



CITY OF MORRO BAY

CITY COUNCIL

AGENDA

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

Regular Meeting

Tuesday, December 14, 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

- **Service Pin Presentation to employees who were recognized for their years of service:**
Michael Hoes, 10 years, Fire Department
Jeremiah Jacobs, 10 years, Harbor Department
Dawn McLean, 10 years, Fire Department
Tami Ponder, 10 years, Police Department
Dana Stein, 15 years, Police Department
Gene Stuart, 15 years, Police Department
Robert Trout, 25 years, Public Works Department

PUBLIC COMMENT

Pursuant to Executive Order N-08-21, issued by Governor Newsom on June 11, 2021, 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-08-21, 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.**
- *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 NOVEMBER 9, 2021, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-2 APPROVAL OF MINUTES FOR THE DECEMBER 1, 2021, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-3 CLEAN CALIFORNIA MAINTENANCE AGREEMENT FOR LITTER AND GRAFFITI ABATEMENT; (PUBLIC WORKS DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council authorize the Mayor and City Manager to sign the Clean California Maintenance Agreement, subject to City Attorney approval, to receive up to \$35,000 over three years to perform litter and graffiti abatement on Caltrans property along State Route 41 within the City’s limits.

- A-4 NATIONAL OPIOID SETTLEMENTS; (CITY ATTORNEY)

RECOMMENDATION: Staff recommends Council consider following actions:

1. **Approve Settlement Participation Form for the City of Morro Bay’s (“City”) participation in the National Opioid Settlement with McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation.**
2. **Approve Settlement Participation Form for the City’s participation in the National Opioid Settlement with Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc.**
3. **Approve the California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds - Distributor Settlement.**
4. **Approve the California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds - Janssen Settlement.**
5. **Adopt Resolution No. 88-21 approving and authorizing the City Manager to execute the documents identified in Nos. 1 through 4 above.**
6. **Authorize the City Manager to carry out all necessary acts such that the City can participate in the National Opioid Settlements, including, but not limited to, the transmittal of the executed documents in Nos. 1 through 4 above.**
7. **Approve disbursement of initial partial settlement funds to County (default option) while reserving City option to request direct distribution of further settlement funds to City later in time.**

- A-5 ADOPT RESOLUTION NO. 82-21 AUTHORIZING THE MORRO BAY FIRE DEPARTMENT TO SUBMIT AN APPLICATION FOR FEDERAL EMERGENCY MANAGEMENT AGENCY ASSISTANCE TO FIREFIGHTERS GRANT; (FIRE DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 82-21 Authorizing the Morro Bay Fire Department (MBFD) to submit an application to Federal Emergency Management Agency (FEMA) for an Assistance to Firefighter Grant for hydraulic extrication equipment and mobile radios and accept grant if awarded.

- A-6 SECOND READING AND ADOPTION OF ORDINANCE NO. 645 ADDING CHAPTER 8.18 SPECIFIC REGULATIONS FOR COLLECTION, AND DISPOSAL REDUCTION, OF ORGANIC WASTE, RECYCLABLES AND SOLID WASTE TO TITLE 8 ("HEALTH AND SAFETY") OF THE MORRO BAY MUNICIPAL CODE; (PUBLIC WORKS DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council adopt, by second reading and by title only with further reading waived, Ordinance No. 645 adding Chapter 8.18 Specific Regulations for Collection, and Disposal Reduction, of Organic Waste, Recyclables and Solid Waste to Title 8 ("Health and Safety") of the Morro Bay Municipal Code to enact regulations in compliance with Senate Bill (SB) 1383 for the implementation of Mandatory Food and Organics Recycling, and related solid waste and recycling processing and reporting.

- A-7 FIRST QUARTER INVESTMENT REPORT (PERIOD ENDING SEPTEMBER 30, 2021) FOR FISCAL YEAR (FY) 2021-22; (ADMINISTRATIVE SERVICES DEPARTMENT)

RECOMMENDATION: Receive the attached First Quarter Investment Report (period ending September 30, 2021) for FY 2021-22.

- A-8 DESIGNATION LETTER DELEGATING CITY RESPONSIBILITIES RELATING TO SENATE BILL 1383 COMPLIANCE TO THE SAN LUIS OBISPO INTEGRATED WASTE MANAGEMENT AUTHORITY (IWMA); (PUBLIC WORKS DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council receive and file the SB 1383 compliance letter of designation delegating various compliance responsibilities to the IWMA.

- A-9 PROGRESS CHECK #3, AND ADOPTION OF RESOLUTION NO. 83-21 APPROVING AMENDMENT #2 TO THE MASTER LEASE AGREEMENT BETWEEN THE CITY OF MORRO BAY AND TLC FAMILY ENTERPRISES FOR LEASE SITE 87-88/87W-88W, LOCATED AT 833 EMBARCADERO; (HARBOR DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council receive and file this Progress Check #3, and adopt Resolution No. 83-21, approving Amendment #2 to the Master Lease Agreement (MLA) for Lease Site 87-88/87W-88W, as proposed.

- A-10 RESOLUTION MAKING FINDINGS RELATED TO THE CONTINUED EXISTENCE OF A STATE OF EMERGENCY DUE TO COVID-19 AND RE-AUTHORIZING FOR PUBLIC HEALTH AND SAFETY THE CONDUCT OF PUBLIC MEETINGS OF THE LEGISLATIVE BODIES OF THE CITY VIA REMOTE TELECONFERENCING FOR A CONTINUED 30-DAY PERIOD PURSUANT TO THE RALPH M. BROWN ACT AS AMENDED BY ASSEMBLY BILL NO. 361"; (CITY ATTORNEY)

RECOMMENDATION: Staff recommends Council consider adoption of Resolution No. 84-21 reauthorizing for public health and safety the conduct of public meetings of the legislative bodies of the City via remote teleconferencing.

- A-11 PROCLAMATION EXPRESSING APPRECIATION FOR THE DEDICATION AND PUBLIC SERVICE OF FORMER COUNCIL MEMBER MELODY ANNE DEMERITT; (ADMINISTRATION)

RECOMMENDATION: Approved as submitted

B. PUBLIC HEARINGS

- B-1 REVIEW AND ADOPT DRAFT FUNDING RECOMMENDATIONS FOR THE 2022 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM; (COMMUNITY DEVELOPMENT DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council conduct a public hearing to review and adopt Resolution No. 85-21 approving draft funding recommendations for the 2022 Community Development Block Grant (CDBG) funds and forward recommendations to the San Luis Obispo County Board of Supervisors for inclusion with the other draft funding requests from the Urban County Consortium. The funding recommendation is for the two applications received from Peoples Self-Help Housing Corp, and 5 Cities Homeless Coalition along with City program administration of \$4,036 and rollover of the balance for a total funding allocation of \$57,656. 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.

C. BUSINESS ITEMS

- C-1 HOUSING LEGISLATIVE UPDATE AND STATUS REVIEW OF CURRENT CITY HOUSING EFFORTS; (COMMUNITY DEVELOPMENT DEPARTMENT)

RECOMMENDATION: Receive an update on:

- 1. Housing Legislative update (SB 8, 9 & 10) from Dave Mullinax, Regional Public Affairs Manager, League of California Cities; and**
- 2. City of Morro Bay status update on housing efforts from Scot Graham, Community Development Director.**

- C-2 REVIEW WATER RECLAMATION FACILITY (WRF) QUARTERLY UPDATE REPORT; (PUBLIC WORKS DEPARTMENT)

RECOMMENDATION: Receive the Q1 2021-21 WRF Quarterly Update Report and provide input.

- C-3 UTILITY DISCOUNT PROGRAM AND EXPIRATION OF STATE EXECUTIVE ORDER REGARDING WATER SERVICE TERMINATION; (ADMINISTRATIVE SERVICES DEPARTMENT/PUBLIC WORKS DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council:

- 1). Adopt Resolution No. 86-21 to authorize (i) the lapse, by its own terms, of Resolution No. 54-21 which extended a twenty-five percent discount and a COVID-19 discount program through December 31, 2021; and (ii) acknowledgement of the reinstatement of the prior Utility Discount Program outlined in Resolution 64-19, which offers a ten percent discount for income-qualifying customers; and the reinstatement of late payment penalties to fund the program. And 2) Receive and file staff's plan to reinstate water shutoffs in full compliance with California Senate Bill (SB) 998 upon the expiration of the State's Executive Order related to water shutoffs, duly notifying customers according to the adopted Discontinuation of Residential Water Service for Non-Payment policy.**

- C-4 INTRODUCTION AND FIRST READING OF ORDINANCE NO. 646, UPDATES TO CHAPTER 3.08 OF THE CITY'S MUNICIPAL CODE, PURCHASING SYSTEM; (ADMINISTRATIVE SERVICES DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council introduce, by title only, and waive further reading of Ordinance No. 646: "An Ordinance of the City Council of the City of Morro Bay, California, Amending Morro Bay Municipal Code Chapter 3.08 of Title 3 to Update the City's Purchasing System."

- C-5 AUTHORIZE CITY COUNCIL COMMENTS TO THE NATIONAL MARINE SANCTUARIES PROGRAM REGARDING THE POTENTIAL CHUMASH HERITAGE NATIONAL MARINE SANCTUARY DESIGNATION PROCESS AND REITERATE PREVIOUS OPPOSITION TO NATIONAL MARINE SANCTUARY IN LOCAL WATERS UNTIL CRITICAL MANAGEMENT ISSUES ADDRESSED; (HARBOR DEPARTMENT)

RECOMMENDATION: Staff recommend the City Council reiterate its previous opposition of a national marine sanctuary in local area waters until critical sanctuary governance and management issues, as outlined in this staff report, are resolved. Additionally, staff recommend the City Council authorize the Mayor to submit comments, as outlined in this staff report, to the National Marine Sanctuary Program regarding the proposed designation of the Chumash Heritage National Marine Sanctuary.

- C-6 CONSIDERATION OF RESOLUTION NO. 87-21 FOR 180-DAY WAIT PERIOD EXCEPTION FOR CALPERS RETIRED ANNUITANT / INTERIM CITY ENGINEER APPOINTMENT, APPROVAL OF INTERIM CITY ENGINEER AGREEMENT BETWEEN THE CITY AND ROBERT LIVICK, AND RECEIVE ENGINEERING DIVISION UPDATE; (CITY MANAGER/PUBLIC WORKS DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council: 1) Adopt Resolution No. 87-21 approving an exception to the 180-day waiting period for the position of Interim City Engineer; and 2) Approve the Interim City Engineer appointment and Interim City Engineer employment agreement between the City and Mr. Livick, and authorize the City Manager to execute the employment agreement; and 3) Receive Staff Update regarding Engineering Division Resources and Staffing.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, January 11, 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.

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MINUTES - MORRO BAY CITY COUNCIL
SPECIAL CLOSED SESSION MEETING –
NOVEMBER 9, 2021 – 3:30 P.M.
TELECONFERENCE

AGENDA NO: A-1
MEETING DATE: December 14, 2021

City Council conducted this meeting in accordance with California Governor Newsom's Executive Order N-08-21 issued on June 11, 2021 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
Jennifer Ford Council Member
Jeff Heller Council Member

ABSENT: None

STAFF: Scott Collins City Manager
Chris Neumeyer City Attorney
Scot Graham Community Development Director

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding called the meeting to order at 3:30 p.m. with all members present.

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

Council Member Ford announced that she would recuse herself from CS-1 due to a potential conflict of interest related to the property of discussion. Council Member Ford left the zoom meeting at 3:32 p.m.

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

Hemant and Jalpa Patel offered to respond to any Council questions.

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: 714 Embarcadero, 781 Market Street and parking lot; APNs 066-321-028, 066-321-027, 066-321-026, 066-321-025, 066-112-007, 006-321-008
Property Negotiator: Hemant Patel
Agency Negotiators: Scott Collins, City Manager; Scot Graham, Community Development Director; and Chris Neumeyer, City Attorney
Negotiation: Price and Terms of Payment

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

ADJOURNMENT - The meeting adjourned at 4:10 p.m.

Recorded by:

Dana Swanson
City Clerk

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MINUTES - MORRO BAY CITY COUNCIL
SPECIAL CLOSED SESSION MEETING –
DECEMBER 1, 2021 – 3:30 P.M.
TELECONFERENCE

AGENDA NO: A-2
MEETING DATE: December 14, 2021

City Council conducted this meeting in accordance with California Governor Newsom's Executive Order N-08-21 issued on June 11, 2021 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
	Jennifer Ford	Council Member
	Jeff Heller	Council Member

ABSENT: None

STAFF:	Scott Collins	City Manager
	Chris Neumeyer	City Attorney
	Scot Graham	Community Development Director

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding called the meeting to order at 3:30 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.

Sean Green, Morro Bay, commented on CS-1 urging the Council to seek out long-term opportunities for the underutilized property. Regarding Item CS-2, he expressed support for City Manager Collins.

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:	231 Atascadero Road; APN: 065-182-005
Property Negotiator:	Lawrence Guesno
Agency Negotiators:	Scott Collins, City Manager; Scot Graham, Community Development Director; and Chris Neumeyer, City Attorney
Negotiation:	Price and Terms of Payment

CS-2 PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Conduct an employee evaluation of City Manager pursuant to Government Code section 54957

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 5:03 p.m.

Recorded by:

Dana Swanson
City Clerk

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AGENDA NO: A-3

MEETING DATE: December 14, 2021

Staff Report

TO: Honorable Mayor and Council Members **DATE:** December 9, 2021
FROM: Gregory Kwolek, Public Works Director
SUBJECT: Clean California Maintenance Agreement for Litter and Graffiti Abatement

RECOMMENDATION

Staff recommends the City Council authorize the Mayor and City Manager to sign the Clean California Maintenance Agreement, subject to City Attorney approval, to receive up to \$35,000 over three years to perform litter and graffiti abatement on Caltrans property along State Route 41 within the City's limits.

ALTERNATIVE

The City Council could choose not to enter into an agreement with Caltrans.

BACKGROUND/DISCUSSION

On October 11, 2021, Caltrans notified the City of available funding in the amount \$35,000 over three years to perform litter and graffiti abatement through the Clean California Initiative. This funding is intended to allow the City to be reimbursed for litter and graffiti abatement work on Caltrans right-of-way along State Route 41 within the City limits, which amounts to a half a mile of roadway. This work could either be performed by City crews or by a City-hired contractor. Administrative costs are also eligible for reimbursement. Caltrans is requiring jurisdictions interested in participating in this program to enter into a Clean California Maintenance Agreement (Agreement). The Agreement expires on June 30, 2024, at which time all reimbursement requests must be submitted.

According to Caltrans, the stretch of State Route 41 covered under the agreement has received only two service requests for maintenance issues in the past 10 years. Given this, staff anticipates performance of the litter and graffiti abatement work on Caltrans right-of-way to have a minimal impact on City staffing. As such, all reimbursements back to the City would be expected to proportionally offset General Fund expenditures in the Consolidated Maintenance Division, making those funds available for other uses. Further, deploying work crews to address litter and graffiti on Caltrans right-of-way will be optional. If the City does not have adequate resources on a given day to support Highway 41 cleanup, Caltrans will still respond to service requests to complete any major work. The Agreement excludes a variety of maintenance activities, including unsheltered encampment relocation, hazardous materials clean up, and weed abatement.

FISCAL IMPACT

Approving this Agreement will make the City eligible to receive up to \$35,000 over three years, or approximately \$11,333 per year. There are no local match requirements associated with receiving these funds. Staff anticipates performing the work outlined in the agreement with existing staff, resulting in a net positive fiscal impact to the City.

ATTACHMENT

1. Clean California Maintenance Agreement

Prepared By: GK

Dept Review: GK

City Manager Review: SC

City Attorney Review: CFN

CLEAN CALIFORNIA MAINTENANCE AGREEMENT WITH THE CITY OF MORRO BAY

This CLEAN CALIFORNIA MAINTENANCE AGREEMENT ("AGREEMENT") is made by and between the State of California, acting by and through the Department of Transportation ("STATE"), and the City of Morro Bay ("LOCAL AGENCY"); each may be referred to individually as a "PARTY" and jointly as "PARTIES".

RECITALS

1. This AGREEMENT will identify the specific maintenance functions STATE requests LOCAL AGENCY to perform in the STATE right of way situated within LOCAL AGENCY'S jurisdictional limits as authorized in Streets and Highways Code Section 130.
2. Pursuant to the "Clean California Beautification Program of 2021," the PARTIES desire to identify specific mission-critical maintenance services LOCAL AGENCY will perform on and around STATE right of way situated within LOCAL AGENCY's jurisdictional limits.

OPERATIVE PROVISIONS

1. **Maintenance Services.** LOCAL AGENCY shall perform litter, debris, and graffiti removal and associated traffic control, at the State Route(s) (SR), post miles (PM) and approximate mile lengths (STATE Right of Way) set forth in Exhibit A. LOCAL AGENCY shall sweep, remove and discard litter and debris, including, but not limited to: furniture, appliances, tire casings, bulky and large items, auto components, clothing, beverage containers, food packages and garbage.
2. **Maintenance Standards.** LOCAL AGENCY shall perform all maintenance services in compliance with the provisions of Streets and Highways Code section 27, and in accordance with California and federal laws and regulations and STATE policies, procedures and specifications in effect and as amended, and applicable municipal ordinances.
3. **Prior Maintenance Agreement.** The PARTIES agree that this AGREEMENT does not supersede the PARTIES' existing Delegated Maintenance Agreements or other maintenance agreements, if any.

4. **Maintenance Areas.** LOCAL AGENCY shall only perform maintenance services in the STATE Right of Way locations described in Exhibit A and listed in Exhibit B.
5. **Amendment to Agreement.** Changes to LOCAL AGENCY's maintenance services covered in this AGREEMENT may be made by each PARTY executing amended Exhibits A and B and/or executing additional pages to Exhibits A and B that shall be attached to this AGREEMENT and will supersede the original Exhibits A and B. Otherwise, this AGREEMENT may only be amended by a written AGREEMENT executed by both PARTIES. STATE's District Maintenance AGREEMENT Coordinator (DMAC) must obtain prior written approval of any amendments from the District 5 Deputy Director of Maintenance before such amendments may become effective and enforceable under this AGREEMENT.
6. **Party Representatives and Notices.**

LOCAL AGENCY's Project Manager is: _____
STATE's DMAC is Steve Talbert

All notices, document submittals and invoices required under this AGREEMENT shall be deemed to have been fully given when made in writing and received by the PARTIES at their respective addresses as follows:

LOCAL AGENCY

Attn: Name of Project Manager: _____
Address: _____
City, Zip: _____

STATE

Attn: Ashley Johnson, Resource Manager <ashley.johnson@dot.ca.gov>
Address: 50 Higuera Street
San Luis Obispo, CA 93401

7. **Excluded Maintenance Activities.**

7.1 **Unsheltered Encampment Relocation.** LOCAL AGENCY shall not engage in any activities to relocate any persons experiencing homelessness who are situated within STATE Right of Way. LOCAL AGENCY shall comply with the processes and procedures set forth in STATE's "Interim Guidance on Encampments, Prioritizing and Addressing Encampments on Caltrans-

owned Property," dated July 2021, and as may be amended during the term of this AGREEMENT (Interim Guidance).

- 7.2 **Abandoned Encampments.** If LOCAL AGENCY encounters abandoned homeless encampments at or within STATE Right of Way, LOCAL AGENCY shall comply with the processes and procedures set forth in STATE's Interim Guidance, including but not limited to coordination with STATE and the local California Highway Patrol.
- 7.3 **Hazardous Material Clean up.** LOCAL AGENCY shall not engage in any hazardous material clean-up activities. If LOCAL AGENCY encounters any hazardous materials, including but not limited to bloodborne pathogens, biological waste, feces, syringes, needles, sharp objects or unknown substances during maintenance services performed under this AGREEMENT, LOCAL AGENCY shall immediately contact STATE's District Hazardous Material manager for appropriate action.
- 7.4 **Weed Abatement.** LOCAL AGENCY shall not perform any weed abatement, remove overgrown brush, trees, grass and limbs or conduct any spraying, grading, mowing or discing for any maintenance services within STATE Right of Way.
8. **Graffiti Removal.** LOCAL AGENCY's graffiti removal shall be limited to removal of text only in accordance with Streets and Highway Code Section 96. Any graffiti that in any way resembles a mural, artwork, paintings, or other similar elements may not be removed. LOCAL AGENCY shall discuss such possible art with STATE's District 5 Transportation Art Coordinator (<Caltrans.Art.D5@dot.ca.gov>) before conducting any graffiti removal or remediation. STATE shall pay the actual cost of LOCAL AGENCY's graffiti removal as specified in Section 11 of this AGREEMENT.
9. **Maintenance Service Schedule.** LOCAL AGENCY shall provide STATE's District 5 Area Maintenance Superintendent, Cody Collins, at least twenty-four (24) hours prior telephone or email notice before performing any maintenance services under this AGREEMENT. His email and phone number are: cody.collins@dot.ca.gov or (805) 434-1812. LOCAL AGENCY shall provide the RESOURCE MANAGER identified in this AGREEMENT with a litter, debris and graffiti removal schedule. Maintenance services shall be provided at a minimum biweekly basis. Maintenance services shall be performed between the hours of 6:00 am and 6:00 pm and may be performed on weekends and holidays if necessary. LOCAL AGENCY must request prior written approval

from STATE's District Maintenance Superintendent prior to performing any maintenance services before 6:00 am or after 6:00 pm

10. **Authorized Reimbursement.** The functions and levels of maintenance services delegated to LOCAL AGENCY in the attached Exhibits A and B and amounts appropriated to State pursuant to the Clean California Beautification Program of 2021 have been considered in setting authorized total dollar amounts. LOCAL AGENCY may perform additional work if desired, but STATE will not reimburse LOCAL AGENCY for any work in excess of the authorized dollar limits established herein.

11. **Cost Reimbursement.** STATE shall reimburse LOCAL AGENCY for LOCAL AGENCY's actual and necessary costs incurred to perform the maintenance services under this AGREEMENT; provided, however, that STATE's reimbursement shall not exceed the maximum authorized expenditures listed in Exhibit B.

11.1 **Amendment to Approved Expenditures.** Upon LOCAL AGENCY's written request, the expenditures per route for maintenance services set forth in Exhibits A and B may be increased, decreased, or redistributed between routes pursuant to the PARTIES executing an appropriate amendment in accordance with section 5 above. All such adjustments must be authorized in writing by the District Director or his/her authorized representative.

11.2 **Term of Expenditures.** Additional expenditures or an adjustment of expenditures once authorized shall apply only for the term of this AGREEMENT and shall not be deemed to permanently modify or change the basic maximum expenditures per route as specified in Exhibits A and B. Any expenditure adjustments shall not affect or alter any other terms of this AGREEMENT.

12. **Billing, Payment and Reporting.**

12.1 **Billing Date.** LOCAL AGENCY shall submit billing invoices to STATE's RESOURCE MANAGER each month beginning after the first month LOCAL AGENCY has performed maintenance services under this AGREEMENT. LOCAL AGENCY shall not submit billing invoices for reimbursement of costs less than \$500 more than once each

quarter. LOCAL AGENCY shall also submit billing invoices promptly following the close of STATE's fiscal year on each June 30th.

12.2 **Billing Submission Format.** Each billing invoice shall include all of the following:

- (a) STATE's Clean California Program Code: CLEANCADMA;
- (b) AGREEMENT number: CCMA 05-22-ST03;
- (c) Date(s) of services;
- (d) Location of services;
- (e) Number of hours and hourly rates;
- (f) Receipts for trash disposal;
- (g) Receipts for equipment, materials and supplies; and
- (h) LOCAL AGENCY's maintenance services report that includes the information required under section 15 of this AGREEMENT.

STATE shall pay LOCAL AGENCY for the maintenance services satisfactorily performed in accordance with the rates and schedules in Exhibits A and B.

13. **Successors.** This AGREEMENT shall be binding upon and inure to the benefit of each of the PARTIES' successors-in-interest, including, but not limited to any public entity to whom any part of the STATE right of way covered under this AGREEMENT may be relinquished and any subsequently incorporated city or other municipality established within the LOCAL AGENCY's jurisdictional limits.

14. **Encroachment Permits.** Before LOCAL AGENCY may enter STATE right of way to perform any maintenance services in the areas covered by this AGREEMENT, STATE's District 5 Encroachment Permit Office must issue an initial encroachment permit at no cost to LOCAL AGENCY. LOCAL AGENCY must obtain additional encroachment permits, if necessary, to enter or perform any work within STATE right of way not covered by this AGREEMENT. STATE will issue these additional encroachment permits at no cost to LOCAL AGENCY. LOCAL AGENCY's contractors and sub-contractors must apply for and be issued separate encroachment permits before they may enter STATE right of way to perform any maintenance or work under this AGREEMENT.

15. **Performance Monitoring.** LOCAL AGENCY shall prepare a Performance Report to record and report the quantity and description of litter, debris, and graffiti removed and maintenance services performed at each clean-up site and location set forth in Exhibits A and B. This Performance Report shall include dated and executed documents demonstrating the weight and/or amount of litter, debris, and graffiti removed, including disposal receipts from authorized disposal sites and/or landfills. The RESOURCE MANAGER may also request that LOCAL AGENCY provide photographs of the sites taken before and after LOCAL AGENCY's maintenance services are performed.
16. **Legal Disposal of Litter Collected.** LOCAL AGENCY shall make its own arrangements for the legal disposal of litter or debris materials to authorized disposal sites. LOCAL AGENCY shall not leave any filled litter bags, litter piles or other groups of litter assembled during its maintenance services along or in STATE Right of Way. Such litter groupings shall be removed out of STATE Right of Way each day LOCAL AGENCY performs the maintenance services in this AGREEMENT.
17. **Safety and Worker Compliance.** LOCAL AGENCY shall be solely responsible for crew pay, workers compensation and any other benefits required by state and federal law. Subcontractors and crew members are not considered STATE's employees at any time. LOCAL AGENCY shall comply with all applicable State and Federal statutes and regulations governing worker and public safety, including but not limited to compliance with CAL-OSHA regulations and guidelines. LOCAL AGENCY shall notify the STATE's District 5 Area Maintenance Superintendent no later than Tuesday of the prior week when traffic controls, flags, signs, or lane closures are necessary to safely perform any maintenance services and must receive prior approval for any such lane and/or shoulder closures.
18. **Equipment and Supplies.** LOCAL AGENCY shall provide the necessary equipment, tools, personal protective equipment, materials, supplies and products necessary to perform the maintenance services under this AGREEMENT. STATE shall reimburse LOCAL AGENCY for the reasonable costs of such equipment and supplies not to exceed the authorized expenditures set forth in Exhibit B.

19. Legal Relations and Responsibilities.

19.1 **No Third-party Beneficiaries.** This AGREEMENT is not intended to create duties, obligations, or rights of third parties beyond the PARTIES to this AGREEMENT. Nor does this AGREEMENT affect a PARTY's legal liability by imposing any standard of care for the maintenance of STATE highways different from the standard of care imposed by law.

19.2 **Indemnification.** Neither STATE nor any of its officers or employees is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by LOCAL AGENCY in connection with any work, authority or jurisdiction conferred upon LOCAL AGENCY under this AGREEMENT. LOCAL AGENCY shall fully defend, indemnify, and save harmless STATE and its officers and employees from all claims, suits, or actions of every kind occurring by reason of anything done or omitted to be done by LOCAL AGENCY, its contractors, sub-contractors and/or its agents pursuant to this AGREEMENT.

Neither LOCAL AGENCY nor any of its officers or employees is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE, in connection with any work, authority or jurisdiction conferred upon STATE under this AGREEMENT. STATE shall fully defend, indemnify, and save harmless LOCAL AGENCY and its officers and employees from all claims, suits, or actions of every kind occurring by reason of anything done or omitted to be done by STATE under this AGREEMENT.

19.3 **Work-related Injuries.** If a LOCAL AGENCY-assigned crew member is injured while performing maintenance services under this AGREEMENT, LOCAL AGENCY or its designated subcontractor shall be responsible for ensuring the crew member is given prompt medical care and treatment and, if necessary, transportation to a medical facility. LOCAL AGENCY or its designated subcontractor shall administer any injury and workers compensation claims. LOCAL AGENCY shall notify the STATE's Area Maintenance Superintendent within twenty-four (24) hours when any such incident has occurred.

20. Prevailing Wages and Labor Compliance. LOCAL AGENCY shall comply with any and all applicable labor and prevailing wage requirements in Labor Code Sections 1720 through 1815 and implementing regulations for public works or maintenance contracts and subcontracts executed for the LOCAL AGENCY's maintenance services under this AGREEMENT.

21. Self-Insured. LOCAL AGENCY is self-insured. LOCAL AGENCY shall deliver evidence of self-insured coverage providing general liability insurance, coverage of bodily injury and property damage liability, in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in excess by delivering a Letter Certifying Self-Insurance. The Letter of Self-Insurance must be substantially in the form of Exhibit C and identify the AGREEMENT number, and location as depicted in Exhibits A and B. LOCAL AGENCY shall provide the original Letter Certifying Self-Insurance as a condition to STATE's execution of this AGREEMENT. A copy of the original letter shall be attached to this AGREEMENT as Exhibit C.

Self-Insured using Contractor. If the work performed under this AGREEMENT is done by LOCAL AGENCY's contractor(s), LOCAL AGENCY shall require its contractor(s) to maintain in force, during the term of this AGREEMENT, a policy of general liability insurance, including coverage of bodily injury and property damage liability, naming STATE, its officers, agents and employees as the additional insured in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in excess. LOCAL AGENCY shall provide a certificate of insurance evidencing this insurance in a form satisfactory to STATE.

22. Budget Contingency. STATE's payments to LOCAL AGENCY are contingent upon the Legislature appropriating sufficient funds under the Budget Act, the allocation of funding by the Clean California State Beautification Program of 2021 as appropriate, and the encumbrance of funding to STATE's District Office.

23. Termination. This AGREEMENT may be terminated by the mutual written consent of each PARTY. STATE may terminate this AGREEMENT for convenience or for cause upon thirty (30) day prior written notice to LOCAL AGENCY. LOCAL AGENCY may terminate this AGREEMENT upon thirty (30) day prior written notice to STATE.

24. **Term of AGREEMENT.** This AGREEMENT shall become effective on the last of the dates each PARTY's authorized representative has executed this AGREEMENT and shall expire on June 30, 2024, unless terminated or amended.

25. **Authority.** Each individual executing this AGREEMENT on behalf of each PARTY represents and warrants that he/she is duly authorized to execute this AGREEMENT as authorized under Streets and Highways Code Sections 114 and 130. LOCAL AGENCY represents and certifies that it has, through its regular political process, authorized the execution of this AGREEMENT by appropriate resolution, delegation, or plenary authority as required.

26. **Counterparts.** This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

27. **Electronic Signatures.** Electronic signatures of the PARTIES, whether digital or encrypted, are intended to authenticate this written AGREEMENT and shall have the same force and effect as manual signatures for this AGREEMENT.

THE LOCAL AGENCY OF

Dated:

_____ Mayor

INITIATED AND APPROVED:

Dated:

_____ City Manager

Dated:

_____ City Clerk

APPROVED AS TO FORM

Dated:

_____ City Attorney

STATE OF CALIFORNIA

DEPARTMENT OF TRANSPORTATION

Dated:

_____ Deputy District Director
Maintenance District 5

EXHIBIT A

Route No.	Length Miles	Description of Routing	Program Code
41	0.50	PM 0.00 to 0.50 From State Route 1 to approximately 630 feet easterly of Ironwood Ave.	CLEANCADMA

EXHIBIT B

BREAKDOWN & LISTING OF MAINTENANCE TASKS

Rte No.	Post Miles	Litter per Bag (CY)	Large Items	Graffiti	Traffic Control	Other (CY)	Maximum Authorized Expenditures
41	0.00 to 0.50	X	X	X	X	X	Actual Cost
TOTAL MAXIMUM AUTHORIZED EXPENDITURES:							\$35,000

EXHIBIT C

LETTER CERTIFYING CITY'S SELF-INSURED STATUS (TEMPLATE)

On Local Agency letterhead

Caltrans – District 5 _____, 20__

ATTN: Steve Talbert

Re: Statement of Self-Insurance for CITY of Morro Bay for Clean California Maintenance AGREEMENT No. CCMA 05-22-ST03 with California Department of Transportation for the Litter, Debris, and Graffiti Removal along SR 41 within the Morro Bay City Limits.

Dear Steve:

This letter certifies that the CITY of Morro Bay is self-insured and self-funded covering third-party claims arising out of its general operations (i.e.; commercial general liability and automobile liability insurance). Further, the CITY is self-insured covering workers' compensation claims and has received the consent of the State Department of Industrial Relations to do so.

Each fiscal year, as a part of its budgetary process, the CITY appropriates funds specifically to satisfy valid third-party claims and workers' compensation claims, which may be brought against the CITY.

The CITY certifies its self-insured, general liability coverage for bodily injury and property damage liability, meets the required coverage amounts in section 21 (Insurance) of the Clean California Maintenance Agreement, specifically general liability insurance, coverage of bodily injury and property damage liability in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in excess.

If you need any additional information regarding this letter, please direct those inquiries through my office.

Sincerely,

Finance Manager/Risk Manager/Authorized Representative's Title



AGENDA NO: A-4

MEETING DATE: December 14, 2021

Staff Report

TO: Honorable Mayor and City Council

DATE: December 6, 2021

FROM: Chris F. Neumeyer, City Attorney

SUBJECT: National Opioid Settlements

RECOMMENDATION

Staff recommends Council consider following actions:

1. Approve Settlement Participation Form for the City of Morro Bay's ("City") participation in the National Opioid Settlement with McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation.
2. Approve Settlement Participation Form for the City's participation in the National Opioid Settlement with Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc.
3. Approve the California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds - Distributor Settlement.
4. Approve the California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds - Janssen Settlement.
5. Adopt Resolution No. 88-21 approving and authorizing the City Manager to execute the documents identified in Nos. 1 through 4 above.
6. Authorize the City Manager to carry out all necessary acts such that the City can participate in the National Opioid Settlements, including, but not limited to, the transmittal of the executed documents in Nos. 1 through 4 above.
7. Approve disbursement of initial partial settlement funds to County (default option) while reserving City option to request direct distribution of further settlement funds to City later in time.

ALTERNATIVES

Do not approve settlement agreements and related items.

Prepared By: CFN Dept Review: _____
City Manager Review: SC City Attorney Review: CFN _____

FISCAL IMPACT

According to County estimates, approval of settlement agreements will provide approximately \$322,000 over 18 years for City of Morro Bay's share. That is broken out by approximately \$21,300 annually for years 1-9, and then approximately \$14,367 annually for years 10-18, for specified intervention, treatment, education, and recovery services.

BACKGROUND

Various states, counties, and cities have been in litigation with the McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation. (collectively, the "Distributors") and Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (collectively, the "Manufacturer") (Distributors and Manufacturer are collectively referred to as the "Settling Defendants").

The litigation concerns the distribution and manufacture of opioids that have contributed to the opioid addiction epidemic in the United States. Two tentative settlements were reached with the Distributors and Manufacturer at the end of October ("National Opioids Settlements"). The National Opioids Settlements are very detailed and total about 800 pages. Council approval and authorization for execution, submission, and receipt of all required documents to participate in the settlements must be completed before January 2, 2022.

In order to proceed, a "critical mass" of participation by States, cities and counties must be achieved. This critical mass is determined by the Settling Defendants in their sole discretion. The first step is to achieve a critical mass of States. The second step is to achieve a critical mass of cities and counties. If a critical mass is not achieved, then the National Opioids Settlements do not proceed and the litigation continues. At this stage, a critical mass of States has already occurred.

DISCUSSION

1. Settlement

Assuming there is a critical mass to proceed, the payout amounts under the settlements with the Settling Defendants is contingent upon various factors, including the number of states, cities, and counties participating, with a maximum payout of \$21 billion over the course of 18 years by the Distributors and \$5 billion over no more than nine years by the Manufacturer to all participating entities. A proportion of that amount will be received by California, its counties, and cities. The actual amount for the City is dependent on a number of variables, including, but not limited to, the number of California cities and counties participating, whether or not non-participating cities later sue the Settling Defendants, and certain actions that may be taken by the State of California. Further, the City's share of the potential amount is determined using three factors: (1) Opioid use disorder; (2) Opioid deaths; and (3) Opioid dosage.

The National Opioids Settlements also provide for injunctive relief that requires changes to the Distributors' and Manufacturer's conduct. This includes the creation of a clearinghouse through which the Distributors will be required to account for their own shipments and the shipments of the other distributors, in order to detect, stop, and report suspicious opioids orders. In addition, the Manufacturer (which ceased marketing opioids in 2015 and ceased selling opioids in 2020) will not market or sell any opioid products in the next ten years and has agreed to cease lobbying concerning prescription opioids for ten years.

By participating in the National Opioid Settlements, the City would be agreeing to a very broad release

of claims relating in any way to opioids against the Settling Defendants, which includes both known and unknown claims. However, not participating, and litigating on its own, would require expenditure of City funds for such a project and legal action from the City.

2. Settlement Funds

If the City participates, the funds will automatically be allocated to the County, unless the City opts to receive the funds directly. The City may later in time request direct payment to City (rather than default to the County) by providing notice at least 60 days prior to an annual payment date scheduled for no later than July of each year. If the City does not participate at all, then the City's share goes to the State of California.

Staff recommends that the City (at least initially) default its funds to the County (rather than receive funds directly or default the funds to the State of California). The use of settlement funds is restricted and the City reasonably does not have the infrastructure, resources and personnel to immediately and directly use the settlement funds in compliance with the settlements. Furthermore, direct receipt of the funds requires annual reporting obligations and possible audits. Prospectively upon further review and analysis on potential future direct municipal use of the funds the City may opt to receive funds directly.

The National Opioids Settlements will allow for a range of approved abatement uses, which includes a range of intervention, treatment, education, and recovery services. For example, a city or county could use funds to support overdose treatment, wrap around programs like housing and training, and criminal justice initiatives like pre-trial diversion treatment programs. Under the Allocation Agreement, at least 50% of the abatement funds received by the local entity must also be used towards a narrower list of state designated "High Impact Abatement Activities," identified in the settlements (see, e.g., Attachments 3 and 4, and Exhibit E of Attachments 6 and 7).

There are significant public reporting and tracking requirements on the expenditures for such funds, which make County receipt and expenditure of such funds more desirable. For example, the settlement with the Manufacturer would require the following reporting and tracking: 1) Preparation of annual written reports regarding the use of the funds. This report must include a certification that all funds received has been used in compliance with the Manufacturer settlement agreements. This report must be in a form that is approved by the California Department of Health Care Services ("DHCS"); 2) The City would be required to track all deposits and expenditures; and, 3) Funds not used for a permitted purpose must be identified and included in the annual report (including any attorneys' fees, investigation costs, or litigation costs). This information must also be reported to the Manufacturer and the settlement fund administrator.

If the City elects to receive direct distribution, and does not apply the funds to the County, then the following enforcement requirements apply to the City: 1) If DHCS believes that the use of settlement funds is inconsistent with the requirements, it must meet and confer with subdivision (i.e., the City), and if not resolved, DHCS may perform an audit; 2) If the issue is not resolved, DHCS can bring a motion or action in court to resolve the concern or to enforce the terms of the settlement agreement/state-allocation agreement; and, 3) There are also time limits on expenditure where money not expended or encumbered within 5 years of receipt must be transferred to the State.

CONCLUSION

Staff recommends Council consider approving the various settlement agreements, approving the accompanying resolution to authorize the City Manager to execute all documentation necessary to participate in the National Opioid Settlements, and authorizing City Manager to carry out all necessary acts such that the City can participate in the National Opioid Settlements.

ATTACHMENTS

1. Settlement Participation Form for the City's participation in the National Opioid Settlement with McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation.
2. Settlement Participation Form for the City's participation in the National Opioid Settlement with Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc.
3. Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds - Distributor Settlement.
4. Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds - Janssen Settlement.
5. Resolution No. 88-21 authorizing the City Manager to execute the documents identified above.
6. Distributor Settlement Agreement at [https://nationalopioidsettlement.com/wp-content/uploads/2021/11/Final-Distributor-Settlement-Agreement-10.22.2021-Exhibit-Updates .pdf](https://nationalopioidsettlement.com/wp-content/uploads/2021/11/Final-Distributor-Settlement-Agreement-10.22.2021-Exhibit-Updates.pdf)
7. Manufacturer Settlement Agreement at <https://nationalopioidsettlement.com/wp-content/uploads/2021/11/Janssen-agreement-20211105.pdf>

Settlement Participation Form

Governmental Entity: Morro Bay city	State: CA
Authorized Signatory:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above (“Governmental Entity”), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated July 21, 2021 (“Distributor Settlement”), and acting through the undersigned authorized official, hereby elects to participate in the Distributor Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Distributor Settlement, understands that all terms in this Election and Release have the meanings defined therein, and agrees that by this Election, the Governmental Entity elects to participate in the Distributor Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity shall, within 14 days of the Reference Date and prior to the filing of the Consent Judgment, dismiss with prejudice any Released Claims that it has filed.
3. The Governmental Entity agrees to the terms of the Distributor Settlement pertaining to Subdivisions as defined therein.
4. By agreeing to the terms of the Distributor Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
5. The Governmental Entity agrees to use any monies it receives through the Distributor Settlement solely for the purposes provided therein.
6. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity’s state where the Consent Judgment is filed for purposes limited to that court’s role as provided in, and for resolving disputes to the extent provided in, the Distributor Settlement.
7. The Governmental Entity has the right to enforce the Distributor Settlement as provided therein.



8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Distributor Settlement, including but not limited to all provisions of Part XI, and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Distributor Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Distributor Settlement shall be a complete bar to any Released Claim.
9. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision as set forth in the Distributor Settlement.
10. In connection with the releases provided for in the Distributor Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. 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 that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Distributor Settlement.

11. Nothing herein is intended to modify in any way the terms of the Distributor Settlement, to which Governmental Entity hereby agrees. To the extent this Election and Release is interpreted differently from the Distributor Settlement in any respect, the Distributor Settlement controls.



I swear under penalty of perjury that I have all necessary power and authorization to execute this Election and Release on behalf of the Governmental Entity.

Signature: _____

Name: _____

Title: _____

Date: _____



Settlement Participation Form

Governmental Entity: Morro Bay city	State: CA
Authorized Signatory:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above (“Governmental Entity”), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated July 21, 2021 (“Janssen Settlement”), and acting through the undersigned authorized official, hereby elects to participate in the Janssen Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Janssen Settlement, understands that all terms in this Election and Release have the meanings defined therein, and agrees that by this Election, the Governmental Entity elects to participate in the Janssen Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity shall, within 14 days of the Reference Date and prior to the filing of the Consent Judgment, dismiss with prejudice any Released Claims that it has filed.
3. The Governmental Entity agrees to the terms of the Janssen Settlement pertaining to Subdivisions as defined therein.
4. By agreeing to the terms of the Janssen Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
5. The Governmental Entity agrees to use any monies it receives through the Janssen Settlement solely for the purposes provided therein.
6. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity’s state where the Consent Judgment is filed for purposes limited to that court’s role as provided in, and for resolving disputes to the extent provided in, the Janssen Settlement.
7. The Governmental Entity has the right to enforce the Janssen Settlement as provided therein.



8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Janssen Settlement, including but not limited to all provisions of Section IV (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Janssen Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Janssen Settlement shall be a complete bar to any Released Claim.
9. In connection with the releases provided for in the Janssen Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. 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 that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Janssen Settlement.

10. Nothing herein is intended to modify in any way the terms of the Janssen Settlement, to which Governmental Entity hereby agrees. To the extent this Election and Release is interpreted differently from the Janssen Settlement in any respect, the Janssen Settlement controls.



I swear under penalty of perjury that I have all necessary power and authorization to execute this Election and Release on behalf of the Governmental Entity.

Signature: _____

Name: _____

Title: _____

Date: _____



**Proposed California State-Subdivision Agreement
Regarding Distribution and Use of
Settlement Funds – Distributor Settlement**

1. Introduction

Pursuant to the Distributor Settlement Agreement, dated as of July 21, 2021, and any revision thereto (the “Distributor Settlement Agreement”), including Section V and Exhibit O, the State of California proposes this agreement (the “CA Distributor Allocation Agreement”) to govern the allocation, distribution, and use of Settlement Fund payments made to California pursuant to Sections IV and V of the Distributor Settlement Agreement.¹ For the avoidance of doubt, this agreement does not apply to payments made pursuant to Sections IX or X of the Distributor Settlement Agreement.

Pursuant to Exhibit O, Paragraph 4, of the Distributor Settlement Agreement, acceptance of this CA Distributor Allocation Agreement is a requirement to be an Initial Participating Subdivision.

2. Definitions

- a) *CA Participating Subdivision* means a Participating Subdivision that is also (a) a Plaintiff Subdivision and/or (b) a Primary Subdivision with a population equal to or greater than 10,000. For the avoidance of doubt, eligible CA Participating Subdivisions are those California subdivisions listed in Exhibit C (excluding Litigating Special Districts) and/or Exhibit I to the Distributor Settlement Agreement.
- b) *Janssen Settlement Agreement* means the Janssen Settlement Agreement dated July 21, 2021, and any revision thereto.
- c) *Litigating Special District* means a school district, fire protection district, health authority, health plan, or other special district that has filed a lawsuit against an Opioid Defendant. Litigating Special Districts include Downey Unified School District, Elk Grove Unified School District, Kern High School District, Montezuma Fire Protection District (located in Stockton, California), Santa Barbara San Luis Obispo Regional Health Authority, Inland Empire Health Plan, Health Plan of San Joaquin, and LA Care Health Plan.
- d) *Plaintiff Subdivision* means a Subdivision located in California, other than a Litigating Special District, that filed a lawsuit, on behalf of the Subdivision and/or through an official of the Subdivision on behalf of the People of the State of California, against one or more Opioid Defendants prior to October 1, 2020.

¹ A parallel but separate agreement (the “CA Janssen Allocation Agreement”) will govern the allocation, distribution, and use of settlement fund payments under the Janssen Settlement Agreement. An eligible Subdivision may elect to participate in either the Distributor Settlement or the Janssen Settlement, or in both.

- e) *Opioid Defendant* means any defendant (including but not limited to Johnson & Johnson, Janssen Pharmaceuticals, Inc., Purdue Pharma L.P., Cardinal Health, Inc., AmerisourceBergen Corporation, and McKesson Corporation) named in a lawsuit seeking damages, abatement, or other remedies related to or caused by the opioid public health crisis in any lawsuit brought by any state or local government on or before October 1, 2020.

3. General Terms

This agreement is subject to the requirements of the Distributor Settlement Agreement, as well as applicable law, and the Distributor Settlement Agreement governs over any inconsistent provision of this CA Distributor Allocation Agreement. Terms used in this CA Distributor Allocation Agreement have the same meaning as in the Distributor Settlement Agreement unless otherwise defined herein.

Pursuant to Section V(D)(1) of the Distributor Settlement Agreement, (a) all Settlement Fund payments will be used for Opioid Remediation, except as allowed by Section V(B)(2) of the Distributor Settlement Agreement; and (b) at least seventy percent (70%) of Settlement Fund payment amounts will be used solely for future Opioid Remediation.

4. State Allocation

The Settlement Fund payments to California,² pursuant to the Distributor Settlement Agreement, shall be allocated as follows: 15% to the State Fund; 70% to the Abatement Accounts Fund; and 15% to the Subdivision Fund. For the avoidance of doubt, all funds allocated to California from the Settlement Fund shall be combined pursuant to this CA Distributor Allocation Agreement, and 15% of that total shall be allocated to the State of California (the “State of California Allocation”), 70% to the California Abatement Accounts Fund (“CA Abatement Accounts Fund”), and 15% to the California Subdivision Fund (“CA Subdivision Fund”).

A. State of California Allocation

Fifteen percent of the total Settlement Fund payments will be allocated to the State and used by the State for future Opioid Remediation.

B. CA Abatement Accounts Fund

i. Allocation of CA Abatement Accounts Funds

- a) Seventy percent of the total Settlement Fund payments will be allocated to the CA Abatement Accounts Fund. The funds in the CA Abatement Accounts Fund will be

² For purposes of clarity, use of the term “California” refers to the geographic territory of California and the state and its local governments therein. The term “State” or “State of California” refers to the State of California as a governmental unit.

allocated based on the allocation model developed in connection with the proposed negotiating class in the National Prescription Opiate Litigation (MDL No. 2804), as adjusted to reflect only those cities and counties that are eligible, based on population or litigation status, to become a CA Participating Subdivision. The percentage from the CA Abatement Accounts Fund allocated to each CA Participating Subdivision is set forth in Appendix 1 in the column entitled abatement percentage (the “Local Allocation”). For the avoidance of doubt, Litigating Special Districts and California towns, cities, and counties with a population less than 10,000 are not eligible to receive an allocation of CA Abatement Accounts Funds.

- b) A CA Participating Subdivision that is a county, or a city and county, will be allocated its Local Allocation share as of the date on which it becomes a Participating Subdivision, and will receive payments as provided in the Distributor Settlement Agreement.
- c) A CA Participating Subdivision that is a city will be allocated its Local Allocation share as of the date on which it becomes a Participating Subdivision. The Local Allocation share for a city that is a CA Participating Subdivision will be paid to the county in which the city is located, rather than to the city, so long as: (a) the county is a CA Participating Subdivision, and (b) the city has not advised the Settlement Fund Administrator that it requests direct payment at least 60 days prior to a Payment Date. A Local Allocation share allocated to a city but paid to a county is not required to be spent exclusively for abatement activities in that city, but will become part of the county’s share of the CA Abatement Accounts Funds, which will be used in accordance with Section 4.B.ii (Use of CA Abatement Accounts Funds) and reported on in accordance with Section 4.B.iii (CA Abatement Accounts Fund Oversight).
- d) A city within a county that is a CA Participating Subdivision may opt in or out of direct payment at any time, and it may also elect direct payment of only a portion of its share, with the remainder going to the county, by providing notice to the Settlement Fund Administrator at least 60 days prior to a Payment Date. For purposes of this CA Distributor Allocation Agreement, the Cities of Los Angeles, Oakland, San Diego, San Jose and Eureka will be deemed to have elected direct payment if they become Participating Subdivisions.
- e) The State will receive the Local Allocation share of any payment to the Settlement Fund that is attributable to a county or city that is eligible to become a CA Participating Subdivision, but that has not, as of the date of that payment to the Settlement Fund, become a Participating Subdivision.
- f) Funds received by a CA Participating Subdivision, and not expended or encumbered within five years of receipt and in accordance with the Distributor Settlement Agreement and this CA Distributor Allocation Agreement shall be transferred to the State; provided however, that CA Participating Subdivisions have seven years to expend or encumber CA Abatement Accounts Funds designated to support capital outlay projects before they must be transferred to the State. This provision shall not apply to the Cost Reimbursement Funds, which shall be controlled by Appendix 2.

ii. Use of CA Abatement Accounts Funds

- a) The CA Abatement Accounts Funds will be used for future Opioid Remediation in one or more of the areas described in the List of Opioid Remediation Uses, which is Exhibit E to the Distributor Settlement Agreement.
- b) In addition to this requirement, no less than 50% of the funds received by a CA Participating Subdivision from the Abatement Accounts Fund in each calendar year will be used for one or more of the following High Impact Abatement Activities:
 - (1) the provision of matching funds or operating costs for substance use disorder facilities within the Behavioral Health Continuum Infrastructure Program;
 - (2) creating new or expanded Substance Use Disorder (“SUD”) treatment infrastructure;
 - (3) addressing the needs of communities of color and vulnerable populations (including sheltered and unsheltered homeless populations) that are disproportionately impacted by SUD;
 - (4) diversion of people with SUD from the justice system into treatment, including by providing training and resources to first and early responders (sworn and non-sworn) and implementing best practices for outreach, diversion and deflection, employability, restorative justice, and harm reduction; and/or
 - (5) interventions to prevent drug addiction in vulnerable youth.
- c) The California Department of Health Care Services (“DHCS”) may add to this list (but not delete from it) by designating additional High Impact Abatement Activities. DHCS will make reasonable efforts to consult with stakeholders, including the CA Participating Subdivisions, before adding additional High Impact Abatement Activities to this list.
- d) For the avoidance of doubt, and subject to the requirements of the Distributor Settlement Agreement and applicable law, CA Participating Subdivisions may form agreements or ventures, or otherwise work in collaboration with, federal, state, local, tribal or private sector entities in pursuing Opioid Remediation activities funded from the CA Abatement Accounts Fund. Further, provided that all CA Abatement Accounts Funds are used for Opioid Remediation consistent with the Distributor Settlement Agreement and this CA Distributor Allocation Agreement, a county and any cities or towns within the county may agree to reallocate their respective shares of the CA Abatement Accounts Funds among themselves, provided that any direct distribution may only be to a CA Participating Subdivision and any CA Participating Subdivision must agree to their share being reallocated.

iii. CA Abatement Accounts Fund Oversight

- a) Pursuant to Section 5 below, CA Participating Subdivisions receiving settlement funds must prepare and file reports annually regarding the use of those funds. DHCS may regularly review the reports prepared by CA Participating Subdivisions about the use of CA Abatement Accounts Funds for compliance with the Distributor Settlement Agreement and this CA Distributor Allocation Agreement.
- b) If DHCS determines that a CA Participating Subdivision's use of CA Abatement Accounts Funds is inconsistent with the Distributor Settlement Agreement or this CA Distributor Allocation Agreement, whether through review of reports or information from any other sources, DHCS shall send a request to meet and confer with the CA Participating Subdivision. The parties shall meet and confer in an effort to resolve the concern.
- c) If the parties are unable to reach a resolution, DHCS may conduct an audit of the Subdivision's use of the CA Abatement Accounts Funds within one year of the request to meet and confer, unless the parties mutually agree in writing to extend the meet and confer time frame.
- d) If the concern still cannot be resolved, the State may bring a motion or action in the court where the State has filed its Consent Judgment to resolve the concern or otherwise enforce the requirements of the Distributor Settlement Agreement or this CA Distributor Allocation Agreement. However, in no case shall any audit be conducted, or motion be brought, as to a specific expenditure of funds, more than five years after the date on which the expenditure of the funds was reported to DHCS, in accordance with this agreement.
- e) Notwithstanding the foregoing, this Agreement does not limit the statutory or constitutional authority of any state or local agency or official to conduct audits, investigations, or other oversight activities, or to pursue administrative, civil, or criminal enforcement actions.

C. CA Subdivision Fund

- i. Fifteen percent of the total Settlement Fund payments will be allocated to the CA Subdivision Fund. All funds in the CA Subdivision Fund will be allocated among the Plaintiff Subdivisions that are Initial Participating Subdivisions. The funds will be used, subject to any limits imposed by the Distributor Settlement Agreement and this CA Distributor Allocation Agreement, to fund future Opioid Remediation and reimburse past opioid-related expenses, which may include fees and expenses related to litigation, and to pay the reasonable fees and expenses of the Special Master as set forth in Appendix 2.

The CA Subdivision Funds will be allocated as follows:

- a) First, funds in the CA Subdivision Fund shall be used to pay the Special Master's reasonable fees and expenses in accordance with the procedures and limitations set forth in Appendix 2 to this document;
- b) Second, funds will be allocated to Plaintiff Subdivisions that are Initial Participating Subdivisions that have been awarded Costs, as defined by and in accordance with the procedures and limitations set forth in Appendix 2 to this document.
- c) Funds remaining in the CA Subdivision Fund, which shall consist of no less than 50% of the total CA Subdivision Fund received in any year pursuant to Appendix 2, Section 2.c.v, will be distributed to Plaintiff Subdivisions that are Initial Participating Subdivisions, in relative proportion to the Local Allocation. These funds shall be used to fund future opioid-related projects and to reimburse past opioid-related expenses, which may include fees and expenses related to litigation against any Opioid Defendant.

D. Provision for State Back-Stop Agreement

On August 6, 2021, Judge Dan Polster of the U.S. District Court, Northern District of Ohio, Eastern Division, issued an order (ECF Docket Number 3814) ("MDL Fees Order") in the National Prescription Opiate Litigation (MDL No. 2804) "cap[ping] all applicable contingent fee agreements at 15%." Private counsel representing Plaintiff Subdivisions should seek its contingency fees and costs from the Attorney Fee Fund or Cost Funds under the Distributor Settlement Agreement and, if applicable, the Janssen Settlement Agreement.

A Plaintiff Subdivision may separately agree to use its share of the CA Subdivision Fund to pay for fees or costs incurred by its contingency-fee counsel ("State Back-Stop Agreement"), pursuant to Exhibit R, section I(R), of the Distributor Settlement Agreement and the MDL Fees Order, so long as such contingency fees do not exceed a total contingency fee of 15% of the total gross recovery of the Plaintiff Subdivision pursuant to the Distributor Settlement, and if applicable, the Janssen Settlement, inclusive of contingency fees from the national Attorney Fee Fund and this State Back-Stop Agreement. Before seeking fees or litigation costs and expenses from a State Back-Stop Agreement, private counsel representing Plaintiff Subdivisions must first seek contingency fees and costs from the Attorney Fee Fund or Cost Funds created under the Distributor Settlement Agreement and, if applicable, the Janssen Settlement Agreement. Further, private counsel may only seek reimbursement for litigation fees and costs that have not previously been reimbursed through prior settlements or judgments.

To effectuate a State Back-Stop Agreement pursuant to this section, an agreement in the form of Appendix 3 may be entered into by a Plaintiff Subdivision, private counsel, and the California Office of the Attorney General. The California Office of the Attorney General shall, upon the request of a Plaintiff Subdivision, execute any agreement executed by a Plaintiff Subdivision and its private counsel if it is in the form of Appendix 3. The California Office of the Attorney

General will also consider requests from Plaintiff Subdivisions to execute and enter into agreements presented in other forms.

For the avoidance of doubt, this agreement does not require a Plaintiff Subdivision to request or enter into a State Back-Stop Agreement, and no State Back-Stop Agreement shall impose any duty or obligation on the State of California or any of its agencies or officers, including without limitation the Attorney General.

5. State and Subdivision Reporting

- a) DHCS will prepare an annual written report regarding the State's use of funds from the settlement until those funds are fully expended and for one year thereafter. These reports will be made publicly available on the DHCS web site.
- b) Each CA Participating Subdivision that receives payments of funds from the settlement will prepare written reports at least annually regarding the use of those funds, until those funds are fully expended and for one year thereafter. These reports will also include a certification that all funds that the CA Participating Subdivision has received through the settlement have been used in compliance with the Distributor Settlement Agreement and this CA Distributor Allocation Agreement. The report will be in a form reasonably determined by DHCS. Prior to specifying the form of the report DHCS will confer with representatives of the Plaintiff Subdivisions.
- c) The State and all CA Participating Subdivisions receiving CA Abatement Accounts Funds will track all deposits and expenditures. Each such subdivision is responsible solely for the CA Abatement Accounts Funds it receives. A county is not responsible for oversight, reporting, or monitoring of CA Abatement Accounts Funds received by a city within that county that receives direct payment. Unless otherwise exempt, Subdivisions' expenditures and uses of CA Abatement Accounts Funds and other Settlement Funds will be subject to the normal budgetary and expenditure process of the Subdivision.
- d) Each Plaintiff Subdivision receiving CA Subdivision Funds will track all deposits and expenditures, as required by the Distributor Settlement Agreement and this CA Distributor Allocation Agreement. Among other things, Plaintiff Subdivisions using monies from the CA Subdivision Fund for purposes that do not qualify as Opioid Remediation must identify and include in their annual report, the amount and how such funds were used, including if used to pay attorneys' fees, investigation costs, or litigation costs. Pursuant to Section V(B)(2) of the Distributor Settlement Agreement, such information must also be reported to the Settlement Fund Administrator and the Distributors.
- e) In each year in which DHCS prepares an annual report DHCS will also host a meeting to discuss the annual report and the Opioid Remediation activities being carried out by the State and Participating Subdivisions.

6. Miscellaneous

- a) The State or any CA Participating Subdivision may bring a motion or action in the court where the State has filed its Consent Judgment to enforce the requirements of this CA Distributor Allocation Agreement. Before filing such a motion or action the State will meet and confer with any CA Participating Subdivision that is the subject of the anticipated motion or action, and vice versa.
- b) Except as provided in the Distributor Settlement Agreement, this CA Distributor Allocation Agreement is not enforceable by any party other than the State and the CA Participating Subdivisions. It does not confer any rights or remedies upon, and shall not be enforceable by, any third party.
- c) Except as provided in the CA Distributor Allocation Agreement, if any provision of this agreement or the application thereof to any person, entity, or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this agreement, or the application of such provision to persons, entities, or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, and each other provision of this agreement will be valid and enforceable to the fullest extent permitted by law.
- d) Except as provided in the Distributor Settlement Agreement, this agreement shall be governed by and interpreted in accordance with the laws of California.

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DISCLAIMER: The allocation percentages herein are estimates only and should not be relied on for decisions regarding legal rights, releases, waivers, or other decisions affecting current or potential legal claims. Percentages shown in the Plaintiff Subdivision Percentage column may change pursuant to Section 4.C. of the California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds—Distributor Settlement, whereas the percentages shown in the Abatement Percentage column should not change. Participating Subdivisions, underlying calculations, and the calculated allocation percentages are subject to change. Regarding the column herein entitled “Abatement Percentage,” pursuant to Section 4.B.e., the State of California will receive the Local Allocation share of any payment to the Settlement Fund that is attributable to a county or city that is eligible to become a CA Participating Subdivision, but that has not, as of the date of that payment to the Settlement Fund, become a Participating Subdivision. Regarding the column herein entitled “Plaintiff Subdivision Percentage,” payments allocated to a Plaintiff Subdivision, which is not an Initial Participating Subdivision, will be re-allocated among the Plaintiff Subdivisions that are Initial Participating Subdivisions. Regarding the column herein entitled “Abatement Percentage,” the annotation of “100%” refers to one-hundred percent (100%) of the California Abatement Account Funds received, pursuant to Section 4.B. Regarding the column herein entitled “Plaintiff Subdivision Percentage,” the annotation of “100%” refers to one-hundred percent (100%) of the California Subdivision Funds received, pursuant to Section 4.C. Regarding the column herein entitled “Weighted Allocation Percentage,” the annotation of “100%” refers to one-hundred percent (100%) of the combined and weighted allocation of the Abatement Percentage and the Plaintiff Subdivision Percentage.

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			100.000%	100.000%	100.000%
Participating Subdivision Classification	Participating Subdivision	County	Abatement Percentage	Plaintiff Subdivision Percentage	Weighted Allocation Percentage
County	<i>Alameda County</i>	Alameda	2.332%	2.853%	2.4237952%
City	Alameda	Alameda	0.069%		0.0570162%
City	Albany	Alameda	0.013%		0.0107768%
City	Berkeley	Alameda	0.152%		0.1249656%
City	Dublin	Alameda	0.033%	0.040%	0.0338810%
City	Emeryville	Alameda	0.023%		0.0185765%
City	Fremont	Alameda	0.108%		0.0888576%
City	Hayward	Alameda	0.117%		0.0966218%
City	Livermore	Alameda	0.054%		0.0446740%
City	Newark	Alameda	0.026%		0.0217626%
City	Oakland	Alameda	0.486%	0.595%	0.5055601%
City	Piedmont	Alameda	0.014%		0.0114064%
City	Pleasanton	Alameda	0.067%		0.0554547%
City	San Leandro	Alameda	0.039%		0.0321267%
City	Union City	Alameda	0.043%		0.0352484%
County	<i>Amador County</i>	Amador	0.226%	0.277%	0.2349885%
County	<i>Butte County</i>	Butte	1.615%	1.975%	1.6783178%
City	Chico	Butte	0.216%	0.264%	0.2246499%
City	Oroville	Butte	0.079%		0.0646595%
County	<i>Calaveras County</i>	Calaveras	0.226%	0.277%	0.2351644%
County	<i>Colusa County</i>	Colusa	0.059%		0.0489221%
County	<i>Contra Costa County</i>	Contra Costa	2.102%	2.571%	2.1844585%
City	Antioch	Contra Costa	0.037%		0.0301879%
City	Brentwood	Contra Costa	0.026%		0.0215339%
City	Clayton	Contra Costa	0.002%		0.0018060%
City	Concord	Contra Costa	0.055%		0.0456676%
City	Danville	Contra Costa	0.010%		0.0082255%
City	El Cerrito	Contra Costa	0.023%		0.0189024%
City	Hercules	Contra Costa	0.010%		0.0078273%

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Participating Subdivision Classification	Participating Subdivision	County	Abatement Percentage	Plaintiff Subdivision Percentage	Weighted Allocation Percentage
City	Lafayette	Contra Costa	0.006%		0.0046030%
City	Martinez	Contra Costa	0.012%		0.0098593%
City	Moraga	Contra Costa	0.004%		0.0031007%
City	Oakley	Contra Costa	0.010%		0.0079416%
City	Orinda	Contra Costa	0.005%		0.0038157%
City	Pinole	Contra Costa	0.013%		0.0110909%
City	Pittsburg	Contra Costa	0.053%		0.0436369%
City	Pleasant Hill	Contra Costa	0.013%		0.0106309%
City	Richmond	Contra Costa	0.146%		0.1201444%
City	San Pablo	Contra Costa	0.018%		0.0148843%
City	San Ramon	Contra Costa	0.021%		0.0176459%
City	Walnut Creek	Contra Costa	0.026%		0.0212132%
County	<i>Del Norte County</i>	Del Norte	0.114%	0.140%	0.1189608%
County	<i>El Dorado County</i>	El Dorado	0.768%	0.939%	0.7980034%
City	Placerville	El Dorado	0.015%		0.0127642%
City	South Lake Tahoe	El Dorado	0.081%		0.0665456%
County	<i>Fresno County</i>	Fresno	1.895%	2.318%	1.9693410%
City	Clovis	Fresno	0.065%		0.0536211%
City	Coalinga	Fresno	0.012%		0.0098554%
City	Fresno	Fresno	0.397%		0.3270605%
City	Kerman	Fresno	0.005%		0.0042534%
City	Kingsburg	Fresno	0.008%		0.0066167%
City	Mendota	Fresno	0.002%		0.0019387%
City	Orange Cove	Fresno	0.004%		0.0035607%
City	Parlier	Fresno	0.008%		0.0069755%
City	Reedley	Fresno	0.012%		0.0098804%
City	Sanger	Fresno	0.018%		0.0146135%
City	Selma	Fresno	0.015%		0.0127537%
County	<i>Glenn County</i>	Glenn	0.107%	0.131%	0.1116978%
County	<i>Humboldt County</i>	Humboldt	1.030%	1.260%	1.0703185%

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Participating Subdivision Classification	Participating Subdivision	County	Abatement Percentage	Plaintiff Subdivision Percentage	Weighted Allocation Percentage
City	Arcata	Humboldt	0.054%		0.0447660%
City	Eureka	Humboldt	0.117%	0.143%	0.1216284%
City	Fortuna	Humboldt	0.032%		0.0266837%
County	Imperial County	Imperial	0.258%	0.315%	0.2679006%
City	Brawley	Imperial	0.011%		0.0087986%
City	Calexico	Imperial	0.019%		0.0152799%
City	El Centro	Imperial	0.158%		0.1302522%
City	Imperial	Imperial	0.006%		0.0048791%
County	Inyo County	Inyo	0.073%	0.089%	0.0754413%
County	Kern County	Kern	2.517%	3.079%	2.6159145%
City	Arvin	Kern	0.006%		0.0046425%
City	Bakersfield	Kern	0.212%		0.1747198%
City	California City	Kern	0.009%		0.0070820%
City	Delano	Kern	0.030%		0.0249316%
City	McFarland	Kern	0.003%		0.0025644%
City	Ridgecrest	Kern	0.015%		0.0120938%
City	Shafter	Kern	0.013%		0.0103417%
City	Tehachapi	Kern	0.009%		0.0073580%
City	Wasco	Kern	0.008%		0.0069861%
County	Kings County	Kings	0.293%		0.2413469%
City	Avenal	Kings	0.007%		0.0056335%
City	Corcoran	Kings	0.013%		0.0107032%
City	Hanford	Kings	0.027%		0.0226038%
City	Lemoore	Kings	0.016%		0.0131900%
County	Lake County	Lake	0.795%		0.6545389%
City	Clearlake	Lake	0.041%	0.050%	0.0426253%
City	Lakeport	Lake	0.021%	0.026%	0.0222964%
County	Lassen County	Lassen	0.319%	0.391%	0.3320610%
City	Susanville	Lassen	0.027%		0.0219295%
County	Los Angeles County	Los Angeles	13.896%	16.999%	14.4437559%

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Participating Subdivision Classification	Participating Subdivision	County	Abatement Percentage	Plaintiff Subdivision Percentage	Weighted Allcation Percentage
City	Agoura Hills	Los Angeles	0.005%		0.0040024%
City	Alhambra	Los Angeles	0.042%		0.0343309%
City	Arcadia	Los Angeles	0.033%		0.0267718%
City	Artesia	Los Angeles	0.001%		0.0005100%
City	Azusa	Los Angeles	0.026%		0.0210857%
City	Baldwin Park	Los Angeles	0.027%		0.0218520%
City	Bell	Los Angeles	0.008%		0.0068783%
City	Bellflower	Los Angeles	0.002%		0.0014485%
City	Bell Gardens	Los Angeles	0.014%		0.0114301%
City	Beverly Hills	Los Angeles	0.065%		0.0534897%
City	Burbank	Los Angeles	0.100%		0.0823132%
City	Calabasas	Los Angeles	0.006%		0.0048948%
City	Carson	Los Angeles	0.019%		0.0159805%
City	Cerritos	Los Angeles	0.005%		0.0039682%
City	Claremont	Los Angeles	0.010%		0.0082584%
City	Commerce	Los Angeles	0.000%		0.0002971%
City	Compton	Los Angeles	0.044%		0.0361882%
City	Covina	Los Angeles	0.028%		0.0229127%
City	Cudahy	Los Angeles	0.001%		0.0006020%
City	Culver City	Los Angeles	0.055%		0.0449894%
City	Diamond Bar	Los Angeles	0.001%		0.0006993%
City	Downey	Los Angeles	0.052%		0.0429994%
City	Duarte	Los Angeles	0.003%		0.0027261%
City	El Monte	Los Angeles	0.031%	0.038%	0.0318985%
City	El Segundo	Los Angeles	0.033%		0.0268020%
City	Gardena	Los Angeles	0.034%		0.0278088%
City	Glendale	Los Angeles	0.166%		0.1366586%
City	Glendora	Los Angeles	0.016%		0.0134411%
City	Hawaiian Gardens	Los Angeles	0.005%		0.0040549%
City	Hawthorne	Los Angeles	0.050%		0.0407833%

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Participating Subdivision Classification	Participating Subdivision	County	Abatement Percentage	Plaintiff Subdivision Percentage	Weighted Allcation Percentage
City	Hermosa Beach	Los Angeles	0.018%		0.0145307%
City	Huntington Park	Los Angeles	0.023%		0.0190667%
City	Inglewood	Los Angeles	0.059%		0.0489195%
City	La Cañada Flintridge	Los Angeles	0.003%		0.0025565%
City	Lakewood	Los Angeles	0.005%		0.0039971%
City	La Mirada	Los Angeles	0.010%		0.0081572%
City	Lancaster	Los Angeles	0.045%		0.0369689%
City	La Puente	Los Angeles	0.002%		0.0012999%
City	La Verne	Los Angeles	0.024%		0.0194190%
City	Lawndale	Los Angeles	0.002%		0.0017731%
City	Lomita	Los Angeles	0.004%		0.0031940%
City	Long Beach	Los Angeles	0.439%		0.3614151%
City	Los Angeles	Los Angeles	2.715%	3.321%	2.8218811%
City	Lynwood	Los Angeles	0.016%		0.0134345%
City	Malibu	Los Angeles	0.002%		0.0019269%
City	Manhattan Beach	Los Angeles	0.032%		0.0260686%
City	Maywood	Los Angeles	0.004%		0.0035528%
City	Monrovia	Los Angeles	0.031%		0.0254455%
City	Montebello	Los Angeles	0.030%		0.0250670%
City	Monterey Park	Los Angeles	0.031%		0.0256677%
City	Norwalk	Los Angeles	0.031%		0.0258228%
City	Palmdale	Los Angeles	0.046%		0.0375827%
City	Palos Verdes Estates	Los Angeles	0.006%		0.0053102%
City	Paramount	Los Angeles	0.011%		0.0091483%
City	Pasadena	Los Angeles	0.146%		0.1200524%
City	Pico Rivera	Los Angeles	0.022%		0.0183333%
City	Pomona	Los Angeles	0.111%		0.0911933%
City	Rancho Palos Verdes	Los Angeles	0.002%		0.0012645%
City	Redondo Beach	Los Angeles	0.062%		0.0506992%
City	Rosemead	Los Angeles	0.003%		0.0028260%

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Participating Subdivision Classification	Participating Subdivision	County	Abatement Percentage	Plaintiff Subdivision Percentage	Weighted Allocation Percentage
City	San Dimas	Los Angeles	0.003%		0.0022016%
City	San Fernando	Los Angeles	0.013%		0.0104837%
City	San Gabriel	Los Angeles	0.018%		0.0147726%
City	San Marino	Los Angeles	0.009%		0.0073791%
City	Santa Clarita	Los Angeles	0.022%		0.0178167%
City	Santa Fe Springs	Los Angeles	0.031%		0.0257531%
City	Santa Monica	Los Angeles	0.158%		0.1298513%
City	Sierra Madre	Los Angeles	0.006%		0.0048646%
City	Signal Hill	Los Angeles	0.010%		0.0084884%
City	South El Monte	Los Angeles	0.005%		0.0039603%
City	South Gate	Los Angeles	0.020%		0.0166272%
City	South Pasadena	Los Angeles	0.012%		0.0095334%
City	Temple City	Los Angeles	0.005%		0.0039498%
City	Torrance	Los Angeles	0.112%		0.0919820%
City	Walnut	Los Angeles	0.006%		0.0047305%
City	West Covina	Los Angeles	0.049%		0.0404521%
City	West Hollywood	Los Angeles	0.013%		0.0108517%
City	Whittier	Los Angeles	0.032%		0.0260581%
County	Madera County	Madera	0.349%	0.427%	0.3630669%
City	Chowchilla	Madera	0.012%		0.0097332%
City	Madera	Madera	0.039%		0.0318441%
County	Marin County	Marin	0.564%	0.690%	0.5861325%
City	Larkspur	Marin	0.015%		0.0124697%
City	Mill Valley	Marin	0.020%		0.0168401%
City	Novato	Marin	0.028%		0.0229824%
City	San Anselmo	Marin	0.009%		0.0078062%
City	San Rafael	Marin	0.089%		0.0729823%
County	Mariposa County	Mariposa	0.084%	0.103%	0.0876131%
County	Mendocino County	Mendocino	0.439%	0.536%	0.4558394%
City	Ukiah	Mendocino	0.039%		0.0317153%

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Participating Subdivision Classification	Participating Subdivision	County	Abatement Percentage	Plaintiff Subdivision Percentage	Weighted Allocation Percentage
County	<i>Merced County</i>	Merced	0.551%	0.674%	0.5724262%
City	Atwater	Merced	0.024%		0.0195846%
City	Livingston	Merced	0.006%		0.0045873%
City	Los Banos	Merced	0.020%		0.0165142%
City	Merced	Merced	0.061%		0.0500762%
County	<i>Modoc County</i>	Modoc	0.065%	0.080%	0.0678250%
County	<i>Mono County</i>	Mono	0.023%	0.029%	0.0242606%
County	<i>Monterey County</i>	Monterey	0.908%	1.111%	0.9437083%
City	Greenfield	Monterey	0.006%		0.0050552%
City	King City	Monterey	0.005%		0.0037355%
City	Marina	Monterey	0.017%		0.0144098%
City	Monterey	Monterey	0.041%		0.0336540%
City	Pacific Grove	Monterey	0.009%		0.0074842%
City	Salinas	Monterey	0.094%		0.0776576%
City	Seaside	Monterey	0.023%		0.0191772%
City	Soledad	Monterey	0.007%		0.0060870%
County	<i>Napa County</i>	Napa	0.288%	0.352%	0.2994325%
City	American Canyon	Napa	0.017%		0.0136869%
City	Napa	Napa	0.078%		0.0642783%
County	<i>Nevada County</i>	Nevada	0.441%	0.539%	0.4579827%
City	Grass Valley	Nevada	0.024%		0.0197805%
City	Truckee	Nevada	0.003%		0.0023843%
County	<i>Orange County</i>	Orange	4.364%	5.339%	4.5363576%
City	Aliso Viejo	Orange	0.014%		0.0113841%
City	Anaheim	Orange	0.554%	0.678%	0.5759282%
City	Brea	Orange	0.086%		0.0708897%
City	Buena Park	Orange	0.087%		0.0714352%
City	Costa Mesa	Orange	0.124%	0.152%	0.1288366%
City	Cypress	Orange	0.033%		0.0271937%
City	Dana Point	Orange	0.001%		0.0005560%

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Participating Subdivision Classification	Participating Subdivision	County	Abatement Percentage	Plaintiff Subdivision Percentage	Weighted Allocation Percentage
City	Fountain Valley	Orange	0.055%		0.0455980%
City	Fullerton	Orange	0.137%	0.168%	0.1425744%
City	Garden Grove	Orange	0.213%		0.1752482%
City	Huntington Beach	Orange	0.247%	0.302%	0.2568420%
City	Irvine	Orange	0.139%	0.170%	0.1442350%
City	Laguna Beach	Orange	0.047%	0.058%	0.0493043%
City	Laguna Hills	Orange	0.014%		0.0115457%
City	Laguna Niguel	Orange	0.001%		0.0007071%
City	Laguna Woods	Orange	0.001%		0.0006546%
City	La Habra	Orange	0.060%	0.073%	0.0621049%
City	Lake Forest	Orange	0.012%		0.0101249%
City	La Palma	Orange	0.012%		0.0095439%
City	Los Alamitos	Orange	0.008%		0.0069190%
City	Mission Viejo	Orange	0.014%		0.0117560%
City	Newport Beach	Orange	0.179%		0.1470134%
City	Orange	Orange	0.150%		0.1231320%
City	Placentia	Orange	0.029%	0.035%	0.0298912%
City	Rancho Santa Margarita	Orange	0.001%		0.0006296%
City	San Clemente	Orange	0.008%	0.010%	0.0086083%
City	San Juan Capistrano	Orange	0.008%		0.0065510%
City	Santa Ana	Orange	0.502%	0.614%	0.5213866%
City	Seal Beach	Orange	0.020%		0.0165891%
City	Stanton	Orange	0.035%		0.0291955%
City	Tustin	Orange	0.073%		0.0600341%
City	Westminster	Orange	0.104%	0.127%	0.1082721%
City	Yorba Linda	Orange	0.044%		0.0362223%
County	Placer County	Placer	1.045%	1.278%	1.0861002%
City	Auburn	Placer	0.017%		0.0141114%
City	Lincoln	Placer	0.031%		0.0255599%
City	Rocklin	Placer	0.076%		0.0625485%

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Participating Subdivision Classification	Participating Subdivision	County	Abatement Percentage	Plaintiff Subdivision Percentage	Weighted Allocation Percentage
City	Roseville	Placer	0.196%		0.1616559%
County	Plumas County	Plumas	0.205%	0.251%	0.2128729%
County	Riverside County	Riverside	4.534%	5.547%	4.7128296%
City	Banning	Riverside	0.017%		0.0143848%
City	Beaumont	Riverside	0.021%		0.0171135%
City	Blythe	Riverside	0.012%		0.0096714%
City	Canyon Lake	Riverside	0.000%		0.0001761%
City	Cathedral City	Riverside	0.067%		0.0553614%
City	Coachella	Riverside	0.021%		0.0173054%
City	Corona	Riverside	0.147%		0.1207083%
City	Desert Hot Springs	Riverside	0.024%		0.0200433%
City	Eastvale	Riverside	0.000%		0.0002747%
City	Hemet	Riverside	0.051%		0.0421792%
City	Indio	Riverside	0.056%		0.0457794%
City	Jurupa Valley	Riverside	0.001%		0.0008991%
City	Lake Elsinore	Riverside	0.021%		0.0172949%
City	La Quinta	Riverside	0.063%		0.0516732%
City	Meniffee	Riverside	0.032%		0.0260909%
City	Moreno Valley	Riverside	0.137%		0.1130348%
City	Murrieta	Riverside	0.048%	0.059%	0.0497423%
City	Norco	Riverside	0.016%		0.0134542%
City	Palm Desert	Riverside	0.083%		0.0682465%
City	Palm Springs	Riverside	0.076%		0.0629862%
City	Perris	Riverside	0.009%		0.0076774%
City	Rancho Mirage	Riverside	0.052%		0.0431098%
City	Riverside	Riverside	0.268%		0.2206279%
City	San Jacinto	Riverside	0.010%		0.0085936%
City	Temecula	Riverside	0.022%		0.0180086%
City	Wildomar	Riverside	0.008%		0.0062500%
County	Sacramento County	Sacramento	3.797%	4.645%	3.9465887%

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Participating Subdivision Classification	Participating Subdivision	County	Abatement Percentage	Plaintiff Subdivision Percentage	Weighted Allocation Percentage
City	Citrus Heights	Sacramento	0.057%		0.0465312%
City	Elk Grove	Sacramento	0.130%		0.1066994%
City	Folsom	Sacramento	0.108%		0.0890850%
City	Galt	Sacramento	0.017%		0.0143704%
City	Rancho Cordova	Sacramento	0.008%		0.0067679%
City	Sacramento	Sacramento	0.721%	0.882%	0.7496530%
County	San Benito County	San Benito	0.106%	0.130%	0.1101417%
City	Hollister	San Benito	0.027%		0.0225355%
County	San Bernardino County	San Bernardino	3.259%	3.987%	3.3878124%
City	Adelanto	San Bernardino	0.008%		0.0066640%
City	Apple Valley	San Bernardino	0.025%		0.0207360%
City	Barstow	San Bernardino	0.015%		0.0122056%
City	Chino	San Bernardino	0.064%		0.0525893%
City	Chino Hills	San Bernardino	0.001%		0.0006388%
City	Colton	San Bernardino	0.031%		0.0253443%
City	Fontana	San Bernardino	0.112%		0.0920543%
City	Grand Terrace	San Bernardino	0.006%		0.0051051%
City	Hesperia	San Bernardino	0.035%		0.0291522%
City	Highland	San Bernardino	0.004%		0.0029061%
City	Loma Linda	San Bernardino	0.009%		0.0071188%
City	Montclair	San Bernardino	0.039%		0.0322108%
City	Ontario	San Bernardino	0.179%		0.1472934%
City	Rancho Cucamonga	San Bernardino	0.084%		0.0689431%
City	Redlands	San Bernardino	0.057%		0.0469150%
City	Rialto	San Bernardino	0.073%		0.0603206%
City	San Bernardino	San Bernardino	0.178%		0.1461880%
City	Twentynine Palms	San Bernardino	0.002%		0.0012605%
City	Upland	San Bernardino	0.052%		0.0424460%
City	Victorville	San Bernardino	0.033%		0.0269400%
City	Yucaipa	San Bernardino	0.016%		0.0128772%

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Participating Subdivision Classification	Participating Subdivision	County	Abatement Percentage	Plaintiff Subdivision Percentage	Weighted Allocation Percentage
City	Yucca Valley	San Bernardino	0.003%		0.0021228%
County	<i>San Diego County</i>	San Diego	5.706%	6.980%	5.9309748%
City	Carlsbad	San Diego	0.128%		0.1050485%
City	Chula Vista	San Diego	0.189%	0.231%	0.1961456%
City	Coronado	San Diego	0.044%		0.0359095%
City	El Cajon	San Diego	0.113%		0.0933582%
City	Encinitas	San Diego	0.061%	0.074%	0.0630289%
City	Escondido	San Diego	0.145%		0.1192204%
City	Imperial Beach	San Diego	0.014%		0.0118283%
City	La Mesa	San Diego	0.055%	0.068%	0.0575593%
City	Lemon Grove	San Diego	0.022%		0.0183911%
City	National City	San Diego	0.080%		0.0656808%
City	Oceanside	San Diego	0.213%		0.1753428%
City	Poway	San Diego	0.062%		0.0511040%
City	San Diego	San Diego	1.975%	2.416%	2.0531169%
City	San Marcos	San Diego	0.089%		0.0733897%
City	Santee	San Diego	0.033%		0.0268401%
City	Solana Beach	San Diego	0.017%		0.0138564%
City	Vista	San Diego	0.052%		0.0425144%
Consolidated	<i>San Francisco</i>	San Francisco	3.026%	3.702%	3.1457169%
County	<i>San Joaquin County</i>	San Joaquin	1.680%	2.055%	1.7460399%
City	Lathrop	San Joaquin	0.009%		0.0075394%
City	Lodi	San Joaquin	0.053%		0.0439484%
City	Manteca	San Joaquin	0.054%		0.0443454%
City	Ripon	San Joaquin	0.013%		0.0104219%
City	Stockton	San Joaquin	0.313%	0.383%	0.3256176%
City	Tracy	San Joaquin	0.084%		0.0692047%
County	<i>San Luis Obispo County</i>	San Luis Obispo	0.816%	0.999%	0.8484126%
City	Arroyo Grande	San Luis Obispo	0.024%		0.0199053%
City	Atascadero	San Luis Obispo	0.029%		0.0240680%

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Participating Subdivision Classification	Participating Subdivision	County	Abatement Percentage	Plaintiff Subdivision Percentage	Weighted Allocation Percentage
City	El Paso de Robles (Paso Robles)	San Luis Obispo	0.043%		0.0353456%
City	Grover Beach	San Luis Obispo	0.017%		0.0137881%
City	Morro Bay	San Luis Obispo	0.020%		0.0160922%
City	San Luis Obispo	San Luis Obispo	0.077%		0.0637841%
County	<i>San Mateo County</i>	San Mateo	1.074%	1.313%	1.1159599%
City	Belmont	San Mateo	0.021%		0.0169860%
City	Burlingame	San Mateo	0.019%		0.0152537%
City	Daly City	San Mateo	0.044%		0.0363880%
City	East Palo Alto	San Mateo	0.013%		0.0103982%
City	Foster City	San Mateo	0.020%		0.0166101%
City	Half Moon Bay	San Mateo	0.004%		0.0031638%
City	Hillsborough	San Mateo	0.013%		0.0110029%
City	Menlo Park	San Mateo	0.015%		0.0126209%
City	Millbrae	San Mateo	0.013%		0.0105836%
City	Pacifica	San Mateo	0.016%		0.0130625%
City	Redwood City	San Mateo	0.056%		0.0463511%
City	San Bruno	San Mateo	0.021%		0.0172161%
City	San Carlos	San Mateo	0.013%		0.0108885%
City	San Mateo	San Mateo	0.052%		0.0425841%
City	South San Francisco	San Mateo	0.043%		0.0353943%
County	<i>Santa Barbara County</i>	Santa Barbara	1.132%	1.385%	1.1768968%
City	Carpinteria	Santa Barbara	0.001%		0.0008938%
City	Goleta	Santa Barbara	0.004%		0.0028969%
City	Lompoc	Santa Barbara	0.047%		0.0389379%
City	Santa Barbara	Santa Barbara	0.122%		0.1004559%
City	Santa Maria	Santa Barbara	0.058%		0.0479179%
County	<i>Santa Clara County</i>	Santa Clara	2.404%	2.941%	2.4987553%
City	Campbell	Santa Clara	0.014%		0.0112566%
City	Cupertino	Santa Clara	0.008%		0.0066824%
City	Gilroy	Santa Clara	0.025%		0.0202891%

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Participating Subdivision Classification	Participating Subdivision	County	Abatement Percentage	Plaintiff Subdivision Percentage	Weighted Allocation Percentage
City	Los Altos	Santa Clara	0.013%		0.0103338%
City	Los Gatos	Santa Clara	0.013%		0.0103220%
City	Milpitas	Santa Clara	0.036%		0.0298120%
City	Morgan Hill	Santa Clara	0.015%		0.0124619%
City	Mountain View	Santa Clara	0.041%		0.0334608%
City	Palo Alto	Santa Clara	0.039%		0.0323080%
City	San Jose	Santa Clara	0.294%	0.360%	0.3054960%
City	Santa Clara	Santa Clara	0.067%		0.0549723%
City	Saratoga	Santa Clara	0.004%		0.0034161%
City	Sunnyvale	Santa Clara	0.053%		0.0434069%
County	<i>Santa Cruz County</i>	Santa Cruz	0.783%	0.957%	0.8135396%
City	Capitola	Santa Cruz	0.020%		0.0168191%
City	Santa Cruz	Santa Cruz	0.143%		0.1180348%
City	Scotts Valley	Santa Cruz	0.015%		0.0126525%
City	Watsonville	Santa Cruz	0.063%		0.0520136%
County	<i>Shasta County</i>	Shasta	1.095%	1.339%	1.1380191%
City	Anderson	Shasta	0.024%		0.0198896%
City	Redding	Shasta	0.284%		0.2334841%
City	Shasta Lake	Shasta	0.004%		0.0031993%
County	<i>Siskiyou County</i>	Siskiyou	0.228%	0.279%	0.2373393%
County	<i>Solano County</i>	Solano	0.760%		0.6260795%
City	Benicia	Solano	0.031%		0.0253903%
City	Dixon	Solano	0.016%		0.0130849%
City	Fairfield	Solano	0.109%		0.0897317%
City	Suisun City	Solano	0.021%		0.0176183%
City	Vacaville	Solano	0.119%		0.0976497%
City	Vallejo	Solano	0.167%		0.1373644%
County	<i>Sonoma County</i>	Sonoma	1.218%	1.490%	1.2661290%
City	Healdsburg	Sonoma	0.032%		0.0266929%
City	Petaluma	Sonoma	0.081%		0.0667507%

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Participating Subdivision Classification	Participating Subdivision	County	Abatement Percentage	Plaintiff Subdivision Percentage	Weighted Allocation Percentage
City	Rohnert Park	Sonoma	0.041%		0.0340759%
City	Santa Rosa	Sonoma	0.184%		0.1519070%
City	Sonoma	Sonoma	0.022%		0.0183438%
City	Windsor	Sonoma	0.016%		0.0129298%
County	Stanislaus County	Stanislaus	1.722%		1.4182273%
City	Ceres	Stanislaus	0.041%		0.0340260%
City	Modesto	Stanislaus	0.217%		0.1788759%
City	Newman	Stanislaus	0.006%		0.0046964%
City	Oakdale	Stanislaus	0.018%		0.0145531%
City	Patterson	Stanislaus	0.015%		0.0126590%
City	Riverbank	Stanislaus	0.010%		0.0085699%
City	Turlock	Stanislaus	0.065%		0.0531966%
County	Sutter County	Sutter	0.306%	0.374%	0.3179548%
City	Yuba City	Sutter	0.074%		0.0606242%
County	Tehama County	Tehama	0.213%	0.261%	0.2216654%
City	Red Bluff	Tehama	0.014%		0.0117771%
County	Trinity County	Trinity	0.082%	0.101%	0.0855476%
County	Tulare County	Tulare	0.809%	0.990%	0.8410949%
City	Dinuba	Tulare	0.014%		0.0116929%
City	Exeter	Tulare	0.004%		0.0032479%
City	Farmersville	Tulare	0.003%		0.0027879%
City	Lindsay	Tulare	0.007%		0.0057111%
City	Porterville	Tulare	0.021%		0.0171845%
City	Tulare	Tulare	0.037%		0.0302273%
City	Visalia	Tulare	0.066%		0.0545872%
County	Tuolumne County	Tuolumne	0.486%	0.594%	0.5047621%
County	Ventura County	Ventura	2.192%	2.681%	2.2781201%
City	Camarillo	Ventura	0.002%		0.0012815%
City	Fillmore	Ventura	0.002%		0.0020294%
City	Moorpark	Ventura	0.008%		0.0067337%

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Participating Subdivision Classification	Participating Subdivision	County	Abatement Percentage	Plaintiff Subdivision Percentage	Weighted Allocation Percentage
City	Oxnard	Ventura	0.156%	0.190%	0.1617338%
City	Port Hueneme	Ventura	0.021%		0.0174145%
City	San Buenaventura (Ventura)	Ventura	0.085%		0.0702181%
City	Santa Paula	Ventura	0.014%		0.0119072%
City	Simi Valley	Ventura	0.065%		0.0533043%
City	Thousand Oaks	Ventura	0.022%		0.0179902%
County	<i>Yolo County</i>	Yolo	0.357%	0.437%	0.3713319%
City	Davis	Yolo	0.055%		0.0451747%
City	West Sacramento	Yolo	0.066%		0.0544321%
City	Woodland	Yolo	0.058%		0.0477904%
County	<i>Yuba County</i>	Yuba	0.214%	0.262%	0.2225679%
City	Marysville	Yuba	0.014%		0.0112079%

APPENDIX 2

Cost Reimbursement Procedure

1. Additional defined terms:

- a) *Costs* means the reasonable amounts paid for the attorney and other City Attorney and County Counsel staff time for individuals employed by a Plaintiff Subdivision at the contractual rate, inclusive of benefits and overhead, together with amounts paid for court reporters, experts, copying, electronic research, travel, vendors, and the like, which were paid or incurred (i) prior to July 21, 2021 in litigation against any Opioid Defendant and/or (ii) in negotiating and drafting this CA Distributor Allocation Agreement. Costs does not include attorneys' fees, costs, or expenses incurred by private contingency fee counsel. No part of the CA Abatement Accounts Fund will be used to reimburse Costs.
- b) *First Claims Date* means October 1, 2023 or when all applications for reimbursement of Costs, in whole or in part, from funds available under Section X and Exhibit R of the Distributor Settlement Agreement or Section XI and Exhibit R of the Janssen Settlement Agreement, have been finally determined under the provisions of those agreements, whichever comes first.
- c) *Special Master* means a retired judicial officer or former public lawyer, not presently employed or retained by a Plaintiff Subdivision, who will aggregate, review, and determine the reasonable Costs to be awarded to each Plaintiff Subdivision that submits a claim for reimbursement of Costs. The Special Master will be selected by a majority vote of the votes cast by Plaintiff Subdivisions, with each such subdivision having one vote.
- d) *Plaintiff Subdivision Committee* means the committee of Plaintiff Subdivisions that will review and approve the invoices submitted by the Special Master reflecting his or her reasonable time and expenses.

2. Cost Reimbursement to Plaintiff Subdivision

- a) Purpose. Substantial resources have been expended to hold Opioid Defendants accountable for creating and profiting from the opioid crisis, and this effort has been a significant catalyst in creating a National Opioid Settlement with Distributors, Johnson & Johnson, and others.
- b) Claims Procedure.
 - i. If a Plaintiff Subdivision is eligible to seek reimbursement of Costs, in whole or in part, from funds available under Section X or Exhibit R of the Distributor Settlement Agreement or Section XI or Exhibit R of the Janssen Settlement Agreement, it must first make a timely application for reimbursement from such funds. To allow sufficient time for determination of those applications, no claim for

Costs to the CA Subdivision Fund under this Agreement may be made before the First Claims Date.

- ii. A Plaintiff Subdivision that wishes to be reimbursed from the CA Subdivision Fund must submit a claim to the Special Master no later than forty-five (45) days after the First Claims Date. The Special Master will then compile and redistribute the aggregated claim totals for each Plaintiff Subdivision via email to representatives of all the Plaintiff Subdivisions. A claim for attorney and staff time must list, for each attorney or staff member included in the claim, the following information: name, title, total hours claimed, hourly rate (including, if sought, benefits and share of overhead), and narrative summarizing the general nature of the work performed by the attorney or staff member. For reimbursement of “hard” costs, the subdivision may aggregate across a category (e.g., total for travel costs). It is the intention of the Plaintiff Subdivisions that submission of documents related to reimbursement of Costs does not waive any attorney-client privilege or exemptions to the California Public Records Act.
- iii. The Special Master may request, at his or her sole option, additional documents or details to assist in the final award of Costs.
- iv. The Special Master will review claims for reasonableness and will notify each Plaintiff Subdivision of the final determination of its claim, and will provide a list of all final awards to all Plaintiff Subdivisions by email or, upon request, via First Class U.S. Mail. Any Plaintiff Subdivision may ask the Special Master to reconsider any final award within twenty-one (21) days. The Special Master will make a final determination on any such reconsideration request within thirty (30) days of receipt.
- v. Any decision of the Special Master is final and binding, and will be considered under the California Arbitration Act, Code of Civil Procedure section 1280 et seq. as a final arbitration award. Nothing in this agreement is intended to expand the scope of judicial review of the final award for errors of fact or law, and the Parties agree that they may only seek to vacate the award if clear and convincing evidence demonstrates one of the factors set forth in Code of Civil Procedure, section 1286.2, subdivision (a). Plaintiff Subdivisions will have fourteen (14) days after all final awards are made, together with any final determination of a request for reconsideration, to seek review in the Superior Court of California, pursuant to Code of Civil Procedure, section 1285, where the State has filed its Consent Judgment.
- vi. The Special Master will prepare a report of Costs that includes his or her fees and expenses at least ninety (90) days before the Payment Date for each Annual Payment. The Special Master’s preparation of a report of Costs does not discharge a Plaintiff Subdivision’s reporting requirement under Section V.B.2 of the Distributor Agreement.
- vii. A member of the Plaintiff Subdivision Committee, which is a CA Participating Subdivision, will submit to the Settlement Fund Administrator and the Distributors a

report of the fees and expenses incurred by the Special Master pursuant to Section V.B.2 of the Distributor Agreement.

c) Claims Priority and Limitation.

- i. The Special Master will submit invoices for compensation of reasonable fees and expenses to the Plaintiff Subdivision Committee no later than ninety (90) days prior to the Payment Date for each Annual Payment. The Plaintiff Subdivision Committee will promptly review and, if reasonable, approve the Special Master's invoice for compensation. The Plaintiff Subdivision Committee will submit approved invoices to the Settlement Fund Administrator for payment. The Special Master's approved invoices have priority and will be paid first from the CA Subdivision Fund before any award of Costs, subject to the limitation in Section 2.c.v below.
- ii. Final Awards of Costs that do not exceed seventy-five thousand dollars (\$75,000.00) will be paid next in priority after the Special Master's approved invoices.
- iii. Final Awards of Costs in excess of seventy-five thousand dollars (\$75,000.00) will be paid proportionally from the funds remaining in that year's Annual Payment.
- iv. Any claim for Costs that is not paid in full will be allocated against the next year's distribution from the CA Subdivision Fund, until all approved claims for Costs are paid in full.
- v. In no event will more than 50% of the total CA Subdivision Fund received in any year be used to pay Costs or the Special Master's approved invoices.
- vi. In no event shall more than \$28 million of the total CA Subdivision Funds paid pursuant to the Distributor Settlement Agreement and the Janssen Settlement Agreement be used to pay Costs.

d) Collateral Source Payments and Third-Party Settlement.

- i. In the event a Plaintiff Subdivision is awarded compensation, in whole or in part, by any source of funds created as a result of litigation against an Opioid Defendant for its reasonable Costs, it will reduce its claim for Costs from the CA Subdivision Fund by that amount. If a Plaintiff Subdivision has already received a final award of Costs from the CA Subdivision Fund, it will repay the fund up to the prior award of Costs via a payment to the Settlement Fund Administrator or notify the Settlement Fund Administrator that its allocation from the next and subsequent Annual Payments should be reduced accordingly. If the Plaintiff Subdivision is repaying any prior award of Costs, that repayment will occur as soon as is feasible after the Plaintiff Subdivision's receipt of Cost funds from the collateral source, but no more than 90 days after its receipt from the collateral source. The Settlement Fund Administrator will add any repaid Costs to the CA Subdivision Fund.

- ii. In the event a Plaintiff Subdivision reaches a monetary settlement or compromise against any Opioid Defendant outside of the National Opioid Settlement, the monetary portion of such settlement, net of fees paid to outside contingency fee counsel and of funds earmarked strictly for abatement, will be credited against its Costs and the subdivision will be ineligible to recover those credited Costs from the CA Subdivision Fund. Plaintiff Subdivisions negotiating monetary settlements or compromises against any Opioid Defendant outside of the National Opioid Settlement will negotiate for funds to repay any Costs it previously received from the CA Subdivision Fund or for Costs it otherwise might be eligible to claim from the CA Subdivision Fund. If such a settlement is paid after all final approved claims for Costs by all Plaintiff Subdivisions are satisfied in full, the settling subdivision will reimburse the CA Subdivision Fund in that amount by making payment to the Settlement Fund Administrator to add to the CA Subdivision Fund in a manner consistent with the repayments described in section 2.d.i above.

APPENDIX 3

CALIFORNIA-SUBDIVISION BACKSTOP AGREEMENT

On August 6, 2021, Judge Polster of the US District Court for the Northern District of Ohio issued an Order (the Order), docket number 3814, in In Re National Prescription Opiate Litigation, MDL 2804, addressing contingent attorney fee contracts between political subdivisions eligible to participate in the Distributors Settlement and their counsel.

In light of the Order, and at the request of [SUBDIVISION], the [SUBDIVISION], its counsel [COUNSEL], and the California Attorney General, on behalf of the State of California, are entering into this California-Subdivision Backstop Agreement (Backstop Agreement).

[SUBDIVISION] and [COUNSEL] intend this Backstop Agreement to constitute a State Back-Stop Agreement as that term is used in the Order and in Exhibit R (Agreement on Attorneys' Fees, Expenses and Costs) of the Distributor Settlement Agreement.

Pursuant to this Backstop Agreement, [SUBDIVISION] may, subject to the limitations of the Distributor Settlement Agreement and CA Distributor Allocation Agreement, as well as any other limitations imposed by law, use funds that it receives from the Distributor Settlement CA Subdivision Fund to pay a contingent fee to [COUNSEL]. Any such payment from [SUBDIVISION] to [COUNSEL], together with any contingency fees that [COUNSEL] may receive from the national Attorney Fee Fund, will not exceed a total contingency fee of [PERCENTAGE NOT TO EXCEED 15%] of the total gross recovery of [SUBDIVISION] from the Distributors Settlement.

[COUNSEL] certify that they first sought fees and costs from the Attorney Fee Fund created under the Distributor Settlement Agreement before seeking or accepting payment under this backstop agreement. [COUNSEL] further certify that they are not seeking and will not accept payment under this backstop agreement of any litigation fees or costs that have been reimbursed through prior settlements or judgments.

The Attorney General is executing this agreement solely because the definition of "State Back-Stop Agreement" in Exhibit R of the Distributor Settlement Agreement requires such agreements to be between "a Settling State" and private counsel for a participating subdivision. Neither the California Attorney General nor the State of California have any obligations under this Backstop Agreement, and this Backstop Agreement does not require the payment of any state funds to [SUBDIVISION], [COUNSEL], or any other party.

[DATE]

[SUBDIVISION SIGNATURE BLOCK]

[DATE]

[COUNSEL SIGNATURE BLOCK]

[DATE]

[ATTORNEY GENERAL SIGNATURE BLOCK]

The undersigned, Morro Bay city, ACKNOWLEDGES acceptance of this Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds - Distributor Settlement is a requirement to be an Initial Participating Subdivision in the Distributor Settlement and ACCEPTS this Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds - Distributor Settlement.

I swear under penalty of perjury that I have all necessary power and authorization to execute this Election and Release on behalf of the Governmental Entity.

Signature: _____

Name: _____

Title: _____

Date: _____



**Proposed California State-Subdivision Agreement
Regarding Distribution and Use of
Settlement Funds – Janssen Settlement**

1. Introduction

Pursuant to the Janssen Settlement Agreement, dated as of July 21, 2021, and any revision thereto (the “Janssen Settlement Agreement”), including Section VI and Exhibit O, the State of California proposes this agreement (the “CA Janssen Allocation Agreement”) to govern the allocation, distribution, and use of Settlement Fund payments made to California pursuant to Sections V and VI of the Janssen Settlement Agreement.¹ For the avoidance of doubt, this agreement does not apply to payments made pursuant to Sections X or XI of the Janssen Settlement Agreement.

Pursuant to Exhibit O, Paragraph 4, of the Janssen Settlement Agreement, acceptance of this CA Janssen Allocation Agreement is a requirement to be an Initial Participating Subdivision.

2. Definitions

- a) *CA Participating Subdivision* means a Participating Subdivision that is also (a) a Plaintiff Subdivision and/or (b) a Primary Subdivision with a population equal to or greater than 10,000. For the avoidance of doubt, eligible CA Participating Subdivisions are those California subdivisions listed in Exhibit C (excluding Litigating Special Districts) and/or Exhibit I to the Janssen Settlement Agreement.
- b) *Distributor Settlement Agreement* means the Distributor Settlement Agreement dated July 21, 2021, and any revision thereto.
- c) *CA Litigating Special District* means a Litigating Special District located in California. CA Litigating Special Districts include Downey Unified School District, Elk Grove Unified School District, Kern High School District, Montezuma Fire Protection District (located in Stockton, California), Santa Barbara San Luis Obispo Regional Health Authority, Inland Empire Health Plan, Health Plan of San Joaquin, and LA Care Health Plan.
- d) *Plaintiff Subdivision* means a Subdivision located in California, other than a CA Litigating Special District, that filed a lawsuit, on behalf of the Subdivision and/or through an official of the Subdivision on behalf of the People of the State of California, against one or more Opioid Defendants prior to October 1, 2020.
- e) *Opioid Defendant* means any defendant (including but not limited to Johnson & Johnson, Janssen Pharmaceuticals, Inc., Purdue Pharma L.P., Cardinal Health, Inc.,

¹ A parallel but separate agreement (the “CA Distributor Allocation Agreement”) will govern the allocation, distribution, and use of settlement fund payments under the Distributor Settlement Agreement. An eligible Subdivision may elect to participate in either the Distributor Settlement or the Janssen Settlement, or in both.

AmerisourceBergen Corporation, and McKesson Corporation) named in a lawsuit seeking damages, abatement, or other remedies related to or caused by the opioid public health crisis in any lawsuit brought by any state or local government on or before October 1, 2020.

3. General Terms

This agreement is subject to the requirements of the Janssen Settlement Agreement, as well as applicable law, and the Janssen Settlement Agreement governs over any inconsistent provision of this CA Janssen Allocation Agreement. Terms used in this CA Janssen Allocation Agreement have the same meaning as in the Janssen Settlement Agreement unless otherwise defined herein.

Pursuant to Section VI(D)(1) of the Janssen Settlement Agreement, (a) all Settlement Fund payments will be used for Opioid Remediation, except as allowed by Section VI(B)(2) of the Janssen Settlement Agreement; and (b) at least seventy percent (70%) of Settlement Fund payment amounts will be used solely for future Opioid Remediation.

4. State Allocation

The Settlement Fund payments to California,² pursuant to the Janssen Settlement Agreement, shall be allocated as follows: 15% to the State Fund; 70% to the Abatement Accounts Fund; and 15% to the Subdivision Fund. For the avoidance of doubt, all funds allocated to California from the Settlement Fund shall be combined pursuant to this CA Janssen Allocation Agreement, and 15% of that total shall be allocated to the State of California (the “State of California Allocation”), 70% to the California Abatement Accounts Fund (“CA Abatement Accounts Fund”), and 15% to the California Subdivision Fund (“CA Subdivision Fund”).

A. State of California Allocation

Fifteen percent of the total Settlement Fund payments will be allocated to the State and used by the State for future Opioid Remediation.

B. CA Abatement Accounts Fund

i. Allocation of CA Abatement Accounts Funds

- a) Seventy percent of the total Settlement Fund payments will be allocated to the CA Abatement Accounts Fund. The funds in the CA Abatement Accounts Fund will be allocated based on the allocation model developed in connection with the proposed negotiating class in the National Prescription Opiate Litigation (MDL No. 2804), as adjusted to reflect only those cities and counties that are eligible, based on population or litigation status, to become a CA Participating Subdivision. The percentage from the CA

² For purposes of clarity, use of the term “California” refers to the geographic territory of California and the state and its local governments therein. The term “State” or “State of California” refers to the State of California as a governmental unit.

Abatement Accounts Fund allocated to each CA Participating Subdivision is set forth in Appendix 1 in the column entitled abatement percentage (the “Local Allocation”). For the avoidance of doubt, CA Litigating Special Districts and California towns, cities, and counties with a population less than 10,000 are not eligible to receive an allocation of CA Abatement Accounts Funds.

- b) A CA Participating Subdivision that is a county, or a city and county, will be allocated its Local Allocation share as of the date on which it becomes a Participating Subdivision, and will receive payments as provided in the Janssen Settlement Agreement.
- c) A CA Participating Subdivision that is a city will be allocated its Local Allocation share as of the date on which it becomes a Participating Subdivision. The Local Allocation share for a city that is a CA Participating Subdivision will be paid to the county in which the city is located, rather than to the city, so long as: (a) the county is a CA Participating Subdivision, and (b) the city has not advised the Settlement Fund Administrator that it requests direct payment at least 60 days prior to a Payment Date. A Local Allocation share allocated to a city but paid to a county is not required to be spent exclusively for abatement activities in that city, but will become part of the county’s share of the CA Abatement Accounts Funds, which will be used in accordance with Section 4.B.ii (Use of CA Abatement Accounts Funds) and reported on in accordance with Section 4.B.iii (CA Abatement Accounts Fund Oversight).
- d) A city within a county that is a CA Participating Subdivision may opt in or out of direct payment at any time, and it may also elect direct payment of only a portion of its share, with the remainder going to the county, by providing notice to the Settlement Fund Administrator at least 60 days prior to a Payment Date. For purposes of this CA Janssen Allocation Agreement, the Cities of Los Angeles, Oakland, San Diego, San Jose and Eureka will be deemed to have elected direct payment if they become Participating Subdivisions.
- e) The State will receive the Local Allocation share of any payment to the Settlement Fund that is attributable to a county or city that is eligible to become a CA Participating Subdivision, but that has not, as of the date of that payment to the Settlement Fund, become a Participating Subdivision.
- f) Funds received by a CA Participating Subdivision, and not expended or encumbered within five years of receipt and in accordance with the Janssen Settlement Agreement and this CA Janssen Allocation Agreement shall be transferred to the State; provided however, that CA Participating Subdivisions have seven years to expend or encumber CA Abatement Accounts Funds designated to support capital outlay projects before they must be transferred to the State. This provision shall not apply to the Cost Reimbursement Funds, which shall be controlled by Appendix 2.

ii. Use of CA Abatement Accounts Funds

- a) The CA Abatement Accounts Funds will be used for future Opioid Remediation in one or more of the areas described in the List of Opioid Remediation Uses, which is Exhibit E to the Janssen Settlement Agreement.
- b) In addition to this requirement, no less than 50% of the funds received by a CA Participating Subdivision from the Abatement Accounts Fund in each calendar year will be used for one or more of the following High Impact Abatement Activities:
 - (1) the provision of matching funds or operating costs for substance use disorder facilities within the Behavioral Health Continuum Infrastructure Program;
 - (2) creating new or expanded Substance Use Disorder (“SUD”) treatment infrastructure;
 - (3) addressing the needs of communities of color and vulnerable populations (including sheltered and unsheltered homeless populations) that are disproportionately impacted by SUD;
 - (4) diversion of people with SUD from the justice system into treatment, including by providing training and resources to first and early responders (sworn and non-sworn) and implementing best practices for outreach, diversion and deflection, employability, restorative justice, and harm reduction; and/or
 - (5) interventions to prevent drug addiction in vulnerable youth.
- c) The California Department of Health Care Services (“DHCS”) may add to this list (but not delete from it) by designating additional High Impact Abatement Activities. DHCS will make reasonable efforts to consult with stakeholders, including the CA Participating Subdivisions, before adding additional High Impact Abatement Activities to this list.
- d) For the avoidance of doubt, and subject to the requirements of the Janssen Settlement Agreement and applicable law, CA Participating Subdivisions may form agreements or ventures, or otherwise work in collaboration with, federal, state, local, tribal or private sector entities in pursuing Opioid Remediation activities funded from the CA Abatement Accounts Fund. Further, provided that all CA Abatement Accounts Funds are used for Opioid Remediation consistent with the Janssen Settlement Agreement and this CA Janssen Allocation Agreement, a county and any cities or towns within the county may agree to reallocate their respective shares of the CA Abatement Accounts Funds among themselves, provided that any direct distribution may only be to a CA Participating Subdivision and any CA Participating Subdivision must agree to their share being reallocated.

iii. CA Abatement Accounts Fund Oversight

- a) Pursuant to Section 5 below, CA Participating Subdivisions receiving settlement funds must prepare and file reports annually regarding the use of those funds. DHCS may regularly review the reports prepared by CA Participating Subdivisions about the use of CA Abatement Accounts Funds for compliance with the Janssen Settlement Agreement and this CA Janssen Allocation Agreement.
- b) If DHCS determines that a CA Participating Subdivision's use of CA Abatement Accounts Funds is inconsistent with the Janssen Settlement Agreement or this CA Janssen Allocation Agreement, whether through review of reports or information from any other sources, DHCS shall send a request to meet and confer with the CA Participating Subdivision. The parties shall meet and confer in an effort to resolve the concern.
- c) If the parties are unable to reach a resolution, DHCS may conduct an audit of the Subdivision's use of the CA Abatement Accounts Funds within one year of the request to meet and confer, unless the parties mutually agree in writing to extend the meet and confer time frame.
- d) If the concern still cannot be resolved, the State may bring a motion or action in the court where the State has filed its Consent Judgment to resolve the concern or otherwise enforce the requirements of the Janssen Settlement Agreement or this CA Janssen Allocation Agreement. However, in no case shall any audit be conducted, or motion be brought, as to a specific expenditure of funds, more than five years after the date on which the expenditure of the funds was reported to DHCS, in accordance with this agreement.
- e) Notwithstanding the foregoing, this Agreement does not limit the statutory or constitutional authority of any state or local agency or official to conduct audits, investigations, or other oversight activities, or to pursue administrative, civil, or criminal enforcement actions.

C. CA Subdivision Fund

- i. Fifteen percent of the total Settlement Fund payments will be allocated to the CA Subdivision Fund. All funds in the CA Subdivision Fund will be allocated among the Plaintiff Subdivisions that are Initial Participating Subdivisions. The funds will be used, subject to any limits imposed by the Janssen Settlement Agreement and this CA Janssen Allocation Agreement, to fund future Opioid Remediation and reimburse past opioid-related expenses, which may include fees and expenses related to litigation, and to pay the reasonable fees and expenses of the Special Master as set forth in Appendix 2.

The CA Subdivision Funds will be allocated as follows:

- a) First, funds in the CA Subdivision Fund shall be used to pay the Special Master's reasonable fees and expenses in accordance with the procedures and limitations set forth in Appendix 2 to this document;
- b) Second, funds will be allocated to Plaintiff Subdivisions that are Initial Participating Subdivisions that have been awarded Costs, as defined by and in accordance with the procedures and limitations set forth in Appendix 2 to this document.
- c) Funds remaining in the CA Subdivision Fund, which shall consist of no less than 50% of the total CA Subdivision Fund received in any year pursuant to Appendix 2, Section 2.c.v, will be distributed to Plaintiff Subdivisions that are Initial Participating Subdivisions, in relative proportion to the Local Allocation. These funds shall be used to fund future opioid-related projects and to reimburse past opioid-related expenses, which may include fees and expenses related to litigation against any Opioid Defendant.

D. Provision for State Back-Stop Agreement

On August 6, 2021, Judge Dan Polster of the U.S. District Court, Northern District of Ohio, Eastern Division, issued an order (ECF Docket Number 3814) ("MDL Fees Order") in the National Prescription Opiate Litigation (MDL No. 2804) "cap[ping] all applicable contingent fee agreements at 15%." Private counsel representing Plaintiff Subdivisions should seek its contingency fees and costs from the Attorney Fee Fund or Cost Funds under the Janssen Settlement Agreement and, if applicable, the Distributor Settlement Agreement.

A Plaintiff Subdivision may separately agree to use its share of the CA Subdivision Fund to pay for fees or costs incurred by its contingency-fee counsel ("State Back-Stop Agreement"), pursuant to Exhibit R, section I(R), of the Janssen Settlement Agreement and the MDL Fees Order, so long as such contingency fees do not exceed a total contingency fee of 15% of the total gross recovery of the Plaintiff Subdivision pursuant to the Janssen Settlement, and if applicable, the Distributor Settlement, inclusive of contingency fees from the national Attorney Fee Fund and this State Back-Stop Agreement. Before seeking fees or litigation costs and expenses from a State Back-Stop Agreement, private counsel representing Plaintiff Subdivisions must first seek contingency fees and costs from the Attorney Fee Fund or Cost Funds created under the Janssen Settlement Agreement and, if applicable, the Distributor Settlement Agreement. Further, private counsel may only seek reimbursement for litigation fees and costs that have not previously been reimbursed through prior settlements or judgments.

To effectuate a State Back-Stop Agreement pursuant to this section, an agreement in the form of Appendix 3 may be entered into by a Plaintiff Subdivision, private counsel, and the California Office of the Attorney General. The California Office of the Attorney General shall, upon the request of a Plaintiff Subdivision, execute any agreement executed by a Plaintiff Subdivision and its private counsel if it is in the form of Appendix 3. The California Office of the Attorney

General will also consider requests from Plaintiff Subdivisions to execute and enter into agreements presented in other forms.

For the avoidance of doubt, this agreement does not require a Plaintiff Subdivision to request or enter into a State Back-Stop Agreement, and no State Back-Stop Agreement shall impose any duty or obligation on the State of California or any of its agencies or officers, including without limitation the Attorney General.

5. State and Subdivision Reporting

- a) DHCS will prepare an annual written report regarding the State's use of funds from the settlement until those funds are fully expended and for one year thereafter. These reports will be made publicly available on the DHCS web site.
- b) Each CA Participating Subdivision that receives payments of funds from the settlement will prepare written reports at least annually regarding the use of those funds, until those funds are fully expended and for one year thereafter. These reports will also include a certification that all funds that the CA Participating Subdivision has received through the settlement have been used in compliance with the Janssen Settlement Agreement and this CA Janssen Allocation Agreement. The report will be in a form reasonably determined by DHCS. Prior to specifying the form of the report DHCS will confer with representatives of the Plaintiff Subdivisions.
- c) The State and all CA Participating Subdivisions receiving CA Abatement Accounts Funds will track all deposits and expenditures. Each such subdivision is responsible solely for the CA Abatement Accounts Funds it receives. A county is not responsible for oversight, reporting, or monitoring of CA Abatement Accounts Funds received by a city within that county that receives direct payment. Unless otherwise exempt, Subdivisions' expenditures and uses of CA Abatement Accounts Funds and other Settlement Funds will be subject to the normal budgetary and expenditure process of the Subdivision.
- d) Each Plaintiff Subdivision receiving CA Subdivision Funds will track all deposits and expenditures, as required by the Janssen Settlement Agreement and this CA Janssen Allocation Agreement. Among other things, Plaintiff Subdivisions using monies from the CA Subdivision Fund for purposes that do not qualify as Opioid Remediation must identify and include in their annual report, the amount and how such funds were used, including if used to pay attorneys' fees, investigation costs, or litigation costs. Pursuant to Section VI(B)(2) of the Janssen Settlement Agreement, such information must also be reported to the Settlement Fund Administrator and Janssen.
- e) In each year in which DHCS prepares an annual report DHCS will also host a meeting to discuss the annual report and the Opioid Remediation activities being carried out by the State and Participating Subdivisions.

6. Miscellaneous

- a) The State or any CA Participating Subdivision may bring a motion or action in the court where the State has filed its Consent Judgment to enforce the requirements of this CA Janssen Allocation Agreement. Before filing such a motion or action the State will meet and confer with any CA Participating Subdivision that is the subject of the anticipated motion or action, and vice versa.
- b) Except as provided in the Janssen Settlement Agreement, this CA Janssen Allocation Agreement is not enforceable by any party other than the State and the CA Participating Subdivisions. It does not confer any rights or remedies upon, and shall not be enforceable by, any third party.
- c) Except as provided in the CA Janssen Allocation Agreement, if any provision of this agreement or the application thereof to any person, entity, or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this agreement, or the application of such provision to persons, entities, or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, and each other provision of this agreement will be valid and enforceable to the fullest extent permitted by law.
- d) Except as provided in the Janssen Settlement Agreement, this agreement shall be governed by and interpreted in accordance with the laws of California.

APPENDIX 1

DISCLAIMER: The allocation percentages herein are estimates only and should not be relied on for decisions regarding legal rights, releases, waivers, or other decisions affecting current or potential legal claims. Percentages shown in the Plaintiff Subdivision Percentage column may change pursuant to Section 4.C. of the California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds—Janssen Settlement, whereas the percentages shown in the Abatement Percentage column should not change. Participating Subdivisions, underlying calculations, and the calculated allocation percentages are subject to change. Regarding the column herein entitled “Abatement Percentage,” pursuant to Section 4.B.e., the State of California will receive the Local Allocation share of any payment to the Settlement Fund that is attributable to a county or city that is eligible to become a CA Participating Subdivision, but that has not, as of the date of that payment to the Settlement Fund, become a Participating Subdivision. Regarding the column herein entitled “Plaintiff Subdivision Percentage,” payments allocated to a Plaintiff Subdivision, which is not an Initial Participating Subdivision, will be re-allocated among the Plaintiff Subdivisions that are Initial Participating Subdivisions. Regarding the column herein entitled “Abatement Percentage,” the annotation of “100%” refers to one-hundred percent (100%) of the California Abatement Account Funds received, pursuant to Section 4.B. Regarding the column herein entitled “Plaintiff Subdivision Percentage,” the annotation of “100%” refers to one-hundred percent (100%) of the California Subdivision Funds received, pursuant to Section 4.C. Regarding the column herein entitled “Weighted Allocation Percentage,” the annotation of “100%” refers to one-hundred percent (100%) of the combined and weighted allocation of the Abatement Percentage and the Plaintiff Subdivision Percentage.

APPENDIX 1

			100.000%	100.000%	100.000%
Participating Subdivision Classification	Participating Subdivision	County	Abatement Percentage	Plaintiff Subdivision Percentage	Weighted Allcation Percentage
County	<i>Alameda County</i>	Alameda	2.332%	2.853%	2.4237952%
City	Alameda	Alameda	0.069%		0.0570162%
City	Albany	Alameda	0.013%		0.0107768%
City	Berkeley	Alameda	0.152%		0.1249656%
City	Dublin	Alameda	0.033%	0.040%	0.0338810%
City	Emeryville	Alameda	0.023%		0.0185765%
City	Fremont	Alameda	0.108%		0.0888576%
City	Hayward	Alameda	0.117%		0.0966218%
City	Livermore	Alameda	0.054%		0.0446740%
City	Newark	Alameda	0.026%		0.0217626%
City	Oakland	Alameda	0.486%	0.595%	0.5055601%
City	Piedmont	Alameda	0.014%		0.0114064%
City	Pleasanton	Alameda	0.067%		0.0554547%
City	San Leandro	Alameda	0.039%		0.0321267%
City	Union City	Alameda	0.043%		0.0352484%
County	<i>Amador County</i>	Amador	0.226%	0.277%	0.2349885%
County	<i>Butte County</i>	Butte	1.615%	1.975%	1.6783178%
City	Chico	Butte	0.216%	0.264%	0.2246499%
City	Oroville	Butte	0.079%		0.0646595%
County	<i>Calaveras County</i>	Calaveras	0.226%	0.277%	0.2351644%
County	<i>Colusa County</i>	Colusa	0.059%		0.0489221%
County	<i>Contra Costa County</i>	Contra Costa	2.102%	2.571%	2.1844585%
City	Antioch	Contra Costa	0.037%		0.0301879%
City	Brentwood	Contra Costa	0.026%		0.0215339%
City	Clayton	Contra Costa	0.002%		0.0018060%
City	Concord	Contra Costa	0.055%		0.0456676%
City	Danville	Contra Costa	0.010%		0.0082255%
City	El Cerrito	Contra Costa	0.023%		0.0189024%
City	Hercules	Contra Costa	0.010%		0.0078273%

APPENDIX 1

Participating Subdivision Classification	Participating Subdivision	County	Abatement Percentage	Plaintiff Subdivision Percentage	Weighted Allocation Percentage
City	Lafayette	Contra Costa	0.006%		0.0046030%
City	Martinez	Contra Costa	0.012%		0.0098593%
City	Moraga	Contra Costa	0.004%		0.0031007%
City	Oakley	Contra Costa	0.010%		0.0079416%
City	Orinda	Contra Costa	0.005%		0.0038157%
City	Pinole	Contra Costa	0.013%		0.0110909%
City	Pittsburg	Contra Costa	0.053%		0.0436369%
City	Pleasant Hill	Contra Costa	0.013%		0.0106309%
City	Richmond	Contra Costa	0.146%		0.1201444%
City	San Pablo	Contra Costa	0.018%		0.0148843%
City	San Ramon	Contra Costa	0.021%		0.0176459%
City	Walnut Creek	Contra Costa	0.026%		0.0212132%
County	<i>Del Norte County</i>	Del Norte	0.114%	0.140%	0.1189608%
County	<i>El Dorado County</i>	El Dorado	0.768%	0.939%	0.7980034%
City	Placerville	El Dorado	0.015%		0.0127642%
City	South Lake Tahoe	El Dorado	0.081%		0.0665456%
County	<i>Fresno County</i>	Fresno	1.895%	2.318%	1.9693410%
City	Clovis	Fresno	0.065%		0.0536211%
City	Coalinga	Fresno	0.012%		0.0098554%
City	Fresno	Fresno	0.397%		0.3270605%
City	Kerman	Fresno	0.005%		0.0042534%
City	Kingsburg	Fresno	0.008%		0.0066167%
City	Mendota	Fresno	0.002%		0.0019387%
City	Orange Cove	Fresno	0.004%		0.0035607%
City	Parlier	Fresno	0.008%		0.0069755%
City	Reedley	Fresno	0.012%		0.0098804%
City	Sanger	Fresno	0.018%		0.0146135%
City	Selma	Fresno	0.015%		0.0127537%
County	<i>Glenn County</i>	Glenn	0.107%	0.131%	0.1116978%
County	<i>Humboldt County</i>	Humboldt	1.030%	1.260%	1.0703185%

APPENDIX 1

Participating Subdivision Classification	Participating Subdivision	County	Abatement Percentage	Plaintiff Subdivision Percentage	Weighted Allocation Percentage
City	Arcata	Humboldt	0.054%		0.0447660%
City	Eureka	Humboldt	0.117%	0.143%	0.1216284%
City	Fortuna	Humboldt	0.032%		0.0266837%
County	<i>Imperial County</i>	Imperial	0.258%	0.315%	0.2679006%
City	Brawley	Imperial	0.011%		0.0087986%
City	Calexico	Imperial	0.019%		0.0152799%
City	El Centro	Imperial	0.158%		0.1302522%
City	Imperial	Imperial	0.006%		0.0048791%
County	<i>Inyo County</i>	Inyo	0.073%	0.089%	0.0754413%
County	<i>Kern County</i>	Kern	2.517%	3.079%	2.6159145%
City	Arvin	Kern	0.006%		0.0046425%
City	Bakersfield	Kern	0.212%		0.1747198%
City	California City	Kern	0.009%		0.0070820%
City	Delano	Kern	0.030%		0.0249316%
City	McFarland	Kern	0.003%		0.0025644%
City	Ridgecrest	Kern	0.015%		0.0120938%
City	Shafter	Kern	0.013%		0.0103417%
City	Tehachapi	Kern	0.009%		0.0073580%
City	Wasco	Kern	0.008%		0.0069861%
County	<i>Kings County</i>	Kings	0.293%		0.2413469%
City	Avenal	Kings	0.007%		0.0056335%
City	Corcoran	Kings	0.013%		0.0107032%
City	Hanford	Kings	0.027%		0.0226038%
City	Lemoore	Kings	0.016%		0.0131900%
County	<i>Lake County</i>	Lake	0.795%		0.6545389%
City	Clearlake	Lake	0.041%	0.050%	0.0426253%
City	Lakeport	Lake	0.021%	0.026%	0.0222964%
County	<i>Lassen County</i>	Lassen	0.319%	0.391%	0.3320610%
City	Susanville	Lassen	0.027%		0.0219295%
County	<i>Los Angeles County</i>	Los Angeles	13.896%	16.999%	14.4437559%

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Participating Subdivision Classification	Participating Subdivision	County	Abatement Percentage	Plaintiff Subdivision Percentage	Weighted Allocation Percentage
City	Agoura Hills	Los Angeles	0.005%		0.0040024%
City	Alhambra	Los Angeles	0.042%		0.0343309%
City	Arcadia	Los Angeles	0.033%		0.0267718%
City	Artesia	Los Angeles	0.001%		0.0005100%
City	Azusa	Los Angeles	0.026%		0.0210857%
City	Baldwin Park	Los Angeles	0.027%		0.0218520%
City	Bell	Los Angeles	0.008%		0.0068783%
City	Bellflower	Los Angeles	0.002%		0.0014485%
City	Bell Gardens	Los Angeles	0.014%		0.0114301%
City	Beverly Hills	Los Angeles	0.065%		0.0534897%
City	Burbank	Los Angeles	0.100%		0.0823132%
City	Calabasas	Los Angeles	0.006%		0.0048948%
City	Carson	Los Angeles	0.019%		0.0159805%
City	Cerritos	Los Angeles	0.005%		0.0039682%
City	Claremont	Los Angeles	0.010%		0.0082584%
City	Commerce	Los Angeles	0.000%		0.0002971%
City	Compton	Los Angeles	0.044%		0.0361882%
City	Covina	Los Angeles	0.028%		0.0229127%
City	Cudahy	Los Angeles	0.001%		0.0006020%
City	Culver City	Los Angeles	0.055%		0.0449894%
City	Diamond Bar	Los Angeles	0.001%		0.0006993%
City	Downey	Los Angeles	0.052%		0.0429994%
City	Duarte	Los Angeles	0.003%		0.0027261%
City	El Monte	Los Angeles	0.031%	0.038%	0.0318985%
City	El Segundo	Los Angeles	0.033%		0.0268020%
City	Gardena	Los Angeles	0.034%		0.0278088%
City	Glendale	Los Angeles	0.166%		0.1366586%
City	Glendora	Los Angeles	0.016%		0.0134411%
City	Hawaiian Gardens	Los Angeles	0.005%		0.0040549%
City	Hawthorne	Los Angeles	0.050%		0.0407833%

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Participating Subdivision Classification	Participating Subdivision	County	Abatement Percentage	Plaintiff Subdivision Percentage	Weighted Allcation Percentage
City	Hermosa Beach	Los Angeles	0.018%		0.0145307%
City	Huntington Park	Los Angeles	0.023%		0.0190667%
City	Inglewood	Los Angeles	0.059%		0.0489195%
City	La Cañada Flintridge	Los Angeles	0.003%		0.0025565%
City	Lakewood	Los Angeles	0.005%		0.0039971%
City	La Mirada	Los Angeles	0.010%		0.0081572%
City	Lancaster	Los Angeles	0.045%		0.0369689%
City	La Puente	Los Angeles	0.002%		0.0012999%
City	La Verne	Los Angeles	0.024%		0.0194190%
City	Lawndale	Los Angeles	0.002%		0.0017731%
City	Lomita	Los Angeles	0.004%		0.0031940%
City	Long Beach	Los Angeles	0.439%		0.3614151%
City	Los Angeles	Los Angeles	2.715%	3.321%	2.8218811%
City	Lynwood	Los Angeles	0.016%		0.0134345%
City	Malibu	Los Angeles	0.002%		0.0019269%
City	Manhattan Beach	Los Angeles	0.032%		0.0260686%
City	Maywood	Los Angeles	0.004%		0.0035528%
City	Monrovia	Los Angeles	0.031%		0.0254455%
City	Montebello	Los Angeles	0.030%		0.0250670%
City	Monterey Park	Los Angeles	0.031%		0.0256677%
City	Norwalk	Los Angeles	0.031%		0.0258228%
City	Palmdale	Los Angeles	0.046%		0.0375827%
City	Palos Verdes Estates	Los Angeles	0.006%		0.0053102%
City	Paramount	Los Angeles	0.011%		0.0091483%
City	Pasadena	Los Angeles	0.146%		0.1200524%
City	Pico Rivera	Los Angeles	0.022%		0.0183333%
City	Pomona	Los Angeles	0.111%		0.0911933%
City	Rancho Palos Verdes	Los Angeles	0.002%		0.0012645%
City	Redondo Beach	Los Angeles	0.062%		0.0506992%
City	Rosemead	Los Angeles	0.003%		0.0028260%

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Participating Subdivision Classification	Participating Subdivision	County	Abatement Percentage	Plaintiff Subdivision Percentage	Weighted Allocation Percentage
City	San Dimas	Los Angeles	0.003%		0.0022016%
City	San Fernando	Los Angeles	0.013%		0.0104837%
City	San Gabriel	Los Angeles	0.018%		0.0147726%
City	San Marino	Los Angeles	0.009%		0.0073791%
City	Santa Clarita	Los Angeles	0.022%		0.0178167%
City	Santa Fe Springs	Los Angeles	0.031%		0.0257531%
City	Santa Monica	Los Angeles	0.158%		0.1298513%
City	Sierra Madre	Los Angeles	0.006%		0.0048646%
City	Signal Hill	Los Angeles	0.010%		0.0084884%
City	South El Monte	Los Angeles	0.005%		0.0039603%
City	South Gate	Los Angeles	0.020%		0.0166272%
City	South Pasadena	Los Angeles	0.012%		0.0095334%
City	Temple City	Los Angeles	0.005%		0.0039498%
City	Torrance	Los Angeles	0.112%		0.0919820%
City	Walnut	Los Angeles	0.006%		0.0047305%
City	West Covina	Los Angeles	0.049%		0.0404521%
City	West Hollywood	Los Angeles	0.013%		0.0108517%
City	Whittier	Los Angeles	0.032%		0.0260581%
County	Madera County	Madera	0.349%	0.427%	0.3630669%
City	Chowchilla	Madera	0.012%		0.0097332%
City	Madera	Madera	0.039%		0.0318441%
County	Marin County	Marin	0.564%	0.690%	0.5861325%
City	Larkspur	Marin	0.015%		0.0124697%
City	Mill Valley	Marin	0.020%		0.0168401%
City	Novato	Marin	0.028%		0.0229824%
City	San Anselmo	Marin	0.009%		0.0078062%
City	San Rafael	Marin	0.089%		0.0729823%
County	Mariposa County	Mariposa	0.084%	0.103%	0.0876131%
County	Mendocino County	Mendocino	0.439%	0.536%	0.4558394%
City	Ukiah	Mendocino	0.039%		0.0317153%

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Participating Subdivision Classification	Participating Subdivision	County	Abatement Percentage	Plaintiff Subdivision Percentage	Weighted Allocation Percentage
County	<i>Merced County</i>	Merced	0.551%	0.674%	0.5724262%
City	Atwater	Merced	0.024%		0.0195846%
City	Livingston	Merced	0.006%		0.0045873%
City	Los Banos	Merced	0.020%		0.0165142%
City	Merced	Merced	0.061%		0.0500762%
County	<i>Modoc County</i>	Modoc	0.065%	0.080%	0.0678250%
County	<i>Mono County</i>	Mono	0.023%	0.029%	0.0242606%
County	<i>Monterey County</i>	Monterey	0.908%	1.111%	0.9437083%
City	Greenfield	Monterey	0.006%		0.0050552%
City	King City	Monterey	0.005%		0.0037355%
City	Marina	Monterey	0.017%		0.0144098%
City	Monterey	Monterey	0.041%		0.0336540%
City	Pacific Grove	Monterey	0.009%		0.0074842%
City	Salinas	Monterey	0.094%		0.0776576%
City	Seaside	Monterey	0.023%		0.0191772%
City	Soledad	Monterey	0.007%		0.0060870%
County	<i>Napa County</i>	Napa	0.288%	0.352%	0.2994325%
City	American Canyon	Napa	0.017%		0.0136869%
City	Napa	Napa	0.078%		0.0642783%
County	<i>Nevada County</i>	Nevada	0.441%	0.539%	0.4579827%
City	Grass Valley	Nevada	0.024%		0.0197805%
City	Truckee	Nevada	0.003%		0.0023843%
County	<i>Orange County</i>	Orange	4.364%	5.339%	4.5363576%
City	Aliso Viejo	Orange	0.014%		0.0113841%
City	Anaheim	Orange	0.554%	0.678%	0.5759282%
City	Brea	Orange	0.086%		0.0708897%
City	Buena Park	Orange	0.087%		0.0714352%
City	Costa Mesa	Orange	0.124%	0.152%	0.1288366%
City	Cypress	Orange	0.033%		0.0271937%
City	Dana Point	Orange	0.001%		0.0005560%

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Participating Subdivision Classification	Participating Subdivision	County	Abatement Percentage	Plaintiff Subdivision Percentage	Weighted Allocation Percentage
City	Fountain Valley	Orange	0.055%		0.0455980%
City	Fullerton	Orange	0.137%	0.168%	0.1425744%
City	Garden Grove	Orange	0.213%		0.1752482%
City	Huntington Beach	Orange	0.247%	0.302%	0.2568420%
City	Irvine	Orange	0.139%	0.170%	0.1442350%
City	Laguna Beach	Orange	0.047%	0.058%	0.0493043%
City	Laguna Hills	Orange	0.014%		0.0115457%
City	Laguna Niguel	Orange	0.001%		0.0007071%
City	Laguna Woods	Orange	0.001%		0.0006546%
City	La Habra	Orange	0.060%	0.073%	0.0621049%
City	Lake Forest	Orange	0.012%		0.0101249%
City	La Palma	Orange	0.012%		0.0095439%
City	Los Alamitos	Orange	0.008%		0.0069190%
City	Mission Viejo	Orange	0.014%		0.0117560%
City	Newport Beach	Orange	0.179%		0.1470134%
City	Orange	Orange	0.150%		0.1231320%
City	Placentia	Orange	0.029%	0.035%	0.0298912%
City	Rancho Santa Margarita	Orange	0.001%		0.0006296%
City	San Clemente	Orange	0.008%	0.010%	0.0086083%
City	San Juan Capistrano	Orange	0.008%		0.0065510%
City	Santa Ana	Orange	0.502%	0.614%	0.5213866%
City	Seal Beach	Orange	0.020%		0.0165891%
City	Stanton	Orange	0.035%		0.0291955%
City	Tustin	Orange	0.073%		0.0600341%
City	Westminster	Orange	0.104%	0.127%	0.1082721%
City	Yorba Linda	Orange	0.044%		0.0362223%
County	Placer County	Placer	1.045%	1.278%	1.0861002%
City	Auburn	Placer	0.017%		0.0141114%
City	Lincoln	Placer	0.031%		0.0255599%
City	Rocklin	Placer	0.076%		0.0625485%

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Participating Subdivision Classification	Participating Subdivision	County	Abatement Percentage	Plaintiff Subdivision Percentage	Weighted Allocation Percentage
City	Roseville	Placer	0.196%		0.1616559%
County	<i>Plumas County</i>	Plumas	0.205%	0.251%	0.2128729%
County	<i>Riverside County</i>	Riverside	4.534%	5.547%	4.7128296%
City	Banning	Riverside	0.017%		0.0143848%
City	Beaumont	Riverside	0.021%		0.0171135%
City	Blythe	Riverside	0.012%		0.0096714%
City	Canyon Lake	Riverside	0.000%		0.0001761%
City	Cathedral City	Riverside	0.067%		0.0553614%
City	Coachella	Riverside	0.021%		0.0173054%
City	Corona	Riverside	0.147%		0.1207083%
City	Desert Hot Springs	Riverside	0.024%		0.0200433%
City	Eastvale	Riverside	0.000%		0.0002747%
City	Hemet	Riverside	0.051%		0.0421792%
City	Indio	Riverside	0.056%		0.0457794%
City	Jurupa Valley	Riverside	0.001%		0.0008991%
City	Lake Elsinore	Riverside	0.021%		0.0172949%
City	La Quinta	Riverside	0.063%		0.0516732%
City	Menifee	Riverside	0.032%		0.0260909%
City	Moreno Valley	Riverside	0.137%		0.1130348%
City	Murrieta	Riverside	0.048%	0.059%	0.0497423%
City	Norco	Riverside	0.016%		0.0134542%
City	Palm Desert	Riverside	0.083%		0.0682465%
City	Palm Springs	Riverside	0.076%		0.0629862%
City	Perris	Riverside	0.009%		0.0076774%
City	Rancho Mirage	Riverside	0.052%		0.0431098%
City	Riverside	Riverside	0.268%		0.2206279%
City	San Jacinto	Riverside	0.010%		0.0085936%
City	Temecula	Riverside	0.022%		0.0180086%
City	Wildomar	Riverside	0.008%		0.0062500%
County	<i>Sacramento County</i>	Sacramento	3.797%	4.645%	3.9465887%

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Participating Subdivision Classification	Participating Subdivision	County	Abatement Percentage	Plaintiff Subdivision Percentage	Weighted Allocation Percentage
City	Citrus Heights	Sacramento	0.057%		0.0465312%
City	Elk Grove	Sacramento	0.130%		0.1066994%
City	Folsom	Sacramento	0.108%		0.0890850%
City	Galt	Sacramento	0.017%		0.0143704%
City	Rancho Cordova	Sacramento	0.008%		0.0067679%
City	Sacramento	Sacramento	0.721%	0.882%	0.7496530%
County	San Benito County	San Benito	0.106%	0.130%	0.1101417%
City	Hollister	San Benito	0.027%		0.0225355%
County	San Bernardino County	San Bernardino	3.259%	3.987%	3.3878124%
City	Adelanto	San Bernardino	0.008%		0.0066640%
City	Apple Valley	San Bernardino	0.025%		0.0207360%
City	Barstow	San Bernardino	0.015%		0.0122056%
City	Chino	San Bernardino	0.064%		0.0525893%
City	Chino Hills	San Bernardino	0.001%		0.0006388%
City	Colton	San Bernardino	0.031%		0.0253443%
City	Fontana	San Bernardino	0.112%		0.0920543%
City	Grand Terrace	San Bernardino	0.006%		0.0051051%
City	Hesperia	San Bernardino	0.035%		0.0291522%
City	Highland	San Bernardino	0.004%		0.0029061%
City	Loma Linda	San Bernardino	0.009%		0.0071188%
City	Montclair	San Bernardino	0.039%		0.0322108%
City	Ontario	San Bernardino	0.179%		0.1472934%
City	Rancho Cucamonga	San Bernardino	0.084%		0.0689431%
City	Redlands	San Bernardino	0.057%		0.0469150%
City	Rialto	San Bernardino	0.073%		0.0603206%
City	San Bernardino	San Bernardino	0.178%		0.1461880%
City	Twentynine Palms	San Bernardino	0.002%		0.0012605%
City	Upland	San Bernardino	0.052%		0.0424460%
City	Victorville	San Bernardino	0.033%		0.0269400%
City	Yucaipa	San Bernardino	0.016%		0.0128772%

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Participating Subdivision Classification	Participating Subdivision	County	Abatement Percentage	Plaintiff Subdivision Percentage	Weighted Allocation Percentage
City	Yucca Valley	San Bernardino	0.003%		0.0021228%
County	<i>San Diego County</i>	San Diego	5.706%	6.980%	5.9309748%
City	Carlsbad	San Diego	0.128%		0.1050485%
City	Chula Vista	San Diego	0.189%	0.231%	0.1961456%
City	Coronado	San Diego	0.044%		0.0359095%
City	El Cajon	San Diego	0.113%		0.0933582%
City	Encinitas	San Diego	0.061%	0.074%	0.0630289%
City	Escondido	San Diego	0.145%		0.1192204%
City	Imperial Beach	San Diego	0.014%		0.0118283%
City	La Mesa	San Diego	0.055%	0.068%	0.0575593%
City	Lemon Grove	San Diego	0.022%		0.0183911%
City	National City	San Diego	0.080%		0.0656808%
City	Oceanside	San Diego	0.213%		0.1753428%
City	Poway	San Diego	0.062%		0.0511040%
City	San Diego	San Diego	1.975%	2.416%	2.0531169%
City	San Marcos	San Diego	0.089%		0.0733897%
City	Santee	San Diego	0.033%		0.0268401%
City	Solana Beach	San Diego	0.017%		0.0138564%
City	Vista	San Diego	0.052%		0.0425144%
Consolidated	<i>San Francisco</i>	San Francisco	3.026%	3.702%	3.1457169%
County	<i>San Joaquin County</i>	San Joaquin	1.680%	2.055%	1.7460399%
City	Lathrop	San Joaquin	0.009%		0.0075394%
City	Lodi	San Joaquin	0.053%		0.0439484%
City	Manteca	San Joaquin	0.054%		0.0443454%
City	Ripon	San Joaquin	0.013%		0.0104219%
City	Stockton	San Joaquin	0.313%	0.383%	0.3256176%
City	Tracy	San Joaquin	0.084%		0.0692047%
County	<i>San Luis Obispo County</i>	San Luis Obispo	0.816%	0.999%	0.8484126%
City	Arroyo Grande	San Luis Obispo	0.024%		0.0199053%
City	Atascadero	San Luis Obispo	0.029%		0.0240680%

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Participating Subdivision Classification	Participating Subdivision	County	Abatement Percentage	Plaintiff Subdivision Percentage	Weighted Allocation Percentage
City	El Paso de Robles (Paso Robles)	San Luis Obispo	0.043%		0.0353456%
City	Grover Beach	San Luis Obispo	0.017%		0.0137881%
City	Morro Bay	San Luis Obispo	0.020%		0.0160922%
City	San Luis Obispo	San Luis Obispo	0.077%		0.0637841%
County	<i>San Mateo County</i>	San Mateo	1.074%	1.313%	1.1159599%
City	Belmont	San Mateo	0.021%		0.0169860%
City	Burlingame	San Mateo	0.019%		0.0152537%
City	Daly City	San Mateo	0.044%		0.0363880%
City	East Palo Alto	San Mateo	0.013%		0.0103982%
City	Foster City	San Mateo	0.020%		0.0166101%
City	Half Moon Bay	San Mateo	0.004%		0.0031638%
City	Hillsborough	San Mateo	0.013%		0.0110029%
City	Menlo Park	San Mateo	0.015%		0.0126209%
City	Millbrae	San Mateo	0.013%		0.0105836%
City	Pacifica	San Mateo	0.016%		0.0130625%
City	Redwood City	San Mateo	0.056%		0.0463511%
City	San Bruno	San Mateo	0.021%		0.0172161%
City	San Carlos	San Mateo	0.013%		0.0108885%
City	San Mateo	San Mateo	0.052%		0.0425841%
City	South San Francisco	San Mateo	0.043%		0.0353943%
County	<i>Santa Barbara County</i>	Santa Barbara	1.132%	1.385%	1.1768968%
City	Carpinteria	Santa Barbara	0.001%		0.0008938%
City	Goleta	Santa Barbara	0.004%		0.0028969%
City	Lompoc	Santa Barbara	0.047%		0.0389379%
City	Santa Barbara	Santa Barbara	0.122%		0.1004559%
City	Santa Maria	Santa Barbara	0.058%		0.0479179%
County	<i>Santa Clara County</i>	Santa Clara	2.404%	2.941%	2.4987553%
City	Campbell	Santa Clara	0.014%		0.0112566%
City	Cupertino	Santa Clara	0.008%		0.0066824%
City	Gilroy	Santa Clara	0.025%		0.0202891%

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Participating Subdivision Classification	Participating Subdivision	County	Abatement Percentage	Plaintiff Subdivision Percentage	Weighted Allocation Percentage
City	Los Altos	Santa Clara	0.013%		0.0103338%
City	Los Gatos	Santa Clara	0.013%		0.0103220%
City	Milpitas	Santa Clara	0.036%		0.0298120%
City	Morgan Hill	Santa Clara	0.015%		0.0124619%
City	Mountain View	Santa Clara	0.041%		0.0334608%
City	Palo Alto	Santa Clara	0.039%		0.0323080%
City	San Jose	Santa Clara	0.294%	0.360%	0.3054960%
City	Santa Clara	Santa Clara	0.067%		0.0549723%
City	Saratoga	Santa Clara	0.004%		0.0034161%
City	Sunnyvale	Santa Clara	0.053%		0.0434069%
County	<i>Santa Cruz County</i>	Santa Cruz	0.783%	0.957%	0.8135396%
City	Capitola	Santa Cruz	0.020%		0.0168191%
City	Santa Cruz	Santa Cruz	0.143%		0.1180348%
City	Scotts Valley	Santa Cruz	0.015%		0.0126525%
City	Watsonville	Santa Cruz	0.063%		0.0520136%
County	<i>Shasta County</i>	Shasta	1.095%	1.339%	1.1380191%
City	Anderson	Shasta	0.024%		0.0198896%
City	Redding	Shasta	0.284%		0.2334841%
City	Shasta Lake	Shasta	0.004%		0.0031993%
County	<i>Siskiyou County</i>	Siskiyou	0.228%	0.279%	0.2373393%
County	<i>Solano County</i>	Solano	0.760%		0.6260795%
City	Benicia	Solano	0.031%		0.0253903%
City	Dixon	Solano	0.016%		0.0130849%
City	Fairfield	Solano	0.109%		0.0897317%
City	Suisun City	Solano	0.021%		0.0176183%
City	Vacaville	Solano	0.119%		0.0976497%
City	Vallejo	Solano	0.167%		0.1373644%
County	<i>Sonoma County</i>	Sonoma	1.218%	1.490%	1.2661290%
City	Healdsburg	Sonoma	0.032%		0.0266929%
City	Petaluma	Sonoma	0.081%		0.0667507%

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Participating Subdivision Classification	Participating Subdivision	County	Abatement Percentage	Plaintiff Subdivision Percentage	Weighted Allocation Percentage
City	Rohnert Park	Sonoma	0.041%		0.0340759%
City	Santa Rosa	Sonoma	0.184%		0.1519070%
City	Sonoma	Sonoma	0.022%		0.0183438%
City	Windsor	Sonoma	0.016%		0.0129298%
County	<i>Stanislaus County</i>	Stanislaus	1.722%		1.4182273%
City	Ceres	Stanislaus	0.041%		0.0340260%
City	Modesto	Stanislaus	0.217%		0.1788759%
City	Newman	Stanislaus	0.006%		0.0046964%
City	Oakdale	Stanislaus	0.018%		0.0145531%
City	Patterson	Stanislaus	0.015%		0.0126590%
City	Riverbank	Stanislaus	0.010%		0.0085699%
City	Turlock	Stanislaus	0.065%		0.0531966%
County	<i>Sutter County</i>	Sutter	0.306%	0.374%	0.3179548%
City	Yuba City	Sutter	0.074%		0.0606242%
County	<i>Tehama County</i>	Tehama	0.213%	0.261%	0.2216654%
City	Red Bluff	Tehama	0.014%		0.0117771%
County	<i>Trinity County</i>	Trinity	0.082%	0.101%	0.0855476%
County	<i>Tulare County</i>	Tulare	0.809%	0.990%	0.8410949%
City	Dinuba	Tulare	0.014%		0.0116929%
City	Exeter	Tulare	0.004%		0.0032479%
City	Farmersville	Tulare	0.003%		0.0027879%
City	Lindsay	Tulare	0.007%		0.0057111%
City	Porterville	Tulare	0.021%		0.0171845%
City	Tulare	Tulare	0.037%		0.0302273%
City	Visalia	Tulare	0.066%		0.0545872%
County	<i>Tuolumne County</i>	Tuolumne	0.486%	0.594%	0.5047621%
County	<i>Ventura County</i>	Ventura	2.192%	2.681%	2.2781201%
City	Camarillo	Ventura	0.002%		0.0012815%
City	Fillmore	Ventura	0.002%		0.0020294%
City	Moorpark	Ventura	0.008%		0.0067337%

APPENDIX 1

Participating Subdivision Classification	Participating Subdivision	County	Abatement Percentage	Plaintiff Subdivision Percentage	Weighted Allocation Percentage
City	Oxnard	Ventura	0.156%	0.190%	0.1617338%
City	Port Hueneme	Ventura	0.021%		0.0174145%
City	San Buenaventura (Ventura)	Ventura	0.085%		0.0702181%
City	Santa Paula	Ventura	0.014%		0.0119072%
City	Simi Valley	Ventura	0.065%		0.0533043%
City	Thousand Oaks	Ventura	0.022%		0.0179902%
County	<i>Yolo County</i>	Yolo	0.357%	0.437%	0.3713319%
City	Davis	Yolo	0.055%		0.0451747%
City	West Sacramento	Yolo	0.066%		0.0544321%
City	Woodland	Yolo	0.058%		0.0477904%
County	<i>Yuba County</i>	Yuba	0.214%	0.262%	0.2225679%
City	Marysville	Yuba	0.014%		0.0112079%

APPENDIX 2

Cost Reimbursement Procedure

1. Additional defined terms:

- a) *Costs* means the reasonable amounts paid for the attorney and other City Attorney and County Counsel staff time for individuals employed by a Plaintiff Subdivision at the contractual rate, inclusive of benefits and overhead, together with amounts paid for court reporters, experts, copying, electronic research, travel, vendors, and the like, which were paid or incurred (i) prior to July 21, 2021 in litigation against any Opioid Defendant and/or (ii) in negotiating and drafting this CA Janssen Allocation Agreement. Costs does not include attorneys' fees, costs, or expenses incurred by private contingency fee counsel. No part of the CA Abatement Accounts Fund will be used to reimburse Costs.
- b) *First Claims Date* means October 1, 2023 or when all applications for reimbursement of Costs, in whole or in part, from funds available under Section X and Exhibit R of the Distributor Settlement Agreement or Section XI and Exhibit R of the Janssen Settlement Agreement, have been finally determined under the provisions of those agreements, whichever comes first.
- c) *Special Master* means a retired judicial officer or former public lawyer, not presently employed or retained by a Plaintiff Subdivision, who will aggregate, review, and determine the reasonable Costs to be awarded to each Plaintiff Subdivision that submits a claim for reimbursement of Costs. The Special Master will be selected by a majority vote of the votes cast by Plaintiff Subdivisions, with each such subdivision having one vote.
- d) *Plaintiff Subdivision Committee* means the committee of Plaintiff Subdivisions that will review and approve the invoices submitted by the Special Master reflecting his or her reasonable time and expenses.

2. Cost Reimbursement to Plaintiff Subdivision

- a) Purpose. Substantial resources have been expended to hold Opioid Defendants accountable for creating and profiting from the opioid crisis, and this effort has been a significant catalyst in creating a National Opioid Settlement with Distributors, Johnson & Johnson, and others.
- b) Claims Procedure.
 - i. If a Plaintiff Subdivision is eligible to seek reimbursement of Costs, in whole or in part, from funds available under Section X or Exhibit R of the Distributor Settlement Agreement or Section XI or Exhibit R of the Janssen Settlement Agreement, it must first make a timely application for reimbursement from such funds. To allow sufficient time for determination of those applications, no claim for

Costs to the CA Subdivision Fund under this Agreement may be made before the First Claims Date.

- ii. A Plaintiff Subdivision that wishes to be reimbursed from the CA Subdivision Fund must submit a claim to the Special Master no later than forty-five (45) days after the First Claims Date. The Special Master will then compile and redistribute the aggregated claim totals for each Plaintiff Subdivision via email to representatives of all the Plaintiff Subdivisions. A claim for attorney and staff time must list, for each attorney or staff member included in the claim, the following information: name, title, total hours claimed, hourly rate (including, if sought, benefits and share of overhead), and narrative summarizing the general nature of the work performed by the attorney or staff member. For reimbursement of “hard” costs, the subdivision may aggregate across a category (e.g., total for travel costs). It is the intention of the Plaintiff Subdivisions that submission of documents related to reimbursement of Costs does not waive any attorney-client privilege or exemptions to the California Public Records Act.
- iii. The Special Master may request, at his or her sole option, additional documents or details to assist in the final award of Costs.
- iv. The Special Master will review claims for reasonableness and will notify each Plaintiff Subdivision of the final determination of its claim, and will provide a list of all final awards to all Plaintiff Subdivisions by email or, upon request, via First Class U.S. Mail. Any Plaintiff Subdivision may ask the Special Master to reconsider any final award within twenty-one (21) days. The Special Master will make a final determination on any such reconsideration request within thirty (30) days of receipt.
- v. Any decision of the Special Master is final and binding, and will be considered under the California Arbitration Act, Code of Civil Procedure section 1280 et seq. as a final arbitration award. Nothing in this agreement is intended to expand the scope of judicial review of the final award for errors of fact or law, and the Parties agree that they may only seek to vacate the award if clear and convincing evidence demonstrates one of the factors set forth in Code of Civil Procedure, section 1286.2, subdivision (a). Plaintiff Subdivisions will have fourteen (14) days after all final awards are made, together with any final determination of a request for reconsideration, to seek review in the Superior Court of California, pursuant to Code of Civil Procedure, section 1285, where the State has filed its Consent Judgment.
- vi. The Special Master will prepare a report of Costs that includes his or her fees and expenses at least ninety (90) days before the Payment Date for each Annual Payment. The Special Master’s preparation of a report of Costs does not discharge a Plaintiff Subdivision’s reporting requirement under Section VI.B.2 of the Janssen Agreement.
- vii. A member of the Plaintiff Subdivision Committee, which is a CA Participating Subdivision, will submit to the Settlement Fund Administrator and Janssen a report

of the fees and expenses incurred by the Special Master pursuant to Section VI.B.2 of the Janssen Agreement.

c) Claims Priority and Limitation.

- i. The Special Master will submit invoices for compensation of reasonable fees and expenses to the Plaintiff Subdivision Committee no later than ninety (90) days prior to the Payment Date for each Annual Payment. The Plaintiff Subdivision Committee will promptly review and, if reasonable, approve the Special Master's invoice for compensation. The Plaintiff Subdivision Committee will submit approved invoices to the Settlement Fund Administrator for payment. The Special Master's approved invoices have priority and will be paid first from the CA Subdivision Fund before any award of Costs, subject to the limitation in Section 2.c.v below.
- ii. Final Awards of Costs that do not exceed seventy-five thousand dollars (\$75,000.00) will be paid next in priority after the Special Master's approved invoices.
- iii. Final Awards of Costs in excess of seventy-five thousand dollars (\$75,000.00) will be paid proportionally from the funds remaining in that year's Annual Payment.
- iv. Any claim for Costs that is not paid in full will be allocated against the next year's distribution from the CA Subdivision Fund, until all approved claims for Costs are paid in full.
- v. In no event will more than 50% of the total CA Subdivision Fund received in any year be used to pay Costs or the Special Master's approved invoices.
- vi. In no event shall more than \$28 million of the total CA Subdivision Funds paid pursuant to the Distributor Settlement Agreement and the Janssen Settlement Agreement be used to pay Costs.

d) Collateral Source Payments and Third-Party Settlement.

- i. In the event a Plaintiff Subdivision is awarded compensation, in whole or in part, by any source of funds created as a result of litigation against an Opioid Defendant for its reasonable Costs, it will reduce its claim for Costs from the CA Subdivision Fund by that amount. If a Plaintiff Subdivision has already received a final award of Costs from the CA Subdivision Fund, it will repay the fund up to the prior award of Costs via a payment to the Settlement Fund Administrator or notify the Settlement Fund Administrator that its allocation from the next and subsequent Annual Payments should be reduced accordingly. If the Plaintiff Subdivision is repaying any prior award of Costs, that repayment will occur as soon as is feasible after the Plaintiff Subdivision's receipt of Cost funds from the collateral source, but no more than 90 days after its receipt from the collateral source. The Settlement Fund Administrator will add any repaid Costs to the CA Subdivision Fund.

- ii. In the event a Plaintiff Subdivision reaches a monetary settlement or compromise against any Opioid Defendant outside of the National Opioid Settlement, the monetary portion of such settlement, net of fees paid to outside contingency fee counsel and of funds earmarked strictly for abatement, will be credited against its Costs and the subdivision will be ineligible to recover those credited Costs from the CA Subdivision Fund. Plaintiff Subdivisions negotiating monetary settlements or compromises against any Opioid Defendant outside of the National Opioid Settlement will negotiate for funds to repay any Costs it previously received from the CA Subdivision Fund or for Costs it otherwise might be eligible to claim from the CA Subdivision Fund. If such a settlement is paid after all final approved claims for Costs by all Plaintiff Subdivisions are satisfied in full, the settling subdivision will reimburse the CA Subdivision Fund in that amount by making payment to the Settlement Fund Administrator to add to the CA Subdivision Fund in a manner consistent with the repayments described in section 2.d.i above.

APPENDIX 3

CALIFORNIA-SUBDIVISION BACKSTOP AGREEMENT

On August 6, 2021, Judge Polster of the US District Court for the Northern District of Ohio issued an Order (the Order), docket number 3814, in In Re National Prescription Opiate Litigation, MDL 2804, addressing contingent attorney fee contracts between political subdivisions eligible to participate in the Janssen Settlement and their counsel.

In light of the Order, and at the request of [SUBDIVISION], the [SUBDIVISION], its counsel [COUNSEL], and the California Attorney General, on behalf of the State of California, are entering into this California-Subdivision Backstop Agreement (Backstop Agreement).

[SUBDIVISION] and [COUNSEL] intend this Backstop Agreement to constitute a State Back-Stop Agreement as that term is used in the Order and in Exhibit R (Agreement on Attorneys' Fees, Costs, and Expenses) of the Janssen Settlement Agreement.

Pursuant to this Backstop Agreement, [SUBDIVISION] may, subject to the limitations of the Janssen Settlement Agreement and CA Janssen Allocation Agreement, as well as any other limitations imposed by law, use funds that it receives from the Janssen Settlement CA Subdivision Fund to pay a contingent fee to [COUNSEL]. Any such payment from [SUBDIVISION] to [COUNSEL], together with any contingency fees that [COUNSEL] may receive from the national Attorney Fee Fund, will not exceed a total contingency fee of [PERCENTAGE NOT TO EXCEED 15%] of the total gross recovery of [SUBDIVISION] from the Distributors Settlement.

[COUNSEL] certify that they first sought fees and costs from the Attorney Fee Fund created under the Janssen Settlement Agreement before seeking or accepting payment under this backstop agreement. [COUNSEL] further certify that they are not seeking and will not accept payment under this backstop agreement of any litigation fees or costs that have been reimbursed through prior settlements or judgments.

The Attorney General is executing this agreement solely because the definition of "State Back-Stop Agreement" in Exhibit R of the Janssen Settlement Agreement requires such agreements to be between "a Settling State" and private counsel for a participating subdivision. Neither the California Attorney General nor the State of California have any obligations under this Backstop Agreement, and this Backstop Agreement does not require the payment of any state funds to [SUBDIVISION], [COUNSEL], or any other party.

[DATE]

[SUBDIVISION SIGNATURE BLOCK]

[DATE]

[COUNSEL SIGNATURE BLOCK]

[DATE]

[ATTORNEY GENERAL SIGNATURE BLOCK]

The undersigned, Morro Bay city, ACKNOWLEDGES acceptance of this Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds - Janssen Settlement is a requirement to be an Initial Participating Subdivision in the Janssen Settlement and ACCEPTS this Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds - Janssen Settlement.

I swear under penalty of perjury that I have all necessary power and authorization to execute this Election and Release on behalf of the Governmental Entity.

Signature: _____

Name: _____

Title: _____

Date: _____



RESOLUTION NO. 88-21

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA AUTHORIZING CITY OF
MORRO BAY TO ENTER INTO THE NATIONAL OPIOID SETTLEMENT
AGREEMENTS WITH MCKESSON CORPORATION, CARDINAL HEALTH,
INC., AMERISOURCEBERGEN CORPORATION, JOHNSON & JOHNSON,
JANSSEN PHARMACEUTICALS, INC., ORTHO-MCNEIL-JANSSEN
PHARMACEUTICALS, INC., AND JANSSEN PHARMACEUTICA, INC.,
AGREEING TO THE TERMS OF THE MOU ALLOCATING SETTLEMENT
PROCEEDS, AND AUTHORIZING ENTRY INTO THE MOU WITH THE
ATTORNEY GENERAL**

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

WHEREAS, the United States is facing an ongoing public health crisis of opioid abuse, addiction, overdose, and death. The State of California and California local governments spend billions of dollars each year to address the direct consequences of this crisis;

WHEREAS, since 2017, state and local governments in California and around the United States have been pursuing litigation (the "Litigation") against certain manufacturers, distributors, and retailers of opioid pharmaceuticals (the "Opioid Defendants") in an effort to hold the Opioid Defendants financially responsible for the impact of the Opioid Epidemic nationwide as well as the impact on cities and counties, including on the City of Morro Bay ("the City");

WHEREAS, negotiations to settle claims against several of the Opioid Defendants, specifically McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation, Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (the "Settling Defendants") have been ongoing for several years;

WHEREAS, negotiations with the Settling Defendants have resulted in proposed nationwide settlements of state and local government claims to settle the Litigation;

WHEREAS, the proposed terms of those proposed nationwide settlements have been set forth in the Distributors Master Settlement Agreement and the Janssen Master Settlement Agreement (collectively "Settlement Agreements") and, in order to participate in the Settlement Agreements, the City must enter into participation agreements with respect to each of the Settlement Agreements ("Participation Agreements");

WHEREAS, copies of the Settlement Agreements as well as summary of the main terms of the Settlement Agreements, the deadlines for submitting the Participation Agreements to the Settlement Agreements and the MDL Court's Order setting deadlines for any Plaintiff who declines to enter into the Settlement Agreements, have been provided to the City Council with this Resolution;

WHEREAS, the Settlement Agreements provide, among other things, for the payment of a certain sum to settling government entities in California including to the State of California and Participating Subdivisions upon occurrence of certain events as defined in the Settlement

Agreements ("California Opioid Funds");

WHEREAS, California local governments as well as the attorneys representing those local governments have engaged in extensive discussions with the State Attorney General's Office ("AGO") as to how the California Opioid Funds will be allocated, which has resulted in the "Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds- Distributor Settlement" and the "Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds- Janssen Settlement" (collectively the "Allocation Agreements"), which are agreements between all of the entities identified in the Allocation Agreements;

WHEREAS, copies of the Allocation Agreements have been provided with this Resolution;

WHEREAS, the Allocation Agreements propose to allocate the California Opioid Funds 15% to a State Fund; 70% to local governments in an Abatement Accounts Fund; and 15% to litigating local governments in a Subdivision Fund. For the avoidance of doubt, all funds allocated to California from the Settlements will be combined pursuant to Allocation Agreements, and 15% of that total shall be allocated to the State of California (the "State of California Allocation"), 70% to the California Abatement Accounts Fund ("CA Abatement Accounts Fund Allocation"), and 15% to the California Subdivision Fund ("CA Subdivision Fund Allocation");

WHEREAS, the funds in the CA Abatement Accounts Fund (i.e., the California Abatement Accounts Fund Allocation) will be allocated based on an allocation model developed in connection with the proposed negotiating class in the National Prescription Opiate Litigation (MDL No. 2804). The percentage from the CA Abatement Accounts Fund allocated to each eligible local government (any county or city above 10,000 in population) ("Eligible Local Government") is set forth in Appendix 1 to each Allocation Agreement and provided to the Council with this Resolution. The City's share of the CA Abatement Accounts Fund is a product of the total in the CA Abatement Accounts Fund multiplied by the City's percentage set forth in Appendix 1 (the "Local Allocation");

WHEREAS, any city that is an Eligible Local Government will be allocated its Local Allocation share only when it becomes a Participating Subdivision by signing the Participation Agreements to the Settlements. The Local Allocation share for a city that is a Participating Subdivision will be paid to the county in which the city is located, rather than to the city, so long as: (a) the county is a Participating Subdivision, and (b) the city has not advised the Settlement Fund Administrator that it requests direct payment at least 60 days prior to a Payment Date as defined in the Settlement Agreements.

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

SECTION 1. The City Council hereby approves and authorizes the City Manager to settle and release the City's claims against the Settling Defendants in exchange for the consideration set forth in the Settlement Agreements, Allocation Agreements and all exhibits thereto, including, without limitation, taking the following measures:

1. The execution of the Participation Agreement to the Distributors Master Settlement Agreement and any and all documents ancillary thereto.
2. The execution of the Participation Agreement to the Janssen Master Settlement

Agreement and any and all documents ancillary thereto.

3. The execution of the Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds- Distributor Settlement by executing the signature pages thereof.
4. The execution of the Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds- Janssen Settlement Allocation Agreements by executing the signature pages thereof.

SECTION 2. All actions heretofore taken by the City Council and other appropriate public officers and agents of the City with respect to the matters contemplated under this Resolution are hereby ratified, confirmed and approved.

SECTION 3. This Resolution shall take effect immediately upon its adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 14th day of December 2021 by the following vote:

AYES:
NOES:
ABSENT:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

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AGENDA NO: A-5

MEETING DATE: December 14, 2021

Staff Report

TO: Honorable Mayor and City Council

DATE: December 6, 2021

FROM: Daniel McCrain, Fire Chief

SUBJECT: Adopt Resolution No. 82-21 Authorizing the Morro Bay Fire Department to submit an application for Federal Emergency Management Agency Assistance to Firefighters Grant

RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 82-21 Authorizing the Morro Bay Fire Department (MBFD) to submit an application to Federal Emergency Management Agency (FEMA) for an Assistance to Firefighter Grant for hydraulic extrication equipment and mobile radios and accept grant if awarded.

ALTERNATIVES

Council may choose to:

1. Direct staff to request funding these items through the traditional budget request process. (General fund, measure Q&E funds, etc.),
2. Provide alternate direction, or
3. Take no action

FISCAL IMPACT

The FEMA Assistance to Firefighter Grant (AFG) program has a cost share based on the population served. The cost share for a population less than 20,000 residents is listed as "not less than 5% of the grant awarded". The grant request is for an estimated amount of \$249,955 for radios, radio installation, and auto extrication tools. This amount may be amended by FEMA for a partial award.

The estimated cost share for Morro Bay Fire would be approximately \$11,903 that would have to be paid by department funds.

BACKGROUND

The FEMA has allocated \$414 million for AFG grants for Fiscal Year (FY) 2021 and is projecting 2,500 awards. FEMA will begin allocating grant awards on or near May 1st, 2022, for this grant cycle. The grant application period opens Monday November 8, 2021 and closes Friday, December 17, 2021. Notification of this grant application period was received by MBFD staff on November 2, 2021.

Prepared By: __DM__

Dept Review: _____

City Manager Review: __SC__

City Attorney Review: __CFN__

DISCUSSION

A majority of the hydraulic extrication equipment currently in use by MBFD was scheduled for replacement in FY 2017/18, but due to budget constraints most of these items have not been replaced. The gasoline power pumps were replaced during FY 2018/19. The spreaders and cutters were purchased in 2011, the hoses were purchased in 2007, and the rams were purchased in 2009. The equipment has a life expectancy of 8 to 14 years depending on the item. As such much of the equipment for this service is in need of replacement soon.

This year Governor Newsom signed California Assembly Bill (AB) 1346 requiring the phase out of all gasoline powered small engines beginning in 2024. To comply with this law, MBFD are looking to replace the current gasoline powered hydraulic extrication equipment with battery powered equipment. This new electric equipment has higher operating strengths than current equipment, and this also reduces emissions levels in accordance with the councils stated goal of Climate Action. The adopted budget for small tools and equipment is \$3,613.39. The estimated cost to replace all of the extrication equipment is approximately \$137,877.21 depending on current pricing and brand chosen. Purchasing this equipment would be a significant increase to the line-item budget if funded through the general fund or measure Q&E funds. By seeking grant funding, the City could potentially procure this equipment for approximately 5% of the overall cost.

Mobile radios are equipment permanently mounted in the response vehicles. These vehicle radios have larger antennas and are more powerful than the handheld radios used by personnel during incidents. These radios are necessary for safe communications while operating the fire apparatus, and to allow for better communication on scene in areas with limited radio repeater access. The Council approved the use of American Rescue Plan funds to purchase new handheld radios for FY 2021/22 fiscal year and we are in the process of upgrading those radios. Of the mobile radios currently installed in the Fire Department vehicles, three apparatus have radios that are discontinued and do not meet the current specifications required for interoperability. Two apparatus have newer model radios, but are still outdated. Most current MBFD radios were discontinued by the manufacturer in 2019. MBFD have experienced multiple failures of the mobile radio on Engine 5391 and one of the radios is being sent back to the manufacturer for a fourth time for repairs. The age and capabilities of the current radios is a limiting factor for interoperability on mutual aid assignments due to limited channel capacity and features. The National Institute of Occupational Safety and Health NIOSH has identified the top 5 common factors causing Firefighter fatalities, inadequate communications are one of those top 5 factors. Upgrading the mobile radios will allow for improved communications and allow the department to comply with all current industry standards and best practices. The cost to purchase all of the mobile radios is estimated at \$85,082.22 plus an additional \$27,000 for the installation of the equipment.

CONCLUSION

The cost of replacing capital equipment such as mobile radios and extrication equipment can easily exceed the available funds in a departmental operating budget. These two items alone account for 7.4% of the Fire Departments 2021 operating budget. Grant funding is a mechanism that many fire departments utilize to purchase much needed equipment that would be unobtainable without outside assistance due to limited agency finances. The cost share required by FEMA is based on population of the community served, and Morro Bay falls in the 5% cost share range. This would allow the fire department to obtain equipment to enhance the safety of our responders and the community with a very small financial impact to city funds. The grant process includes a review of the application by a computerized system to evaluate the merit of the application. If the application passes this evaluation, then it is reviewed by a panel of fire service personnel that will review the project goals and financial need. After a final technical review, grants will be awarded in order of need. The staff effort required

to write the grant is offset by the potential benefits of the program.

Staff is applying for \$238,052 in grant funding (total program cost of \$249,955, including the City's 5% contribution). If awarded, the City would need to contribute \$11,903 for the procurement of this equipment. Since the City's contribution would have needed to be spent on equipment regardless of grant opportunities, this grant would be a positive fiscal impact to the city. The \$11,903 is included in the Adopted Budget for FY 2021-22 and no budget adjustments would be required if the city receives the grant award.

Staff recommends the City Council adopt Resolution No. 82-21 authorizing the Morro Bay Fire Department (MBFD) to submit an application to Federal Emergency Management Agency (FEMA) for an Assistance to Firefighter Grant for hydraulic extrication equipment and mobile radios, and accept grant if awarded.

ATTACHMENT

1. Resolution No. 82-21

RESOLUTION 82-21

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, AUTHORIZING THE FIRE CHIEF TO APPLY FOR, AND ACCEPT IF AWARDED, A FEMA ASSISTANCE TO FIREFIGHTER GRANT FOR COMMUNICATIONS EQUIPMENT AND AUTO EXTRICATION TOOLS

The City Council City of Morro Bay, California

WHEREAS, in its mission to protect the health and welfare of its community, the City of Morro Bay has provided all-hazard emergency response services through qualified personnel of the Morro Bay Fire Department; and

WHEREAS, the purpose of the Assistance to Firefighters Grant (AFG) Program is to enhance the safety of the public and firefighters with respect to fire and fire-related hazards by providing direct financial assistance to eligible fire departments for critically-needed resources to equip and train emergency personnel, enhance operational efficiencies, foster interoperability, and support community resilience; and

WHEREAS, communications equipment and auto extrication tools have an estimated lifespan of 8-14 years and should be replaced during this timeframe to ensure compatibility and reliability of the equipment; and

WHEREAS, the Morro Bay Fire Department is seeking assistance to purchase new communication equipment, including mobile radios and installation of communication equipment to improve the safety Morro Bay Firefighters and the citizens they serve through enhanced, reliable communications; and

WHEREAS, the Morro Bay Fire Department is also seeking assistance with purchasing battery powered auto extrication tools. Vehicle extrication tools are critical in the safe and expedited removal of victims of vehicle accidents from their vehicle and are a necessity in the priority of stabilizing and transporting these victims to appropriate medical care as quickly as possible; and

WHEREAS, transitioning to electric powered extrication equipment is aligned with the Council's stated goal of "Climate Action" by reducing reliance on carbon producing energy sources, and also allows the Morro Bay Fire Department to be in alignment with Assembly Bill 1346 requiring the phase out of gasoline powered small engines; and

WHEREAS, the Morro Bay Fire Department is eligible and desires to apply for \$249,955 in AFG Grant funds for this purpose; and

WHEREAS, the Morro Bay Fire Department is prepared to provide an \$11,903 cash match should the application be successful.

NOW, THEREFORE, BE IT RESOLVED, by the City Council, City of Morro Bay, California, that the conditions set forth in this resolution, as follows, take effect upon adoption by the City of Morro Bay.

1. Authorizes the Fire Chief or his designee to submit an application to the FEMA Assistance to Firefighter Grant program to purchase communications equipment and auto extrication tools for an estimated value of \$249,955.
2. Supports a 5% cash match using city funds for an estimated amount of \$11,903.
3. Authorizes the Fire Chief or his designee to accept the Assistance to Firefighter Grant if awarded by FEMA.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 14th day of December 2021 on the following vote:

AYES:
NOES:
ABSENT:

John Headding, Mayor

ATTEST:

Dana Swanson, City Clerk

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AGENDA NO: A-6

MEETING DATE: December 14, 2021

Staff Report

TO: Honorable Mayor and City Council

DATE: November 29, 2021

FROM: Greg Kwolek, Public Works Director
Janeen Burlingame, Management Analyst

SUBJECT: Second Reading and Adoption of Ordinance No. 645 Adding Chapter 8.18 Specific Regulations for Collection, and Disposal Reduction, of Organic Waste, Recyclables and Solid Waste to Title 8 ("Health and Safety") of the Morro Bay Municipal Code

RECOMMENDATION

Staff recommends the City Council adopt, by second reading and by title only with further reading waived, Ordinance No. 645 adding Chapter 8.18 Specific Regulations for Collection, and Disposal Reduction, of Organic Waste, Recyclables and Solid Waste to Title 8 ("Health and Safety") of the Morro Bay Municipal Code to enact regulations in compliance with Senate Bill (SB) 1383 for the implementation of Mandatory Food and Organics Recycling, and related solid waste and recycling processing and reporting.

FISCAL IMPACT

There is no immediate fiscal impact to the City adopting the proposed Ordinance. However, compliance with SB 1383 regulations related to the proposed ordinance will result in additional costs to the City. The City is currently analyzing these costs and may recommend solid waste collection rate increases through a Proposition 218 process in the future.

DISCUSSION

Senate Bill 1383 (SB 1383) was signed into law in September 2016 to address climate change, and specifically short-lived climate pollutants. It sets targets for reducing organic waste disposal in landfills and to reduce disposal of edible food. The California Department of Resources Recycling and Recovery (CalRecycle) found 20% of the State's methane emissions come from landfills with organics such as food scraps, yard trimmings, paper and cardboard making up half of what California disposes of in landfills.

SB 1383 established a statewide target to reduce organic waste disposal by 50% by 2020 and 75% by 2025 and a statewide target to redirect to people in need at least 20% of edible food that is currently disposed. To meet these targets, CalRecycle developed regulations requiring local jurisdictions adopt a mandatory and enforceable organics waste recycling ordinance by January 1, 2022.

In addition, local jurisdictions are required to:

- Provide organic waste recycling services to all residents and businesses;
- Implement an edible food recovery program to recover edible food from the waste stream;
- Conduct outreach and education to all affected parties, including generators, haulers, facilities, and edible food recovery organizations;

Prepared By: J Burlingame

Dept Review: GK

City Manager Review: _____

City Attorney Review: CFN

- Procure recycled organic waste products like compost, mulch, and renewable natural gas;
- Maintain accurate and timely records of SB 1383 compliance for annual reporting requirements; and
- Monitor compliance and conduct enforcement of the City's enforcement ordinance.

SB 1383 will take effect January 1, 2022, with enforcement, including assessment of penalties, beginning on January 1, 2024. This progressive approach is intended to provide ample time for notification to solid waste generators on what is required of them and achieve compliance before penalties are required to be issued by the City.

The proposed ordinance (Attachment 1) is a critical element of the City's efforts to comply with SB 1383 and the corresponding CalRecycle regulations. The proposed ordinance addresses key elements of SB 1383 compliance, including the following:

- Collection Services: All residences and commercial businesses, including multi-family residential dwellings, will be automatically enrolled in the City's collection services for trash, recycling, and green waste. Food waste generated by residents and businesses will be collected in the green container. Commercial businesses may apply for de minimis and physical space waivers if their organic waste collected in the blue or green containers is below a certain amount or the business does not have adequate space for all the collection containers.
- Commercial Edible Food Generators: These generators are required to recover the maximum amount of edible food that would otherwise be disposed in the waste stream and implement related programs. These generators are also required to maintain and provide records to City staff or the City's Designee regarding their edible food recovery efforts.
- Food Recovery Organizations: These entities are required to maintain certain records related to their food recovery efforts, report amounts of edible food recovered to the City or the City's Designee and provide information upon request to support the City's food recovery capacity.
- Haulers and Self-Haulers: Haulers and Self-Haulers are required to transport trash, recycling, and organic waste to the appropriate facility that will accept and process such waste. Self-Haulers are additionally required to keep records of what they haul and provide such records.
- Procurement Requirements for Direct Service Providers and Vendors: Direct services providers and vendors are required under the ordinance to comply with the City's procurement policy for organics.
- Inspections and Investigations: The City or the City's Designee is authorized to conduct investigations to confirm compliance. Regulated entities are required to provide access and cooperate with City staff or the City Designee during the process.
- Enforcement: Violation of any provision of the ordinance shall constitute grounds for issuance of a penalty. Furthermore, fees may be assessed for container contamination.
- Model Water Efficient Landscape Ordinance (MWELO) Compliance: Entities subject to MWELO are required under the ordinance to at a minimum comply with certain provisions of MWELO, as in effect on September 15, 2015, including those related to compost and mulch.
- California Green Building Standards (CalGreen): Entities subject to CalGreen are required under the ordinance to at a minimum comply with certain provisions of CalGreen, as in

effect on January 1, 2020, related to accommodating collection containers and treatment of organics comingled with construction and demolition debris.

City staff is currently working to update its solid waste franchise agreement to address the relevant requirements of SB 1383 and the corresponding CalRecycle regulations. Additionally, City staff is working to update its procurement policies to be consistent with the new organics procurement requirements. Both updates to the solid waste franchise agreement and procurement policies will be brought to the City Council for review and approval once finalized.

The City Council introduced, at its November 9, 2021 meeting, for a first reading, by title only, Ordinance 645. In order to fully enact Ordinance 645, the City Council must adopt the ordinance by second reading and by title only, with further reading waived.

CONCLUSION

Staff recommends the City Council adopt, by second reading and by title only with further reading waived, Ordinance No. 645 adding Chapter 8.18 Specific Regulations for Collection, and Disposal Reduction, of Organic Waste, Recyclables and Solid Waste to Title 8 ("Health and Safety") of the Morro Bay Municipal Code to enact regulations in compliance with Senate Bill (SB) 1383 for the implementation of Mandatory Food and Organics Recycling, and related solid waste and recycling processing and reporting.

ATTACHMENT

1. Ordinance No. 645

ORDINANCE NO. 645

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA, ADDING CHAPTER 8.18 TO
TITLE 8 ("HEALTH AND SAFETY") OF THE MORRO BAY MUNICIPAL CODE,
ENTITLED "SPECIFIC REGULATIONS FOR COLLECTION, AND DISPOSAL
REDUCTION, OF ORGANIC WASTE, RECYCLABLES AND SOLID WASTE,"
TO ENACT REGULATIONS IN COMPLIANCE WITH SENATE BILL (SB) 1383
FOR THE IMPLEMENTATION OF MANDATORY FOOD AND ORGANICS
RECYCLING, AND RELATED SOLID WASTE AND RECYCLING
PROCESSING AND REPORTING**

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

WHEREAS, a city council may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, Assembly Bill 939 of 1989, the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000, et seq., as amended, supplemented, superseded, and replaced from time to time), requires cities and counties to reduce, reuse, and recycle (including composting) solid waste generated in their jurisdictions to the maximum extent feasible before any incineration or landfill disposal of waste, to conserve water, energy, and other natural resources, and to protect the environment; and

WHEREAS, Assembly Bill 341 of 2011 places requirements on businesses and multi-family property owners that generate a specified threshold amount of solid waste to arrange for recycling services and requires the City to implement a mandatory commercial recycling program; and

WHEREAS, Assembly Bill 1826 of 2014 requires businesses and multi-family property owners that generate a specified threshold amount of solid waste, recycling, and organic waste per week to arrange for recycling services for that waste, requires cities to implement a recycling program to divert organic waste from businesses subject to the law, and requires cities to implement a mandatory commercial organics recycling program; and

WHEREAS, SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires the California Department of Resources Recycling and Recovery ("CalRecycle") to develop regulations to reduce organics in landfills as a source of methane. As adopted by CalRecycle, these SB 1383 regulations ("SB 1383 Regulations") place requirements on multiple entities including the City of Morro Bay, residential households, commercial businesses and business owners, commercial edible food generators, haulers, self-haulers, food recovery organizations, and food recovery services to support achievement of statewide organic waste disposal reduction targets; and

WHEREAS, the SB 1383 Regulations require the City to adopt and enforce an ordinance or other enforceable mechanism to implement relevant provisions of the SB 1383 Regulations, and to reduce community food insecurity by requiring commercial edible food generators to arrange to have the maximum amount of their edible food, that would otherwise be disposed, be recovered for human consumption; and

WHEREAS, this Ordinance implements the requirements of AB 341, AB 1826, and the SB 1383 Regulations; and

WHEREAS, on November 9, 2021, the City Council of the City of Morro Bay held a duly-agendized meeting on the Ordinance, reviewed and considered the staff report, other written reports, public testimony and other information contained in the record.

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

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

SECTION 2. The Ordinance is consistent with the City's General Plan, the Morro Bay Municipal Code, and applicable Federal and State laws.

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

SECTION 4. The Ordinance is hereby adopted by the addition of a new Chapter 8.18, "SPECIFIC REGULATIONS FOR COLLECTION, AND DISPOSAL REDUCTION, OF ORGANIC WASTE, RECYCLABLES AND SOLID WASTE," in Title 8 of the Morro Bay Municipal Code to read in its entirety as shown in Exhibit "A" attached hereto and incorporated herein by this reference.

SECTION 5. If the provisions in this Ordinance conflict in whole or in part with any other City regulation or ordinance adopted prior to the effective date of this section, the provisions in this Ordinance will control.

SECTION 6. If any subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance. The City Council hereby declare that it would have passed this Ordinance, and each and every section, subsection, sentence, clause, and phrase thereof not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 7. This Ordinance shall take effect in accordance with the "Effective Date" stated in Section 8.18.180 of Exhibit "A", and the City Clerk shall cause it to be posted and published in a newspaper of general circulation, printed, published and circulated in the City in the manner required by law and shall cause a copy of this Ordinance and its certification, together with proof of publication, to be entered in the Book of Ordinances of the City.

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SECTION 8. The City Clerk shall certify to the adoption of this Ordinance and cause it to be published, in accordance with Government Code Section 36933.

INTRODUCED at a regular meeting of the City Council of Morro Bay, held on the 9th day of November, 2021, by motion of Council Member Heller and seconded by Mayor Heading.

PASSED and ADOPTED this _____ day of _____, 2021.

AYES:
NOES:
ABSENT:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

CHRISTOPHER F. NEUMEYER, City Attorney

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

I, Dana Swanson, City Clerk of the City of Morro Bay, California, do hereby certify that the foregoing Ordinance No. 645 was duly passed and adopted by the City Council of the City of Morro Bay at the regular meeting thereof, held on the 14th day of December 2021, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of the City of Morro Bay, California, this ____ day of _____, 2021

DANA SWANSON, City Clerk

EXHIBIT "A"

CHAPTER 8.18 – SPECIFIC REGULATIONS FOR COLLECTION, AND DISPOSAL REDUCTION, OF ORGANIC WASTE, RECYCLABLES AND SOLID WASTE

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8.18.010 Purpose and Findings

The City finds and declares:

- (a) State recycling law, Assembly Bill 939 of 1989, the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000, et seq., as amended, supplemented, superseded, and replaced from time to time), requires cities and counties to reduce, reuse, and recycle (including composting) Solid Waste generated in their City to the maximum extent feasible before any incineration or landfill disposal of waste, to conserve water, energy, and other natural resources, and to protect the environment.
- (b) State recycling law, Assembly Bill 341 of 2011 (approved by the Governor of the State of California on October 5, 2011, which amended Sections 41730, 41731, 41734, 41735, 41736, 41800, 42926, 44004, and 50001 of, and added Sections 40004, 41734.5, and 41780.01 and Chapter 12.8 (commencing with Section 42649) to Part 3 of Division 30 of, and added and repealed Section 41780.02 of, the Public Resources Code, as amended, supplemented, superseded and replaced from time to time), places requirements on Commercial Businesses and Multi-Family Premises that generate a specified threshold amount of Solid Waste to arrange for recycling services and requires jurisdictions to implement a mandatory Commercial recycling program.
- (c) State Organics Materials recycling law, Assembly Bill 1826 of 2014 (approved by the Governor of the State of California on September 28, 2014, which added Chapter 12.9 (commencing with Section 42649.8) to Part 3 of Division 30 of the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time), requires Commercial Businesses and Multi-Family Premises that generate a specified threshold amount of Solid Waste, Recyclable Materials, and Organic Materials per week to arrange for recycling services for that waste, requires jurisdictions to implement a recycling program to divert Organic Materials from Commercial Businesses and Multi-Family Premises subject to the law, and requires jurisdictions to implement a mandatory Commercial Organic Materials recycling program.
- (d) SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires CalRecycle to develop regulations to reduce Organic Waste in landfills as a source of methane. The regulations place requirements on multiple entities including jurisdictions, Residential households, Multi-Family Premises, Commercial Businesses, Commercial Edible Food Generators, haulers, Self-Haulers, Food Recovery Organizations, and Food Recovery Services to support achievement of the SB 1383 statewide Organic Waste disposal reduction targets.
- (e) SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires jurisdictions to adopt and enforce an ordinance or enforceable mechanism to implement relevant provisions of SB 1383 Regulations. This Chapter will also help reduce food insecurity by requiring Commercial Edible Food Generators to arrange

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to have the maximum amount of their Edible Food, that would otherwise be disposed, be recovered for human consumption.

- (f) Requirements in this Chapter are consistent with other adopted goals and policies of the City including without limitation: the Morro Bay General Plan, Morro Bay Climate Action Plan, Morro Bay Municipal Code Title 8 ("Health and Safety), Morro Bay Municipal Code Title 14 ("Building and Construction") and any franchise agreements for relating to City services for Solid Waste and recycling programs.

8.18.020 - Title of Ordinance

This Chapter shall be entitled "Specific Regulations For Collection, and Disposal Reduction, of Organic Waste, Recyclables and Solid Waste."

8.18.030 - Definitions

"Alternative Daily Cover (ADC)" has the same meaning as in Section 20690 of Title 27 of the California Code of Regulations.

"Alternative Intermediate Cover (AIC)" has the same meaning as in Section 20700 of Title 27 of the California Code of Regulations.

"CalRecycle" means California's Department of Resources Recycling and Recovery, which is the Department designated with responsibility for developing, implementing, and enforcing SB 1383 Regulations.

"California Code of Regulations" or "CCR" means the State of California Code of Regulations. CCR references in this Chapter are preceded with a number that refers to the relevant Title of the CCR (e.g., "14 CCR" refers to Title 14 of CCR).

"City" means the City of Morro Bay, a General Law Municipal Corporation, and all the territory lying within the municipal boundaries of the City as presently existing or as such boundaries may be modified during the term, acting through the City Council or the City Manager. The City may designate responsibilities to City staff or a third-party designee through written letter between the City Manager and designee.

"City Enforcement Official" means any City employee or agent of the City with the authority to enforce any provision of this Chapter.

"Code," when not embedded within citation to another law or regulation, means this Morro Bay Municipal Code.

"Commercial Business" or "Commercial" means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial facility, or a Multi-Family Residential Dwelling, or as otherwise defined in 14 CCR Section 18982(a)(6). A Multi-Family Residential Dwelling that consists of fewer than five (5) units is not a Commercial Business for purposes of implementing this Chapter.

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“Commercial Edible Food Generator” includes a Tier One or a Tier Two Commercial Edible Food Generator as defined in this Section 8.18.030 or as otherwise defined in 14 CCR Section 18982(a)(73) and (a)(74). For the purposes of this definition, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators pursuant to 14 CCR Section 18982(a)(7).

“Community Composting” means any activity that Composts green material, agricultural material, food material, and vegetative food material, alone or in combination, and the total amount of feedstock and Compost on-site at any one time does not exceed 100 cubic yards and 750 square feet, as specified in 14 CCR Section 17855(a)(4); or, as otherwise defined by 14 CCR Section 18982(a)(8).

“Compliance Review” means a review of records by the City to determine compliance with this Chapter.

“Compost” has the same meaning as in 14 CCR Section 17896.2(a)(4), which stated, as of the effective date of this Chapter, that “Compost” means the product resulting from the controlled biological decomposition of organic Solid Wastes that are Source Separated from the municipal Solid Waste stream, or that are separated at a centralized facility yielding a safe and nuisance free Compost product.

“Contamination,” any variant thereof, or “Contaminated Container” means a container, regardless of color, that contains Prohibited Container Contaminants, or as otherwise defined in 14 CCR Section 18982(a)(55).

“Contractor” means an entity under exclusive or non-exclusive franchise agreement with the City for the collection, handling, transport and processing of Recyclable Materials, Organic Materials, and Solid Waste, organized and operating under the laws of the State and its officers, directors, employees, agents, companies, related-parties, affiliates, subsidiaries, and subcontractors. Contractor may also serve as a Designee for purposes of this Chapter.

“County Enforcement Official” means a county agency enforcement official.

“Customer” means the Person to whom Contractor or other Designee submits its billing invoice to, and collects payment from, for collection services provided to a Premises. The Customer may be either the Occupant or Owner of the Premises.

“C&D” means construction and demolition debris composed of building materials, packaging and rubble resulting from the construction, remodeling, repair or demolition of pavements, houses, Commercial, industrial or agricultural buildings, and other structures.

“Designated Waste” means non-Hazardous Waste which may pose special Disposal problems because of its potential to Contaminate the environment, and which may be Disposed of only in Class II Disposal sites or Class III Disposal sites pursuant to a variance issued by the California Department of Health Services. Designated Waste consists of those substances classified as Designated Waste by the State, in California Code of Regulations Title 23, Section 2522 as may be amended from time to time.

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116 "Designee" means an entity that a City contracts with or otherwise arranges to carry out
117 any of the City's responsibilities of this Chapter as authorized in 14 CCR Section 18981.2.
118 A Designee may be a government entity, a hauler (including Contractor) or other a private
119 entity, or a combination of those entities.

120 "Discarded Materials" means all Recyclable Materials, Organic Materials, and Solid
121 Waste placed by a Generator in a collection container and/or at a location for the purposes
122 of collection, excluding Excluded Waste.

123 "Edible Food" means food intended for human consumption, or as otherwise defined in
124 14 CCR Section 18982(a)(18). For the purposes of this Chapter or as otherwise defined
125 in 14 CCR Section 18982(a)(18), "Edible Food" is not Solid Waste if it is recovered and
126 not discarded. Nothing in this Chapter or in 14 CCR, Division 7, Chapter 12 requires or
127 authorizes the Recovery of Edible Food that does not meet the food safety requirements
128 of the California Health and Safety Code, including the California Retail Food Code.

129 "Enforcement Action" means an action of the City to address non-compliance with this
130 Chapter including, but not limited to, issuing administrative citations, fines, penalties, or
131 using other remedies.

132 "Excluded Waste" means Hazardous Substance, Hazardous Waste, Infectious Waste,
133 Designated Waste, volatile, corrosive, medical waste, infectious, regulated radioactive
134 waste, and toxic substances or material that facility operator(s), which receive materials
135 from the City and its Generators, reasonably believe(s) would, as a result of or upon
136 acceptance, transfer, processing, or disposal, be a violation of local, State, or Federal
137 law, regulation, or ordinance, including without limitation: land use restrictions or
138 conditions, waste that cannot be disposed of in Class III landfills or accepted at the facility
139 by permit conditions, waste that in City, or its Designee's reasonable opinion would
140 present a significant risk to human health or the environment, cause a nuisance or
141 otherwise create or expose City, or its Designee, to potential liability; but not including de
142 minimis volumes or concentrations of waste of a type and amount normally found in
143 Single-Family or Multi-Family Solid Waste after implementation of programs for the safe
144 collection, processing, recycling, treatment, and disposal of batteries and paint in
145 compliance with Sections 41500 and 41802 of the California Public Resources Code.

146 "Food Distributor" means a company that distributes food to entities including, but not
147 limited to, Supermarkets and Grocery Stores, or as otherwise defined in 14 CCR Section
148 18982(a)(22).

149 "Food Facility" has the same meaning as in Section 113789 of the Health and Safety
150 Code.

151 "Food Recovery" means actions to collect and distribute food for human consumption that
152 otherwise would be disposed, or as otherwise defined in 14 CCR Section 18982(a)(24).

153 "Food Recovery Organization" means an entity that engages in the collection or receipt
154 of Edible Food from Commercial Edible Food Generators and distributes that Edible Food

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to the public for Food Recovery either directly or through other entities or as otherwise defined in 14 CCR Section 18982(a)(25), including, but not limited to:

- (1) A food bank as defined in Section 113783 of the Health and Safety Code;
- (2) A nonprofit charitable organization as defined in Section 113841 of the Health and Safety Code; and,
- (3) A nonprofit charitable temporary Food Facility as defined in Section 113842 of the Health and Safety Code.

A Food Recovery Organization is not a Commercial Edible Food Generator for the purposes of this Chapter and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7).

If the definition in 14 CCR Section 18982(a)(25) for Food Recovery Organization differs from this definition, the definition in 14 CCR Section 18982(a)(25) shall apply to this Chapter.

"Food Recovery Service" means a person or entity that collects and transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food Recovery, or as otherwise defined in 14 CCR Section 18982(a)(26). A Food Recovery Service is not a Commercial Edible Food Generator for the purposes of this Chapter and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7).

"Food Scraps" means those Discarded Materials that will decompose and/or putrefy including: (i) all kitchen and table Food Waste; (ii) animal or vegetable waste that is generated during or results from the storage, preparation, cooking or handling of food stuffs; (iii) fruit waste, grain waste, dairy waste, meat, and fish waste; and, (iv) vegetable trimmings, houseplant trimmings and other Compostable Organic Waste common to the occupancy of Residential dwellings. Food Scraps are a subset of Food Waste. Food Scraps excludes fats, oils, and grease when such materials are Source Separated from other Food Scraps.

"Food Service Provider" means an entity primarily engaged in providing food services to institutional, governmental, Commercial, or industrial locations of others based on contractual arrangements with these types of organizations, or as otherwise defined in 14 CCR Section 18982(a)(27).

"Food-Soiled Paper" is compostable paper material that has come in contact with Food Scraps or liquid, such as, but not limited to, compostable paper plates, paper coffee cups, napkins, milk cartons and pizza boxes.

"Food Waste" means Source Separated Food Scraps and Food-Soiled Paper.

"Food Waste Self-Hauler" means a Self-Hauler who generates and hauls, utilizing their own employees and equipment, an average of one cubic yard or more per week, or 6,500

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192 pounds or more per quarter of their own Food Waste to a location or facility that is not
193 owned and operated by that Self-Hauler. Food Waste Self-Haulers are a subset of Self-
194 Haulers.

195 "Generator" means a person or entity that is responsible for the initial creation of one or
196 more types of Discarded Materials.

197 "Grocery Store" means a store primarily engaged in the retail sale of canned food; dry
198 goods; fresh fruits and vegetables; fresh meats, fish, and poultry; and any area that is not
199 separately owned within the store where the food is prepared and served, including
200 without limitation a bakery, deli, and meat and seafood departments, or as otherwise
201 defined in 14 CCR Section 18982(a)(30).

202 "Hauler Route" means the designated itinerary or sequence of stops for each segment of
203 the City's collection service area, or as otherwise defined in 14 CCR Section
204 18982(a)(31.5).

205 "Hazardous Substance" means any of the following: (a) any substances defined,
206 regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous
207 materials", "Hazardous Wastes", "toxic waste", "pollutant", or "toxic substances", or
208 similarly identified as hazardous to human health or the environment, in or pursuant to:
209 (i) the Comprehensive Environmental Response, Compensation and Liability Act
210 (CERCLA) of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials
211 Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery
212 Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California
213 Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air
214 Act, 42 USC §7901 et seq.; and, (vii) California Water Code §13050; (b) any amendments,
215 rules or regulations promulgated thereunder to such enumerated statutes or acts currently
216 existing or hereafter enacted; and, (c) any other hazardous or toxic substance, material,
217 chemical, waste or pollutant identified as hazardous or toxic or regulated under any other
218 Applicable Law currently existing or hereinafter enacted, including, without limitation,
219 friable asbestos, polychlorinated biphenyl's (PCBs), petroleum, natural gas, and synthetic
220 fuel products, and by-products.

221 "Hazardous Waste" means all substances defined as Hazardous Waste, acutely
222 Hazardous Waste, or extremely Hazardous Waste by the State in Health and Safety Code
223 §25110.02, §25115, and §25117, State Public Resources Code Section 40141, or in the
224 future amendments to or recodifications of such statutes or identified and listed as solar
225 panels from Residential Premises, and Hazardous Waste by the U.S. Environmental
226 Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery
227 Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations
228 promulgated thereunder.

229 "High Diversion Organic Waste Processing Facility" means a facility that is in compliance
230 with the reporting requirements of 14 CCR Section 18815.5(d) and meets or exceeds an
231 annual average Mixed Waste organic content Recovery rate of 50 percent between
232 January 1, 2022 and December 31, 2024, and 75 percent after January 1, 2025, as

EXHIBIT "A"

233 calculated pursuant to 14 CCR Section 18815.5(e) for Organic Waste received from the
234 "Mixed waste organic collection stream" as defined in 14 CCR Section 17402(a)(11.5);
235 or, as otherwise defined in 14 CCR Section 18982(a)(33).

236 "Infectious Waste" means (a) equipment, instruments, utensils and other fomites of a
237 disposable nature from the rooms of patients who are suspected to have or have been
238 diagnosed as having a communicable disease and must, therefore, be isolated as
239 required by public health agencies; (b) laboratory wastes, including pathological
240 specimens (i.e., all tissues, specimens of blood elements, excreta and secretions
241 obtained from patients or laboratory animals) and disposable fomites (any substance that
242 may harbor or transmit pathogenic organisms) attendant thereto; and/or (c) surgical
243 operating room pathologic specimens - including recognizable anatomical parts, human
244 tissue, anatomical human remains and disposable materials from hospitals, clinics,
245 outpatient areas and emergency rooms, as defined in 14 CCR Section 17225.36. .

246 "Inspection" means a site visit where a City reviews records, containers, and an entity's
247 collection, handling, recycling, or landfill disposal of Recyclable Materials, Organic Waste,
248 Solid Waste or Edible Food handling to determine if the entity is complying with
249 requirements set forth in this Chapter, or as otherwise defined in 14 CCR Section
250 18982(a)(35).

251 "Large Event" means an event, including, but not limited to, a sporting event or a flea
252 market, that charges an admission price, or is operated by a local agency, and serves an
253 average of more than 2,000 individuals per day of operation of the event, at a location
254 that includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot,
255 golf course, street system, or other open space when being used for an event. If the
256 definition in 14 CCR Section 18982(a)(38) differs from this definition, the definition in 14
257 CCR Section 18982(a)(38) shall apply to this Chapter.

258 "Large Venue" means a permanent venue facility that annually seats or serves an
259 average of more than 2,000 individuals within the grounds of the facility per day of
260 operation of the venue facility. For purposes of this Chapter and implementation of 14
261 CCR, Division 7, Chapter 12, a venue facility includes, but is not limited to, a public,
262 nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement
263 park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing
264 arts center, fairground, museum, theater, or other public attraction facility. For purposes
265 of this Chapter and implementation of 14 CCR, Division 7, Chapter 12, a site under
266 common ownership or control that includes more than one Large Venue that is contiguous
267 with other Large Venues in the site, is a single Large Venue. If the definition in 14 CCR
268 Section 18982(a)(39) differs from this definition, the definition in 14 CCR Section
269 18982(a)(39) shall apply to this Chapter.

270 "Local Education Agency" means a school district, charter school, or county office of
271 education that is not subject to the control of City or county regulations related to Solid
272 Waste, or as otherwise defined in 14 CCR Section 18982(a)(40).

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273 "Multi-Family Residential Dwelling" or "Multi-Family" or "MFD" means of, from, or
274 pertaining to Residential Premises with five (5) or more dwelling units including such
275 Premises when combined in the same building with Commercial establishments, that
276 receive centralized, shared, Collection service for all units on the Premises which are
277 billed to one (1) Customer at one (1) address. Customers residing in Townhouses, mobile
278 homes, condominiums, or other structures with five (5) or more dwelling units who receive
279 individual service and are billed separately shall not be considered Multi-Family. Multi-
280 Family Premises do not include hotels, motels, or other transient occupancy facilities,
281 which are considered Commercial Businesses.

282 "MWELO" refers to the Model Water Efficient Landscape Ordinance (MWELO), 23 CCR,
283 Division 2, Chapter 2.7.

284 "Notice of Violation" or "NOV" means a notice that a violation has occurred that includes
285 a compliance date to avoid an action to seek penalties, or as otherwise defined in 14 CCR
286 Section 18982(a)(45) or further explained in 14 CCR Section 18995.4.

287 "Occupant" means the Person who occupies a Premises.

288 "Organic Materials" means Yard Trimmings and Food Waste, individually or collectively
289 that are set aside, handled, packaged, or offered for collection in a manner different from
290 Solid Waste for the purpose of processing. No Discarded Material shall be considered to
291 be Organic Materials, however, unless it is Source Separated from Recyclable Material
292 and Solid Waste. Organic Materials are a subset of Organic Waste.

293 "Organic Materials Container" shall be used for the purpose of storage and collection of
294 Source Separated Organic Materials.

295 "Organic Waste" means wastes containing material originated from living organisms and
296 their metabolic waste products, including but not limited to food, green material,
297 landscape and pruning waste, organic textiles and carpets, lumber, wood, Paper
298 Products, Printing and Writing Paper, manure, biosolids, digestate, and sludges or as
299 otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as
300 defined by 14 CCR Section 18982(a).

301 "Owner" means the Person(s) holding legal title to real property and/or any improvements
302 thereon and shall include the Person(s) listed on the latest equalized assessment roll of
303 the County Assessor.

304 "Paper Products" include, but are not limited to, paper janitorial supplies, cartons,
305 wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling,
306 or as otherwise defined in 14 CCR Section 18982(a)(51).

307 "Printing and Writing Papers" include, but are not limited to, copy, xerographic,
308 watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes,
309 manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated
310 writing papers, posters, index cards, calendars, brochures, reports, magazines, and
311 publications, or as otherwise defined in 14 CCR Section 18982(a)(54).

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312 "Premises" means and includes any land, building and/or structure, or portion thereof, in
313 the City where Discarded Materials are produced, generated, or accumulated. All
314 structures on the same legal parcel, which are owned by the same person shall be
315 considered as one Premises.

316 "Prohibited Container Contaminants" means the following: (i) Discarded Materials placed
317 in the Recyclable Materials Container that are not identified as acceptable Source
318 Separated Recyclable Materials for the City's Recyclable Materials Container; (ii)
319 Discarded Materials placed in the Organic Materials Container that are not identified as
320 acceptable Source Separated Organic Materials for the City's Organic Materials
321 Container; (iii) Discarded Materials placed in the Solid Waste Container that are
322 acceptable Source Separated Recyclable Materials and/or Source Separated Organic
323 Materials to be placed in City's Organic Materials Container and/or Recyclable Materials
324 Container; and, (iv) Excluded Waste placed in any container.

325 "Recovery" means any activity or process described in 14 CCR Section 18983.1(b), or as
326 otherwise defined in 14 CCR Section 18982(a)(49).

327 "Recyclable Materials" means those Discarded Materials that the Generators set out in
328 Recyclables Containers for Collection for the purpose of Recycling by the Service
329 Provider and that exclude Excluded Waste. No Discarded Materials shall be considered
330 Recyclable Materials unless such material is separated from Organic Materials, and Solid
331 Waste. Recyclable Materials shall include, but not be limited to newspaper, aluminum, tin
332 and bi-metal cans, clear and colored glass containers, all plastic containers (except
333 polystyrene), corrugated cardboard, mixed paper (Including white and colored ledger
334 paper, chipboard, junk mail, magazines and phone books) and used motor oil and filter.
335 Acceptable Recyclable Materials may be added to or removed from this list from time to
336 time by mutual consent or at the sole discretion of the City. Contractor shall not add or
337 remove materials to or from this list without written approval from the City Manager or
338 signed amendment to any City agreement with a Contractor or Designee, and such
339 approval shall not be unreasonably withheld. For the purpose of collection of Recyclable
340 Materials through contractor's collection services, recyclable materials shall be limited to
341 those materials identified by the collection contractor as acceptable recyclable materials.

342 "Recyclable Materials Container" shall be used for the purpose of storage and collection
343 of Source Separated Recyclable Materials.

344 "Recycled-Content Paper" means Paper Products and Printing and Writing Paper that
345 consists of at least 30 percent, by fiber weight, postconsumer fiber, or as otherwise
346 defined in 14 CCR Section 18982(a)(61).

347 "Residential" shall mean of, from, or pertaining to a Single-Family Premises or Multi-
348 Family Premises, including Single-Family homes, apartments, condominiums,
349 Townhouse complexes, mobile home parks, and cooperative apartments. For purposes
350 of this Chapter, a Multi-Family Residential Dwelling (five units or less) qualifies as
351 Commercial despite its Residential uses.

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352 "Responsible Party" means the Owner, property manager, tenant, lessee, Occupant, or
353 other designee that subscribes to and pays for Recyclable Materials, Organic Materials,
354 and/or Solid Waste collection services for Premises in the City, or, if there is no such
355 subscriber, the Owner or property manager of a Single-Family Premises, Multi-Family
356 Premises, or Commercial Premises. In instances of dispute or uncertainty regarding who
357 is the Responsible Party for a Premises, Responsible Party shall mean the Owner of a
358 Single-Family Premises, Multi-Family Premises, or Commercial Premises.

359 "Restaurant" means an establishment primarily engaged in the retail sale of food and
360 drinks for on-Premises or immediate consumption, or as otherwise defined in 14 CCR
361 Section 18982(a)(64).

362 "Route Review" means a visual Inspection of containers along a Hauler Route for the
363 purpose of determining Container Contamination and may include mechanical Inspection
364 methods such as the use of cameras, or as otherwise defined in 14 CCR Section
365 18982(a)(65).

366 "SB 1383" means Senate Bill 1383 of 2016 approved by the Governor on September 19,
367 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and
368 Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of
369 Division 30 of the Public Resources Code, establishing methane emissions reduction
370 targets in a Statewide effort to reduce emissions of short-lived climate pollutants as
371 amended, supplemented, superseded, and replaced from time to time.

372 "SB 1383 Regulations" or "SB 1383 Regulatory" means or refers to, for the purposes of
373 this Chapter, the Short-Lived Climate Pollutants: Organic Waste Reduction regulations
374 developed by CalRecycle and adopted in 2020 that created 14 CCR, Division 7, Chapter
375 12 and amended portions of regulations of 14 CCR and 27 CCR.

376 "Self-Haul" means to act as a Self-Hauler.

377 "Self-Hauler" means a Person, who hauls Solid Waste, Organic Waste or Recyclable
378 Material he or she has generated to another Person. Self-Hauler also includes a person
379 who back-hauls waste, or as otherwise defined in 14 CCR Section 18982(a)(66). Back-
380 haul means generating and transporting Organic Waste to a destination owned and
381 operated by the Generator using the Generator's own employees and equipment, or as
382 otherwise defined in 14 CCR Section 18982(a)(66)(A). A Self-Hauler must be a Person
383 within the City who is not primarily engaged in the business of collection, removal or
384 transportation of Solid Waste, Organic Waste, or Recyclables, but in the course of
385 performing the Person's primary business function incidentally transports Solid Waste,
386 Organic Waste, or Recyclables with equipment owned or leased by that Person.
387 Examples of Self-Haulers include, but are not limited to, gardeners, landscapers, and
388 household cleanup service firms. A Person who is engaged in the business of collection,
389 removal or transportation of C&D material (other than as work performed ancillary to the
390 person's business and using that person's own forces and equipment) is not a Self-Hauler
391 under any circumstance.

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392 "Service Level" refers to the size of a Customer's Container and the frequency of
393 Collection service.

394 "Single-Family" or "SFD" refers to any detached or attached house or residence of four
395 (4) units or less designed or used for occupancy by one (1) family, provided that Collection
396 service feasibly can be provided to such Premises as an independent unit, and the Owner
397 or Occupant of such independent unit is billed directly for the Collection service. Single-
398 Family includes townhouses, condominiums, and each independent unit of duplex, tri-
399 plex, or four-plex Residential structures, regardless of whether each unit is separately
400 billed for their specific Service Level.

401 "Solid Waste" has the same meaning as defined in State Public Resources Code Section
402 40191, which defines Solid Waste as all putrescible and non-putrescible solid, semisolid,
403 and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial
404 wastes, demolition and construction wastes, abandoned vehicles and parts thereof,
405 discarded home and industrial appliances, dewatered, treated, or chemically fixed
406 sewage sludge which is not Hazardous Waste, manure, vegetable or animal solid and
407 semi-solid wastes, and other discarded solid and semisolid wastes, with the exception
408 that Solid Waste does not include any of the following wastes:

- 409 (1) Hazardous Waste.
- 410 (2) Radioactive waste regulated pursuant to the State Radiation Control Law
411 (Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of
412 the State Health and Safety Code).
- 413 (3) Medical waste regulated pursuant to the State Medical Waste Management
414 Act (Part 14 (commencing with Section 117600) of Division 104 of the State
415 Health and Safety Code). Untreated medical waste shall not be disposed of
416 in a Solid Waste landfill, as defined in State Public Resources Code Section
417 40195.1. Medical waste that has been treated and deemed to be Solid
418 Waste shall be regulated pursuant to Division 30 of the State Public
419 Resources Code.
- 420 (4) Recyclable Materials, Organic Materials, and Construction and Demolition
421 Debris when such materials are Source Separated.

422 Notwithstanding any provision to the contrary, Solid Waste may include de minimis
423 volumes or concentrations of waste of a type and amount normally found in
424 Residential Solid Waste after implementation of programs for the safe Collection,
425 Recycling, treatment, and Disposal of household hazardous waste (as defined in
426 Health and Safety Code Section 25218.1) in compliance with Section 41500 and
427 41802 of the California Public Resources Code as may be amended from time to
428 time. Solid Waste includes salvageable materials only when such materials are
429 included for Collection in a Solid Waste Container not Source Separated from Solid
430 Waste at the site of generation.

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431 "Solid Waste Container" shall be used for the purpose of storage and collection of Solid
432 Waste.

433 "Source Separated" or "Source-Separated (materials)" means materials, including
434 commingled Recyclable Materials and Organic Materials, that have been separated or
435 kept separate from the Solid Waste stream, at the point of generation, for the purpose of
436 additional sorting or processing those materials for recycling or reuse in order to return
437 them to the economic mainstream in the form of raw material for new, reused, or
438 reconstituted products, which meet the quality standards necessary to be used in the
439 marketplace, or as otherwise defined in 14 CCR Section 17402.5(b)(4). For the purposes
440 of the ordinance, Source Separated shall include separation of materials by the
441 Generator, Responsible Party, or Responsible Party's employee, into different containers
442 for the purpose of collection such that Source-Separated materials are separated from
443 Solid Waste for the purposes of collection and processing.

444 "Source Separated Organic Materials" means Organic Materials that are Source
445 Separated and placed in an Organic Materials Container.

446 "Source Separated Recyclable Materials" means Recyclable Materials that are Source
447 Separated and placed in a Recyclable Materials Container.

448 "State" means the State of California.

449 "Supermarket" means a full-line, self-service retail store with gross annual sales of two
450 million dollars (\$2,000,000), or more, and which sells a line of dry grocery, canned goods,
451 or nonfood items and some perishable items, or as otherwise defined in 14 CCR Section
452 18982(a)(71).

453 "Tier One Commercial Edible Food Generator" means a Commercial Edible Food
454 Generator that is one of the following:

455 (1) Supermarket.

456 (2) Grocery Store with a total facility size equal to or greater than 10,000 square
457 feet.

458 (3) Food Service Provider.

459 (4) Food Distributor.

460 (5) Wholesale Food Vendor.

461 If the definition in 14 CCR Section 18982(a)(73) of Tier One Commercial Edible
462 Food Generator differs from this definition, the definition in 14 CCR Section
463 18982(a)(73) shall apply to this Chapter.

464 "Tier Two Commercial Edible Food Generator" means a Commercial Edible Food
465 Generator that is one of the following:

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- 466 (1) Restaurant with 250 or more seats, or a total facility size equal to or greater
467 than 5,000 square feet.
- 468 (2) Hotel with an on-site Food Facility and 200 or more rooms.
- 469 (3) Health facility with an on-site Food Facility and 100 or more beds.
- 470 (4) Large Venue.
- 471 (5) Large Event.
- 472 (6) A State agency with a cafeteria with 250 or more seats or total cafeteria
473 facility size equal to or greater than 5,000 square feet.
- 474 (7) A Local Education Agency facility with an on-site Food Facility.

475 If the definition in 14 CCR Section 18982(a)(74) of Tier Two Commercial Edible
476 Food Generator differs from this definition, the definition in 14 CCR Section
477 18982(a)(74) shall apply to this Chapter.

478 "Ton" or "Tonnage" means a unit of measure for weight equivalent to two thousand (2,000)
479 standard pounds where each pound contains sixteen (16) ounces.

480 "Wholesale Food Vendor" means a business or establishment engaged in the merchant
481 wholesale distribution of food, where food (including fruits and vegetables) is received,
482 shipped, stored, prepared for distribution to a retailer, warehouse, distributor, or other
483 destination, or as otherwise defined in 14 CCR Section 18982(a)(76).

484 **8.18.040 - Requirements for Single-Family Premises**

485 (a) Except Responsible Parties of Single-Family Premises that meet the Self-Hauler
486 requirements in Section 8.18.110, Responsible Parties of Single-Family Premises
487 shall comply with the following requirements:

488 (1) Subscribe to and pay for City's three-container collection services for
489 weekly collection of Recyclable Materials, Organic Materials, and Solid
490 Waste generated by the Single-Family Premises and comply with
491 requirements of those services as described below in Section
492 8.18.040(a)(2). City and its Designee(s) shall have the right to review the
493 number and size of a Generator's containers to evaluate adequacy of
494 capacity provided for each type of collection service for proper separation
495 of materials and containment of materials. The Responsible Parties for
496 Single-Family Premises shall adjust their Service Level for their collection
497 services as requested by the City.

498 (2) Participate in the City's three-container collection service(s) in the manner
499 described below.

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500 (A) Place, or, if Responsible Party is not an Occupant of the Single-
501 Family Premises, direct its Generators to place, Source Separated
502 Organic Materials, including Food Waste, in the Organic Materials
503 Container; Source Separated Recyclable Materials in the Recyclable
504 Materials Container; and Solid Waste in the Solid Waste Container.

505 (B) Not place, or, if Responsible Party is not an Occupant of the Single-
506 Family Premises, direct its Generators to not place Prohibited
507 Container Contaminants in collection containers and not place
508 materials designated for the Organic Materials Containers or
509 Recyclable Materials Containers in the Solid Waste Containers.

510 (b) Nothing in this Section prohibits a Responsible Party or Generator of a Single-
511 Family Premises from preventing or reducing Discarded Materials generation,
512 managing Organic Waste on site, and/or using a Community Composting site
513 pursuant to 14 CCR Section 18984.9(c).

514 **8.18.050 - Requirements for Multi-Family Residential Dwellings**

515 (a) Responsible Parties of Multi-Family Premises shall provide or arrange for
516 Recyclable Materials, Organic Materials, and Solid Waste collection services
517 consistent with this Chapter and for employees, contractors, and tenants.
518 Responsible Parties of Multi-Family Premises may receive waivers pursuant to
519 Section 8.18.070 for some requirements of this Section.

520 (b) Except for Responsible Parties of Multi-Family Premises that meet the Self-Hauler
521 requirements in Section 8.18.110 of this Chapter, including hauling services
522 arranged through a landscaper, Responsible Parties of Multi-Family Premises
523 shall:

524 (1) Subscribe to and pay for City's three or more-container collection services
525 and comply with requirements of those services for all Recyclable Materials,
526 Organic Materials, and Solid Waste generated at the Multi-Family Premises
527 as further described below in this Section. City and its Designee(s) shall
528 have the right to review the number and size of the Multi-Family Premises'
529 collection containers and frequency of collection to evaluate adequacy of
530 capacity provided for each type of collection service for proper separation
531 of materials and containment of materials. The Responsible Party of a Multi-
532 Family Premises shall adjust their Service Level for their collection services
533 as requested by the City or its Designee.

534 (2) Participate in the City's three or more-container collection service(s) for at
535 least weekly collection of Recyclable Materials, Organic Materials, and
536 Solid Waste in the manner described below.

537 (A) Place and/or direct its Generators to place Source Separated
538 Organic Materials, including Food Waste, in the Organic Materials

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- 539 Container; Source Separated Recyclable Materials in the Recyclable
540 Materials Container; and Solid Waste in the Solid Waste Container.
- 541 (B) Not place and/or direct its Generators to not place Prohibited
542 Container Contaminants in collection containers and to not place
543 materials designated for the Organic Materials Containers or
544 Recyclable Materials Containers in the Solid Waste Containers.
- 545 (3) Supply and allow access to adequate number, size and location of collection
546 containers with sufficient labels or colors for employees, contractors,
547 tenants, and customers, consistent with City's Recyclable Materials
548 Container, Organic Materials Container, and Solid Waste Container
549 collection service or, if Self-Hauling, consistent with the Multi-Family
550 Premises' approach to complying with Self-Hauler requirements in Section
551 8.18.110 of this Chapter.
- 552 (4) Annually provide information to employees, contractors, tenants, and
553 customers about Recyclable Materials and Organic Waste Recovery
554 requirements and about proper sorting of Recyclable Materials, Organic
555 Materials, and Solid Waste.
- 556 (5) Provide education information before or within fourteen (14) days of
557 occupation of the Premises to new tenants that describes requirements to
558 Source Separate Recyclable Materials and Organic Materials and to keep
559 Source Separated Organic Materials and Source Separated Recyclable
560 Materials separate from each other and from Solid Waste (when applicable)
561 and the location of containers and the rules governing their use at each
562 property.
- 563 (6) Provide or arrange access for City and/or its Designee(s) to their properties
564 during all Inspections conducted in accordance with this Chapter to confirm
565 compliance with the requirements of this Chapter.
- 566 (c) If the Responsible Party of a Multi-Family Premises wants to Self-Haul, meet the
567 Self-Hauler requirements in Section 8.18.110 of this Chapter.
- 568 (d) Multi-family Premises that generate two (2) cubic yards or more of total Solid
569 Waste, Recyclable Materials, and Organic Materials per week (or other threshold
570 defined by the State) that arrange for gardening or landscaping services shall
571 require that the contract or work agreement between the Owner, Occupant, or
572 operator of a Multi-Family Premises and a gardening or landscaping service
573 specifies that the designated organic materials generated by those services be
574 managed in compliance with this Chapter.
- 575 (e) Nothing in this Section prohibits a Responsible Party or Generator of a Multi-Family
576 Premises from preventing or reducing Discarded Materials generation, managing
577 Organic Waste on site, or using a Community Composting site pursuant to 14 CCR
578 Section 18984.9(c).

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8.18.060 - Requirements for Commercial Businesses

- (a) Responsible Parties of Commercial Businesses shall provide or arrange for Recyclable Materials, Organic Materials, and Solid Waste collection services consistent with this Chapter and for employees, contractors, tenants, and customers. Responsible Parties of Commercial Premises may receive waivers pursuant to Section 8.18.070 for some requirements of this Section.
- (b) Except Responsible Parties of Commercial Businesses that meet the Self-Hauler requirements in Section 8.18.110 of this Chapter, including hauling services arranged through a landscaper, Responsible Parties of Commercial Premises shall:
- (1) Subscribe to and pay for City's three or more-container collection services and comply with requirements of those services for all Recyclable Materials, Organic Materials, and Solid Waste generated at the Commercial Premises as further described below in this Section. City and its Designee(s) shall have the right to review the number and size of a Commercial Premises' collection containers and frequency of collection to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials. The Responsible Party of the Commercial Business shall adjust their Service Level for their collection services as requested by the City or its Designee.
 - (2) Participate in the City's three or more-container collection service(s) for at least weekly collection of Recyclable Materials, Organic Materials, and Solid Waste in the manner described below.
 - (A) Place and/or direct its Generators to place Source Separated Organic Materials, including Food Waste, in the Organic Materials Container; Source Separated Recyclable Materials in the Recyclable Materials Container; and Solid Waste in the Solid Waste Container.
 - (B) Not place and/or direct its Generators to not place Prohibited Container Contaminants in collection containers and to not place materials designated for the Organic Materials Containers or Recyclable Materials Containers in the Solid Waste Containers.
 - (3) Supply and allow access to adequate number, size and location of collection containers with sufficient labels or colors (conforming with Sections 8.18.060(b)(4)(A) and 8.18.060(b)(4)(B), below) for employees, contractors, tenants, and customers, consistent with City's Recyclable Materials Container, Organic Materials Container, and Solid Waste Container collection service or, if Self-Hauling, consistent with the Commercial Premises' approach to complying with Self-Hauler requirements in Section 8.18.110 of this Chapter.

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- (4) Provide containers for customers for the collection of Source Separated Recyclable Materials and Source Separated Organic Materials in all indoor and outdoor areas where Solid Waste containers are provided for customers, for materials generated by that Commercial Business. Such containers shall be visible and easily accessible. Such containers do not need to be provided in restrooms. If a Commercial Business does not generate any of the materials that would be collected in one type of container, as demonstrated through an approved de minimis waiver per Section 8.18.070(a), then the Responsible Party of the Commercial Business does not have to provide that particular container in all areas where Solid Waste containers are provided for customers. Pursuant to 14 CCR Section 18984.9(b), the containers provided by the Responsible Party of the Commercial Business shall have either:
- (A) A body or lid that conforms with the container colors provided through the collection service provided by City, with either lids conforming to the color requirements or bodies conforming to the color requirements or both lids and bodies conforming to color requirements. The Responsible Party of the Commercial Business is not required to replace functional containers that do not comply with the requirements of this subsection prior to whichever of the following comes first: (i) the end of the useful life of those containers, or (ii) January 1, 2036.
- (B) Container labels that include language or graphic images, or both, indicating the primary material accepted and the primary materials prohibited in that container, or containers with imprinted text or graphic images that indicate the primary materials accepted and primary materials prohibited in the container. Pursuant 14 CCR Section 18984.8, the container labeling requirements are required on new containers commencing January 1, 2022.
- (5) To the extent practical through education, training, Inspection, and/or other measures, prohibit employees from placing materials in a container not designated for those materials per the City's Recyclable Materials Container, Organic Materials Container, and Solid Waste collection service or, if Self-Hauling, per the instructions of the Commercial Business's Responsible Party to support its compliance with Self-Hauler requirements in Section 8.18.110 of this Chapter.
- (6) Periodically inspect Recyclable Materials Containers, Organic Materials Containers, and Solid Waste Containers for Contamination and inform employees if containers are Contaminated and of the requirements to keep contaminants out of those containers pursuant to 14 CCR Section 18984.9(b)(3).

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(7) Annually provide information to employees, contractors, tenants, and customers about Recyclable Materials and Organic Waste Recovery requirements and about proper sorting of Recyclable Materials, Organic Materials, and Solid Waste.

(8) Provide education information before or within fourteen (14) days of occupation of the Premises to new tenants that describes requirements to Source Separate Recyclable Materials and Organic Materials and to keep Source Separated Organic Materials and Source Separated Recyclable Materials separate from each other and from other Solid Waste (when applicable) and the location of containers and the rules governing their use at each property.

(9) Provide or arrange access for City or its Designee to their properties during all Inspections conducted in accordance with this Chapter to confirm compliance with the requirements of this Chapter.

(c) If the Responsible Party of a Commercial Business wants to Self-Haul, meet the Self-Hauler requirements in Section 8.18.110 of this Chapter.

(d) Nothing in this Section prohibits a Responsible Party or a Generator of a Commercial Business from preventing or reducing Discarded Materials generation, managing Organic Waste on site, or using a Community Composting site pursuant to 14 CCR Section 18984.9(c).

(e) Responsible Parties of Commercial Businesses that are Tier One or Tier Two Commercial Edible Food Generators shall comply with Food Recovery requirements, pursuant to Section 8.18.080 of this Chapter.

8.18.070 - Waivers for Multi-Family Premises and Commercial Premises

(a) De Minimis Waivers for Multi-Family Premises and Commercial Premises. The City's Designee, or the City if there is no Designee, may waive a Responsible Party's obligation to comply with some or all Recyclable Materials and Organic Waste requirements of this Chapter if the Responsible Party of the Commercial Business or Multi-Family Premises submits an application in a form established by Designee, or the City if there is no Designee, to the Designee, or the City if there is no Designee, that the Commercial Business or Multi-Family Premises meets one of the criteria in subsections (1) and (2) below. For the purposes of subsections (1) and (2), the total Solid Waste shall be the sum of weekly container capacity measured in cubic yards for Solid Waste, Recyclable Materials, and Organic Materials collection service. Hauling through paper shredding service providers or other incidental services may be considered in granting a de minimis waiver.

(1) The Commercial Business's or Multi-Family Premises' total Solid Waste collection service is two (2) cubic yards or more per week and Recyclable Materials and Organic Materials subject to collection in Recyclable Materials Container(s) or Organic Materials Container(s) comprises less

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- 699 than twenty (20) gallons per week per applicable material stream of the
700 Multi-family Premises' or Commercial Business's total waste (i.e.,
701 Recyclable Materials in the Recyclable Materials stream are less than
702 twenty (20) gallons per week or Organic Materials in the Organic Materials
703 stream are less than twenty (20) gallons per week); or,
- 704 (2) The Commercial Business's or Multi-Family Premises' total Solid Waste
705 collection service is less than two (2) cubic yards per week and Recyclable
706 Materials and Organic Materials subject to collection in a Recyclable
707 Materials Container(s) or Organic Materials Container(s) comprises less
708 than ten (10) gallons per week per applicable material stream of the Multi-
709 family Premises' or Commercial Business's total waste (i.e., Recyclable
710 Materials in the Recyclable Materials stream are less than ten (10) gallons
711 per week or Organic Materials in the Organic Materials stream are less than
712 ten (10) gallons per week).
- 713 (b) Physical Space Waivers. The City's Designee, or the City if there is no Designee,
714 may waive a Commercial Business's or Multi-Family Premises' obligation to
715 comply with some or all of the Recyclable Materials and/or Organic Waste
716 collection service requirements if the City or its Designee has evidence from its
717 own staff, a hauler, licensed architect, or licensed engineer demonstrating that the
718 Premises lacks adequate space for Recyclable Materials Containers and/or
719 Organic Materials Containers required for compliance with the Recyclable
720 Materials and Organic Materials collection requirements of Section 8.18.050 or
721 8.18.060 as applicable.
- 722 (c) Review and Approval of Waivers. Waivers shall be granted to Responsible Parties
723 by the City's Designee, or the City if there is no Designee, according to the
724 following process:
- 725 (1) Responsible Parties of Premises seeking waivers shall submit a completed
726 application form to the City's Designee, or the City if there is no Designee,
727 for a waiver specifying the waiver type requested, type(s) of collection
728 services for which they are requesting a waiver, the reason(s) for such
729 waiver, and documentation supporting such request.
- 730 (2) Upon waiver approval, the City's Designee, or the City if there is no
731 Designee, shall specify that the waiver is valid for the following duration:
- 732 (i) For Commercial Premises, five (5) years, or if property ownership
733 changes, or if occupancy changes, whichever occurs first.
- 734 (ii) For Multi-Family Premises, five (5) years, or if property ownership
735 changes, or if the property manager changes, whichever occurs first.
- 736 (3) Waiver holder shall notify City's Designee, or the City if there is no
737 Designee, if circumstances change such that Commercial Business's or

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738 Multi-Family Premises' may no longer qualify for the waiver granted, in
739 which case waiver will be rescinded.

740 (4) Any waiver holder must cooperate with the City and/or its Designee for any
741 on-site assessment of the appropriateness of the waiver.

742 (5) Waiver holder shall reapply to the City's Designee, or the City if there is no
743 Designee, for a waiver upon the expiration of the waiver period and shall
744 submit any required documentation, and/or fees/payments as required by
745 the City and/or its Designee. Failure to submit a completed application shall
746 equate to an automatic denial of said application.

747 (6) The City's Designee, or the City if there is no Designee, may revoke a
748 waiver upon a determination that any of the circumstances justifying a
749 waiver are no longer applicable.

750 (7) If the City's Designee does not approve a waiver application or revokes a
751 waiver, the City may appeal the decision for additional review by the
752 Designee. The City may also, after meeting and conferring with the
753 Designee, direct the Designee to approve the waiver application and/or
754 repeal the revocation of the waiver.

755 **8.18.080 - Requirements for Commercial Edible Food Generators**

756 (a) Tier One Commercial Edible Food Generators must comply with the requirements
757 of this Section commencing January 1, 2022, and Tier Two Commercial Edible
758 Food Generators must comply commencing January 1, 2024, pursuant to 14 CCR
759 Section 18991.3.

760 (b) Large Venue or Large Event operators not providing food services, but allowing
761 for food to be provided by others, shall require Food Facilities operating at the
762 Large Venue or Large Event to comply with the requirements of this Section,
763 commencing January 1, 2024.

764 (c) Commercial Edible Food Generators shall comply with the following requirements:

765 (1) Arrange to recover the maximum amount of Edible Food that would
766 otherwise be disposed. Food that is donated shall be free from adulteration,
767 spoilage, and meet the food safety standards of the California Health and
768 Safety Code. Food cannot be donated if it is not in compliance with the food
769 safety standards of the California Health and Safety Code, including food
770 that is returned by a customer, has been served or sold and in the
771 possession of a consumer, or is the subject of a recall.

772 (2) Contract with or enter into a written agreement with Food Recovery
773 Organizations or Food Recovery Services for: (i) the collection of Edible
774 Food for Food Recovery; or, (ii) acceptance of the Edible Food that the

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- 775 Commercial Edible Food Generator Self-Hauls to the Food Recovery
776 Organization for Food Recovery.
- 777 (3) Not intentionally spoil Edible Food that is capable of being recovered by a
778 Food Recovery Organization or a Food Recovery Service.
- 779 (4) Allow City's designated enforcement entity or designated third-party
780 enforcement entity to access the Premises and review records pursuant to
781 14 CCR Section 18991.4.
- 782 (5) Keep records that include the following information, or as otherwise
783 specified in 14 CCR Section 18991.4:
- 784 (A) A list of each Food Recovery Service or Food Recovery Organization
785 that collects or receives its Edible Food pursuant to a contract or
786 written agreement established under 14 CCR Section 18991.3(b).
- 787 (B) A copy of all contracts or written agreements established under 14
788 CCR Section 18991.3(b).
- 789 (C) A record of the following information for each of those Food Recovery
790 Services or Food Recovery Organizations:
- 791 (i) The name, address and contact information of the Food
792 Recovery Service or Food Recovery Organization.
- 793 (ii) The types of food that will be collected by or Self-Hauled to
794 the Food Recovery Service or Food Recovery Organization.
- 795 (iii) The established frequency that food will be collected or Self-
796 Hauled.
- 797 (iv) The quantity of food, measured in pounds recovered per
798 month, collected or Self-Hauled to a Food Recovery Service
799 or Food Recovery Organization for Food Recovery.
- 800 (6) Maintain records required by this section for five (5) years.
- 801 (7) No later than January 31 of each year commencing no later than January
802 31, 2023 for Tier One Commercial Edible Food Generators and January 31,
803 2025 for Tier Two Commercial Edible Food Generators, provide an annual
804 Food Recovery report to the City or its Designee that includes the following
805 information:
- 806 (i) The amount, in pounds, of edible food donated to a Food
807 Recovery Service or Food Recovery Organization annually;
808 and,

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- 809 (ii) The amount, in pounds of edible food rejected by a Food
810 Recovery Service or Food Recovery Organization annually.
- 811 (iii) Any additional information required by the City Manager or
812 his/her designee, or Designee.
- 813 (d) Nothing in this Chapter shall be construed to limit or conflict with the protections
814 provided by the California Good Samaritan Food Donation Act of 2017, the Federal
815 Good Samaritan Act, or share table and school food donation guidance pursuant
816 to Senate Bill 557 of 2017 (approved by the Governor of the State of California on
817 September 25, 2017, which added Article 13 [commencing with Section 49580] to
818 Chapter 9 of Part 27 of Division 4 of Title 2 of the Education Code, and to amend
819 Section 114079 of the Health and Safety Code, relating to food safety, as
820 amended, supplemented, superseded and replaced from time to time).
- 821 **8.18.090 - Requirements for Food Recovery Organizations and Services**
- 822 (a) Food Recovery Services collecting or receiving Edible Food directly from
823 Commercial Edible Food Generators, via a contract or written agreement
824 established under 14 CCR Section 18991.3(b), shall maintain the following
825 records, or as otherwise specified by 14 CCR Section 18991.5(a)(1):
- 826 (1) The name, address, and contact information for each Commercial Edible
827 Food Generator from which the service collects Edible Food.
- 828 (2) The quantity in pounds of Edible Food collected from each Commercial
829 Edible Food Generator per month.
- 830 (3) The quantity in pounds of Edible Food transported to each Food Recovery
831 Organization per month.
- 832 (4) The name, address, and contact information for each Food Recovery
833 Organization that the Food Recovery Service transports Edible Food to for
834 Food Recovery.
- 835 (b) Food Recovery Organizations collecting or receiving Edible Food directly from
836 Commercial Edible Food Generators, via a contract or written agreement
837 established under 14 CCR Section 18991.3(b), shall maintain the following
838 records, or as otherwise specified by 14 CCR Section 18991.5(a)(2):
- 839 (1) The name, address, and contact information for each Commercial Edible
840 Food Generator from which the organization receives Edible Food.
- 841 (2) The quantity in pounds of Edible Food received from each Commercial
842 Edible Food Generator per month.
- 843 (3) The name, address, and contact information for each Food Recovery
844 Service that the organization receives Edible Food from for Food Recovery.

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- 845 (c) Maintain records required by this section for five years.
- 846 (d) Food Recovery Organizations and Food Recovery Services that have their primary
847 address physically located in the City and contract with or have written agreements
848 with one or more Commercial Edible Food Generators pursuant to 14 CCR Section
849 18991.3(b) shall report to the City it is located in and the City's Designee, if
850 applicable, the total pounds of Edible Food recovered in the previous calendar year
851 from the Tier One and Tier Two Commercial Edible Food Generators they have
852 established a contract or written agreement with pursuant to 14 CCR Section
853 18991.3(b). The annual report shall be submitted to the City and the City's
854 Designee, if applicable, no later than January 31 of each year.
- 855 (e) In order to support Edible Food Recovery capacity planning assessments or other
856 studies conducted by the City that provides Solid Waste collection services, or its
857 designated entity, Food Recovery Services and Food Recovery Organizations
858 operating in the City shall provide information and consultation to the City and
859 City's Designee, if applicable, upon request, regarding existing, or proposed new
860 or expanded, Food Recovery capacity that could be accessed by the City and its
861 Commercial Edible Food Generators. A Food Recovery Service or Food Recovery
862 Organization contacted by the City and/or its Designee shall respond to such
863 request for information within 60 days, unless a shorter timeframe is otherwise
864 specified by the City.
- 865 (f) Food Recovery Organizations and Food Recovery Services that have their primary
866 address physically located in the City and contract with or have written agreements
867 with one or more Commercial Edible Food Generators shall include language in
868 all agreements with Tier 1 and Tier 2 edible food generators located in the City
869 identifying and describing the California Good Samaritan Act of 2017.
- 870 (g) Nothing in this chapter prohibits a Food Recovery Organization or Food Recovery
871 Service from refusing to accept Edible Food from a Commercial Edible Food
872 Generator.

873 **8.18.100 - Requirements for Haulers and Facility Operators**

- 874 (a) Requirements for Haulers
- 875 (1) Franchised hauler(s) providing Recyclable Materials, Organic Waste,
876 and/or Solid Waste collection services to Generators within the City's
877 boundaries shall meet the following requirements and standards as a
878 condition of approval of its contract, agreement, permit, or other
879 authorization with the City to collect Recyclable Materials, Organic
880 Materials, and/or Solid Waste:
- 881 (A) Through written notice to the City annually on or before January 31 of
882 each year, identify the facilities to which they will transport Discarded
883 Materials, including facilities for Source Separated Recyclable
884 Materials, Source Separated Organic Materials, and Solid Waste

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- 885 unless otherwise stated in the franchise agreement, contract, permit,
886 or license, or other authorization with the City.
- 887 (B) Transport Source Separated Recyclable Materials to a facility that
888 recovers those materials; transport Source Separated Organic
889 Materials to a facility, operation, activity, or property that recovers
890 Organic Waste as defined in 14 CCR, Division 7, Chapter 12, Article
891 2; transport Solid Waste to a disposal facility or transfer facility or
892 operation that processes or disposes of Solid Waste; and transport
893 manure to a facility that manages manure in conformance with 14
894 CCR Article 12 and such that the manure is not landfilled, used as
895 Alternative Daily Cover (ADC), or used as Alternative Intermediate
896 Cover (AIC).
- 897 (C) Obtain approval from the City to haul Organic Waste, unless it is
898 transporting Source Separated Organic Waste to a Community
899 Composting site or lawfully transporting C&D in a manner that
900 complies with 14 CCR Section 18989.1, Section 8.18.110 of this
901 Chapter, and all City ordinances and requirements related to C&D
902 collection, transportation and processing.
- 903 (2) Franchised hauler(s) authorized to collect Recyclable Materials, Organic
904 Materials, and/or Solid Waste shall comply with education, equipment,
905 signage, container labeling, container color, Contamination monitoring,
906 reporting, and other requirements contained within its franchise agreement,
907 permit, or other agreement entered into with City.
- 908 (b) Requirements for Facility Operators and Community Composting Operations
- 909 (1) Owners of facilities, operations, and activities located in the City's
910 boundaries that recover Organic Waste, including, but not limited to,
911 Compost facilities, in-vessel digestion facilities, and publicly-owned
912 treatment works shall, upon City request, provide information regarding
913 available and potential new or expanded capacity at their facilities,
914 operations, and activities, including information about throughput and
915 permitted capacity necessary for planning purposes. Entities contacted by
916 the City shall respond within 60 days.
- 917 (2) Community Composting operators with operations located in the City's
918 boundaries, upon City request, shall provide information to the City to
919 support Organic Waste capacity planning, including, but not limited to, an
920 estimate of the amount of Organic Waste anticipated to be handled at the
921 Community Composting operation. Entities contacted by the City shall
922 respond within 60 days.
- 923 (3) Owners of facilities, operations, and activities located in the City's
924 boundaries that receive Recyclable Materials, Organic Materials, and/or

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925 Solid Waste shall provide to the City on a quarterly basis copies of all reports
926 they are required to report to CalRecycle under 14 CCR.

927 **8.18.110 - Self-Hauler Requirements**

928 (a) Every Self-Hauler shall Source Separate its Recyclable Materials and Organic
929 Materials (materials that City otherwise requires Generators or Responsible
930 Parties to separate for collection in the City's Recyclable Materials and Organic
931 Materials collection program) generated on-site from Solid Waste in a manner
932 consistent with 14 CCR Section 18984.1 and the City's collection program. Self-
933 Haulers shall deliver their materials to facilities described in subsection (b) below.
934 Alternatively, Self-Haulers may or choose not to Source Separate Recyclable
935 Materials and Organic Materials and shall haul its Solid Waste (that includes
936 Recyclable Materials and Organic Materials) to a High Diversion Organic Waste
937 Processing Facility subject to advance written approval by the City.

938 (b) Self-Haulers that Source Separate their Recyclable Materials and Organic
939 Materials shall haul their Source Separated Recyclable Materials to a facility that
940 recovers those materials; haul their Source Separated Organic Waste to a facility,
941 operation, activity, or property that processes or recovers Source Separated
942 Organic Waste; and, haul their Solid Waste to a disposal facility or transfer facility
943 or operation that processes or disposes of Solid Waste.

944 (c) Self-Haulers that are Responsible Parties of Commercial Businesses or Multi-
945 Family Premises shall keep records of the amount of Recyclable Materials,
946 Organic Waste, and Solid Waste delivered to each facility, operation, activity, or
947 property that processes or recovers Recyclable Materials and Organic Waste and
948 processes or disposes of Solid Waste or shall keep records of Solid Waste
949 delivered to High Diversion Organic Waste Processing Facilities. These records
950 shall be subject to review by the City and/or its Designee(s). The records shall
951 include the following information:

952 (1) Delivery receipts and weight tickets from the entity accepting the Recyclable
953 Materials, Organic Materials, and Solid Waste.

954 (2) The amount of material in cubic yards or Tons transported by the Generator
955 or Responsible Party to each entity.

956 (3) If the material is transported to an entity that does not have scales on-site
957 or employs scales incapable of weighing the Self-Hauler's vehicle in a
958 manner that allows it to determine the weight of materials received, the Self-
959 Hauler is not required to record the weight of material but shall keep a record
960 of the entities that received the Recyclable Materials, Organic Materials,
961 and Solid Waste.

962 (d) Self-Haulers shall retain all records and data required to be maintained by this
963 Section for no less than five (5) years after the Recyclable Materials, Organic

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964 Materials, and/or Solid Waste was first delivered to the facility accepting the
965 material.

966 (e) Self-Haulers that are Commercial Businesses or Multi-Family Premises shall
967 provide copies of records required by this Section to City in accordance with any
968 schedule and/or format set by the City Manager or his/her designee, or any City
969 administrative policy.

970 (f) A Single-Family Generator or Single-Family Responsible Party that Self-Hauls
971 Recyclable Materials, Organic Waste, or Solid Waste is not required to record or
972 report information in Section 11(c) through (e).

973 (g) Pursuant to 14 CCR Section 18815.9, Food Waste Self-Haulers are required to
974 maintain records and report to CalRecycle information on the Tons of Food Waste
975 Self-Hauled and the facilities or each use of such material. All reports Food Waste
976 Self-Haulers are required to report to CalRecycle shall be subject to review by the
977 City and/or its Designee upon written 30-day request.

978 **8.18.120 - Compliance with CalGreen Recycling Requirements**

979 (a) Persons applying for a permit from the City for new construction and building
980 additions and alternations shall comply with the requirements of this Section and
981 all required components of the California Green Building Standards Code, 24 CCR,
982 Part 11, known as CalGreen, as amended, if its project is covered by the scope of
983 CalGreen or more stringent requirements of the City. If the requirements of
984 CalGreen are more stringent then the requirements of this Section, the CalGreen
985 requirements shall apply.

986 Project applicants shall refer to City's building and/or planning code for complete
987 CalGreen requirements.

988 (b) For projects covered by CalGreen or more stringent requirements of the City, the
989 applicants must, as a condition of the City's permit approval, comply with the
990 following:

991 (1) Where five (5) or more Multi-Family units are constructed on a building site,
992 provide readily accessible areas that serve Owners or Occupants of all
993 buildings on the site and are identified for the storage and collection of
994 Discarded Materials, consistent with the three container collection program
995 offered by the City, or comply with provision of adequate space for recycling
996 for Multi-Family and Commercial Premises pursuant to Sections 4.408.1,
997 4.410.2, 5.408.1, and 5.410.1 of the California Green Building Standards
998 Code, 24 CCR, Part 11, as amended, provided amended requirements are
999 more stringent than the CalGreen requirements for adequate recycling
1000 space effective January 1, 2020.

1001 (2) New Commercial or Multi-Family construction or additions resulting in more
1002 than 30% of the floor area shall provide readily accessible areas identified

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1003 for the storage and collection of Discarded Materials, consistent with the
1004 three container collection program offered by the City, or shall comply with
1005 provision of adequate space for recycling for Multi-Family and Commercial
1006 Premises pursuant to Sections 4.408.1, 4.410.2, 5.408.1, and 5.410.1 of the
1007 California Green Building Standards Code, 24 CCR, Part 11, as amended,
1008 provided amended requirements are more stringent than the CalGreen
1009 requirements for adequate recycling space effective January 1, 2020.

1010 (3) Comply with CalGreen requirements and applicable law related to
1011 management of C&D, including diversion of Organic Waste and Recyclable
1012 Materials in C&D from disposal. Comply with all written and published City
1013 policies, ordinances, and/or administrative guidelines regarding the
1014 collection, recycling, diversion, tracking, and/or reporting of C&D.

1015 **8.18.130 - Model Water Efficient Landscaping Ordinance Requirements** 1016 **(MWEL0)**

1017 (a) Property owners or their building or landscape designers, including anyone
1018 requiring a building or planning permit, plan check, or landscape design review
1019 from the City, who are constructing a new (Single-Family, Multi-Family, public,
1020 institutional, or Commercial) project with a landscape area greater than 500 square
1021 feet, or rehabilitating an existing landscape with a total landscape area greater
1022 than 2,500 square feet, shall comply with Sections 492.6(a)(3)(B), (C), (D), and
1023 (G) of the MWEL0, including sections related to use of Compost and mulch as
1024 delineated in this Section 8.18.130.

1025 (b) The following Compost and mulch use requirements that are part of the MWEL0
1026 are now also included as requirements of this Chapter. Other requirements of the
1027 MWEL0 are in effect and can be found in 23 CCR, Division 2, Chapter 2.7.

1028 (c) Property owners or their building or landscape designers that meet the threshold
1029 for MWEL0 compliance outlined in Section 8.18.130(a) above shall:

1030 (1) Comply with Sections 492.6 (a)(3)(B)(C),(D) and (G) of the MWEL0, which
1031 requires the submittal of a landscape design plan with a soil preparation,
1032 mulch, and amendments section to include the following:

1033 (A) For landscape installations, Compost at a rate of a minimum of four
1034 (4) cubic yards per 1,000 square feet of permeable area shall be
1035 incorporated to a depth of six (6) inches into the soil. Soils with
1036 greater than six percent (6%) organic matter in the top six (6) inches
1037 of soil are exempt from adding Compost and tilling.

1038 (B) For landscape installations, a minimum three (3) inch layer of mulch
1039 shall be applied on all exposed soil surfaces of planting areas except
1040 in turf areas, creeping or rooting groundcovers, or direct seeding
1041 applications where mulch is contraindicated. To provide habitat for
1042 beneficial insects and other wildlife up to five percent (5%) of the

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1043 landscape area may be left without mulch. Designated insect habitat
1044 must be included in the landscape design plan as such.

1045 (C) Organic mulch materials made from recycled or post-consumer
1046 materials shall (i) take precedence over inorganic materials or virgin
1047 forest products unless the recycled post-consumer organic products
1048 are not locally available, and (ii) comply with 14 CCR, Division 7,
1049 Chapter 12, Article 12. Organic mulches are not required where
1050 prohibited by local fuel modification plan guidelines or other
1051 applicable local ordinances.

1052 (2) The MWELo compliance items listed in this Section are not an inclusive list
1053 of MWELo requirements; therefore, property owners or their building or
1054 landscape designers that meet the threshold for MWELo compliance
1055 outlined in Section 8.18.130(a) shall consult the full MWELo for all
1056 requirements.

1057 (d) If, after the adoption of this Chapter, the California Department of Water
1058 Resources, or its successor agency, amends 23 CCR, Division 2, Chapter 2.7,
1059 Sections 492.6(a)(3)(B) (C), (D), and (G) of the MWELo September 15, 2015
1060 requirements in a manner that requires jurisdictions to incorporate the
1061 requirements of an updated MWELo in a local ordinance, and the amended
1062 requirements include provisions more stringent than those required in this Section,
1063 the revised requirements of 23 CCR, Division 2, Chapter 2.7 shall be enforced.

1064 **8.18.140 - Procurement Requirements for City Departments, Direct Service** 1065 **Providers, and Vendors**

1066 (a) City departments, and direct service providers to the City, as applicable, must
1067 comply with the City-adopted procurement policy for Recycled-Content Paper
1068 Products adopted in accord with 14 CCR Section 18993.3.

1069 (b) All vendors providing Paper Products and Printing and Writing Paper to the City
1070 shall:

1071 (1) If fitness and quality are equal, provide Recycled-Content Paper Products
1072 and Recycled-Content Printing and Writing Paper that consists of at least
1073 30 percent, by fiber weight, postconsumer fiber instead of non-recycled
1074 products whenever recycled Paper Products and Printing and Writing Paper
1075 are available at the same or lesser total cost than non-recycled items.

1076 (2) Provide Paper Products and Printing and Writing Paper that meet Federal
1077 Trade Commission recyclability standard as defined in 16 Code of Federal
1078 Regulations (CFR) Section 260.12.

1079 (3) Certify in writing, under penalty of perjury, the minimum percentage of
1080 postconsumer material in the Paper Products and Printing and Writing
1081 Paper offered or sold to the City. This certification requirement may be

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1082 waived if the percentage of postconsumer material in the Paper Products,
1083 Printing and Writing Paper, or both can be verified by a product label,
1084 catalog, invoice, or a manufacturer or vendor internet website.

1085 (4) Certify in writing, on invoices or receipts provided, that the Paper Products
1086 and Printing and Writing Paper offered or sold to the City is eligible to be
1087 labeled with an unqualified recyclable label as defined in 16 Code of Federal
1088 Regulations (CFR) Section 260.12.

1089 (5) Provide records to the City's designated personnel member for purposes of
1090 procurement recordkeeping in accordance with the City's Recycled-Content
1091 Paper procurement policy(ies) of all Paper Products and Printing and
1092 Writing Paper purchases within thirty (30) days of the purchase (both
1093 recycled-content and non-recycled content, if any is purchased) made by
1094 any division or department or employee of the City. Records shall include a
1095 copy (electronic or paper) of the invoice or other documentation of
1096 purchase, written certifications as required in Sections 8.18.140(b)(3) and
1097 (b)(4) of this Chapter for recycled-content purchases, purchaser name,
1098 quantity purchased, date purchased, and recycled content (including
1099 products that contain none), and if non-recycled content Paper Products or
1100 Printing and Writing Papers are provided, include a description of why
1101 Recycled-Content Paper Products or Printing and Writing Papers were not
1102 provided.

1103 **8.18.150 - Inspections and Investigations**

1104 (a) City/County representatives or its Designee(s) are authorized to conduct
1105 Inspections and investigations, at random or otherwise, of any collection container,
1106 collection vehicle loads, or transfer, processing, or disposal facility for materials
1107 collected from Generators, or Source Separated materials to confirm compliance
1108 with this Chapter by Generators, Responsible Parties of Single-Family Premises,
1109 Responsible Parties of Commercial Businesses, Responsible Parties of Multi-
1110 Family Premises, Commercial Edible Food Generators, haulers, Self-Haulers,
1111 Food Recovery Services, and Food Recovery Organizations, subject to applicable
1112 laws. This Section does not allow City or its Designee to enter the interior of a
1113 private Residential property for Inspection.

1114 (b) Entities regulated by this Chapter shall provide or arrange for access during all
1115 Inspections (with the exception of Residential property interiors) and shall
1116 cooperate with the City's representative or its Designee during such Inspections
1117 and investigations. Such Inspections and investigations may be set by City
1118 ordinance, resolution, or internal policy and include, without limitation, confirmation
1119 of proper placement of materials in containers, inspection of Edible Food Recovery
1120 activities, review of required records, or other verification or Inspection to confirm
1121 compliance with any other requirement of this Chapter. Failure of a Responsible
1122 Party to provide or arrange for: (i) access to an entity's Premises; or (ii) access to

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1123 records for any Inspection or investigation is a violation of this Chapter and may
1124 result in penalties described in Section 8.18.160.

1125 (c) Any records obtained by a City or its Designee during its Inspections, and other
1126 reviews shall be subject to the requirements and applicable disclosure exemptions
1127 of the Public Records Act as set forth in Government Code Section 6250 et seq.

1128 (d) City representatives or their Designee are authorized to conduct any Inspections,
1129 or other investigations as reasonably necessary to further the goals of this Chapter,
1130 subject to applicable laws.

1131 (e) City or its Designee shall receive written complaints from persons regarding an
1132 entity that may be potentially non-compliant with SB 1383 Regulations, including
1133 receipt of anonymous complaints.

1134 (f) City representatives and/or their Designee are authorized to provide informational
1135 notices to entities regulated by this Chapter regarding compliance with this
1136 Chapter.

1137 **8.18.160 - Enforcement**

1138 (a) Violation of any provision of this Chapter shall constitute grounds for issuance of
1139 a Notice of Violation and assessment of a fine by a City Enforcement Official or
1140 representative. Enforcement Actions under this Chapter are issuance of an
1141 administrative citation and assessment of a fine. The City's procedures on
1142 imposition of administrative fines as specified in Chapter 1 of the City's code are
1143 hereby incorporated in their entirety, as modified from time to time, and shall
1144 govern the imposition, enforcement, collection, and review of administrative
1145 citations issued to enforce this Chapter and any rule or regulation adopted
1146 pursuant to this Chapter, except as otherwise indicated in this Chapter.

1147 (b) Other remedies allowed by law may be used for enforcement, including but not
1148 limited to civil action or prosecution as misdemeanor or infraction. City may pursue
1149 civil actions in the California courts to seek recovery of unpaid administrative
1150 citations. City may choose to delay court action until such time as a sufficiently
1151 large number of violations, or cumulative size of violations exist such that court
1152 action is a reasonable use of City staff and resources.

1153 (c) Responsible Entity for Enforcement

1154 (1) Enforcement pursuant to this Chapter may be undertaken by the City
1155 Enforcement Official or their designee authorized and legally able to
1156 undertake such action.

1157 (2) Enforcement may also be undertaken by a County Enforcement Official,
1158 designated by the County, in consultation with City Enforcement Official and
1159 legally able to undertake such action.

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- 1160 (3) City Enforcement Official(s) may issue Notices of Violation(s).
- 1161 (d) Process for Enforcement
- 1162 (1) City Enforcement Officials and/or their designee will monitor compliance
1163 with this Chapter through Compliance Reviews, Route Reviews,
1164 investigation of complaints, and an Inspection program. City Enforcement
1165 Officials and/or their designee may also monitor compliance with this
1166 Chapter randomly and reserve all authority of their full prosecutorial
1167 discretion. The City may exercise any of its rights to conduct inspections
1168 and investigations as established by Section 8.18.150 and any other
1169 provision of the Code authorizing such investigations.
- 1170 (2) City may issue an official notification to notify regulated entities of its
1171 obligations under the ordinance.
- 1172 (3) Container Contamination:
- 1173 i. For incidences of Prohibited Container Contaminants found by City
1174 or its Designee, City or its Designee will issue an informational notice
1175 of Contamination to any Generator or Responsible Party found to
1176 have Prohibited Container Contaminants in a container. Such notice
1177 will be provided via a cart tag or other communication immediately
1178 upon identification of the Prohibited Container Contaminants or
1179 within 3 days after determining that a violation has occurred. If the
1180 City or its Designee observes Prohibited Container Contaminants in
1181 a Responsible Party's containers on more than two (2) occasion(s),
1182 every calendar year starting January 1, the City may assess an
1183 administrative fine or penalty on the Responsible Party in
1184 accordance with Code Chapter 1.03.
- 1185 ii. In addition to subparagraph (i) above, Designee may implement
1186 through Designee's service rate structure a Contamination service
1187 charge for customers committing incidents of Prohibited Container
1188 Contaminants. Designee shall provide such customers with written
1189 notice and/or cart tags, or such other procedures required under any
1190 contract, agreement, or similar contractual authorization between the
1191 City and its Designee, prior to levying any Contamination service
1192 charge. The foregoing Contamination service charge shall not be
1193 considered an administrative fine or penalty. Any disputes arising
1194 from the assessment of a Contamination service charge shall be
1195 adjudicated pursuant to the customer complaint resolution process
1196 provided under the terms of any contract, agreement, or similar
1197 contractual authorization between the City and its Designee
1198 assigned to collect Organic Waste.

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- 1199 (4) With the exception of violations of Contamination of container contents
1200 addressed under subparagraph (d)(3) above, City shall issue a Notice of
1201 Violation requiring compliance within 60 days of issuance of the notice.
- 1202 (5) Absent compliance by the respondent within the deadline set forth in the
1203 Notice of Violation, City shall commence an Enforcement Action to impose
1204 penalties, via an administrative citation and fine.
- 1205 (6) Notices shall be sent to "owner" at the official address of the owner
1206 maintained by the tax collector for the County Assessor or if no such
1207 address is available, to the owner at the address of the Multi-Family
1208 Premises or Commercial Premises or to the Responsible Party for the
1209 collection services, depending upon available information.
- 1210 (e) Penalty Amounts for Types of Violations
- 1211 Administrative fine levels shall be as stated in Section 1.03.050 of the Code,
1212 excepting that should the penalties levels in Section 1.03.050 either (i) fall below
1213 the minimum amounts stated in 14 CCR Section 18997.2, or (ii) exceed the
1214 maximum amounts stated in 14 CCR Section 18997.2, then the administrative fine
1215 level shall be that which is closest to a level stated in 14 CCR Section 18997.2.
- 1216 (f) Factors Considered in Determining Penalty Amount
- 1217 The following factors shall be used to determine the amount of the penalty for each
1218 violation within the appropriate penalty amount range:
- 1219 (1) The nature, circumstances, and severity of the violation(s).
- 1220 (2) The violator's ability to pay.
- 1221 (3) The willfulness of the violator's misconduct.
- 1222 (4) Whether the violator took measures to avoid or mitigate violations of this
1223 chapter.
- 1224 (5) Evidence of any economic benefit resulting from the violation(s).
- 1225 (6) The deterrent effect of the penalty on the violator.
- 1226 (7) Whether the violation(s) were due to conditions outside the control of the
1227 violator.
- 1228 (g) Compliance Deadline Extension Considerations
- 1229 City may extend the compliance deadlines set forth in a Notice of Violation issued
1230 in accordance with this Section if it finds that there are extenuating circumstances

EXHIBIT "A"

1231 beyond the control of the respondent that make compliance within the deadlines
1232 impracticable, including the following:

1233 (1) Acts of God such as earthquakes, wildfires, flooding, and other
1234 emergencies or natural disasters;

1235 (2) Delays in obtaining discretionary permits or other government agency
1236 approvals; or,

1237 (3) Deficiencies in Organic Waste recycling infrastructure or Edible Food
1238 Recovery capacity and the City/County is under a corrective action plan with
1239 CalRecycle pursuant to 14 CCR Section 18996.2 due to those deficiencies.

1240 (h) Review and Appeals Process

1241 Persons receiving an administrative citation containing a penalty for an
1242 uncorrected violation may request a hearing and any subsequent review of the
1243 decision in accordance with the procedures set forth in Code Chapter 1.03.

1244 (i) Education Period for Non-Compliance

1245 Beginning January 1, 2022 and through December 31, 2023, City or its Designee
1246 will conduct Inspections, Route Reviews or waste evaluations, and Compliance
1247 Reviews, depending upon the type of regulated entity, to determine compliance,
1248 and if City or its Designee determines that Generator, Responsible Party, Self-
1249 Hauler, hauler, Tier One Commercial Edible Food Generator, Food Recovery
1250 Organization, Food Recovery Service, or other entity is not in compliance, it shall
1251 provide educational materials to the entity describing its obligations under this
1252 Chapter and a notice that compliance is required by January 1, 2022, and that
1253 violations may be subject to administrative civil penalties starting on January 1,
1254 2024.

1255 (j) Civil Penalties for Non-Compliance

1256 Beginning January 1, 2024, if the City determines that a Generator, Responsible
1257 Party, Self-Hauler, hauler, Tier One or Tier Two Commercial Edible Food
1258 Generator, Food Recovery Organization, Food Recovery Service, or other entity
1259 is not in compliance with this Chapter, it shall document the noncompliance or
1260 violation, issue a Notice of Violation, and take Enforcement Action pursuant to this
1261 Section, as needed.

1262 **Section 8.18.170. Coordination and Interpretation in Conjunction With**
1263 **Related Solid Waste Ordinances**

1264 In interpreting this Chapter in conjunction with the City's general solid waste regulations
1265 (Municipal Code Chapters 8.16, entitled "Solid Waste Management" and 8.17, entitled
1266 "Expanded Polystyrene"), in the event of any conflict between this Chapter and Chapters
1267 8.16 and 8.17 that cannot be reasonably harmonized through the application of lawful

EXHIBIT "A"

1268 principles of statutory construction, the provisions of this Chapter shall control with
1269 respect to all issues specific to the regulation of organic and food waste collection,
1270 disposal, enforcement and penalties.

1271 **Section 8.18.180. Effective Date**

1272 This Chapter shall be effective commencing on January 1, 2022.

1273



AGENDA NO: A-7

MEETING DATE: December 14, 2021

Staff Report

TO: Honorable Mayor and Council Members **DATE:** December 1, 2021

FROM: Sarah Johnson-Rios, Asst City Manager/Admin Services Director

SUBJECT: First Quarter Investment Report (period ending September 30, 2021) for Fiscal Year (FY) 2021-22

RECOMMENDATION

Receive the attached First Quarter Investment Report (period ending September 30, 2021) for FY 2021-22.

FISCAL IMPACT

There is no fiscal impact associated with this recommendation.

DISCUSSION

Attached for City Council consideration is the First Quarter Investment Report for FY 2021-22. As of September 30, 2021, the City's weighted portfolio yield of 0.29% was slightly above the Local Agency Investment Fund (LAIF) yield of 0.22%. Yields remain low, reflecting the uncertainty of the current economic climate. As of September 30, 2021, the City had recorded \$57,963 in total interest earnings for the fiscal year.

Staff continues to keep significant cash in the City's LAIF account to ensure sufficient cash flow for the ongoing Water Reclamation Facility (WRF) project. Staff recommends that no immediate investment actions be taken at this time.

During the first quarter, one of the City's certificates of deposit matured. Interest rates for certificates of deposit are quite low at this time (appx. 1% for a five-year CD) and are expected to remain at that level or inch upward slightly in the months ahead. As a result of the low rates and the ongoing liquidity needs for the WRF project, staff plans to more comprehensively evaluate investment options when the WRF project nears completion. At that time, staff will focus on renewed assessment of cash flow needs and research the most prudent ways to balance Council adopted investment goals of safety, liquidity, and yield as well as social responsibility in accordance with Resolution No. 50-21.

CONCLUSION

Staff recommends the City Council receive the First Quarter Investment Report (period ending September 30, 2021) for Fiscal Year 2021-22.

ATTACHMENT

1. First Quarter Investment Report for FY 2021-22 (period ending September 30, 2021)

Prepared By: SJR

Dept Review:

City Manager Review: SC

City Attorney Review: CFN

CITY OF MORRO BAY
QUARTERLY PORTFOLIO PERFORMANCE
9/30/2021

INVESTMENT OR CUSIP NUMBER	INSTITUTION	PURCHASE PRICE	INTEREST RATE	PURCHASE DATE	MATURITY DATE	DAYS TO MATURITY
LAIF	LOCAL AGENCY INVESTMENT FUND	\$ 35,775,951	0.22%	DAILY	DAILY	1
MONEY MARKET ACCOUNT:						
MM	MECHANICS BANK - MONEY MARKET	1,945,677	0.04%	DAILY	DAILY	1
SWEEP	MECHANICS BANK - SWEEP	5,957,859	0.01%	DAILY	DAILY	1
CERTIFICATES OF DEPOSIT:						
02007GHD8	ZION BANK - Ally Bank UT	246,000	2.900%	1/24/2019	1/24/2022	116
949763XU5	ZION BANK - Wells Fargo	249,000	2.800%	2/27/2019	2/28/2022	151
1404202A7	ZION BANK - Capital One	250,005	2.400%	4/12/2017	4/12/2022	194
61760AUU1	ZION BANK - Morgan Stanley	246,000	3.000%	1/24/2019	1/24/2023	481
61690UDL1	ZION BANK - Morgan Stanley	246,000	3.100%	1/24/2019	1/24/2024	846
1731202F5	ZION BANK - Citibank	246,000	3.200%	1/25/2019	1/25/2024	847
3090683803	US BANK (FORMERLY STATE FARM BANK)	250,435	3.050%	10/21/2013	10/24/2023	754
		\$ 45,412,926				
			RECORDED INTEREST AS OF 9/30/2021	% OF LIQUID PORTFOLIO HOLDINGS	WEIGHTED AVERAGE RATE OF EARNINGS	WEIGHTED AVERAGE MATURITY
			\$ 57,963.41	96.183%	0.288%	19

Portfolio holdings as of the quarter ended September 30, 2021, are in compliance with the current Investment Policy. With 96.183% of the portfolio held in liquid instruments, allowing the City to meet cash flow needs for at least six months, in compliance with the investment policy approved by the City Council in June 2021.



AGENDA NO: A-8

MEETING DATE: December 14, 2021

Staff Report

TO: Honorable Mayor and City Council **DATE:** December 2, 2021

FROM: Greg Kwolek, Public Works Director
Janeen Burlingame, Management Analyst

SUBJECT: Designation Letter Delegating City Responsibilities Relating to Senate Bill 1383 Compliance to the San Luis Obispo Integrated Waste Management Authority (IWMA)

RECOMMENDATION

Staff recommends the City Council receive and file the SB 1383 compliance letter of designation delegating various compliance responsibilities to the IWMA as outlined in Attachment 1.

FISCAL IMPACT

There is no immediate fiscal impact to the City due to this delegation to the IWMA. However, compliance with SB 1383 regulations will result in additional costs to the City, which are currently being analyzed and staff may recommend solid waste collection rate increases through a Proposition 218 process in the future.

DISCUSSION

SB 1383 was signed into law to address climate change, and specifically short-lived climate pollutants. It establishes statewide targets to reduce organic waste disposal and to redirect to people in need edible food that is currently disposed of in landfills.

SB 1383 regulations provide for the ability of a jurisdiction to designate compliance responsibilities to a public or private entity, regional agency, or other government entity (14 CCR 18981.2).

In addition, at its November 9, 2021, meeting, the City Council introduced Ordinance No. 645 adding Chapter 8.18 to the Morro Bay Municipal Code (MBMC) to enact regulations in compliance with SB 1383 for the implementation of mandatory food and organics recycling, and related solid waste and recycling processing and reporting with the second reading and adoption of Ordinance 645 scheduled for tonight's Council meeting.

MBMC Chapter 8.18 identifies various roles and responsibilities to be carried out by the City or its designee and provides for the ability of the City Manager to designate certain responsibilities within this Chapter to a third-party designee through a written letter between the City Manager and the designee. The City Manager may sign a designation letter once MBMC Chapter 8.18 is in effect.

The IWMA was formed as a Joint Powers Authority in 1994 for the purpose of facilitating the

Prepared By: J Burlingame

Dept Review: GK

City Manager Review: _____

City Attorney Review: CFN

development of waste diversion programs and projects and provide economies of scale on a regional basis for the implementation of previous solid waste laws and regulations, such as the California Integrated Waste Management Act of 1989 (AB 939), Mandatory Commercial Recycling (AB 341), and Mandatory Commercial Organics (AB 1826).

Since that time, the IWMA has been instrumental in planning for and developing programs to implement solutions for waste management issues in the region, such as the local effort to comply with SB 1383.

With the passage of SB 1383, it is the City's intent to continue having the IWMA facilitate the development and implementation of organic waste disposal and edible food recovery programs and requirements mandated by the State as identified in the City Manager's designation letter to the IWMA in Attachment 1.

CONCLUSION

Staff recommends the City Council receive and file the SB 1383 compliance letter of designation delegating various compliance responsibilities to the IWMA as outlined in Attachment 1.

ATTACHMENT

1. Senate Bill 1383 Compliance Letter of Designation



CITY OF MORRO BAY

CITY HALL

595 Harbor Street
Morro Bay, CA 93442

January 15, 2022

San Luis Obispo Integrated Waste Management Authority
Attention: Patti Toews, Interim Executive Director
870 Osos Street
San Luis Obispo, CA 93401

Subject: Senate Bill 1383 Compliance Letter of Designation

Dear Ms. Toews:

On December 14, 2021, the City Council adopted Ordinance 645 that added to the Morro Bay Municipal Code (MBMC) Chapter 8.18, Specific Regulations for Collection and Disposal Reduction of Organic Waste, Recyclables and Solid Waste, which implements the relevant provisions of Senate Bill 1383 (Public Resources Code section 42652-42654) and the corresponding regulations in Title 14 of the California Code of Regulations (CCR), Division 7, Chapter 12, and enables the City to delegate authority for the implementation of Senate Bill 1383 and MBMC Chapter 8.18 requirements to the extent allowed by law.

I am the authorized Signature Authority for the City of Morro Bay. Accordingly, I hereby designate the San Luis Obispo County Integrated Waste Management Authority (IWMA) to act as a delegate on behalf of the City of Morro Bay for the responsibilities of compliance with Senate Bill 1383 and the corresponding regulations in Title 14 of the California Code of Regulations, Division 7, Chapter 12 to the extent allowed by law.

These delegated responsibilities, include, but are not limited to:

- (1) Establishing, administering, implementing, educating, and/or operating all state mandated Senate Bill 1383 programs including, but not limited to, organic waste management, education and outreach, monitoring, inspection, and record keeping programs.
- (2) Establishing, administering, and implementing the edible food recovery requirements of Senate Bill 1383 regulations. Such duties shall include but are not limited to: assessment of existing capacity for edible food recovery, establishing a food recovery program, inspection of commercial generators for compliance, and education and outreach to all businesses, residents, commercial edible food generators, and any other entities or parties required by law.
- (3) Coordinating with CalRecycle and any other state or federal entities in assessing and ensuring compliance with the CalRecycle procurement and pollution reduction targets for each party.

(4) Monitoring and education related to 14 CCR 18984.5, 18984.5.b, 18984.5.c and 18984.11, and MBMC Chapter 8.18, including but not limited to container monitoring compliance through route reviews and evaluations, determining the applicability of and issuing waivers, and issuing educational notices where necessary and/or appropriate.

(5) Reporting to CalRecycle on behalf of the City related to its compliance with SB 1383, consistent with the requirements prescribed by CalRecycle.

This designation will remain effective until rescinded by my authority, or my successor's authority.

Sincerely,

Scott Collins
City Manager



AGENDA NO: A-9

MEETING DATE: December 14, 2021

Staff Report

TO: Honorable Mayor and City Council

DATE: December 7, 2021

FROM: Eric Endersby, Harbor Director

SUBJECT: Progress Check #3, and Adoption of Resolution No. 83-21 Approving Amendment #2 to the Master Lease Agreement Between the City of Morro Bay and TLC Family Enterprises for Lease Site 87-88/87W-88W, Located at 833 Embarcadero

RECOMMENDATION

Staff recommends the City Council receive and file this Progress Check #3, and adopt Resolution No. 83-21, approving Amendment #2 to the Master Lease Agreement (MLA) for Lease Site 87-88/87W-88W, as proposed.

ALTERNATIVES

Council may elect not to approve Resolution No. 83-21 for the Master Lease Agreement as-proposed, and direct staff accordingly.

FISCAL IMPACT

There is no fiscal impact to this action.

BACKGROUND

On December 11, 2018, the City Council approved a new 50-year master lease agreement with TLC Family Enterprises (TLC) in exchange for a complete redevelopment of Lease Site 87-88/87W-88W. TLC's redevelopment proposal was vetted through a request for proposals process in 2017/2018.

The lease contains certain "milestones" or timeline performance requirements TLC must meet to remain in compliance with their lease, including obtaining all the necessary permits to complete the redevelopment project, and commence and complete construction. The deadlines for the then-remaining milestones were amended this past January to account for the negative effects of the COVID-19 pandemic.

In addition, per Council direction TLC has been providing ~quarterly progress reports to the Council on the status of their permitting and securing of funding to complete the redevelopment project. To date, two such progress reports have been made.

DISCUSSION

TLC has provided staff with the following Progress Report #3 bullet points:

- Appraisal is done; the \$3.2M loan amount meets loan criteria
- Finances all in order and sufficient cash reserves are in the bank
- Over \$500,000 has been spent on soft costs and pre purchasing of materials

Prepared By: EE

Dept Review: EE

City Manager Review: SC

City Attorney Review: JWP

- Initial subcontractors are scheduled with materials ordered; ready to commence work
- Loan is in underwriting, signing in the next ~month
- All bank criteria for approval are met
- All criteria for Building permit complete, with exception of one relatively minor issue (existing sewer lateral, which staff are working to quickly resolve)
- Army Corps permit was extended
- Coastal Commission permit was extended

Earlier this year, TLC timely submitted for their building permits, the last step in the permitting process. Although they have made steady progress through this last stage, and according to Community Development Department staff are down to one outstanding issue regarding additional information about the sewer lateral being needed by the City, TLC was to have obtained their building permits and started the construction process by November 1, 2021 in order to remain compliant with that deadline in their lease.

Two primary factors, however, have contributed to the delay in obtaining building permits and starting construction:

1. The current Council-approved concept proposal being developed by TLC's southern neighbor, Libertine Pub, to redevelop the Libertine site does not currently include razing the site and moving the building back from their shared property line, as TLC had originally designed for in their now-approved plans. This forced TLC to significantly revise their building plans from their approved concept and precise plans to incorporate fire-separation measures between the two sites. While now reconciled, this caused several months of delays.
2. The continued effects of the COVID pandemic on the ability of TLC's engineering and architectural teams to complete work due to staffing and other pandemic-related issues.

In addition, ongoing supply chain issues will likely impact the project's ability to be completed in twelve months, and an extension of the one-year completion of construction timeline is prudent.

Finally, TLC continues to work with Community West Bank as their lending source for the project, who in early November 2021 completed their necessary appraisal of the project to inform their underwriting. Community West reports to City staff TLC's credit is pending approval from their underwriters for a \$3.2M loan, after which, assuming approval, an escrow process to fund the project would begin.

In correspondence with City staff, Community West staff have characterized TLC's project and lending to fund it as "very strong" and "getting close."

In order to remain in compliance with their lease, and to satisfy their lender they are and will remain in compliance with their lease, TLC requires another extension of their remaining redevelopment project deadlines.

CONCLUSION

Although plagued with some unfortunate delays, TLC remains committed and on-track to be funded and complete the redevelopment project as-planned. If the resolution and amendment, included with this staff report in Attachments #1 and #2, are approved, the remaining old and new staff-recommended deadlines in TLC's lease will be as-follows:

- Obtain building permits no later than ~~May 11, 2021~~ January 14, 2022
- Commence construction no later than ~~November 1, 2021~~ February 14, 2022
- Complete construction and obtain certificate of occupancy no later than ~~November 1, 2022~~ May 14, 2023

Due in part to the holidays, it is anticipated a Consent to Encumber the lease site with this funding will be brought to the Council for approval in January 2022, once TLC moves into an escrow with Community West.

ATTACHMENTS

1. Resolution No. 83-21
2. Amendment #2 to the Master Lease Agreement for Lease Site 87-88/87W-88W

RESOLUTION NO. 83-21

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING AMENDMENT #2 TO THE MASTER LEASE AGREEMENT
FOR LEASE SITE 87-88/87W-88W, LOCATED AT 833 EMBARCADERO,
BETWEEN THE CITY OF MORRO BAY AND TLC FAMILY ENTERPRISES**

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

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

WHEREAS, TLC Family Enterprises (Cherise Hansson and Travis Leage) have been the lessees of Lease Site 87-88/87W-88W since 2018, and are tenants in good standing; and

WHEREAS, TLC Family Enterprises was granted approval of a new Master Lease Agreement on December 11, 2018 for a proposed lease site redevelopment project consisting of a complete site demolition and redevelopment of mixed restaurant, retail and hotel use; and

WHEREAS, due to unforeseen circumstances necessitating a significant change to Tenant's building plans, and to the continued social, economic and supply chain effects of the COVID-19 pandemic, it is again necessary to amend TLC's lease site redevelopment deadlines as stipulated in the amended lease to provide more time to complete the necessary redevelopment steps.

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

1. The attached Amendment #2 to the Master Lease Agreement for Lease Site 87-88/87W-88W is hereby approved.
2. The Mayor is hereby authorized to execute said Master Lease Agreement Amendment.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 14th day of December, 2021 on the following vote:

AYES:
NOES:
ABSENT:

John Headding, Mayor

ATTEST:

Dana Swanson, City Clerk

**AMENDMENT #2 TO THE LEASE AGREEMENT FOR
LEASE SITE 87-88/87W-88W,
LOCATED AT 833 EMBARCADERO**

This Amendment ("Amendment #2") is made and entered into as of this ____ day of _____, 2021, by and among the City of Morro Bay, a municipal corporation of the State of California, hereinafter called "City," and TLC Family Enterprises, a California corporation, hereinafter called "Tenant." (Collectively, City and Tenant are sometimes referred to herein as the "Parties.")

WHEREAS, this Amendment #2 is to that certain amended Lease, which was signed on behalf of the Parties and is effective as of December 11, 2018 (the "Master Lease"), and amended on January 12, 2021; and

WHEREAS, Tenant has received Precise Plan approval from the City of Morro Bay and Coastal Development Approval from the California Coastal Commission for a complete redevelopment of the site including new restaurant, retail and hotel use, and other public access improvements as-proposed; and

WHEREAS, Tenant is in final building plan check, and due to unforeseen circumstances necessitating a significant change to Tenant's building plans, and to the continued social, economic and supply chain effects of the ongoing COVID-19 pandemic, it is again necessary to amend the Master Lease to provide more time for Tenant to redevelop the lease site as-stipulated in the Master Lease; and

WHEREAS, the Parties desire to amend the Master Lease so the redevelopment project can proceed as contemplated.

NOW THEREFORE, Tenant and City agree as-follows:

1. Sections 13.02(G), 13.02(H) and 13.02(I) of the Master Lease Agreement between Tenant and City are replaced in their entirety to read as follows:

Section 13.02 TENANT'S Obligation to Redevelop Site

G. Obtain Building Permits for the Project no later than January 14, 2022.

H. Commence construction of the Project no later than February 14, 2022. Commencement shall mean when the TENANT has incurred at least \$50,000 of hard construction costs for actual work satisfactorily completed for the Project on the site pursuant to the approved Building Permit.

I. Complete construction of all components of the Project no later than May 14, 2023. Completion shall mean when the Project is entitled to be issued a final Certificate of Occupancy.

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

3. The effective date of this Amendment #2 is the date first written above.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment #2 as of the date written above.

CITY OF MORRO BAY

TLC Family Enterprises,
a California Corporation

By: _____
John Headding, Mayor

By: _____
Cherise Hansson, President

By: _____
Travis Leage, Secretary

APPROVED AS TO FORM:

Chris F. Neumeyer, City Attorney

ATTEST:

Dana Swanson, City Clerk



AGENDA NO: A-10

MEETING DATE: December 14, 2021

Staff Report

TO: Honorable Mayor and City Council

DATE: December 8, 2021

FROM: Chris F. Neumeyer, City Attorney

SUBJECT: Resolution Making Findings Related to the Continued Existence of a State of Emergency Due to COVID-19 and Re-Authorizing for Public Health and Safety the Conduct of Public Meetings of the Legislative Bodies of the City via Remote Teleconferencing for a Continued 30-Day Period Pursuant to the Ralph M. Brown Act as Amended by Assembly Bill No. 361

RECOMMENDATION

Staff recommends Council consider adoption of attached Resolution No. 84-21 reauthorizing for public health and safety the conduct of public meetings of the legislative bodies of the City via remote teleconferencing.

ALTERNATIVES

Do not consider adoption of the attached resolution and/or provide further direction to staff.

FISCAL IMPACT

No immediate fiscal impact.

BACKGROUND

On March 4, 2020, the Governor proclaimed a State of Emergency to exist in California because of the spread of COVID-19. Beginning in March, 2020 the Governor also issued a number of Executive Orders (e.g., N-25-20, N-29-20, N-35-20) (the "Brown Act Orders") for the public health and safety that waived requirements in the Brown Act that expressly or impliedly required the physical presence of City Councilmembers, staff, or the public at meetings of the City Council, Planning Commission and other City boards, commissions and committees ("legislative bodies") that are subject to the Brown Act. The Brown Act Orders allowed City legislative bodies that are subject to the Brown Act to modify how meetings were conducted to protect the health and safety of staff and the public while ensuring transparency and accessibility for open and public meetings. The most recent Brown Act Order expired on September 30, 2021.

On September 16, 2021, Governor Newsom signed Assembly Bill 361 ("AB 361") into law. AB 361 was made effective on October 1, 2021, on an urgency basis, to correspond to the timing of expiration of the Brown Act Orders. AB 361 provides for the ability to continue teleconferencing Brown Act meetings of City legislative bodies for public health and safety reasons under certain conditions, akin to the authority to do so under the Brown Act Orders.

Prepared By: __ CFN __ Dept Review: _____

City Manager Review: _ SC _ City Attorney Review: _ CFN _____

DISCUSSION

Assembly Bill 361 allows City legislative bodies to continue to utilize remote/virtual platforms for public meetings (consistent with certain statutory requirements) during a state of emergency proclaimed by the Governor that includes the City if certain conditions are met.

On October 26, 2021, the City Council adopted Resolution No. 70-21 making findings related to the continued existence of a state of emergency due to COVID-19 and re-authorizing for public health and safety the conduct of public meetings of City's legislative bodies via remote teleconferencing for an initial 30-day period pursuant to the Ralph M. Brown Act as amended by Assembly Bill No. 361. On November 9 and 18, 2021, the City Council reviewed the need for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing for public health and safety as authorized by AB 361, and upon making necessary findings, adopted Resolution No. 78-21 and 81-21, respectively, authorizing such meetings for an additional thirty days.

If a state of emergency remains active, or State or local officials have imposed or recommended measures to promote social distancing, AB 361 imposes certain requirements to continue use of its provisions after the initial 30-day period, or a 30-day period thereafter, has elapsed.

Government Code section 54953(e)(3) provides that "not later than 30 days after teleconferencing for the first time pursuant" to AB 361, "and every 30 days thereafter," the City Council shall make the following findings by majority vote for the City to continue using the teleconferencing provisions of AB 361:

1. The City Council has reconsidered the circumstances of the state of emergency; **and**
2. Either of the following circumstances exist:
 - a. The state of emergency continues to directly impact the ability of the members to meet safely in person, **or**
 - b. State or local officials continue to impose or recommend measures to promote social distancing.

CONCLUSION

Staff recommends Council consider adoption of the proposed Resolution No. 84-21 making the findings required to re-authorize use of AB 361. Doing so will allow meetings of the City Council, City boards and City commissions to continue to occur by teleconference for the public health and safety. Continued reliance on AB 361 will require adoption of a new resolution making the required findings every 30 days thereafter.

ATTACHMENT

1. Resolution No. 84-21

RESOLUTION NO. 84-21

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
MAKING FINDINGS RELATED TO THE CONTINUED EXISTENCE OF A STATE OF
EMERGENCY DUE TO COVID-19 AND RE-AUTHORIZING FOR PUBLIC HEALTH AND
SAFETY THE CONDUCT OF PUBLIC MEETINGS OF THE LEGISLATIVE BODIES OF THE
CITY VIA REMOTE TELECONFERENCING FOR A CONTINUED
30-DAY PERIOD PURSUANT TO THE RALPH M. BROWN ACT
AS AMENDED BY ASSEMBLY BILL NO. 361**

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

WHEREAS, the City Council of the City of Morro Bay ("City") is committed to preserving and nurturing public access and participation in meetings of the Legislative Bodies (as that term is defined in Government Code §54952, including the City Council, commissions, boards and committees subject to the Brown Act) of the City; and

WHEREAS, all meetings of the Legislative Bodies are open and public as required by the Ralph M. Brown Act, codified as Government Code §§ 54950 *et seq.*, so that any member of the public may attend, participate, and observe the Legislative Bodies conduct their business; and

WHEREAS, the Brown Act, at Government Code § 54953(e), as amended by Assembly Bill (AB) 361 effective October 1, 2021, makes provision for remote teleconferencing participation in public meetings by members of a Legislative Body without compliance with the provisions of Government Code § 54953(b)(3), subject to the existence of certain conditions; and

WHEREAS, a required condition under Government Code § 54953(e) for its initial use is that the meeting is held during a state of emergency that has been declared by the Governor pursuant to Government Code § 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code § 8558; and

WHEREAS, a proclamation is made when there is an actual incident, threat of disaster, or extreme peril to the safety of persons and property within the jurisdictions that are within the City's boundaries, caused by natural, technological, or human-caused disasters

WHEREAS, a required condition under Government Code § 54953(e) for its initial use is that state or local officials have imposed or recommended measures to promote social distancing, or that the legislative body is meeting to determine or has previously determined that meeting in person would present imminent risks to the health or safety of attendees; and

WHEREAS, starting in March 2020, in response to the spread of COVID-19 in the State of California, the Governor proclaimed a state of emergency for the State of California and thereafter issued a number of executive orders aimed at containing COVID-19; and

WHEREAS, on March 19, 2020, the City Council adopted Resolution No. 23-20, proclaiming and affirming the existence of a local emergency, and confirming and ratifying proclamation by City's Director of Emergency Services of Existence of a Local Emergency, in response to COVID-19 (Coronavirus). The Legislative Bodies have since conducted meetings via remote teleconferencing consistent with the declaration of local emergency and executive orders issued by the Governor; and

WHEREAS, the executive orders issued by the Governor, among other things, for the public health and safety waived requirements of the Brown Act expressly or impliedly requiring the physical presence of members of the legislative body, the clerk or other personnel of the body, or of the public as a condition of participation in or for the purpose of establishing a quorum for a public meeting; and

WHEREAS, on June 11, 2021, the Governor issued Executive Order N-08-21, which rescinded the modifications made by the aforementioned executive orders, effective September 30, 2021. On September 16, 2021, the Governor signed AB 361, creating a modified set of provisions for local agencies for compliance with the Brown Act relative to remote meetings. AB 361 was made effective on October 1, 2021; and

WHEREAS, on October 26, 2021, the City Council adopted Resolution No. 70-21 making findings related to the continued existence of a state of emergency due to COVID-19 and re-authorizing for public health and safety the conduct of public meetings of City's legislative bodies via remote teleconferencing for an initial 30-day period pursuant to the Ralph M. Brown Act as amended by Assembly Bill No. 361; and

WHEREAS, On November 9, 2021, the City Council reviewed the need for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing for public health and safety as authorized by AB 361, and upon making necessary findings, adopted Resolution No. 78-21 authorizing such meetings for an additional thirty days; and

WHEREAS, On November 18, 2021, the City Council reviewed the need for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing for public health and safety as authorized by AB 361, and upon making necessary findings, adopted Resolution No. 81-21 authorizing such meetings for an additional thirty days; and

WHEREAS, the Governor's proclaimed state of emergency and the City's proclaimed local emergency related to COVID-19 remain in effect and encompass the jurisdictional boundaries of the City; and

WHEREAS, the California Department of Public Health and the San Luis Obispo County Health Officer continue to impose or recommend measures to promote social distancing, and the Centers for Disease Control and Prevention ("CDC") continue to recommend physical distancing; and

WHEREAS, Government Code Section 54953(e)(3) requires that the City Council review the need and make findings for continuing the conduct of public meetings of City's legislative

bodies via remote teleconferencing as authorized by AB 361 at least once every thirty days until the Governor terminates the state of emergency; and

WHEREAS, for the public health and safety the Council wishes to affirm the need and findings necessary for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing as authorized by AB 361; and

WHEREAS, the City Council does hereby intend that, as a consequence of the persisting state of emergency and the imposed or recommended social distancing measures, the Legislative Bodies shall be authorized to continue to conduct their meetings without compliance with paragraph (3) of subdivision (b) of Government Code § 54953, as authorized by subdivision (e) of Government Code § 54953, and that the Legislative Bodies shall comply with the requirements to provide the public with access to the meetings as prescribed in paragraph (2) of subdivision (e) of Government Code § 54953; and

WHEREAS, consistent with AB 361, during the effectiveness of this Resolution, the Legislative Bodies meeting pursuant to the requirements of Government Code § 54953(e)(2) and their staff will give notice of the manner by which members of the public may access the Legislative Bodies' meetings and offer public comment; identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option; and allow members of the public to access the meeting, and the agenda shall include an opportunity for members of the public to address the Legislative Body directly.

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

SECTION 1. The foregoing recitals are true and correct and are incorporated herein by reference.

SECTION 2. The City Council hereby acknowledges and affirms the continued effectiveness of the Governor's proclaimed state of emergency and the City's proclaimed local emergency (as may have been amended since their initial proclamation) which encompass their jurisdictional boundaries.

SECTION 3. The City Council finds as follows: 1) they have reconsidered the circumstances of the state of emergency; 2) the state of emergency remains active within their jurisdictional boundaries; 3) the state of emergency continues to directly impact the ability of the City Council, the City's Legislative Bodies, City staff and the public to meet safely in person; and 4) State and local officials continue to impose or recommend measures to promote social distancing.

SECTION 4. The Legislative Bodies and staff are hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution, including conducting all open and public meetings of the Legislative Bodies in accordance with Government Code § 54953(e) and other applicable provisions of the Brown Act.

SECTION 5. This Resolution shall take effect immediately upon its adoption by the City Council and shall be effective for until the earlier of (i) January 13, 2022, or (ii) such time as the City Council adopts a subsequent resolution in accordance with Government Code § 54953(e)(3) to extend the time during which the Legislative Bodies may continue to teleconference without compliance with paragraph (3) of subdivision (b) of Government Code § 54953.

SECTION 6. Should any provision, section, paragraph, sentence or word of this Resolution be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Resolution as hereby adopted shall remain in full force and effect.

SECTION 7. The City Clerk shall certify to the adoption of this Resolution and enter it into the book of original Resolutions.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 14th day of December 2021 by the following vote:

AYES:
NOES:
ABSENT:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

**A PROCLAMATION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY
EXPRESSING APPRECIATION FOR THE DEDICATION
AND PUBLIC SERVICE OF MELODY ANNE DEMERITT**

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

WHEREAS, the City of Morro Bay has learned with profound sorrow of the death of Melody Anne DeMeritt, former Council Member for the City of Morro Bay; and

WHEREAS, Melody Anne DeMeritt served as Council Member for the City of Morro Bay from November 2004 - December 2008; and

WHEREAS, Melody was appointed to Vice-Mayor to serve in 2007; and

WHEREAS; Melody took pride in herself as being a champion of accountability in government, both fiscally and procedurally; and

WHEREAS, Melody earned a Master of Arts (MA) in English at Cal Poly in 1980; and

WHEREAS, Melody taught a variety of courses in the Technical Communications Certificate program at Cal Poly which led her to become a valuable member of their faculty; and

WHEREAS, Melody retired after 30 years of teaching communication skills at Cal Poly to pursue independent consulting work and traveling; and

WHEREAS, Melody enjoyed the relationships she made during her traveling adventures around the world; and

WHEREAS; Melody will be remembered by the City and community for her kindness and willingness to support small and local businesses.

NOW, THEREFORE, BE IT RESOLVED, that the Morro Bay City Council does hereby thank Melody Anne DeMeritt for her dedicated service to the City of Morro Bay and community and we extend our sincere sympathy to her family and many friends during this difficult time.

IN WITNESS WHEREOF I have
hereunto set my hand and caused the
seal of the City of Morro Bay to be
affixed this 14th day of December 2021

JOHN HEADDING, MAYOR
City of Morro Bay, California

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AGENDA NO: B-1

MEETING DATE: December 14, 2021

Staff Report

TO: Honorable Mayor and City Council **DATE:** December 7, 2021

FROM: Cindy Jacinth, Senior Planner

SUBJECT: Review and Adopt Draft Funding Recommendations for the 2022 Community Development Block Grant (CDBG) Program

RECOMMENDATION

Staff recommends the City Council conduct a public hearing to review and adopt Resolution No. 85-21 approving draft funding recommendations for the 2022 Community Development Block Grant (CDBG) funds and forward recommendations to the San Luis Obispo County Board of Supervisors for inclusion with the other draft funding requests from the Urban County Consortium. The funding recommendation is for the two applications received from Peoples Self-Help Housing Corp, and 5 Cities Homeless Coalition along with City program administration of \$4,036 and rollover of the balance for a total funding allocation of \$57,656. 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.

ALTERNATIVES

The City Council may move to adopt draft funding recommendations to instead fund the Public Services application by Peoples Self-Help Housing (PSHH) for the full Public Services category amount of \$8,648 and not fund the 5 Cities Homeless Coalition project request consistent with CDBG requirements of the Urban County Consortium.

FISCAL IMPACT

Approving staff recommendations includes an application for administrative funds as allowed by HUD in the amount of \$4,036. If awarded, this amount would offset City administrative costs. The majority of CDBG administration, including compliance with Federal regulations, is performed by County staff pursuant to the City's 2021-2023 Urban County Participation Agreement executed July 7, 2020.

SUMMARY

Since 2011, the City of Morro Bay has been a member of the Urban County Consortium, which is a consortium of participating local jurisdictions that includes San Luis Obispo County and the cities of Paso Robles, Atascadero, San Luis Obispo, Pismo Beach and Arroyo Grande for the purpose of receiving and allocating federal CDBG funds. The 2022 CDBG award process began earlier this fall with the release of the Notice of Funding Availability on September 27, 2021 (Online Link #1 below). Virtual [public workshops](#) were held in October 2021 to provide application training guidance and answer questions. The County Board of Supervisors held a needs workshop on December 7, 2021. Applications were due by November 1, 2021. The City received two applications for this funding cycle (see below for more details).

Prepared By: CJ

Dept Review: SC

City Manager Review:

City Attorney Review: BWB

Total Morro Bay funding is anticipated to be approximately \$57,656 for the 2022 program year with an estimated total allocation countywide of \$1,772,309. Final funding amounts are subject to change and will be released by the Department of Housing and Urban Development (HUD) in early 2022.

BACKGROUND

The Community Development Block Grant (CDBG) program is a flexible funding source providing communities with resources to address a wide range of unique community development needs. (Online Link #2 below). The program works to ensure decent, affordable housing, to provide services for members of our community and to create jobs through expansion and retention of businesses.

CDBG funds are available for community development activities, which meet at least one of the three national objectives:

1. A benefit to low- and moderate-income persons;
2. Aid in the prevention or elimination of blight;
3. Address urgent needs that pose a serious and immediate threat to the health or welfare of the community.

In order for a program to qualify under the low- and moderate-income objective, at least 51% of the persons benefiting from the project or program must earn no more than 80% of the area median income. Additionally, at least 70% of the CDBG funds must be spent toward that objective.

The following criteria should also be used to guide selection of CDBG programs:

1. The proposal is consistent with the national objectives and eligibility criteria of the HUD CDBG program;
2. The proposal is consistent with the Urban County Consolidated Plan;
3. The proposal is consistent with the General Plan and other City codes/ordinances;
4. The proposal will achieve multiple community development objectives;
5. The proposal can be implemented in a timely manner, without significant environmental, policy, procedural, legal, or fiscal obstacles to overcome; and
6. The project is not financially feasible without CDBG funding.

DISCUSSION

The applications received by the City for the 2022 funding cycle are included by category in the below table along with a description of the application request and staff recommendation. As noted below, only two applications were received by the application deadline. Due to the 15% cap on public service activities, this leaves a balance of \$37,477 for which the City has no applications to award. Based on guidance from County staff, this unallocated remaining amount can be rolled over to be leveraged with the 2023 CDBG allocation to support a future project within the City.

	Amount Requested	Amount Recommended
<i>Public Services – Limited to 15% of 2021 Allocation (or a maximum of \$8,648)</i>		
<i>1. <u>Project Name:</u> Supportive Housing Services to Residents in Danger of Homelessness</i> <i>Applicant:</i> Peoples' Self-Help Housing	\$149,821 (\$34,911 request to Morro Bay)	\$7,748

Corporation (PSH) City location for services: 2612 Elm St, 495 Main St., 456 Elena St, 375 Sequoia St. Services to include clinical social services and case management of the Supportive Housing Program (SHP) to residents of PSH's 26 affordable rental properties countywide. Within the City, there are 4 PSH rental properties (addresses noted above) that would receive services from the requested CDBG assistance.		
2. <u>Project Name:</u> 22-23 Homeless Services: Shelter, Outreach, RRH and HP Services Applicant: 5 Cities Homeless Coalition (5CHC) 5CHC proposes continued and expanded comprehensive homeless services including coordinated entry, street outreach, emergency shelter, and housing navigation services. Help clients to secure and maintain stable housing, provide rapid re-housing and homeless prevention services to residents of SLO County, providing housing support coupled with supportive social services. Services to low income individuals include financial assistance and services to individuals and families based on income and anticipated need. Emergency grants for subsistence payments (rental assistance) or for deposit assistance. Assistance to be provided to those of imminent threat of homelessness also.	\$89,000 CDBG funding requested (Also requested ESH Funding and General Funds for total request of \$229,000). Amount requested for Morro Bay is \$900)	\$900
Unallocated Funds – No applications		
3. <u>Rollover</u> – No non-public service applications were received eligible for funding per HUD CDBG regulations. This unallocated amount of \$37,477 is recommended for rollover to be allocated along with the 2023 CDBG funds.	\$37,477	\$37,477
Administration – Limited to 20% of 2022 Allocation (City=35% / County =65%)	\$11,531	
City Program Administration Costs (Required County Administration Costs)	\$4,036 (\$7,495)	\$4,036 (\$7,495)
Total Funds Requested	\$57,656	
Estimated Total 2022 Funding Available		\$57,656

Federal HUD regulations apply limits to each category of funding, as described below. As part of the CDBG process, Council must adopt a draft recommendation for the 2022 grant year that meets the funding criteria while adhering to the category limits. Upon approval, the draft funding recommendations will be forwarded to the County for publishing, along with recommendations from all jurisdictions. The public notice starts a 30-day review and comment period during which a second public workshop will be held to allow questions from applicants after which the draft allocations, plus any workshop comments, will be forwarded to City Council for final approval at a duly noticed public hearing anticipated to be approximately February/March 2022. After that meeting, final funding recommendations would then be forwarded to the County Board of Supervisors in order to adopt the 2022 Action Plan consistent with the 2020-2024 Consolidated Plan which is the five-year strategic planning document that establishes funding goals for HUD funding.

The following is a brief explanation of the funding categories and applications received within each:

Public Services – The 15% Federal cap on percentage of award from this category is estimated at \$8,648. Public services activities are those activities that include, but not limited to, employment services, crime prevention, childcare, health services, substance abuse services, fair housing counseling and recreational services.

Two applications were received under this category. The City's Cooperation Agreement with the County requires any funding of public services activities must be a minimum amount of \$8,000 or more. That is a result of direction from HUD not to award CDBG funds that cost more to administer than the award itself. Cities can recommend awards of less than \$8,000 if the applicant has applied to multiple jurisdictions and the cumulative toward of their CDBG award is a minimum of \$8,000. Both PSHHC and 5CHC has previously applied for these CDBG activities and have been funded for a minimum of \$8,000 cumulatively so it is anticipated a similar funding level would occur for the 2022 program year which would allow the City to recommend funding despite the minimum \$8,000 rule.

- **Supportive Housing Program for Low Income Households** by Applicant: Peoples' Self-Help Housing Corporation (PSHH)
CDBG Funds Requested: \$149,821 /\$34,911 from Morro Bay. Amount recommended \$7,748
This project consists of supportive services at existing affordable rental housing developments managed by PSHH. The Supportive Housing Program provides clinical social services and case management to residents of PSHH's 26 affordable rental properties throughout SLO County. The amount of \$34,911 requested would be for the four developments located in Morro Bay at 2612 Elm St, 495 Main St., 456 Elena St, and 375 Sequoia St. These 4 locations represent apartment developments for both low income family households and low-income senior households. The total amount requested for all locations in the County is \$149,821. The City specific amount requested is \$34,911; however due to the 15% cap on Public Services activities, the maximum amount the City could award is \$8,648. (Attachment 3). For this funding year, staff is recommending an award of \$7,748 to enable funding for the 5 Cities Homeless Coalition also.
- **Subsistence Payments, Homeless Assistance, & Security Deposits** by Applicant: 5 Cities Homeless Coalition (5CHC)
CDBG Funds Requested: \$900. Amount recommended \$900
This program will provide emergency subsistence and deposit payments, with case management services. These emergency subsistence payments (rental assistance) and deposits will be provided on behalf of people who are homeless or at risk of becoming homeless as allowed per CDBG regulations. Services will include assistance with developing housing stability plans and provide short-term emergency homeless prevention assistance.

The application was submitted to all cities and the County. The total amount requested for all locations in the County is \$229,000 with varying amounts requested per location. The City specific amount requested is \$900. (Attachment 4).

Although this amount does not meet the minimum \$8,000 award as required by HUD, staff is recommending the project for funding because homeless prevention and services to address homelessness are a high priority item under the County's Consolidated Plan. Based on previous funding cycles, 5 Cities Homeless Coalition has received a cumulative minimum of \$8,000 from the County and therefore would be eligible for funding.

Administration –The 20% cap on percentage of award from this category is estimated at \$11,531 with \$4,036 available to Morro Bay this cycle (and with 65% of administration (\$7,495) reserved for County grant administration which includes compliance with Federal regulations).

- *City of Morro Bay – CDBG Program Administration*
Funds Requested: \$4,036 for City administration
Pursuant to the City's 2021-2023 Cooperation Agreement with the County, the twenty-percent cap on administration allowed under HUD regulation is split between City and County staff administration. Of the 20 percent, the City is eligible to apply for 35 percent (or \$4,036) with the balance to be forwarded to the County (\$7,495). Those are for costs associated with the administration of the Community Development Block Grant Program, including staff time required for grant administration, payment processing and coordination with County Planning staff. If administration costs exceed the funding allocation, then remaining costs of administering the program would need to be paid from the General Fund.

CONCLUSION

The total estimated 2022 allocation for Morro Bay, as released by the County, is \$57,656. With the County's administrative share of \$7,782, the net amount available to the City for funding recommendations is anticipated to be \$50,161. The City's Cooperation Agreement with the County requires any awards in the category of public service activities be no less than \$8,000 with a Federal cap at no more than 15% of an allocation (maximum of \$8,648), which can be spent on public service activities. The two recommended public service applications received are recommended for funding at levels less than the required minimum of \$8,000 but can be recommended based on an anticipated cumulative award by other jurisdictions in the Urban County Consortium and based on past funding years with these applicants. This leaves an unallocated 2022 balance of \$37,477 that is recommended to be rolled over in order to be leveraged with the 2023 CDBG funding allocation to support a future project within the City.

Staff is recommending that Council approve the 2022 Draft Funding Recommendations for the two applications received (Attachments 2 and 3), the City application of \$4,036 for program administration, and the balance to be rolled over to the 2023 Program Year.

ATTACHMENTS

1. Resolution No. 85-21
2. Peoples' Self-Help Housing –Supportive Housing Program for Low-Income Households
3. 5 Cities Homeless Coalition – Subsistence Payments, Homeless Assistance, & Security Deposits.
4. Powerpoint presentation

ONLINE LINKS:

1. County of San Luis Obispo CDBG Notice of Funding Availability

<https://www.slocounty.ca.gov/getattachment/Departments/Planning-Building/Department-Divisions/Housing/2022-SLO-Co-NOFA.pdf?lang=en-US>

2. Community Development Block Grant (CDBG) Fact Sheet
<https://files.hudexchange.info/resources/documents/About-the-CDBG-Program.pdf>

RESOLUTION NO. 85-21

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING COMMUNITY DEVELOPMENT BLOCK GRANT
PROJECTS FOR YEAR 2022**

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

WHEREAS, via a Cooperation Agreement with County of San Luis Obispo (hereafter referred to as "County"), a political subdivision of the State of California, executed by the City of Morro Bay (hereafter referred to as "City") a municipal corporation, on July 7, 2020, the City agreed to become a participant for a period of three years with the County and other cities therein as an "Urban County" under the U.S. Department of Housing and Urban Development (HUD); and

WHEREAS, under the Cooperation Agreement, the City retains the authority to determine which projects are to be funded with its allotment of CDBG Program funds; and

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

WHEREAS, the City expects to receive \$57,656 in CDBG funds in 2022; and

WHEREAS, in 2021, the County published a "Notice of Funding Availability" for projects to be funded under the 2022 CDBG Programs, which provided proposals were to be submitted by November 1, 2021; and

WHEREAS, at its meeting on December 14, 2021, the City Council gave approval for draft funding recommendations to be forwarded to the County Board of Supervisors for 2022 CDBG projects.

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

1. City will timely submit draft funding recommendations for the current CDBG funding cycle to the Board of Supervisors for the County of San Luis Obispo consistent with the programs and allocations listed in Exhibit "A," attached hereto and incorporated herein by this reference, to be funded with the City's allocation of CDBG Program funds.
2. City Manager is authorized for the current CDBG funding cycle 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 San Luis Obispo County

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a special meeting thereof held on the 14th day of December 2021 on the following vote:

AYES:

NOES:

ABSENT:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

EXHIBIT "A"

DRAFT FUNDING RECOMMENDATIONS

TO FORWARD TO THE

COUNTY BOARD OF SUPERVISORS

Public Services – Limited to 15% of 2022 Allocation (or a maximum of \$8,648)	Amount Requested	Amount Recommended
1. <u>Project Name:</u> San Luis Obispo Municipal and County Supportive Housing Program for Low-Income Households Applicant: Peoples' Self-Help Housing Corporation (PSHH)	34,911	7,748
2. <u>Project Name:</u> 22-23 Homeless Services: Shelter, Outreach, RRH and HP Services Applicant: 5 Cities Homeless Coalition (5CHC)	\$900	\$900
<u>Rollover to 2023 CDBG Program Year</u>		
<u>Unallocated funds for rollover</u>	\$37,477	\$37,477
Administration – Limited to 20% of 2022 Allocation (City=35% / County =65%)	\$11,531	
City Program Administration Costs (Required County Administration Costs)	\$4,036 (\$7,495)	\$4,036 (\$7,495)
Total Funds Requested	\$57,656	
Estimated Total 2022 Funding Available		\$57,656



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County of San Luis Obispo

2022 Public Services and Economic Development (CDBG, ESG, HOME, General Fund, PLHA)

Deadline: 11/1/2021

People's Self-Help Housing Corporation

Supportive Housing Services to Residents in Danger of Homelessness

Jump to: [Eligibility](#) [Application Questions](#) [Budget](#) [Tables](#) [Documents](#)

\$ 149,821.00 Requested

Submitted: 10/29/2021 12:08:16 PM (Pacific)

Project Contact

Forrest Eastham

grants@pshhc.org

Tel: 8055482345

Additional Contacts

adrianas@pshhc.org

People's Self-Help Housing Corporation

1060 Kendall Road
San Luis Obispo, CA 93401
United States

CEO & President

Kenneth Trigueiro

ceo@pshhc.org

Telephone(805) 781-3088

Fax (805) 544-1901

Web www.pshhc.org

Eligibility [top](#)

Some answers will not be presented because they are not part of the selected group of questions based on the answer to #1.

1. Please identify all funding sources being requested:

This question will be used to branch only those questions related to the funding sources requested in this application, so don't worry if your application has skipped question numbers.

- ☒ CDBG only
- ☐ ESG only
- ☐ ESG-CV only
- ☐ HOME only
- ☐ General Funds only
- ☐ PLHA only
- ☐ Select this for any combination of grant funding requests(CDBG, ESG/ESG-CV, HOME, PLHA, and General Funds)

National Objectives

2. CDBG ONLY - Please select the national objective that best applies to the proposed project

Please refer to "Basically CDBG" or the "CDBG Guide to National Objectives and Eligible Activities" in the Library for more

information regarding CDBG national objectives.

☒ Low/Moderate Income

☐ Slums or Blight

☐ Urgent Need

3. CDBG ONLY - IF LOW/MODERATE INCOME WAS SELECTED: Select which criteria the proposed project intends to qualify under to meet the Low/Moderate Income objective

Please refer to "Basically CDBG" or the "CDBG Guide to National Objectives and Eligible Activities" in the Library for more information regarding the Low/Moderate Income national objective.

☐ Area Benefit

☒ Clientele

☐ Housing

☐ Jobs

☐ N/A - Low/Moderate Income NOT selected

4. CDBG ONLY - IF SLUM OR BLIGHT WAS SELECTED: Select which criteria the proposed project intends to qualify under to meet the Slums or Blight objective

Please refer to "Basically CDBG" or the "CDBG Guide to National Objectives and Eligible Activities" in the Library tab for information regarding the Slums or Blight national objective.

☐ Area Basis

☐ Spot Basis

☒ N/A - Slums or Blight NOT selected

5. CDBG ONLY - Please explain how the proposed project meets the selected National Objective.

Please refer to "Basically CDBG" or the "CDBG Guide to National Objectives and Eligible Activities" in the Library tab.

This project qualifies as a low/moderate income limited clientele activity. Among program clientele, 96% are low/moderate income persons from low/moderate income households, and all are residents at PSHH's affordable, supportive rental properties throughout San Luis Obispo County. The rate of low/moderate income persons served is well above the 51% threshold established in the "CDBG Guide to National Objectives and Eligible Activities."

6. ESG/ESG-CV ONLY - Please select all objectives applicable to the proposed project, as established in "Opening Doors: Federal Strategic Plan to Prevent and End Homelessness" or the CARE Act.

-answer not presented because of the answer to #1-

7. ESG/ESG-CV ONLY - Please explain how the proposed project supports the selected objective(s).

-answer not presented because of the answer to #1-

Beneficiary Documentation

8. How will you document and maintain income status or presumed benefit status for CDBG?

Please provide a sample of your Client Intake Form under the Documents Requested section below. Income verification for CDBG beneficiaries must be provided in accordance with 24 CFR Part 5; a link is provided in the Library.

Receiving HUD and USDA funds to build housing for low-income households, PSHH collects and verifies information on family size, income, disability, and senior status in accordance with federal HUD and USDA regulations as part of a household's application process prior to move in at a PSHH property. Once residing at a PSHH rental property, every household's income and size is recertified annually. PSHH retains data on the size and annual income of all families and households living at our properties, including those receiving services through Supportive Housing Program (SHP), for which grant funding is sought. In most cases, household income may not exceed 50% of the Area Median Income (AMI) at move-in. Household size, income, disability, and senior status information is stored in PSHH's resident database, which is easily cross referenced with the client database maintained by the Supportive Housing Program, the program for which funds are sought.

9. How will you collect demographic data on the beneficiaries of the proposed project (i.e. racial/ethnic characteristics)? (General Fund requests are exempt from this requirement)

Please provide a sample of your Client Intake Form under the Documents Requested section below. To qualify for an award of Federal and State funds, the agency must collect race and ethnicity information from all clients.

Race and ethnicity data is reported by residents during the tenant application process and is stored in PSHH's resident database, in accordance with HUD and USDA regulations. Application forms for potential residents of rental properties as well as the intake form for new SHP clients are attached.

Eligible Activities

10. CDBG ONLY - Identify all eligible activities that apply to the proposed project

Please refer to "Basically CDBG" or the "CDBG Guide to National Objectives and Eligible Activities" in the Library tab for information regarding CDBG eligible activities.

- ☐ Public Services (General)
- ☐ Operating Costs of Homeless/AIDS patients programs
- ☒ Senior Services
- ☒ Handicapped Services
- ☐ Legal Services
- ☒ Youth Services
- ☒ Transportation Services
- ☒ Substance Abuse Services
- ☒ Services for Battered and Abused Spouses
- ☐ Crime Awareness or Neighborhood Cleanups
- ☐ Fair Housing Activities
- ☒ Tenant/Landlord/Housing Counseling
- ☐ Child Care Services
- ☒ Health Services
- ☐ Services for Abused and Neglected Children
- ☒ Mental Health Services
- ☒ Subsistence Payments, Homeless Assistance, Rental Housing Subsidies or Security Deposits
- ☒ Job training and job placement services
- ☐ Assistance to microenterprises (technical assistance, business support services, and other similar services to owners of microenterprises or persons developing microenterprises)

11. ESG ONLY - Identify all eligible activities that apply to the proposed project

-answer not presented because of the answer to #1-

12. GENERAL FUND ONLY - Identify all eligible activities that apply to the proposed project

-answer not presented because of the answer to #1-

13. ESG-CV ONLY - Identify all eligible activities that apply to the proposed project

-answer not presented because of the answer to #1-

14. HOME ONLY - The only activity under the public service application for HOME is Tenant Based Rental Assistance (TBRA)

-answer not presented because of the answer to #1-

15. PLHA ONLY - Identify all eligible activities that apply to the proposed project

-answer not presented because of the answer to #1-

Documents Requested ***Required? Attached Documents ***

Client Intake Form(s) for Limited Clientele (if applicable)

Map for Area Benefit (if applicable)

CDBG Requirements and Acknowledgements (Please download the template below and upload an initialed document here)

[download template](#)

General Liability Insurance

[FYE23 SHP new client intake form](#)

[FYE23 Tenant Application](#)

[PSHH FYE23 Subrecipient Agreement](#)

[FYE23 PSHH SLO Co Insurance](#)

Application Questions [top](#)

Some answers will not be presented because they are not part of the selected group of questions based on the answer to #1.

1. Please identify the funding sources being requested:

This question will be used to branch only those questions related to the funding sources requested in this application - so don't worry if your application has skipped question numbers.

- ☒ CDBG only
- ☐ ESG only
- ☐ HOME only
- ☐ General Funds only
- ☐ PLHA only
- ☐ Select this for any combination of grant funding requests (CDBG, ESG, HOME, General Funds, PLHA)

Project Summary

2. Project Address(es):

If the proposed project has multiple addresses, please upload a map of the specific locations under the Documents tab

Arroyo Grande:

163 S Elm St.

351 S Elm St.

119 Juniper St.

150 S Courtland St.

Atascadero:

7480 Santa Ysabel

Avila Beach:

240 Ocean Oaks Ln.

Cambria:

2835 Schoolhouse Ln.

Los Osos:

1251 Los Olivos Ave.

1351 Los Olivos Ave.

Morro Bay:

2612 Elm St.

495 Main St.

456 Elena St.

375 Sequoia St.

Oceano:

1261 Belridge St

1720 17th St.

Paso Robles:

400 Oak Hill Rd.

401 Oak Hill Rd.

1255 Creston Rd.

2940 Spring St.

Pismo Beach:

360 Park Ave.

211 to 251 Addie St.

San Luis Obispo:

537 Brizzolara St.

3071 S Higuera St.

Templeton:

999 Las Tablas Rd. (Rolling Hills I)

999 Las Tablas Road (Rolling Hills II)

1009 Petersen Ranch Rd.

3. Jurisdiction(s)/Area(s) Served:

Select all that apply

- ☒ Arroyo Grande
- ☒ Atascadero
- ☒ Morro Bay
- ☒ Paso Robles
- ☒ Pismo Beach
- ☒ City of San Luis Obispo
- ☒ County of San Luis Obispo

4. Brief Project Description:

You will have the chance to expand on your project description further in the application. Please upload any maps, photos, drawings or plans under the Documents tab

PSHH will provide clinical social services and case management of the Supportive Housing Program (SHP) to residents of PSHH's 26 affordable rental properties in San Luis Obispo County. The vast majority of households are classified as very-low-income, earning 50% or less AMI. Services are being held virtually and onsite at the properties where residents live, weekdays between 9 am and 6 pm. Services are free, confidential, and always optional, and are provided by licensed and associate clinical social workers (LCSWs and ACSWs) with a master's degree in counseling or social services. Services prevent homelessness among some of the region's most vulnerable residents while enhancing housing stability and resiliency.

5. Please answer the following:

Please write N/A for any questions that are not applicable.

149,821	CDBG funding requested
	ESG funding requested
	HOME funding requested
	General Funds requested
	PLHA funding requested "
149,821.00	SUBTOTAL
	Anticipated start date
	Anticipated end date
149,821.00	TOTAL

6. Type of agency:

- ☒ 501(c)(3)
- ☐ For Profit
- ☐ Gov't/Public
- ☐ Other:

Agency Details, Capacity, and Experience**7. Is the organization faith-based?**

- ☐ Yes
- ☒ No

8. Please answer the following:

If this is your first time applying to the County for funds, please upload your organizations' incorporation documents in the Documents tab.

1971	Date of incorporation
10,029,919	Annual operating budget
202	Number of paid staff
53	Number of volunteers
10,032,145.00	TOTAL

9. Agency Mission Statement:

The mission of People's Self-Help Housing is to build affordable homes with site-base services that offer opportunities to change lives and strengthen communities on the Central Coast of California.

10. Please describe the services your organization is CURRENTLY providing (regardless of funding source).

The Central Coast's longest-serving nonprofit affordable housing developer, PSHH builds, owns, rents and manages sliding scale, affordable, permanent supportive housing throughout San Luis Obispo, Santa Barbara, and Ventura counties. A natural extension of our mission to create opportunities and change the lives of the residents we serve, each of the 53 affordable housing properties we compassionately maintain is enriched with onsite supportive health, education, and housing retention services designed to promote long-term resiliency.

Primarily serving low-income families, veterans, seniors, persons living with disabilities, farmworkers, and those transitioning out of homelessness, PSHH has, to date, assisted over 1,200 households in becoming first-time homeowners through its "sweat equity" path to homeownership program, in which low-income families build their own homes over an 18-month period. In addition to its onsite education program, Camino Scholars, which advances equity in education for under-resourced and low-income students, and its attentive onsite property management division, PSHH's Supportive Housing Program (SHP) provides clinical case management and social services onsite where residents live. As with all services PSHH provides, these are provided at no cost to residents, and without restriction or barrier.

Through SHP, the program for which funding is being requested, residents gain access to PSHH's staff of ten onsite licensed clinical social workers and case managers, who provide service coordination to connect residents to a broad network of organizational and community resources. Services provided include: preventive health screenings, mobile vaccination clinics, behavioral health counseling and referrals, food assistance, wellness checks for seniors and housebound residents, medical transportation, eviction prevention, financial literacy coaching, and administrative assistance, such as securing disability accommodations, medical insurance, or adaptive technology support. SHP also helps residents experiencing temporary challenges in accessing emergency rental, utility, and critical transportation assistance when no other resources are available.

PSHH social workers work with residents of PSHH's 26 San Luis Obispo County properties at intake to complete a needs assessment and co-develop ongoing case management plans to establish and maintain household stability. Most program staff are bilingual and all are trained in trauma-informed care frameworks. Services are inclusive, culturally relevant, and tailored to meet individual needs. PSHH works directly with each household from the outset to identify unique challenges faced, developing comprehensive services and crisis intervention strategies designed to prevent common threats to household security. Clinical staff establish contact early in the timeline, helping secure resources and intervening wherever families are experiencing temporary difficulties.

11. Please describe the services your organization PROPOSES to provide (regardless of funding source).

PSHH will provide clinical social services and case management through the San Luis Obispo County SHP, developing personalized wraparound services for those living at PSHH's 26 affordable, sliding-scale rental properties in the County. Households are certified as very-low-income at time of move-in, which typically means they earn 50% or less of Area Median Income. Most services are provided weekdays between 9 am and 6 pm, and always by a licensed or associate clinical social worker.

Services are provided in English and Spanish to any of the 733 households and 1,656 individuals in residence at PSHH properties in the County. SHP services are free, confidential, completely optional, and available to all PSHH residents. Residents are never placed on a waiting list, and are provided immediate assistance to ensure that those at risk of homelessness remain stably housed. Social workers provide free and confidential assistance with coordinating medical appointments and mobility, linking residents to community resources, enhancing budgeting skills, assisting with job placement and retention, providing crisis intervention, addressing mental health issues, accessing emergency financial assistance for basic needs, and more. SHP helps residents maintain critical transportation, enhance financial and family stability, and access PSHH's resident emergency assistance fund when no other resources are available. Social workers maintain records of all client services, outcomes, and resources utilized in the HIPPA-compliant SHP client database.

SHP staff is certified in trauma-informed care, a treatment framework that allows providers to understand, recognize, and respond to the effects of all types of trauma while emphasizing physical, psychological and emotional safety for both patients and providers. These practices assist survivors in rebuilding control and empowerment. After 18 months of living under the effects of the pandemic, residents' need for our behavioral health support services is at an all-time high, and the scope of our social workers' role has broadened vastly in response.

Municipalities:

- 70 of 98 households in Arroyo Grande, including all 28 households at properties for seniors & disabled
- 18 of 18 households in Atascadero
- 99 of 99 households in Morro Bay, including all 61 households at properties for seniors & disabled
- 133 of 197 households in Paso Robles, including all 69 households at properties for seniors & disabled
- 20 of 26 households in Pismo Beach
- 33 of 33 households in San Luis Obispo

Unincorporated areas:

- 83 of 104 households in Los Osos
- 19 of 28 households in Oceano
- 29 of 29 households in Avila Beach
- 10 of 24 households in Cambria
- 95 of 112 in Templeton, including all 29 households at properties for seniors & disabled
- 236 of 297 total households in unincorporated SLO County.

12. How does the project complement and collaborate with existing efforts? Does your organization partner with other organizations?

SHP complements and collaborates with existing efforts by connecting PSHH residents with community partnerships and programs that augment onsite services and promote health and housing stability. We continually strive to forge new partnerships and deepen existing relationships with public agencies, such as SLO County Public Health, the Department of Social Services, and the Housing Authority of SLO. Our clinical case managers and social workers routinely coordinate appointments for our residents, assist them with intake processes, and accompany them at appointments as necessary, providing mediation, language support, and service navigation assistance to ensure more equitable and seamless service provision. SHP staff remain apprised of emerging regulations, updates to income restrictions, and eligibility requirements at these public agencies. Our program also complements DHHS services by helping PSHH residents anticipate and mitigate challenges before they occur, thereby reducing staff time and program resources invested by DHHS.

An integral component of our service provision is establishing partnerships with a diverse range of public and private agencies to ensure that residents have access to a range of community resources that improve their health, safety, and resiliency. Within San Luis Obispo County, some of the agencies we work with include:

- 5 Cities Homeless Coalition for rental and deposit assistance
- SLO County public health for mobile vaccination clinics
- Cuesta Community College for English as a Second Language classes
- Housing Authority of the City of San Luis Obispo for Housing Choice Vouchers and Rental and Security Deposit Assistance
- The Department of Housing and Urban Development's Veterans Affairs Supportive Housing for vouchers for homeless veterans, who in turn are prioritized on our waiting lists and receive a waived background check fee
- Noor Clinic SLO for senior dental care and preventive health screenings
- SLO County Social Service Administration enhancing access to benefits such as Cal Fresh, Cash Assistance and In-Home Supportive Services
- SLO Food Bank and the Salvation Army for food distribution
- Catholic Charities for emergency assistance with rental and utility payments
- CAPSLO for utility assistance and the Supportive Services for Veteran Families to provide access to financial and legal assistance and employment counseling
- SLO Safe Ride for medical transportation
- Transitions Mental Health and County Behavioral Health for behavioral health support
- Community Health Centers for resident health care
- Ride-On for senior shuttle, veterans express, and access shuttle for low-income residents
- SLO County Community Garden Network for community garden spaces at properties for seniors and those living with disabilities

While this list provides some of the most significant examples of PSHH's cooperative relationships with outside agencies in San Luis Obispo County, it is by no means

13. If the proposed project will serve homeless households, please describe how the project will coordinate with other homeless service providers to connect homeless individuals and families to resources.

If this question is not applicable, write N/A in the box below.

In Ventura and Santa Barbara Counties, PSHH manages three permanent, supportive housing, Single Room Occupancy properties primarily dedicated to serving those who transitioned out of homelessness upon moving into a PSHH home, where residents have access to SHP services. Residents of these three properties have an exceptional rate of moving on to other stable housing, which led to PSHH's decision, in alignment with a focus of its 5-year strategic plan, to dedicate 10% of units at all new properties we develop to housing those who are transitioning out of homelessness.

Today, 14% of households who live at PSHH properties transitioned out of homelessness upon moving into a PSHH home. While this transition to permanent supportive housing means that our residents are no longer served by homelessness service providers, we recognize that the unique needs and challenges faced by this population means these households tend to require a higher level of service and assistance to prevent recidivism. We draw on nearly 20 years of providing SHP services to the recently homeless to ensure their transition is successful and permanent.

SHP administers a needs assessment to new clients and then works with residents to co-develop a case management plan to meet their personal resiliency goals. Residents stabilize by meeting their immediate needs, such as personal care items, food, health screenings, prescriptions, and a telephone. Next, they are assisted in obtaining resources that will sustain these, such as employment, nutritional security, health insurance, and critical transportation. When they are ready, SHP helps

these residents with more personalized needs, such as seeking legal aid, physical and mental health care, education, personal finance coaching, and help reconnecting with family, friends and support networks.

While SHP provides these services whenever possible, coordination with outside agencies is required to stabilize these households and help them reach a point at which they can thrive independently. Residents are connected to local food banks, SNAP and MediCal offices, GED testing at the California Department of Education, college counselors, medical practices accepting new MediCal patients, legal clinics, and to many other service providers. With 98% of formerly homeless households continuing on to other stable housing, SHP's connecting residents to these resources helps them to reach a point where they are thriving and able to contribute to their community in ways that are personally meaningful.

14. Please describe your organization's capacity to implement the proposed project. Who will be involved? List projects of similar size and type that your organization has completed.

SHP has been an ongoing program at PSHH for 20 years. Agency-wide 98% of SHP clients maintain stable housing for six months after initiating program services, meeting the requirement for housing stability as established by HUD, which provides CDBG funding. SHP is open to each of the 5,500+ resident of our 53 affordable rental properties in San Luis Obispo, Santa Barbara and Ventura counties, ensuring that every household is given the opportunity to create a safe, healthy, and secure home. Last year, SHP served 1,239 households, 63% of all PSHH households, across three counties through nearly 20,000 hours of service, with 676 referrals to partnering agencies. Case managers also helped distribute emergency assistance funds to over 100 families with pressing rental and utility relief needs.

SHP is housed in the Department of Neighborhood Development and Resident Services, headed by Rick Gulino, a Licensed Clinical Social Worker, and is staffed by two Clinical Supervisors, six Bilingual Social Workers, and two Social Workers, all licensed or associate clinical social workers. PSHH also partners with regional universities and colleges to provide internships to social work graduate students.

15. Briefly describe your agency's record keeping system with relevance to the proposed project.

Refer to Chapter 13 of "Basically CDBG" in the Library for more information on record keeping for CDBG.

PSHH uses two databases that are relevant to the project. The first is the organization's resident database, which stores information on every PSHH household, including household members, ages, race and ethnicity, income at move-in, and income at the most recent recertification. This database is maintained by the Property Management Department.

The second database is the SHP program database, which is used to store case management records, and is maintained by PSHH clinical social workers. This database includes case files and notes, which are tagged for specific services provided during instances of service, and it is easily cross referenced with the resident database. These tags are relevant to various outcomes, outputs, and funder reports. Examples of service tags include crisis intervention, healthcare services, food assistance, transportation, counseling services, and legal issues.

16. CDBG/ESG ONLY - Will the services offered by your organization increase or expand as a result of CDBG/ESG assistance?

- ☒ Yes
☐ No

17. CDBG/ESG ONLY - IF YES TO ABOVE - What new programs or services will be provided?

If this question is not applicable, write N/A in the box below.

N/A

18. CDBG/ESG ONLY - IF YES TO QUESTION 16 - Describe how existing programs or services will be expanded and what percentage of an increase is expected.

If this question is not applicable, write N/A in the box below.

During the grant period, PSHH is bringing on two ACSW interns who are completing intern hours toward becoming LCSWs. These two interns will add an additional 30 hours per week of capacity to the program. This represents an increase in person-hours of 22%.

19. Please describe the proposed project in detail (i.e. What activities are to be undertaken? What are the projects' goals?).

Please attach a timeline of the project milestones under the Documents tab.

PSHH proposes the continuation of SHP services at PSHH properties throughout San Luis Obispo County. SHP will serve approximately 500 households through over 3,500 hours of clinical social work and case management. Services are provided in English and Spanish to any members of any of the households residing at PSHH's affordable supportive housing properties in the County. These include:

- 98 households in Arroyo Grande, including 28 for seniors and disabled
- 18 in Atascadero

- 99 in Morro Bay, including 61 for seniors and disabled
- 197 in Paso Robles, including 69 for seniors and disabled
- 26 in Pismo Beach
- 33 in San Luis Obispo
- 104 in Los Osos
- 28 in Oceano
- 29 in Avila Beach
- 24 in Cambria
- 112 in Templeton, including 29 for seniors and disabled

Based on SHP services provided over the previous year and the expectation that low-income households will continue to experience devastating secondary effects from the pandemic, we estimate that we will assist the following number of households in jurisdictions throughout San Luis Obispo County:

- 52 households (114 individuals) in Arroyo Grande
- 18 households (39 individuals) in Atascadero
- 97 households (213 individuals) in Morro Bay
- 109 households (239 individuals) Paso Robles
- 13 households (28 individuals) in Pismo Beach
- 22 households (48 individuals) in the City of San Luis Obispo
- 182 households (400 individuals) in unincorporated San Luis Obispo

During the grant period, 98% of SHP clients will maintain stable housing for six months after initiating program services, meeting the requirement for reaching housing stability as established by HUD, which provides CDBG funding.

Our approach recognizes that just providing affordable housing is not enough. It must be healthy housing which includes easy access to transportation hubs, good paying jobs, healthy activities, and food systems, all of which support a life full of opportunity for vulnerable populations. Our priority is to assist residents in meeting their most basic needs of food, housing, income security, and health. To help residents achieve stability, our social workers provide free and confidential assistance with coordinating medical appointments and mobility, linking residents to community resources, enhancing budgeting skills, assisting with job searches, providing crisis intervention, addressing mental health issues, accessing emergency financial assistance for basic needs, and more.

During the grant period, SHP will continue to evaluate emerging resident needs, including those stemming from the economic impact of COVID-19 on low-income households, in order to better assist residents in addressing household challenges. Evaluation of emerging needs not only guides SHP services, but provides insight for PSHH as a whole, guiding organizational policy development and the establishment of new services.

Project Details

20. Please estimate the number of unduplicated persons or households to benefit from the proposed project. Write "p" for persons or "hh" for households.

Please refer to the Library for HUD Income Limits and information on CDBG Presumed Low/Mod Income populations. Please enter any presumed benefit persons as low-income.

500	TOTAL number of persons (p) or households (hh) regardless of income
69	Of the total number of persons (p) or households (hh) entered above, how many will be LOW-INCOME (earning 51% - 80% or less of the County median-income)(HUD funding only)
406	Of the total number of persons (p) or households (hh) entered above, how many will be VERY LOW-INCOME (earning 50% or less of the County median-income)(HUD funding only)
	Of the total number of persons (p) or households (hh) entered above, how many will be earning 60% or less of County median-income(PLHA only)
975.00	TOTAL

21. CDBG ONLY - If the project serves any of the presumed benefit populations under the Low/Moderate Income national objective, please describe how the project will directly benefit the populations identified.

If this question is not applicable, write N/A in the box below.

PSHH's Supportive Housing Program primarily serves households classified as low- to very-low income, with residents being certified upon move-in as earning between 50% and 80% of Area Median Income. This project will directly benefit the aforementioned population through provision of free onsite supportive health and homelessness prevention services designed to enhance health outcomes and foster long-term resiliency.

22. ESG ONLY - FOR EMERGENCY SHELTER ONLY: Please identify the following projected accomplishments and

portion of funding requested to go towards each service type for the 12-month contract period.

-answer not presented because of the answer to #1-

23. ESG ONLY - FOR STREET OUTREACH ONLY: Please identify the following projected accomplishments and portion of funding requested to go towards each service type for the 12-month contract period.

-answer not presented because of the answer to #1-

24. ESG ONLY - RAPID RE-HOUSING ONLY - Please identify the following projected accomplishments and portion of funding requested to go towards each service type for the 12-month contract period.

-answer not presented because of the answer to #1-

25. ESG ONLY - FOR HOMELESSNESS PREVENTION ONLY: Please identify the following projected accomplishments and portion of funding requested to go towards each service type for the 12-month contract period.

-answer not presented because of the answer to #1-

26. ESG ONLY - FOR HMIS ONLY: Please identify the portion of funding requested to go towards each service type for the 12-month contract period.

-answer not presented because of the answer to #1-

27. GENERAL FUND ONLY - OVERNIGHT SHELTERS ONLY - Please answer the following:

-answer not presented because of the answer to #1-

28. GENERAL FUND ONLY - Please identify the following projected accomplishments:

-answer not presented because of the answer to #1-

29. Identify the projected target population(s) your proposed project and activities will serve (including age, race, residency, handicap status, income level or other unit characteristics or subgroup information) and how those populations will benefit

The project and activities will serve seniors, veterans, persons living with disabilities, farmworker families, those transitioning out of homelessness, and individuals from historically under-resourced racial and ethnic demographics, all of whom are low-income. Within the County's geographic footprint, over 80% of our residents are Latino, 17% of heads of household are living with a disability, 11% are veterans, 57% are female, over one-third are seniors, and 17% were previously homeless. Many of our households are also classified as English Language Learners.

These populations will benefit from access to onsite clinical social services and preventive health care. Seniors will benefit from services that enable them to age in place and with dignity, and will receive regular wellness checks, health screenings, assistance with medical appointment coordination and transportation, and nutrition assistance. Veterans and those living with disabilities will benefit from access to onsite clinical case management, assistance securing accommodations and adaptive technology, and safe, thoughtfully-designed ADA-accessible housing which promotes dignified, independent living. Residents making the transition out of homelessness will benefit from financial coaching, career access services, behavioral health counseling and homelessness prevention programming. English Language Learners also benefit from culturally-relevant social services, mediation and language support provided by social workers, and access to PSHH's Camino Scholars Education Program, which provides free afterschool support in literacy and math to families of students residing at PSHH properties.

As the socio-emotional effects of the pandemic have deepened, and many of our residents are facing disproportionate impacts as a result, demand for our behavioral health services has been on the incline, and addressing the pandemic's lingering impacts on mental health will be a focus of recovery efforts.

30. Has environmental review been completed (CEQA and/or NEPA)?

- ☐ Yes - CEQA review completed
- ☐ No - CEQA review not completed
- ☒ N/A - CEQA not required
- ☐ Yes - NEPA review completed
- ☐ No - NEPA review not completed
- ☐ N/A - NEPA not required

31. Please answer yes or no to the following:

If applicable, please upload a copy of the Phase I or II environmental assessment under the Documents tab.

- Has a Phase I or Phase II environmental assessment been conducted for the property?
- List and describe any known hazards (e.g. asbestos, storage tanks – underground, aboveground)
- Is the project on a property designated or been determined to be potentially eligible for designation as a local, state, or national historic site?

no	Are the building(s)/structure(s) located on a Historic Site or within a Historic District?
no	Is the project located within a 100-year flood plain?
no	IF YES TO ABOVE, does your agency have flood insurance?
no	Will there be demolition required?
0.00	TOTAL

32. Identify all permits necessary for the project (local, state or federal).

No permits are necessary for this project.

33. State whether or not the necessary permits have been issued. If a permit has not yet been issued, indicate when the permit(s) will be applied for or issued.

Please provide proof of permit issuance under the Documents tab.

PSHH is required to have an independent financial audit referred to as a "Single Audit." The annual financials are audited by a third party CPA firm according to OMB uniform practice. The independent Auditor reports annually to the Executive Management Team and the Board's four member Audit Committee on the results of their audit. With a licensed CPA serving as CEO and President, and as a steward of HUD, USDA, and VA funds, PSHH has built a comprehensive and robust fiscal oversight system. The PSHH accounting manual governs the policies and procedures of our accounting department to ensure appropriate segregation of duties and handling of the organization's accounting transactions.

34. Briefly describe your agency's auditing requirements, including those for the proposed project.

Please upload a copy of your most recent audit under the Documents tab.

PSHH is required to have an independent financial audit referred to as a "Single Audit." The annual financials are audited by a third party CPA firm according to OMB uniform practice. The independent Auditor reports annually to the Executive Management Team and the Board's four member Audit Committee on the results of their audit. With a licensed CPA serving as CEO and President, and as a steward of HUD, USDA, and VA funds, PSHH has built a comprehensive and robust fiscal oversight system. The PSHH accounting manual governs the policies and procedures of our accounting department to ensure appropriate segregation of duties and handling of the organization's accounting transactions.

Financial

35. How do you plan to fund the operation and maintenance costs (if any) associated with this project? Are these funds available now? If not, when will they be available?

PSHH funds our programming through various revenue streams, which include rental fees, development and construction fees, individual donations, and grants from public and private grantors. A portion of funds from each of these categories is currently available. The remaining funds will become available on a case-by-case basis throughout the remainder of the current fiscal year as well as the grant period.

36. Do you have any grant funds remaining from prior Fiscal Year allocations?

☐ Yes

☒ No

37. IF YES TO ABOVE, please answer the following:

If this question is not applicable, write N/A in the boxes below.

N/A	What fiscal year(s) did you receive the funding?
N/A	What project did you receive the funding for?
N/A	How much is remaining?
0.00	TOTAL

38. CDBG ONLY - Identify all jurisdictions you are applying to for CDBG funds by indicating the amount applied for at each jurisdiction.

Write N/A for jurisdictions not being applied to for CDBG funds. Note: Any project/program being recommended less than \$8,000 total will not be funded per the Cooperation Agreement between the County and participating cities of the Urban County.

	City of Arroyo Grande
21383	City of Atascadero
34911	City of Morro Bay
10590	City of Paso Robles

8925	City of Pismo Beach
28362	City of San Luis Obispo
45650	County of San Luis Obispo
149,821.00	TOTAL

39. GENERAL FUND ONLY - Please indicate the estimated portion of funding to go towards the following activities:
-answer not presented because of the answer to #1-

40. HOME Only - TBRA Only - Please indicate the amounts to be spent for rental assistance, deposit assistance, and project administration?
-answer not presented because of the answer to #1-

Budget [top](#)

Funding Sources/Revenues	Committed	Conditional	Proposed
CDBG Funding (this request)		\$ 0.00	\$ 149,821.00
HUD	\$ 0.00	\$ 0.00	\$ 86,257.00
NeighborWorks		\$ 0.00	\$ 16,071.00
City of Pismo Beach		\$ 0.00	\$ 5,000.00
City of San Luis Obispo	\$ 0.00		\$ 5,850.00
County of San Luis Obispo (PHG)		\$ 0.00	\$ 21,739.00
Avila Beach Community Foundation		\$ 0.00	\$ 2,000.00
Wells Fargo Foundation		\$ 0.00	\$ 7,143.00
Other Grants		\$ 0.00	\$ 79,948.00
Property Service and Program Revenue		\$ 0.00	\$ 175,390.00
Total	\$ 0.00	\$ 0.00	\$ 549,219.00

Funding Uses/Expenses	CDBG	ESG & ESG-CV	General Fund	HOME	PLHA
Personnel Costs, County Unincorporated Areas	\$ 113,623.00				
Personnel Costs, Atascadero	\$ 31,827.00				
Personnel Costs, Morro Bay	\$ 92,796.00				
Personnel Costs, Paso Robles	\$ 81,208.00				
Personnel Costs, Pismo Beach	\$ 28,273.00				
Personnel Costs, City of San Luis Obispo	\$ 37,418.00				
Professional Services	\$ 1,161.00				
Travel/Training/Meals	\$ 6,335.00				
Office Expenses	\$ 14,495.00				
Indirect	\$ 135,947.00				
Depreciation	\$ 6,136.00				
Total	\$ 549,219.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00

Budget Narrative

PSHH is requesting funding exclusively for salary expenses from each jurisdiction.

UNINCORPORATED SAN LUIS OBISPO COUNTY INCOME

NeighborWorks, \$2,679
County of SLO Preventative Health Grant, \$6,413
SLO Community Foundation, \$1,277
Avila Beach Community Foundation, \$2,000
Other grants, \$13,669
Property Service Revenue, \$90,595

TOTAL INCOME (less CDBG): \$116,376

UNINCORPORATED SAN LUIS OBISPO COUNTY
EXPENSES

Program Salaries and Benefits: \$113,623
Non-Salary Operating Expenses: \$6,487
Indirect Costs: \$40,016
Depreciation: \$1,810

TOTAL EXPENSES: \$162,026
COUNTY OF SAN LUIS OBISPO CDBG REQUEST: \$45,650

ATASCADERO
INCOME

NeighborWorks, \$2,679
County of SLO Preventative Health Grant, \$1,796
SLO Community Foundation, \$1,437
Other Private Grants, \$9,558
Property Service Revenue, \$8,532

TOTAL INCOME (less CDBG): \$ 24,003

ATASCADERO
EXPENSES

Program Salaries and Benefits: \$31,827
Non-Salary Operating Expenses: \$1,815
Indirect Costs: \$11,234
Depreciation: \$507
TOTAL EXPENSES: \$45,386

ATASCADERO CDBG REQUEST: \$21,383

MORRO BAY
INCOME

HUD Service Coordinator Grant, \$43,128
NeighborWorks, \$2,679
County of SLO Preventative Health Grant, \$5,238
SLO Community Foundation, \$4,190
Other grants, \$18,195
Property Service Revenue, \$23,985

TOTAL INCOME (less CDBG): \$ 97,416

MORRO BAY
EXPENSES

Program Salaries and Benefits: \$92,796
Non-Salary Operating Expenses: \$5,300
Indirect Costs: \$32,754
Depreciation: \$1,478

TOTAL EXPENSES: \$132,326
MORRO BAY CDBG REQUEST: \$34,911

PASO ROBLES
INCOME

HUD, \$43,128
NeighborWorks, \$2,679
Count of SLO Preventative Health Grant, \$4,584
SLO Community Foundation, \$3,667
Other grants, \$13,265
Property Service Revenue, \$37,890

TOTAL INCOME (less CDBG): \$ 105,213

PASO ROBLES

EXPENSES

Program Salaries and Benefits: \$81,208

Non-Salary Operating Expenses: \$4,637

Indirect Costs: \$28,664

Depreciation: \$1,294

TOTAL EXPENSES: \$115,803

PASO ROBLES CDBG REQUEST: \$10,590

PISMO BEACH

INCOME

NeighborWorks, \$2,679

City of Pismo Beach, \$5,000

County of SLO Preventative Health Grant, \$1,596

SLO Community Foundation, \$1,277

Other grants, \$9,558

Property Service Revenue, \$ 11,282

TOTAL INCOME (less CDBG): \$ 31,392

PISMO BEACH

EXPENSES

Program Salaries and Benefits: \$28,273

Non-Salary Operating Expenses: \$

Indirect Costs: \$9,980

Depreciation: \$450

TOTAL EXPENSES: \$40,317

PISMO BEACH CDBG REQUEST: \$8,925

CITY OF SAN LUIS OBISPO

INCOME

NeighborWorks, \$2,679

City of San Luis Obispo GIA, \$5,850

County of SLO Preventative Health Grant, \$2,112

SLO Community Foundation, \$1,690

Wells Fargo Foundation, \$1,020

Other grants, \$11,654

TOTAL INCOME (less CDBG): \$ 24,996

CITY OF SAN LUIS OBISPO

EXPENSES

Program Salaries and Benefits: \$37,418

Non-Salary Operating Expenses: \$2,134

Indirect Costs: \$13,208

Depreciation: \$596

TOTAL EXPENSES: \$53,358

CITY OF SAN LUIS OBISPO CDBG REQUEST: \$28,362

Tables [top](#)

ESG Matching Funds

Sources	Amount
	\$
	\$
	\$
	\$

	\$
	\$
	\$
Total	\$ 0

Documents [top](#)

Documents Requested *

Required? Attached Documents *

Incorporation Documents (if applicable)		PSHH Articles of Incorporation & Bylaws Certificate of Good Standing 501(c)3 letter CA State Determination Letter
Timeline of Project Milestones	✓	FYE23 Pub Svcs Project Milestones
Proof of Permit Issuance (if applicable)		
Map of Multiple Project Locations (if applicable)		FYE23 Map of SLO Co SHP project locations
Most Recent Audit	✓	PSHH FYE20 Completed Audit Statement
Commitment Letters for funds (if available)		
Timeline of Expenditures	✓	PSHH Pub Svcs FYE23 Timeline of Expenditures

* ZoomGrants™ is not responsible for the content of uploaded documents.

Application ID: 373799

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County of San Luis Obispo

2022 Public Services and Economic Development (CDBG, ESG, HOME, General Fund, PLHA)

Deadline: 11/1/2021

5CITIES HOMELESS COALITION

22-23 Homeless Services: Shelter, Outreach, RRH and HP Services,

Jump to: [Eligibility](#) [Application Questions](#) [Budget](#) [Tables](#) [Documents](#)

\$ 229,000.00 Requested

Submitted: 11/1/2021 3:07:44 PM (Pacific)

Project Contact

Janna Nichols

janna.nichols@5chc.org

Tel: 805-574-1638

Additional Contacts

none entered

5CITIES HOMELESS COALITION

P.O. Box 558

GROVER BEACH, CA 93483

United States

Telephone 805-574-1638

Fax 805-668-2380

Web 5chc.org

Executive Director

Janna Nichols

janna.nichols@5chc.org

Eligibility [top](#)

Some answers will not be presented because they are not part of the selected group of questions based on the answer to #1.

1. Please identify all funding sources being requested:

This question will be used to branch only those questions related to the funding sources requested in this application, so don't worry if your application has skipped question numbers.

- ☐ CDBG only
- ☐ ESG only
- ☐ ESG-CV only
- ☐ HOME only
- ☐ General Funds only
- ☐ PLHA only
- ☒ Select this for any combination of grant funding requests(CDBG, ESG/ESG-CV, HOME, PLHA, and General Funds)

National Objectives

2. CDBG ONLY - Please select the national objective that best applies to the proposed project

Please refer to "Basically CDBG" or the "CDBG Guide to National Objectives and Eligible Activities" in the Library for more

information regarding CDBG national objectives.

☒ Low/Moderate Income

☐ Slums or Blight

☐ Urgent Need

3. CDBG ONLY - IF LOW/MODERATE INCOME WAS SELECTED: Select which criteria the proposed project intends to qualify under to meet the Low/Moderate Income objective

Please refer to "Basically CDBG" or the "CDBG Guide to National Objectives and Eligible Activities" in the Library for more information regarding the Low/Moderate Income national objective.

☐ Area Benefit

☒ Clientele

☐ Housing

☐ Jobs

☐ N/A - Low/Moderate Income NOT selected

4. CDBG ONLY - IF SLUM OR BLIGHT WAS SELECTED: Select which criteria the proposed project intends to qualify under to meet the Slums or Blight objective

Please refer to "Basically CDBG" or the "CDBG Guide to National Objectives and Eligible Activities" in the Library tab for information regarding the Slums or Blight national objective.

☐ Area Basis

☐ Spot Basis

☐ N/A - Slums or Blight NOT selected

5. CDBG ONLY - Please explain how the proposed project meets the selected National Objective.

Please refer to "Basically CDBG" or the "CDBG Guide to National Objectives and Eligible Activities" in the Library tab.

5CHC's Shelter and Outreach Services will be provided to benefit a clientele who are generally presumed by HUD to be principally L/M income persons - those who are homeless. This population is among those who are currently presumed by HUD to be made up principally of L/M income persons: Reference: §570.208(a)(2)(i)(A).

5CHC's Housing Program targets financial assistance and services to individuals and families based on income and anticipated need, following a coordinated entry assessment and progressive engagement model. Those who receive emergency grants for subsistence payments (rental assistance, 05Q) or for deposit assistance (05T Assistance will be provided to benefit a clientele who are generally presumed by HUD to be principally L/M income persons - those who are homeless. This population is among those who are currently presumed by HUD to be made up principally of L/M income persons: Reference: §570.208(a)(2)(i)(A). Additionally, as some assistance will be provided to those of imminent threat of homelessness, 5CHC's program additionally requires information on family size and income so that it is evident that at least 51% of the clientele are persons whose family income does not exceed the L/M income limit. Reference: §570.208(a)(2)(i)(B) and (C)

6. ESG/ESG-CV ONLY - Please select all objectives applicable to the proposed project, as established in "Opening Doors: Federal Strategic Plan to Prevent and End Homelessness" or the CARE Act.

☐ Finish the job of ending chronic homelessness in five years

☒ Prevent and end homelessness among veterans in five years

☒ Prevent and end homelessness for families, youth, and children in ten years

☒ Set a path to ending all types of homelessness

☒ Prevent, prepare for, and respond to COVID-19 outbreak among individuals and families who are homeless or receiving homeless assistance

☒ Support additional homeless assistance and homelessness prevention activities to mitigate the impacts of COVID-19

7. ESG/ESG-CV ONLY - Please explain how the proposed project supports the selected objective(s).

The Federal Strategic Plan to Prevent and End Homelessness focuses on collaboration and strategic action; education and service improvements; utilization of affordable housing; targeting the needs of families and children; recognizing that health is a determinant of housing stability; and the role of other supportive services.

Collaboration/Strategic Action: 5CHC Homeless Services program is integrated in the local Continuum of Care, focusing on collaboration and strategic action. 5CHC is a key participant in the Coordinated Entry System receiving referrals community partners throughout the compendium of services. Additionally, 5CHC staff participate in HSOC at all levels, with the Executive Director currently serving as chair of Data and Finance; a member of the Executive Committee; and on the ad-hoc Ten-Year Plan update.

Service Improvements: 5CHC staff participate in HSOC's Services Coordinating Committee, which is focused on improving the integration of services and regularly participate in evidence-based trainings (Mental Health First Aid, etc.) 5CHC also has a program of providing staff trainings monthly with other service professionals and partner agencies.

Access and Utilization of Affordable Housing: 5CHC's Housing Program couples short-term financial assistance with housing stabilization services which have been documented to be cost-effective in both preventing the occurrence of homelessness, and ensuring that homelessness is brief and a one-time occurrence. With our partnership with the SSVF program we are able to serve Veterans, including those who may not qualify for the SSVF program. We also maximize use of affordable housing and supports with People's Self-Help Housing and HASLO. 5CHC has aggressively works with current and existing clients to complete applications and offer needed financial assistance.

Families and Children: 5CHC provides housing services working with family programs such as SAFE, FIT, and the Family Resource Centers. 5CHC also has a program specifically targeted to Transitional Age Youth experiencing homelessness.

Health and Supportive Services: Through our work with Dignity Health, 5CHC's outreach case managers and benefits acquisition advocate work to connect clients to health resources, as well as provide assistance post-hospitalization. 5CHC's coordinated entry and outreach staff are regularly offering support for services needed such as one-time financial assistance, family reunification, acquisition of public benefits, identification, health-care navigation and the role that other supportive services can play. 5CHC regularly offers vaccination options and provides needed ppe to those experiencing homelessness.

Beneficiary Documentation

8. How will you document and maintain income status or presumed benefit status for CDBG?

Please provide a sample of your Client Intake Form under the Documents Requested section below. Income verification for CDBG beneficiaries must be provided in accordance with 24 CFR Part 5; a link is provided in the Library.

Attached are our current policies regarding income verification. A household's income is any money that goes to, or on behalf of, the head of household or spouse (even if temporarily absent) or to any other household member. When calculating income for eligibility, annual income includes the current gross income of all adult household members and unearned income attributable to a minor (e.g., child support, TANF payments, SSI payment, and other benefits paid on behalf of a minor). Gross income is the amount of income earned before any deductions (such as taxes and health premiums) are made. Current Gross Income is the income that the household is currently receiving at the time of application for assistance. Income recently terminated should not be included. The attached calculation form is used to determine the applicant's income eligibility.

9. How will you collect demographic data on the beneficiaries of the proposed project (i.e. racial/ethnic characteristics)? (General Fund requests are exempt from this requirement)

Please provide a sample of your Client Intake Form under the Documents Requested section below. To qualify for an award of Federal and State funds, the agency must collect race and ethnicity information from all clients.

Utilizing the attached Enrollment Packet, including Coordinated Intake assessment, applicants are asked to self-disclose their demographic data, including race and ethnicity, age range and disability. This data is collected and entered into the County Homeless Management Information System.

Eligible Activities

10. CDBG ONLY - Identify all eligible activities that apply to the proposed project

Please refer to "Basically CDBG" or the "CDBG Guide to National Objectives and Eligible Activities" in the Library tab for information regarding CDBG eligible activities.

- ✓ Public Services (General)
- ✓ Operating Costs of Homeless/AIDS patients programs
 - ⓔ Senior Services
 - ⓔ Handicapped Services
 - ⓔ Legal Services
 - ⓔ Youth Services
 - ⓔ Transportation Services
 - ⓔ Substance Abuse Services
 - ⓔ Services for Battered and Abused Spouses
 - ⓔ Crime Awareness or Neighborhood Cleanups
 - ⓔ Fair Housing Activities
 - ⓔ Tenant/Landlord/Housing Counseling

- ☐ Child Care Services
- ☐ Health Services
- ☐ Services for Abused and Neglected Children
- ☐ Mental Health Services
- ☒ Subsistence Payments, Homeless Assistance, Rental Housing Subsidies or Security Deposits
- ☐ Job training and job placement services
- ☐ Assistance to microenterprises (technical assistance, business support services, and other similar services to owners of microenterprises or persons developing microenterprises)

11. ESG ONLY - Identify all eligible activities that apply to the proposed project

- ☒ Emergency Shelter
- ☒ Street Outreach
- ☒ Rapid Re-Housing
- ☒ Homelessness Prevention
- ☒ HMIS

12. GENERAL FUND ONLY - Identify all eligible activities that apply to the proposed project

General Funds activities are limited to those regarding emergency/homeless shelters and warming centers

- ☒ Operations (e.g. maintenance, repair, utilities)
- ☒ Services (e.g. case management, child care, education services, employment assistance, outpatient health services, legal services, life skills training, mental health services, and substance abuse treatment)
- ☐ Administration
- ☒ HMIS

13. ESG-CV ONLY - Identify all eligible activities that apply to the proposed project

- ☐ Emergency Shelter
- ☐ Street Outreach
- ☐ Rapid Re-Housing
- ☐ Homelessness Prevention
- ☐ HMIS

14. HOME ONLY - The only activity under the public service application for HOME is Tenant Based Rental Assistance (TBRA)

- ☐ TBRA

15. PLHA ONLY - Identify all eligible activities that apply to the proposed project

Eligible activities must assist persons who are experiencing or At risk of homelessness and can include, but are not limited providing rapid rehousing, rental assistance, supportive/case management services, and operating costs.

-no answer-

Documents Requested *

Required? Attached Documents *

Client Intake Form(s) for Limited Clientele (if applicable)

[5chc Housing Packet](#)

[5CHC Intake](#)

[5chc Housing Packet Spanish](#)

[5chc Privacy Notice](#)

[5CHC ESG Policies and Procedures](#)

Map for Area Benefit (if applicable)

CDBG Requirements and Acknowledgements
(Please download the template below and upload an initialed document here)

[download template](#)

[Subrecipient Acknowledgement](#)

General Liability Insurance

[5CHC General Liability Umbrella Policy](#)

Some answers will not be presented because they are not part of the selected group of questions based on the answer to #1.

1. Please identify the funding sources being requested:

This question will be used to branch only those questions related to the funding sources requested in this application - so don't worry if your application has skipped question numbers.

- ☐ CDBG only
- ☐ ESG only
- ☐ HOME only
- ☐ General Funds only
- ☐ PLHA only
- ☒ Select this for any combination of grant funding requests (CDBG, ESG, HOME, General Funds, PLHA)

Project Summary

2. Project Address(es):

If the proposed project has multiple addresses, please upload a map of the specific locations under the Documents tab

100 S. 4th Street, Grover Beach - Housing Navigation Center, Outreach Services, Admin.

800 W. Branch Street, Arroyo Grande - Warming Center

216 S. 16th Street, Grover Beach - Non-Congregate Shelter

P.O. Box 558, Grover Beach, CA 93483 - Mailing

Services are provided county-wide (with the exception of Grover Beach for purposes of this CDBG/ESG application). As the City of Grover Beach is not a participating jurisdiction of the Urban County of San Luis Obispo, CDBG regulations do not allow the expenditure of CDBG funds to benefit residents of, nor expend these funds within, the City of Grover Beach. Therefore, the 5CHC shall not use CDBG or ESG funds to benefit clients from the City of Grover Beach nor use CDBG funds for subsistence payments within the City of Grover Beach.

3. Jurisdiction(s)/Area(s) Served:

Select all that apply

- ☒ Arroyo Grande
- ☒ Atascadero
- ☒ Morro Bay
- ☒ Paso Robles
- ☒ Pismo Beach
- ☒ City of San Luis Obispo
- ☒ County of San Luis Obispo

4. Brief Project Description:

You will have the chance to expand on your project description further in the application. Please upload any maps, photos, drawings or plans under the Documents tab

5CHC proposes both continued and expanded comprehensive homeless services including coordinated entry, street outreach, emergency shelter, and housing navigation services. With a focus on helping clients to secure and maintain stable housing, 5CHC will conduct outreach, sheltering, coordinated assessment, and case management to provide rapid re-housing and homeless prevention services to residents of San Luis Obispo County, utilizing Housing First principles of providing housing support coupled with supportive services.

With the support and guidance of case management, those who are experiencing homelessness will be supported with their immediate needs (including food and shelter) while also receive coaching, financial literacy, advice on credit repair, and life and job skill guidance coupled with short-term financial assistance for move-in expenses or homeless prevention rental assistance.

5. Please answer the following:

Please write N/A for any questions that are not applicable.

CDBG funding requested

ESG funding requested

HOME funding requested

General Funds requested

	PLHA funding requested "
229,000.00	SUBTOTAL
7/1/2022	Anticipated start date
6/30/2022	Anticipated end date
229,000.00	TOTAL

6. Type of agency:

- ☒ 501(c)(3)
- ☐ For Profit
- ☐ Gov't/Public
- ☐ Other:

Agency Details, Capacity, and Experience

7. Is the organization faith-based?

- ☐ Yes
- ☒ No

8. Please answer the following:

If this is your first time applying to the County for funds, please upload your organizations' incorporation documents in the Documents tab.

3/3/2009	Date of incorporation
1,300,000	Annual operating budget
16	Number of paid staff
75	Number of volunteers
1,300,091.00	TOTAL

9. Agency Mission Statement:

5CHC's Guiding Principles

I. Housing First

For 5Cities Homeless Coalition "Housing First" means that we seek to provide housing as a means to recovery, rather than a reward. Our overarching goal is to connect homeless people to permanent housing as quickly as possible. Meeting the client "where they're at," our work is focused on the development of a case plan that is oriented toward their success in obtaining or maintaining housing, which is predicated by consumer choice and self-determination. Our services support the client in identifying the barriers to stable housing that they are experiencing, and assisting them with services to address these fundamental challenges.

Through this Housing First lens, we progressively engage clients through engagement, assessment, diversion, and addressing immediate needs (such as food and sheltering) as we work with the client with housing stabilization planning, including financial management.

5Cities Homeless Coalition offers services as needed and requested on a voluntary basis and does not make housing contingent on participation in services. Within the Housing First framework, our approach with clients is based on the following principles: Trauma Informed; Housing Focused; Recovery Oriented; Person Centered; and Strengths Based.

II. Personal and Professional Integrity

All staff, board members, and volunteers of 5CHC and its partners act with honesty, integrity, and openness in all their dealings as representatives of the organization. The organization promotes a working environment that values Respect, Integrity, Teamwork, and Excellence through its RITE Values.

III. Mission

5Cities Homeless Coalition strengthens our community by mobilizing resources, fostering hope, and advocating for those who are homeless and facing homelessness. Through collaboration and leadership, the Coalition is building an engaged community that fully understands the complexities of homelessness and actively shares the responsibility of creating and implementing solutions to eliminate it.

IV. Governance

5CHC has an active governing body, representative of our community, responsible for setting the mission and strategic direction; and oversight of the finances, operations, and policies of 5CHC.

VIII. Program Evaluation

5CHC regularly reviews program effectiveness and has mechanisms to incorporate lessons learned into future programs. The organization is committed to improving program and organizational effectiveness and develops mechanisms to promote learning from its activities and the field. 5CHC is responsive to changes in its field of activity and is responsive to the needs of its constituencies.

IX. Inclusiveness and Diversity 5CHC has a policy of promoting inclusiveness and its staff, board, and volunteers reflect diversity in order to enrich its programmatic effectiveness. 5CHC takes meaningful steps to promote inclusiveness in its hiring, retention, promotion, board recruitment, and constit

10. Please describe the services your organization is CURRENTLY providing (regardless of funding source).

5Cities Homeless Coalition provides wrap-around services including case management and direct financial assistance - with a special emphasis on our housing support program.

5CHC's housing support program serves clients throughout San Luis Obispo County who are either homeless or facing homelessness. These programs include Street Outreach; Emergency Shelter; Coordinated Entry; Immediate Needs Assistance; Housing Navigation and Stabilization (including the enrollment support for the California Covid Rental Relief Program); Transition Age Youth Targeted Services; Financial Literacy Training; Benefits Acquisition; HMIS data management; Special Projects (Census; Point In Time Count, etc.) and referral services to other appropriate community resources.

5CHC's Programs align with 25 CCR § 8409 Core Practices and are targeted to individuals and families who "without" these programs will become or will remain homeless. These programs target area residents with the most urgent and severe needs including Families with Children; Chronically Homeless; Veterans; Unaccompanied Youth; Victims of Domestic Violence.

Following local coordinated entry protocols, we seek to identify and serve people who:

- Are unsheltered and living in places not designed for human habitation;
- Have experienced the longest amount of time homeless;
- Have multiple and severe service needs that inhibit their ability to secure housing on their own; and
- Through homelessness prevention activities, are at greatest risk of becoming literally homeless without an intervention and are at greatest risk of experiencing a longer time in shelter or on the street should they become homeless.

With these activities we will work to ensure services are low-barrier and accessible; help participants identify and resolve barriers to housing; assist them to resolve their housing crisis before focusing on other non-housing related services; allow participants to choose the services and housing that meets their needs; connect participants to appropriate services and offer financial assistance initially at a minimum level and adding as needed through progressive engagement.

In 2020, 5CHC fielded over 4,500 calls for assistance in 2020 and provided direct assistance to 310 households countywide, including 76 single parents, 30 seniors, 117 who are disabled, and 65 transition age youth. 5CHC helped 65 households obtain housing and an additional 51 households avoid homelessness. 5CHC also provided basic needs assistance to 737 (utilities, relocation costs, gasoline, bus passes, auto repairs, clothing, employment readiness, detox/sober living, emergency food, rental and application fees) and offered an emergency shelter on cold and rainy nights through the winter.

11. Please describe the services your organization PROPOSES to provide (regardless of funding source).

5Cities Homeless Coalition proposes to continue to provide these same wrap-around services, with the addition of a non-congregate emergency shelter that is currently being developed on the County's health services campus in Grover Beach.

5CHC's will continue services for Street Outreach; Emergency Shelter (warming center and non-congregate emergency shelter); Coordinated Entry; Immediate Needs Assistance; Housing Navigation and Stabilization (including homeless prevention); Transition Age Youth Targeted Services; Financial Literacy Training; Benefits Acquisition; HMIS data management; and referral services to other appropriate community resources.

Information & Referral / Coordinated Entry:

Assistance begins with general information and referral to community services coupled with a comprehensive assessment of needs, identification of barriers and development of an immediate action plan. Access to computer, internet, phone, mailing address, food, clothing and hygiene supplies.

Rapid Re-Housing and Homeless Prevention Program:

Case management and financial assistance for deposit, rent and immediate needs for those who are homeless or facing homelessness. Services provided Countywide. Partnership with Good Samaritan includes Veteran Services.

Immediate Needs:

5CHC assists homeless and low-income families and individuals in South County with limited funds to address their immediate needs, and move them to self-sufficiency. Examples of assistance are utilities, gasoline, bus voucher, auto

repairs, clothing, employment readiness, detox/sober living, basic needs, emergency food etc.

Benefits Advocacy:

5CHC clients are offered additional guidance and advocacy for obtaining and retaining public benefits, including SSI, SSDI, Medicare, along with financial literacy and budgeting training.

Outreach

5CHC Street Outreach team works with those living on the street and in camps throughout southern San Luis Obispo County to connect them to services and resources including food, transportation, public benefits, identification and family relocation. Additionally working to improve discharge planning with Arroyo Grande Community Hospital, and County Jail, the program serves those who are patients or inmates who are homeless by working to develop a post-release discharge plan.

Homeless Youth:

Outreach and case management targeting homeless youth age 16-24, providing support for immediate needs, education and job development, and housing assistance. 5CHC has master-leased several housing units, and is initiating a housing support Host Home program. It is anticipated that new housing units targeted to TAY will come online during this grant, in partnership with People's Self-Help Housing.

Emergency Shelter: 5CHC will continue to offer an emergency winter warming center for drop in shelter needs and will provide a non-congregate shelter including intensive case management targeted at securing housing for those who are chronically home

12. How does the project complement and collaborate with existing efforts? Does your organization partner with other organizations?

5CHC engages with a broad spectrum of community partners to assist those needing assistance. In particular 5CHC, ECHO and CAPSLO have, as part of the coordinated entry system, worked to geographically distribute responsibilities in order to provide enhanced services without duplication. These agencies have been meeting regularly to coordinate outreach activities countywide, and have recently been joined by Salvation Army. T-MHA (in partnership with Public Health) has also begun working with our outreach teams as we begin planning for COVID-19 vaccinations in the field.

5CHC is currently working in partnership with the City of Grover Beach and Integrated Waste Management to provide trash bags and regular dumpster service at one key camp in order to minimize trash and improve hygiene. 5CHC is also expanding its partnership with SLO Bangers to provide sharps containers, clean-up and wound care supplies to those living in camps in South County. These are just a few examples of how 5CHC seeks out partners in addressing the needs of those chronically homeless in South County.

5CHC also works closely with grass-roots services providers and the faith community in South County. 5CHC staff regularly connect with Arroyo Grande Community Hospital, Community Health Centers of the Central Coast, Lucia Mar Unified School District Families In Transition Program; SAFE System of Care, Family Resource Centers, County Drug and Alcohol, County Jail, Dept. of Social Services, State Rangers, Law Enforcement, City Government, business and other community stakeholders.

As mentioned earlier, 5CHC endeavors to be a collaborative and strategic partner in service delivery and development throughout San Luis Obispo County. The agency dedicates substantial staffing resources to participation in HSOC and the evaluation and refinement of the area's services, from piloting new initiatives to evaluation and review of client outcomes.

Known for being "nimble," 5CHC has often times sought to pilot new services in the County such as its Youth Program and impending Non-Congregate Shelter Program. That said, when asked, 5CHC has also shared its expertise or offered to partner with others. Most recently 5CHC joined with Lumina Alliance in an effort to expand DV services in South County; has been asked to provide Housing Navigation training to Salvation Army staff; and worked to identify potential board volunteers and provide mentorship to Shower The People.

13. If the proposed project will serve homeless households, please describe how the project will coordinate with other homeless service providers to connect homeless individuals and families to resources.

If this question is not applicable, write N/A in the box below.

In 2016, CAPSLO, 5Cities Homeless Coalition (5CHC) and El Camino Homeless Organization (ECHO) partnered together to develop a Coordinated Entry System (CES) to provide screening, diversion, and case management services to homeless individuals and families throughout the county. Together with county staff, the partners developed an integrated system that avoids duplication of services and streamlines access to the most appropriate service providers to meet client needs.

Through the CES, each agency covers a different region of the county. 5CHC operates in South County and coastal areas south of Avila. This program provides a foundation for prioritizing services for those who are unsheltered, have experienced homelessness the longest amount of time, and who have multiple and severe services needs that inhibit their ability to quickly

identify and secure housing on their own. Individuals at risk of homelessness can also find resources to assist them in stabilizing their situation in order to remain in their housing.

5CHC's case managers regularly participate in county-wide case management meetings to assess client needs, review the County's service priority list. 5CHC participates in the SAFE system of care targeting children and youth and their families. As mentioned previously we are regularly meeting with clients in the Jail, and participate in the Jail to Community case plan meetings.

Recently a family of 14 adults and 20 children (from seven households) arrived in SLO County, fleeing targeted extreme violence in Mexico. 5CHC is working with more than 20 agencies, and government service providers to coordinate needed services for these families, including mental health, physical health, education, employment, legal services and more. 5CHC's role is in assisting with housing navigation services and providing financial assistance for immediate needs not covered by other services - for example telephone and email for each household.

14. Please describe your organization's capacity to implement the proposed project. Who will be involved? List projects of similar size and type that your organization has completed.

5CHC has been providing these same services for several years. As mentioned in 2016 5CHC joined the Coordinated Entry collaborative with CAPSLO and ECHO. 5CHC has been the lead Rapid Re-Housing and Homeless Prevention provider in the County since 2017, providing these housing services countywide. Since 2015 the agency has operated a Winter Warming Center. In 2019 the agency initiated a targeted Youth program; and expanded its Street Outreach Efforts.

5CHC staff include those with lived experience homeless. 5CHC staff include 6 who are bilingual/bicultural speaking both English and Spanish; additionally the agency has access to support those who are mono-lingual Mixteco. 5CHC staff have extensive training and relationships with those in the LBTGQ community

At present the agency is managing more than 50 grants for services similar to those requested here, from federal, state, local government, and private business. Of these current grants many are targeted to respond to the impacts of COVID, which will conclude within three months of the beginning of this grant period.

Current grants include:

- Emergency Solutions Grants, annual and CV restricted
- Community Development Block Grants - Urban County and Grover Beach, annual and CV restricted
- County of San Luis Obispo General Fund
- County of San Luis Obispo CBO/Preventative Health
- Continuum of Care - Coordinated Entry services
- CESH – Coordinated Entry, Homeless Outreach Service

Several additional contracts are pending including HHAP 1.

5CHC employs a dedicated HMIS Data Manager to ensure quality compliance and track client outcomes. This position is supported with three finance employees, including one charged with Grants Management for accountability of expenses and fulfillment of grant commitments. The agency's Associate Director is responsible for authorizing all funding requests and reporting on program outcomes. With each program (Street Outreach, Shelter, Coordinated Entry, Housing Navigation) staff are dedicated to client outreach, engagement, and case management, with program supervision and oversight. The agency's Executive Director is directly engaged in initial program development, and efforts to address services on a regional basis.

15. Briefly describe your agency's record keeping system with relevance to the proposed project.

Refer to Chapter 13 of "Basically CDBG" in the Library for more information on record keeping for CDBG.

Programmatically:

Clients initially are asked to complete a coordinated intake that is documented through ClientTrack. Referrals and client files are formatted in specific order to ensure all forms are completed and accounted for, detailing client housing stability plan, income verification, etc.

Lastly all enrolled clients are tracked through the County's Homeless Management Information System (HMIS), both at intake and program exit.

Administratively:

All funding requests are dual tracked through the agency's financial accounting process by class and grant and a program-based master assistance file. All expenditures for the program are verified for eligibility against program budget and HUD requirements and CDBG regulations with appropriate back-up documentation, copies of which are maintained separately for review and monitoring. Matching responsibilities are tracked concurrently against grant expenditures.

5CHC staff have received training in the requirements of Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200), Community Development Block Grants (24 CFR Part 570) and 24 CFR Part 576 - Emergency Solutions Grant Program.

16. CDBG/ESG ONLY - Will the services offered by your organization increase or expand as a result of CDBG/ESG assistance?

-answer not presented because of the answer to #1-

17. CDBG/ESG ONLY - IF YES TO ABOVE - What new programs or services will be provided?

-answer not presented because of the answer to #1-

18. CDBG/ESG ONLY - IF YES TO QUESTION 16 - Describe how existing programs or services will be expanded and what percentage of an increase is expected.

-answer not presented because of the answer to #1-

19. Please describe the proposed project in detail (i.e. What activities are to be undertaken? What are the projects' goals?).

Please attach a timeline of the project milestones under the Documents tab.

Working through a model of progressive engagement, 5CHC services will be offered to "meet the client where they're at" and assist them to develop and execute a plan to housing stability.

Street Outreach - Daily outreach throughout South County, with special focus on known encampments, and coordination with local law enforcement and rangers.

Coordinated Entry - daily intake and assessment, estimated 1 hr per assessment

Diversion - Reunification - helping people avoid homelessness or divert from use of SLO County resources by providing reunification services and transportation

Immediate Needs - Providing assistance as needed for one-time support for immediate needs - especially targeted to homeless prevention and immediate needs to facilitate housing search and employment.

Housing Navigation & Case Management - On-going case management and housing search support for income-qualified clients (homeless prevention) and those experiencing homelessness.

Non-Congregate Shelter - schedule to open in early 2022 providing wrap-around intensive services (shelter, food, basic needs, benefits acquisition, housing search, and supportive services) for up to 40 residents in 90-180 program. Funding secured through Sept. 2022.

Warming Center - drop in shelter on cold and rainy nights Nov 22-March 23.

Client Training (i.e. Financial Literacy) - on-going part of case management for all interested clients.

HMIS - daily capturing of client touchpoints and demographic from intake to exit.

Grants Management - on-going management of expenditure documentation and reporting.

Project Details

20. Please estimate the number of unduplicated persons or households to benefit from the proposed project. Write "p" for persons or "hh" for households.

Please refer to the Library for HUD Income Limits and information on CDBG Presumed Low/Mod Income populations. Please enter any presumed benefit persons as low-income.

400 p	TOTAL number of persons (p) or households (hh) regardless of income
0	Of the total number of persons (p) or households (hh) entered above, how many will be LOW-INCOME (earning 51% - 80% or less of the County median-income)(HUD funding only)
400	Of the total number of persons (p) or households (hh) entered above, how many will be VERY LOW-INCOME (earning 50% or less of the County median-income)(HUD funding only)
	Of the total number of persons (p) or households (hh) entered above, how many will be earning 60% or less of County median-income(PLHA only)
400.00	TOTAL

21. CDBG ONLY - If the project serves any of the presumed benefit populations under the Low/Moderate Income national objective, please describe how the project will directly benefit the populations identified.

-answer not presented because of the answer to #1-

22. ESG ONLY - FOR EMERGENCY SHELTER ONLY: Please identify the following projected accomplishments and portion of funding requested to go towards each service type for the 12-month contract period.

-answer not presented because of the answer to #1-

23. ESG ONLY - FOR STREET OUTREACH ONLY: Please identify the following projected accomplishments and portion of funding requested to go towards each service type for the 12-month contract period.

-answer not presented because of the answer to #1-

24. ESG ONLY - RAPID RE-HOUSING ONLY - Please identify the following projected accomplishments and portion of funding requested to go towards each service type for the 12-month contract period.

-answer not presented because of the answer to #1-

25. ESG ONLY - FOR HOMELESSNESS PREVENTION ONLY: Please identify the following projected accomplishments and portion of funding requested to go towards each service type for the 12-month contract period.

-answer not presented because of the answer to #1-

26. ESG ONLY - FOR HMIS ONLY: Please identify the portion of funding requested to go towards each service type for the 12-month contract period.

-answer not presented because of the answer to #1-

27. GENERAL FUND ONLY - OVERNIGHT SHELTERS ONLY - Please answer the following:

-answer not presented because of the answer to #1-

28. GENERAL FUND ONLY - Please identify the following projected accomplishments:

-answer not presented because of the answer to #1-

29. Identify the projected target population(s) your proposed project and activities will serve (including age, race, residency, handicap status, income level or other unit characteristics or subgroup information) and how those populations will benefit

5CHC's programs are targeted to individuals and families who "without" these programs will become or will remain homeless. These programs target area residents with the most urgent and severe needs including Families with Children; Chronically Homeless; Veterans; Unaccompanied Youth; Victims of Domestic Violence.

Following local coordinated entry protocols, we seek to identify and serve people who:

- Are unsheltered and living in places not designed for human habitation;
- Have experienced the longest amount of time homeless;
- Have multiple and severe service needs that inhibit their ability to secure housing on their own; and
- Through homelessness prevention activities, are at greatest risk of becoming literally homeless without an intervention and are at greatest risk of experiencing a longer time in shelter or on the street should they become homeless.

5CHC's Coordinated Entry and Street Outreach services will be targeted to those experiencing homelessness or at-risk of homelessness living in South County, unless requested by other service partners - for example, due to COVID some partners were required to shut their facilities and 5CHC was asked to assist with added coordinated entries.

All other services will be provided County-wide, or be open to anyone living in the County (shelter services) and will meet the demographic breakdown of the County (including age, race, residency, handicap status, income level). All financial services provided through this grant will be provided based on income verification and homeless status as required. Utilizing the attached Coordinated Intake Form, applicants are asked to self-disclose their demographic data, including race and ethnicity.

Additionally 5CHC's website, facebook page, and outreach materials all provide logos for Fair Housing and Accessibility and are provided in both English and Spanish. 5CHC has added a translation tab to its website, and is working to expand bilingual communications through social media.

30. Has environmental review been completed (CEQA and/or NEPA)?

- ☐ Yes - CEQA review completed
- ☐ No - CEQA review not completed
- ☒ N/A - CEQA not required
- ☐ Yes - NEPA review completed
- ☐ No - NEPA review not completed
- ☒ N/A - NEPA not required

31. Please answer yes or no to the following:

If applicable, please upload a copy of the Phase I or II environmental assessment under the Documents tab.

n/a Has a Phase I or Phase II environmental assessment been conducted for the property?

n/a List and describe any known hazards (e.g. asbestos, storage tanks – underground, aboveground)

n/a	Is the project on a property designated or been determined to be potentially eligible for designation as a local, state, or national historic site?
n/a	Are the building(s)/structure(s) located on a Historic Site or within a Historic District?
n/a	Is the project located within a 100-year flood plain?
n/a	IF YES TO ABOVE, does your agency have flood insurance?
n/a	Will there be demolition required?
0.00	TOTAL

32. Identify all permits necessary for the project (local, state or federal).

n/a

33. State whether or not the necessary permits have been issued. If a permit has not yet been issued, indicate when the permit(s) will be applied for or issued.

Please provide proof of permit issuance under the Documents tab.

n/a

34. Briefly describe your agency's auditing requirements, including those for the proposed project.

Please upload a copy of your most recent audit under the Documents tab.

5CHC engages an independent auditor annually to review the financial records of the organization. The last one completed, attached, represents calendar year ending Dec. 31, 2020. The level of federal grants currently administered by 5CHC does not require a "single audit;" however 5CHC has engaged an auditor to conduct such an audit for 2021, due to an increase in federal assistance in our current fiscal year.

Financial

35. How do you plan to fund the operation and maintenance costs (if any) associated with this project? Are these funds available now? If not, when will they be available?

General maintenance and occupancy expenses are funded through other grants and direct donations. 5CHC's does not carry a debt for its Housing Navigation Center located at 100 S. 4th Street. Funding for the location of the 5CHC winter warming center is anticipated to be partially funded through a grant that has been awarded with the City of Grover Beach (GB- CDBG) and partially through this application. The location of the Non-Congregate Shelter Program at 216 16th Street is expected to be leased to 5CHC by the County at no cost. Funds for the operation of the shelter program has been partially secured through September 2022. Additional funds will be needed for continued operation, and 5CHC is working to solicit support through other grants (HHAP 2; HOME-ARP, ARPA and private donations).

36. Do you have any grant funds remaining from prior Fiscal Year allocations?

☒ Yes

☐ No

37. IF YES TO ABOVE, please answer the following:

If this question is not applicable, write N/A in the boxes below.

2021-22	What fiscal year(s) did you receive the funding?
ESG/CDBG/G	What project did you receive the funding for?
\$109,013	How much is remaining?
109,013.00	TOTAL

38. CDBG ONLY - Identify all jurisdictions you are applying to for CDBG funds by indicating the amount applied for at each jurisdiction.

-answer not presented because of the answer to #1-

39. GENERAL FUND ONLY - Please indicate the estimated portion of funding to go towards the following activities:

-answer not presented because of the answer to #1-

40. HOME Only - TBRA Only - Please indicate the amounts to be spent for rental assistance, deposit assistance, and project administration?

-answer not presented because of the answer to #1-

Budget [top](#)

Funding Sources/Revenues

	Committed	Conditional	Proposed
CDBG Funding (this request)			\$ 89,000.00
ESG Funding (this request)			\$ 65,000.00
General Funds (this request)			\$ 75,000.00
ESG-CV Funding (this request)			
HOME Funds (this request):			
PLHA Funds (this request):			
Local/County (non-federal)(please specify): State ESG 22-23, \$100,000, CoC Coordinated Entry \$54,000, CESH 22-23 \$91,000, CBO \$30,000	\$ 100,000.00	\$ 175,000.00	
Local/City (non-federal)(please specify):			
In-kind (Private Contributions, Office Space)	\$ 150,000.00	\$ 135,000.00	
Other (please specify): GB CDBG Warming Center 22-23 - \$50,000, Serving GB Residents at Warming Center	\$ 50,000.00		
Total	\$ 300,000.00	\$ 310,000.00	\$ 229,000.00

Funding Uses/Expenses

	CDBG	ESG & ESG-CV	General Fund	HOME	PLHA
Personnel Costs	\$ 28,000.00	\$ 35,000.00	\$ 55,000.00		
Operating Costs			\$ 20,000.00		
Professional Services					
Capital Outlay					
Permits, Development Fees					
Legal and Public Notices					
Other (please specify):					
CDBG Subsistence Rent 05Q	\$ 36,000.00				
CDBG Deposit 05T	\$ 25,000.00				
ESG Housing Stabilization (Deposits)		\$ 20,000.00			
ESG Rent		\$ 10,000.00			
Total	\$ 89,000.00	\$ 65,000.00	\$ 75,000.00	\$ 0.00	\$ 0.00

Budget Narrative

CDBG:

Rental Assistance at \$3,600 Avg/Household = \$36,000

Deposits Assistance at \$2,500 Avg/Household = \$25,000

Client Intake Assessment \$100/Household = \$2,000 Case Manager @\$27/hr x 35 hours/Household = \$19,000

Primary Activity Delivery Cost (Grant Management Specialists) \$23.50/hr X 298 Hours = \$7,000

ESG:

Short and long-term rental assistance (avg \$2,600/hh)

Case Manager, HMIS & Grant Admin @\$27/hr x 85 hours/Household = \$35,000

Deposits \$2,250 per HH Avg.

General Fund:

Operating Costs - Maintenance, Utilities of Warming center, Insurance, Facility Rental

Personnel Costs - .5 FTE Benefit Advocate, .1 FTE supervision, .25FTE Coordinated Entry, .15 HMIS, .2 FTE Outreach

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ESG Matching Funds

Sources	Amount
County CBO	\$ 10,000

Local Cities (GB, PB, AG)	\$ 30,000
Private Donations	\$ 25,000
	\$
	\$
	\$
	\$
Total	\$ 65,000

Documents [top](#)

Documents Requested *	Required?	Attached Documents *
Incorporation Documents (if applicable)		Article of Incorporation
Timeline of Project Milestones	✓	Timeline and Milestones
Proof of Permit Issuance (if applicable)		
Map of Multiple Project Locations (if applicable)		
Most Recent Audit	✓	5CHC Audit 2020
Commitment Letters for funds (if available)		
Timeline of Expenditures	✓	Expenditure Timeline

* ZoomGrants™ is not responsible for the content of uploaded documents.

Application ID: 375816

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City of Morro Bay City Council

Community Development Block Grant (CDBG) Program

Review and Adopt Draft Funding
Recommendations for 2022 Program Year

CDBG Program

- Federal entitlement funding via participation with the Urban County consortium
- Funding availability for 2022 year is \$57,656
- Draft funding recommendations are forwarded to County Board of Supervisors followed by public comment period and final funding recommendations early 2022.
- Two applications for funding received in the Public Services activity category.

CDBG Program

Application Name	Brief Project Description	Amount Requested	Amount Recommended
Supportive Housing Program by Peoples' Self-Help Housing	Provide supportive services to 4 existing affordable rental developments in Morro Bay	\$34,911	\$7,748
Subsistence Payments, Homeless Assistance by 5CHC	Provide emergency rental payment assistance for homeless or people at risk of homelessness	\$900	\$900
Rollover of Unallocated Funds to leverage with 2023 Funding	n/a	\$37,477	\$37,477
General administration costs	CDBG allowed administration for program costs / staff time	\$4,036	\$4,036

CDBG Staff Recommendation

- Recommendation: Fund the two applications received from Peoples' Self-Help & 5 Cities Homeless Coalition, City administration at \$4,036, and rollover the remaining allocation to be leveraged with the 2023 CDBG funding allocation for a total allocation of \$57,656.
- Additionally, authorize the City Manager to make pro rata adjustments to the allocation based on any HUD budgetary changes to the approved final 2022 CDBG funding amount from San Luis Obispo County.

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AGENDA NO: C-1

MEETING DATE: December 14, 2021

Staff Report

TO: Honorable Mayor and City Council

DATE: December 8, 2021

FROM: Scot Graham, Community Development Director

SUBJECT: Housing Legislative Update and Status Review of Current City Housing Efforts

RECOMMENDATION

Receive an update on:

1. Housing Legislative update (SB 8, 9 & 10) from Dave Mullinax, Regional Public Affairs Manager, League of California Cities; and
2. City of Morro Bay status update on housing efforts from Scot Graham, Community Development Director.

BACKGROUND

The City Council identified housing as one of their recently adopted City Goals.

Housing Goal Statement

(7) Educate the Council on new and existing State legislation related to housing, (8) identify the opportunities for additional housing options and/or explore partnerships to support these efforts, and (9) continue the Community Development Department's efforts to expedite the development review process.

This agenda item is meant to provide Council with an overview of recent changes in state housing law and to provide an update on current City Housing facilitation efforts. The staff report includes discussion of the Regional Housing Needs Assessment (RHNA), Housing Opportunities and Constraints, Housing Element Implementation Project, Regional Stock ADU plan project, update on the 405 Atascadero Road affordable housing project and the rezoning efforts on the Seashell Estates property to increase residential density to 7 – 15 units per acre.

Prepared By: SG Dept Review: _____
City Manager Review: SC City Attorney Review: BWB

LEGISLATIVE INFORMATION

The State has passed numerous housing related bills recently, many of which reduce local control in the review and processing of housing permit applications. Dave Mullinax, with the League of California Cities, will provide an overview and status update to Council at the December 14, 2021 meeting on recently passed housing bills (SB 8, 9 & 10) and on current housing legislation pending before the Legislature.

The City Attorney's office has also provided a legislative update memo summarizing Senate Bills 8, 9 and 10 (see Attachment 1 to the staff report).

Also included in the staff report is Attachment 2 which is a memorandum from Townsend Public Affairs Inc. (City of Morro Bay's state advocacy group) covering legislation approved by the State Legislature and signed into law by Governor Newsom in 2021 related to housing and homelessness. The memo provides a legislative overview, discussion on the Housing Production and Accountability Legislative Package and a section on the Homelessness and Mental Health Legislative Package.

REGIONAL HOUSING NEEDS ALLOCATION AND HOUSING ELEMENT

Regional Housing Needs Allocation

The Regional Housing Needs Allocation (RHNA) is mandated by California State housing laws as part of the process of updating General Plan Housing Elements. The RHNA process is meant to address housing needs for projected state population and household growth, to improve the jobs - housing balance in communities and to ensure the availability of affordable housing for all income groups. The State Housing and Community Development Department (HCD) works with the San Luis Obispo County Council of Governments (SLOCOG) and the eight jurisdictions in the County to determine the number of housing units to be assigned. SLOCOG's 2019 RHNA Final Plan for the 6th Cycle quantifies the need for housing, by income group within each jurisdiction for incorporation in the City's Housing Element for the period from December 31, 2020 to December 31, 2028. The RHNA is used to assist with local planning efforts to help address existing and future housing needs. The RHNA for San Luis Obispo County is 10,810 units with 391 units allocated to the City of Morro Bay as shown in the Table below broken down by income level (sourced from SLOCOG's 6th Cycle Final RHNA Plan):

Figure 1: Regional Housing Need Allocation (2019)

Jurisdiction	Total Allocation	Very Low	Low	Moderate	Above Moderate
		24.6%	15.5%	18.0%	41.9%
Arroyo Grande	692	170	107	124	291
Atascadero	843	207	131	151	354
Grover Beach	369	91	57	66	155
Morro Bay	391	97	60	70	164
Paso Robles	1,446	356	224	259	607
Pismo Beach	459	113	71	82	193
San Luis Obispo	3,354	825	520	603	1,406
Unincorporated	3,256	801	505	585	1,365
Regional Total	10,810	2,660	1,675	1,940	4,535

2019 RHNA: Jan. 1, 2019 - Dec. 31, 2028 (10 years)

Note 1: The table above includes minor percentage calculation adjustments (to the top percentage to achieve whole units). Income group totals accurately match HCD's determination.

Note 2: Income limit categories for San Luis Obispo County in 2019 are determined by HCD and found at:

<http://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits.shtml>

The City is not required to construct the 391 units, but is required to identify available land with appropriate zoning to accommodate those units. Other methods are also available for identifying where the units can go, including increasing density in certain land use categories, providing overlays for mixed use development, or providing/facilitating construction of Accessory Dwelling Units (ADU's). The City's RHNA numbers are broken down by county wide income levels and Affordable Housing Standards published by the County that identify maximum household incomes, home purchase prices, and rents for each income category. See following link for Affordable Housing Standards in San Luis Obispo County: [https://www.slocounty.ca.gov/Departments/Planning-Building/Forms-Documents/Housing-Forms-and-Documents/Informational-Documents/Affordable-Housing-Standard-\(Post-2009\).pdf](https://www.slocounty.ca.gov/Departments/Planning-Building/Forms-Documents/Housing-Forms-and-Documents/Informational-Documents/Affordable-Housing-Standard-(Post-2009).pdf)

CITY OPPORTUNITIES AND CONSTRAINTS

Opportunities for Housing Development

The City has been in the process of updating its major land use documents including the Housing Element (Adopted August 25, 2020), General Plan/Local Coastal Program (Adopted May 25, 2021 and certified by the Coastal Commission August 21, 2021) and Zoning Code (going to adoption hearings in beginning of 2022) with one of the goals for the effort being removal of barriers to housing development. The City has implemented policy to remove development barriers to facilitate production of both affordable and market rate housing as follows:

- GP/LCP includes policies/overlays to encourage mixed-use projects in the City's commercial zones

- Draft Zoning Code removes the garage requirement for single family residences, making it easier for smaller lots to accommodate ADU's
- City is in process of improving its development review process by integrating Cityworks with DigEplan to allow for online submittal of applications and online plan checking. These efforts will reduce project intake, routing and overall processing times
- Draft Zoning Code increase height on Morro Bay Boulevard and on Main Street from MB Blvd. to Beach Street to 37-feet to allow three story mixed use development
- The City's Housing Element Implementation Project seeks to implement several Housing element policies including residential by right, objective design standards, update of City's density bonus policies, update of City's Accessory Dwelling (ADU) policies, and update of the City's Inclusionary Housing Ordinance (see expanded discussion of these items below)

City Constraints to Housing Development

As a mostly built-out city, Morro Bay has a limited number of vacant residential zoned lots, with most no larger than 6,000 square feet. Most properties in commercial zones that allow mixed-use developments are also small, requiring developers to acquire multiple lots in order to create economies of scale that result in profitable projects. However, many developers prefer to avoid lot consolidation and find larger lots to develop. In addition, there is very low turnover of commercial properties because property owners collect lease income and have limited interest in redeveloping or selling the property.

One way to address the lack of undeveloped property available in the City would be for the City to annex property to accommodate additional housing. However, the City is subject to Ordinance 197, adopted June 24, 1981, that implements Measure "F", which requires a vote of Morro Bay citizens to approve annexation of property to the City for anything other than permanent public use.

MORRO BAY HOUSING ELEMENT IMPLEMENTATION PROJECT

In response to the State-wide housing crisis, the State of California has adopted legislation to aid cities in streamlining housing production. The City applied for and received grant funding in the amount of \$138,000 under the Senate Bill 2 Planning Grant Program and the Regional Early Action Planning (REAP) program to draft and implement the adopted Housing Element policies. With assistance from RRM Design Group, the City of Morro Bay is pursuing a series of regulatory updates that continue to meet the requirements of development in a Coastal Zone, but with the intent of improving housing production and affordability, including:

- 1) Residential-by-Right: new procedures to streamline housing projects in multiple-family and mixed use zones. Housing development approval under this policy will take place at the administrative level without need to a public hearing.

- 2) Accessory Dwelling Unit (ADU) Ordinance Update: new revisions to bring Morro Bay's ADU law into compliance with State law. Develop handout material on ADU's. Policy will also look at possible development of tiny home and micro home policies.
- 3) Density Bonus Ordinance Update: new revisions to expand and clarify requirements and provisions in the density bonus policy that will incentivize production of an increased percentage of deed restricted affordable housing units available for sale or rent.
- 4) Inclusionary Housing Ordinance Update: currently, developers for certain types of new construction are required to provide a certain percentage of new housing units for low- or moderate-income housing, or pay an in-lieu fee; new revisions would expand the types of projects where these fees apply, increase the in-lieu fees, and reduce opportunity for payment of in-lieu when providing the affordable units is possible.
- 5) Objective Development Standards: new standards developed to promote objective (vs subjective) design criteria to provide more certainty of approval for qualifying multi-unit development. The new objective design standards will provide guidance for applicants for project design and development aspects for the project that will result in a streamlined application review process. These standards will work in conjunction with the Residential-By-Right policy.

CENTRAL COAST REGIONAL ADU PROGRAM

The cities of Morro Bay, Atascadero, Arroyo Grande and Grover Beach applied for and received \$181,000 in REAP grant funding to develop stock ADU plans. The intent behind the effort is to expedite the permit process for ADU's, save time and money for applicants by providing a free selection of preapproved stock plans that can be constructed on various development sites. The stock plans will also streamline the City's construction plan check review process as the plans will be preapproved. The draft stock ADU plans will be presented to the City's Planning Commission at the December 21, 2021 meeting.

405 ATASCADERO ROAD 35-UNIT AFFORDABLE HOUSING PROJECT UPDATE

The Housing Authority of San Luis Obispo (HASLO) has received approval for a 35-unit affordable housing project at 405 Atascadero Road. The project has completed building plan check and the building permit is ready for issuance. It is anticipated that HASLO will pull building permits in the December 2021/January 2022 timeframe.

REZONING OF THE SEASHELL ESTATES PROPERTY TO MEDIUM DENSITY

The Seashell estates property is located to the north of the Casa de Flores facility located at 1405 Teresa Drive at the south end of the City. The property is currently zoned R-A (Suburban Residential) and includes an approved 10-lot subdivision. The applicant is proposing a change from R-A zoning which allows 0-4 units per acre to Medium Density Residential which allows 7-15 units per acre. The change in density would accommodate a multifamily residential development of approximately 70-units. The land use change is currently undergoing environmental review and it is anticipated that the land use change will move forward for public hearings in February/March of 2022.

CONCLUSION

Council should receive the presentations, and ask questions as appropriate.

ATTACHMENTS

1. November 15, 2021, Aleshire & Wynder Legislative Update Memo
2. October 15, 2021, Townsend Public Affairs State Housing and Homelessness Legislative Update Memo



TO: Scot Graham, Community Development Director;
Scott Collins, City Manager

FROM: Chris F. Neumeyer, City Attorney

DATE: November 15, 2021

RE: Legislation Update: Senate Bills 8, 9, & 10

This memorandum provides a summary of Senate Bills 8, 9, and 10 which will take effect January 1, 2022. Section IV of this memo suggests options for responding to these new laws. Please note that these laws are complicated and this memo is only intended to provide a summary. Please contact the City Attorney's office with any questions you may have.

I. SENATE BILL 8 – EXTENSION AND AMENDMENT OF SENATE BILL 330

SB 8 is essentially an extension and modification of SB 330, also known as the Housing Crisis Act of 2019, which took effect on January 1, 2020. SB 330 implemented several measures aimed at streamlining the approval process for housing development projects and increasing housing production, including the following:

- (a) It created the preliminary application process, which allows housing developers to lock in the development standards applicable to a housing project by filing a pared-down “preliminary application.” Subject to limited exceptions, cities must consider housing development applications based on the general plan, zoning, and subdivision standards that were in place on the date the completed preliminary application was submitted.
- (b) It limited cities to a total of five hearings to consider approval of a housing development application after the application is deemed complete.
- (c) It placed limits on the criteria cities could use when determining if a housing application was complete.
- (d) It prohibited “affected cities” from enacting any development policy, standard, or condition that would have the effect of reducing the intensity of the land use of a parcel where housing is an allowable use below what was allowed under the city's policies and ordinances in effect on January 1, 2018.

SB 330 was previously set to expire on January 1, 2025. SB 8 has now extended the applicable term of SB 330 until January 1, 2030.

SB 8 also modifies or clarifies several provisions of SB 330, including the following:

- (a) SB 330 allows cities to apply standards to housing projects that were adopted *after* the preliminary application was submitted in a few situations, including when the housing project has not commenced construction within 2 ½ years following the date the project received final approval. SB 8 extends this time period to 3 ½ years for affordable housing projects (as defined in Government Code Section 65589.5(o)(2)(D)(i)).
- (b) SB 8 clarifies that “hearing,” for purposes of the 5-hearing limitation in Government Code Section 95905.5, includes (i) appeals, except for appeals of a legislative approval such as a general plan or zoning amendment, and (ii) a “meeting related to [Government Code] Section 65915.” Government Code Section 65915(d) and (e), part of California’s density bonus law, allow the developer to request a “meeting” with a city to discuss development incentives and concessions, or other reductions of development standards. Such a meeting now counts toward the 5-hearing limit.
- (c) As described above, SB 330 prohibits affected cities from reducing the intensity of land use (for parcels where housing is an allowable use) below what was in effect on January 1, 2018. However, there is an exception when the city “concurrently” changes the standards applicable to other parcels so that there is no net loss in residential capacity. SB 8 clarifies that this exception includes actions by the legislative body through the initiative process, and also clarifies the meaning of “concurrently” in different situations. (See changes to Gov. Code § 66300(i).)
- (d) SB 330 requires developers to provide relocation benefits to existing tenants when a housing development project will require the demolition of occupied or vacant “protected units” (essentially, rent-controlled units or units with affordability covenants) and a right of first refusal of a comparable unit in the new housing development at an affordable rent or sale price. SB 8 places limits on these requirements. For more details, see revisions made to GC Section 66300(d).

II. SENATE BILL 9 – MINISTERIAL APPROVAL OF TWO UNITS & LOT SPLITS

SB 9 requires the ministerial approval of two units on parcels in a single-family zone and the ministerial approval of lots splits for parcels in a single-family zone, subject to certain requirements. A separate section (C) is provided below to address how ADUs and JADUs are handled under SB 9. Section (D), below, addresses how SB 9 relates to HOAs and CC&Rs. SB 9 also amends requirements in the Subdivision Map Act regarding the initial duration of all tentative maps. These amendments are discussed in section (E), below.

A. Ministerial Approval of Two Dwelling Units (Gov. Code § 65852.21)

SB 9 requires cities to ministerially approve two residential units on a single parcel in a single-family residential zone, without discretionary review or hearing, if the proposed development

meets certain requirements. This includes both a proposal for two new units and a proposal to add one new unit to a parcel with one existing unit.

1. Requirements for Approval

In order to qualify for ministerial approval, a proposed residential development must meet the following requirements:

(a) The subject parcel must be located in a city that includes some portion of either an “urbanized area” or an “urban cluster,” as designated by the U.S. Census Bureau. Notably, the parcel itself is not required to be in the urbanized area or urban cluster.

(b) The subject parcel must meet the requirements in Government Code Section 65913.4(a)(6)(B)-(K). Essentially, the parcel may not be located in or on: prime farmland, farmland of statewide importance, or land zoned or designated for agricultural protection or preservation by an approved local ballot measure; wetlands; a high or very high fire severity zone, as determined by the California Department of Forestry and Fire Protection, unless the site has adopted fire hazard mitigation measures pursuant to existing state standards or state fire mitigation measures applicable to the development; a hazardous waste site; a delineated earthquake fault zone, as determined by the State Geologist; a special flood hazard area subject to inundation by the 100-year flood, as determined by FEMA; a regulatory floodway, as determined by FEMA; land identified for conservation in an adopted natural community conservation plan; habitat for protected species; or land under a conservation easement.

(c) The proposed housing development must not require the demolition or alteration of any of the following types of housing: housing restricted to affordable rent by a covenant, ordinance, or other law; housing subject to any form of rent or price control; or housing that has been occupied by a tenant in the last three years.

(d) An owner of residential property on the parcel must not have exercised the owner’s rights under Government Code Section 7060 *et seq.* to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(e) The proposed development must not allow the demolition of more than 25% of existing exterior structural walls, unless: (i) allowed by a local ordinance or (ii) the site has not been occupied by a tenant in the last three years.

(f) The parcel must not be located in a historic district or property included in the State Historic Resources Inventory, or on a site designated as a city or county landmark or historic property or district pursuant to a city or county ordinance.

2. **Development Standards**

A city may impose objective zoning, subdivision, and design review standards on these residential developments. However, the following limitations apply (many of which are similar to the limitations on development standards for ADUs):

(a) **Size**. The city cannot impose any standards that would have the effect of physically precluding the construction of up to two units or that would physically preclude either of the two units from being at least 800 square feet in floor area.

(b) **Setbacks**. The city cannot require a setback for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure. In all other situations, the city may require a setback of up to 4 feet from the side and rear lot lines.

(c) **Connected Units**. The units may either be detached from one another or connected, so long as the units meet building code safety standards and are sufficient to allow separate conveyance.

(d) **Parking**. The city can require up to one off-street parking space per unit, except that a city cannot impose any parking requirements if either: (i) the parcel is located within a half-mile walking distance of a high-quality transit corridor or a major transit stop (see definitions in Public Resources Code Sections 21155 and 21064.3), or (ii) there is a car share vehicle located within one block of the parcel.

(e) **Wastewater**. For residential units connected to an onsite wastewater treatment system, the city may require a percolation test completed within the last 5 years, or, if the percolation test has been recertified, within the last 10 years.

3. **Grounds for Denial**

Notwithstanding the requirement for ministerial approval, a city may deny a proposed housing development project if the building official makes a written finding based upon a preponderance of the evidence, that the proposed housing development project would have a specific adverse impact, as defined in Government Code Section 65589.5(d)(2), upon public health and safety or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

4. **No Short-Term Rentals**

Cities must prohibit rental of any unit created under this law for a term of 30 days or less. This can be done through a covenant recorded on the property, as is commonly done with ADUs.

5. **Annual Housing Element Report**

Units constructed pursuant to this law must be included in the city's annual housing element report. (See Gov. Code § 65400(a)(2)(I).)

6. Charter Cities and Coastal Act

This law applies to general law and charter cities. This law does not supersede the Coastal Act, except that a city is not required to hold public hearings for coastal development permit applications for lot splits under this law.

7. CEQA

Adoption of an ordinance to implement this law (Government Code Section 65852.21) is not a project for purposes of CEQA, and is therefore not subject to CEQA review.

B. Ministerial Approval of Lot Split (Government Code § 66411.7)

SB 9 also requires cities to ministerially approve a parcel map for a lot split, if the lot split meets certain requirements.

1. Requirements for Approval

In order to qualify for ministerial approval, the parcel map must meet the following requirements:

- (a) The map can only create two parcels.
- (b) Neither new parcel may be smaller than 40% of the lot area of the original parcel being divided. Furthermore, neither new parcel shall be smaller than 1,200 square feet, except that the city may adopt a smaller minimum lot size that will be subject to ministerial approval.
- (c) The parcel being divided must be in a single-family residential zone.
- (d) The parcel being divided must be located in a city that includes some portion of either an “urbanized area” or an “urban cluster,” as designated by the U.S. Census Bureau. Notably, the parcel itself is not required to be in the urbanized area or urban cluster.
- (e) The parcel being divided must meet the requirements in Government Code Section 65913.4(a)(6)(B)-(K). (See explanation in Section II.A.1(b), above.)
- (f) The proposed lot split must not require the demolition or alteration of any of the following types of housing: housing restricted to affordable rent by a covenant, ordinance, or other law; housing subject to any form of rent or price control; or housing that has been occupied by a tenant in the last three years.
- (g) The parcel being divided must not be located in a historic district or property included in the State Historic Resources Inventory, or on a site designated as a city or county landmark or historic property or district pursuant to a city or county ordinance.
- (h) The parcel being divided must not have been established through a prior lot split under this law.

(i) Neither the owner of the parcel being divided nor any other person acting in concert with the owner shall have previously subdivided any adjacent parcel under this law.

(j) The lot split must conform to all applicable requirements of the Subdivision Map Act, except as otherwise expressly provided by this law.

2. Development Standards

A city may impose objective zoning, subdivision, and design review standards on parcels created by a lot split under this law. However, the following limitations apply (many of which are similar to the limitations on development standards for ADUs):

(a) Size. The city cannot impose any standards that would have the effect of physically precluding the construction of two units on either of the resulting parcels or that would result in a unit size of less than 800 square feet.

(b) Setbacks. The city cannot require a setback for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure. In all other situations, the city may require a setback of up to 4 feet from the side and rear lot lines.

(c) Easements. The city may require easements for the provision of public services and facilities.

(d) Access to Right-of-Way. The city may require that the new parcels have access to, provide access to, or adjoin the public right-of-way.

(e) Parking. The city can require up to one off-street parking space per unit, except that a city cannot impose any parking requirements if either: (i) the parcel is located within a half mile walking distance of a high-quality transit corridor or a major transit stop (see definitions in Public Resources Code Sections 21155 and 21064.3), or (ii) there is a car share vehicle located within one block of the parcel.

3. Other Requirements and Limitations

The following additional requirements and limitations also apply

(a) Residential Uses Only. The city must require that only residential uses are allowed on a new parcel created by this law.

(b) No Dedications or Offsite Improvements. The city may not require dedications of right-of-way or the construction of off-site improvements as a condition of approving a lot split under this law.

(c) Owner Occupancy. The city must require an applicant for a lot split under this law to sign an affidavit stating that the applicant intends to occupy one of the housing units as their primary residence for a minimum of three years from the date of the approval of the lot split.

However, this requirement does not apply if the applicant is a community land trust or a qualified nonprofit corporation. No other owner-occupancy requirements may be imposed.

(d) No Short-Term Rentals. Cities must prohibit rental of any unit created under this law for a term of 30 days or less. This can be done through a covenant recorded on the property, as is commonly done with ADUs.

(e) Non-Conforming Zoning Conditions. Cities cannot require the correction of non-conforming zoning conditions as a condition of approval of a parcel map under this law.

4. Grounds for Denial

Notwithstanding the requirement for ministerial approval, a city may deny a proposed lot split under this law if the building official makes a written finding based upon a preponderance of the evidence, that the proposed housing development project would have a specific adverse impact, as defined Government Code Section 65589.5(d)(2), upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

5. Annual Housing Element Report

The number of applications for lot splits under this law must be included in the city's annual housing element report. (See Gov. Code § 65400(a)(2)(I).)

6. Charter Cities and Coastal Act

This law applies to general law and charter cities. This law does not supersede the Coastal Act, except that a city is not required to hold public hearings for coastal development permit applications for lot splits under this law.

C. Accessory Dwelling Units Under SB 9

Subject to certain requirements, cities are usually required to ministerially approve applications for accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) on residential lots. However, SB 9 makes a few exceptions to this rule.

(a) New Parcels Created By Lot Split Under SB 9. Cities are not required to permit more than two units on any parcel created by a lot split under SB 9. (See Gov. Code § 65852.21(f) & 66411.7(j).) For purposes of this law, "unit" includes ADUs and JADUs.

For example, imagine the owner of a lot created two new parcels through an SB 9 lot split, and built one single-family home on each new parcel. Under normal circumstances, the city would be required to approve an application for both an ADU and a JADU on each of those parcels (resulting in 3 units on each parcel). However, under SB 9, the city only has to approve either an ADU or a JADU, but not both (for a total of 2 units).

As a variation of this example, imagine the owner of a lot created two new parcels through an SB 9 lot split, and built 2 single-family homes on each new parcel, using the authority provided by SB 9. In this circumstance, each parcel already has 2 units on it, so the city is not required to permit either an ADU or a JADU on either parcel.

(b) Parcels With Two Units, But Not Resulting from a Lot Split Under SB 9. If the owner of a parcel builds two units on the parcel using the authorization in SB 9, but does not split the lot, then standard ADU/JADU law applies to that parcel. SB 9 does not create an exception to ADU/JADU law in this circumstance. Consequently, up to 4 units (including ADUs and JADUs) could be built on such a parcel.

D. Homeowners Associations (HOAs) and CC&Rs

SB 9 does not place any limits on the ability of a homeowners association or other private parties to prohibit lot splits or prohibit more than one primary dwelling unit on each lot. Effective January 1, 2020, the state legislature prohibited provisions in CC&Rs and other deed restrictions that effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on a single-family lot. (See Gov. Code § 4751.) However, so far, no such provision has been adopted prohibiting HOAs and private parties from limiting the implementation of SB 9. In other words, if an HOA amended its CC&Rs to prohibit lots splits or to prohibit more than one primary dwelling unit per parcel, it currently appears that this requirement would be valid.

E. Initial Duration of Tentative Maps

SB 9 also makes amendments to Government Code Section 66452.6, regarding the initial duration of tentative maps. Under current law, an approved tentative map has an initial life of 24 months, except that a city may extend the initial life up to 12 additional months, for a total of 36 months. Under SB 9, cities may now allow tentative maps to have an initial life of 48 months.

III. SENATE BILL 10 – ENABLES UPZONING WHERE OTHERWISE LIMITED

*Note: There is at least one current lawsuit challenging the constitutionality of SB 10, so the future of this bill is uncertain.

SB 10 (codified at Government Code Section 65913.5) allows a city council to override any local density controls – including restrictions enacted by local initiative – in order to re-zone a parcel for up to 10 residential units per parcel, subject to certain limitations.

(a) Location of Parcels. This law is limited to parcels in “transit-rich areas” and “urban infill sites,” as defined. Furthermore, it does not apply to parcels located in a very high fire hazard severity zone, as determined by the California Department of Forestry and Fire Protection, unless the site has adopted fire hazard mitigation measures pursuant to existing state standards or state fire mitigation measures applicable to the development.

(b) Limitation for Open-Space, Parks, and Recreation Land. This law does not allow a city council to override any local restriction enacted or approved by a local initiative that designates publicly owned land as open-space land (as defined in Government Code Section 65560(h)), or for park or recreation purposes.

(c) Procedural Requirements. When adopting a zoning ordinance pursuant to this law, a city must comply with the following requirements:

- (i) The ordinance must include a statement that the ordinance is adopted pursuant to this law, and must clearly demarcate the areas that are being rezoned.
- (ii) The city council must make a finding that the increased density authorized by the ordinance is consistent with the city's obligation to affirmatively further fair housing, pursuant to Government Code Section 8899.50.
- (iii) If the ordinance overrides any zoning restriction established by a local initiative, the ordinance may only take effect if adopted by a two-thirds vote of the members of the city council.

(d) CEQA.

- (i) Zoning Ordinance. An ordinance adopted pursuant to this law does not count as a "project" for CEQA purposes, and is therefore not subject to CEQA review.
- (ii) Development Project. This law also establishes CEQA requirements for projects developed on a site that is rezoned pursuant to this section, but they are too complicated to be helpfully summarized. Please refer CEQA questions to the City Attorney's office.

(e) Additional Limitations. An ordinance adopted pursuant to this law cannot reduce the density of any parcel. Furthermore, if the density of a parcel is increased under this law, the city council cannot subsequently reduce the density of the parcel.

(f) Partial Sunset Clause. Zoning ordinances enacted under this law must be adopted before January 1, 2029, but ordinances enacted under this law may be effective beyond January 1, 2029.

IV. OPTIONS FOR RESPONDING TO THESE BILLS

The response that a city will have to these new laws will vary from city to city depending on each city's approach to housing issues. However, here are a few possible responses to consider:

(a) SB 8. No actions are needed in response to SB 8, other than to be aware of the revisions to the SB 330 requirements and act in compliance with them.

(b) Actions to Encourage Development of Housing. If a city wants to make it easier to develop housing, the city can do all or some of the following:

- (i) Adopt an ordinance decreasing the allowable size of a new parcel resulting from a lot split. (See Section II.B.1(b) of this memo.)
- (ii) Adopt more lenient standards for when existing walls may be demolished as part of project placing two units on a lot. (See Section II.A.1(e) of this memo.)
- (iii) Revise the city's subdivision ordinance to allow tentative maps to have an initial life of 48 months. (See Section II.E of this memo.)
- (iv) Consider upzoning an otherwise restricted property pursuant to SB 10. However, please consult with our office regarding the status of current litigation concerning SB 10. (See Section III of this memo.)

(c) Actions to Maximize Local Control of Housing and Limit Utilization of SB 9.

(i) Adopt Objective Development Standards. In order to preserve maximum local control, cities should review the city's current zoning, subdivision, and design review standards applicable to single-family homes, duplexes, and lot splits, and ensure that these are objective and cover all of the issues the city is concerned about. Standards that are not objective will not be enforceable, if challenged.

Objective standards are defined as: "standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances."

(ii) Limit on Size of SB 9 Unit. Perhaps the most important objective development standard cities should consider adopting is a limit on the size of units created under SB 9 or units on parcels that result from an SB 9 lot split. The smallest limit cities may set is 800 s.f. per unit. Strict limits on size may discourage utilization of SB 9 because the size limit may make the units undesirable or economically infeasible to develop.

(iii) Fire Hazard Severity Zones and Other Restricted Locations. Cities should review what portions, if any, of their cities are within restricted zones, which are excluded from SB 9. Perhaps most pertinently, these areas include high and very high fire hazard severity zones and historic districts. Notably, the fire zone exception does not apply if the site has adopted fire hazard mitigation measures pursuant to existing state standards or state fire mitigation measures

applicable to the development. (See Section II.A.1(b) and Section II.B.1(e) of this memo for a full list of exempt locations.)

(d) Update Zoning and Subdivision Ordinances. Eventually, cities may wish to update their zoning and subdivision ordinances, including but not limited to permitted uses in single-family zones and lot split requirements, to incorporate SB 9 requirements. However, SB 9 will preempt any inconsistencies in local codes, so there is no need to have these changes in place by January 1, 2022.

(e) CC&Rs and Other Deed Restrictions – Private Option. City residents concerned about these laws, and who live in housing tracts with HOAs, may wish to work with their HOAs to amend the CC&Rs governing the tract to prohibit lot splits and more than one primary dwelling on each parcel. Residents that do not live in developments with HOAs may still be able to enter into restrictive covenants with their neighbors including the same prohibitions. However, this will require private action and is outside of city control. Furthermore, city residents should seek private legal advice about the legality of such covenants and restrictions.

[END]

MEMORANDUM

To: City of Morro Bay
Mayor and Council Members
Scott Collins, City Manager

From: Townsend Public Affairs, Inc.
Christopher Townsend, President
Richard Harmon, Central California Senior Director

Date: October 15, 2021

Subject: State Housing and Homelessness Legislative Update

SUMMARY

This memorandum is an overview of legislation approved by the State Legislature and signed into law by Governor Newsom in 2021 related to housing and homelessness, organized as follows:

- **Legislative Overview**
- **Housing Production and Accountability Legislative Package**
- **Homelessness and Mental Health Legislative Package**

LEGISLATIVE OVERVIEW

September 10 marked the final day of the 2021 Legislative Session. This year's final day contrasted with previous sessions. Instead of chambers marred by disruptive protests and partisan-fueled drama, the Legislature adjourned hours before midnight after a day of frequent pauses, as both chambers took numerous recesses. Most major issues had been decided and passed with the weekly waves of budget bills and budget trailer bills over the summer and in the month since summer recess.

This year, there were 836 bills that reached the Governor's Desk out of 2,421 bills introduced (Senate—828; Assembly—1,593). In finalizing his actions on legislation on October 9, the Governor signed 770 bills, or 92 percent, and vetoed 66 bills, or 7.9 percent. This means that 34.5 percent of the bills *introduced* made it to the Governor's Desk; 32 percent of the bills introduced got signed into law; and 2.7 percent of the bills introduced got vetoed.



Much of the legislation signed by the Governor was packaged with other similar measures to address economic recovery, the housing crisis, and extreme weather events, including drought and wildfires. For instance, the Newsom Administration has been focused on the implementation of the *California Comeback Plan* through significant budget allocations to both accelerate the State's recovery from the pandemic and tackling persistent challenges. Part of the \$100 billion plan has included over \$20 billion in housing and homelessness investments, with the goal of producing 84,000 homes. Other investments include a climate resiliency package and stimulus payments to the State's vulnerable residents.

HOUSING PRODUCTION AND ACCOUNTABILITY LEGISLATIVE PACKAGE

Just shy of a week after the Legislature's adjournment on September 10, Governor Newsom signed the first round of housing and land use reform bills, which included SB 8 (Skinner), which extends the Housing Crisis Act of 2019, SB 9 (Atkins), which requires the ministerial approval of urban lot splits and two-unit developments on single-family zoned parcels, and SB 10 (Wiener), which authorizes local governments to zone any parcel up to 10 units via ordinance.

After the enactment of the first round of housing and land use bills, the Governor signed a 27-bill package on September 28 to further address the State's housing crisis, with more focus on accountability and enforcement as it pertains to development goals. The bills in this package include AB 215 (Chiu), which increases enforcement within the Department of Housing and Community Development (HCD) and housing element transparency standards, AB 602 (Grayson), which increases the transparency of impact fees through revised nexus study requirements, and SB 478 (Wiener), which prohibits local governments from imposing certain floor area ratio standards on specified housing projects. These highly contentious bills mark significant, top-down changes to the State's housing production, accountability, and land use standards, with each of these bills representing renditions of bills that have attempted to pass the policy committee process for years but have previously failed.

Summarized below are the significant pieces of housing legislation approved by the Legislature and signed by the Governor this year:

- **AB 68** by Assembly Member Sharon Quirk-Silva (D-Fullerton) – *Department of Housing and Community Development: California Statewide Housing Plan: annual reports.*

This bill reorganizes existing statutory sections related to the California Statewide Housing Plan and creates a dedicated chapter to the Plan and the plan update, created by HCD. The bill updates the content of the Plan after January 1, 2023, by adding an inventory of the number of affordable units needed to meet the State's affordable housing needs for the plan period, and technical updates and recommendations. The bill authorizes HCD to use data collected by the Homeless Coordinating and Financing Council (Council).

The bill requires HCD to report annually on grant programs administered by HCD during the previous fiscal year, including the following: a) The time between the issuance of an award letter and the delivery of the standard agreement to the awardee, as well as the time between the delivery of the standard agreement to the awardee and its execution. A comparison of how the time between award letter, standard agreement, and standard agreement execution varies across HCD-administered programs. c) Changes to the information reported in this section for each program since the previous annual report.

The bill also requires HCD to develop and publish an annual report that includes information regarding land use oversight actions related to housing that were active during the previous fiscal year pursuant to its AB 72 authority, including, but not limited to, all of the following: a) The number of land use oversight actions related to housing taken against cities and counties. b) The outcomes of those oversight actions. c) The median time between the initiation of each oversight action and its resolution. d) The reports required under this section shall be published and made available to the public on HCD's internet website.

- **AB 215** by Assembly Member David Chiu (D-San Francisco) – *Planning and Zoning Law: housing element: violations.*

This bill clarifies and revises existing law provisions requiring HCD to review each jurisdiction's draft housing element and any subsequent amendments. Specifically, this bill requires HCD to report findings to a jurisdiction within 90 days of reviewing the first draft of a housing element (rather than 60 days), or within 60 days for each revision or subsequent draft amendment (rather than 90 days). The bill requires the city or county to make the first draft revision of a housing element available for public comment for at least 30 days; if comments are received, the city or county must take at least 10 days beyond the 30-day comment period to consider and incorporate public comment. The bill requires HCD, for any subsequent draft revision, to post the draft on its website and to email it to individuals upon request.

The bill adds the following to the list of housing law violations for which HCD is required to notify the jurisdiction and is authorized to provide notice to the state Attorney General: a) Housing Crisis Act (HCA); b) Affirmatively Furthering Fair Housing (AFFH); c) SB 35 (streamlined ministerial approval for certain housing projects); d) AB 2162 (streamlining for permanent supportive housing); and e) AB 101 (streamlining for low-barrier navigation centers).

The bill further clarifies that the existing law authorization for HCD to provide notice to the Attorney General for specified housing law violations does not limit the authority of the Attorney General to bring a suit in an independent capacity to enforce State law. The bill provides that if the Attorney General declines to represent HCD in any action or special proceeding brought pursuant to a notice or referral under HCD's enforcement authority, HCD may appoint or contract with other counsel. Finally, the bill provides that notwithstanding any other provision of law, the statute of limitations set forth in existing law applies to any action or special proceeding brought by the Attorney General or HCD.

- **AB 345** by Assembly Member Sharon Quirk-Silva (D-Fullerton) – *Accessory dwelling units: separate conveyance.*

This bill requires, rather than authorizes, local governments to allow an accessory dwelling unit (ADU) to be sold or conveyed separately from the primary residence under specified circumstances. The bill requires a tenancy in common agreement recorded after December 31, 2021 to include the following: a) Delineation of all areas of the property that are for the exclusive use of a covenant; b) Delineation of each co-tenant's responsibility for the costs of taxes, insurances, utilities, general maintenance and repair, improvements, and any other costs, obligations, or liabilities associated with the property; and c) Procedures for dispute resolution among the parties prior to legal action.

- **AB 447** by Assembly Member Tim Grayson (D-Concord) – *California Debt Limit Allocation Committee: income taxes: low-income housing tax credits.*

This bill updates the list of federal programs providing government assistance for projects considered “at risk of conversion” and adds the following assistance provided cities and counties in exchange for restrictions on the maximum rents and the maximum tenant income as a condition of eligibility for occupancy of the unit subject to the rent restriction: a) Loans or grants provided using tax increment financing pursuant to the Community Redevelopment Law; b) Local housing trust funds; c) The sale or lease of public property at or below market rates; and d) The granting of density bonuses under state density bonus law.

The bill provides that “government assistance” does not include the use of tenant-based housing choice vouchers (also known as “Section 8”). Restrictions shall not include any rent control or rent stabilization ordinance imposed by a county or city. The bill provides that if the development is subject to restrictions on rent and income levels, 50 percent of the units are also restricted to initial occupancy by lower income households. The bill also provides that any restrictions on rent or income levels shall exclude any affordability restrictions recorded when a preservation purchaser agrees to obligate itself to maintain the affordability of an assisted housing development for an additional 30 years or to carry out the remaining term of the federal government assistance.

Finally the bill provides that projects eligible for the funds available through the budget beginning in 2020 shall include any retrofitting and repurposing of existing nonresidential structures, including but not limited to hotels and motels that were converted to residential use within the previous five years from date of application.

- **AB 491** by Assembly Member Christopher Ward (D-San Diego) – *Housing: affordable and market rate units.*

This bill requires that, for mixed income multifamily structures, the occupants of the affordable housing units within the mixed-income multifamily structure shall have the same access to the common entrances, areas and amenities as the occupants of the market-rate housing units. The bill prohibits a mixed-income multifamily structure from isolating the affordable housing units within that structure to a specific floor or an area on a specific floor. The bill defines “market rate unit” as any residential unit that is not affordable housing or a manager’s unit occupied by on-site property management staff; Defines “affordable housing unit” as any residential dwelling unit that is restricted by deed or other recorded document as affordable housing for persons and families of low or moderate income; and Defines “common entrance” as any area used by the occupants of a mixed-income multifamily structure for ingress to or egress from that structure.

- **AB 571** by Assembly Member Chad Mayes (I-Rancho Mirage) – *Planning and zoning: density bonuses: affordable housing.*

This bill prohibits a local government from charging affordable housing impact fees, including inclusionary zoning fees, public benefit fees, and in-lieu fees on deed-restricted affordable units that are part of a project eligible for a density bonus under Density Bonus Law (DBL). The bill further provides that no reimbursement is required by this bill, pursuant to California Constitution Article XIII B, Section 6, because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this bill.

- **AB 602** by Assembly Member Tim Grayson (D-Concord) – *Development fees: impact fee nexus study.*

This bill requires a city, county, or special district to conduct and adopt a nexus study prior to the adoption of an impact fee and follow certain standards and practices: a) When applicable, identify the existing level of service for each public facility and any proposed new level of service, and include an explanation why the new level of service is appropriate; b) Include information that supports the local agency's actions; c) If a nexus study supports a fee increase, review the original nexus study fee assumptions and evaluate the amount of fees collected under the original fee; d) For nexus studies adopted after July 1, 2022, calculate the fee proportionately to the square footage of the proposed units, unless the local agency makes a finding that another standard is more appropriate as specified. If a local agency imposes a fee proportionate to the square footage, it shall be deemed to have used a valid method to establish a reasonable relationship between the fee charged and the burden posed by the development; e) Adopt a capital improvement plan in jurisdictions located in counties with over 250,000 residents; f) Adopt nexus studies at a public hearing with at least 30 days' notice, and provide notice to members of the public that request it as specified; and g) Update nexus studies every eight years, from the period beginning on January 1, 2022.

The bill provides that nothing in the bill shall be construed to relieve a local agency from requirements to comply with the Mitigation Fee Act, the California Constitution, or applicable case law when calculating fee amounts. The bill allows a local agency to use the impact fee nexus study template the measure requires HCD to develop by January 1, 2024. The bill provides that its provisions do not apply to water and sewer connection and capacity charges.

The bill provides that any member of the public can submit evidence that local agency findings are insufficient, or the local agency failed to comply with specified requirements. The legislative body must consider any such evidence and can change or adjust the fee if they deem necessary. The bill requires every city, county, or special district that has a website to post a written fee schedule or a link directly to the written fee schedule on its internet website.

The bill requires cities and counties to request from a development proponent, upon issuance of a certificate of occupancy or final inspection, whichever occurs last, the total amount of fees and exactions associated with the project. The city or county must post this information on its internet website, and update it at least twice per year, but is not responsible for its accuracy. The city or county may also include a disclaimer regarding the accuracy of this information.

- **AB 634** by Assembly Member Wendy Carrillo (D-Los Angeles) – *Density Bonus Law: affordability restrictions.*

This bill provides that, if permitted by a local ordinance, nothing shall be construed to prohibit a city or county from requiring an affordability period longer than 55 years for any units that qualify the applicant for a density bonus developed in compliance with a local inclusionary ordinance that requires that the development include a certain percentage of units for lower income households, as specified, and that will be financed without low-income housing tax credits.

- **AB 721** by Assembly Member Richard Bloom (D-Santa Monica) – *Covenants and restrictions: affordable housing.*

This bill provides that recorded covenants, restrictions, or private limits that restrict the number, size, or location of the residences that may be built on a property, or that restrict the number of persons or families who may reside on the property, shall not be enforceable against the owner of an affordable housing development if an approved restrictive covenant modification document has been recorded in the public record. The bill defines an affordable housing development as one that is subject to a recorded affordability restriction requiring 100 percent of the units to be affordable to lower income housing for at least 55 years and requires that the property is owned or controlled by an entity or individual that has submitted a permit application to the jurisdiction to develop the project.

The bill establishes a process by which an affordable housing developer is entitled to file a modification document with the county recorder to replace a noncompliant document, as follows: a) Authorizes an owner of an affordable housing development to submit a modification document to modify or remove any existing restrictive covenant language; b) Requires a county recorder, prior to recording the modification document, to submit it to the county counsel for review. Requires the county counsel to determine whether: the original restrictive covenant document restricts the property in a manner prohibited by the first provision above; the owner has submitted sufficient documents to establish that the property qualifies as an affordable housing development; any notice required pursuant to this bill has been provided; whether any exemptions apply, as specified; and restrictions may no longer be enforced against the owner of the affordable housing development; c) Requires the county counsel to inform the county recorder of its determination within 15 days. Requires the county counsel, if unable to make a determination, to specify the documentation needed to do so. Provides that if the county counsel has authorized the county recorder to record the document, the authorization shall be noted on the face of the modification or on an attached cover sheet; d) Requires a modification document to be indexed in the same manner as the original restrictive covenant document, and to include a recording reference to the original restrictive covenant document; e) Provides that a county shall not incur liability for recording a modification document that is not authorized by this bill; f) Provides that a restrictive covenant invalidated by this bill shall become and remain enforceable while the property is utilized in any manner that violates the terms of the required affordability restrictions; g) Provides that if the property is utilized in any manner that violates the terms of affordability restrictions required by this bill, the city or county may, after notice and opportunity for hearing, record a notice of the violation. If the owner complies with the affordability restrictions, they may apply for a release of the notice of violation, and if approved by the city or county, a release shall be recorded; h) Authorizes the county recorder to charge a standard recording fee to an owner who submits a modification document.

The bill provides that nothing in this bill shall be interpreted to weaken, modify, or invalidate existing laws protecting affordable and fair housing and prohibiting unlawful discrimination in the provision of housing. The bill provides that this bill shall not apply to conservation easements that are held by tax-exempt non-profit organizations; the state or any city, county, district or other state or local government entity; or a California Native American Indian tribe, as specified. Provides that this bill shall not apply to specified settlements, conservation agreements, or conservation easements. The bill provides that this bill shall not apply to any recorded deed restriction, public access easement, or other similar covenant that was required by a State agency for purposes of complying with a State or federal law, as specified.

- **AB 787** by Assembly Member Jesse Gabriel (D-Encino) – *Planning and zoning: housing element: converted affordable housing units.*

This bill authorizes a city or county, for up to 25 percent of its moderate income Regional Housing Needs Assessment (RHNA) in its annual progress report (APR), to include the number of units in an existing multifamily building that were converted to deed-restricted housing for moderate income households through affordability covenants and restrictions on the units. The bill requires the APR to clearly indicate that these units were not newly constructed and to provide all relevant project- and unit-level information pursuant to existing APR requirements.

The bill authorizes a unit to be reported as a converted unit only if all of the following apply: a) The rent for the unit prior to conversion was not affordable to low-, very low-, or moderate-income households; b) The unit is subject to a long-term recorded regulatory agreement with a public entity that requires the unit to be affordable to, and occupied by, individuals of moderate income for a term of 55 years; c) The initial post-conversion rent for the unit is at least 10 percent less than the average monthly rent charged over the 12 months prior to conversions; d) The unit is in decent, safe, and sanitary condition at the time of occupancy following the conversion; e) The unit was not acquired by eminent domain as part of the conversion; f) The units is subject to a governmental monitoring program to ensure continued affordability and occupancy by qualified households; and g) Unless the development is subject to a regulatory agreement with the California Tax Credit Allocation Committee, a public entity shall hold an assignable right to purchase the development, or any interest in a partnership that owns the development, for a price not exceeding the principal amount of outstanding indebtedness secured by the building and all federal, State, and local taxes attributable to the sale.

The bill authorizes a city or county to reduce its RHNA share on a unit-for-unit basis for any units converted between the beginning of the housing element period and the deadline for adoption of the housing element. The bill specifies that this authorization only applies if the reduction does not exceed 25 percent of need in the moderate income category. Finally, the bill authorizes HCD to delay implementation of this bill until January 1, 2023, but authorizes localities to report units converted on or after January 1, 2022.

- **AB 838** by Assembly Member Laura Friedman (D-Glendale) – *State Housing Law: enforcement response to complaints.*

This bill requires a city or county that receives a complaint from a tenant, resident, or occupant regarding a building that contains lead hazards or is substandard to do all of the following: a) Inspect the building or portion intended for human occupancy that may contain lead hazards or that may be substandard pursuant to State Housing Law; b) Document any violations that would be discovered based upon a reasonably competent and diligent visual inspection of the property and identify any building or portion intended for human occupancy or the premises that is determined to be substandard, as applicable; and c) Advise the owner or operator of each violation and of each action required to remedy the violation and schedule a re-inspection to verify correction of the violations, as applicable. The bill requires a city or county to perform an inspection pursuant to this provision at least as promptly as required for a final building inspection.

The bill provides that a city or county is not required to conduct an inspection in response to either of the following types of complaints: a) A complaint that does not allege one or

more substandard conditions; or b) A complaint submitted by a tenant, resident, or occupant who, within the last 180 days, submitted a complaint about the same property that the chief building inspector or their designee reasonably determined was frivolous or unfounded.

The bill requires a city or county to provide free, certified copies of an inspection report and citations issued pursuant to this bill if any to the complaining tenant, resident, occupant or their agent. If the inspection reveals a condition potentially affecting multiple tenants, residents, or occupants, the city or county shall provide free copies to all those potentially affected. The bill prohibits a city or county from collecting a fee, cost, or charge from a property owner or owner's agent for any inspection of their property, or associated report, unless the inspection reveals one or more material and violations of the state housing law or deems and declares the property substandard. Nothing limits or alters the existing authority of a city or county to impose fees on rental property owners to support a rental property inspection program or otherwise impose or generally applicable charges, fees, or assessments to cover the costs of inspections or associated reports.

The bill provides that an inspection or report shall not be subject to any unreasonable conditions, including a requirement that: a) The tenant, resident, or occupant first make a demand for correction upon the owner of the property; b) The tenant be current on rent; c) The tenant otherwise be in compliance with their rental agreement; and d) The tenant, resident, or occupant not be involved in a legal dispute with the owner of the property. The bill prohibits a city or county from unreasonably refusing to communicate with a tenant, resident, occupant, or agent of the tenant regarding any matter covered by this bill.

The bill provides that this bill shall not impose a mandatory duty or be construed to affect any immunity otherwise applicable to a city or county under existing law. The bill requires enforcement to be brought through a writ of mandate and becomes operative on July 1, 2022.

- **AB 948** by Assembly Member Chris Holden (D-Pasadena) – *Bureau of Real Estate Appraisers: disclosures: demographic information: reporting: continuing education.*

This bill requires the Bureau of Real Estate Appraisers (BREA) to provide notice to multiple parties that a buyer is entitled to an unbiased appraisal of the property and in every contract for the sale of real property and by a licensed person refinancing a first lien purchase money loan, as specified; requires the BREA to provide a check box on a complaint form asking if that person believes that the opinion of the value of the real estate is below market value; requires the BREA to collect demographic information and other relevant information to review the appraiser's practices; and, requires appraisers to complete continuing education (CE) on cultural competency, as specified.

- **AB 1029** by Assembly Member Kevin Mullin (D-South San Francisco) – *Housing elements: prohousing local policies.*

This bill adds to the list of policies that HCD may consider to be a pro-housing policy, the preservation of affordable housing units through the extension of existing project-based rental assistance covenants, if such covenants avoid the displacement of affected tenants or avoid a reduction in available affordable housing units.

- **AB 1043** by Assembly Member Isaac Bryan (D-Los Angeles) – *Housing programs: rental housing developments: affordable rent.*

This bill adds “acutely low income households” to the list of income categories for purposes of defining affordable rents. The bill also defines affordable rent for “acutely low income households” as the product of 30 times 15 percent AMI adjusted for family size appropriate for the unit and defines “acutely low income households” as persons and families whose incomes do not exceed 15 percent AMI, adjusted for family size and revised annually. The limits shall be published by HCD in the California Code of Regulations for all geographic areas of the State.

- **AB 1095** by Assembly Member Ken Cooley (D-Rancho Cordova) – *Affordable rental and owner-occupied housing: equity in state and local programs.*

This bill clarifies that projects eligible for Affordable Housing and Sustainable Communities (AHSC) funding include owner-occupied housing, in addition to rental housing. The bill requires the Strategic Growth Council (SGC) to adopt guidelines or selection criteria that include both affordable housing rental units and owner-occupied affordable housing units. The bill provides that, for notices of funding availability released after July 1, 2022, SGC may include guidelines or criteria for the award of funds to projects that provide home ownership-opportunities for low-income individuals.

- **AB 1174** by Assembly Member Tim Grayson (D-Concord) – *Planning and zoning: housing: development application modifications, approvals, and subsequent permits.*

This bill provides that if a development proponent requests a development modification, the time during which the approval shall remain valid shall be extended for the number of days between the submittal of a modification request and the date of its final approval, plus an additional 180 days to allow time to obtain a building permit. If litigation is filed relating to the modification request, the time shall be further extended during the pendency of the litigation. The extension required shall only apply to the first request for a modification submitted by the development proponent. This change applies retroactively to developments approved prior to January 1, 2022.

The bill further provides that any objective building standards adopted after an application for development modifications is submitted may be agreed upon by the developer if the modification application is submitted after the first building permit application. This change applies retroactively to developments approved prior to January 1, 2022.

The bill requires a local government to consider an application for subsequent permits based upon the objective standards specified in any state or local laws that were in effect when the original development application was submitted, unless the developer agrees to a change in objective standards. This change applies retroactively to developments approved prior to January 1, 2022.

The bill provides that approval for a project shall remain valid for three years provided construction activity, including demolition and grading activity, on the development has begun pursuant to a permit issued by the local jurisdiction and is in progress. The bill provides that when determining which objective planning standards shall apply, the local government shall not include any underground space in the calculation of development changes.

The bill provides that for projects over 500 units that submit an application prior to January 1, 2019, the affordable rent for 30 percent of the affordable units shall be determined pursuant to the calculation in the Health and Safety Code, while the rent for the remainder of the affordable units shall be consistent with the maximum rent levels established by the Tax Credit Allocation Committee.

- **AB 1297** by Assembly Member Chris Holden (D-Pasadena) – *California Infrastructure and Economic Development Bank: public and economic development facilities: housing.*

This bill expands the financing authority of the California Infrastructure and Economic Development Bank (IBank) to include housing projects, when that housing is necessary for the operation of the financed project. This new authority would apply to economic development facilities and public development facilities financed through any of the IBank's financing programs or authorities, as specified. In addition to requiring that the housing is required for the operation of the financed project, this bill also: 1) Requires housing projects to be incidental to the overall project and the cost of the housing component shall not represent more than 20 percent of the overall project costs financed by the bank; 2) Excludes the use of tax-exempt bonds issued by the IBank, which are subject to a State allocation of private activity bond cap, to finance the housing; and 3) Excludes moneys from the Infrastructure State Revolving Fund (SRLF) Program from being used to finance any housing component of an economic development or public development facility.

- **AB 1304** by Assembly Member Miguel Santiago (D-Los Angeles) – *Affirmatively further fair housing: housing element: inventory of land.*

This bill clarifies that public agencies have a mandatory duty to comply with AFFH requirements. The bill requires a housing element's inventory of sites that are suitable for housing development to include an analysis of the relationship of the sites to the jurisdiction's AFFH duty, and whether the inventory affirmatively furthers fair housing.

The bill specifies that a housing element must include a statement of the community's goals, quantified objectives, and policies relative to AFFH. The bill specifies that a housing element's program of action must identify sites as needed to meet the AFFH requirement.

The bill specifies that a housing element's assessment of fair housing in the jurisdiction must include trends both within the jurisdiction and of the jurisdiction compared to the region. Finally, the bill specifies that the assessment of factors contributing to fair housing issues must include the local and regional historical origins as well as current policies and practices.

- **AB 1398** by Assembly Member Richard Bloom (D-Santa Monica) – *Planning and zoning: housing element: rezoning of sites: prohousing local policies.*

This bill provides that, beginning with the sixth housing element cycle, if a local government has not adopted a housing element that HCD deems substantially compliant with state law within 120 days of the applicable statutory deadline, it shall be required to complete its rezoning program within one year, instead of three. The bill removes the existing requirement that local governments that fail to adopt a compliant housing element within 120 days of the statutory deadline must revise their housing element not less than every four years until they have adopted at least two consecutive revisions by the statutory deadline.

The bill provides that if a jurisdiction that adopts a housing element more than one year after the statutory deadline, HCD shall not find its housing element to be in substantial compliance until all required rezoning is complete. Finally, the bill provides that if a jurisdiction fails to complete the required rezoning within one year, HCD must notify the jurisdiction and may provide notice to the Attorney General.

- **AB 1466** by Assembly Member Kevin McCarty (D-Sacramento) – *Real property: discriminatory restrictions.*

This bill requires a title insurance company involved in any transfer of real property and that provides a deed or other documents to identify whether any of the documents contain unlawfully restrictive covenants and, if found, record a specified modification document with the county recorder. The bill makes additional changes to the existing process of recording a restrictive covenant modification.

- **AB 1584** by the Committee on Housing and Community Development – *Housing omnibus.*

This annual committee-sponsored bill makes non-controversial and non-policy changes to sections of law relating to housing.

- **SB 8** by Senator Nancy Skinner (D-Berkeley) – *Housing Crisis Act of 2019.*

This bill extends the sunset on the HCA by five years, to January 1, 2030, and provides that until January 1, 2034, the HCA's provisions apply to a housing development project that submits a preliminary application before January 1, 2030. The bill extends by 1 year, up to three and a half years, the period during which a local government may not impose new rules or standards on an affordable housing project, as defined.

The bill expands on the definition of "housing development project" for the purposes of the HCA to include both discretionary and ministerial projects, as well as projects to construct single dwelling units. This bill also says that these changes are declaratory of existing law and do not affect the interpretation of the scope of the Housing Accountability Act but provides that its changes do not affect a project for which an application was submitted before January 1, 2022.

The bill clarifies that the receipt of a density bonus is not a basis for finding a project out of compliance with local zoning rules. The bill defines, for the purposes of the requirement to upzone concurrently with a downzone, "concurrently" to mean at the same meeting, or within 180 days of the downzoning if the downzoning was requested by an applicant for a housing development project and refines the provisions governing what a downzone means to include any other action that would reduce the site's residential development capacity in effect at the time of the proposed change. The bill clarifies that appeals and public meetings related to density bonus law are counted for the purposes of the five hearing limit in the HCA and includes technical changes to the limitation on a local government's ability to reduce the intensity of land use in its jurisdiction.

The bill provides, regarding the HCA's demolition and replacement provisions, that: a) The replacement requirements must be followed, despite local density requirements that may be in conflict; b) Any existing occupants that are required to leave their units must be allowed to return at their prior rental rate if the demolition does not proceed and the property is returned to the rental market; c) Relocation and right-of-first-refusal

requirements no longer apply to occupants of any protected units that are moderate-income or high-income households; and d) The right of first refusal provided to occupants of protected units would not apply in the following circumstances: i) In a development project that consists of a single residential unit located on a site where a single protected unit is being demolished; and ii) In units in a housing development in which 100 percent of the units, exclusive of a manager's unit or units, are reserved for lower income households, and the existing residents of the protected unit would be precluded from occupying the new units based on requirements of one or more funding source of the housing development.

- **SB 9** by Senator Toni G. Atkins (D-San Diego) – *Housing development: approvals.*

This bill requires a city or county to ministerially approve either or both of the following, as specified: a) A housing development of no more than two units (duplex) in a single-family zone; or b) The subdivision of a parcel zoned for residential use, into two approximately equal parcels (lot split). The bill requires that a development or parcel to be subdivided must be located within an urbanized area or urban cluster and prohibits it from being located on any of a number of specified areas.

The bill prohibits demolition or alteration of an existing unit of rent-restricted housing, housing that has been the subject of an Ellis Act eviction within the past 15 years, or that has been occupied by a tenant in the last three years. The bill further prohibits demolition of more than 25 percent of the exterior walls of an existing structure unless the local ordinance allows greater demolition or if the site has not been occupied by a tenant in the last three years.

The bill authorizes a city or county to impose objective zoning, subdivision, and design review standards that do not conflict with this bill, except: a) A city or county shall not impose objective standards that would physically preclude the construction of up to two units or that would physically preclude either of the two units from being at least 800 square feet in floor area. A city or county may, however, require a setback of up to four feet from the side and rear lot lines; and b) A city or county shall not require a setback for an existing structure or a structure constructed in the same location and to the same dimensions as the existing structure.

The bill prohibits a city or county from requiring more than one parking space per unit for either a proposed duplex or a proposed lot split and prohibits a city or county from imposing any parking requirements if the parcel is located within one-half mile walking distance of either a high-quality transit corridor or a major transit stop, or if there is a car share vehicle located within one block of the parcel.

The bill authorizes a city or county to require a percolation test completed within the last five years or, if the test has been recertified, within the last 10 years, as part of the application for a permit to create a duplex connected to an onsite wastewater treatment system.

The bill authorizes a local agency to deny a housing project otherwise authorized by this bill if the building official makes a written finding based upon the preponderance of the evidence that the housing development project would have a specific, adverse impact upon health and safety or the physical environment and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. The bill requires a city or county to prohibit rentals of less than 30 days. The bill prohibits a city or county from rejecting an

application solely because it proposes adjacent or connected structures, provided the structures meet building code safety standards and are sufficient to allow separate conveyance.

Among its other provisions, the bill provides that a city or county shall not be required to permit an ADU or JADU in addition to units approved under this bill. The bill requires a city or county to include the number of units constructed and the number of applications for lot splits under this bill, in its APR.

The bill requires a city or county to ministerially approve a parcel map for a lot split only if the local agency determines that the parcel map for the urban lot split meets the following requirements, in addition to the requirements for eligible parcels that apply to both duplexes and lot splits: a) The parcel map subdivides an existing parcel to create no more than two new parcels of approximately equal size, provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel; b) Both newly created parcels are at least 1,200 square feet, unless the city or county adopts a small minimum lot size by ordinance; c) The parcel does not contain rent-restricted housing, housing where an owner has exercised their rights under the Ellis Act within the past 15 years, or has been occupied by tenants in the past three years; d) The parcel has not been established through prior exercise of an urban lot split; and e) Neither the owner of the parcel, or any person acting in concert with the owner, has previously subdivided an adjacent parcel using an urban lot split.

The bill requires a city or county to approve a lot split if it conforms to all applicable objective requirements of the Subdivision Map Act not except as otherwise expressly provided in this bill. The bill prohibits a city or county from imposing regulations that require dedicated rights-of-way or the construction of offsite improvements for the parcels being created, as a condition of approval.

The bill authorizes a city or county to impose objective zoning standards, objective subdivision standards, and objective design review standards that do not conflict with this bill. A city or county may, however, require easements or that the parcel have access to, provide access to, or adjoin the public right-of-way. The bill provides that a local government shall not be required to permit more than two units on a parcel. The bill prohibits a city or county from requiring, as a condition for ministerial approval of a lot split, the correction of nonconforming zoning conditions. The bill requires a local government to require an applicant for an urban lot split to sign an affidavit stating that the applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of lot split, unless the applicant is a community land trust, as defined, or a qualified nonprofit corporation.

The bill provides that no additional owner occupancy standards may be imposed other than those contained within the provisions above, and that requirement expires after five years. The bill allows a city or county to adopt an ordinance to implement the urban lot split requirements and duplex provisions and provides that those ordinances are not a project under CEQA. The bill allows a city or county to extend the life of subdivision maps by one year, up to a total of four years. Finally, the bill provides that nothing in this bill shall be construed to supersede the California Coastal Act of 1976, except that a local government shall not be required to hold public hearings for a coastal development permit applications under this bill.

- **SB 10** by Senator Scott Wiener (D-San Francisco) – *Planning and zoning: housing development: density.*

This bill authorizes a city or county to pass an ordinance, notwithstanding any local restrictions on zoning ordinances that limit the legislative body's ability to adopt zoning ordinances, to zone any parcel for up to 10 units of residential density, at a height specified by the ordinance, if the parcel is located in a transit-rich area or an urban infill site. The bill specifies that neither an ordinance adopted consistent with the provision above, nor any resolution ordinance or any other local regulation adopted to amend the jurisdiction's general plan to be consistent with that ordinance, is a project for purposes of CEQA.

The bill requires a local agency that adopts an ordinance pursuant to this bill to do all of the following: a) Include a declaration that the zoning is adopted pursuant to this bill; b) The zoning ordinance shall clearly demarcate the areas that are zoned; c) Make a finding that the increased density is consistent with the city's obligation to affirmatively further fair housing; and d) If the ordinance supersedes any zoning restriction established by a local initiative, the ordinance shall only take effect if adopted by a 2/3 vote of the members of the legislative body.

The bill prohibits, notwithstanding any other law permitting ministerial or by right approval of a development project, or any other CEQA exemption, a project of more than 10 units from receiving ministerial or by right approval if it uses the provisions of this bill. In addition, the creation of up to two ADUs or JADUs shall not count towards the total number of units when determining whether the project may be approved ministerially or by right and a project may not be divided into smaller projects in order to exclude the project from the prohibition.

The bill defines "transit-rich area" as a parcel within one-half mile of a major transit stop, or a parcel on a high-quality bus corridor. The bill defines "high-quality bus corridor" as a corridor with a fixed-route bus service that meets specified service interval times. The bill defines "urban infill site" as a site that satisfies all of the following: a) A site that is a legal parcel or parcels located in a city if the city boundaries include some portion of either an urbanized area or urban cluster or for unincorporated areas, a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster; b) A site in which at least 75 percent of the perimeter adjoins parcels that are developed with urban uses. Parcels that are only separated by a street or highway shall be considered to be adjoined; and c) A site that is zoned for residential use or residential mixed-use, or has a general plan designation that allows residential use or a mix of residential and non-residential uses, with at least two-thirds of the square footage of the development designated for residential use.

The bill excludes parcels located in either of the following: a) A high or very high fire hazard severity zone, except for sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development; or b) A local restriction enacted or approved by a local initiative that designates publicly owned land as open space or for park or recreational purposes.

The bill prohibits a local government from subsequently reducing the density of any parcels subject to an ordinance adopted pursuant to this bill. The bill provides that this bill shall not apply to a project located on a parcel or parcels that are zoned pursuant to an ordinance adopted under this bill, then subsequently rezoned without regard to this bill, as specified. The bill prohibits an ordinance adopted pursuant to this bill from reducing the

density of any parcel subject to the ordinance. Finally, the bill includes a sunset of January 1, 2029, and authorizes an ordinance adopted pursuant to this bill to extend beyond January 1, 2029.

- **SB 263** by Senator Susan Rubio (D-Baldwin Park) – *Real estate applicants and licensees: education requirements: fair housing and implicit bias training.*

This bill updates training requirements for Department of Real Estate (DRE) licensees by including implicit bias within the real estate practice course and revises the legal aspects of the real estate course to include a component on state and federal fair housing laws. The bill also requires a two-hour implicit bias course within the 45 hours continuing education (CE) for license renewal. The implementation of this bill is delayed until 2023.

- **SB 290** by Senator Nancy Skinner (D-Berkeley) – *Density Bonus Law: qualifications for incentives or concessions: student housing for lower income students: moderate-income persons and families: local government constraints.*

This bill requires a city or county to report in the housing element APR, the number of units for lower income students that were included in a student housing development for which a developer received a density bonus. The bill clarifies that the 10 percent of the total units affordable to lower income households or 5 percent of the total units to very low income units in a density bonus project may be either rental or for sale units. The bill makes a student housing development containing at least 20 percent of the units for lower-income students, as defined, eligible for one incentive or concession.

The bill expands the types of for-sale moderate- and low-income housing units that can benefit from a density bonus by deleting the existing law requirement that the units be in a "common interest development." The bill allows moderate-income housing developments that include 40 percent moderate income for-sale housing and are within in one-half mile of a major transit stop, to receive a parking reduction of 0.5 parking spaces per bedroom. Finally, the bill defines "total units" or "total dwelling units" as the calculation of the number of units that: a) Excludes a unit added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus; and b) Includes a unit designated to satisfy an inclusionary zoning requirement of a local agency.

- **SB 381** by Senator Anthony Portantino (D-La Cañada Flintridge) – *Surplus residential property: priorities, procedures, price, and fund: City of South Pasadena.*

This bill makes changes to the Roberti Act to encourage the sale of homes owned by the California Department of Transportation for low- and moderate-income housing in the State Route 710 corridor in South Pasadena.

- **SB 478** by Senator Scott Wiener (D-San Francisco) – *Planning and Zoning Law: housing development projects.*

This bill prohibits a local government from doing the following: a) For a housing development project consisting of three to seven units, impose a floor area ratio (FAR) standard that is less than 1.0; b) For a housing development project consisting of eight to 10 units, impose a FAR standard that is less than 1.25; and c) Deny a housing development project located on an existing legal parcel solely on the basis that the lot area of the proposed lot does not meet the local agency's requirements for minimum lot size. The bill requires, to be eligible for the minimum FAR standards above, the housing

development project to meet all of the following conditions: a) The project contains at least three but no more than 10 units; b) The project is located in a multifamily residential zone or a mixed-use zone, and is not located in either of the following: i) Within a single-family zone. ii) Within a historic district or property included in the State Historic Resources Inventory or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance; and c) The project is located on a legal parcel or parcels in a city if, and only if, the city boundaries include some portion of either an urbanized area or urban cluster, or, for unincorporated areas, a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster.

The bill provides that this bill shall not be construed to prohibit a local agency from imposing any zoning or design standards other than zoning or design standards that conflict with those in the provisions above. The bill prohibits a local government from imposing a lot coverage requirement that would physically preclude a housing development that meets the requirements established above from achieving FAR ratios allowed in the first section above.

The bill requires HCD to notify a local government and may notify the State Attorney General if the local government is in violation of the requirements in this bill. The bill declares void and unenforceable any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of governing document of a homeowner's association, if it effectively prohibits or unreasonably restricts an eligible housing development project from using the FAR standards under the bill. Finally, the bill provides that it does not apply to reasonable restrictions on a housing development project that do not make the FAR standards in this bill infeasible

- **SB 591** by Senator Josh Becker (D-Menlo Park) – *Senior citizens: intergenerational housing developments.*

This bill specifies that an intergenerational housing development may be established if all of the following requirements are met: a) The development is affordable to lower income households as specified; b) Eighty percent of the dwelling units are occupied by at least one senior citizen; and c) Up to 20 percent of the dwelling units may be occupied by at least one caregiver or transition age youth. The bill provides that, if a unit that is identified for occupancy by a caregiver or transition age youth ceases to house a caregiver or transition age youth, the owner, board of directors, or other governing body may require, at their discretion, the household in that unit to cease residing in the development upon receipt of a minimum of six months written notice. Termination of the tenancy would be allowed for the sole purpose of making the unit available for an eligible occupant.

The bill prohibits the eviction or termination of a tenancy of a family with children in order to comply with the requirement that at least 80 percent of the occupied units in an intergenerational housing development be occupied by at least one senior citizen. The bill requires the covenants, conditions, and restrictions and other documents or written policy for the development to set forth the limitations on occupancy, residency, or use.

The bill establishes a State policy supporting intergenerational housing for senior citizens, caregivers, and transition age youth, as described in Section 42(g)(9) of the Internal Revenue Code, and, further, permits developers in receipt of local or state funds or tax credits designated for affordable rental housing to restrict occupancy to senior citizens,

caregivers, and transition age youth as specified. The bill defines various terms for the provision of the law.

The bill specifies that, notwithstanding any other law, any occupied dwelling units within an intergenerational housing development occupied by caregivers or transition age shall not count toward the housing type goal for seniors under the qualified allocation plan adopted by the California Tax Credit Allocation Committee.

- **SB 728** by Senator Robert Hertzberg (D-Van Nuys) – *Density Bonus Law: purchase of density bonus units by nonprofit housing organizations.*

This bill requires an applicant for a density bonus to agree that a for-sale unit meets either of the following: a) The unit is initially occupied by a person or family of very low-, low-, or moderate income and offered at an affordable housing cost; or b) The unit is purchased by a qualified nonprofit housing corporation pursuant to a specified recorded contract and includes all of the following: i) A repurchase option that requires a subsequent purchaser of the property. ii) An equity sharing agreement. Among other things, the following apply: (1) Upon resale, the seller of the unit shall retain the value of any improvements, the down payment, and the seller's proportionate share of the appreciation; and (2) If the unit is purchased or developed by a qualified nonprofit housing organization, the local government may enter into a contract under which the qualified nonprofit housing corporation would recapture any initial subsidy and its proportionate share of appreciate if the qualified nonprofit housing organization is required to use 100% of the proceeds to promote homeownership for lower income households; and iii) Affordability restrictions on the sale and conveyance of the property that ensure that the property will be preserved for lower income housing for at least 45 years for owner occupied housing units and will be sold or resold to only persons of very low-, low-, or moderate-income.

- **SB 791** by Senator Dave Cortese (D-San Jose) – *California Surplus Land Unit.*

This bill creates the Surplus Land Unit within HCD, subject to appropriation by the Legislature, to facilitate the development and construction of housing on local surplus property. The bill authorizes the Surplus Land Unit to: a) Facilitate agreements between, and provide technical assistance to, housing developers and local agencies relating to disposition of surplus land, available funding and financing instruments, and construction of housing on local surplus land; and b) Collaborate with the California Housing Finance Agency (CalHFA), the California Tax Credit Allocation Committee, the California Debt Limit Allocation Committee, and other relevant State agencies to assist housing developers and local agencies in obtaining financing to facilitate the construction of housing on surplus land.

The bill prohibits the Surplus Land Unit from acquiring property by eminent domain. Finally, the bill provides that this bill shall not relieve a local agency or a housing developer from complying with any disposal requirements or conditions applicable to disposal of government property, as specified.

HOMELESSNESS AND MENTAL HEALTH LEGISLATIVE PACKAGE

On September 29, the Governor signed a number of bills relating to homelessness and mental health issues. Among the bills signed were AB 1220 by Assembly Member Luz Rivas (D-Arleta) which reforms the former Homeless Coordinating and Financing Council, renaming it the California Interagency Council on Homelessness, and bolsters the Council's powers through new data mandates and oversight authorities. Further linking housing with health care, the legislation names California Health and Human Services Secretary Dr. Mark Ghaly and Business, Consumer Services and Housing Agency Secretary Lourdes Castro Ramírez as Co-Chairs of the Council. AB 977 by Assembly Member Jesse Gabriel (D-Encino) implements new data mandates under the State's Homeless Management Information System, allowing policymakers to better track and evaluate the effectiveness of homelessness funding around the State.

In total, the following bills were signed on September 29:

- **AB 27** by Assembly Member Luz Rivas (D-Arleta) – *Homeless children and youths and unaccompanied youths: reporting.*

This bill requires, as an urgency measure, local education agencies (LEAs) and charter schools to ensure that each school identifies all enrolled homeless and unaccompanied students; requires the California Department of Education (CDE) to develop best practices and a model housing questionnaire; requires LEAs to annually administer a housing questionnaire based on the model questionnaire developed by the CDE; and authorizes the CDE, subject to an appropriation of specified state or federal funds, to award grant funding to county offices of education (COEs) to develop technical assistance centers related to homeless and unaccompanied students.

- **AB 362** by Assembly Member Sharon Quirk-Silva (D-Fullerton) – *Homeless shelters: safety regulations.*

This bill requires a local government that receives a complaint from an occupant of a homeless shelter, or an agent of an occupant, that alleges a homeless shelter is substandard, shall do all of the following: a) Inspect the homeless shelter or portion intended for human occupancy that may be substandard; b) Identify whether the homeless shelter or portion intended for human occupancy is substandard and include documentation in the inspection report; and c) Advise the owner or operator of a homeless shelter of each violation and of each action that is required to be taken to remedy the violation. The local government shall schedule a re-inspection to verify correction of the violations.

The bill requires that if the local government determines that a homeless shelter is substandard, the local government shall promptly, but no later than 10 business days after the inspection is completed, issue a notice to correct the violation to the owner or operator of the homeless shelter as follows: a) If the local government determines that the violation constitutes an imminent threat to the health and safety of the occupants of the homeless shelter, the notice of violation shall be issued immediately and served on the owner or operator of the homeless shelter; and b) If the local government determines that deficiencies, violations, or conditions exist that are hazardous, immediately detrimental to life or health, or otherwise render the homeless shelter unfit for human habitation, it may issue an emergency order directly to the owner or operator to take immediate measures to rectify those deficiencies, violations, or conditions. The bill requires a local government

to maintain all records on file of each homeless shelter inspection and made available to the public. The bill requires a local government to perform an inspection at least as promptly as that local government conducts an inspection in response to a request for final inspection.

The bill prohibits a local government from conducting an inspection in response to a complaint to either of the following: a) A complaint that does not allege one or more substantial conditions; or b) A complaint submitted by a tenant, resident, or occupant, who, within the past 180 days, submitted a complaint about the same property that the chief building inspector or their designee determined, after inspection, was frivolous or unfounded.

The bill requires a local government to provide free, certified copies of an inspection report and citations issued, if any, to the complaining occupant or their agent. If the inspection reveals a condition potentially affecting multiple occupants, including but not limited to, conditions related to the premises, common areas, or structural features, then the local government shall provide free copies of the inspections report and citations issued to all potentially affected occupants or their agents.

The bill requires the owner or operator of a homeless shelter to be responsible for the correction of any violations under this bill. The owner or operator shall correct each violation within 30 days of receipt of a citation. The local government may grant a 30-day extension to correct a violation. The bill provides that in addition to existing penalties under the State Housing Law, an owner or operator who fails to meet the timelines to correct a violation under this bill may be liable for a civil penalty in an amount determined by the local government for each violation or for each day of a continuing violation.

The bill prohibits the local government from awarding or distributing state funding to the owner or operator of a homeless shelter for purposes of operating a shelter if the local government determines that any of the following exist: a) The owner or operator fails to correct a violation within the time periods specified under this bill; b) The owner or operator has failed to correct violations in a timely manner on multiple occasions; and c) The owner or operator has been cited for a violation that is an imminent threat to the health and safety of the occupants of the homeless shelter and the owner or operator fails to make sufficient action to correct the violation or prevent future similar violations.

The bill requires a local government to submit a report annually to HCD and the Business Consumer Services and Housing Agency (BCSH) by April 1 of each year that includes all of the following information: a) Any pending uncorrected violations determined by the local government; b) Any determination by a local government that conditions exist or existed that make or made the homeless shelter dangerous, hazardous, imminently detrimental to life or health, or otherwise render the homeless shelter unfit for human habitation; c) A list of any emergency orders issued by this bill; d) A list of any owners or operators who received three or more violations within any six-month period; and e) Any corrected violations from the prior year. The bill requires any local government that applies for state funding to support the ongoing operations of homeless shelters to disclose to the state agency that administers the state funding the status of any unresolved violations and the names of the homeless shelter owner or operators. Finally, the bill authorizes HCD or BCSH to deem an owner or operator of a shelter ineligible for state funding for shelter operations, pursuant to the information provided in the report under the provisions above.

- **AB 816** by Assembly Member David Chiu (D-San Francisco) – *Homelessness: Housing Trust Fund: housing projects.*

This bill requires HCD to allocate National Housing Trust Fund (NHTF) monies to projects serving individuals experiencing homelessness, to the extent that a sufficient number of projects exist. The bill also authorizes HCD to alter priority for funding in order to align eligibility for benefits, such as Medi-Cal, that are intended to fund services for individuals experiencing homelessness.

- **AB 977** by Assembly Member Jesse Gabriel (D-Encino) – *Homelessness program data reporting: Homeless Management Information System.*

This bill requires a grantee or entity receiving funds from any of 10 specified State homeless programs to enter the required collected data elements on the individuals and families it serves into its local Homeless Management Information System (HMIS) system, as required by the United States Department of Housing and Urban Development (HUD) guidance, unless otherwise exempted by State or federal law, beginning on January 1, 2023. The bill requires the Council, in consultation with the respective administering state agencies or departments, to specify the entry format and disclosure frequency of the data elements required by this bill in a manner that informs the Council's statutory objectives and goals.

- **AB 1220** by Assembly Member Luz Rivas (D-Arleta) – *Homelessness: California Interagency Council on Homelessness.*

This bill renames the Council as the Interagency Council on Homelessness (ICH) and reconstitutes its membership as follows, to serve at the pleasure of the relevant appointing authority: a) Requires the Secretary of the California Health and Human Services Agency to sever as a co-chair with the Secretary of BCSH; b) Requires existing member agencies and departments to be represented by the Director or Secretary rather than by a representative, except for DOE; c) Adds the Directors of the Departments of Aging, Rehabilitation, and State Hospitals; the State Public Health Officer; the executive director of the California Workforce Development Board; and the Director of the Office of Emergency Services; d) Moves the two representatives of local agencies who participate in the United States Department of Housing and Urban Development's (HUD's) Continuum of Care (CoC) program to an advisory committee; and e) Removes the other members who may be appointed at the Governor's discretion.

The bill requires the ICH to meet at least quarterly with an advisory committee that includes: a current or former homeless person; a current or former homeless youth; a survivor of gender-based violence who formerly experienced homelessness; representatives of local agencies or organizations who participate in HUD's CoC program; stakeholders with expertise in solutions to homelessness and best practices from other states; and, representatives of committees on African Americans, youth, and survivors of gender-based violence. The bill requires a State agency or department that administers a homeless program or programs to, upon request of the ICH, participate in ICH workgroups, task forces, or other similar administrative structures, and provide to the ICH any relevant information regarding those programs.

- **AB 1443** by Assembly Member Kevin McCarty (D-Sacramento) – *Mental health: involuntary treatment.*

This bill permits any county to develop training and procedures related to taking, or causing to be taken, a person into custody for an involuntary detention; and requires the County of Sacramento to develop a written policy for training and procedures for designating persons who are employed by the City of Sacramento and who meet specified criteria to involuntarily detain individuals.

- **SB 400** by Senator Brian W. Jones (R-Santee) – *Homeless children and youths: local educational agencies: collaboration, training, and reporting.*

This bill requires, pursuant to federal law, local educational agency (LEA) liaisons for homeless youth to ensure the identification of homeless youth through outreach and coordination activities, and ensure homeless youth receive referrals for health and other services.



AGENDA NO: C-2

MEETING DATE: December 14, 2021

Staff Report

TO: Honorable Mayor and Council Members **DATE:** December 8, 2021

FROM: Kyle Rhorer – WRF Program Manager, Carollo Engineers
Greg Kwolek – Public Works Director

SUBJECT: Review Water Reclamation Facility (WRF) Quarterly Update Report

RECOMMENDATION

Receive the Q1 2021-21 WRF Quarterly Update Report and provide input.

FISCAL IMPACT

There is no fiscal impact associated with this recommendation.

DISCUSSION

Provided as Attachment 1 is the Quarterly Water Reclamation Facility (WRF) Project Report. This report was presented to the Citizens Finance Advisory Committee (CFAC) for review in advance at their November 16, 2021 meeting.

The Q1 2021-2022 Quarterly Water Reclamation Facility Project Report provides a summary of WRF program activities and financial metrics for the period of July 1, 2021 through September 30, 2021.

The table below shows the status of the overall WRF Project budget as of the end of Q1 2022.

<i>Project Component</i>	<i>Quarterly Budget Reconciliation Q4 FY 20/21</i>	<i>Quarterly Budget Reconciliation Q1 FY 21/22</i>
Water Reclamation Facility	\$77,687,023	\$74,697,995
Conveyance Facilities	\$37,982,000	\$34,214,311
Recycled Water Facilities	\$6,668,000	\$6,668,000
General Project	\$15,445,000	\$25,589,712
Construction Contingency	\$6,892,854	\$3,504,859
TOTAL	\$144,674,877	\$144,674,877

While the overall WRF Project budget did not change during Q1, the allocation of budget across the Project components was adjusted due to 1) adjustments of the "Estimate at Completion" for the Water Reclamation Facility and Conveyance Facilities, and 2) reconciliation of the General Project component resulting from budget and accounting analyses associated with the close of Fiscal Year 2020-2021.

Prepared By: ____KR/SJR____ Dept Review:

City Manager Review: __SC__

City Attorney Review: _CFN__

Q2 2021/2022 Look Ahead

New contract amendments related to the Conveyance Facilities were approved by City Council on October 12, 2021 for: Cogstone Resources Management in the amount of \$740,803; Far Western Anthropological Research Group, Inc. in the amount of \$463,086; and Anvil Builders, Inc. in the amount of \$674,485. These three amendments were anticipated and their sum are within the Conveyance Facilities \$2.7M contingency budget available at the end of Q1.

The City is also tracking additional potential change orders for the Water Reclamation Facility related to COVID-19 cost escalation, SRF loan requirements, and City-directed improvements. The total of these change orders is currently estimated between \$250,000 and \$700,000. The City is also tracking change orders for the Conveyance Facilities related to new (more stringent) air pollution requirements from the San Luis Obispo County Air Pollution Control District for generators. The current estimate for these change orders is between \$300,000 and \$500,000. The potential change orders identified above are not included in the construction contingency budgets for the Project components and will require an increase to the Program budget.

Project Financing Update

During this last quarter, staff and the City's financial advisor continued to evaluate the project's cash flow and the potential need for interim financing. Staff and Carollo simultaneously continued regular discussions with SRF regarding disbursement schedules and other key SRF approvals that impact reimbursement. While SRF does not put any disbursement timing guarantees in writing, their senior staff indicated verbally and via email to a 90-day or less disbursement timeline. In addition, SRF granted written approval to a loan agreement provision that allows staff to submit disbursement requests for the conveyance portion of the project, for which the City had already incurred significant expenditures. Staff and Carollo prepared and submitted the first disbursement request for \$11.2 million under the construction loan. It received approval and The City received that disbursement in late November, roughly 60 days after submitted to SRF. Due to these positive indicators from SRF and to expenditures being lower than anticipated over the last few months, staff did not recommend proceeding with interim financing during this quarter. Staff will continue to closely monitor project cash flow and SRF disbursement timelines for future requests, and will advise if any other financing actions are needed.

ATTACHMENTS

1. City of Morro Bay Water Reclamation Facility Quarterly Report
2. Staff presentation slides



City of Morro Bay
Water Reclamation Facility Project

QUARTERLY REPORT ENDING SEPTEMBER 2021

FINAL | November 2021





City of Morro Bay
Water Reclamation Facility Project

QUARTERLY REPORT ENDING SEPTEMBER 2021

FINAL | November 2021

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Abbreviations

Anvil	Anvil Builders, Inc.
BMP	Best Management Practices
BNR	Biological Nutrient Removal
BOD	Biochemical Oxygen Demand
BR	brine
CA	California
Carollo	Carollo Engineers, Inc.
CDFW	California Department of Fish and Wildlife
CFAC	Citizens Finance Advisory Committee
CO	Change Order
CPM	critical path method
CWSRF	Clean Water State Revolving Fund
DDW	Division of Drinking Water
EHSP	Enhanced Source Control Program
EIR	Environmental Impact Report
EPA	Environmental Protection Agency
FIW	Filter Inlet Water
FO	fiber optic
FRP	Fiber-Reinforced Plastic
FWB	Filter Backwash
GAMA	Groundwater Ambient Monitoring and Assessment Program
GMP	Guaranteed Maximum Price
GSI	GSI Water Solutions
IFC	Issued for Construction
IPR	Indirect Potable Reuse
KPI	Key Performance Indicator
If	Linear Feet
MBR	Membrane Bioreactor
NPDES	National Pollution Discharge Elimination System
NTP	Notice to Proceed
PA	Programmatic Agreement
PCO	Potential Change Order
PG&E	Pacific Gas and Electric
PPP	Pollution Prevention Plan
Project	Water Reclamation Facility Project
PRW	Plant Recycled Water
PWAB	Public Works Advisory Board

Q1	Quarter No. 1
RFI	request for information
RO	Reverse Osmosis
ROWD	Report of Waste Discharge
RWQCB	Regional Water Quality Control Board
SAA	Stream Bed Alteration Agreement
SHPO	State Historic Preservation Office
SHT	Sludge Holding Tank
SLO	San Luis Obispo
SPI	schedule performance index
SRF	State Revolving Fund
SWRCB	State Water Resources Control Board
TSO	Time Schedule Order
TSS	Total Suspended Solids
USBR	United States Bureau of Reclamation
UVAOP	Ultraviolet Advanced Oxidation Process
VDC	volts direct current
Vistra	Vistra Energy
WIFIA	Water Infrastructure Finance and Innovation Act
WRF	Water Reclamation Facility
WWE	Water Works Engineers
WWR	Wastewater Raw
WWS	Wastewater Screened

Section 1

PROJECT OVERVIEW

1.1 General Project Status Update

All components of the Water Reclamation Facility Project (Project) are currently in progress. The general progress update and schedule information presented in this report represents Quarter No. 1 (Q1) of Fiscal Year 2021-2022, from July 1, 2021 to September 30, 2021.

1.1.1 Water Reclamation Facility

1.1.1.1 Design

The design for the Water Reclamation Facility (WRF) was completed with the delivery of the Issued for Construction (IFC) drawings and specifications for the WRF on May 22, 2020.

1.1.1.2 Construction

Construction at the WRF site began on March 20, 2020. Activities to date include the following major activities which are discussed in detail in Section 8:

- Completion of major earthwork
- Remediation of the second soil slip
- Continued installation of major and minor yard piping systems
- Pressure testing of installed underground piping
- Installation of various electrical infrastructure components.
- Construction progress in the following process areas:
 - Headworks
 - Biological Nutrient Removal (BNR)/Membrane Bioreactor (MBR) treatment
 - Reverse Osmosis (RO)/Ultraviolet (UV) Advanced Oxidation Process (AOP)
 - Product water facilities
 - Residuals sludge processing
 - Electrical and Instrumentation/Controls
 - Chemical storage and feed
 - Operations building
 - Maintenance building
 - City yard facilities

1.1.2 Conveyance Facilities

1.1.2.1 Design

Water Works Engineers (WWE) submitted the bid set plans and specifications in May 2020 and the City advertised this component of the Project on June 15, 2020.

1.1.2.2 Construction

The City opened bids for the Conveyance Facilities component of the Project on August 14, 2020. The City received a total of five bids. Anvil Builders, Inc. (Anvil) was awarded the contract for construction of the Conveyance Facilities on November 10, 2020 and issued notice to proceed (NTP) on December 14, 2020. The following activities were completed between July 1, 2021 and September 30, 2021:

The contractor continued to maintain general and administrative tasks such as project Stormwater Pollution Prevention Plan (SWPPP), archeological mitigation and monitoring, and public outreach efforts. Additionally, five separate construction crews worked at the following locations, and a detailed description of the work within these areas is included in Section 8:

- Pump Station A
- Pump Station B
- Pipeline construction in the following segments:
 - Segment 1 - Atascadero Road (Existing City Wastewater Treatment Plant to Bike Path)
 - Segment 3 – Bike Path (Morro Creek Foot Bridge to Main Street)
 - Segment 5 – Quintana Road (Main Street to Morro Bay Blvd)
 - Segment 6 – Quintana Road (Morro Bay Blvd to La Loma Avenue)
 - Segment 7 – Quintana Road (La Loma Avenue to South Bay Blvd)
- Lift Station 2

1.1.3 Recycled Water Facilities

1.1.3.1 Design

In Q1, the following preliminary design items were progressed for the Recycled Water Facilities by the Program Management Team:

- The locations of both the pilot injection and monitoring well sites were finalized to be within the 100-foot permanent easement acquired by the City from Vistra Energy. This differed from the original plan of having the monitoring well located in the temporary construction easement just north of the pilot injection well. The location of the monitoring well was revised to be within the permanent easement to ensure that the well would be in service for its entire useful life rather than required to be destroyed at the end of the temporary construction easement conditional use timeframe.
- The City, Carollo, and GSI continued to make progress toward installing the pilot injection well. The pilot well work is expected to be bid in the coming months.
- Bidding documents for the pilot injection well were completed and contract documents were sent to the City for review.
- ABC Liovin was the selected contractor to install the monitoring well. Work is anticipated to begin at the end of October 2021.
- The City received Notice of Acceptance on August 27, 2021 from the Regional Water Quality Control Board for their Aquifer Storage and Recovery (ASR) Permit, therefore allowing the upcoming pilot injection testing to commence.

- Guida Surveying, inc. performed their first pre-construction survey on July 6 and 9, 2021 to perform topographic surveying, easement delineation, and existing utility locations for the 100-foot easement from Willow Camp Creek to the bike path parallel to Highway 1.
- Several existing utilities were found to be on site as a result of the topographic survey conducted on July 7, 2021. With the revised well sites both within the permanent easement, the Program Management Team plans to have the utilities in the area near both the pilot injection well and the monitoring well sites potholed and surveyed to ensure there will be no utility conflicts during installation.
- Desktop vegetation surveys and exhibit development has been completed and the Program Management Team is expected to coordinate with the project biologist in October to identify vegetation protection and removal requirements for the pilot injection and monitoring construction activities.

1.1.3.2 Construction

Recycled Water Facilities are not yet under construction.

1.1.4 Accomplishments and Challenges

Table 1 summarizes some of the key accomplishments and critical challenges identified for the Project through September 30, 2021.

Table 1 Project Accomplishments and Challenges

Project Component	Key Accomplishments	Critical Challenges	Actions to Overcome Challenges	Likely Outcomes
General Project	Assembled and submitted the first disbursement request package to SRF Construction Loan.	Invoices from FBV have historically not separated costs incurred by the 16-bid items identified in the agreement between SRF and the City. The 16-bid item format is required for SRF disbursement requests. Moving forward, SRF is requiring that all invoices from FBV reformat costs incurred into these 16-bid items. SRF also requires FBV to develop a one-time breakdown of costs incurred to date by these 16-bid items.	The funding team continues to work with both FBV and SRF staff to develop the appropriate invoice format and historical documentation necessary to meet the requirements of the funding agreement between SRF and the City.	FBV invoices will meet the SRF requirements and the City will submit disbursement requests for WRF and conveyance construction costs.
Water Reclamation Facility	All major earthwork (excluding the remediation of the second soil slip), rough grading, major yard piping is complete.	Contractor continues to install minor service piping, onsite electrical infrastructure, pressure test of underground piping, and second soil slip earthwork remediation.	Contractor continues to progress on-site construction and installation as planned.	All on-site work completed in the coming months.
	City Council authorized the execution of legal documentation for the 19.5 acres conservation covenant on September 28 th , 2021.	Finalization of the conservation covenant cannot be completed until the restoration of site to natural condition and the soil slip remediation is complete since a final aerial photograph is required for final documentation.	Complete the remediation of the new soil slip and then restore the remaining area to natural condition.	The 19.5 acres conservation covenant will be officially documented, and the final package will be sent to the EPA and US Fish and Wildlife Service for approval.
	Completed physical investigation of the second soil slip. City has directed FBV to proceed with remediation efforts.	FBV to complete remediation efforts for second soil slip.	FBV will move forward with soil slip remediation activities by complete excavation of disturbed soils, installation of sub drains, installation of engineered fill of soil slip area, and installation of v-ditch drains surrounding soil slip area.	Second soil slip will be remediated.
Conveyance Facilities	Phase 2 Monitoring and Mitigation Report sent to EPA to be transmitted to SHPO.	Phase 2B (between stations 27+00 and 37+00) is still under a ground disturbing moratorium set by SHPO. Program Management Team must ensure that Anvil has clearance within Phase 2B by SHPO in order to prevent any delay claims by Anvil should they need to work in the area.	Program Management Team, Far Western, and City staff continue to coordinate with EPA to provide adequate information required in the Phase 2 monitoring and mitigation plan as directed in the Programmatic Agreement between SHPO and the EPA in regards to the Morro Bay WRF project.	SHPO will accept the Phase 2B Monitoring and Mitigation plan. If comments are received, they will be addressed by the Program Management Team, City and Far Western until completion. If comments are not received by SHPO, the Program Management Team will notify Anvil that clearance by SHPO within Phase 2B has been received.
	Microtunnel boring machine (MTBM) reached receiving pit on September 24 th , 2021.	The MTBM encountered several situations that caused the machine to essentially stop until soil conditions were further investigated or cleared by the contractor. Additionally, it was found that pieces of the MTBM cutting head were damaged.	Anvil installed emergency shafts in order to investigate soil conditions and/or make repairs of the MTBM cutting head in order to progress steel casing installation by MTBM.	The steel casing beneath the roundabout was successfully installed and the carrier pipes within the casing are expected to be installed within the casing in Q2.
	A fourth Native American Tribe was added to the construction monitoring efforts for the Conveyance Facilities Project.	Adding the Xolon Salinan tribe will increase project management and coordination costs for Cogstone Resource Management.	Program Management Team in coordination with Far Western and Cogstone resource management coordinated with Xolon Salinan Native American Tribe to be included in the Native American monitoring efforts for the remainder of the Conveyance Facilities project including the Phase 2B archaeological mitigation efforts in the near future.	Cogstone and Far Western will rotate the four Native American Tribes as monitors for the Conveyance Facilities project. Cogstone will be requesting an amendment in Q2 to its contract with the City for the additional effort required.
	Tree survey was completed by Anvil and the Program Management Team to support tree removal and protection survey by Heritage Tree.	Heritage Tree was contracted by the City to provide consultation services on tree removal and mitigation measures for trees along the bike path section of the alignment. Several trees were identified by Heritage tree to be removed and/or protected in place by Heritage tree. This is outside of Anvil's current scope of work and exceeds the quantity of trees identified in the Construction Plan of the Coastal Development Permit. The additional measures to remove and/or protect in place these trees would require a change order for Anvil and a revision to the CDP special condition.	Program Management Team has provided the tree survey which identifies trees outside of Anvil's scope and the CDP special condition that will either need to be removed, protected in place or trimmed. This information is to be used in conjunction with Heritage Tree findings to ultimately make a recommendation to the City.	Additional trees required to be removed will be identified and a request to revise the CDP special conditions report for the Conveyance Facilities will be sent to the Coastal Commission. Additionally, the trees to be protected in place and/or removed will be included in a change order to Anvil for the work outside of their original scope. The City is currently considering a program to replace trees removed due to Conveyance Facilities construction.

Table 1 Project Accomplishments and Challenges (continued)

Project Component	Key Accomplishments	Critical Challenges	Actions to Overcome Challenges	Likely Outcomes
Conveyance Facilities (continued)	Dewatering efforts at Pump Station A were completed.	Anvil initially had encountered challenging dewatering conditions for the excavation at Pump Station A which significantly slowed construction progress at Pump Station A.	The Program Management Team is currently coordinating with Anvil to implement a series of schedule recovery workshops for pump station A and the remainder of the Conveyance Facilities project.	Anvil has successfully dewatered the PS-A excavation and began subgrade preparation for PS-A facilities. Additionally, schedule recovery strategies are to be implemented by the Anvil to ensure PS-A will be completed on time.
Recycled Water Facilities	Development continued for the pilot injection well bid package and bid opening is expected in late October.	A delineation will be required for the 100-foot-wide permanent easement in field, existing utilities, proposed pilot injection well site, and monitoring well site.	Efforts included surveying the easement, utilities, and well locations from bike path to Willow Camp Creek prior to bid advertisement to include in bid package.	Schedule may require extension due to contractor award/evaluation and notice to proceed timeline.
	Contract was executed with well driller to install pilot monitoring well for late October.	Monitoring well needs to be staked prior to installation.	Program Management Team has scheduled surveyor to stake monitoring well.	Monitoring well to be staked for construction in late October.

1.2 Quarterly Budget Revision

The original \$126 million baseline budget was developed in June 2018 (Q4 Fiscal Year 2017 / 2018). At the beginning of each fiscal year, the budget is updated and used as the measure of performance for the Project during that upcoming fiscal year. The budget is then reviewed and reconciled on a quarterly basis to facilitate comparison to both the current fiscal year and baseline budgets.

A summary of the baseline, reconciled quarterly, and fiscal year budgets is provided in Table 2.

Table 3 shows the latest estimate at completion (EAC) for each project component. The EAC considers the City's fiscal year budget and adjusts for City contract amendments, new City consultant contracts, City costs such as labor and administrative expenses, as-needed reallocation from contingency, and other information gathered by the Program Management Team as the project progresses.

Table 2 Budget Revision Summary

Project Component	Baseline (Q4 FY 17/18)	Quarterly Reconciliation (Q3 FY 18/19)	Fiscal Year 19/20 (Q4 FY 18/19)	Quarterly Reconciliation (Q1 FY 19/20)	Quarterly Reconciliation (Q2 FY 19/20)	Quarterly Reconciliation (Q3 FY 19/20)	Fiscal Year 20/21 (Q4 FY 19/20) ⁽⁴⁾	Quarterly Reconciliation (Q1 FY 20/21)	Quarterly Reconciliation (Q2 FY 20/21) ⁽¹⁾	Quarterly Reconciliation (Q3 FY 20/21) ⁽¹⁾⁽²⁾	Fiscal Year 21/22 (Q4 FY 20/21) ⁽¹⁾⁽³⁾	Quarterly Reconciliation (Q1 FY 21/22) ⁽¹⁾⁽⁶⁾
Water Reclamation Facility	\$62,414,000	\$74,059,000	\$72,891,000	\$72,598,000	\$72,231,000	\$71,856,000	\$77,828,000	\$77,082,000	\$77,281,977	\$77,087,023	\$77,687,023	\$74,697,995
Conveyance Facilities	\$21,087,000	\$27,108,000	\$28,864,000	\$28,524,000	\$29,224,000	\$29,989,000	\$29,840,000	\$37,355,000	\$37,482,000	\$37,482,000	\$37,982,000	\$34,214,311
Recycled Water Facilities	\$8,593,000	\$5,366,000	\$5,250,000	\$5,212,000	\$5,353,000	\$5,526,000	\$5,526,000	\$5,740,000	\$5,968,000	\$5,968,000	\$6,668,000	\$6,668,000
General Project ⁽⁵⁾	\$24,403,000	\$11,614,000	\$11,801,000	\$11,625,000	\$11,701,000	\$12,964,000	\$13,260,000	\$14,255,000	\$14,445,000	\$14,445,000	\$15,445,000	\$25,589,712
Construction Contingency	\$9,444,000	\$6,450,000	\$7,132,000	\$7,131,000	\$7,364,000	\$10,264,000	\$4,207,000	\$4,250,000	\$3,414,023	\$3,608,977	\$6,892,854	\$3,504,859
Total	\$125,941,000	124,597,000	\$125,938,000	\$125,090,000	\$125,873,000	\$130,599,000	\$130,661,000	\$138,682,000	\$138,591,000	\$138,591,000	\$144,674,877	\$144,674,877

Notes:

- (1) The Project budget is estimated on a quarterly basis (i.e. September 30th, December 31st, and March 31st) and compared to the adopted fiscal year budget by June 30th. Costs shown through Q2 FY 20/21 include the design-build agreement with Filanc/Black & Veatch (Overland), Carollo's Program Management Contract (including subcontracting consultants), and other City consultants. Beginning Q3 FY20/21 this table reflects updated contract amendments and new adopted budgets.
- (2) Breakdown of the Q3 FY 20/21 contingency of \$3,608,977 is as follows: WRF = \$808,977; Conveyance Facilities = \$2,500,000; and Recycled Water Facilities = \$300,000.
- (3) As presented to City Council on May 25, 2021 for the WRF Q3 2021 Update Report. Breakdown of the Q1 FY 21/22 contingency of \$3,504,859 is as follows: WRF = \$304,859; Conveyance Facilities = \$2,700,000; and Recycled Water Facilities = \$500,000.
- (4) The FY 20/21 budget adopted by City Council was \$130,596,361. The numbers shown in this column, and all columns prior to Q3 FY 20/21, are preserved from prior year quarterly reports.
- (5) Starting in Q4 FY 20/21, General Project includes construction management of the Water Reclamation Facility and the Conveyance Facilities as part of the Program Management costs.
- (6) Starting in Q1 FY 21/22, General Project includes all associated City Costs (e.g. staff salaries and benefits, legal services, land acquisition, supplies, equipment, etc.), and City Contracts for active consultants including construction permitting compliance activities and Program Management costs.

Table 3 Estimates at Completion

Project Component	Original Estimate	Initial Contract Value	Current Contract Value	Expenditures to Date	Estimate at Completion ⁽¹⁾
WRF	\$62,414,000	\$67,234,512	\$76,697,995	\$39,868,487	\$74,697,995
Design/Build (FBV/Overland)	--	\$67,234,512	\$76,697,995	\$39,868,487	\$74,697,995
Conveyance Facilities	\$21,087,000	\$32,854,240	\$33,707,986	\$13,244,368	\$34,214,311
Design (Water Works Engineers)	--	\$1,360,565	\$2,214,311	\$2,058,935	\$2,214,311
Construction (Anvil Builders)	--	\$31,493,675	\$31,493,675	\$11,185,433	\$32,000,000
Recycled Water Facilities⁽⁵⁾	\$8,593,000	\$351,000	\$933,650	\$549,967	\$6,668,000
Design (GSI)	--	\$351,000	\$933,650	\$549,967	\$933,650
Construction	--	--	--	--	\$5,734,350
General Project	\$24,403,000	\$293,000	\$13,233,472	\$16,354,157	\$25,589,712
City Costs ⁽²⁾	--	--	--	\$9,376,602	\$11,889,712
Program Management (Carollo and Subconsultants) ⁽³⁾	--	\$293,000	\$11,808,401	\$5,738,681	\$12,200,000
City Contracts ⁽⁴⁾	--		\$1,425,071	\$1,238,873	\$1,500,000
Contingency	\$9,444,000	--	--	--	\$3,504,859
Water Reclamation Facility	--	--	--	--	\$304,859
Conveyance Facilities	--	--	--	--	\$2,700,000
Recycled Water Facilities	--	--	--	--	\$500,000
Total	\$125,941,000		\$124,573,103	\$70,016,979	\$144,674,877

Notes:

- (1) Beginning with the Q4 Fiscal Year 2020/2021 report, the EAC reflects the June 2021 adopted City budget for Fiscal Year 2021/2022 and updated contract amendments.
- (2) City costs include staff salaries and benefits, legal services, land acquisition, supplies, equipment, etc.
- (3) Program management costs include permitting, public outreach, funding support, and construction oversight/management.
- (4) Costs shown for General Project City contracts include inactive consultants (such as MKN, Black & Veatch, ESA, and Kestrel) and current consultants including Bartle Wells Associates, Cogstone, Far Western, Guida, and Kevin Merk & Associates.
- (5) Recycled Water Facilities Expenditures to Date costs include injection well planning and permitting (included with General Project costs) as well as hydrogeologic modeling by GSI.

Section 2

KEY PERFORMANCE MEASURES

2.1 Performance Measures

A set of five (5) Key Performance Indicators (KPIs) were established to readily measure the progress of the Project. These KPIs represent various success factors associated with the WRF project management and delivery that were established by the Program Manager and City staff and are summarized as Table 4.

Table 4 WRF Project Performance Measures (through September 2021)

Performance Measure	Data	Baseline (Q4FY 19/20)	Current (Q1 FY 21/22)	Delta	Status	Ⓞ	Ⓜ	Ⓡ
1: Total Project Costs	Total Project Projected Cost at Completion versus the Baseline Budget	\$130.7 M	\$144.7M	\$14.0M	Ⓡ	Estimated cost within 5% of target budget	Estimated cost > 5% above target budget	Estimated cost > 10% above target budget
1.1: WRF Costs	On Site WRF Projected Cost at Completion versus the Baseline Budget	\$77.8 M	\$74.7 M	\$(3.1)M	Ⓞ	Estimated cost within 5% of target budget	Estimated cost > 5% above target budget	Estimated cost > 10% above target budget
1.2: Conveyance Facilities Costs	Conveyance Facilities Projected Cost at Completion versus the Baseline Budget	\$29.8 M	\$34.2 M	\$4.4 M	Ⓡ	Estimated cost within 5% of target budget	Estimated cost > 5% above target budget	Estimated cost > 10% above target budget
1.3: Recycled Water Facilities Costs	Off Site Injection Facilities Projected Cost at Completion versus the Baseline Budget	\$5.5 M	\$6.7M	\$1.2 M	Ⓡ	Estimated cost within 5% of target budget	Estimated cost > 5% above target budget	Estimated cost > 10% above target budget
1.4: General Project Costs	General Project Projected Cost at Completion versus the Baseline Budget	\$13.3 M	\$25.6 M	\$12.3M	Ⓡ	Estimated cost within 5% of target budget	Estimated cost > 5% above target budget	Estimated cost > 10% above target budget
2: Program Manager Earned Value	Ratio of Program Manager Earned Value to Actual Invoiced Cost-to-Date	1.00	1	0	Ⓞ	>= 1.00	0.99 to 0.90	< 0.90
3: Schedule Performance Index	Ratio of Planned Percent Complete to Actual Percent Complete	1.00	1.02	0.02	Ⓞ	>=1.00	0.99 to 0.80	<0.80
4: TSO Compliance Date Countdown	Days Remaining to time schedule order (TSO) Compliance Date of February 28, 2023	789	516	273	Ⓞ	<= 365 days	364 days and 180 days	> 179 days

Section 3

PROJECT COSTS

3.1 Project Budget

The overall budget status for the Project is summarized in Table 5.

Table 5 WRF Project Overall Budget Status (through September 2021)

Summary of Total WRF Project Cost	
Original Baseline WRF Project Budget ⁽¹⁾	\$125,941,000
Adopted FY 20/21 WRF Project Budget ⁽²⁾	\$130,596,361
Adopted FY 21/22 WRF Project Budget ⁽²⁾	\$144,674,877
Adopted Budget Percent Change (FY 20/21 to FY 21/22)	10.8%
Total Expenditures for FY 21/22 Q1 (7/01/21 to 9/30/21; Cash Basis)	\$14,607,553
Total Expenditures to Date (thru 9/30/21 invoices; Cash Basis)	\$70,016,979
Percent of Adopted FY 21/22 WRF Project Budget Expended to Date	48.4%

Notes:

- (1) Developed in June 2018 as the basis of the approved rate surcharge that took effect in July 2019.
- (2) The budget for the Project is reviewed on an annual basis near the end of each fiscal year (May) and is adopted by City Council in June prior to each fiscal year.

3.2 Quarterly Expenditures by Budget Code

The current quarterly expenditures as reported by the City's corresponding budget performance report and according to adopted City budget code designations are summarized in Table 6, and expressed by Project component in Table 7.

Table 6 Quarterly Expenditures by Budget Code

City Budget Code(1)	Fund Name	Total Q1 FY21/22 Expenditures(3)	Vendor Name	Project Component
4120	Overtime Pay	Summarized in Total Personnel Services below	City of Morro Bay	General Project
4310	Part-Time Pay			
4910	Employer Paid Benefits			
4911	Pension Normal Cost			
4999	Labor Costs Applied			
Total Personnel Services		\$25,252.67	City of Morro Bay	General Project
5114	Laboratory Testing Supplies	Summarized in Total Supplies below	Various	General Project
5115	Water Distribution System Supplies			
5116	Wastewater Collection System Supplies			
5199	Miscellaneous Operating Supplies			
Total Supplies		\$80,446.43	Various	General Project
6101	Legal Services – General	\$25,904.36	Aleshire & Wynder	General Project
6103	Financial Audits	-	-	General Project
6107	Advertising	-	-	-
5307	Blueprint/Copy Charges	-	-	-
6220	Postage (Included in 6710)	\$232.77	-	-
6301	Electricity	\$30,646.46	PG&E	Water Reclamation Facility and Conveyance Facilities
6303	Water	\$504.00	City of Morro Bay	Water Reclamation Facility and Conveyance Facilities
6510	Meetings & Conferences	-	-	-
6513	Meals & Lodging	-	-	-
6514	Travel Expense	\$39.00	Mechanics Bank	General Project
6640	Maintenance Contracts	-	-	-
6710	Notices & Publications	-	-	-
Total Services		\$57,326.59		
6104	Engineering Services	\$60,810.39	GSI Water Solutions	Recycled Water Facilities
6105	Consultation Services	\$168,565.16	Bartle Wells, Ferguson Group, Cogstone, KMA, Heritage Tree	General Project
6152	Outside Lab Testing	\$13,232.00	BC Laboratories	General Project
6161	Licenses & Permits	\$2,962.50	Mechanics Bank, SLO APCD	General Project
6195	Rate Study	-	-	-
6196	Program Management & DB Procurement	\$760,646.84	Carollo Engineers and Subconsultants ⁽²⁾	General Project
6197	Grant Support	-	-	-
6198	Government Relations	\$85.18	Ferguson Group	General Project
6640	Maintenance Contracts	-	-	-
7101	Land Acquisition	-	-	-
Total Project Soft Costs		\$1,006,302.07		
6106	Contractual Services	\$5,502,051.33	Anvil Builders	Conveyance Facilities
7103	Design/Build-On-Site Improvement Design Phase	-	-	-
7104	Design-Lift Station/Force Main	\$27,099.70	Water Works Engineers	Conveyance Facilities
7105	Planning & Permitting	\$50,538.24	Far Western	Conveyance Facilities
7106	Design-Injection Wells & Recycled Water Pipeline	-	-	-
7107	Design/Build-On-Site Improvement Build Phase	\$7,858,536.38	FBV Overland	Water Reclamation Facility
7108	Injection Well Construction	-	-	-
7109	Lift Station/FM Construction Phase	-	-	-
7110	Pilot Well Construction	-	-	-
Total Construction Costs		\$13,438,225.65		
Total Quarterly Expenditures		\$14,607,553.41		

Notes:

(1) Budget codes correspond to the City’s adopted budget for current fiscal year and paid invoices correspond with the City’s budget performance report for those codes. Opportunities to reallocate invoice codes or consolidate codes will be considered in future quarters.

(2) Carollo Engineers’ active subconsultants include the following: CM Solutions/Quest (Conveyance Facilities schedule review), Earth Systems (Conveyance Facilities materials testing and special inspection), Filippin Engineering (Conveyance Facilities construction inspection), Guida (surveying), JFR Consulting (CEQA support), Katz & Associates (public outreach), KMA (biological resources services), Underwater Resources, Inc. (outfall analysis), Mimiaga Engineering Group (WRF Construction Management), Penny Carlo Engineering (industrial users permitting) and Yeh and Associates (geotechnical engineer).

(3) Total quarterly expenditures shown only include invoices paid by the City in this quarter and are derived from a cash basis of accounting using the Accounts Payable reports provided by the City approximately one week after the end of the quarter. Total quarterly expenditures shown may differ from City fiscal year-end budget performance reports that are based on a modified accrual basis of accounting, which reallocates current quarter expenditures for services rendered in prior fiscal year back to June 30, 2021.

Table 7 Quarterly Expenditures by Project Component

Project Component	Cash Basis Expenditures (Q1 FY 21/22)
Water Reclamation Facility	\$7,858,536
Conveyance Facilities	\$5,579,689
Recycled Water Facilities	\$60,810
General Project	\$1,108,517
Total	\$14,607,553

3.3 Project Cash Flow

Figure 1 presents the projected and actual expenditures for the Project through September 2021 compared to the Fiscal Year 2021/2022 budget developed at the end of Q4 Fiscal Year 2020/2021. The line graph shows the cumulative values for the Project and the bars show the discrete monthly values. Actual and budgeted expenditures from 2013 to the end of Fiscal Year 2018/2019 have been combined to improve readability. The cumulative actual and cumulative forecasted expenditures show anticipated project costs over the project duration. The milestone markers correspond to the final completion deadline of the WRF and Conveyance components of the project by February 2023, which coincides with the City being in compliance with the Time Schedule Order (TSO) issued by the Regional Water Quality Control Board (RWQCB) in June 2018.

A breakdown of the current Q1 Fiscal Year 2021/2022 budget projection by fiscal year compared with total project expenditures to date is included in Table 8.

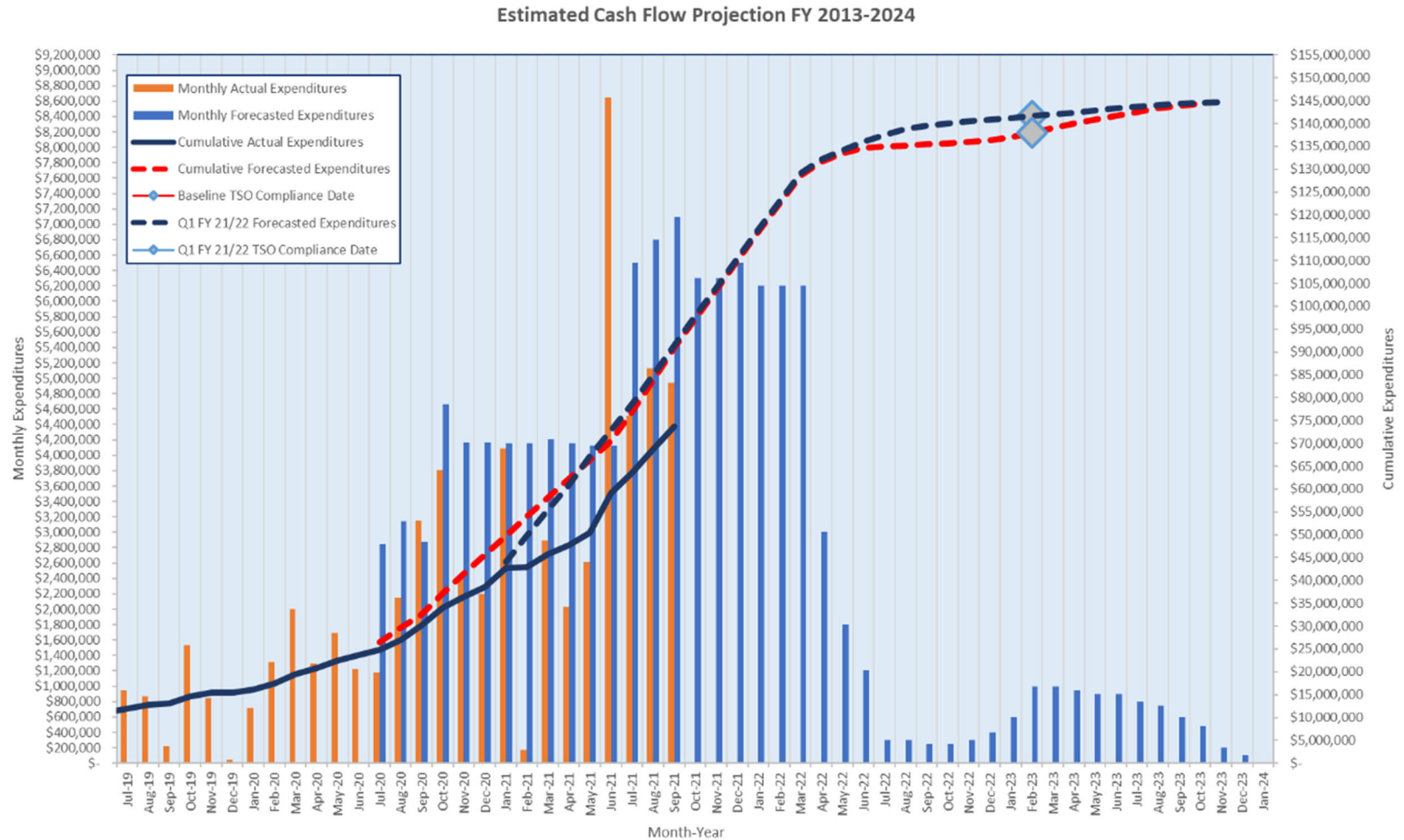


Figure 1 Project Cash Flow Projections and Actual Expenditures

Table 8 WRF Project Expenditures and City Fiscal Year Budgets

Project Component	Total Project Expenditures to Date as of FY 21/22 Q1 ⁽¹⁾	FY 21/22 Budget ^{(2) (8)}	FY 22/23 Budget ⁽²⁾	FY 23/24 Budget ⁽²⁾	Total Project Budget as of FY 21/22 ⁽²⁾
WRF	\$39,868,487	\$33,609,031	\$700,000	\$-	\$73,677,796 ⁽³⁾
Conveyance Facilities	\$13,244,368	\$22,289,569	\$-	\$-	\$38,802,964 ⁽⁴⁾
Recycled Water Facilities	\$549,967	\$2,025,000	\$3,000,000	\$3,000,000	\$8,280,570 ⁽⁵⁾
General Project	\$16,354,157	\$7,748,516	\$1,181,402	\$283,750	\$23,913,546 ⁽⁶⁾
Subtotal	\$70,016,979	\$65,672,116	\$4,881,402	\$3,283,750	\$144,674,877
Contingency	\$-	\$-	Note ⁽⁷⁾	Note ⁽⁷⁾	Note ⁽⁷⁾
Total	\$70,016,979	\$65,672,116	\$4,881,902	\$3,283,750	\$144,674,877

Notes:

- (1) This table reflects activity through the end of the quarter using the quarterly expenditures by project component allocations shown in Table 6.
- (2) This quarterly report Total Project Budget projection reflects the new FY 21/22 WRF Project budget as adopted by City Council in June 2021 as well as future fiscal year City budget projections.
- (3) Breakdown of the Water Reclamation Facility budget by codes from the adopted FY21/22 budget: 7103 (Design/Build WRF Onsite Imprv) = \$59,686,921 and 7107 (Design/Build – On-site Imprv Build Phase) = \$13,990,875. Budget reallocation from another code will be needed during FY 21/22.
- (4) Breakdown of the Conveyance Facilities budget by codes from the adopted FY21/22 budget codes: 7104 (Design-Lift Station/Force Main) = \$2,396,412 and 7109 (Liftstation Pipeline Construction) = \$36,406,552.
- (5) Breakdown of the Recycled Water Facilities budget by codes from adopted FY21/22 budget: 7106 (Design-Inj Wells & Recycled Water Pipeline) = \$1,695,570; 7108 (Injection Well Construction) = \$6,285,000 and 7110 (Pilot Well Construction) = \$300,000.
- (6) Breakdown of the General Project budget includes the remaining codes from the adopted FY21/22 budget not specified in (4), (5), or (6) above. Starting in Q4 FY 20/21, General Project includes construction management of the Water Reclamation Facility and the Conveyance Facilities as part of code 6196 (Prog Mgmt & DB Procure).
- (7) Beginning Q4 FY 20/21 the contingency budget is not broken out within the latest adopted City budget but is accounted for in each project component.
- (8) FY 21/22 Budget amounts exclude carryforward from FY 2021.

3.4 Project Cost Summary

Table 9 summarizes the cost-to-date and contracted amounts for each of the components of the Project. This table also provides the current cost estimate for each project. Detailed information on the individual components of the Project is provided in Section 7 of this Report.

Table 9 WRF Project Cost Summary (through September 2021)

Project Component	FY 21/22 Q1 Actual Expenditures to Date	Contracted Amount to Date	Contracted Amount Expended to Date (%)	Anticipated Total Project Cost ⁽²⁾	Anticipated Total Project Cost Expended to Date (%)
WRF	\$44,942,556	\$76,697,995	58.6	\$75,002,854	59.9
Conveyance Facilities	\$13,424,623	\$33,707,986	39.8	\$36,914,311	36.4
Recycled Water Facilities	\$653,403	\$933,650	70.0	\$7,168,000	9.1
General Project	\$10,996,396 ⁽¹⁾	\$12,618,208 ⁽¹⁾	87.1 ⁽³⁾	\$25,589,712	43.0
Total	\$70,016,979	\$123,957,839	56.5	\$144,674,877	48.4

Notes:

- (1) General Project actual expenditures to date include prior contracts from previous program consultants that are no longer active. General Project contracted amount to date shows active contracts.
- (2) Estimate at Completion with contingencies included in each project component.
- (3) General Project contracted amount expended to date as a percent assumes that actual expenditures to date of active contracts are accrued after the baseline Q2 FY 20/21 amount of \$8,115,000.

3.5 Detailed Project Costs

Tables 10 through 13 present the detailed costs to date for active contracts for each element of the Project.

Table 10 General Project Contracts Cost Summary (through September 2021)

Consultant / Contractor	Actual Expenditures to Date ⁽¹⁾	Total Contracted Cost	Contract Expended to Date (%)
Bartle Wells Associates	\$45,100	\$64,000	70.5
Carollo Engineers, Inc. ⁽²⁾	\$5,738,681	\$11,808,401	48.6
Cogstone	\$247,417	\$264,918	93.4
Far Western	\$336,100	\$397,079	84.6
JSP Automation	\$43,450	\$63,500	68.4
Kevin Merk & Associates	\$14,155	\$71,310	19.8
Total	\$6,424,903	\$12,669,208	50.7

Notes:

(1) Actual expenditures to date as indicated on City budget performance report and total contracted cost only includes contracts that are currently active.

(2) Includes all Carollo subcontractors under Program Management Contract.

Table 11 WRF Contract Cost Summary (through September 2021)

Consultant / Contractor	Actual Expenditures to Date	Total Contracted Cost ⁽¹⁾	Contract Expended to Date (%)
Overland Contracting	\$39,868,487	\$76,697,995	52.0
Total	\$39,868,487	\$76,697,995	52.0

Notes:

(1) Total Contracted Cost includes final value for Amendment No. 1 through No. 6 of \$1,636,060, \$63,937, \$5,992,218, \$835,097, \$(195,946), and \$1,132,117 respectively and the original contract value of \$67,234,512.

Table 12 Conveyance Facilities Contracts Cost Summary (through September 2021)

Consultant / Contractor	Actual Expenditures to Date	Total Contracted Cost	Contract Expended to Date (%)
Water Works Engineers	\$2,058,935	\$2,214,311	93.0
Anvil Builders	\$11,185,433	\$31,493,675	35.5
Total	\$13,244,368	\$33,707,986	39.3

Table 13 Recycled Water Facilities Contracts Cost Summary (through September 2021)

Consultant / Contractor	Actual Expenditures to Date	Total Contracted Cost	Contract Expended to Date (%)
GSI	\$549,967	\$933,650	58.9
Total	\$549,967	\$933,650	58.9

3.6 Change Orders

This section presents change orders executed for the WRF and Conveyance Facilities construction activities.

3.6.1 WRF Project Change Orders

The following Amendments have been approved by City Council and have been incorporated into the WRF design-build team's contract, resulting in revisions of the Guaranteed Maximum Price (GMP). Tables 14 through 19 lists the change orders associated with each Amendment.

- Amendment No. 1 – May 2019 (GMP increased by \$1,636,060)
- Amendment No. 2 – March 2020 (GMP increased by \$63,937)
- Amendment No. 3 – May 2020 (GMP increased by \$5,992,218)
- Amendment No. 4 – November 2020 (GMP increased by \$835,097)
- Amendment No. 5 – March 2021 (GMP reduced by \$195,946)
- Amendment No. 6 – September 2021 (GMP increased by \$1,132,117)

Table 14 Summary of Approved Change Orders (Amendment No. 1)

Contract	Change Order No.	Description	Value
WRF	01	New sodium hypochlorite feed for plant water	\$78,576
WRF	02	Change architecture of operations building	\$(21,623)
WRF	03	Headworks odor control	\$18,422
WRF	04	Remove canopy and monorail at membrane bioreactor (MBR)	\$(185,434)
WRF	05	Consolidate chemical facilities	\$218,978
WRF	06	Modify chemical piping	\$(15,856)
WRF	07	Remove solids dumpster lid	\$14,543
WRF	08	Add safe equalization tank	\$504,116
WRF	09	Instrumentation and control changes	\$75,266
WRF	10	Revise maintenance building layout and size	\$516,583
WRF	11	Influent piping and metering	\$411,766
WRF	12	Install outdoor-rated positive displacement blowers at BNR facility	\$(58,210)
WRF	13	Remove bypass of coarse screens	\$(37,137)
WRF	14	Safe diversion box additions	\$58,304
WRF	15	Size dewatering as a building in the future	\$30,983
WRF	16	Stairs for the coarse screens and grit basins (total of 4)	\$52,870
WRF	17	Indirect potable reuse (IPR) product water tank bypass	\$(26,087)
Total			\$1,636,060

Table 15 Summary of Approved Change Orders (Amendment No. 2)

Contract	Change Order No.	Description	Value
WRF	65	Davis-Bacon wage increases	\$63,937
Total			\$63,937

Table 16 Summary of Approved Change Orders (Amendment No. 3)

Contract	Change Order No.	Description	Value
WRF	16	Modify outfall pump station	\$367,632
WRF	19	Reduce size of the product water tank	\$(129,681)
WRF	32	Sulfuric acid system	\$315,652
WRF	37	PLC/SCADA software uniformity (MBR, RO, and headworks only)	\$201,577
WRF	39	NTP delay	\$1,220,532
WRF	40	Headworks valve automation	\$249,946
WRF	41	Perimeter barbed wire fence	\$79,935
WRF	42	UV/AOP system modifications	\$(33,481)
WRF	44	Tank access improvements	\$210,327
WRF	45	Maintenance ceiling revisions and automated roll-up door	\$21,009
WRF	46	Curbed washdown areas	\$76,250
WRF	47	Changes to furnishings and residential equipment	\$85,194
WRF	50	Revisions to water/sewer supply storage sheds	\$13,142
WRF	52	Analyzer relocation and enclosures	\$76,555
WRF	55	Notice of dispute – PG&E temporary power	\$13,163
WRF	56	Impacts of water quality changes	\$282,420
WRF	57	Soil lateral earth pressure	\$116,329
WRF	58	Permanent exclusion fencing	\$855,991
WRF	59	Increased escalation costs	\$1,232,677
WRF	61	Potential change order (PCO) design impacts	\$158,172
WRF	62	Conduit alternative design	\$(268,400)
WRF	64	Reduce performance period	\$(35,450)
WRF	66	Caltrans intersection improvements	\$(21,893)
WRF	67	BNR system modifications	\$742,405
WRF	68	Safe equalization settle tank drain piping	\$62,215
WRF	69	Third party inspection and testing	\$100,000
Total			\$5,992,218

Table 17 Summary of Approved Change Orders (Amendment No. 4)

Contract	Change Order No.	Description	Value
WRF	30	Match sludge blowers to MBR scour blowers	\$17,426
WRF	71	California department of fish and wildlife (CDFW) site access restrictions	\$254,443
WRF	72	Owner trailer utility hook ups	\$19,593
WRF	73	Man gates in perimeter fence	\$27,031
WRF	74	Parking canopy electrical receptacles	\$42,346
WRF	75	Security window at admin building	\$11,079
WRF	76	Additional sodium bisulfite pump	\$58,243
WRF	78	Changed condition - soil slip	\$280,013
WRF	79	Modify water and collection system supply shed	\$10,847
WRF	82	SCADA uniformity	\$108,887
WRF	86	Water shut off valve in Theresa Road	\$5,189
Total			\$835,097

Table 18 Summary of Approved Change Orders (Amendment No. 5)

Contract	Change Order No.	Description	Value
WRF	84	Alternate Red Legged Frog barrier (Ref. PCO 58)	\$(468,768)
WRF	87	Modify alternate conduit design scope (Ref. PCO 62).	\$272,822
Total			\$(195,946)

Table 19 Summary of Approved Change Orders (Amendment No. 6)

Contract	Change Order No.	Description	Value
WRF	77	Covid-19 impacts	\$125,000
WRF	88	Dead-front control panels	\$37,774
WRF	90	24 volts direct current (VDC) digital output circuits	\$25,689
WRF	91	Equipment color (Tnemec 32 light gray)	\$12,500
WRF	92	West cut-slope soil slip reactivation (2021)	\$825,300
WRF	93	NEMA 4x electrical enclosures	\$40,000
WRF	94	Security system revisions	\$25,659
WRF	95	January 2021 storm event (1-26 thru 1-29)	\$40,195
Total			\$1,132,117

3.7 Reimbursement from Funding Agencies

In 2017, the City was awarded a \$10.3 million planning loan from the Clean Water State Revolving Fund (CWSRF) program. As of Q1 FY 21/22, the City has submitted three disbursement requests for the planning loan resulting in a total disbursement to the City of \$7.95 million, with an additional \$1.15 million of expenses that is eligible but withheld by the State for final disbursement release. Therefore approximately \$1.20 million remains. City staff and the

Program Management Team are currently preparing a fourth disbursement request to the State that is anticipated to use most of the remaining amount and is expected to be sent in November 2021.

In February 2020, the City executed a \$61.7 million loan with the Environmental Protection Agency's (EPA's) Water Infrastructure and Innovation Act (WIFIA) program. To date, a total of 15 WIFIA reimbursement requests have been made, totaling \$35.73 million in reimbursements.

In June 2021, the City executed a \$66.6 million construction loan with the CWSRF program. To date, the City has submitted one reimbursement request for the construction loan in the amount of \$11.19 million and is awaiting approval by CWSRF.

A summary of these requests is presented in Table 20.

Table 20 Summary of Reimbursement Requests

Agency	Description	No.	Date Submitted	Requested Amount	Approved Amount	Received?
SWRCB	CWSRF Planning Loan	01	Dec 2018	\$289,595	\$217,441	Yes
SWRCB	CWSRF Planning Loan	02	Nov 2019	\$6,431,295	\$5,312,748	Yes
SWRCB	CWSRF Planning Loan	03	Oct 2020 ⁽¹⁾	\$4,783,797	\$2,415,669	Yes
SWRCB	CWSRF Construction Loan	01	Sep 2021	\$11,185,434	TBD	No
EPA	WIFIA Loan	01	May 2020	\$1,100,944	\$1,100,944	Yes
EPA	WIFIA Loan	02	Jun 2020	\$61,014	\$50,486	Yes
EPA	WIFIA Loan	03	Jul 2020	\$3,489,409	\$3,489,409	Yes
EPA	WIFIA Loan	04	Jul 2020	\$2,461,121	\$2,461,121	Yes
EPA	WIFIA Loan	05	Aug 2020	\$142,863	\$142,863	Yes
EPA	WIFIA Loan	06	Oct 2020	\$1,635,106	\$1,635,106	Yes
EPA	WIFIA Loan	07	Dec 2020	\$3,008,572	\$3,008,572	Yes
EPA	WIFIA Loan	08	Dec 2020	\$3,671,499	\$3,671,499	Yes
EPA	WIFIA Loan	09	Jan 2021	\$5,553,851	\$5,553,851	Yes
EPA	WIFIA Loan	10	Mar 2021	\$2,440,399	\$2,440,399	Yes
EPA	WIFIA Loan	11	Apr 2021	\$1,621,783	\$1,621,783	Yes
EPA	WIFIA Loan	12	May 2021	\$2,988,342	\$2,988,342	Yes
EPA	WIFIA Loan	13	Jun 2021	\$3,544,987	\$3,544,987	Yes
EPA	WIFIA Loan	14	Jul 2021	\$2,692,977	\$2,692,977	Yes
EPA	WIFIA Loan	15	Sep 2021	\$1,328,552	\$1,328,552	Yes
Total				\$58,431,540	\$43,676,749	

Notes:

(1) Reimbursement No. 3 for the CWSRF Planning Loan was originally submitted in December 2019 and was resubmitted in October 2020.

Section 4

PROJECT SCHEDULE

A summary of the Project schedule is presented in Figure 2. Updates to the individual schedules for each Project component are developed by or provided to the Program Management Team on a regular basis. The light blue bars for each major task represent the planned progress based on the baseline schedule. The dark blue bars represent the current actual progress through September 2021. For each major line item, the schedule performance index (SPI) has been provided as well as an overall SPI for the entire Project. The SPI is a ratio of the planned percent complete versus the current actual percent complete. A SPI of greater than 1.00 indicates that the Project is on or ahead of the most current schedule and a SPI of less than 1.00 indicates the Project is running behind the most current planned schedule.

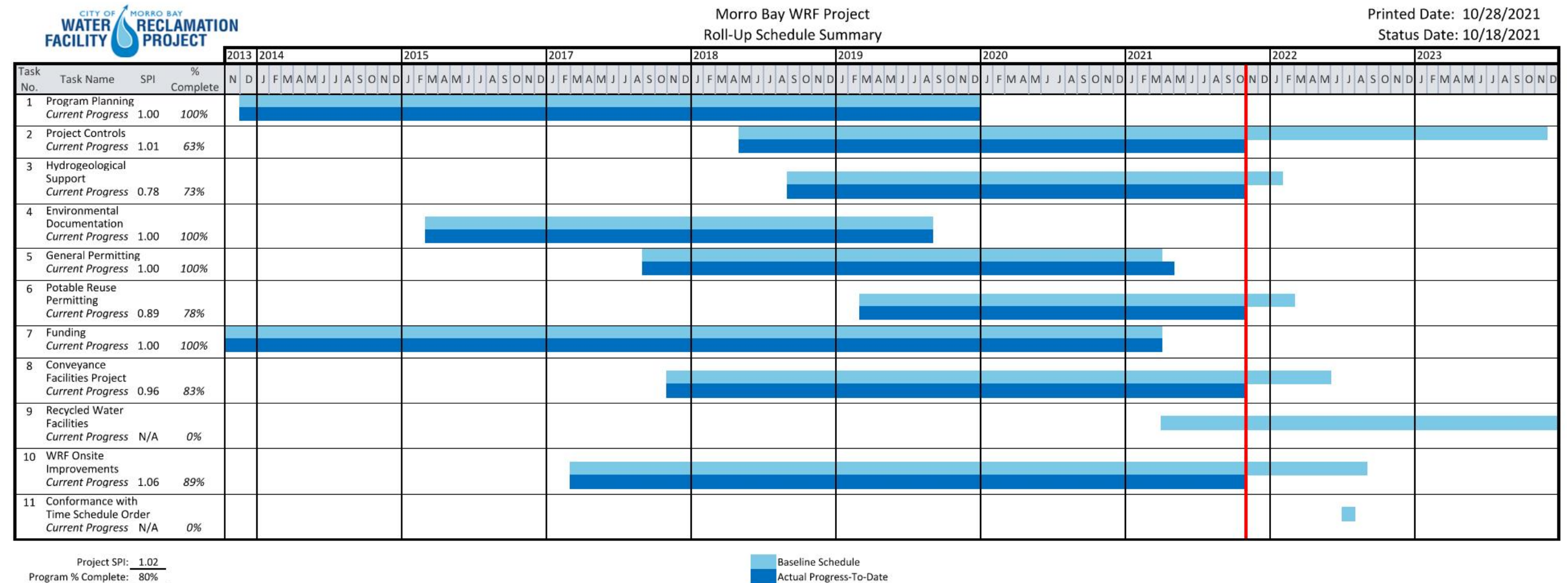


Figure 2 Project Summary Schedule

4.1 Project Milestones

In June 2018, the City received a TSO from the RWQCB. The TSO requires the City to comply with a time schedule that will, within five years of adoption, allow the City to achieve full compliance with biochemical oxygen demand (BOD) and total suspended solids (TSS) final effluent limitations established in Order No. R3-2017-0050. In addition to the final compliance date, a number of intermediate milestones are provided in Table 3 (Compliance Schedule) of the TSO. Presented in Table 21 are the milestones in the TSO.

Table 21 Time Schedule Order Milestone Summary

Required Actions	Compliance Due Date	Planned Compliance Date	Actual Compliance Date
Release of Public Draft EIR	March 30, 2018	-	March 30, 2018
Release of Updated Rate Study	June 30, 2018	-	July 05, 2018
Proposition 218 Hearing	August 30, 2018	-	September 11, 2018
Certification of Final EIR	June 30, 2018	-	August 14, 2018
Award of Contract for WRF	September 30, 2018	-	October 23, 2018
Develop, Implement, and Submit Pollution Prevention Plan (PPP) for BOD and TSS	December 01, 2018	TBD ⁽¹⁾	-
Award of Contract for Construction of Conveyance Facilities	November 30, 2019	-	November 10, 2020
Completion of WRF Improvements with Completion Report	December 30, 2022	July 05, 2022	-
Full TSO compliance with final effluent limitations	February 28, 2023	July 05, 2022	-

Notes:

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

Table 22 lists an expanded milestone schedule. It has also been developed for outstanding Project activities.

Table 22 Expanded Milestone Schedule

Milestone	Baseline Schedule due Date	Planned Completion Date
<u>General Project</u>		
Compliance with the TSO ⁽¹⁾	November 11, 2021	July 05, 2022
<u>Water Reclamation Facility</u>		
Begin Construction	August 08, 2019	March 20, 2020 (Actual)
Deliver 90 Percent Design	October 24, 2019	March 31, 2020 (Actual)
Substantial Completion	November 11, 2021	July 05, 2022
Final Completion	June 09, 2022	August 30, 2022
<u>Conveyance Facilities</u>		
Deliver 90 Percent Design	October 15, 2019	February 10, 2020 (Actual)
Deliver 100 Percent Design	December 17, 2019	June 15, 2020 (Actual)
Bid Advertisement	February 21, 2020	June 16, 2020 (Actual)
Award Construction Contract	May 08, 2020	November 10, 2020 (Actual)
Substantial Completion	September 17, 2021	March 11, 2022
Final Completion	November 19, 2021	April 25, 2022
<u>Recycled Water Facilities</u>		
Select Preferred Injection Area	May 28, 2019	June 17, 2020 (Actual)
Deliver 30 Percent Design	August 04, 2020	December 22, 2021
Deliver 60 Percent Design	November 10, 2020	March 30, 2022
Deliver 90 Percent Design	February 16, 2021	June 15, 2022
Deliver 100 Percent Design	April 27, 2021	September 14, 2022
Award Construction Contract	July 21, 2021	December 07, 2022
Substantial Completion	April 21, 2022	November 11, 2023
Final Completion	June 21, 2022	December 06, 2023

Notes:

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

Section 5

DESIGN AND PROCUREMENT

5.1 Design Status

No new design contracts for the Project were executed in Q1 Fiscal Year 2021/2022. A summary of the existing design contracts is included in Table 23 below.

Table 23 Design Status (through September 2021)

Project Component	Current Contract Amount	Amount Expended	Percent				Final
			30	60	90	100	
WRF (Design-Build)	\$76,697,995	\$39,868,487	✓	✓	✓	✓	NA
Conveyance Facilities ⁽¹⁾	\$2,214,311	\$2,058,935	✓	✓	✓	✓	✓
Recycled Water Facilities	\$933,650	\$549,967	-	-	-	-	-

Notes:

(1) The Water Works Engineers contract amount included in this table is for both Conveyance Facilities design and Engineering Services During Construction. This contract is excluded from the Project Construction Costs table below.

5.2 Procurement

No design or design-build contract procurements were performed in Q1 FY 2021/2022. Table 24 presents a summary of the procurement activity for the Project.

Table 24 Procurement Status (through September 2021)

Project Component	Circulate Request for Proposals	Proposal Opening Date	Council Award Date	Notice to Proceed Date	Consultant
WRF	January 24, 2018	May 8, 2018	October 23, 2018	November 1, 2018	Overland Contracting (Filanc-Black & Veatch)
Conveyance Facilities	January 31, 2017	March 8, 2017	November 14, 2017	November 15, 2017	Water Works Engineers
Recycled Water Facilities	GSI is currently completing permitting and planning activities. Design Engineer to be Selected in FY 2021/22				

Section 6

CONSTRUCTION STATUS

6.1 Construction Summary

During Q1 Fiscal Year 2021/2022, construction continued for the WRF and the Conveyance Facilities. Table 25 presents a summary of project construction progress and costs through September 30, 2021.

Table 25 Project Construction Costs (through September 2021)

Project Name	Amount Expended	Initial Contract Amount	Current Contract Amount	% Change in Contract Amount
WRF	\$39,868,487	\$67,234,512	\$76,697,995	14.1
Conveyance Facilities	\$13,244,368	\$31,493,675	\$33,707,986	7.0
Recycled Water Facilities	\$-	\$-	\$-	0
Construction Total	\$53,112,855	\$98,728,187	\$110,405,981	11.8

6.2 Upcoming Traffic Control

6.2.1 Planned Impacted Areas

Construction activities for the Conveyance Facilities continued in several work zones:

- Pump Station A near the Existing WWTP on Atascadero Road.
- Pump Station B at the intersection of Quintana and Main Street.
- Pipeline installation along Quintana Road between Main Street and Kennedy Way.
- Pipeline installation along Quintana Road between La Loma and South Bay Boulevard.
- Trenchless installation preparations at Morro Bay Roundabout.
- Site preparation for trenchless installation at Willow Camp Creek on bike path.

6.2.2 Hours of Planned Lane/Road Closures

The City approves traffic control plans for the 21 designated traffic areas that are outlined in the Project plans. Throughout Q1, the necessary traffic control plans were set in place to provide a safe work area for the Contractor as well as provide a safe detour or means of through traffic for Morro Bay commuters. Anvil continues to traffic control measures on Quintana Road between South Bay Boulevard and La Loma. As Anvil progresses along Quintana Road to the roundabout, the traffic control changes based on the location of the trench and pipeline configuration.

The community is encouraged to obtain additional information on current road closures/conditions from the WRF website (www.morrobaywrf.com) or by calling the Project hotline at 877-MORROBAYH2O.

6.3 Construction Safety

The Project safety goal is zero reportable incidents. Every weekly progress meeting includes a brief safety moment between the Program Management Team and both FBV and Anvil to discuss safety topics encountered in the field. There has been a total of one reported incident through September 30, 2021, however this was not a result of construction. The incident occurred on the Conveyance Facilities component of the Project and involved a driver that was not following the traffic control measures set by Anvil, resulting in injuring an Anvil employee.

Section 7

OTHER PROGRAM ACTIVITIES

7.1 Public Outreach

As part of the construction of the Conveyance Facilities component of the Project, the Program Manager has been engaged in a number of public outreach activities. The following activities occurred during Q1:

- Updated the WRF website with regular construction information on homepage and Construction Information page.
- Coordinated with contractor for distribution of bilingual doorhangers on immediately impacted residences and businesses in several work areas from Main Street to South Bay Boulevard.
- Continued to build stakeholder database email list for regular email correspondence.
- Developed bi-weekly e-blasts to highlight construction schedule look-ahead information and promote virtual community outreach meetings.
- Prepared for and conducted three monthly virtual community outreach meetings via Zoom.
- Responded to regular community inquiries from project phone line and email address, and coordinated with team members when necessary.
- Conducted multiple rounds of business visits to communicate about construction in specific areas.
- Worked with construction team on traffic control configuration planning, and traffic control and circulation concerns from the community.

Additional near-term public outreach activities include:

- Developing bi-weekly e-blasts and as-needed construction notices to convey construction look-ahead information to stakeholders and the public.
- Obtaining media coverage about milestone construction activities.
- Working with contractor to distribute doorhangers to properties with 24-hour and seven-day lead times.
- Visiting businesses before work in new areas.
- Responding to inquiries received from community members.

7.2 Permitting Activities

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

- Regional Water Quality Control Board:
 - In order to obtain a National Pollution Discharge Elimination System (NPDES), the City must submit a Report of Waste Discharge (ROWD) to the RWQCB. The Program Manager submitted the Draft ROWD to the RWQCB in March, which is currently under review.

- Division of Drinking Water:
 - The Title 22 Engineering Report is required by Division of Drinking Water (DDW) before the City can receive a potable reuse permit. The Program Manager delivered an initial Draft of the Title 22 Engineering Report to the City for review in June 2020. The revised draft, including comments from City staff, was submitted to DDW in July 2020. During Q3 Fiscal Year 2020/2021, the City and Program Manager have received comments from DDW and has had several meetings to review their comments. The Program Management Team met with DDW during Q1 FY 21/22 to discuss the various treatment equipment processes proposed to be installed at the WRF site.
 - The City is working with DDW to obtain a variance from their typical pipeline separation requirements due to the width of the trench for the Conveyance Facilities pipelines and the limited ROW for much of the alignment. The City has been coordinating with DDW on this issue since early 2019 and submitted a formal application to DDW in August 2020. Since that time, the City has had a meeting to review the information provided and has provided supplemental information to aid DDW's review. As of March 2021, The City has addressed the majority of DDW's comments and is expected to complete their response to DDW in October/November 2021.
- Caltrans:
 - The City obtained the encroachment permit from Caltrans for construction of the Conveyance Facilities pipelines in August 2020. In June the Program Manager approached Caltrans to revise their encroachment permit for the Conveyance Facilities project to extend the permit expiration date and to revise the design at the Atascadero Road and Highway 1 on-ramp. There was no activity regarding Caltrans Encroachment Permits in Q1.
- California Department of Fish and Wildlife:
 - The City must have a Stream Bed Alteration Agreement (SAA) (as required) from the CDFW before work can begin along certain segments on the bike path for the Conveyance Facilities component of the Project. The City submitted the revised notification in January 2020 and received notification from CDFW on May 4 that their SAA had been approved and they are cleared for construction.
- State Historic Preservation Office:
 - The PA negotiated with the SHPO requires that a mitigation and monitoring plan be developed for each element of the project (i.e., WRF, pipelines, and injection wells). The City submitted the mitigation and monitoring plan to EPA for distribution to SHPO in October 2020. The City has received notification from the EPA regarding SHPO's response on March 15, 2021. The response stated that the City may proceed with construction by implementing the appropriate cultural resources monitoring and mitigation measures for areas along Main St., Quintana road and both lift stations. Far Western has performed the archeological clearance testing for the LS-2 alignment and the pilot injection well in late May 2021 and found the findings largely negative. Far Western completed their Phase 2 Monitoring and Mitigation plan and transmitted to the EPA for transmittal to SHPO on September 23, 2021. City staff and the Program Management Team are expecting to hear back from SHPO by October 23, 2021.

7.3 Funding Status

- City staff and the Program Management Team continue to support the WIFIA and SRF funding programs through program reporting, invoice documentation tracking and related coordination with consultants, preparation of disbursement request packages, permitting support to satisfy funding agency requirements, and coordination with various funding agency staff.
- During Q1 of FY 21/22, the Program Management Team coordinated with CWSRF and FBV to prepare for the fourth planning loan disbursement request to the State that is expected to be sent in November 2021. The City and Program team will continue to utilize the planning loan as much as possible to cover design and planning costs.
- During Q1 of FY 21/22, the Program Management Team coordinated with CWSRF and Anvil Builders to prepare the first construction loan disbursement request to the State that was sent on September 30, 2021 and currently under review. The City and Program Management Team also coordinated with CWSRF for execution of a second budget approval letter which authorizes disbursement of funding for Conveyance construction expenses. The City anticipates receiving this letter in October 2021. The Program Management Team also coordinated with CWSRF and FBV to prepare for future WRF construction loan disbursement requests.
- The United States Department of the Interior Bureau of Reclamation released its WaterSmart Title XVI WIIN Notice of Funding Opportunity in mid-March 2021. The City prepared an application and submitted to USBR on April 22, 2021 and received notification on July 30, 2021 that they were not selected to receive the grant. The City and Program Management Team met with USBR funding staff on September 1, 2021 to debrief the grant application and scoring metrics.

7.4 City Operations Activity

Significant City Operations activities are not anticipated until start-up of the WRF begins in early 2022.

Section 8

PROJECT DETAILS

8.1 Water Reclamation Facility

8.1.1 Design/Build

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

8.1.2 Project Scope

The scope of this element of the Project includes a preliminary, secondary, and advanced treatment facilities. The secondary treatment processes will consist of an MBR and have the ability to exceed the anticipated discharge requirements for the City's new NPDES permit. The advanced treatment facilities include RO and UV-AOP. Purified water from the advanced treatment facilities will be injected into the Lower Morro Groundwater Basin.

8.1.3 Current Progress

The design-build team has continued to progress the construction of the WRF and is on track to reach substantial completion in July 2022. On March 20, 2020, the City issued the construction NTP to the DB team for the WRF. For Q1 of FY 2021-2022, the following activities were completed between July 1, 2021 and September 30, 2021:

General and Administrative

- Continued use and maintenance of SWPPP Best Management Practices (BMP).
- Continued adherence to pertinent Mitigation Measures stipulations.
- Continued compliance with Davis-Bacon Act requirements.
- Responses to numerous public information requests.
- Continued management of equipment submittals/procurements, subcontractor bidding, etc.:
 - Submittal processing is on-going - 450 items submitted and/or approved to date.
 - DB Team has processed 242 requests for information (RFIs) and 30 Design Clarifications to date.
- Continued preparation and submittal of critical path method (CPM) schedule updates monthly:
 - Contractor's September 2021 CPM Schedule Update indicates 12 days late in achieving both Substantial Completion and Final Acceptance, based on current contractual completion dates.

Sitework

- Completion of major earthwork operations including filling, compacting, and rough grading the entire site (only exception is below noted and ongoing landslide remediation work).
- Advancement of remediation of the second solid slip: On January 28, 2021, the previous cut-slope landslide area reactivated during a major storm. The DB Team has performed extensive site investigation, developed remediation drawings, and submitted total costs in the amount of \$825,300 to address the known conditions. The remediation scope of work includes:
 - Removal and stockpiling of approximately 17,000 cy of loose material to the mapped slip plane.
 - Benching into competent native subgrade material.
 - Installing a subdrain system at each bench with drainage to surface.
 - Placement and compaction of 17,000+ cy of engineered fill.
 - Surface contours to enhance precipitation run-off.
 - Concrete v-ditches to divert run-off from the areas.
 - The installation of two inclinometer for future monitoring by the City (monitoring not included).
 - Work will be completed in October 2021. Future deliverables shall include As-Built IFC Drawings of all site work revisions and a P.E. stamped Geotech Report amendment indicating approval of work and updated slope stability analysis.
- Near completion of all major yard piping installations.
- Continued work on minor service piping, equipment drains, etc.
- Commencement pressure testing of installed underground piping, including: 20" to 78" POW.
- Completion of the following site work installations by electrical subcontractor:
 - Installing street light stanchions, fixtures, and precast foundations along plant access roads.
 - Continued PG&E conduit run along the WRF Access Road to the PMI-9 Vault on Teresa Road.

Headworks

- Continued installation of process piping, valves, appurtenances, handrails, etc., associated with the Course Screens and Grit Tank equipment skids (by Zima/Kusters) at the Headworks upper slab.
- Completed concrete placement and leak testing for SAFE Diversion Box (high flow diversion box).
- Completed setting Fine Screens (by Enviro-Care) and installing adjacent process piping, valves, etc.
- Taking delivery and setting in place the Odor Control Bio-Filter System (by ESC Environmental).

BNR/MBR Treatment

- Completed concrete placements for MBR cassette tank walls, and currently working on leak testing.
- Installing MBR equipment (by Suez) including pumps, blowers, control panels, and process piping.
- Installing WAS/SCUM wet well tank, pumps, process piping, valves, etc.
- Installing Recycled Water Pump Station skid mounted system and connecting process piping.

RO/UV-AOP

- Completed RO/UV Building erection including exterior walls, roof, Electrical Room interior walls, etc.
- Electrical subcontractor installing conduits, boxes, panels, etc. in the Electrical Room.
- Continued installing Reverse Osmosis (RO) equipment (By H2O Innovation) including three RO skids, RO flush pump skid and tank, RO CIP pump skid and tank, neutralization tank, etc.
- Completed coating concrete in containment areas for CIP, FLUSH, and neutralization tank(s).

Product Water Facilities

- Continued installing calcite facility equipment including two calcite filter tanks, flush pump and backwash supply tank, and much of the connecting process piping, valves, supports, etc.
- Continued installation of IPR/Outfall Pump Station equipment including pumps, piping, valves, etc.

Residuals/Sludge Processing

- Completed concrete placement for dewatering facility slab-on-grade including all underslab piping and electrical. Also placed concrete containment curbs. Ready for Belt Press equipment delivery.
- Completed concrete placement for wet weather SAFE Filter slab-on-grade, including underslab piping and electrical. Also installed the cloth disk filter equipment (by Aqua-Aerobics) and associated process piping, valves, auxiliary equipment, pumps, etc.

Electrical and Controls

- Completed concrete work for Electrical building, and generator facility, slabs-on-grade.
- Emergency generator has been delivered and set on slab. Installed access stairs and platforms.
- Completed Electrical Building erection including exterior walls, roof, etc.
- Electrical subcontractor installing conduits, boxes, panels, Motor Control Centers (1 & 2), etc.

Chemical Storage and Feed

- Completed chemical facility structural steel columns and roof beams erection. The Chemical Facility canopy roof panels are backordered.
- Continued coating concrete in the various individual Chem Pump and Storage containment areas.

Operations Building

- Building interior work is on-going, including gyp board wall and ceiling installations, interior wall texturing and painting, interior electrical and lighting, heating, ventilation, and air conditioning (HVAC) equipment and ducting, fire protection systems, windows, doors, bathroom tile, etc.
- Building exterior work is essentially completed, including roof, cupolas, louvers, building trim, etc.

Maintenance Building

- Building interior work is on-going, including gyp board wall and ceilings, interior wall texturing and painting, interior electrical and lighting, HVAC, fire protection, windows, doors, roll-up doors, etc.
- Building exterior work is essentially completed, including roof, louvers, building trim, etc.

City Yard Facilities

- Completed all building erections for WRF Parking Canopy and Outdoor Storage Aisles (PEMBs). The Storage Shed wall panels and Vehicle/Equipment Storage Canopy roof panels are backordered.
- Electrical subcontractor installing conduit, switches, fixtures, for canopy lighting and receptacles.

8.1.4 Project Challenges

- West Cut Slope Soil Slip (Re-Activation):
 - The DB Team's proposed landslide remediation work scope and cost has been approved by City Council and is currently being undertaken as noted elsewhere herein. The work is estimated to be completed in October 2021. Item not resolved.
- PG&E Easement Concerns:
 - PG&E previously had determined that existing easement rights on Teresa Road (private road) and the WRF Access Road are ambiguous as to allowing PG&E facilities. The City is currently working to resolve/clarify easement issues. Item not resolved.
- SoCal Gas Easement Concerns:
 - SoCal Gas has advised the City that existing easement rights on Teresa Road (private road) and the WRF Access Road are unacceptable to SoCal Gas. The City is currently working to resolve/clarify easement issues. Item not resolved.
- Equipment Long Term Storage:
 - The DB Team continues to implement project-wide measures to store delivered process and electrical equipment in accordance with operations and maintenance (O&M) manual long-term storage requirements. Item resolved.

- Covid-19 Related Material Shortages and Equipment Delivery Delays:
 - The DB Team has notified the City of current and on-going project cost and schedule impacts caused by the global supply chain disruptions resulting from the Covid-19 pandemic, quarantines, and other related occurrences. The Contractor is currently tracking several minor potential costs impacts from these disruptions, but there is potential for future worsening of the current situation. The City, Program Manager, and DB Team are tracking these actual and potential impacts. This item is not resolved.

Table 26 WRF Performance Measures

Performance Measures	Target	Current
Construction Cost ⁽¹⁾	\$67.2M	\$74.7M
Construction Contingency ⁽²⁾	\$9.1M	\$0.3M

Notes:

(1) The GMP includes costs for both design and construction of the WRF (through Amendment No. 6)

(2) For Q1 of FY 21/22, the total contingency remaining for all components is approximately \$3.5M. Approximately \$0.3M is allocated to the WRF.

Table 27 WRF Construction Summary

Schedule	
Request for Bid / Bid Advertisement	January 24, 2018
Bid Opening Date	May 08, 2018
Contract Award / Council Award Date	October 23, 2018
Notice to Proceed (Design)	November 05, 2018
Notice to Proceed (Construction)	March 20, 2020
Original Final Completion Date	October 1, 2021
Original Duration (Calendar Days)	886
Days Changed by Change Order	15
Actual Final Completion Date (including Calendar Days)	August 31, 2022
Schedule Percent Complete	62.8% (566 days / 901 days)
Budget	
Engineer's Estimate (Construction Cost + 10% Construction Contingency)	\$73,475,845
Award Amount (including Design Cost)	\$67,234,512
Change Order Total	\$9,463,482
Current Contract Value	\$76,697,994
Percent Change	14.0%
Work Completed	
Actual Cost -to-Date	\$39,868,487
Percent Complete (Percent Expended)	48.0%

Construction Oversight Statistics		
	PCOs	COs
Total Received	103	N/A
Total Approved	N/A	66 ⁽¹⁾
Total Pending	7	0
Average Turnaround (calendar days)	N/A	N/A

Acronym List:

PCO – Proposed Change Order; CO – Change Order

(1) 66 PCOs have been approved and are reflected in Amendment No. 1, 2, 3, 4, 5, and 6 to the Design-Build Agreement.

8.2 Conveyance Facilities

8.2.1 Designer

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

8.2.2 Contractor

The City awarded a contract to Anvil for construction of the Conveyance Facilities component of the Project on November 10, 2020. A construction NTP was issued on December 14, 2020 and Anvil began construction in January of 2021.

8.2.3 Project Scope

The Conveyance Facilities include the design of approximately 3.5 miles of pipelines and two (2) lift stations. The pipelines include two raw wastewater force mains, a wet weather/brine discharge force main, and a potable reuse pipeline to the west injection area.

8.2.4 Current Progress

General and Administrative

- Anvil continues to maintain their project field office at 853 Quintana Road (near Roundabout).
- Contractor continues to maintain SWPPP BMPs.
- Contractor continues to adhere to pertinent Mitigation Measures stipulations.
- Contractor/subcontractors continue to comply with Davis-Bacon Act requirements.
- Several requests for public information were responded to during the reporting period.
- Contractor continues equipment submittals and procurement activities.
- Contractor's submission of CPM schedule updates is tardy and past due. Contractor's July thru Sept. CPM Schedule Updates are pending. Contractor has committed to providing past due updates as soon as possible.
 - Contractor and City have completed negotiations and tentatively agreed upon a 40 calendar day extension for the SHPO ground disturbance moratorium from 02/16/2021 to 03/16/2021. Upon approval by City Council, the revised Final Acceptance Date will be 04/03/2022.
 - Based on the Construction Manager's current rough/informal estimate, Substantial Completion may be expected in late Spring 2022, and Final Acceptance in early Summer of 2022.

- A half-day “Partnering Workshop” or “Schedule Recovery Meeting” is planned for 10/21/2021.
- The City continued its public relations/outreach effort including:
 - Monthly virtual meetings with stakeholders and affected business owners.
 - Periodic press releases for general information or for specific planned work.
 - Interactive City website with project information, digital documents library, etc.
 - All public contacts are promptly responded to and logged by the Program Manager.
 - Informational door hangers are placed 7 days, then again 24 hours, in advance of work activities.

Pump Station A

- Contractor struggled to maintain dewatering drawdown for various reasons through July/August.
- Contractor corrected dewatering systems and achieved Geotech approval of structure subgrade.
- Contractor set forms, installed rebar, and placed concrete for the wet well slab-on-grade.

Pump Station B

- Contractor completed installing 24” SS and 8” SS (gravity sewers) and the PS-B Junction Manhole.
- Contractor over-excavated, recompacted, and placed CL2AB subgrade for the Electrical Building.
- Electricians installed underground conduits including Electrical Building underslab conduit/stub-ups.

Pipeline

The contractor is currently working at five different locations within the City for the pipeline installation of the Conveyance facilities. Note: Throughout this report “Joint Trench” refers to FM1 & FM2 (wastewater force mains), BR (brine/outfall line), FO (fiber optic conduit), and in some locations IPR (purified water) in casing. Work was performed at each of the different segments listed below:

- Segment 1 - Atascadero Road (Existing City Wastewater Treatment Plant to Bike Path).
- Segment 3 – Bike Path (Morro Creek Foot Bridge to Main Street).
- Segment 5 – Quintana Road (Main Street to Morro Bay Blvd).
- Segment 6 – Quintana Road (Morro Bay Blvd to La Loma Avenue).
- Segment 7 – Quintana Road (La Loma Avenue to South Bay Blvd).

No trenching or potholing activities occurred this quarter at Segment 2 (Bike Path from Atascadero Road to the Morro Creek Foot Bridge), Segment 4 (Main Street from the Bike Path to Quintana Road), Segment 8 (South Bay Blvd between Quintana Road and the new MB WRF), or Segment 9 (Vistra Property from the Bike Path to existing Lift Station 2). The contractor closed the Bike Path in Segment 2.

The following items were completed along Segment 1:

- Pump Station A is located along this segment; there was no trenching work in street this period.

- Contractor continues to store heavy equipment and materials on City property along Atascadero Road, including HDPE piping and the prefabricated utility bridge for crossing Morro Creek.

The following items were completed along Segment 2:

- Contractor has closed the Bike Path in this segment; there was no trenching activity this period.

The following items were completed along Segment 3:

- Contractor has closed the Bike Path in this segment; there was no trenching activity this period.
- Contractor has installed a temporary by-pass above-grade 12" Waterline over this entire segment.
- Contractor has installed sheet pile shoring for both the jacking and receiving pits for the planned trenchless construction crossing the Willow Camp Creek Jurisdictional Wetlands. Contractor will install dewatering systems and mobilize their Jack & Bore subcontractor in late October 2021.
- Contractor continues using assigned Staging Area on Vistra property (using Bike Path for access).

The following items were completed along Segment 5:

- Completed Joint Trench installation, backfill, paving from Sta 64+28 to near Roundabout. During this period, Contractor completed the Joint Trench from approx Sta. 71 to approx Sta. 94.
- Contractor continued partial road closures in this segment during the reporting period.
- Contractor has moved back to Sta 64+28 and will start trenching north toward Pump Station B.

The following items were completed along Segment 6:

- Contractor has completed the Microtunnel crossing below the Morro Bay Blvd Roundabout.
 - MTBM subcontractor is currently demobilizing and removing equipment from site.
 - MTBM was stopped twice near Sta. 98+50, based on reports of possible obstructions from the MTBM subcontractor. Two separate 23-ft deep recovery shafts were excavated, but no obstruction was found (all excavation activities near the cutting-head were closely monitored by engineers and staff representing both the City and Anvil, all parties agree no obstruction was found). Regardless, MTBM subcontractor intends to claim impacts from 2 months downtime.
- Contractor continued partial road closures in this segment during the reporting period.
- Contractor continues Joint Trench installation, backfill, etc. from Sta. 113 to Sta 122 (approx).
- Contractor maintaining temporary above-grade sewer by-pass pipe along this segment.

The following items were completed along Segment 7:

- Completed all Joint Trench installations, backfill, paving, etc., from Sta 122 to Sta 150 (approx).

- Completed 10-inch Waterline Relocation, backfill, etc. from Sta 121+50 to Sta 144+00 (approx).
- Contractor continued partial road closures in this segment during the reporting period.
- Contractor maintaining temporary above-grade sewer and water by-pass pipes along this segment.

Existing Lift Station 2

- No activities.

Existing Lift Station 3

- Contractor maintaining temporary above-grade sewer by-pass pipe from Lift Station 3.

8.2.5 Upcoming Activities

Anvil is scheduled to complete the following activities during Q1 FY 21/22:

- Preparation and installation of jack and bore installation across Willow Camp Creek on bike path.
- Installation of pipeline along bike path.
- Assisting Far Westerns archaeological monitoring and mitigation at CA-SLO-16 site for the installation of the utility bridge and pipelines between station 27+00 to 37+00.
- Installation of pipelines in Quintana Avenue between La Loma Avenue and South Bay Boulevard.
- Installation of carrier pipes within 60" steel casing beneath roundabout.
- Installation of Pump Station A emergency storage system and wet well.
- Above ground mechanical and electrical at Pump Station A.
- Above ground mechanical and electrical at Pump Station B.

8.2.6 Project Challenges

- SHPO Delay – PCO #1:
 - Contract work by Anvil was suspended by directive from the City between 02/16/2021 and 03/16/2021 due to lack of authorization to proceed from SHPO. The City and Contractor have negotiated a cost and time settlement as noted herein above. This item is not resolved.
- Pump Station A Dewatering Permit – PCO #5:
 - Contractor and City have come to agreement on the added scope and on-going costs to sample and test dewatering discharge as mandated by the SWRCB permit issued to the City. The extra cost will be included in a future CCO This item is not resolved.
- Atascadero Gravity Sewer Pipeline Addition – PCO #6:
 - The City is interested in adding a segment of new gravity sewer on Atascadero Road to the project scope. This proposed work is part of a separate City capital improvements effort and would not be paid for under current project funding. The Contractor is currently preparing a quote for the material costs only. This item is not resolved.

- Reroute Quintana Joint Trench for DDW Clearances - PCO #10:
 - The new Joint Trench between 62+00 and 64+28 needs to be rerouted due to DDW clearance requirements. Revised design drawings were issued to the Contractor. The associated extra costs will be tracked on a Time and Materials basis and will be included in a future CCO. This item is not resolved.
- Archaeological Site CA-SLO-16 Work Revisions – PCO #13:
 - The City has proposed and Caltrans has approved work revisions at CA-SLO-16, including adding embankment fill to raise grade, and installing the new pipelines just below added fill to not disturb CA-SLO-16. A required site investigation by Far Western Archeologist has occurred and the City has received input from associated local tribal groups. The necessary documents were submitted to SHPO on 9/23/21, and the required 30-day SHPO response should be received by 10/23/21. This item is not resolved.
- SLO County APCD Determination – PCO #28:
 - The City has received APCD notice of non-compliance for Pump Station A and Pump Station B emergency standby generators. In particular the 1000 hp generator for Pump Station B is non-compliant at Tier 2, due to changes in regulations occurring after project bidding but prior to APCD issuing the Authority to Construct Permit. The City's current approach is to (1) perform the mandated Health Risk Assessments at both pump stations, and (2) subsequently plan for and implement whatever Best Available Control Technology (BACT) is necessary to achieve the mandated Tier 4 compliance level. This item is not resolved.
- Pending Microtunnel Obstruction Claim – PCO #14:
 - The City has received from Vadnais two pieces of concrete debris that Vadnais staff verbally stated were found in the MTBM recovery shafts. The City has formally requested that Anvil/Vadnais provide in writing the specific date, time, and location where the items were found. During all recovery shaft investigations, excavation activities near the cutting-head were monitored by engineers and staff representing both the City and Anvil, including Geotech Engineers. All witnessing parties have agreed that no obstruction as defined by the Contract documents was found in either recovery shaft. Once Vadnais has gone on record clarifying the concrete debris origin, the City will have the concrete debris cored and strength tested for the record. City, Anvil, and Vadnais have agreed to meet in October. This item is not resolved.

Table 28 Conveyance Facilities Performance Measures

Performance Measures	Target	Current
Construction Cost	\$24.2M	\$31.5M
Construction Contingency ⁽¹⁾	\$2.5M	\$2.7M
Number of Feet of Pipelines Constructed	25,785 lf	14,748 lf
Number of Days of Full Road Closures	N/A	10 Days
Number of Hours of Night Work	N/A	15 Hours

Notes:

(1) For Q1 of FY 21/22, the total contingency remaining for all components is approximately \$3.5M. Approximately \$2.7M is allocated to the Conveyance Facilities.

Table 29 Conveyance Facilities Summary

Schedule				
Request for Bid / Bid Advertisement			June 15, 2020	
Bid Opening Date			August 14, 2020	
Contract Award / Council Award Date			November 10, 2020	
Notice to Proceed for Construction			December 14, 2020	
Original Final Completion Date			February 22,2022	
Original Duration (Calendar Days)			435	
Days Changed by Change Order			0	
Actual Final Completion Date			April 22, 2022	
Schedule Percent Complete			66.7%(290 days /435 days)	
Budget				
Engineer's Estimate (Construction Cost + 10% Construction Contingency)			\$26,657,000	
Award Amount			\$31,493,675	
Change Order Total			\$0	
Current Contract Value			\$31,493,675	
Percent Change			2.14%	
Work Completed				
Actual Cost -to-Date			\$11,185,433	
Percent Complete (Percent Expended)			35.5%	
Length of Pipe Installed (Actual to Date / Planned Total)			14,748 lf / 25,785 lf	
Construction Management Statistics				
	RFIs	Submittals	PCOs	COs
Total Received	96	233	28	1
Total Responded To	74	210	5	0
Total Pending	122	13	23	0

8.3 Recycled Water Facilities

8.3.1 Designer

Procurement activities for the final design of the Recycled Water Facilities have not yet begun. Phase 1 and Phase 2 of the hydrogeological work has been completed by GSI and work on Phase 3 (i.e., pilot injection testing) will be completed in late 2021, early 2022. The Program Manager also anticipates the final injection well preliminary design to begin in spring 2022.

8.3.2 Contractor

This element of the Project is being delivered via a conventional design-bid-build procurement process. The Recycled Water Facilities will begin construction in late 2022/early 2023.

8.3.3 Project Scope

Since the potable reuse pipeline from the WRF to the selected injection site was moved into WWE's scope for design of the Conveyance Facilities, this element of the Project consists primarily of full-scale injection wells at the west injection site. It is anticipated that the scope of work for the final injection well field design will include, but is not limited to, the following:

- Alternatives analysis and preliminary design report
- Injection well design
- Electrical and instrumentation design and integration
- On-site linear infrastructure
- Above and below-ground mechanical piping and supporting infrastructure
- Injection well back-wash facilities and supporting infrastructure
- Facility and infrastructure flood proofing
- Engineer's estimate of potential cost
- Regulatory permitting

8.3.4 Current Progress

GSI has completed Phase 1 and is currently working on Phase 2 of the hydrogeological work, which has culminated in the selection of the west injection area and preliminary siting of the injection wells. In Q1, the following preliminary design items were progressed for the Recycled Water Facilities by the Program Management Team:

- The locations of both the pilot injection and monitoring well sites were finalized to be within the 100-foot permanent easement acquired by the City from Vistra Energy. This differed from the original plan of having the monitoring well located in the temporary construction easement just north of the pilot injection well. The location of the monitoring well was revised to be within the permanent easement to ensure that the well would be in service for its entire useful life rather than required to be destroyed at the end of the temporary construction easement conditional use timeframe.
- The City, Carollo, and GSI continued to make progress toward installing the pilot injection well. The pilot well work is expected to be bid in the coming months.
- Bidding documents for the pilot injection well were completed and contract documents were sent to the City for review.
- ABC Liovin was the selected contractor to install the monitoring well. They are anticipated to begin work at the end of October 2021.
- The City received Notice of Acceptance on August 27, 2021 from the Regional Water Quality Control Board for their Aquifer Storage and Recovery (ASR) Permit, therefore allowing the upcoming pilot injection testing to commence.
- Guida Surveying, inc. performed their first pre-construction survey on July 6 and 9, 2021 to perform topographic surveying, easement delineation, and existing utility locations for the 100-foot easement from Willow Camp Creek to the bike path parallel to Highway 1. Existing utilities identified will need to be physically located prior to installing both the pilot and monitoring wells.

- Several existing utilities were found to be on site as a result of the topographic survey conducted on July 7, 2021. With the revised well sites both within the permanent easement, the Program Management Team plans to have the utilities in the area near both the pilot injection well and the monitoring well sites potholed and surveyed to ensure there will be no utility conflicts during installation.
- Desktop vegetation surveys and exhibit development has been completed and the Program Management Team is expected to coordinate with the project biologist in October to identify vegetation protection and removal requirements for the pilot injection and monitoring construction activities.

8.3.5 Upcoming Activities

The next phase of hydrogeological work is pilot injection testing, which consists of the following elements:

- Design of the pilot injection well (Completed February 2021).
- Clearance of the pilot injection well by SHPO (Completed June 2021).
- Permitting for installation of the pilot injection well through San Luis Obispo County general well drillers permit (Completed August 2021).
- Install pilot injection well monitoring well (October 2021)
- Construction of the pilot injection well (November/December 2021).
- Conducting pilot testing (Anticipated November 2021 to February 2022).

8.3.6 Project Challenges

The west side injection site resides within a 100-foot-wide permanent easement acquired by the City from Vistra Energy. The injection wells and all supporting infrastructure must be within this easement. To ensure that all construction activity and permanent infrastructure is within this easement, the site had an initial topographic survey with the 100-foot-wide easement partially staked in the field to define working limits for the installation of the pilot and monitoring well installation. Additionally, as part of the initial survey effort, an underground utility search was performed, and several utilities were found to be in the area which could potentially be a conflict during installation. The Program Management Team is planning on having a separate underground utility search performed to identify the known utilities in the area and has directed Anvil Builders, inc. to pothole hole and survey the encountered utilities in the area to physically locate any potential conflicts prior to construction. Lastly, the work area for both pilot and monitoring well has extensive vegetation throughout. Prior to any construction in the area, the Program Management Team must identify which vegetation species are to be protected and/or cleared for removal for future activities in the area. The team is working with the project biologist and working to produce a vegetation clearance map in October 2021.

Table 29 and 30 show anticipated construction information for the Recycled Water Facilities component of the WRF Project. Since there has been no construction progress on this component of the project the majority of the rows are not applicable. With the acceptance of the FY 21/22 budget for the WRF project, the Recycled Water Facilities construction cost has been updated to reflect the total estimated construction cost and its respective contingency.

Table 30 Recycled Water Facilities Performance Measures

Performance Measures	Target	Current
Construction Cost	\$5.7M	\$0.0M
Construction Contingency	\$0.5M	\$0.5M

Notes:

(1) For Q1 of FY 21/22, the total contingency remaining for all components is approximately \$3.5M. Approximately \$0.5M is allocated to the Recycled Water Facilities.

Table 31 Recycled Water Facilities Summary

Schedule				
Selection of the Injection Site				N/A
Request for Bid / Bid Advertisement				N/A
Bid Opening Date				N/A
Contract Award / Council Award Date				N/A
Notice to Proceed for Construction				N/A
Original Final Completion Date				N/A
Original Duration (Calendar Days)				N/A
Days Changed by Change Order				0
Actual Final Completion Date				N/A
Schedule Percent Complete				0%
Budget				
Engineer's Estimate (Construction Cost + 10% Construction Contingency)				\$6,307,785
Award Amount				\$0
Change Order Total				\$0
Current Contract Value				\$0
Percent Change				0%
Work Completed				
Actual Cost -to-Date				\$0
Percent Complete (Percent Expended)				0%
Work Completed				
	RFIs	Submittals	PCOs	COs
Total Received	0	0	0	0
Total Responded to	0	0	0	0
Total Pending	0	0	0	0
Average Turnaround (calendar days)	NA	NA	N/A	N/A

A blue-tinted photograph of Morro Rock, a large, craggy rock formation in the ocean, with waves breaking at its base. The text is overlaid on the right side of the image.

Item C2

Morro Bay City Council

Water Reclamation Facility

WRF Quarterly Report – Q1 2022

December 14, 2021

MORRO BAY
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Recommendation

- Receive the WRF Quarterly Update Report for Q1 2022 and provide input.

Quarterly Report Overview – Q1 2022

Summary of WRF Project Status

Budget

- Current project estimate exceeds the baseline budget
 - \$144,674,877 vs. \$125,941,000
- Q1 2022 budget reconciliation total unchanged
- Budget reconciliation Project component allocation adjusted

Summary of WRF Project Status

Schedule

- Overall WRF Project is on schedule
 - TSO Compliance – February 28, 2023
 - Substantial Completion – July 5, 2022 (238 days prior to deadline)

Q1 Budget Revision Summary

Project Component	Baseline (Q4 FY 17/18)	Quarterly Reconciliation (Q3 FY 18/19)	Fiscal Year 19/20 (Q4 FY 18/19)	Quarterly Reconciliation (Q1 FY 19/20)	Quarterly Reconciliation (Q2 FY 19/20)	Quarterly Reconciliation (Q3 FY 19/20)	Fiscal Year 20/21 (Q4 FY 19/20)	Quarterly Reconciliation (Q1 FY 20/21)	Quarterly Reconciliation (Q2 FY 20/21)	Quarterly Reconciliation (Q3 FY 20/21)	Fiscal Year 21/22 (Q4 FY 20/21)	Quarterly Reconciliation (Q1 FY 21/22)
Water Reclamation Facility	\$62,414,000	\$74,059,000	\$72,891,000	\$72,598,000	\$72,231,000	\$71,856,000	\$77,828,000	\$77,082,000	\$77,281,977	\$77,087,023	\$77,687,023	\$74,697,995
Conveyance Facilities	\$21,087,000	\$27,108,000	\$28,864,000	\$28,524,000	\$29,224,000	\$29,989,000	\$29,840,000	\$37,355,000	\$37,482,000	\$37,482,000	\$37,982,000	\$34,214,311
Recycled Water Facilities	\$8,593,000	\$5,366,000	\$5,250,000	\$5,212,000	\$5,353,000	\$5,526,000	\$5,526,000	\$5,740,000	\$5,968,000	\$5,968,000	\$6,668,000	\$6,668,000
General Project	\$24,403,000	\$11,614,000	\$11,801,000	\$11,625,000	\$11,701,000	\$12,964,000	\$13,260,000	\$14,255,000	\$14,445,000	\$14,445,000	\$15,445,000	\$25,589,712
Construction Contingency	\$9,444,000	\$6,450,000	\$7,132,000	\$7,131,000	\$7,364,000	\$10,264,000	\$4,207,000	\$4,250,000	\$3,414,023	\$3,608,977	\$6,892,854	\$3,504,859
Total	\$125,941,000	124,597,000	\$125,938,000	\$125,090,000	\$125,873,000	\$130,599,000	\$130,661,000	\$138,682,000	\$138,591,000	\$138,591,000	\$144,674,877	\$144,674,877

Q1 Budget Revision Summary

Program Component Allocation Revisions

Project Component	Fiscal Year 21/22 (Q4 FY 20/21)	Quarterly Reconciliation (Q1 FY 21/22)
Water Reclamation Facility	\$77,687,023	\$74,697,995
Conveyance Facilities	\$37,982,000	\$34,214,311
Recycled Water Facilities	\$6,668,000	\$6,668,000
General Project	\$15,445,000	\$25,589,712
Construction Contingency	\$6,892,854	\$3,504,859
Total	\$144,674,877	\$144,674,877

Adjusted to reflect current (Q1) estimate at completion and General Project reconciliation

Adjusted to reflect current (Q1) estimate at completion and General Project reconciliation

No change

Fiscal year reconciliation to capture ALL City costs (e.g., staff, legal, land acquisition, etc.)

Adjusted based on above revisions

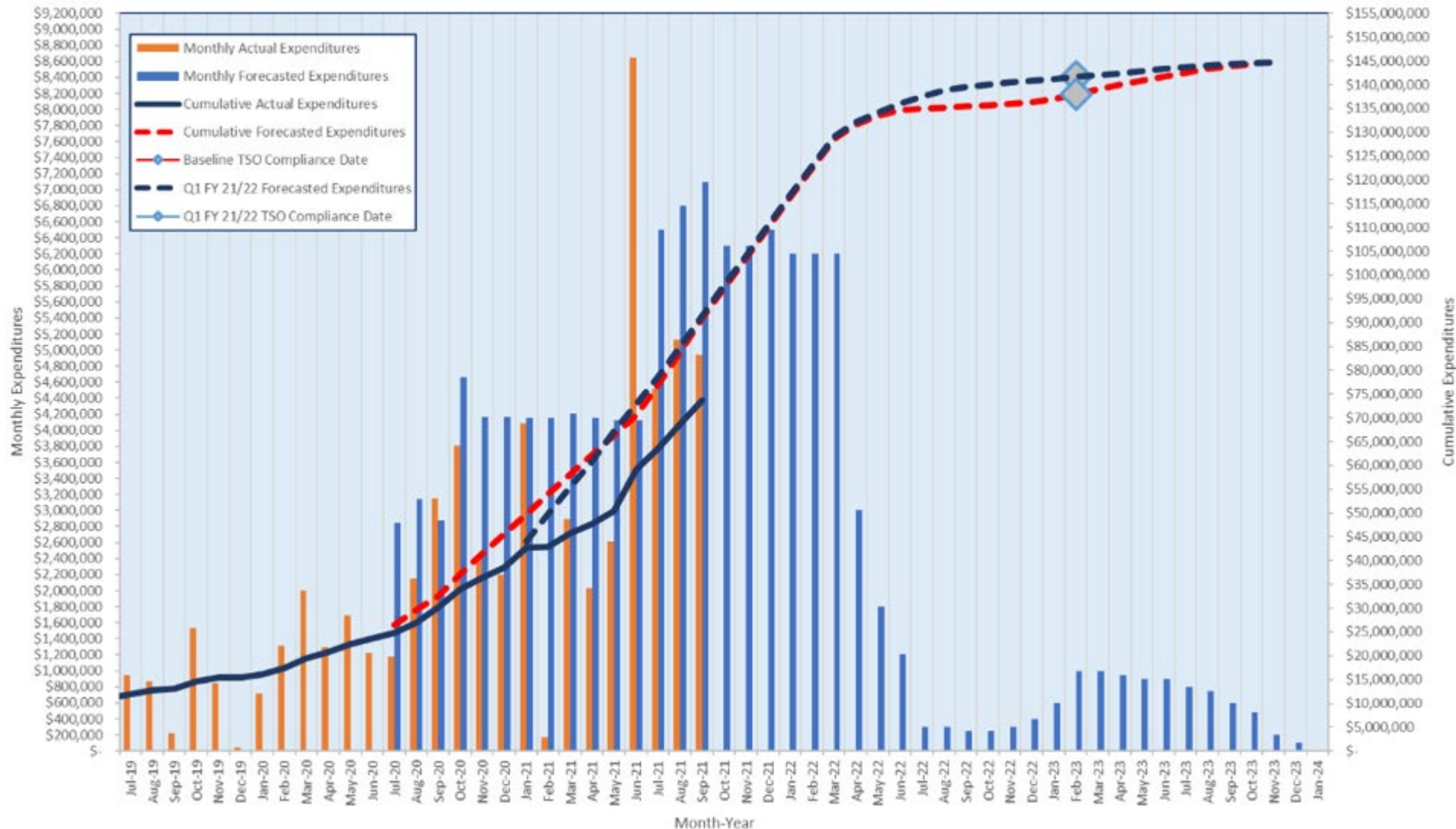
Program Expenditures To Date (cash basis)

Project Component	Expenditures (Q1 FY 21/22)
Water Reclamation Facility	\$7,858,536
Conveyance Facilities	\$5,579,689
Recycled Water Facilities	\$60,810
General Project	\$1,108,517
Total	\$14,607,553

Project Component	Total Project Expenditures to Date as of FY 21 Q4	Total Project Expenditures to Date as of FY 22 Q1
WRF	\$37,084,020	\$39,868,487
Conveyance Facilities	\$7,844,934	\$13,244,368
Recycled Water Facilities	\$592,593	\$549,967
General Project	\$9,887,879	\$16,354,157
Total	\$55,409,426	\$70,016,979

Current vs. Planned Expenditures

Estimated Cash Flow Projection FY 2013-2024



Milestone Schedule

Milestone	Baseline Schedule due Date	Planned Completion Date
<u>General Project</u>		
Compliance with the TSO ⁽¹⁾	November 11, 2021	July 05, 2022
<u>Water Reclamation Facility</u>		
Begin Construction	August 08, 2019	March 20, 2020 (Actual)
Deliver 90 Percent Design	October 24, 2019	March 31, 2020 (Actual)
Substantial Completion	November 11, 2021	July 05, 2022
Final Completion	June 09, 2022	August 30, 2022
<u>Conveyance Facilities</u>		
Deliver 90 Percent Design	October 15, 2019	February 10, 2020 (Actual)
Deliver 100 Percent Design	December 17, 2019	June 15, 2020 (Actual)
Bid Advertisement	February 21, 2020	June 16, 2020 (Actual)
Award Construction Contract	May 08, 2020	November 10, 2020 (Actual)
Substantial Completion	September 17, 2021	March 11, 2022
Final Completion	November 19, 2021	April 25, 2022
<u>Recycled Water Facilities</u>		
Select Preferred Injection Area	May 28, 2019	June 17, 2020 (Actual)
Deliver 30 Percent Design	August 04, 2020	December 22, 2021
Deliver 60 Percent Design	November 10, 2020	March 30, 2022
Deliver 90 Percent Design	February 16, 2021	June 15, 2022
Deliver 100 Percent Design	April 27, 2021	September 14, 2022
Award Construction Contract	July 21, 2021	December 07, 2022
Substantial Completion	April 21, 2022	November 11, 2023
Final Completion	June 21, 2022	December 06, 2023

Project Financing Update

- Not pursuing bridge financing at this time
- Positive preliminary progress with SRF
- Lower than estimated monthly expenditures
- Will continue to monitor closely

Looking Ahead to Q2

- New contract amendments for Conveyance Facilities approved in Q2 (October 12, 2021)
 - Cogstone Resources Management
 - \$740,803
 - Far Western Anthropological Research Group, Inc.
 - \$463,086
 - Anvil Builders, Inc.
 - \$674,485
- October 12, 2021 amendment amounts are within Conveyance Facilities contingency budget (\$2.7M available as of end of Q1)

Looking Ahead to Q2

- Potential change orders currently under development
 - Filanc-Black & Veatch (FBV) (WRF WWTP)
 - Various change orders (COVID-19 cost escalation, expanded SRF loan requirements, City-directed operability improvements)
 - \$250K - \$700K (est.) (Will require increase to Program budget)
 - Anvil Builders / Water Works Engineers (Conveyance Facilities)
 - San Luis Obispo County Air Pollution Control District new (more stringent) requirements for pump station emergency generator emissions
 - \$300K - \$500K (est.) (Will require increase to Program budget)

CFAC Committee Input

- Discussion of Q1 forecasted cash flow vs. actual
- Discussion of SRF loan balance and reimbursement status
- Conveyance Facilities schedule
- Pending change order budgeting

Questions and Discussion

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AGENDA NO: C-3

MEETING DATE: December 14, 2021

Staff Report

TO: Honorable Mayor and Council Members **DATE:** December 9, 2021

FROM: Gregory Kwolek, Public Works Director
Sarah Johnson-Rios, Asst City Manager/Admin Services Director

SUBJECT: Utility Discount Program and Expiration of State Executive Order Regarding Water Service Termination

RECOMMENDATION

Staff recommends the City Council:

1. Adopt Resolution No. 86-21 to authorize (i) the lapse, by its own terms, of Resolution No. 54-21 which extended a twenty-five percent discount and a COVID-19 discount program through December 31, 2021; and (ii) acknowledgement of the reinstatement of the prior Utility Discount Program outlined in Resolution 64-19, which offers a ten percent discount for income-qualifying customers; and the reinstatement of late payment penalties to fund the program.
2. Receive and file staff's plan to reinstate water shutoffs in full compliance with California Senate Bill (SB) 998 upon the expiration of the State's Executive Order related to water shutoffs, duly notifying customers according to the adopted Discontinuation of Residential Water Service for Non-Payment policy.

ALTERNATIVES

Council may choose the following alternatives or provide staff alternate direction.

Utility Discount Program:

- A. Continue increased water discount program at 25% for income-qualifying customers.
- B. Discontinue the utility discount program for income-qualifying customers.
- C. Direct staff to continue to suspend late payment penalties and discontinue the Discount Program when current funds are exhausted or identify unrestricted, non-rate payer funding (e.g. General Fund or Measure Q/E funds) to subsidize the Program.

Water Shutoffs:

- A. Direct staff to forgo water shutoffs and identify unrestricted, non-ratepayer funding to subsidize utility provision in the City.

FISCAL IMPACT

Reinstating the 10% Utility Discount Program and late penalties to fund it will prolong the life of the Program and retain the City's ability to offer discounts to income-qualifying customers, without requiring a subsidy from the General Fund or other non-ratepayer funds to support the Program.

Prepared By: SJR/DH Dept Review: SJR GK

City Manager Review: _SC_ City Attorney Review: _LL_

Reinstating water shutoffs consistent with State law will retain the fiscal viability of the Water and Sewer funds and the City's ability to provide utility services to customers without requiring a subsidy from the General Fund or other non-ratepayer funds.

Reinstating shutoffs will create an impact on existing staffing. Given that staff has been reduced in the utility billing area due to COVID-19 and is working on WRF preparations on the operating side, staff will continue to monitor and assess needs to ensure that the City is adequately resourced.

BACKGROUND

The Utility Discount Program began with the passage of Council Resolution No. 54-15 on July 14, 2015. Discretionary funds from penalties and donations are placed into a Water/Sewer Customer Discount fund to allow a discount of City utility bills for income-qualifying customers who are participants in the PG&E Care Program. Due to the COVID-19 Pandemic and State of California Executive order N-42-20, penalties have not been assessed since March 4, 2020. On June 22, 2021, Council passed Resolution No. 54-21 which extended the suspension of penalty fees and water shutoffs and continued the increased utility discount program (25% instead of 10%) through December 31, 2021.

At the June 22, 2021, meeting, Council requested that staff bring back policy options regarding the Discount Program and viable alternatives, if any, to the discontinuation of water service.

DISCUSSION

Utility Discount Program: As of November 2021, 303 customers are enrolled in the utility discount program (roughly 6.1% of the City's 4,949 residential water customers). This number is slightly down from FY 2019-20 enrollment, which included 378 customers. The difference between a 10% discount and a 25% discount equates to a savings of roughly \$20-25 per month per household.

The program is funded primarily through penalty revenue for late payment and reconnection fees, which have not been collected during COVID, resulting in a significant reduction in available fund balance. Prior to the pandemic, annual late penalties generated over \$100,000 annually.

In FY 2018-19, the 10% discount program cost the City approximately \$39,000. In FY 2019-20, the program cost the City approximately \$64,000. In both years, late payment penalty revenue fully covered and actually exceeded the cost of the discount program, which resulted in available funds for the program in FY 2020-21, when it was increased to 25% and penalties stopped being assessed due to COVID-19.

In FY 2020-21, utilization of the discount program increased, as did the cost per household due to the increased 25% discount. As a result, the overall program cost the City approximately \$204,000 in that fiscal year. However, the program received no new revenue to replenish the fund because late payment penalty fees were suspended.

The unaudited, approximate fund balance as of June 30, 2021, was estimated at approximately \$350,000. The Program has been in operation at the elevated level from July through December, so the fund balance is currently estimated at approximately \$250,000 given last year's usage patterns.

Continuing the discount program at the elevated 25% rate would exhaust the fund balance in roughly 12-18 months from now if usage remained stable and penalties are not reinstated. If the fund balance

is ultimately exhausted, the program would need to be discontinued or subsidized with non-ratepayer funds (General Fund or Measure Q/E as examples).

Reinstating the pre-pandemic discount program of 10% and reinstating the collection of late payment penalties would extend the life of the fund significantly. It is difficult to predict how long the fund would last since it would be based on customer behavior both in terms of program usage and late payment occurrence. Customers who signed up for the Discount Program during the pandemic are likely to remain enrolled even if the discount is lowered to 10%, so the annual cost will fall somewhere between the pre-pandemic levels and the higher FY 2020-21 total.

Staff recommends reinstating the pre-pandemic Utility Discount Program at the 10% discount rate for income-qualifying customers and reinstating late payment penalties to fund the program.

Arrearages: Prior to the pandemic, arrearages (owed balances to the City) for water and sewer totaled approximately \$10,000 and represented approximately 30 accounts. Delinquent accounts were turned over to collections and funds were often recovered.

At the beginning of the pandemic, the City informed customers that water shutoffs and late penalties were suspended, which resulted in a significant increase in the number of accounts in arrears for water and sewer payments. The total water and sewer arrearages balance as of the writing of this report is approximately \$331,000. This represents approximately 248 residential accounts in arrears (5.9% of the 4,949 residential accounts) and 16 commercial accounts in arrears (3.4% of 471 commercial/landscape accounts).

The State of California has rolled out the California Water and Wastewater Arrearages Payment Program for cities to apply to be repaid for qualifying arrearages. City staff applied for approximately \$223,000 to receive the eligible portion of water arrearages plus three percent administrative costs from the State. The eligible arrearages only include residential and commercial accounts over 60 days past due and between March 4, 2020, and June 15, 2021. Staff anticipates learning whether the City will receive State funding to offset qualifying arrearages in early 2022. If the City does receive these funds, there may be an opportunity to apply for the sewer portion of arrearages as well, which staff is tracking.

Staff will continue to seek State reimbursement where eligible. It is anticipated that State funds will cover the majority of arrearages, and staff will pursue collections where needed for any remaining unreimbursed arrearages.

Water Shutoffs: In September 2018, SB 998 was signed into law as the Water Shutoff Protection Act, which set new restrictions on residential water service termination for non-payment of a water utility bill. SB 998 went into effect in February 2020. In January 2020 the City Council adopted Resolution No. 05-20, or the Discontinuation of Residential Water Service for Non-Payment policy, per SB 998 requirements. The policy prohibits disconnection for non-payment of any residential customer who has been delinquent for less than 60 days. It also requires the City to provide notice in writing or by telephone at least seven business days before disconnection and includes an offer to discuss alternative payment methods or deferred payment and information about available appeals and extensions.

In March 2020 Governor Newsom's executive order placed a moratorium on termination of water

service to residential customers and small businesses for nonpayment until September 30, 2021. More recently the Governor signed SB 155 extending the moratorium on termination of water service for nonpayment until December 31, 2021.

Staff has reached out to neighboring cities to get input on how water shutoffs will be handled after the moratorium is lifted and if they offer a utility discount program. All are resuming shutoffs according to SB 998 if the State moratorium is not extended. The table below provides a summary of their responses.

City	Process After State Shutoff Moratorium is Lifted	Discount Program Offered and Funding Source
Arroyo Grande	Waiting to see if Moratorium is extended, if not reinstate SB 998 Shutoff policy	No Discount program offered
Atascadero	Resume shutoffs on all accounts over 60 days past due ASAP Notifications has been sent notifying past due customers.	No Discount program offered
Cayucos	Resume shutoffs on all accounts over 60 days past due ASAP.	No Discount program offered
Grover Beach	Waiting to see if Moratorium is extended, if not reinstate SB 998 Shutoff policy.	25% Discount program offered, funded by General Fund (\$50k annual max; limit on participants). Bimonthly billing.
Nipomo	Waiting to see if Moratorium is extended, if not reinstate SB 998 Shutoff policy.	No Discount program offered
Paso Robles	Waiting to see if Moratorium is extended, if not reinstate SB 998 Shutoff policy.	No Discount program offered
Pismo	Waiting to see if Moratorium is extended, if not reinstate SB 998 Shutoff policy.	Discount program offered, funded by General Fund Bimonthly billing.
San Miguel	Resume shutoffs on all accounts over 60 days past due ASAP Notifications has been sent notifying past due customers.	No Discount program offered
Santa Maria	Resume shutoffs on all accounts if 60 days past due, staring shutoffs on March 1 st .	No Discount program offered
SLO City	Notifications being sent in January bill, February 1 st shutoffs to begin on 60 days past due accounts.	15% Discount program offered, funded by penalties (late fees).

*Templeton	Resume shutoffs on all accounts over 60 days past due ASAP on/around January 17 th Notifications has been sent notifying past due customers.	No Discount program offered

*Templeton has a provision in the shutoff policy allowing the District to collect any delinquent charges and penalties on the tax roll in the same manner as property taxes. The District does still shutoff water for non-payment, the delinquent accounts are collected on the tax roll instead of sending to collections.

As stated previously, the typical number of accounts in arrears prior to the pandemic was approximately 30 totaling \$10,000. Due to State of California Executive Order N-42-20, the City was not allowed to shut off water, and arrearages increased to 264 accounts as a result. Without the warning of potential water shutoff, the number of accounts in arrears increased 780%, and the total arrearages balance increased by 3200%. While current unpaid balances will potentially be covered by the California Water and Wastewater Arrearages Payment Program, this program is not expected to be a long term solution to non-payment of utility bills. Also, any account delinquencies from June 15, 2021, to now do not qualify for the California Water and Wastewater Arrearages Payment Program.

After December 31, 2021, if the State does not extend its moratorium on shutoffs, the City may return to following the adopted Discontinuation of Residential Water Service for Non-Payment policy per SB 998. The City could reinstate late fees and shut off water service for any past due accounts after 60 days. Staff would conduct public outreach ahead of time to notify customers per the policy. Based on the significant growth in unpaid accounts during the State's shutoff moratorium, this course of action will help to ensure the financial viability of the Water and Sewer funds going forward.

Staff plans to extend the customer notification process about potential shutoffs to allow for more time to increase awareness of the City's reinstatement of water shutoff policies and to allow more time for staff to work on this assignment, which will impact existing staff resources. The following planned water shutoff notification process and potential timeline complies with the adopted policy and is consistent with state law:

Potential timeline:

- January: Staff will send out general letter to all water customers that the Executive Order N-42-20 has ended, and the City will be reinstating the approved Discontinuation of Residential Water Service for Non-Payment policy.
- February: Staff will send out a follow up letter to remind customers the City will be reinstating the shutoff policy.
- March: Staff will send out formal delinquency notices to customers past due over 60 days notifying the customer that their account is past due and late penalties will be applied to their account. Potentially by this time, the City will have heard from the California Water and Wastewater Arrearages Payment Program and will have credited customers' accounts with current past due amounts. The letter will state if the account is still not paid by the end of March, shutoffs will begin in early April.
- Mid-March: At least 15 days prior to the water shutoff date, the City will give past due customers a second notice of delinquency and impending discontinuation of services. This notice will provide the customer the options for payment.
- Early April: The City will give the customer a final 48-hour notice of termination that contains the same information as the discontinuation notice. This notice will be provided by posting a

discontinuation notice at the residence or commercial establishments receiving service. The City will also make a reasonable attempt to contact an adult residing at the customer's residence by phone at least 24 hours prior to the water shutoff.

- Early April: Water shutoffs will begin.

ATTACHMENT

1. Resolution No. 86-21
Exhibit A – Resolution 64-19
2. Staff Presentation

RESOLUTION NO. 86-21

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, AUTHORIZING THE LAPSE OF RESOLUTION NO. 54-21, AND ACKNOWLEDGING THE RE-INSTATEMENT OF RESOLUTION NO. 64-19, WHICH ESTABLISHED A UTILITY DISCOUNT PROGRAM WITH PERMANENT ROLLING ENROLLMENT FOR ELIGIBLE CUSTOMERS

THE CITY COUNCIL City of Morro Bay, California

WHEREAS, on August 28, 1995, the Morro Bay City Council adopted Resolution No 103-95, which established economic hardship criteria for utility rates, and a program for water rate adjustments; and

WHEREAS, on July 14, 2015, the Morro Bay City Council adopted Resolution No. 54-15, which established economic hardship criteria for utility rates, and a program for water/sewer rate adjustments; and

WHEREAS, on June 13, 2018, the Morro Bay City Council adopted Resolution No. 42-18, which re-established a Utility Discount Program for eligible customers; and

WHEREAS, on August 14, 2019, the Morro Bay City Council adopted Resolution No. 62-18, which piloted a one-year rolling enrollment period for the Utility Discount Program and eligible customers; and

WHEREAS, on July 9, 2019, the Morro Bay City Council adopted Resolution No. 64-19, which permanently expanded the utility discount program to include on-going enrollment and established a maximum discount rate of 10 percent; and

WHEREAS, on May 12, 2020, the Morro Bay City Council adopted Resolution No. 42-20, which established a temporary Morro Bay Cares COVID-19 Utility Discount Program to those customers that could demonstrate that they were laid off or had to shutter businesses due to the COVID-19 pandemic; and

WHEREAS, on September 22, 2020, the City Council adopted Resolution No. 83-20 increasing the maximum discount rate of that utility discount program from 10% to 25%, through the June 2021 billing cycle; and

WHEREAS, on June 22, 2021, the City Council adopted Resolution No. 54-21 to extend the Morro Bay Cares COVID-19 Utility Discount Program and increase maximum discount rates through the December 2021 billing cycle, and to affirm the discount throughout the time period since the discount was established. Resolution No. 54-21, by its own terms, expires on December 31, 2021; and

WHEREAS, as of December 31, 2021, all COVID-19 related temporary Resolutions Nos. 42-20, 83-20 and 54-21 are either superseded or expired, and will be of no further effect; and

WHEREAS, the City Council now desires to acknowledge that (i) the terms of

Resolution No. 54-21 will expire on December 31, 2021, and (ii) with such expiration of Resolution No. 54-21 the prior Utility Discount Program outlined in Resolution 64-19 will be reinstated.

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

SECTION 1. On December 31, 2021 all terms of Resolution No. 54-21 will lapse, the City Council hereby acknowledging and authorizing such expiration.

SECTION 2. As of December 31, 2021, the prior Utility Discount Program outlined in Resolution 64-19 are reinstated, by which (i) a ten percent (10%) discount program for income-qualifying customers is offered, and (ii) there is a reinstatement of late payment penalties to fund said program. Resolution No. 64-19 is attached hereto as **Attachment "A"**.

SECTION 3. Staff is directed to make changes to the Utility Discount Program application material and policy reflecting the aforementioned criteria, as appropriate.

SECTION 4. This Resolution shall take effect immediately upon its adoption by the City Council.

SECTION 5. Should any provision, section, paragraph, sentence or word of this Resolution be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Resolution as hereby adopted shall remain in full force and effect.

SECTION 6. The City Clerk shall certify to the adoption of this Resolution and enter it into the book of original Resolutions.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 14th day of December 2021 by the following vote:

AYES:

NOES:

ABSENT:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

RESOLUTION NO. 64-19

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
RESCINDING RESOLUTION NO. 62-18, AND RE-ESTABLISHING A
UTILITY DISCOUNT PROGRAM WITH PERMANENT ROLLING
ENROLLMENT FOR ELIGIBLE CUSTOMERS**

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

WHEREAS, on August 28, 1995, the Morro Bay City Council adopted Resolution No. 103-95, which established economic hardship criteria for utility rates, and a program for water rate adjustments; and

WHEREAS, on July 14, 2015, the Morro Bay City Council adopted Resolution No. 54-15, which established economic hardship criteria for utility rates, and a program for water/sewer rate adjustments; and

WHEREAS, on June 13, 2018, the Morro Bay City Council adopted Resolution No. 42-18, which re-established a Utility Discount Program for eligible customers; and

WHEREAS, on August 14, 2019, the Morro Bay City Council adopted Resolution No. 62-18, which piloted a one-year rolling enrollment period for the Utility Discount Program and eligible customers; and

WHEREAS, the Morro Bay City Council now wishes to rescind Resolution No. 62-18; and

WHEREAS, the City Council wishes to re-establish the Utility Discount Program for eligible customers, make rolling enrollment for the Utility Discount Program permanent, and clarify the applicable revenues and criteria for qualifying for the program.

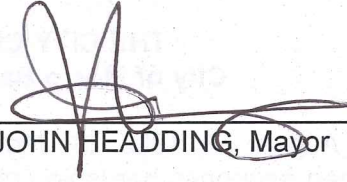
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, as follows:

1. Resolution No. 62-18 is hereby rescinded; and
2. The City wishes to extend rolling, on-going enrollment into the Utility Discount Program, whereby a Water/Sewer customer may enroll anytime in the Utility Discount Program; and
3. For customers initially enrolled in the program between January and June of a given year, reapplication will be deferred until the following year in July.
4. Customers enrolled in the program are required to reapply annually in July to confirm eligibility.
5. The funding for this Program will come from the prior fiscal year's actual water and sewer penalties, voluntary donations, fund balance and other non-rate revenue Council deems appropriate; and
6. The maximum discount is 10-percent of the customer's Water/Sewer bill per month; and
7. The determinant for qualification will be participation in, and eligibility for, the PG&E Customer Care program; and
8. The PG&E Care documentation must match the customers utility address to qualify; and

9. Staff is directed to make changes to the Utility Discount Program application material and policy reflecting the aforementioned criteria, as appropriate.

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

AYES: Headding, Addis, Davis, Heller, McPherson
NOES: None
ABSENT: None



JOHN HEADDING, Mayor

ATTEST:



DANA SWANSON, City Clerk

Item C-3: Utility Discount Program and Expiration of State Executive Order Regarding Water Service Termination

Department of Public Works
December 14, 2021





Utility Discount Program

Pre-pandemic Discount Program

- 10% reduction of utility bill
- Eligible customers are income qualified through PG&E Care Program
- Funded through late penalties
- \$39,000 approx. annual cost, fully funded by late penalties

Pandemic Era Discount Program

- Increased discount to 25% of utility bills
- Eligible customers are income qualified through PG&E Care Program
- Late penalties suspended, funded through remaining fund balance (currently \$250,000)
- \$204,000 approx. cost for FY2020-21, complete depletion of fund balance expected in 12-18 months if program continued as is
- Council Resolution 54-21, which extended increased discount program, expires December 31, 2021



Arrearages/State Payment Program

Arrearages Overview

- In a typical year, approximately 30 accounts, \$10,000 in arrears
- Currently 248 residential and 16 commercial accounts, \$331,000 in arrears
 - Of these, 34 residential accounts participate in the Utility Discount Program

Pandemic Era Arrearages and State Payment Program

- \$331,000 represents significant threat to funding for utility capital improvements, O&M
- California Water and Wastewater Arrearages Payment Program
 - City applied for approx. \$223,000 to receive eligible portion of water arrearages + 3% administrative costs, waiting to hear back from State
 - Eligible arrearages for residential and commercial accounts over 60 days past due between March 4, 2020 and June 15, 2021
 - Will be applied to accounts in arrears
- Possible opportunity to apply for sewer arrearages as well, staff is tracking



Water Shutoffs

SB 998

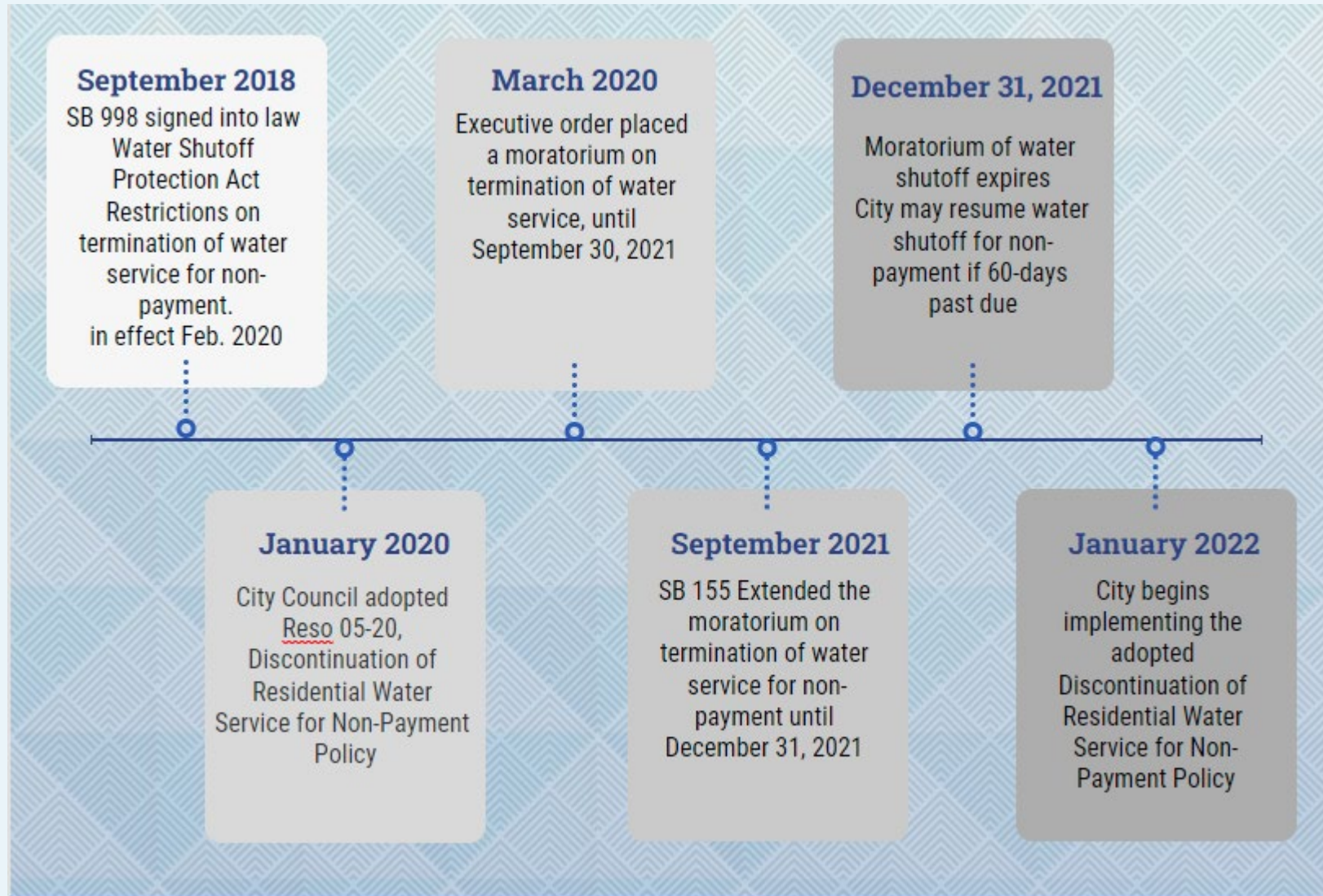
- New restrictions for water shutoffs, adopted September 2018 and effective February 2020
 - Adopted by City Council as the Discontinuation of Residential Water Service for Non-Payment Policy in January 2020
- Prohibits shutoffs for residential customers delinquent less than 60 days
- Requires City to provide notice of shutoff at least 7 days in advance
- Includes an offer for City to discuss with customer alternative payment methods or deferred payment and information about available appeals and extensions

Pandemic Era Water Shutoffs

- Moratorium on water shutoffs per Governor's Executive Order in March 2020
- SB 155 in September 2021 extends shutoff moratorium to December 31, 2021
- No further shutoff moratoriums from State are expected, City staff has prepared extended notification plan for transition back to shutoffs



Water Shutoff Timeline





COMPARING REGIONAL CITIES

Shutoff Policy and Discount Program

City	Shutoff Policy	Discount Program
Arroyo Grande Grover Beach Nipomo Paso Robles Pismo Beach	Waiting to see if Moratorium is extended, if not reinstate SB 998 Shutoff policy	Arroyo Grande, Nipomo, Paso Robles do not offer a discount program Grover Beach, offers a 25% discount program, funded by the general Fun (50k annually) Pismo Beach offers a discount program
Atascadero Cayucos San Miguel Templeton	Resume shutoff on all accounts over 60 Days past due. Notifications have already been sent out Notifying customers.	No Discount program
San Luis Obispo Santa Maria	Notifications being sent in January bill, February 1st shutoffs to begin on 60 days past due accounts Resume shutoffs on all accounts if 60 days past due, staring shutoffs on March 1st	15% Discount program offered, funded by penalties No Discount program offer in Santa Maria



Shutoff Notification Timeline

January

Staff will send out general letter to all water customers that the Executive Order N-42-20 has ended, and the City will be reinstating the approved Discontinuation of Residential Water Service for Non-Payment policy.

February

Staff will send out a follow up letter to remind customers the City will be reinstating the Shutoff policy.

March

Staff will send out delinquency notices to the specific customer notifying the customer that their account is past due and late penalties will be applied to their account. Potentially by this time the City will have heard from the California Water and Wastewater Arrearages Payment Program and will have been able to update the customer's account with the current past due amounts. The letter will state if the account is still not paid by the end of March shutoffs will begin in Early April.

Mid-March

At least 15 days prior to the water shutoff date, the City will give past due customers a second notice of delinquency and impending discontinuation of services. This notice will provide the customer the options for payment.

Early April

The City will give the customer a final 48-hour notice of termination that contains the same information as the discontinuation notice. This notice will be provided by posting a discontinuation notice at the residence or commercial establishments receiving service. The City will also make a reasonable attempt to contact an adult residing at the customer's residence by phone at least 24 hours prior to the water shutoff.

Early April: Shutoffs will Begin



Recommendation

Recommendation:

- Staff recommends the City Council:
 1. Adopt Resolution No. 86-21 to authorize (i) the lapse, by its own terms, of Resolution 54-21 which extended a twenty-five percent discount and a COVID-19 discount program through December 31, 2021; and (ii) acknowledgement of the reinstatement of the prior Utility Discount Program outlined in Resolution 64-19, which offers a ten percent discount for income-qualifying customers; and the reinstatement of late payment penalties to fund the program.
 2. Receive and file staff's plan to reinstate water shutoffs in full compliance with California Senate Bill (SB) 998 upon the expiration of the State's Executive Order related to water shutoffs, duly notifying customers according to the adopted Discontinuation of Residential Water Service for Non-Payment policy.



AGENDA NO: C-4

MEETING DATE: December 14, 2021

Staff Report

TO: Honorable Mayor and Council Members **DATE:** December 8, 2021

FROM: Sarah Johnson-Rios, Asst City Manager/Admin Services Director

SUBJECT: Introduction and First Reading of Ordinance No. 646, Updates to Chapter 3.08 of the City's Municipal Code, Purchasing System

RECOMMENDATION

Staff recommends the City Council introduce, by title only, and waive further reading of Ordinance No. 646: "An Ordinance of the City Council of the City of Morro Bay, California, Amending Morro Bay Municipal Code Chapter 3.08 of Title 3 to Update the City's Purchasing System."

ALTERNATIVES

Council may direct staff to make modifications to the purchasing system code updates or may direct staff to make no update to the Municipal Code in this area.

BACKGROUND

The City's current purchasing policy is documented in the Municipal Code as well as in several fragmented documents that have been approved over the years including various resolutions and administrative directions. In some cases, the resolutions are inconsistent with the Municipal Code, resulting in a confusing and fragmented policy framework.

In addition, recent changes to State law have been made, particularly regarding procurement of recycled material, and the City has not yet brought its Municipal Code up to date to reflect compliance with those updates.

DISCUSSION

The draft revised purchasing chapter of the municipal code accomplishes the following:

- Clarifies approval authority for all contracts and contract amendments increasing compensation. It maintains the City Manager's signing authority at \$125,000 for non-public works projects and aligns signing authority with the competitive bidding threshold in State law for public works projects (currently set at \$200,000 by State law) instead of the current threshold of \$175,000. If the State law threshold for public works projects increases, the City Manager's signing authority for public works contracts with increase accordingly. City Council approval is always required above those thresholds.
- Adds a provision establishing Department Head signing authority for contracts up to \$25,000.
- Adds provisions concerning professional services, so these won't just be covered by resolution (and repeals the old resolution for clarity and consolidation in the Code).
- Updates language to reflect the decentralized purchasing system that the City has, and adds

Prepared By: SJR

Dept Review: SJR

City Manager Review: _SC_

City Attorney Review: BWB

language regarding City Manager and Department Head roles and responsibilities with regard to purchasing.

- Adds language authorizing a Purchasing Policy, to be adopted by the City Manager, and requiring compliance with that policy; simplifies and makes “evergreen” the Code by allowing that document to handle administrative details consistent with policy direction.
- Adds more robust language for purchasing for public projects and aligns the Municipal Code with State law in this area for consistency and clarity.
- Adds requirements for procurement of recycled paper and recovered organic waste products, to comply with new organic waste recycling laws (SB 1383).
- Retains an option to give preference to local service providers in a manner that is clear and practical to implement, and consistent with State law.
- Adds language to prevent breaking up scope of work to get around purchasing authority or bidding requirements – see 3.08.060(E) & (F), 3.08.070(A), and 3.08.080(B).
- Makes changes to terminology throughout (e.g. City Manager instead of City Administrator, and Department instead of Agency).
- Allows for more flexibility in the purchase of goods and services by allowing the City to consider quality of goods and services offered when making an award of contract instead of relying solely on the lowest price offered, except in the case of public works contracts.
- Adds additional documentation requirements when a purchase is made on the basis of “sole source” instead of through a competitive solicitation process.

The changes will repeal all prior resolutions and administrative actions for clarity and consistency, placing all key policy direction within the Municipal Code. The Code will be supplemented by the implementing Purchasing Policy, which will include administrative details; it must be approved by the City Manager and must remain consistent with the Municipal Code.

While a redline of the changes would be difficult to read in this case given that much of the code has been reordered and rearranged, the table below summarizes key differences in the current code and the proposed code. The existing code can be found in its entirety online at https://library.municode.com/ca/morro_bay/codes/code_of_ordinances?nodeId=TIT3REFI_CH3.08_PUSASUEQ.

	Existing Code	Proposed Updates
Management structure	States centralized; in practice, decentralized	Decentralized; oversight by City Manager or designee; Department Head roles clarified
Contract Approval Authority – Non-public (works) projects	Council: > \$125,000 City Manager or designee: \$0-\$125,000 Department Heads: only if designated by CM	Council: No change City Manager: > \$25,000 - \$125,000 Department Heads: \$0-\$25,000
Contract Approval Authority – Public (works) projects	Council: > \$175,000 City Manager or designee: \$0-\$175,000 Department Heads: only if designated by CM	Council: guided by State law* formal bid threshold; (now > \$200,000) City Manager: > \$25,000 – State law *formal bid threshold (now \$200,000) Department Heads: \$0-\$25,000
Contract Amendment Authority	City Manager or designee can amend up to lesser of 25% or \$50k for <i>each</i> amendment	Amendments cannot exceed approval authority (above)
Prevent circumvention of approval authority	No clear language preventing “gaming”	New language preventing splitting work into shorter terms or smaller scope to avoid higher approval level
Purchasing	\$2,500-\$50,000 - require written price quotes	> \$10,000-\$125,000 – require written price

Procedures for Goods / "Supplies and Equipment"	(informal bids) > \$50,000 – formal bid procedure Awarded to lowest responsible bidder	quotes (informal bids) > \$125,000 – formal bid/RFP procedure (align with Council approval threshold) Awarded to lowest responsive and responsible vendor
Purchasing Procedures for Services	Municipal code is somewhat unclear; consultant services are documented in a separate resolution RFP required > \$45,000 Awarded to lowest responsible bidder	> \$40,000-\$125,000 – require written price quotes (informal bids) > \$125,000 – formal bid/RFP procedure (align with Council approval threshold) Awarded on basis of demonstrated competence and price, several criteria outlined
Purchasing Procedures for Public (works) Projects	Up to \$175,000 – informal bid and formal contract procedure > \$175,000 – formal bid and contract procedure (Not aligned with State law)	Aligned with State law* (currently up to \$60,000) – no competitive bidding required Aligned with State law* (currently up to \$200,000) – informal bidding procedure, written Aligned with State law* (currently over \$200,000) – formal bidding procedure Awarded to lowest responsive and responsible bidder
Exceptions to Purchasing Procedures	Sole source and piggybacking allowed, but documented in different resolutions, etc.	Retains ability to use piggybacking and sole source; clarifies that sole source requires justification documentation and approval of City Manager or designee, or Council >
Local Preference	Outdated language that is impractical to implement and may not comply with State law	Retains option to give preference to local service providers in a manner that is practical to implement and consistent with State law
Recycled Goods	Outdated language that may conflict with new State law (SB 1383)	Reference to SB 1383 requiring purchase of recycled paper products and recovered organic waste products
Grant-funded projects	No language	Adds language to clarify that grant requirements must be followed notwithstanding other provisions of the Code

* Public projects are defined in and governed by the State's Public Contract Code Section 22032. Aligning the Municipal Code to State law will ensure consistency and compliance over time.

FISACL IMPACT

There is no fiscal impact associated with the recommended action.

ATTACHMENT

1. Ordinance No. 646
 - a. Exhibit A – Updated Chapter 3.08
2. Current Municipal Code – Chapter 3.08 -
https://library.municode.com/ca/morro_bay/codes/code_of_ordinances?nodeId=TIT3REFI_CH3.08PUSASUEQ

ORDINANCE NO. 646

**AN ORDINANCE OF THE CITY OF CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
AMENDING MORRO BAY MUNICIPAL CODE CHAPTER 3.08
OF TITLE 3 TO UPDATE THE CITY'S PURCHASING SYSTEM**

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

WHEREAS, the City's current purchasing policy is documented in the Municipal Code as well as several fragmented documents that have been approved over the years including various resolutions and administrative direction; and

WHEREAS, recent changes to State law have been made, particularly regarding procurement of recycled material, and the City has not yet brought its Municipal Code up to date to reflect compliance with those updates; and

WHEREAS, the City's purchasing policy must be updated from time to time to remain compliant with State law, to achieve consistency across all City documents, and to reflect changing purchasing needs and priorities over time.

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

SECTION 1. RECITALS. The City Council hereby finds that the recitals set forth above are all true and correct and are incorporated herein by this reference.

SECTION 2. CODE AMENDMENT. Chapter 3.08 of the Morro Bay Municipal Code is hereby repealed and replaced with a new Chapter 3.08 of the Morro Bay Municipal Code, which is attached hereto as Exhibit A.

SECTION 3. REPEAL OF RESOLUTIONS AND POLICIES. Effective on the effective date of this ordinance, all City resolutions and administrative policies regarding the City's purchasing system that were adopted or implemented prior to the effective date of this ordinance are hereby repealed.

INTRODUCED at a regular meeting of the City Council held on the 14th day of December 2021, by motion of _____ and seconded by _____.

PASSED AND ADOPTED on the ____ day of _____ 2021, by the following vote:
AYES:
NOES:
ABSENT:

ATTEST:

JOHN HEADDING, Mayor

DANA SWANSON, City Clerk
APPROVED AS TO FORM:

CHRIS F. NEUMEYER, City Attorney

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

I, Dana Swanson, City Clerk of the City of Morro Bay, do hereby certify that the foregoing Ordinance Number 646 was duly passed and adopted by the City Council of the City of Morro Bay at a regular meeting thereof, held on the _____ day of _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of the City of Morro Bay, California, this ____ day of _____, _____.

DANA SWANSON, City Clerk

EXHIBIT A

Chapter 3.08 PURCHASING SYSTEM

3.08.010 Adoption of purchasing system; applicability.

- A. In order to establish efficient procedures for the purchase of goods and services at the lowest possible cost commensurate with quality needed, to exercise positive financial control over purchases, to clearly define authority for the purchasing function, and to assure the quality of purchases, a purchasing system is adopted.
- B. This chapter is applicable to all city purchases of goods and services, including purchases made through third-party agents.

3.08.020 Purchasing policy.

The city manager may adopt a policy for the detailed administration and implementation of this chapter, referred to herein as the Purchasing Policy, and may revise the Purchasing Policy from time to time as needed. All city purchases shall be made in compliance with the provisions of this chapter and the Purchasing Policy, provided that in the event of a conflict between the Purchasing Policy and the provisions of this chapter, the provisions of this chapter shall govern.

3.08.030 Definitions.

For purposes of this chapter, the following terms shall be defined as follows:

“Goods” means equipment, goods, materials, or supplies.

“Paper products” include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling, or as otherwise defined in 14 CCR Section 18982(a)(51).

“Printing and writing papers” include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications, or as otherwise defined in 14 CCR Section 18982(a)(54).

“Professional services” means the services of attorneys, physicians, architects, engineers, consultants, financial experts, auditors, specialized printers, or other individuals or organizations possessing a high degree of professional, unique, specialized, or technical skill or expertise.

“Public project” means a public project as defined in Public Contract Code Section 22002.

3.08.040 Purchasing oversight.

The city manager, or his or her designee, shall be responsible for overseeing and facilitating compliance with this chapter and the Purchasing Policy. This responsibility includes:

- A. Staying informed of current developments in the field of purchasing;
- B. Prescribing and maintaining such forms as are reasonably necessary to the operation of this chapter and the Purchasing Policy;
- C. Recommending updates to this chapter and making revisions to the Purchasing Policy, as needed;
- D. Maintaining centralized purchasing records and tracking citywide expenditures; and
- E. Coordinating the purchase of goods that will be used by multiple city departments where feasible and practical.

3.08.050 Purchasing responsibilities of department heads.

Each department head shall be responsible for ensuring that all purchases by or for his or her department are made in compliance with this chapter and the Purchasing Policy, including but not limited to compliance with the following requirements:

- A. Preparing requests for proposals, requests for bids, requests for qualifications, and other solicitation materials, as needed, for each purchase;
- B. Making a good faith estimation of the cost of each purchase to determine the appropriate solicitation procedure;
- C. Ensuring that the proper solicitation procedure is followed based on the estimated cost of the purchase (informal, formal, etc.);
- D. Evaluating received bids or proposals in accordance with the selection criteria and process described in this chapter and the Purchasing Policy;
- E. Ensuring that the purchase contract is approved and executed by a person or body with sufficient approval authority based on the dollar amount of the purchase;
- F. Ensuring that sufficient funds are appropriated to pay for the purchase;
- G. Ensuring that the vendor, contractor, or consultant has provided insurance certificates and bonds meeting the requirements of the purchase contract, as applicable, before work under the contract begins, and ensuring that such insurance and bonds are renewed, as applicable, during the term of the agreement;
- H. Ensuring that the vendor, contractor, or consultant has obtained a City of Morro Bay business license, as required by the municipal code, prior to beginning work and ensuring that such license is renewed, as applicable, during the term of the agreement;
- I. Inspecting supplies and equipment delivered to determine their conformance with the specifications set forth in the order;
- J. Monitoring the performance of vendors, contractors, and consultants under approved contracts to ensure compliance with contract requirements;
- K. Recommending and preparing contract amendments and change orders as needed, and ensuring that such amendments and change orders are approved and executed by a person or body with sufficient approval authority based on the dollar amount of the amendment or change order, and that sufficient funds are appropriated to pay for the amendment or change order;
- L. Ensuring that due diligence is performed before determining that a purchase can only be made from a single vendor, contractor, or consultant, and ensuring that decisions to forego a competitive purchase process on the basis of sole sourcing are properly documented and submitted for approval by the city manager or designee, or city council, in accordance with this chapter and the Purchasing Policy;
- M. Taking reasonable steps to avoid conflicts of interest in the purchasing process;
- N. Keeping sufficient records of all departmental contracts and expenditures, and ensuring that such records are properly stored and filed in accordance with city recordkeeping procedures;
- O. Submitting reports to the city manager or designee showing all departmental supplies and equipment that are no longer used or have become obsolete or worn out so that the city manager or designee can sell, exchange, or trade in such supplies and equipment, if desired; and
- P. Transferring surplus or unused goods between departments as needed, or selling, exchanging, or trading in surplus goods to interested private or public agencies or vendors.

3.08.060 Contract approval authority.

- A. All contracts and contract amendments shall be approved by a person or board with proper approval authority, as described in this section.
- B. Approval authority for all contracts and amendments other than for public projects is as follows:
 - 1. The department head of the department initiating the contract is authorized to approve contracts for up to \$25,000 and amendments that do not result in a total contract amount greater than \$25,000.
 - 2. The city manager is authorized to approve contracts for up to \$125,000 and amendments that do not result in a total contract amount greater than \$125,000.
 - 3. Contracts and amendments that exceed the city manager's approval authority may only be approved by the city council.
- C. Approval authority for contracts and amendments for public projects is as follows:
 - 1. The department head of the department initiating the contract is authorized to approve contracts for up to \$25,000 and amendments that do not result in a total contract amount greater than \$25,000.
 - 2. The city manager is authorized to approve contracts for up to the maximum dollar amount for which an informal bidding procedure is permitted under Public Contract Code Section 22032(b), including any amendments thereto, and amendments that do not result in a total contract amount greater than the maximum dollar amount for which an informal bidding procedure is permitted under Public Contract Code Section 22032(b), including any amendments thereto.
 - 3. Contracts and amendments that exceed the city manager's approval authority may only be approved by the city council.
- D. For purposes of subsections (B) and (C), "amendments" means any amendment, renewal, or change order that results in an increase to the total amount of money that may be spent under a single contract. For purposes of clarity, there is not a separate approval authority limit for amendments. Approval authority limits are based on the total contract amount, inclusive of amendments.
- E. Contracts that renew from year to year or have a regularly recurring term shall not be split into multiple single-term contracts to avoid approval by the city council or the city manager, as applicable.
- F. Purchases of similar goods and/or services from a single vendor, contractor, or consultant, which could reasonably be included in a single contract, shall not be split into multiple contracts in order to avoid approval by the city council or the city manager, as applicable.

3.08.070 Purchasing procedures – Purchases other than public projects.

With the exception of purchases made for public projects, all purchases, including purchases of professional services, shall be made as follows:

- A. Solicitation Procedures. Prior to making any purchase, the person or department initiating the purchase shall make a reasonable and good faith estimate of the anticipated cost of the purchase and then proceed with the appropriate solicitation procedure below. If the proposals or bids received exceed the cost threshold for the solicitation procedure used, a new solicitation shall not be required unless directed by the city manager. Purchases shall not be split or separated into smaller orders for the purpose of circumventing the procedures hereunder.

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1. Purchases of goods for an estimated cost of up to \$10,000, and purchases of services (including professional services) for an estimated cost of up to \$40,000, shall not require competitive bidding but may be made following the receipt of at least one price quote or proposal.
 2. Purchases of goods for an estimated cost of greater than \$10,000 up to \$125,000, and purchases of services (including professional services) for an estimated cost of greater than \$40,000 up to \$125,000, shall be made following the receipt of at least three written price quotes or proposals, which may be solicited using any means reasonably calculated to obtain a combination of the lowest price and highest quality of goods or services available. Such solicitations do not need to be published in a newspaper and may be made by posting a notice in a public location, including a website, or by mail, fax, or email. The person or department initiating the purchase shall keep a record of all such solicitations and the price quotes or proposals submitted in response thereto. If the person or department initiating the purchase is unable to obtain three price quotes or proposals from responsive and responsible bidders after making diligent efforts to do so, the purchase may be made without obtaining three price quotes or proposals, provided that the efforts made to obtain three quotes or proposals shall be documented in the contract file for the purchase and shall be presented to the city manager as part of the request for contract approval.
 3. Purchases with an estimated cost of greater than \$125,000 shall be made following the posting of a written solicitation.
 - (a) Such written solicitations and offers or responses thereto may be in any reasonable form, or as may be established in the Purchasing Policy. Each solicitation shall describe the purchases sought and all other requirements, including the quantity and quality thereof, any desired warranty, insurance, or bonds, the time, place and manner of delivery of the purchases, the desired terms of payment, and the form, method, and timing of the response to the solicitation.
 - (b) Such written solicitations shall be posted in at least one publicly accessible location likely to reach the intended service provider, supplier, or vendor. The first publication or posting of the solicitation shall be at least ten days before the due date for responses to the solicitation. The posting location may include the city's website, an electronic bulletin board, a newspaper of general circulation in the city, or a trade journal, magazine, or other publication, whether in print or electronic.
 - (c) Bids or proposals may also be directly solicited from individuals and businesses if such individuals or businesses are known to be capable of providing the item or service that is being solicited. However, such direct solicitations shall be in addition to solicitations made under subsection (A)(3)(b).

B. Award of Contract.

1. The city may reject all bids or proposals in its sole discretion.
2. If no bids or proposals are received, the city may make the purchase by any reasonable and available means, notwithstanding the other requirements of this chapter.

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3. If two or more bids or proposals received are for the same total amount or unit price, quality and service being equal, the contract may be awarded to either bidder or proposer.
 4. Contracts for goods shall be awarded to the lowest responsive and responsible vendor, where the goods offered are identical. However, where the goods offered are not identical, the city may consider the fitness and quality of the goods offered, in addition to price, and may award the contract to the vendor that offers that best combination of price and fitness and quality of goods.
 5. Contracts for services (including professional services) shall be awarded on the basis of demonstrated competence and the professional qualifications necessary for the satisfactory performance of the services, offered at a fair and reasonable price, as determined by a consideration of the following criteria:
 - (a) Whether the price is fair, reasonable, and competitive;
 - (b) The quality of the services offered;
 - (c) The demonstrated competence, ability, capacity, and skill of the person or business to provide the services promptly, within the time specified, within budget, and without delay or interference;
 - (d) The credentials and licenses of the person or business, if required;
 - (e) The character, integrity, reputation, judgment, training, experience, and efficiency of the bidder or proposer;
 - (f) The person's or business's proven working relationships with city project staff and knowledge of local conditions;
 - (g) The person's or business's previous history of working on related projects or issues for the city, where such previous experience will allow the services to be performed more efficiently and will require less time spent on preparation and background research;
 - (h) The sufficiency of the bidder's or proposer's financial and other resources; and
 - (i) The ability of the bidder or proposer to provide such future service as may be needed.
 6. Where two or more bidders or proposers are reasonably comparable based on a consideration of the criteria in subsection (B)(5), a preference may be given to a bidder or proposer that has a primary place of business located within the city. The city council finds that this preference serves the public purposes of supporting local economic stability and of encouraging businesses to locate and remain in the City of Morro Bay.
- C. Exceptions. The solicitation procedures in this section shall not apply to purchases that satisfy one or more of the following criteria:
1. No price advantage would be gained from a competitive solicitation process, including but not limited to circumstances when goods or services are unique and are only available from one source, also known as a "sole source" contract. However, if the person or department initiating the purchase proposes to forego a competitive solicitation process based on this

subsection (C)(1), a justification for this decision shall be presented in writing either to the city manager or designee, where the city manager has approval authority, or to the city council, where the city council has approval authority, and shall be placed in the contract file; provided that failure to provide such information to the city manager or city council shall not nullify the approval of a contract;

2. When the purchase is based on any master agreement, cooperative agreement, multiple award schedule, or other types of agreements entered into by the State of California or the federal government. Examples include, but are not limited to, California Multiple Award Schedules (CMAS) and Federal General Services Administration (GSA) contracts;
3. When the vendor or service-provider was awarded a bid by another public agency, said agency used solicitation procedures substantially similar to those that the city would have been required to use, and the vendor or service-provider offers the same price(s) to the city that it offered to the other agency;
4. When there is a local emergency, as determined by the city manager, and the life, health or safety of employees or the general public is at risk, or when significant harm may occur to city property or operating systems and goods and/or services must be procured immediately to prevent loss or substantial disruption of city services or functions; or
5. When the city council determines by resolution that bidding would be impractical, inefficient, or otherwise not in the best interest of the city, provided that the city council shall state the basis for its determination in the resolution.

3.08.080 Purchasing procedures – public projects.

- A. Uniform Public Construction Cost Accounting Act. The city has adopted the Uniform Public Construction Cost Accounting Act (Public Contract Code Section 22000 et seq., as may be amended) (the "Act") and all expenditures for public projects by the city shall be made in accordance with the Act.
- B. Solicitation Procedures. Prior to making any purchase, the person or department initiating the purchase shall make a reasonable and good faith estimate of the anticipated cost of the purchase and then proceed with the appropriate solicitation procedure below. Purchases shall not be split or separated into smaller orders for the purpose of circumventing the procedures hereunder.
 1. No Competitive Bidding Required. Public projects with an estimated cost of up to the maximum dollar amount stated in Public Contract Code Section 22032(a), including any amendment thereto, may be performed by city employees by force account or else may be awarded by negotiated contract or by purchase order without competitive bidding.
 2. Informal Bidding Required. Public projects with an estimated cost of up to the maximum dollar amount stated in Public Contract Code Section 22032(b), including any amendment thereto, shall require either the informal bidding procedures set forth in section 3.08.080(C) or the formal bidding procedures set forth in section 3.08.080(D).
 3. Formal Bidding Required. Public projects with an estimated cost of greater than the maximum dollar amount stated in Public Contract Code Section 22032(b), including any amendment thereto, shall require the formal bidding procedures set forth in section

3.08.080(D).

- C. Informal Bidding Procedures. The following procedures shall apply to informal bids: A notice inviting bids shall be prepared, which describes the project in general terms, explains how to obtain more detailed information about the project, and states the time and place for the submission of bids. The notice shall be mailed to all contractors for the category of work to be bid, as shown on the list developed in accordance with section 3.08.080(E), and to all construction trade journals as specified by the California Uniform Public Construction Cost Accounting Commission ("Commission"), in accordance with Public Contract Code Section 22036. Notices sent to contractors on the contractors list shall be sent not less than ten calendar days before bids are due and may be sent by mail, fax, or email. Additional contractors and/or construction trade journals may be notified at the discretion of the department soliciting bids, provided, however:
1. If there is no list of qualified contractors maintained by the city for the particular category of work to be performed, the notice inviting bids shall be sent only to the construction trade journals specified by the Commission.
 2. If the product or service is proprietary in nature such that it can be obtained only from a certain contractor or contractors, the notice inviting informal bids may be sent exclusively to such contractor or contractors.
- D. Formal Bidding Procedures. The following procedures shall apply to formal bids: A notice inviting bids shall be prepared, which describes the project in general terms, explains how to obtain more detailed information about the project, and states the time and place for the submission of bids. The notice shall be published at least fourteen calendar days before the date of opening the bids in a newspaper of general circulation, printed and published in the city; or, if there is no newspaper printed and published in the city, in a newspaper of general circulation which is circulated within the city; or, if there is no newspaper which is circulated within the city, publication shall be by posting the notice in at least three places within the city as have been designated by ordinance or regulation of the city as places for the posting of its notices. The notice inviting formal bids shall also be sent electronically, if available, by either fax or email and mailed to all construction trade journals specified by the Commission pursuant to Public Contract Code Section 22036. The notice shall be sent at least fifteen calendar days before the date of opening the bids. In addition to notice required by this section, the city may give such other notice as it deems proper.
- E. Contractors List. The public works director or designee shall develop and maintain a list of contractors in accordance with the provisions of Public Contract Code Section 22034 and criteria promulgated from time to time by the Commission.
- F. Preparation and Adoption of Plans. In accordance with Public Contract Code Section 22039, the city engineer, or his or her designee, is authorized to and shall prepare and adopt plans, specifications, and working details for all public projects with an estimated cost greater than the maximum dollar amount stated in Public Contract Code Section 22032(b), including any amendment thereto.

G. Award of Contract.

1. If a contract is awarded, it shall be awarded to the lowest responsive and responsible bidder. If two or more bids are the same and the lowest, the contract may be awarded to either bidder.
2. If the project was bid using informal bidding procedures, and all bids received exceed the maximum dollar amount stated in Public Contract Code Section 22032(b), including any amendment thereto, the city council may, by a four-fifths vote, adopt a resolution awarding the contract to the lowest responsive and responsible bidder if the amount of the contract does not exceed the dollar threshold stated in Public Contract Code Section 22034(d), including any amendment thereto, and it determines the city's cost estimate for the project, upon which the decision to use informal bidding procedures was based, was reasonable. Otherwise, the project shall be re-bid following the formal bidding procedures.
3. In its discretion, the city may reject all bids, and may do any of the following:
 - a. Abandon the project.
 - b. Re-advertise the bid in the manner described in this chapter.
 - c. By a four-fifths vote, the city council may declare by resolution that the project can be performed more economically by city employees and may have the project done by force account without further complying with this chapter. Prior to rejecting all bids and declaring that the project can be more economically performed by city employees, the city shall furnish a written notice to an apparent low bidder, informing the bidder of the city's intention to reject the bid. Such written notice shall be mailed at least two business days prior to the hearing at which the city intends to reject the bid.
4. If no bids are received through the formal or informal procedure, the project may be performed by city employees by force account or by a negotiated contract without further complying with this chapter.

G. Emergencies.

1. In cases of emergency when repair or replacements are necessary, the city council may proceed at once to replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts. The work may be done by day labor under the direction of the city, by contractor, or by a combination of the two.
2. In case of an emergency, if notice for bids to let contracts will not be given, the city shall comply with the requirements of Public Contract Code section 22050.

H. Exemptions. The bidding procedures for public projects required by this chapter shall not apply when an exemption is provided by state or federal law.

3.08.090 Purchase of paper products; procurement of recovered organic waste products.

- A. When purchasing paper products and printing and writing paper, the city shall comply with 14 CCR Section 18993.3, as may be amended.
- B. All vendors providing paper products and printing and writing paper to the city shall make the certifications required by 14 CCR Section 18993.3(c), as may be amended, and shall provide the city with all records and documents required by the city to comply with the reporting requirements in 14 CCR Section 18993.4, as may be amended.
- C. The city shall procure recovered organic waste products in accordance with the requirements of 14 CCR Section 18993.1, as may be amended, and as further specified in the Purchasing Policy or a different policy adopted by the city council.

3.08.100 Encumbrance of funds.

Except in cases of emergency or in cases where specific authority has been first obtained from the city manager, no purchase shall be made unless there exists an unencumbered appropriation in the department, in the fund against which the purchase is to be charged.

3.08.110 Purchases with grant or loan funds.

Notwithstanding any other provision of this chapter, if a purchase is funded in whole or in part by grant or loan funds and the grant or loan requires the city to use specific purchasing procedures that are inconsistent with the requirements of this chapter, then the city shall follow the grant or loan requirements unless they conflict with state or federal law.



AGENDA NO: C-5

MEETING DATE: December 14, 2021

Staff Report

TO: Honorable Mayor and City Council

DATE: December 7, 2021

FROM: Eric Endersby, Harbor Director
Scott Collins, City Manager

SUBJECT: Authorize City Council Comments to the National Marine Sanctuaries Program Regarding the Potential Chumash Heritage National Marine Sanctuary Designation Process and Reiterate Previous Opposition to National Marine Sanctuary in Local Waters Until Critical Management Issues Addressed

RECOMMENDATION

Staff recommend the City Council reiterate its previous opposition of a national marine sanctuary in local area waters until critical sanctuary governance and management issues, as outlined in this staff report, are resolved. Additionally, staff recommend the City Council authorize the Mayor to submit comments, as outlined in this staff report, to the National Marine Sanctuary Program regarding the proposed designation of the Chumash Heritage National Marine Sanctuary.

ALTERNATIVES

1. Rescind the City's previous opposition to national marine sanctuaries in local waters, taking a support stance on sanctuaries instead, and provide comments regarding the Chumash sanctuary proposal accordingly.
2. Take no action on marine sanctuaries generally, and provide pertinent comments regarding the Chumash sanctuary proposal accordingly.
3. Take no action on marine sanctuaries generally nor the Chumash sanctuary proposal specifically.

If Alternative 1 is chosen, staff recommend the City Council rescind Resolution No. 18-12 as it would be in opposition to a sanctuary "support" position.

FISCAL IMPACT

There is no fiscal impact to this action.

BACKGROUND

The National Marine Sanctuaries Act (NMSA), originally called the Marine Protection, Research and Sanctuaries Act, was first enacted in 1972 under the programmatic management of the then newly-established National Oceanic and Atmospheric Administration (NOAA) following the devastating 1969 Santa Barbara oil spill brought the plight of the marine ecosystem to national attention. The NMSA authorizes the U.S. Secretary of Commerce to designate and protect areas of

Prepared By: EE

Dept Review: EE

City Manager Review: SC

City Attorney Review: CFN

the nation's marine environments and Great Lakes due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational or esthetic qualities as national marine sanctuaries. Current national marine sanctuaries vary from the site of a single U.S. Civil War shipwreck to vast expanses of ocean and habitat.

The first national marine sanctuary was established in 1974 off the Coast of North Carolina to protect the newly discovered wreck of the iron-clad Civil War vessel *USS Monitor*. Currently there are 15 national marine sanctuaries, four of which are in California: Greater Farallones (previously named Gulf of the Farallones), Cordell Bank, Monterey Bay and Channel Islands.

The Monterey Bay National Marine Sanctuary (MBNMS) was established in 1992, and stretches from the Greater Farallones National Marine Sanctuary off San Francisco south to Cambria. Channel Islands National Marine Sanctuary, established in 1980, is completely offshore of the mainland and encompasses San Miguel, Santa Rosa, Santa Cruz, Anacapa and Santa Barbara Islands.

In 2014, NOAA revised the process for sanctuary designation, changing from a “top-down” site evaluation process to a “bottom-up” nomination one. In the “bottom-up” nomination process, a community or entity builds a nomination and submits it to NOAA. NOAA then performs an initial review for completeness and that it meets the basic requirements for submission. If it does, it goes on to a second, more thorough NOAA review where it is evaluated and must meet at least one of four National Significance Criteria categories, and must meet all seven of seven Management Consideration categories.

A guide to the marine sanctuary nomination process is here:

<http://www.nominate.noaa.gov/>

If a nomination meets at least one National Significance Criteria and all seven Management Considerations, NOAA will add the site to an “inventory list” of potential new national marine sanctuary sites. NOAA may then consider an area on the inventory list for future designation in a completely separate public process that can take years to complete.

In 2015, the Northern Chumash Tribal Council submitted a nomination to NOAA for a Chumash Heritage National Marine Sanctuary (CHNMS) that would incorporate local waters and extend from the southern border of the MBNMS off Cambria south to below Point Conception. Under the NMSA, a nomination can “sit on the inventory shelf” for consideration of designation for up to five years. Having not been considered for designation by 2020, last summer the CHNMS nomination was reconsidered by NOAA, and placed back on the “inventory” list for up to five more years.

Links to the CHNMS nomination document and NOAA's Five Year Review Technical Report on the nomination can be found here:

- https://nmsnominate.blob.core.windows.net/nominate-prod/media/documents/nomination_chumash_heritage_071715.pdf
- <https://nmsnominate.blob.core.windows.net/nominate-prod/media/documents/20200922-chnms-technical-report-5-year-review.pdf>

Just before the 2021 Thanksgiving holiday, NOAA announced they were moving forward with the CHNMS designation process, the first step of which is a 60-day public comment period that currently ends on January 10, 2022 (although several entities, including the City of Morro Bay, have

requested an extension of the deadline due to the comment period's proximity to the year-end holidays).

Next steps in the process include public scoping meetings, and preparation of a draft sanctuary proposal by NOAA that includes potential boundaries, regulations, and a management plan. After considering all public comments, if NOAA makes a final decision to pursue sanctuary designation it will prepare final documents. The Governor and Congress then review the documents before final designation.

In discussions with regional Sanctuary Program staff, City staff were advised the entire process for the CHNMS would take approximately one year, although the sanctuary's website states the sanctuary designation process can take two to three years to complete.

DISCUSSION

The national marine sanctuaries have clearly provided environmental, social and economic benefits to the regions in which they have been developed. Those include protecting regions from hazardous oil spills and other environmental issues. The Morro Bay City Council is supportive of those general goals, as evidenced by its support of climate action planning and environmental stewardship. However, City Council, in addition to numerous other local and regional agencies and organizations, have gone on record opposing a marine sanctuary designation on the San Luis Obispo County coast in the past based on historic issues those agencies and organizations have seen and experienced with sanctuary governance, particularly with the MBNMS. In short, those issues are:

- Sanctuary conflicts with the commercial fishing industry, primarily over sanctuary influence and efforts related to commercial fishery regulation detrimental to the industry, in what are arguably the most heavily and well-regulated and managed fisheries in the world
- Sanctuary conflicts with local communities and agencies bordering on sanctuaries, primarily burdensome sanctuary governance and requirements of that governance as they relate to traditional and necessary working harbor/coastal uses and activities, most notably dredging and dredged materials disposal
- Sanctuary Advisory Councils having no true local control mechanisms, and advisory Council members appointed by and serving at the pleasure of sanctuary superintendents, with no local accountability

The last Morro Bay City Council resolution in opposition to marine sanctuary designation, Resolution No. 18-12, as well as a June 10, 2020 letter from the City to NOAA Sanctuaries reiterating the City's opposition to the CHNMS's designation, are included with this staff report in Attachments 1 and 2.

Staff recommend the Morro Bay City Council reiterate its opposition to marine sanctuary designation in local waters until such time the long-standing historic issues outlined above are resolved (as indicated in Resolution No. 18-12).

Staff further recommend, however, that if sanctuary designation continues in local waters as is being proposed with the CHNMS, the following positions are adopted by the Council and provided as initial comments to NOAA regarding this proposal:

1. The Chumash Heritage sanctuary designation document and management plan recognize the cultural and economic value of both native fishers and modern commercial fishers and

fisheries as resources to be protected, preserved and promoted equally to other sanctuary resources. Because the region's native populations included a rich maritime element, including harvesting of the sea for sustenance, it is fitting that any new sanctuary recognize and honor these dual cultures and traditions.

2. The Chumash Heritage sanctuary boundaries set a minimum five-mile exclusion radius around ports and harbors. This will help ensure sanctuary oversight, management and regulation do not interfere with or cause additional unnecessary burdens on traditional working waterfront uses, activities and communities.
3. The Sanctuary Advisory Council (SAC) of the Chumash Heritage sanctuary be populated and managed in such a manner as to foster and create local representation, input and control. Such an SAC have at least 50% of its voting members representative of and chosen by local, resource-dependent tribes and stakeholders, and sanctuary management and governance be such that SAC input and advice has a clearly functional and effective role as indicated in the management plan.
4. The Chumash Heritage sanctuary boundaries have a minimum five-mile buffer to any offshore wind farms, in addition to sufficient sanctuary-free corridors or areas for undersea transmission cable paths and industry service vessel transit. Offshore Wind generation and marine sanctuaries are generally incompatible with each other, with offshore wind being critical to our nation's clean energy future, therefore, adequate buffers and distances must be maintained between the two.

CONCLUSION

While staff have endeavored to place consideration of this sanctuary designation on the Council agenda in a timely, useful and informative manner, the timing of NOAA's announcement with the comment period falling across the year-end holidays and closing on January 10, 2022, does not provide adequate time for thorough vetting and consideration of the numerous issues. Because of this, staff have only touched in this report on the primary issues at play. An extension of the comment period is warranted and has been requested by the City.

Finally, this comment period is the first in a long process of public and stakeholder engagement and sanctuary plan development, and there will be further opportunities for the City to provide input, comments and recommendations, including if the initial comment period is extended.

The City supports many of the stated goals of the marine sanctuary, but significant concerns remain as outlined in the report above. Should those legitimate concerns be adequately addressed and resolved, the City would be in a position to reconsider its current opposition to the proposed national marine sanctuary off the waters of Morro Bay.

ATTACHMENTS

1. Morro Bay Resolution No. 18-12
2. June 10, 2020 letter from Morro Bay City Council to NOAA regarding the CHNMS

RESOLUTION NO. 18-12

**STATEMENT OF CONTINUED OPPOSITION TO CREATION OF A
NATIONAL MARINE SANCTUARY IN THE SAN LUIS OBISPO COUNTY
COASTAL AREA, AND CONTINUED OPPOSITION TO EXPANSION
OF THE MONTEREY BAY NATIONAL MARINE SANCTUARY
INTO THE SAN LUIS OBISPO COUNTY COASTAL AREA**

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

WHEREAS, the City of Morro Bay opposes development of offshore oil and supports protection of the abundant natural resources of the San Luis Obispo coast; and

WHEREAS, the Monterey Bay National Marine Sanctuary (MBNMS) has been created on the California Coast from Half Moon Bay to Cambria to stop any potential offshore oil development and to support natural resource protection through education, public participation and research; and

WHEREAS, the MBNMS management plan update process identified expansion of the MBNMS boundary to the San Luis Obispo coast as a mid level priority for future consideration; and

WHEREAS, the MBNMS Sanctuary Advisory Council (SAC) requested MBNMS staff to support formation of a committee in San Luis Obispo County to study MBNMS expansion to this area; and

WHEREAS, the City of Morro Bay supports the Alliance of Communities for Sustainable Fisheries and its recommendation for improving sanctuary program management through the management plan update process, which recommendations the City feels have not been adequately addressed in the sanctuary program overall; and

WHEREAS, the City supports commercial fishing, commercial fishing facilities and the infrastructure needed for our traditional working harbor community; and

WHEREAS, the National Marine Sanctuary program recently circulated a new fishing regulation coordination policy that clearly states the power of the sanctuary to regulate fishing; and

WHEREAS, despite what promises are made not to regulate fishing, when sanctuaries are created or expanded, this policy will result in sanctuary's becoming another regulatory agent in the already well regulated area of fishing; and

WHEREAS, National Marine Sanctuary programs and the commercial fishing industry have many common goals in education, pollution protection, opposition to offshore oil and creation of sustainable fishery, so that there is no reason why if managed with proper balance and sensitivity to traditional working harbor uses the sanctuary programs should not have positive working relationships with the commercial fishing industry and working harbor communities; and

WHEREAS, the National Marine Sanctuary program has not developed a positive working relationship or the support of commercial fishing and the working harbor communities in its California sanctuaries at this time; and

WHEREAS, the National Marine Sanctuary program does not permit the SAC to have anything other than an advisory role and controls the ability of the SAC to communicate with the public at large and with outside agencies; and

WHEREAS, the National Marine Sanctuary Program, as currently authorized, does not provide for a mechanism for local control of sanctuary programs and the current organization of the SAC does not adequately meet the needs of local community direction to the program; and

WHEREAS, the City of Morro Bay approved Resolution 27-03 on April 28, 2003 which opposed the creation of a National Marine Sanctuary in the San Luis Obispo County Coastal Area and opposed the expansion off the Monterey Bay National Marine Sanctuary in the San Luis Obispo County Coastal Area.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay that because the National Marine Sanctuary Program has not adequately resolved conflicts and concerns of the commercial fishing industry and traditional working harbor uses and because the National Sanctuary Act does not currently allow for a sanctuary designation with true local control, the City of Morro Bay continues to oppose the formation of a National Marine Sanctuary and expansion of the Monterey Bay National Marine Sanctuary in the waters of the San Luis Obispo County coast.

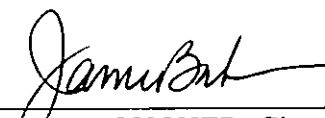
PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting held thereof on the 10th day of April 2012, by the following vote:

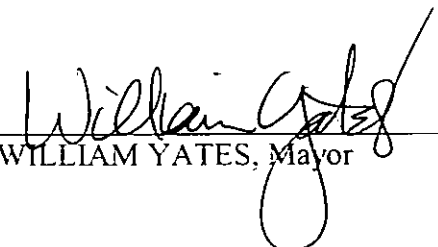
AYES: Borchard, Johnson, Leage, Smukler, Yates

NOES: None

ABSENT: None

ATTEST:


JAMIE BOUCHER, City Clerk


WILLIAM YATES, Mayor



CITY OF MORRO BAY

CITY HALL

595 Harbor Street
Morro Bay, CA 93442

June 10, 2020

Mr. John Armor, Director
NOAA Office of National Marine Sanctuaries
1305 East-West Highway, 11th Floor
Silver Spring, MD 20910

RE: Written Comments – Review of Nomination for Chumash Heritage National Marine
Sanctuary – Docket No. NOAA-NOS-2020-0063

Dear Director Armor,

Thank you for meeting with representatives of the City of Morro Bay and other representatives of the California Marine Affairs and Navigation Conference this past March at your offices in Silver Spring. We appreciate the time you and your staff took to provide us information about the sanctuaries program, and more specifically, the status of the Chumash Heritage sanctuary nomination.

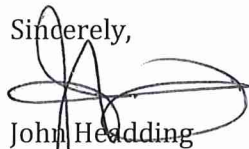
As you know, Morro Bay is a small town on the Central Coast of California, with a long and important commercial and recreational fishing heritage that continues to this day. As such, and with the Monterey Bay National Marine Sanctuary southern border approximately ten miles from our City limits, sanctuary designation in our waters has long been a subject not without controversy.

Because of several controversial sanctuary-related issues, when considering the Chumash Heritage sanctuary nomination in September 2015, the Morro Bay City Council voted to let stand Morro Bay Resolution No. 18-12, which resolves:

Now therefore, be it resolved by the City Council of the City of Morro Bay that because the National Marine Sanctuary Program has not adequately resolved conflicts and concerns of the commercial fishing industry and traditional working harbor uses and because the National Marine Sanctuary Act does not currently allow for a sanctuary designation with true local control, the City of Morro Bay continues to oppose the formation of a National Marine Sanctuary and expansion of the Monterey Bay National Marine Sanctuary in the waters of the San Luis Obispo County coast.

This resolution still stands today, and still represents the City of Morro Bay's opposition to designation of the Chumash Heritage National Marine Sanctuary or its continued inclusion in the national inventory of areas that NOAA may consider for future designation of a national marine sanctuary.

Sincerely,



John Hedding
Mayor

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AGENDA NO: C-6

MEETING DATE: December 14, 2021

Staff Report

TO: Honorable Mayor and City Council

DATE: December 6, 2021

FROM: Scott Collins, City Manager
Greg Kwolek, Public Works Director

SUBJECT: Consideration of Resolution No. 87-21 for 180-Day Wait Period Exception for CalPERS Retired Annuitant / Interim City Engineer Appointment, Approval of Interim City Engineer Agreement between the City and Robert Livick, and Receive Engineering Division Update

RECOMMENDATION

Staff recommends the City Council:

1. Adopt Resolution No. 87-21 approving an exception to the 180-day waiting period for the position of Interim City Engineer; and
2. Approve the Interim City Engineer appointment and Interim City Engineer employment agreement between the City and Mr. Livick, and authorize the City Manager to execute the employment agreement; and
3. Receive Staff Update regarding Engineering Division Resources and Staffing.

ALTERNATIVES

The City Council may elect not to adopt Resolution No. 87-21 and direct staff accordingly.

FISCAL IMPACT

The City has included funds for the position of City Engineer in the budget for Fiscal Year 2021-2022. 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. Also, retirees 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 this will result in a savings to the City of approximately \$6,500 per month compared to carrying the fully benefited position while the City conducts a recruitment for the permanent City Engineer position. Additionally, the City has contracted with two consulting engineers, Eikhof Design Group and Confluence Engineering Solutions, to assist with the transition to provide general engineering services for implementation of capital projects, including the WRF project, and other core and urgent engineering duties. The consulting engineers are estimated to cost the City \$108,000. Funding for consultant services will come from the abovementioned City Engineer salary savings, Water and Sewer funds for related capital projects, and from Measure Q & E funds allocated for capital project implementation in the FY 2021-22 budget.

Prepared By: DS/GK

Dept Review: _____

City Manager Review: SC

City Attorney Review: MH

BACKGROUND

The City's current City Engineer, Rob Livick, very recently announced his retirement effective December 31, 2021. Mr. Livick joined the City as City Engineer in May 2007 and served as Public Works Director from February 2010 to May 2020. The City, community, and the Public Works Department have benefitted greatly from his experience and leadership over the past 14 years. The process to conduct an open recruitment for the permanent City Engineer is currently ongoing and expected to take approximately 10-14 weeks. To fill this critically needed position, maintain continuity of leadership in engineering, and ensure a smooth transfer of knowledge so that capital and other City projects advance when the successor City Engineer begins working for the City, staff recommends the City Council certify the critical need of the City Engineer position and seek an exception to the 180-day waiting period to allow Mr. Livick to serve as Interim City Engineer.

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).)

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

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-12-21 on August 16, 2021 which, among other things, continued the suspension of the retired annuitant work hour limitation of 960 hours per fiscal year to ensure adequate staffing during the state of emergency. Under this executive order, the 180-day break in service requirement under Government Code section 7522.56(f) was also suspended for retired annuitants hired on or after July 1, 2021 to ensure adequate staffing during the state of emergency.

DISCUSSION

Two items are being presented for the City Council's consideration and approval: 1) a resolution certifying the nature of Mr. Livick's employment as interim city engineer 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 city engineer employment agreement for Mr. Livick whereby he would be appointed to the position of interim city engineer, effective January 3, 2022.

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. Livick's appointment to the position of interim city engineer

is necessary to fill a critically needed position. Mr. Livick is the designated Civil Engineer in responsible charge of professional engineering works for the City, a function that is required by California Business and Professions Code § 6730.2. Filling the position of the city engineer and maintaining a designated Civil Engineer in responsible charge of surveying and engineering works is critical to maintaining core City operations. The City anticipates the recruitment for the permanent city engineer position will conclude by March 2022. Mr. Livick's appointment as interim city engineer will automatically terminate when a permanent city engineer begins working for the City.

Mr. Livick's 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-12-21. Accordingly, the basic contract terms for Mr. Livick as interim city engineer would be as follows:

- Anticipated hours of work/ 960 hour limitation: Mr. Livick anticipates working 30-40 hours per week to ensure capital projects continue to move forward and prepare for a successful transfer of historical knowledge to the next city engineer. 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-12-21 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 January 3, 2022, and would expire automatically on December 31, 2022, unless a permanent city engineer begins working for the City before that date.
- Compensation: Mr. Livick will be paid a salary equivalent to the hourly rate for Step 5 of the City Engineer position in the City's salary schedule adopted June 22, 2021 (\$62.47/ hr.).
- No benefits would be paid.
- Employment status: Mr. Livick would serve as an at-will employee. The agreement could be terminated by either party at any time and would automatically terminate upon the commencement of a permanent City Engineer.

Staff has submitted a request for waiver of the work hour limitations to the CalPERS Executive Order Review Section, as required by Executive Order No. N-12-21 and received acknowledgement the request was received and processed. In addition, if Council approves Resolution No. 87-21 and the Interim City Engineer agreement, these documents will be forwarded by staff to CalPERS in accordance with Government Code section 7522.56(f).

Engineering Division Update A top goal for the Engineering Division during Mr. Livick's transition into retirement is to continue to advance the various capital projects currently in progress, including the WRF project, while also compiling, consolidating, and recording the years of institutional knowledge held by Mr. Livick. The latter objective will facilitate the success of the next permanent city engineer in their role. In order to achieve this overall goal, the City has hired two consulting engineers, Eikhof Design Group and Confluence Engineering Solutions, who will be managed by Mr. Livick and will assist with capital projects implementation as well as development reviews, traffic engineering, and public records requests. Eikhof Design Group will take on generalist engineering work, while Confluence Engineering Solutions will focus on the WRF program and OneWater Plan implementation.

Per CalPERS rules, Mr. Livick's employment period as a retired annuitant cannot overlap with the employment of the permanent city engineer. As such, Mr. Livick's employment as a retired annuitant will end just before the new city engineer's start date. Staff opened a recruitment for city engineer with a projected timeline to have a permanent city engineer start in early March. Staff plans to retain both consultants until two weeks after the permanent city engineer is hired to allow for a full knowledge transfer.

CONCLUSION

Staff recommend the City Council:

1. Adopt Resolution No. 87-21 approving an exception to the 180-day waiting period for the position of Interim City Engineer; and
2. Approve the Interim City Engineer appointment and employment agreement between the City and Mr. Livick, and authorize the City Manager to execute the employment agreement.

ATTACHMENTS

1. Resolution No. 87-21
2. Interim City Engineer Employment Agreement

RESOLUTION NO. 87-21

**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, Robert Livick (CalPERS ID 5048447214) will retire from the City of Morro Bay in the position of City Engineer, effective December 31, 2021; and

WHEREAS, section 7522.56 requires that post-retirement employment commence no earlier than 180 days after the retirement date, which is June 30, 2022 (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. Livick 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. Livick as an interim appointment retired annuitant to the vacant position of City Engineer for the City under Government Code section 21221(h), effective January 3, 2022; 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 December 31, 2022, if not automatically terminated earlier; and

WHEREAS, the entire employment agreement, contract or appointment document between Mr. Livick 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-12-21, which continues the suspension of 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 \$10,828.00 and the hourly equivalent is \$62.47, and the minimum base salary for this position is \$8,908.17 and the hourly equivalent is \$51.39; and

WHEREAS, the hourly rate paid to Mr. Livick will be \$62.47; and

WHEREAS, Mr. Livick 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 Robert Livick as described herein and detailed in the attached employment agreement and that this appointment is necessary to fill the critically needed position of City Engineer for the City by January 3, 2022 because such position is essential to maintaining the basic ongoing operations of the City (specifically with respect to critical surveying and engineering works), ensuring adequate staffing during the state of emergency caused by the COVID-19 pandemic, and because a recruitment for the permanent position of City Engineer could not be completed by this date.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 14th day of December 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

CITY OF MORRO BAY
AT-WILL INTERIM CITY ENGINEER
EMPLOYMENT AGREEMENT

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

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 City Engineer effective December 31, 2021, and as a result, the City Engineer 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 City Engineer; and

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

WHEREAS, the duties of the City Engineer are set forth in full in Exhibit “A” to this Agreement;

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. 87-21, 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, part-time temporary employee for the position of Interim City Engineer, which is a position that requires specialized skills and expert professional services for a definite period of time, effective January 3, 2022; 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 City Engineer, as demonstrated by his success as city engineer over an extensive period of time, (ii) desires to perform the duties of and assume responsibility for the position of Interim City Engineer, 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:

Section 1: TERM

The term of this Agreement shall commence on January 3, 2022, and shall automatically terminate on December 31, 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 City Engineer. 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-12-21, which continues the suspension of 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 in a single fiscal year during the Term of this Agreement without CalPERS authorization, then this Agreement shall terminate automatically. January 3, 2022 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 City Engineer, 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 Public Works Director shall, from time to time, direct or assign to Employee. Employee acknowledges the position of Interim City Engineer 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. During the term of his appointment to the position of Interim City Engineer, the Parties anticipate that Employee will work a part-time schedule of approximately thirty (30) hours per week. Employee shall not work more than forty (40) hours per week without first obtaining written authorization to do so from the City Manager. Employee acknowledges proper

performance of the duties of Interim City Engineer may occasionally require Employee to devote time outside of normal office hours, including attendance at City Council and other City or community meetings. 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 his 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 the rate of Sixty-two Dollars and Forty-seven Cents (\$62.47) per hour, which is within the hourly compensation range for the City Engineer position. The current compensation range for the City Engineer position is \$106,898.00 to \$129,936.00 annually. ($\$129,936.00 \div 12 \div 173.333 = \$62.47$.)

B. 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 Public Works Director with at least **thirty-days' advance written notice unless otherwise shortened by the Public Works Director.**

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.

C. 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.

D. 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.

E. 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

Robert Livick
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's 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 30 hours per week will not cause him to exceed the 960 hours per fiscal year limit pursuant to Government Code subdivision 21221(h), except as authorized under Executive Order N-12-21 and CalPERS Circular Letter 200-056-21.
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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:

Approved as to form:

Dana Swanson,
City Clerk

Chris F. Neumeyer,
City Attorney

[Signatures continued on Page 7]

[Signatures continued from on Page 6]

EMPLOYEE,

In signing this Agreement, Employee understands and agrees he is an **at-will, part-time temporary 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: _____
ROBERT LIVICK

CITY OF MORRO BAY
CITY ENGINEER JOB DESCRIPTION

DEFINITION

Under administrative direction of the Public Works Director, to plan, organize and direct the City's Engineering Division of the Public Works Department; perform complex and professional engineering work for environmental, water, sewer, street, and other public works projects and programs ensuring technical competence and compliance with all current codes and criteria; supervise support staff; serve as project manager as needed; and to do related work as required. This position serves as the "City Official" designated to the Board of Professional Engineers, Land Surveyors and Geologists of having "Responsible Charge" for all municipal Engineering and Land Surveying Activities.

ESSENTIAL DUTIES & RESPONSIBILITIES

1. Plans, organizes and directs the activities in the Engineering Division.
2. Acts as City's Traffic Engineer, Floodplain Administrator and Surveyor.
3. Reviews private project development plans for compliance with codes, regulations, and standards; ensures adequacy of applications for permits and compliance with approved plans in coordination with the Community Development Department.
4. Determines applicable codes, regulations, and requirements for assigned projects.
5. Coordinates the preparation of, or develops, engineering plans and specifications; coordinates required advertising for bids; reviews construction bids and makes necessary recommendations based on lowest and best bids, competency of contractors, vendors and consultants, and the selection criteria.
6. Provides project management for the construction of municipal public works projects; oversees assigned projects to ensure contractor compliance with time and budget parameters for the project.
7. Prepares sanitary wastewater, water, storm drainage, and street system maps, data bases, and comprehensive plans.
8. Maintains and approves the engineering standards and specifications and infrastructure records.
9. Assures as-built records of projects, and documents necessary changes for the operation and maintenance programs.
10. Responds to public or other inquiries relative to engineering requirements on specific projects and other information.
11. Reviews utility permits, street use (encroachment) permits, franchise utility permits, etc.
12. Maintains regular contact with consulting engineers, construction project engineers, City, County, State and Federal agencies, professional and technical groups and the general public regarding division activities and services.

CITY ENGINEER

13. Assists in the evaluation of transportation and traffic impacts of development proposals, permits, rezones, plats, etc.; prepares traffic, utility and other studies and reports.
14. Provides intersection signal and channelization design.
15. Develops the pavement management systems.
16. Coordinates sidewalk inspection, maintenance and enforcement programs.
17. Monitors inter-governmental actions affecting public works operations.
18. Assists in the training of other city personnel in public works design and construction techniques.
19. Assists in the management of departmental personnel including interviews, selection, training, evaluations, and discipline.
20. Performs related duties as required.

QUALIFICATIONS

Knowledge of:

Thorough knowledge of civil engineering principles, practices and methods as applicable to a municipal setting; considerable knowledge of applicable City policies, laws, and regulations affecting Division activities; considerable skill in arriving at cost estimates on complex projects; skill in operating the listed tools and equipment.

Ability to:

Ability to communicate effectively, orally and in writing, with employees, consultants, other governmental agency representatives, City officials and the general public; ability to conduct necessary engineering research and compile comprehensive reports.

Education and Experience:

Graduation from a four-year college or university with a degree in civil engineering or closely related field and minimum of four years previous professional civil engineering experience; or any equivalent combination of education and experience.

Must be physically capable of moving about on construction work sites and under adverse field conditions.

Possession and maintenance of a Registered Professional Civil Engineer license in the State of California.

Desirable: Possession and maintenance of a Licensed Professional Land Surveyor license in the State of California.

Must possess a valid California driver's license.

TOOLS & EQUIPMENT USED

Personal computer, including word processing, spreadsheet, and data base and computer-aided-design software; standard drafting tools; surveying equipment including level, theodolite and electronic distance measuring devices; motor vehicle; telephone; mobile radio; fax and copy machine.

PHYSICAL DEMANDS

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.

Work is performed mostly in office settings. Some outdoor work is required in the inspection of various land use developments, construction sites, or public works facilities. Hand-eye coordination is necessary to operate drafting instruments, computers and various pieces of office equipment.

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

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.

While performing the duties of this job, the employee occasionally works in outside weather conditions. 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 to moderate.

SELECTION GUIDELINES

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

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

CITY ENGINEER

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 January 10, 2000.

Revisions approved by the Morro Bay City Council on March 10, 2020.