main cleanliness issues are typically experienced on the summer weekend afternoons at the Rock restroom with the greatest number of users. Staff have responded to calls for service over clogged toilets at the Rock, often finding that the issue could be resolved simply by flushing the toilet. It appears some users are reluctant to push the flush button affixed to the wall above the toilet.

In addition, the City recently had to close the Coleman Beach restroom due to safety concerns related to the integrity of the structure. According to the City's inspection team, the building cannot be salvaged without posing a risk to the community. The Coleman Beach public restroom provides service to those who walk along the path out to the Rock as well as folks who frequent Coleman Beach and nearby basketball courts for recreational activities.

Improvement Recommendation

With regards to the Coleman Beach restroom, staff recommends that the City use State Parks grant (Proposition 68) funds to fully replace the facility with a modern ADA accessible public restroom. Staff is developing a proposal to submit to the State for the grant. It is anticipated that the work would likely begin late in 2021, as construction timelines are entirely dependent upon the State's processing of the Prop 68 application. The City is assured to receive \$177,000 of Prop 68 funds and must match at least \$40,000 in funds or in-kind services. Staff recommends that the City draw down park-in-lieu funds for this project for the required match.

In the meantime, staff recommends providing an ADA accessible porta-potty near the old Coleman Beach restroom for this summer. Once the new facility is constructed at Coleman, the porta-potty likely can be removed without creating an impact on restroom accessibility and cleanliness. The cost for a porta-potty is approximately \$2,000 for the entire season. This would be covered by the General Fund.

TBID Recommendation

The TBID Advisory Board reviewed this item at their March 18, 2021 meeting. The Board recommended, on a 4-1 vote, that City Council approve the recommendation to add staffing and split the costs between the TBID Fund and General Fund, as a one-time effort this year. The TBID Board also requested that the City work with waterfront restaurants on the trash issue, in terms of the number of receptacles required and potential funding sources for maintenance efforts. TBID further requested that, if the City purchases an alternative vehicle for trash pick-up, to include a TBID logo on the vehicle to demonstrate their support for keeping the community clean.

CONCLUSION

The City understands its responsibility to properly manage the continued growth in tourism in Morro Bay. The proposed actions before City Council will address some of the more consistent areas of concern in the community, in particular trash/litter and restroom availability and cleanliness.

Therefore, staff recommends the City Council approve hiring additional part-time consolidated maintenance workers to assist with trash and public restroom service on the Embarcadero and Morro Rock parking lot areas during the peak season months between April through October 2021 and splitting the cost between the TBID Fund and General Fund, and provide additional recommendations as appropriate. Based on Council direction provided, staff will return for formal budget amendments and authorization.

ATTACHMENT

None



AGENDA NO: C-3

MEETING DATE: March 23, 2021

Staff Report

TO: Honorable Mayor and City Council

DATE: March 18, 2021

FROM: Scott Collins, City Manager

SUBJECT: Consideration of Resolution for 180-Day Wait Period Exception for CalPERS Retired Annuitant / Interim Fire Chief Appointment and Interim Fire Chief Agreement – Steven Knuckles

RECOMMENDATION

Staff recommend the City Council:

1. Adopt Resolution No. 15-21 approving an exception to the 180-day waiting period for the position of Interim Fire Chief; and
2. Approve the Interim Fire Chief employment agreement between the City and Mr. Knuckles.

ALTERNATIVES

The City Council may elect not to adopt Resolution No. 15-21 and direct staff accordingly.

FISCAL IMPACT

The City has included funds for the position of Fire Chief in the budget for Fiscal Year 2020-2021. Under CalPERS guidelines, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 to equal the hourly rate and, also, cannot receive any other benefit, incentive, compensation in lieu of benefit or other form of compensation in addition to this hourly pay rate. In other words, the interim position, if this item is approved by Council, will receive only salary, not benefits, and that will save the City approximately \$8,000 per month compared to the fully benefited position, while the City conducts a recruitment for the permanent Fire Chief position.

BACKGROUND

The City's current Fire Chief, Steve Knuckles, very recently announced his retirement effective March 30, 2021. Chief Knuckles joined the City as a Fire Captain in May 1999, began serving as the City's Interim Fire Chief January 2013 and was promoted to Fire Chief in March 2013. The City, community, and the Morro Bay Fire Department (MBFD) have benefitted greatly from his vision and leadership over the past eight years as Chief, and a total of 22 years in the MBFD. This is particularly true over the past 12 months, as the Chief has led the emergency response for the City through the COVID-19 pandemic. The process to conduct an open recruitment for the permanent Fire Chief is currently ongoing and expected to take approximately 14 weeks. To fill this critically needed position, maintain continuity of leadership and ensure MBFD operations continue to run smoothly until the successor Fire Chief begins working for the City, particularly in light of the ongoing state of emergency caused by the COVID-19 pandemic, staff recommends the City Council certify the critical need of the Fire Chief position and seek an exception to the 180-day waiting period to allow Mr. Knuckles to serve as Interim Fire Chief.

01181.0004/703224.1

Prepared By: _DS

Dept Review:

City Manager Review: _SC

City Attorney Review: _MCH

CalPERS Retired Annuitant Requirements and 180-Day Waiting Period Exception

California Government Code section 21221(h) allows public agencies to hire California Public Employees' Retirement System ("CalPERS") retirees for vacant positions subject to certain limitations. The limitations mandate that the employee be paid compensation no more than equivalent to an hourly rate within the salary range for the vacant position, that no benefits be provided or paid, and that the appointment be of limited duration. Also, under normal conditions, CalPERS retirees may only work a maximum of 960 hours per fiscal year.

Additionally, Government Code section 7522.56(f) provides that a CalPERS retiree may not be employed by a CalPERS employer for a period of 180 days following the date of retirement, unless he or she meets one of several exceptions specified in the law. One of the exceptions is where "[t]he employer certifies the nature of the employment and that the appointment is necessary to fill a critically needed position before 180 days have passed and the appointment has been approved by the governing body of the employer in a public meeting[.]" (Government Code §7522.56(f)(1).) Another exception is allowed for a "firefighter hired to perform a function or functions regularly performed by a public safety officer or firefighter." (Government Code §7522.56(f)(4).)

To secure a 180-day wait period exception, CalPERS requires that the employer submit a resolution-certification package to CalPERS, along with a copy of the retiree's employment agreement before the first day of employment.

Governor Newsom's Executive Order N-25-20

On March 4, 2020, Governor Newsom declared a statewide state of emergency due to the COVID-19 pandemic. To further enhance California's ability to respond to COVID-19, Governor Newsom issued Executive Order N-25-20 which, among other things, suspended reinstatement and the retired annuitant work hour limitation of 960 hours per fiscal year during the state of emergency. Under this executive order, the 180-day break in service requirement under Government Code section 7522.56(f) is also suspended for retired annuitants hired to ensure adequate staffing during the state of emergency. The suspension of the retired annuitant work hour limitation and wait period exceptions will remain in place until the state of emergency is lifted.

DISCUSSION

Two items are being presented for the City Council's consideration and approval: 1) a resolution certifying the nature of Mr. Knuckles' employment as interim fire chief and that his appointment to this position is necessary to fill a critically needed position before 180 days have passed since his retirement, and 2) an interim fire chief employment agreement for Mr. Knuckles whereby he would be appointed to the position of interim fire chief, effective March 30, 2021.

As explained above, to be eligible for an exception to the 180 day waiting period following the date of retirement, the City must find that Mr. Knuckles' appointment to the position of interim fire chief is necessary to fill a critically needed position. Filling the position of the fire chief position is critical to maintaining the emergency operations, particularly in light of the state of emergency caused by the COVID-19 pandemic. The City anticipates that the recruitment for the permanent fire chief position will conclude by July 30, 2021. Mr. Knuckles' appointment as interim fire chief will automatically terminate when a permanent fire chief begins working for the City.

Chief Knuckles' employment with the City as a retired annuitant would be subject to CalPERS retired annuitant hiring limitations, except for waivers allowed under Governor Newsom's Executive Order

N-25-20. Accordingly, the basic contract terms for Chief Knuckles as interim fire chief would be as follows:

- Anticipated hours of work/ 960 hour limitation: Mr. Knuckles anticipates working full time (40 hours per week) to ensure that the basic operations of the City continue to run smoothly. Under normal conditions, he would be limited to working 960 hours per fiscal year to comply with CalPERS retired annuitant hiring requirements. However, Executive Order N-25-20 suspends the 960 hour per fiscal year limit during the state of emergency to ensure adequate staffing and response during the COVID-19 pandemic.
- Limited duration appointment: the agreement would commence March 30, 2021 and would expire automatically on March 29, 2022, unless a permanent fire chief begins working for the City before that date.
- Compensation: Mr. Knuckles will be paid a salary equivalent to the hourly rate for Step 5 of the Fire Chief position in the City's salary schedule adopted February 23, 2021 (\$77.05/ hr.).
- Vehicle: Not as a benefit but because Mr. Knuckles will be expected to respond to incidents outside normal business hours, he is authorized to continue to use the City vehicle assigned to the Fire Chief for City business and emergency response. Mr. Knuckles will be provided with the necessary personal protective equipment, iPad and laptop computer regularly assigned to the position of Fire Chief to fulfill the required duties.
- No benefits would be paid.
- Employment status: Mr. Knuckles would serve as an at-will, exempt employee. The agreement could be terminated by either party at any time and would automatically terminate upon the commencement of a permanent Fire Chief.

Staff has submitted a request for waiver of the work hour limitations to the California Department of Human Resources, as required by Executive Order No. N-25-20, and received acknowledgement the request was processed and forwarded to CalPERS. The intent is to request a waiver of the 960 hour requirement preemptively, as it is anticipated he will be doing work directly related to the COVID-19 emergency and should his work on COVID-19 related issues eventually require him to exceed the 960 hour limit that would otherwise apply.

In addition, if Council approves Resolution No. 15-21 and the Interim Fire Chief agreement, these documents will be forwarded by staff to CalPERS in accordance with Government Code section 7522.56(f).

CONCLUSION

Staff recommend the City Council:

1. Adopt Resolution No. 15-21 approving an exception to the 180-day waiting period for the position of Interim Fire Chief; and
2. Approve the Interim Fire Chief employment agreement between the City and Mr. Knuckles.

ATTACHMENTS

1. Resolution No. 15-21
2. Interim Fire Chief Employment Agreement

RESOLUTION NO. 15-21

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
FOR 180-DAY WAIT PERIOD EXCEPTION
G.C. SECTIONS 7522.56 & 21221(H)**

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

WHEREAS, in compliance with Government Code section 7522.56 the City of Morro Bay (“City”) City Council must provide CalPERS this certification resolution when hiring a retiree before 180 days has passed since his or her retirement date; and

WHEREAS, Steven Knuckles (CalPERS ID 5047239807) will retire from the City of Morro Bay in the position of Fire Chief, effective March 30, 2021; and

WHEREAS, section 7522.56 requires that post-retirement employment commence no earlier than 180 days after the retirement date, which is September 27, 2021 (date of 181st day after retirement) without this certification resolution; and

WHEREAS, section 7522.56 provides that this exception to the 180-day wait period shall not apply if the retiree accepts any retirement-related incentive; and

WHEREAS, the City Council of the City and Mr. Knuckles certify that he has not and will not receive a Golden Handshake or any other retirement-related incentive; and

WHEREAS, the City Council of the City hereby appoints Mr. Knuckles as an interim appointment retired annuitant to the vacant position of Fire Chief for the City under Government Code section 21221(h), effective March 30, 2021; and

WHEREAS, an appointment under Government Code section 21221(h) requires an active, publicly posted recruitment for a permanent replacement; and

WHEREAS, the current status of this recruitment is active; and

WHEREAS, this section 21221(h) appointment shall only be made once and therefore will end on March 30, 2022 if not automatically terminated earlier; and

WHEREAS, the entire employment agreement, contract or appointment document between Mr. Knuckles and the City of Morro Bay has been reviewed by this body and is attached herein; and

WHEREAS, no matters, issues, terms or conditions related to this employment and appointment have been or will be placed on a consent calendar; and

WHEREAS, the employment shall be limited to 960 hours per fiscal year, except as allowed by CalPERS pursuant to Executive Order N-25-20, which suspends the 960 hour per fiscal year limit during the state of emergency due to the COVID-19 pandemic; and

WHEREAS, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 to equal the hourly rate; and

WHEREAS, the maximum monthly base salary for this position is \$13,355.67 and the hourly equivalent is \$77.05, and the minimum base salary for this position is \$10,987.75 and the hourly equivalent is \$63.39; and

WHEREAS, the salary paid to Mr. Knuckles will be equivalent to the hourly rate of \$77.05; and

WHEREAS, Mr. Knuckles has not and will not receive any other benefit, incentive, compensation in lieu of benefit or other form of compensation in addition to this hourly pay rate.

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

SECTION 1. The City of Morro Bay City Council hereby certifies the nature of the employment of Steven Knuckles as described herein and detailed in the attached employment agreement and that this appointment is necessary to fill the critically needed position of Fire Chief for the City by March 30, 2021 because such position is essential to maintaining the basic ongoing emergency operations, ensuring adequate staffing during the state of emergency caused by the COVID-19 pandemic, and because a recruitment for the permanent position of Fire Chief could not be completed by this date.

PASSED, APPROVED AND ADOPTED this 23rd day of March 2021.

JOHN HEADDING, Mayor

ATTEST:

State of California)
County of San Luis Obispo) SS
City of Morro Bay)

I, Dana Swanson, City Clerk of the City of Morro Bay, California, do hereby certify that the City Council of the City of Morro Bay duly approved and adopted the foregoing Resolution No. 15-21 at a regular meeting of said Council held on the 23rd day of March 2021, by the following roll call vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Dana Swanson, City Clerk

CITY OF MORRO BAY
AT-WILL INTERIM FIRE CHIEF
EMPLOYMENT AGREEMENT

This AT-WILL INTERIM FIRE CHIEF EMPLOYMENT AGREEMENT (“Agreement”) is made by and between the CITY OF MORRO BAY (the “City”) and STEVEN KNUCKLES (“Employee”). The City and Employee may be referred to individually as a “Party” or collectively as “the Parties.”

RECITALS

WHEREAS, Government Code subdivision 21221(h) permits retired annuitants under the California Public Employees’ Retirement System (“CalPERS”) to be employed without reinstatement from retirement upon appointment by a public agency to fill a vacant position on an interim basis during the recruitment to permanently fill the vacant position; and

WHEREAS, Employee very recently announced his retirement from the position of Fire Chief effective March 30, 2021, and as a result, the Fire Chief position will be vacant as of that date; and

WHEREAS, Employee has reached normal retirement age; and

WHEREAS, the City is currently conducting an open recruitment to permanently fill the position of Fire Chief; and

WHEREAS, the City anticipates the Fire Chief position will be filled with a permanent replacement within four months after the effective date of this Agreement; and

WHEREAS, the duties of the Fire Chief are set forth in full in Exhibit “A” to this Agreement; and

WHEREAS, pursuant to Cal. Government Code § 7522.56(f), a retired person shall not be employed as a retired annuitant for a period of 180 days following the date of retirement, unless he or she meets one of several exceptions, including that “[t]he employer certifies the nature of the employment and that the appointment is necessary to fill a critically needed position before 180 days have passed and the appointment has been approved by the governing body of the employer in a public meeting[.]”; and

WHEREAS, concurrent with the approval of this Agreement, the City Council adopted Resolution No. 15-21, certifying the nature of Employee’s employment and that the appointment is necessary to fill a critically needed position before 180 days have passed since Employee’s retirement; and

WHEREAS, CalPERS requires in order “[t]o secure a 180-day wait period exception, the employer must submit the resolution-certification package . . . and a copy of the retiree’s

employment agreement or personnel appointment document to CalPERS before the first day of employment[;]” and

WHEREAS, it is the desire of the City Manager to appoint Employee to serve as an at-will, temporary employee for the position of Interim Fire Chief, which is a position that requires specialized skills and expert professional services for a definite period of time, effective March 30, 2021; and

WHEREAS, as a CalPERS retired annuitant under Government Code subdivision 21221(h), Employee (i) possesses knowledge, skills and abilities necessary to fulfill the required duties of the Interim Fire Chief, as demonstrated by his success as fire chief over an extensive period of time, (ii) desires to perform the duties of and assume responsibility for the position of Interim Fire Chief, and (iii) acknowledges such employment is at-will and of a limited duration for a definite period of time, as described below; and

WHEREAS, the Parties wish to establish the terms and conditions of Employee’s services to the City, as described in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, City and Employee hereby agree as follows:

AGREEMENT

Section 1: TERM

The term of this Agreement shall commence on March 30, 2021 and shall automatically terminate on March 29, 2022 unless terminated prior to that date by either Party (the “Term”). The City shall terminate this Agreement in accordance with Section 4 of this Agreement upon the City appointment of a permanent replacement for the position of Fire Chief. In no event shall the Term exceed the 960-hour per fiscal year limit under Government Code subdivision 21221(h) except as allowed by CalPERS pursuant to Executive Order N-25-20, which suspends the 960 hour per fiscal year limit during the state of emergency due to the COVID-19 pandemic. In the event Employee works 960 hours during the Term of this Agreement without CalPERS authorization, then this Agreement shall terminate automatically. March 30, 2021 shall be Employee’s “Hire Date” for purposes of this Agreement.

Section 2: DUTIES, RESPONSIBILITIES, AND WORK HOURS

A. Employee shall be appointed to the position of Interim Fire Chief, the functions and duties of that position, as described in Exhibit “A” to this Agreement, and such other legally permissible and proper duties and functions as the City Manager shall, from time to time, direct or assign to Employee. Employee acknowledges the position of Interim Fire Chief requires specialized skills and expert professional services for a definite period of time, as described above in Section 1 of this Agreement. Employee agrees to perform all such functions and duties to the best of Employee’s ability and in an efficient, competent, and ethical matter.

B. Employee acknowledges proper performance of the duties of Interim Fire Chief will generally require Employee to observe normal business hours, as directed by the City

Manager, as well as regularly devote time outside of normal office hours, including attendance at City Council and other City or community meetings. Furthermore, the Interim Fire Chief position remains an “exempt” classification under the overtime provisions of the federal Fair Labor Standards Act (“FLSA”) and Employee shall not be entitled to any compensation for overtime nor subject to such overtime provisions of the FLSA. Notwithstanding the foregoing, the Parties understand and agree, due to the CalPERS’ limitation on the number of hours Employee can work for the City, Employee may not be available during some hours or days, if extra time is required for attendance at meetings and other reasons relating to City-business.

C. All data, studies, reports, and other documents prepared and/or reviewed by Employee while performing her duties during the Term of this Agreement shall be furnished to and become the property of the City, without restriction or limitation on their use. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to Employee in connection with the performance of this Agreement shall be held confidential by Employee to the extent permitted by applicable law. Such materials, without the prior written consent of the City, shall not be used by Employee for any purpose other than the performance of his duties. Nor shall such materials be disclosed to any person or entity not connected with the performance of services under this Agreement, except as required by law.

Section 3: COMPENSATION/ BENEFITS PROHIBITED

A. The City agrees to compensate Employee at a salary equivalent to Step 5 of the City’s approved rate of compensation for the Fire Chief position, which is currently Thirteen Thousand Three Hundred Fifty-five Dollars and Sixty-seven Cents (\$13,355.67) per month (based on an annual salary of \$160,268.00), to equal an hourly rate of Seventy-seven Dollars and Five Cents (\$77.05; \$13,355.67 divided by 173.333). That calculated hourly rate is simply to show compliance with CalPERS’ requirements (Gov’t Code subdivision 21221(h)) and not to be construed as designating the Interim Fire Chief position as hourly employment and anything other than salaried and exempt pursuant to the FLSA.

B. Not as a benefit to Employee, but to allow Employee to provide efficient emergency response for services provided by Employee at all times, during the term of this Agreement the City shall provide Employee with a specially equipped suitable City-owned automobile for Employee’s reasonable use only to perform City-related business and emergency response. The City shall be responsible for paying for liability, property damage and comprehensive insurance for that automobile, and shall be responsible for paying for gasoline and maintenance and repair of that automobile. Employee will also be provided with the necessary personal protective equipment, iPad and laptop computer regularly assigned to the position of Fire Chief to fill the required duties.

C. Employee shall not be eligible for any other benefits, incentives, compensation in lieu of benefits, or any other forms of compensation in addition to the hourly rate except for the above hourly rate and workers’ compensation benefits.

Section 4: RESIGNATION/TERMINATION

A. Employee may resign at any time; provided, however, Employee shall reasonably provide the City Manager with at least **thirty-days’ advance written notice unless otherwise shortened by the City Manager.**

B. Employee is an at-will employee and serves at the will and pleasure of the City Manager and may be terminated at any time, with or without cause, and with or without notice, at any time by the City Manager, subject to section 4(C) below.

C. In accordance with the Firefighters Procedural Bill of Rights Act, Government Code sections 3250 *et seq.*, including Section 3254(c), Employee shall not be terminated except by virtue of the expiration of this Agreement, exhaustion of his CalPERS 960 hour per fiscal year limit, or because of the City's appointment of a permanent Fire Chief, without written notice and the reason(s) therefor, as well as the opportunity for an administrative appeal. The removal of Employee by the City, for the purpose of implementing the goals or policies, or both, of the City, for reasons including, but not limited to, incompatibility of management styles or as a result of a change in administration, shall be sufficient to constitute reason or reasons within the meaning of this Agreement and Government Code section 3254(c). Nothing in this Section shall be construed to create a property interest in Employee's job as Interim Fire Chief. In the event Employee is terminated by virtue of the expiration of this Agreement, CalPERS hours limitations, or the City's appointment of a permanent Fire Chief, he shall not be entitled to written notice or an administrative appeal of his termination.

D. In accordance with state law and the requirements of the California Public Employees Retirement Law, Employee may not be reappointed to this position following the expiration of this Agreement, nor may this Agreement be modified to extend the term of the Agreement.

E. After notice of resignation or termination, Employee shall cooperate with the City, as requested by the City, to effect a transition of Employee’s responsibilities and duties and to ensure the City is aware of all matters being handled by Employee.

F. Employee shall not be entitled to severance pay and Employee expressly waives any and all rights with respect to severance pay.

Section 5. NOTICES

Notices required to be served pursuant to this Agreement shall be served in person or by first-class U.S. mail addressed as follows:

City

City Manager
City of Morro Bay
595 Harbor Street
Morro Bay, California 93442

Employee

Steven Knuckles
Address on file with the City

Section 6: GENERAL TERMS AND CONDITIONS

The General Terms and Conditions of this Agreement are described as follows:

A. Indemnification. To the extent mandated by the California Government Code, the City shall defend, hold harmless, and indemnify Employee against any tort, professional liability, claim or demand, or other legal action arising out of an alleged act or omission occurring in the performance of Employee's services under this Agreement. This section shall not apply to any intentional tort or crime committed by Employee, to any action outside the course and scope of Employee's employment, or any other intentional or malicious conduct or gross negligence of Employee.

B. Entire Agreement. The text of this Agreement shall constitute the entire and exclusive agreement between the Parties regarding the subject matter hereof. All prior oral or written communications, understandings, or agreements between the Parties not set forth herein shall be superseded in total by this Agreement. No amendment or modification to this Agreement may be made except by a written agreement signed by the Employee and the City Manager and approved as to form by the City Attorney.

C. Assignment. This Agreement is not assignable by either the City or Employee.

D. Severability. In the event any provision of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the Parties, the remainder of this Agreement shall remain in full force and effect unless the parts found to be illegal or void are wholly inseparable from the remaining portions of this Agreement.

E. Effect of Waiver. The failure of either Party to insist on strict compliance with any of the terms, covenants, or conditions in this Agreement by the other Party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other time or times.

F. Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of California, which are in full force and effect as of the date of execution. Any action to interpret or enforce the terms of this Agreement shall be held exclusively in a state court in San Luis Obispo County, California. Employee expressly waives any right to remove any such action from San Luis Obispo County.

G. Effective Date. This Agreement shall not become effective until it has been signed by Employee and on behalf of the City.

H. Effect of Agreement on Employee's CalPERS Retirement Benefits. The City makes no representation on the impact, if any, this Agreement shall or may have upon his

CalPERS retirement benefits, status, duties, and/or obligations. Employee acknowledges that in entering into this Agreement, he has not relied upon any such representations (none of which being in existence) in assessing the CalPERS-related impact of his employment. Therefore, Employee releases the City from any and all CalPERS-related claims or liabilities that may arise in connection with his employment pursuant to this Agreement.

I. No Unemployment Insurance Benefits Received By Employee. Employee expressly certifies and warrants to the City that he has not received any unemployment insurance payments for retired annuitant work for any public employer within the 12 months prior to his appointment date.

J. Compliance With 960 Hours Per Fiscal Year Limit. Employee further certifies and warrants to the City his anticipated work schedule of 40 hours per week will not cause him to exceed the 960 hours per fiscal year limit pursuant to Government Code subdivision 21221(h), including work for any other CalPERS employer during the current fiscal year.

K. Conflicts Prohibited. During the term of this Agreement, Employee shall not engage in any business or transaction or maintain a financial interest which conflicts, or reasonably might be expected to conflict, with the proper discharge of Employee's duties under this Agreement. Employee shall comply with all requirements of law, including but not limited to, Sections 1090, 1125, and 87100 *et seq.* of the Government Code, and all other similar statutory and administrative rules.

L. Independent Legal Advice. The City and Employee represent and warrant to each other that each has received legal advice from independent and separate legal counsel with respect to the legal effect of this Agreement or at least had the opportunity to do so, that each has carefully reviewed this entire Agreement, that each and every term thereof is understood, and that the terms of this Agreement are contractual and not a mere recital. This Agreement shall not be construed against the Party or its representatives who drafted it or who drafted any portion thereof.

M. Government Code §§ 53243 - 53243.4. Government Code §§ 53243 - 53243.4 sought to provide greater transparency in local government and institute certain limitations on compensation paid to local government executives. Those statutes also require contracts between local agencies and its employees include provisions requiring an employee who is convicted of a crime involving an abuse of his office or position to provide reimbursement to the local agency. Those statutes are incorporated herein by reference. Accordingly, the Parties agree it is their mutual intent to fully comply with the cited Government Code sections and all other applicable law as it exists as of the date of execution of this Agreement and as such laws may be amended from time to time thereafter. Specifically, the following Government Code sections are called out and hereby incorporated by this Agreement:

§53243. Reimbursement of paid leave salary required upon conviction of crime involving office or position.

§53243.1. Reimbursement of legal criminal defense upon conviction of crime involving office or position.

§53243.2. Reimbursement of cash settlement upon conviction of crime involving office or position.

§53243.3. Reimbursement of noncontractual payments upon conviction or crime involving office or position.

§53243.4. "Abuse of office or position" defined.

Employee represents Employee has reviewed, is familiar with, and agrees to comply fully with each of these provisions if any of these provisions are applicable to Employee.

IN WITNESS WHEREOF, the City of Morro Bay has caused this Agreement to be signed and executed on its behalf by its City Manager, and approved as to form by the City Attorney, and executed by the Employee.

CITY OF MORRO BAY,

Dated: _____
Scott Collins,
City Manager

Attest:

Dana Swanson,
City Clerk

Approved as to form:

Chris F. Neumeyer,
City Attorney

EMPLOYEE,

In signing this Agreement, Employee understands and agrees he is an **at-will, salaried and exempt employee** and his rights to employment with the City are governed by the terms and conditions of this Agreement rather than the ordinances, resolutions, and policies of the City, which might otherwise apply to classified or other employees of the City. Employee further acknowledges he was given the opportunity to consult with an attorney prior to signing this Agreement.

Dated: _____

Signed: _____
STEVEN KNUCKLES

CITY OF MORRO BAY

FIRE CHIEF

DEFINITION

Under administrative direction to plan, organize, and direct the activities of the Fire Department; to take charge of and direct departmental personnel and equipment at the scene of major fire and other disasters; and to do related work as required.

ESSENTIAL DUTIES & RESPONSIBILITIES

1. Plans, organizes, and directs the activities of the Fire Department personnel in providing fire protection and emergency medical services to the City.
2. Formulates rules, procedures, and policies for the efficient operation of the department.
3. Manages departmental personnel including interviews, selection, training, evaluations, and discipline.
4. Prepares and administers annual departmental operating budget; manages operations to achieve goals within available resources.
5. Consults with governmental agencies, other staff members, and the public; and, attends meetings, makes presentations and recommendations to appointed and elected officials on departmental related activities.
6. Evaluates the need for and develops plans and budget schedules for long range programs.
7. Prepares grants, formal bid specifications, and request for proposals, and manages same.
8. Prepares and submits periodic reports, analysis, and recommendations concerning departmental activities.
9. Attends fires and exercises overall supervision of fire fighting operations.
10. Directs and reviews building inspections to determine that they meet minimum safety standards, and ensures that follow-up inspections are coupled with appropriate enforcement measures.
11. Maintains records of medical calls, fire calls, fire losses and property saved.
12. Acts as Deputy Director of Emergency Services; administers the Emergency Medical Service, Hazardous Materials, and Emergency Services programs.

QUALIFICATIONS

Knowledge of:

Modern principles, practices, and techniques of Fire Department and Emergency Services administration, organization, and operation and their application to specific situations; advanced methods, practices, and techniques of modern fire fighting, fire inspection, and fire prevention; provisions of laws, ordinances, rules, regulations, and codes affecting the work of the Fire Department; operation and maintenance of the types of apparatus and equipment used in modern fire fighting activities; principles and practices of supervision and training; EMT and rescue; geography, types of building construction, major fire hazards, water supply, fire and building laws and regulations of the City of Morro Bay; Federal and State regulations relating to hazardous materials.

Ability to:

Plan and coordinate the work of the Fire Department; formulate, place into effect, and administer sound departmental policy; develop, administer, and control departmental budget expenditures; prepare clear, concise written and oral reports; establish and maintain cooperative relationships with those contacted during the course of work; develop and update City emergency plan.

Education and Experience:

Certified by State of California as Fire officer; A.S. Degree in Fire Science, Public Administration, or Business Administration; possession of Master’s degree preferred. Completion of, or a participant in the National Fire Academy’s Executive Fire Officer Program.

Seven (7) years of increasingly responsible, full-time experience in a municipal fire department, including at least five (5) years in the position of Captain or higher rank.

Appropriate and valid California driver’s license.

TOOLS & EQUIPMENT USED

Emergency medical aid unit, fire apparatus, fire pumps, hoses, and other standard firefighting equipment, ladders, first aid equipment, radio, pager, personal computer, telephone.

PHYSICAL DEMANDS

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FIRE CHIEF

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is frequently required to sit; talk or hear; stand; walk; use hands to finger, handle, or operate objects, tools, or controls; and reach with hands and arms. The employee is occasionally required to climb or balance; stoop, kneel, crouch, or crawl; and taste or smell.

The employee must frequently lift and/or move up to 10 pounds and occasionally lift and/or move up to 100 pounds. Specific vision abilities required by this job include close vision, distance vision, color vision, peripheral vision, depth perception, and the ability to adjust focus.

WORK ENVIRONMENT

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Work is performed primarily in office, vehicles, and outdoor settings, in all weather conditions, including temperature extremes, during day and night shifts. Work is often performed in emergency and stressful situations. Individual is exposed to hearing alarms and hazards associated with fighting fires and rendering emergency medical assistance, including smoke, noxious odors, fumes, chemicals, liquid chemicals, solvents, and oils.

The employee occasionally works near moving mechanical parts and in high, precarious places and is occasionally exposed to wet and/or humid conditions, fumes or airborne particles, toxic or caustic chemicals, risk of electrical shock, and vibration.

The noise level in the work environment is usually quiet in office settings, and loud at an emergency scene.

SELECTION GUIDELINES

Formal application; rating of education and experience; appropriate testing and interviews; oral interview; background check; physical agility; drug screening; final selection and pre-employment medical examination.

FIRE CHIEF

The examples of duties are intended only as illustrations of the various types of work 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 May 28, 1996.

JobDescriptions/fire chief.doc