



CITY OF MORRO BAY

City Council Regular Meeting Agenda

Tuesday, August 27, 2024, 5:30 p.m.
Veterans Memorial Hall, 209 Surf St., Morro Bay, CA

Public Participation

Public participation is offered in the following ways:

- Community members may attend the meeting in person at the Morro Bay Veterans Hall.
- Alternatively, members of the public may watch the meeting and speak during general Public Comment or on a specific agenda item by logging into the Zoom webinar using the information provided below. Please use the "raise hand" feature to indicate your desire to provide public comment.
- Zoom webinar link:
<https://us02web.zoom.us/j/82722747698?pwd=aWZpTzcwTHIRTK9xaTImWVNWRWFUQT09>
- 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.
- Meetings are also broadcast on cable Channel 20 and streamed on the City's website.
- Community Members are encouraged to submit agenda correspondence via email to the City Council at council@morrobayca.gov prior to the meeting. Agenda correspondence received by 10:00 a.m. on the meeting day will be posted on the City website.

Pages

1. ESTABLISH QUORUM AND CALL TO ORDER

2. MOMENT OF SILENCE

3. PLEDGE OF ALLEGIANCE

4. REPORTS

4.a Closed Session Report

4.b Mayor and Councilmembers' Reports, Announcements and Presentations

4.c City Manager Reports, Announcements and Presentations

4.d Subcommittee Reports - Verbal Update of Current Subcommittee Activities

1. Water Reclamation Facility & Morro Bay / Cayucos Sanitary District JPA

2. Morro Bay Power Plant (Vistra)
3. Offshore Wind Energy
4. Downtown Design District

5. RECOGNITION AND PRESENTATIONS

None.

6. PUBLIC COMMENT

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

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

7. 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.

7.a	Approval of Minutes (City Clerk)	
	<u>Recommended Action</u> Approve as submitted.	
	1. July 23, 2024 - Regular Council Meeting	8
	2. August 13, 2024 - Special Closed Session Meeting	16
	3. August 13, 2024 - Regular Council Meeting	18
7.b	Acceptance of California Office of Traffic Safety (OTS) Grant (Fire Department)	24
	<u>Recommended Action</u>	
	1. Authorize the Fire Department to accept the grant award from the California Office of Traffic Safety Grant program for hydraulic extrication equipment; and	
	2. Authorize the City Manager to approve execution of grant related documents, subject to City Attorney review and approval as to form; and	
	3. Adopt Resolution No. 54-24 to amend the Fiscal Year (FY) 2024-25 Operating & Capital Budget.	
7.c	Approval of Amendment No. 6 to Environmental Impact Report (EIR) Contract with Rincon Consultants for the Vistra Battery Energy Storage System (BESS) Project at 1290 Embarcadero (Community Development Department)	42
	<u>Recommended Action</u> Approve Amendment No. 6 to the EIR contract for the Vistra Battery Energy Storage System (BESS) project EIR at 1290 Embarcadero. The City Attorneys' Office has reviewed Amendment No. 6 (Attachment 2) as to form, such Amendment subject to final approval as to form by the City Attorney.	
7.d	Award of Contract to AAAA Engineering Contracting, Inc., for the Sequoia Court Storm Drain Repair Project (Public Works Department)	53
	<u>Recommended Action</u> Award a contract to AAAA Engineering Contracting, Inc., for the Sequoia Court Storm Drain Repair Project for a total of \$433,840, which includes a 10% contingency budget executable by the City Manager.	

The contract (Attachment 1) has been reviewed and approved as to form by the City Attorneys' Office.

- 7.e Award of Contract to Hartzell General Engineering Contractor, Inc., for Lift Station 1 Force Main Replacement Project and Approval of Resolution No. 55-24 Amending the Fiscal Year (FY) 2024-25 Operating & Capital Budget** 74

(Public Works Department)

Recommended Action

1. Award a contract to Hartzell General Engineering Contractor, Inc., (Hartzell) for the Lift Station 1 Force Main Replacement Project for a total of \$414,568, which includes a 10% contingency budget executable by the City Manager. The contract (Attachment 1) has been reviewed and approved as to form by the City Attorneys' Office; and
2. Adopt Resolution No. 55-24 amending the FY 2024-25 Operating & Capital Budget to add \$69,568 to the List Station 1 Force Main Replacement Project budget.

- 7.f Approval of SB-1 Funding Project List for FY 24/25 Pavement Management Plan Project** 97

(Public Works Department)

Recommended Action

Adopt Resolution No. 56-24 approving the Fiscal Year 2024/25 project list for use of Senate Bill 1 (Road Repair and Accountability Act of 2017) Road Maintenance and Rehabilitation Account (RMRA) funds.

- 7.g Approval of Contract with Filippin Engineering for Performing Construction Management and Inspection Services for the 2024 Pavement Rehabilitation Project** 102

(Public Works Department)

Recommended Action

Approve and execute contract in the amount of \$334,936.80, which includes a 10% contingency executable by the City Manager, with Filippin Engineering (FE), to perform Construction Management and Inspection Services for the 2024 Pavement Management project (Attachment 1). The City Attorneys' Office has reviewed and approved the contract with FE (Attachment 1) as to form.

- 7.h Adoption of Resolution No. 57-24 Approving Amendment # 1 to the Master Lease Agreement with WBAM LLC, Lease Site 30W-33W, Bayfront Marina located at 201 Main Street** 153

(Harbor Department)

Recommended Action

Adopt Resolution No. 57-24, approving Amendment 1 to the Master Lease Agreement.

- 7.i **Central Coast Community Energy Proposed Amendment to Joint Powers Agreement** 158
(City Manager)

Recommended Action

Receive and file.

8. **PUBLIC HEARING ITEMS**

None.

9. **BUSINESS ITEMS**

- 9.a **Award of Contract to Souza Construction for the 2024 Pavement Rehabilitation Project** 166
(Public Works Department)

Recommended Action

Award a contract to Souza Construction (Souza), for the 2024 Pavement Rehabilitation Project for a total of \$4,383,595.98, which includes a 10% contingency budget executable by the City Manager. The City Attorneys' Office has reviewed the contract with Souza (Attachment 1) as to form, such contract subject to final approval as to form by the City Attorney prior to full execution.

- 9.b **Authorization to Submit a Grant Application for California Coastal Commission (CCC) Local Coastal Program (LCP) Local Assistant Grant Program Funding and Increase Grant Budget for the Waterfront Master Plan Update** 188
(Community Development Department)

Recommended Action

Adopt Resolution No. 58-24 authorizing staff to submit a grant application for California Coastal Commission (CCC) LCP Local Assistance Grant Program to fund the update of the City's 1996 Waterfront Master Plan in the amount of \$750,000. This is a \$250,000 increase to the amount (\$500,000) authorized by the City Council for the same grant application on September 26, 2023.

- 9.c **Amend Council Policies & Procedures Section 5.5, for Elected Officials Not Running for Office, to Conduct Town Halls Under Section 5.5 During Election Season; and 2) Authorize Section 5.5 for Potential for Potential Upcoming Town Hall Meetings** 211
(City Manager/City Attorney/City Clerk)

Recommended Action

Discuss and then consider approval of some/all of the following options:

1. Adoption of Resolution No. 59-24 amending the City Council Policies & Procedures, to amend Section 5.5 regarding the use of public resources during election season by elected officials not running for office, with one of following options:

Option A: affirm that Council by agendized action may consider specific exceptions to the restrictions in Section 5.5 during election season for Council Members not running that election season for re-election; or

Option B: provide that the restrictions in Section 5.5 during election season do not apply to a Council Member not running for re-election that election season; and/or

2. Provide exception(s) to Council Policies and Procedures Section 5.5 to Council Member Landrum for potential upcoming Town Hall meetings, to be determined at meeting, for possible topics including but not limited to homelessness, the downtown, harbor issues such as infrastructure needs and waterfront sustainability, and what can local government do about issues of what is in our water, air and food.

9.d Update on Fiscal Year (FY) 2023-24 and 2024-25 City Council Goals and Action Items

218

(City Manager)

Recommended Action

Receive a progress report on the City Council goals, goals' statements, and action Items, acknowledge accomplishments and overall workload, and provide direction remaining goals.

10. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

11. ADJOURNMENT

The next Regular Meeting will be held on September 10, 2024.

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, 595 Harbor Street, Morro Bay, CA 93442 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 Disability Act, if you need special assistance to participate in a City meeting, please contact the Clerk's office 24 hours prior to the meeting to insure reasonable arrangements can be made to provide

accessibility to the meeting.



**MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING**

**July 23, 2024, 5:30 p.m.
Veterans Memorial Hall, 209 Surf St., Morro Bay, CA**

Members Present: Mayor Carla Wixom
Council Member Zara Landrum
Council Member Laurel Barton
Council Member Cyndee Edwards
Council Member Jennifer Ford

Staff Present: City Manager Yvonne Kimball
City Attorney Chris Neumeyer
City Clerk Dana Swanson
Finance Director Emily Conrad
Community Development Director Airlin Singewald
Police Chief Amy Watkins
Fire Captain/Paramedic Travis Hasch

1. ESTABLISH QUORUM AND CALL TO ORDER

Mayor Wixom established a quorum and called the meeting to order at 5:39 p.m.

2. MOMENT OF SILENCE

3. PLEDGE OF ALLEGIANCE

4. REPORTS

4.a Closed Session Report

https://youtu.be/HBvQhTcCD5w?si=AYB6rV8l_Mb09wob&t=116

City Attorney Neumeyer announced no reportable action was taken in the July 23, 2024 closed session meeting.

Mr. Neumeyer reported the City Council met in closed session on July 10, 2024 to consider two matters. No legally reportable action was taken.

However, in the interests of transparency the Council asked that a “report out” be made on otherwise confidential information for Item No. 4.b.

Item No. 4.b concerned Council review under Govt Code 54956.8 with staff of a potential community benefits agreement with Vistra Energy after they sent a proposal to City. A potential community benefits agreement

includes potential real estate transactions, such as the deeding of Lila Keiser park to the City and joint real estate ventures to generate City income, as well as other related potential benefits.

No commitments were made. No final action was taken on any agreement or contract with Vistra Energy. Rather, the Council conferred with City staff on a non-binding, tentative response to Vistra Energy's proposed community benefits agreement to continue the conversation.

Vistra Energy was informed that the City may amend the response subject to further City staff review and public input. The Council will seek community feedback and input on the community benefits agreement subsequent to the initial rounds of non-binding and tentative discussions. Furthermore, no community benefits agreement will be approved without being agendized at a public Council meeting for review and discussion.

4.b Mayor and Councilmembers' Reports, Announcements and Presentations

<https://youtu.be/HBvQhTcCD5w?si=sAhbrGqX6wklpUD3&t=232>

Council Member Landrum announced she was in Texas providing child care for her family and participating remotely pursuant to the "just cause" provisions of Assembly Bill (AB) 2449.

4.c City Manager Reports, Announcements and Presentations

<https://youtu.be/HBvQhTcCD5w?si=SQaTW7xPLRJ98j4w&t=931>

4.d Subcommittee Reports

<https://youtu.be/HBvQhTcCD5w?si=7AhngQ38NIIRzi3s&t=1045>

- a. Water Reclamation Facility & Morro Bay / Cayucos Sanitary District JPA
- b. Morro Bay Power Plant (Vistra)
- c. Offshore Wind Energy
- d. Downtown Design District

5. RECOGNITION AND PRESENTATIONS

5.a Townsend Public Affairs Legislative Update

<https://youtu.be/HBvQhTcCD5w?si=uLUg92a6glo-emt0&t=1233>

Presented by Townsend Public Affairs Director, Eric O'Donnell, and Senior Associate, Spencer Street.

6. PUBLIC COMMENT

<https://youtu.be/HBvQhTcCD5w?si=4NDGg-c6KCr3lxl7&t=2256>

- Aaron Ochs, Morro Bay, announced the recent passing of his mother, Pamela Ochs, who led efforts to oppose ocean acoustic testing and ensured all voices were heard when the city proposed a water/sewer rate increase in 2018. He urged the community to vote yes on Measure A-24.
- Robert Skinner requested a resolution in favor of a ceasefire in Gaza.
- Rich Raub, resident and Morro Bay Active Adults Board Member, asked the Council to agendize support for a fundraising effort to build four pickleball courts.
- David Yohe, Morro Bay, requested a resolution in favor of a ceasefire in Gaza and commented on the need for an evacuation center should the proposed BESS project move forward.
- Linda Winters, Morro Bay, commented on recent City events and invited attendees to take home COVID test kits provided at no charge by SLO Food Bank.
- Rachel Wilson, Cayucos, commented on the Brattle economic impact report for the proposed BESS Project.
- Dolores Howard, Paso Robles, asked the Council to consider a resolution in support of a ceasefire.
- Margaret Carman, Morro Bay, commented on Item 9a, urging the Council to authorize a second meeting to receive public comment on the findings and conclusions of the ad hoc committee.
- Steve Paige shared information about the potential impacts of the proposed BESS project.
- Barry Branin, Morro Bay, appreciated City Council, Fire and Police Departments, Caltrans and others for united effort to clean up encampments along Quintana Road.
- Betty Winholtz, Morro Bay, asked how the public would be informed about upcoming pavement projects.
- An unnamed resident shared his thoughts regarding a society steeped in violence.
- Jeff Eckles, Morro Bay, announced his candidacy for Morro Bay City Council.
- Terry Simons, Morro Bay, commented on the Townsend Public Affairs presentation and inquired about the annual cost of services.

End of public comment.

7. **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.

Mayor Wixom opened public comment for items on the Consent Agenda.

<https://youtu.be/HBvQhTcCD5w?si=PNwwNldlrnXuoiv-&t=4306>

- Betty Winholtz, Morro Bay, thanked the City for protecting the library.
- Terry Simons, Morro Bay, hoped to receive a cost/benefit report for the Ironman event and spoke in favor of appointing James Costanzo to the Recreation & Parks Commission.

End of public comment.

Council Member Ford pulled Item 7.e.

Council Member Landrum pulled Item 7.c.

**Motion by Council Member Edwards
Seconded by Council Member Ford**

Approve consent agenda Items 7.a., 7.b., 7.d. and 7.f.

Ayes (5): Mayor Wixom, Council Member Landrum, Council Member Barton, Council Member Edwards, and Council Member Ford

CARRIED (5 to 0)

7.a Approval of Minutes

Approve as submitted.

- a. May 23, 2024 - Special Closed Session Meeting
- b. June 11, 2024 - Regular Council Meeting
- c. June 25, 2024 - Regular Council Meeting

7.b Approval of Proclamations

- a. Proclamation recognizing Latino Outreach Council's 30 Years of Service

Approve as submitted.

7.c Morro Bay Library Meeting/Book Room Discussion Update

<https://youtu.be/HBvQhTcCD5w?si=QtH6i2EZ9cGtJGTa&t=4521>

The Council Members shared their appreciation for efforts made to support Friends of the Library.

Motion by Council Member Landrum
Seconded by Mayor Wixom

Receive and file this report.

Ayes (5): Mayor Wixom, Council Member Landrum, Council Member Barton, Council Member Edwards, and Council Member Ford

CARRIED (5 to 0)

7.d Update Regarding Ironman Event Contract Termination

Receive and file the report.

7.e Authorization to Join the League of California Cities Letter of Opposition to Assembly Bill 2560 (Alvarez)

Council Member Ford declared a conflict on this item. (Due to a legislative conflict.)

https://youtu.be/HBvQhTcCD5w?si=1Q-HW37_AabNrxDM&t=4656

Motion by Mayor Wixom
Seconded by Council Member Barton

Join the League of California Cities ("Cal Cities") in opposition of Assembly Bill 2560 (Alvarez).

Ayes (4): Mayor Wixom, Council Member Landrum, Council Member Barton, and Council Member Edwards

Recused (1): Council Member Ford

CARRIED (4 to 0)

7.f Appointment of James Costanzo to the Recreation and Parks Commission

https://youtu.be/HBvQhTcCD5w?si=f_e-DelqKgG-nH19&t=4684

Mayor Wixom invited Mr. Costanzo to the podium to say a few words.

Appoint James Costanzo to the Recreation and Parks Commission (RPC) to fill an unscheduled vacancy through January 31, 2026.

8. PUBLIC HEARING ITEMS

The Mayor and City Council took a brief recess at 6:58 p.m and reconvened at 7:07 p.m. with all members present.

9. BUSINESS ITEMS

9.a Downtown Design District Recommendations

https://youtu.be/HBvQhTcCD5w?si=FhDW1QEie_40R_ct&t=4746

Community Development Director Singewald presented the report and responded to Council inquiries.

Council Members Landrum and Edwards offered comments as sub-committee members.

Mayor Wixom opened public comment on Item 9.a.

https://youtu.be/HBvQhTcCD5w?si=Ut_wXFdforsNNzjj&t=6636

- Bill Luffee, Morro Bay, commended the subcommittee's work and hoped property owner input would be sought to understand their intentions.
- Terry Simons, Morro Bay, agreed with importance of involving property owners and urged the City to pursue a comprehensive Downtown/Waterfront Master Plan.
- Betty Winholtz, Morro Bay, stated that, as a committee member, she did not feel the work was complete and asked the Council to allow the committee to meet again to organize a public presentation.
- Nattalia Merzoyan, Morro Bay, heartily agreed with Ms. Winholtz's comments regarding the need for more community input.
- Michelle Leicester-Cadaret, Morro Bay, agreed a second community input meeting should be allowed.
- Jeff Eckles, Morro Bay, appreciated Mr. Codron's incremental approach and focus on things that are achievable in the short term. He felt it was unreasonable at this point to think the ad hoc committee would provide all the answers for our downtown.

The public comment period was closed.

There was Council discussion and support for a final meeting of the ad hoc group to form consensus prior to presenting information in a community forum,

Council Member Landrum moved for the subcommittee to meet again for a final meeting then to present final outcome to a public workshop as originally intended. The motion was seconded by Council Member Edwards for discussion.

Mr. Singewald sought clarification on the areas of focus and noted the annual General Plan Progress Report would be another opportunity to

report back to Council and community regarding progress made on the implementation.

There was Council consensus the areas of focus should include:

- Viewshed
- Downtown Design District boundaries/footprint
- Historic or character defining buildings
- Housing

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

Motion by Council Member Landrum
Seconded by Council Member Edwards

That the subcommittee meet again for a final meeting then present final outcome in a public workshop as originally intended.

Ayes (5): Mayor Wixom, Council Member Landrum, Council Member Barton, Council Member Edwards, and Council Member Ford

CARRIED (5 to 0)

9.b Approval of City Manager Contract Amendment

<https://youtu.be/HBvQhTcCD5w?si=yxE67VUmBjOWI--B&t=8775>

City Attorney Neumeyer presented the report.

Mayor Wixom opened public comment for Item 9.b.

- Terry Simons, Morro Bay, questioned the need for a retention bonus and was concerned about automatic need for COLA adjustments.

End of public comment.

Mayor Wixom responded to issues raised during public comment.

Mayor Wixom read the following statement into the record as presented in the staff report, "The City Manager will receive an extra 10 hours of maximum vacation leave bank accrual from 300 to 310 hours total; consistent with the COLA salary increases provided to City Department Heads the City Manager's annual salary for FY 2024/25 will be \$234,062, for FY 2025/26 will be \$245,773, and for FY 2026/27 will be \$258,066, totaling an increase of \$35,155 over a three year period, with further increases thereafter consistent with COLA salary increases provided to City Department Heads; and, the City Manager will receive a one-time retention bonus of \$1,063.25 to be paid no later than the second regular pay period following the effective date of the Second Amendment."

Motion by Mayor Wixom
Seconded by Council Member Barton

Consider approval of the Second Amendment to City Manager Employment Agreement for City Manager Yvonne Kimball and authorization for the Mayor to sign the Second Amendment on behalf of the City Council of the City of Morro Bay.

Ayes (5): Mayor Wixom, Council Member Landrum, Council Member Barton, Council Member Edwards, and Council Member Ford

CARRIED (5 to 0)

10. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

None.

11. ADJOURNMENT

The meeting adjourned at 8:24 p.m.

/s/ Dana Swanson, City Clerk



**MINUTES - MORRO BAY CITY COUNCIL
CLOSED SESSION MEETING**

**August 13, 2024, 4:00 p.m.
City Hall Conference Room
595 Harbor Street, Morro Bay, CA 93442**

Members Present: Mayor Carla Wixom
Council Member Zara Landrum
Council Member Laurel Barton
Council Member Cyndee Edwards
Council Member Jennifer Ford

Staff Present: City Manager Yvonne Kimball
City Attorney Chris Neumeyer
Public Works Director Greg Kwolek

1. ESTABLISH QUORUM AND CALL TO ORDER

Mayor Wixom established a quorum and called the meeting to order at 4:01 p.m.

2. SUMMARY OF CLOSED SESSION ITEMS

3. CLOSED SESSION PUBLIC COMMENT

Mayor Wixom opened public comment for items on the agenda; seeing none, the public comment period was closed.

4. THE COUNCIL WILL CONVENE IN CLOSED SESSION

**4.a CONFERENCE WITH REAL PROPERTY NEGOTIATOR -
GOVERNMENT CODE SECTION 54956.8**

4.b CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Govt Code section 54956.9: one matter involving Ms. Betty Winholtz's claim of a Brown Act violation by the Council at the July 10, 2024, Council closed session meeting. The claim from Ms. Betty Winholtz is a public record available for public inspection and is attached to this closed session agenda listing.

5. RECONVENE IN OPEN SESSION

The City Council reconvened in Open Session. City Attorney Neumeyer reported that regarding Item 4.a., a review with real property negotiators for the property

generally known as the wastewater treatment facility, the Council directed that, while no reportable action was taken, the Council had a productive discussion and continues to move forward working with Cayucos figuring out what to do with the site. Regarding Item 4.b., pursuant to the receipt of a Brown Act cure and correct letter that Council received for the closed session meeting held July 10, 2024, the Council directed that a response be sent to the sender of that letter reaffirming no final action was taken and that any Community Benefits Agreement that the Council potentially could pass would be pursuant to review at a public meeting, public input would be sought, that no community benefit agreement was made by City Council, and that the response authorized to be sent back to Vistra was tentative and non-binding.

6. ADJOURNMENT

The meeting adjourned at 5:21 p.m.

Respectfully submitted,

/s/ Dana Swanson, City Clerk



**MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING**

**August 13, 2024, 5:30 p.m.
Veterans Memorial Hall, 209 Surf St., Morro Bay, CA**

Members Present: Mayor Carla Wixom
Council Member Zara Landrum
Council Member Laurel Barton
Council Member Cyndee Edwards
Council Member Jennifer Ford

Staff Present: City Manager Yvonne Kimball
City Attorney Chris Neumeyer
City Clerk Dana Swanson
Public Works Director Greg Kwolek
Community Development Director Airlin Singewald
Police Chief Amy Watkins
Fire Chief Dan McCrain
City Engineer Cynthia Cecil
IPR Program Manager Dan Heimel

1. ESTABLISH QUORUM AND CALL TO ORDER

Mayor Wixom established a quorum and called the meeting to order at 5:34 p.m. with all members present.

2. MOMENT OF SILENCE

3. PLEDGE OF ALLEGIANCE

4. REPORTS

4.a Closed Session Report

<https://youtu.be/WbWJwyVi0EE?si=aZMcW74z2sgzJObl&t=84>

City Attorney Neumeyer reported the Council met in Closed Session and, regarding Item 4.a, a review with real property negotiators for the property generally known as the wastewater treatment facility, the Council directed that, while no reportable action was taken, the Council had a productive discussion and continues to move forward working with Cayucos figuring out what to do with the site. Regarding Item 4.b., pursuant to the receipt of a Brown Act cure and correct letter that Council received for the closed session meeting held July 10, 2024, the Council directed that a response

be sent to the sender of that letter reaffirming no final action was taken and that any Community Benefits Agreement that the Council potentially could pass would be pursuant to review at a public meeting, public input would be sought, that no community benefit agreement was made by City Council, and that the response authorized to be sent back to Vistra was tentative and non-binding.

4.b Mayor and Councilmembers' Reports, Announcements and Presentations

<https://youtu.be/WbWJwyVj0EE?si=YOTpneKfZdw6tPZz&t=174>

4.c City Manager Reports, Announcements and Presentations

<https://youtu.be/WbWJwyVj0EE?si=VIKdNX3BPqoFXtB &t=598>

4.d Subcommittee Reports

<https://youtu.be/WbWJwyVj0EE?si=gnoBNxClax6r9U9u&t=644>

- a. Water Reclamation Facility & Morro Bay / Cayucos Sanitary District JPA
- b. Morro Bay Power Plant (Vistra)
- c. Offshore Wind Energy
- d. Downtown Design District

5. RECOGNITION AND PRESENTATIONS

5.a Morro Bay Chamber of Commerce Quarterly Review

<https://youtu.be/WbWJwyVj0EE?si=CBbVbQneq2z3XLv6&t=1093>

Presented by Interim CEO, Jocelyn Brennan.

6. PUBLIC COMMENT

- Ed Spera, Morro Bay, lobbied for traffic controls and restriping to improve bicycle and pedestrian safety along Main Street near Olive.
- Aaron Ochs, Morro Bay, disputed comments in an opinion piece written in opposition to Measure A-24 and urged caution in how the City approaches revenue generating projects.
- Tina Metzger, Morro Bay, restated her written comments to Council requesting the Council direct staff to establish development standards for siting battery energy storage systems in our town and sphere of influence, and prepare an ordinance temporarily pausing any new battery storage project applications from being accepted as an urgency measure to protect public health, safety and welfare.

- Linda Winters, Morro Bay, was inspired by the Olympics and shared the original start location for the Boston Marathon was in her small hometown.
- Rachel Wilson, Cayucos, shared her appreciation for information gleaned from the August 2, 2024 Coastal Commission letter regarding the proposed BESS Project.
- An unnamed person offered comments.
- Michelle Leicester-Cadaret, Morro Bay, commented on the potential ratepayer impacts to cover the cost for extending Diablo Canyon and urged the Council to offer the Community Center as a venue where State officials can hold meetings on this topic.
- Betty Winholtz, Morro Bay, shared photos and concerns regarding tree pruning in Monte Young Park.

End of public comment.

The Council took a brief recess at 6:36 p.m. and reconvened at 6:44 p.m. with all members present.

7. **CONSENT AGENDA**

https://youtu.be/WbWJwyVj0EE?si=NEryrlyVzK7drA_z&t=4233

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.

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

Motion by Council Member Landrum

Seconded by Council Member Ford

Approve Consent Agenda Items 7.a. through 7.d. as presented.

Ayes (5): Mayor Wixom, Council Member Landrum, Council Member Barton, Council Member Edwards, and Council Member Ford

CARRIED (5 to 0)

7.a **Approval of Minutes**

Approve as submitted.

- June 25, 2024 - Special Closed Session Meeting
- July 10, 2024 - Special Closed Session Meeting
- July 23, 2024 - Special Closed Session Meeting

7.b Adoption of Resolution No. 52-24 Authorizing the Public Works Director to Sign Planning Loan Amendments

Adopt Resolution No. 52-24 authorizing the Public Works Director to Sign Planning Loan Amendments.

7.c Status Update on Substantial Completion for the Water Tank Rehabilitation Project; and, Authorize Funding Reallocation Back to Water Fund

1. Receive and file this status update on substantial completion.
2. Authorize reallocation back to the Water Fund of remaining unexpended project funds not necessary for project completion.

7.d Determination of Public Convenience or Necessity for ABC License - 501 Embarcadero Road, Estero Inn

Make the Determination of Public Convenience or Necessity to approve the request to allow sales of alcohol for off sale beer and wine type 42 license for Estero Inn at 501 Embarcadero Road; and direct staff to provide the applicant with a letter of support.

8. PUBLIC HEARING ITEMS

8.a Adoption of Resolution No. 53-24 approving Major Revision #MAJ24-001 to Conditional Use Permit #CUP22-09 at 801 Embarcadero for redevelopment of the Libertine Brewing site (Lease site 86/86W) and public access improvements

<https://youtu.be/WbWJwyVj0EE?si=Vs1XBn31bLq2GQXb&t=4295>

Community Development Director Singewald presented the report and responded to Council inquiries.

Mayor Wixom opened the public hearing for Item 8.a.

<https://youtu.be/WbWJwyVj0EE?si=3t60TbaUmL4oDjDm&t=5157>

- Eric Newton spoke on behalf of the project development team, sharing his appreciation for a collaborative effort that has maximized the project. He responded to parking concerns, asked the Council to support development of the plaza area, and offered to answer any questions.

Mayor Wixom opened public comment.

- Betty Winholtz, Morro Bay, preferred a hard surface in the plaza area and was disappointed in the Planning Commission's approval of using DG. She requested additional changes to the resolution as submitted in agenda correspondence.

End of public comment.

Mr. Newton responded to Council questions.

Motion by Mayor Wixom

Seconded by Council Member Edwards

Adopt Resolution No. 53-24, for approval of Major Revision #MAJ24-001 to Conditional Use Permit (CUP) #CUP22-09 to remove the City Council added condition to defer public plaza improvements and require the proposed public plaza be added prior to final occupancy to be consistent with Coastal Commission conditions placed on the Coastal Development Permit (CDP), located at 801 Embarcadero.

Ayes (5): Mayor Wixom, Council Member Landrum, Council Member Barton, Council Member Edwards, and Council Member Ford

CARRIED (5 to 0)

9. **BUSINESS ITEMS**

9.a **Professional Services Agreement for Hydrogeologic Support for the Recycled Water Program at the Morro Basin Extraction Well Project**

https://youtu.be/WbWJwyVj0EE?si=PTWM_NZq9JUGLGXC&t=6336

Public Works Director Kwolek and IPR Program Manager Dan Heimel presented the report and responded to Council inquiries.

Mayor Wixom opened public comment for Item 9.a.

<https://youtu.be/WbWJwyVj0EE?si=7poWZwqbNvC90wzi&t=7679>

- Betty Winholtz, Morro Bay, asked what evidence existed to support the need for three wells, how much land would be needed for those wells, and an explanation of recycling vs. extraction wells.
- Bill Luffee, Morro Bay, asked if these contracts were for consulting/engineering or construction.
- Linda Donnelly, Morro Bay, questioned the need for more contract amendments and requested an organizational chart showing what each company is expected to accomplish so the public can easily track the money.

End of public comment.

Staff responded to questions raised during public comment and additional Council inquiries.

Motion by Council Member Ford

Seconded by Council Member Barton

Authorize the City Manager to execute:

1. An agreement with GSI Water Solutions, Inc. (GSI) to provide Injection Well Design and Construction Support Services for the Recycled Water Program in an amount not to exceed \$493,225, which includes a 10% contingency budget executable by the City Manager.
2. An agreement with GSI to provide Design and Construction Support Services for the Morro Basin Extraction Well project in an amount not to exceed \$184,352, which includes a 10% contingency budget executable by the City Manager.

Ayes (5): Mayor Wixom, Council Member Landrum, Council Member Barton, Council Member Edwards, and Council Member Ford

CARRIED (5 to 0)

10. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

<https://youtu.be/WbWJwyVi0EE?si=ya6O8N2F8fEtC69e&t=9056>

Council Member Landrum requested the policy allowing for use of public facilities at no charge be amended to allow council members not running for office to use city facilities for town hall meetings during election season. City Manager Kimball suggested the Council could either amend the policy, or specifically authorize an exception to approve use of city facilities free of charge on specific dates.

11. ADJOURNMENT

The meeting adjourned at 8:13 p.m.

/s/ Dana Swanson, City Clerk



AGENDA NO: 7.b.

MEETING DATE: August 27, 2024

Staff Report

TO: Honorable Mayor and City Council

DATE: August 19, 2024

FROM: Daniel McCrain, Fire Chief

SUBJECT: Acceptance of California Office of Traffic Safety (OTS) Grant

RECOMMENDED ACTION

1. Authorize the Fire Department to accept the grant award from the California Office of Traffic Safety Grant program for hydraulic extrication equipment; and
2. Authorize the City Manager to approve execution of grant related documents, subject to City Attorney review and approval as to form; and
3. Adopt Resolution No. 54-24 to amend the Fiscal Year (FY) 2024-25 Operating & Capital Budget.

ALTERNATIVES

Decline to accept the grant award this year and reapply next year.

FISCAL IMPACT

The OTS grant program does not have a cost share for funding. The cost of equipment is funded 100% through the program up to the total award amount but must first be purchased by the City and then be reimbursed by the Office of Traffic Safety 90 days after purchase. If the equipment purchased exceeds the award amount, the City would be required to contribute the additional funds without the expectation of reimbursement on the additional amount. The financial burden for the City would be encumbering the funds to purchase the equipment for 90 days while awaiting reimbursement. The grant award is approved for up to \$45,145.00. The current pricing is \$48,132.44. The department would have to fund the difference due to vendor price increases between the time the estimate submitted with the grant application was received and the purchase date. The price difference is \$2,987.44. Staff is requesting approval of Resolution No. 54-24 to amend the City's FY 2024-25 Operating & Capital Budget to reflect the receipt of grant funds and offsetting expenditures.

BACKGROUND

The Office of Traffic Safety (OTS) is tasked with developing and implementing a highway safety program that addresses behavioral factors that impact safety on the road. The goal of the annual program is to prevent serious injury or death resulting from motor vehicle crashes so that all roadway users arrive at their destination safely. Using Federal Highway Safety Program funds, the OTS partners with political subdivisions of the state to address California's highway safety needs at the state, county, and local level. The grant application period ran from December 2023, through January 31st, 2024. The grant applications were reviewed between February and May with awards being made in July 2024.

Prepared By: DM

Dept Review: _____

City Manager Review: YK

City Attorney Review: LNL

DISCUSSION

A majority of the hydraulic extrication equipment currently in use by Morro Bay Fire Department was scheduled for replacement in the 2017/2018 fiscal year but due to budget constraints most of these items have not been replaced. The gasoline power pumps were replaced during the 2018/2019 fiscal year; all other equipment is overdue to be replaced. The spreaders and cutters were purchased in 2011, and the rams and air bags were purchased in 2009. The equipment has a life expectancy of approximately 10 years depending on the item. In 2021, Governor Newsom signed AB 1346 requiring the phase out of all gasoline powered small engines beginning in 2024. To comply with this new law, we are replacing the current gasoline powered hydraulic extrication equipment with battery powered equipment. This new electric equipment has higher operating strengths than our current equipment and is designed for the high tensile strength materials of modern vehicles that our current equipment cannot cut. Upgrading this equipment also reduces our dependence on petroleum products and reduces emissions levels in accordance with the council's stated goal of Climate Action. Purchasing this equipment would be a significant increase to the line-item budget if funded through the General Fund or Measure Q&E funds.

The Morro Bay Fire Department was able to obtain an award for one set of extrication tools from the OTS grant program during the last grant cycle. We had applied for two sets of tools but were awarded a single set to allow for more awards to be given to other departments. We were encouraged to apply this year for a second set. Due to our staffing model of running two engines daily having two sets of equipment is necessary to ensure access to the proper tools regardless of what apparatus responds to the incident.

CONCLUSION

The cost of replacing capital equipment such as extrication equipment can easily exceed the available funds in a departmental operating budget. Grant funding is a mechanism that many departments utilize to purchase much needed equipment that would be unobtainable without outside assistance due to limited agency finances. Accepting this grant award would allow the department to obtain equipment to enhance the safety of our responders and the community with a very small financial impact to city funds due to the requirement to purchase the equipment and request reimbursement.

ATTACHMENTS

1. Draft grant agreement
2. Resolution No. 54-24

1. GRANT TITLE Regional Crash Response and Extrication Improvement Program	
2. NAME OF AGENCY Morro Bay	3. Grant Period From: 10/01/2024 To: 09/30/2025
4. AGENCY UNIT TO ADMINISTER GRANT Morro Bay Fire Department	
5. GRANT DESCRIPTION The city/county/regional fire agency will improve their crash response and extrication times by purchasing extrication equipment. Best practice strategies will be used to reduce the response time for the arrival of appropriate extrication equipment to traffic crash scenes and the time to extricate the victims of traffic crashes, thus increasing survivability. The grant will provide funding for new equipment and training for fire departments without extrication equipment or those that have existing equipment that has reached the end of its usable lifespan and is in need of replacement.	
6. Federal Funds Allocated Under This Agreement Shall Not Exceed: \$45,145.00	
7. TERMS AND CONDITIONS: The parties agree to comply with the terms and conditions of the following which are by this reference made a part of the Agreement: <ul style="list-style-type: none"> • Schedule A – Problem Statement, Goals and Objectives and Method of Procedure • Schedule B – Detailed Budget Estimate and Sub-Budget Estimate (if applicable) • Schedule B-1 – Budget Narrative and Sub-Budget Narrative (if applicable) • Exhibit A – Certifications and Assurances • Exhibit B* – OTS Grant Program Manual • Exhibit C – Grant Electronic Management System (GEMS) Access <p>*Items shown with an asterisk (*), are hereby incorporated by reference and made a part of this agreement as if attached hereto.</p> <p>These documents can be viewed at the OTS home web page under Grants: www.ots.ca.gov.</p> <p>We, the officials named below, hereby swear under penalty of perjury under the laws of the State of California that we are duly authorized to legally bind the Grant recipient to the above described Grant terms and conditions.</p> <p>IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.</p>	
8. Approval Signatures	
A. GRANT DIRECTOR NAME: Daniel McCrain TITLE: Fire Chief EMAIL: dmccrain@morrobayca.gov PHONE: (805) 772-6242 ADDRESS: 715 Harbor Street Morro Bay, CA 93442 <hr style="width: 100%;"/> <div style="display: flex; justify-content: space-between;"> (Signature) (Date) </div> C. FISCAL OFFICIAL NAME: Tracy McConnell TITLE: Administrative Technician EMAIL: tmccconnell@morrobayca.gov PHONE: (805) 772-6242 ADDRESS: 715 Harbor Street Morro Bay, CA 93442 <hr style="width: 100%;"/> <div style="display: flex; justify-content: space-between;"> (Signature) (Date) </div>	B. AUTHORIZING OFFICIAL NAME: Yvonne Kimball TITLE: City Manager EMAIL: ykimball@morrobayca.gov PHONE: (805) 772-6206 ADDRESS: 595 Harbor Street Morro Bay, CA 93442 <hr style="width: 100%;"/> <div style="display: flex; justify-content: space-between;"> (Signature) (Date) </div> D. AUTHORIZING OFFICIAL OF OFFICE OF TRAFFIC SAFETY NAME: Barbara Rooney TITLE: Director EMAIL: barbara.rooney@ots.ca.gov PHONE: (916) 509-3030 ADDRESS: 2208 Kausen Drive, Suite 300 Elk Grove, CA 95758 <hr style="width: 100%;"/> <div style="display: flex; justify-content: space-between;"> (Signature) (Date) </div>

<p>E. ACCOUNTING OFFICER OF OFFICE OF TRAFFIC SAFETY</p> <p>NAME: Carolyn Vu ADDRESS: 2208 Kausen Drive, Suite 300 Elk Grove, CA 95758</p>	<p>9. SAM INFORMATION</p> <p>SAM #: KAFQZMM3MRA5 REGISTERED ADDRESS: 595 Harbor St. CITY: Morro Bay ZIP+4: 93442-1957</p>
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10. PROJECTED EXPENDITURES						
FUND	CFDA	ITEM/APPROPRIATION	F.Y.	CHAPTER	STATUTE	PROJECTED EXPENDITURES
				AGREEMENT TOTAL		\$45,145.00
				AMOUNT ENCUMBERED BY THIS DOCUMENT		\$45,145.00
<i>I CERTIFY upon my own personal knowledge that the budgeted funds for the current budget year are available for the period and purpose of the expenditure stated above.</i>				PRIOR AMOUNT ENCUMBERED FOR THIS AGREEMENT		\$ 0.00
				TOTAL AMOUNT ENCUMBERED TO DATE		\$45,145.00
OTS ACCOUNTING OFFICER'S SIGNATURE			DATE SIGNED			

1. PROBLEM STATEMENT

The Morro Bay Fire Department is an all-risk Advanced Life Support Fire Department. The Department has 13 full-time suppression personnel, a Fire Chief, one Division Chief/ Fire Marshal, one Administrative Technician, and two Seasonal firefighters. The Department operates out of one fire station with a second station unstaffed and utilized for equipment storage. Our current staffing model divides a four-person engine company into two engine companies staffed with two personnel on each engine to respond to simultaneous incidents. Both engines respond out of Station 53. This staffing model allows the Department to handle simultaneous incidents without needing mutual aid response but reduces the number of personnel available on the scene if split between two incidents. The City of Morro Bay is situated along the highly trafficked Pacific Coast Highway 1 and Highway 41. These State routes experience substantial traffic, resulting in numerous injuries and fatalities annually from motor vehicle crashes. According to CALTRANS Traffic Census Data for 2020 Highway 1 in North Morro Bay sees an annual average daily traffic of 20,500 vehicles, the highway 41 and Highway 1 junction has an annual average daily traffic of 17,100 vehicles. The city has a population of approximately 10,779 with 15% Latino, 5.3% Asian, 5.6% two or more races, and 28.5% over the age of 65. The city sees an estimated 800,000 annual visitors, which bring increased traffic along these Highways. Morro Bay Fire Department provides automatic and mutual aid response to the unincorporated rural areas of San Luis Obispo County along Highway 1, Highway 41, and South Bay Boulevard, which connects Morro Bay to the community of Los Osos. Highway 41 is a narrow, two-lane, undivided highway with many sharp blind turns, steep drop-offs, and limited areas for slower traffic to yield. Vehicle crashes in this section of Highway 41 between Morro Bay and the City of Atascadero often result in a head-on collision as drivers attempt to pass slower vehicles in unsafe locations. As a result, Morro Bay Fire Department resources have extended response times to this section of Highway 41, and additional resources are approximately 20 to 30 minutes away. The auto extrication equipment currently deployed by Morro Bay Fire Department have reached the end of their lifespan, are outdated and in need of replacement. The average lifespan of extrication tools and airbags is 10 years, the cutters and spreaders are 12 years old, and the hydraulic rams and airbags are 14 years old. The tools currently in service have required multiple repairs due to hydraulic leaks, carburetor failure, broken valves, and hose failures. The Morro Bay Fire Department was awarded a reduced grant award from the OTS grant program last fiscal year and we have ordered one set of extrication tools and airbags. Due to our staffing model of two engines daily there is a need for a second set of extrication tools. This will ensure that both first out units are equipped to respond to traffic crashes with the appropriate equipment. Although the number of incidents requiring extrication has remained neutral, the number of motor vehicle crash responses is expanding annually, increasing the probability of need. The newer technology of extrication equipment improves firefighter and patient safety. The tools have higher operating speeds and strengths to cut through modern metals, reducing the time spent operating the tools and reaching the patient. This reduced operational time due to higher cutting and spreading forces can shorten the entrapment duration for patients and reduce strain on the operator utilizing the device. The new equipment is also lighter, reducing the risk of injury to the operator due to their weight. Electric extrication equipment requires less personnel to move, set up, and operate the equipment due to the lack of additional components such as remote pumps and hoses. This ease of operation is significant based on the staffing model of two personnel on each apparatus and the extended response times for additional resources. The higher strengths and faster operating speeds reduce the amount of time needed to complete the operation, resulting in more rapid extrication of the victim, allowing for more immediate access to patient care, thereby reducing morbidity and mortality. Ease of use, coupled with better performance, reduces the time firefighters are working in the roadway to extricate a patient, limiting their exposure to traffic and other safety hazards. Increased traffic has increased the number of motor vehicle crash responses, and infrastructure projects such as the construction of a water reclamation facility have increased the use of heavy equipment within city limits leading to a potential for greater calls for service. Morro Bay Fire Department has relied heavily on grants and donations to purchase capital equipment that is difficult to fund on the city's limited and lean budget. The expense of replacing the extrication equipment equates to approximately 5.4% of the Department's general fund operating budget. The city did pass a one percent sales tax measure in 2020 that provided additional funding for public safety. This tax revenue funds three full-time firefighter positions. The tax revenue is divided among Police, the Harbor Department and Fire Department, and a portion to public works to maintain public areas. This limited

additional sales tax provides relief for staffing costs but does little to provide for additional equipment. This grant funding would bridge the gap allowing for the purchase of this much-needed equipment, potentially reducing the number of injuries and loss of lives. Adding a second set of extrication equipment would allow both front line fire apparatus to be equipped to provide rapid extrication and patient access to those involved in traffic collisions.

2. PERFORMANCE MEASURES

A. Goals:

1. Reduce the number of persons killed in traffic crashes.
2. Reduce the number of persons injured in traffic crashes.
3. Decrease the average extrication time, from the time of arrival at the crash site to transport.

B. Objectives:

	Target Number
1. Issue a press release announcing the kick-off of the grant by November 15. The kick-off press releases and media advisories, alerts, and materials must be emailed to the OTS Public Information Officer at pio@ots.ca.gov , and copied to your OTS Coordinator, for approval 7 days prior to the issuance date of the release.	1
2. Purchase and place fully equipped extrication systems in strategic locations within the jurisdiction.	1
3. Train firefighters in the use of the new equipment.	13
4. Conduct traffic safety presentations with an effort to reach persons and communities.	2
5. Display the OTS funded equipment during Public Safety Fairs, community festivals and/or other Department or community events.	2
6. Report on the number of times the grant-funded equipment is used during an extrication, provide a brief overview of the incident and indicate if the equipment was used to save a life.	1
7. Station 53 - Decrease the average extrication time, from the time of arrival at the crash site to transport, from 00 minutes to 00 minutes.	

3. METHOD OF PROCEDURE

A. Phase 1 – Program Preparation (1st Quarter of Grant Year)

- Determine specific equipment requirements.
- Request equipment vendor price quotation for the required equipment per host agency requirement.
- Submit purchase orders to equipment vendors for purchase of the equipment.

Media Requirements

- Issue a press release approved by the OTS PIO announcing the kick-off of the grant by November 15, but no sooner than October 1. The kick-off release must be approved by the OTS PIO and only distributed after the grant is fully signed and executed. If you are unable to meet the November 15 deadline to issue a kick-off press release, communicate reasons to your OTS grant coordinator and OTS PIO.

B. Phase 2 – Program Operations (Throughout Grant Year)

- Inventory the new equipment following delivery.
- Disperse equipment to identified recipient agencies.
- Plan a media event announcing the grant funded equipment.
- Recipient agencies will identify training needs and objectives and coordinate instructional staff to conduct a high quality training program for their respective agency.
- Recipient agencies will develop a preventive maintenance schedule for the new equipment following manufacturers’ recommendations.

Media Requirements

The following requirements are for all grant-related activities:

- Send all media advisories, alerts, videos, graphics, artwork, posters, radio/PSA/video scripts, storyboards, digital and/or print educational materials for grant-related activities to the OTS PIO at pio@ots.ca.gov for approval and copy your OTS grant coordinator. Optimum lead time would be 7 days before the scheduled release but at least 3 business days prior to the scheduled release date for review and approval is appreciated.

- Send all Powerpoint presentations, online presentations and trainings for grant-related activities to the OTS PIO at pio@ots.ca.gov for approval and copy your OTS grant coordinator. Certified training courses are EXEMPT from the approval process.
- The OTS PIO is responsible for the approval of the design and content of materials. The agency understands OTS PIO approval is not authorizing approval of budget expenditure or cost. Any cost approvals must come from the OTS grant coordinator.
- Pre-approval is not required when using any OTS-supplied template for media advisories, press releases, social media graphics, videos or posts, or any other OTS-supplied educational material. However, copy the OTS PIO at pio@ots.ca.gov and your OTS grant coordinator when any material is distributed to the media and public, such as a press release, educational material, or link to social media post. The OTS-supplied kick-off press release templates and any kickoff press releases are an exception to this policy and require prior approval before distribution to the media and public.
- If an OTS-supplied template, educational material, social media graphic, post or video is substantially changed, the changes shall be sent to the OTS PIO at pio@ots.ca.gov for approval and copy to your OTS grant coordinator. Optimum lead time would be 7 days prior to the scheduled release date, but at least 3 business days prior to the scheduled release date for review and approval is appreciated.
- Press releases, social media posts and alerts on platforms such as NextDoor and Nixle reporting immediate and time-sensitive grant activities (e.g. enforcement operations, day of event highlights or announcements, event invites) are exempt from the OTS PIO approval process. The OTS PIO and your OTS grant coordinator should still be notified when the grant-related activity is happening (e.g. car seat checks, bicycle rodeos, community presentations, DUI checkpoints, etc.).
- Enforcement activities such as warrant and probation sweeps, court stings, etc. that are embargoed or could impact operations by publicizing in advance are exempt from the PIO approval process. However, announcements and results of activities should still be copied to the OTS PIO at pio@ots.ca.gov and your OTS grant coordinator with embargoed date and time or with "INTERNAL ONLY: DO NOT RELEASE" message in subject line of email.
- Any earned or paid media campaigns for TV, radio, digital or social media that are part of a specific grant objective, using OTS grant funds, or designed and developed using contractual services by a subgrantee, requires prior approval. Please send to the OTS PIO at pio@ots.ca.gov for approval and copy your grant coordinator at least 3 business days prior to the scheduled release date.
- Social media posts highlighting state or national traffic safety campaigns (Distracted Driving Month, Motorcycle Safety Awareness Month, etc.), enforcement operations (DUI checkpoints, etc.), or any other grant-related activity such as Bicycle rodeos, presentations, or events, are highly encouraged but do not require prior approval.
- Submit a draft or rough-cut of all digital, printed, recorded or video material (brochures, posters, scripts, artwork, trailer graphics, digital graphics, social posts connected to an earned or paid media campaign grant objective) to the OTS PIO at pio@ots.ca.gov and copy your OTS grant coordinator for approval prior to the production or duplication.
- Use the following standard language in all press, media, and printed materials, space permitting: Funding for this program was provided by a grant from the California Office of Traffic Safety, through the National Highway Traffic Safety Administration.
- Space permitting, include the OTS logo on all grant-funded print materials, graphics and paid or earned social media campaign grant objective; consult your OTS grant coordinator for specifics, format-appropriate logos, or if space does not permit the use of the OTS logo.
- Email the OTS PIO at pio@ots.ca.gov and copy your OTS grant coordinator at least 21 days in advance, or when first confirmed, a short description of any significant grant-related traffic safety event or program, particularly events that are highly publicized beforehand with anticipated media coverage so OTS has sufficient notice to arrange for attendance and/or participation in the event. If unable to attend, email the OTS PIO and coordinator brief highlights and/or results, including any media coverage (broadcast, digital, print) of event within 7 days following significant grant-related event or program. Media and program highlights are to be reflected in QPRs.

- Any press releases, work plans, scripts, storyboards, artwork, graphics, videos or any educational or informational materials that received OTS PIO approval in a prior grant year needs to be resubmitted for approval in the current grant year.
- For additional guidance, refer to the [OTS Grants Materials Approval Process Guidelines](#) and [OTS Grants Media Approval Process FAQs](#) on the OTS website.
- Contact the OTS PIO or your OTS grant coordinator for consultation when changes from any of the above requirements might be warranted.

C. Phase 3 – Data Collection & Reporting (Throughout Grant Year)

1. Prepare and submit grant claim invoices (due January 30, April 30, July 30, and October 30)
2. Prepare and submit Quarterly Performance Reports (QPR) (due January 30, April 30, July 30, and October 30)
 - Collect and report quarterly, appropriate data that supports the progress of goals and objectives.
 - Provide a brief list of activity conducted, procurement of grant-funded items, and significant media activities. Include status of grant-funded personnel, status of contracts, challenges, or special accomplishments.
 - Provide a brief summary of quarterly accomplishments and explanations for objectives not completed or plans for upcoming activities.
 - Collect, analyze and report statistical data relating to the grant goals and objectives.

4. METHOD OF EVALUATION

Using the data compiled during the grant, the Grant Director will complete the “Final Evaluation” section in the fourth/final Quarterly Performance Report (QPR). The Final Evaluation should provide a brief summary of the grant’s accomplishments, challenges and significant activities. This narrative should also include whether goals and objectives were met, exceeded, or an explanation of why objectives were not completed.

5. ADMINISTRATIVE SUPPORT

This program has full administrative support, and every effort will be made to continue the grant activities after grant conclusion.

FUND NUMBER	CATALOG NUMBER (CFDA)	FUND DESCRIPTION	TOTAL AMOUNT
402EM-25	20.600	State and Community Highway Safety	\$45,145.00

COST CATEGORY	FUND NUMBER	UNIT COST OR RATE	UNITS	TOTAL COST TO GRANT
A. PERSONNEL COSTS				
<u>Straight Time</u>				\$0.00
<u>Overtime</u>				\$0.00
Category Sub-Total				\$0.00
B. TRAVEL EXPENSES				
				\$0.00
				\$0.00
Category Sub-Total				\$0.00
C. CONTRACTUAL SERVICES				
				\$0.00
Category Sub-Total				\$0.00
D. EQUIPMENT				
Fully Equipped Extrication System	402EM-25	\$45,145.00	1	\$45,145.00
Category Sub-Total				\$45,145.00
E. OTHER DIRECT COSTS				
				\$0.00
Category Sub-Total				\$0.00
F. INDIRECT COSTS				
				\$0.00
Category Sub-Total				\$0.00
GRANT TOTAL				\$45,145.00

BUDGET NARRATIVE	
PERSONNEL COSTS	-
TRAVEL EXPENSES	-
CONTRACTUAL SERVICES	-
EQUIPMENT	Fully Equipped Extrication System - Fully equipped extrication systems are generally comprised of a hydraulic pump, fluid, hoses, control valves, and hydraulically actuated spreaders and cutters used primarily for vehicle extrication incidents as well as edraulic tools. It includes every piece of extrication equipment, modifications, attachments, accessories, and auxiliary apparatus necessary to make it usable for the purpose it was acquired, and costs \$5,000 or more (including tax, shipping, and installation).
OTHER DIRECT COSTS	-
INDIRECT COSTS	-
STATEMENTS/DISCLAIMERS	There will be no program income generated from this grant.

Certifications and Assurances for Fiscal Year 2024 Highway Safety Grants (23 U.S.C. Chapter 4 or Section 1906, Public Law 109-59, as amended by Section 25024, Public Law 117-58)

The officials named on the grant agreement, certify by way of signature on the grant agreement signature page, that the Grantee Agency complies with all applicable Federal statutes, regulations, and directives and State rules, guidelines, policies, and laws in effect with respect to the periods for which it receives grant funding. Applicable provisions include, but are not limited to, the following:

GENERAL REQUIREMENTS

The State will comply with applicable statutes and regulations, including but not limited to:

- 23 U.S.C. Chapter 4—Highway Safety Act of 1966, as amended;
- Sec. 1906, [Public Law 109-59](#), as amended by Sec. 25024, [Public Law 117-58](#);
- [23 CFR part 1300](#)—Uniform Procedures for State Highway Safety Grant Programs;
- [2 CFR part 200](#)—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- [2 CFR part 1201](#)—Department of Transportation, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

NONDISCRIMINATION

(applies to all subrecipients as well as States)

The State highway safety agency [and its subrecipients] will comply with all Federal statutes and implementing regulations relating to nondiscrimination (“Federal Nondiscrimination Authorities”). These include but are not limited to:

- *Title VI of the Civil Rights Act of 1964* ([42 U.S.C. 2000d](#) et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- [49 CFR part 21](#) (entitled *Non-discrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964*);
- [28 CFR 50.3](#) (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);
- *The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, ([42 U.S.C. 4601](#)), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- *Federal-Aid Highway Act of 1973*, ([23 U.S.C. 324 et seq.](#)), and *Title IX of the Education Amendments of 1972*, as amended ([20 U.S.C. 1681-1683](#) and [1685-1686](#)) (prohibit discrimination on the basis of sex);
- *Section 504 of the Rehabilitation Act of 1973*, ([29 U.S.C. 794 et seq.](#)), as amended, (prohibits discrimination on the basis of disability) and [49 CFR part 27](#);
- *The Age Discrimination Act of 1975*, as amended, ([42 U.S.C. 6101 et seq.](#)), (prohibits discrimination on the basis of age);
- *The Civil Rights Restoration Act of 1987*, (Pub. L. 100-209), (broadens scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal aid recipients, subrecipients and contractors, whether such programs or activities are Federally-funded or not);
- *Titles II and III of the Americans with Disabilities Act* ([42 U.S.C. 12131-12189](#)) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing) and [49 CFR parts 37](#) and [38](#);
- [Executive Order 12898](#), *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (preventing discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- [Executive Order 13166](#), *Improving Access to Services for Persons with Limited English Proficiency* (requiring that recipients of Federal financial assistance provide meaningful access for applicants and beneficiaries who have limited English proficiency (LEP));
- [Executive Order 13985](#), *Advancing Racial Equity and Support for Underserved Communities through the Federal Government* (advancing equity across the Federal Government); and
- [Executive Order 13988](#), *Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation* (clarifying that sex discrimination includes discrimination on the grounds of gender identity or sexual orientation).

The preceding statutory and regulatory cites hereinafter are referred to as the “Acts” and “Regulations,” respectively.

GENERAL ASSURANCES

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, for which the Recipient receives Federal financial assistance from DOT, including NHTSA.”

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI of the Civil Rights Act of 1964 and other non-discrimination requirements (the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these nondiscrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

SPECIFIC ASSURANCES

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted Highway Safety Grant Program:

1. The Recipient agrees that each “activity,” “facility,” or “program,” as defined in § 21.23(b) and (c) of [49 CFR part 21](#) will be (with regard to an “activity”) facilitated, or will be (with regard to a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all Highway Safety Grant Programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source: *“The [name of Recipient], in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”*
3. The Recipient will insert the clauses of appendix A and E of this Assurance (also referred to as DOT Order 1050.2A) in every contract or agreement subject to the Acts and the Regulations.
4. The Recipient will insert the clauses of appendix B of DOT Order 1050.2A, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form of, or for the acquisition of, real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. That the Recipient will include the clauses set forth in appendix C and appendix D of this DOT Order 1050.2A, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the State highway safety agency also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing NHTSA's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by NHTSA. You must keep records, reports, and submit the material for review upon request to NHTSA, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The State highway safety agency gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the Highway Safety Grant Program. This ASSURANCE is binding on the State highway safety agency, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the Highway Safety Grant Program. The person(s) signing below is/are authorized to sign this ASSURANCE on behalf of the Recipient.

THE DRUG-FREE WORKPLACE ACT OF 1988 (41 U.S.C. 8103)

The Subgrantee will provide a drug-free workplace by:

- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace, and specifying the actions that will be taken against employees for violation of such prohibition;
- b. Establishing a drug-free awareness program to inform employees about:
 1. The dangers of drug abuse in the workplace;
 2. The grantee's policy of maintaining a drug-free workplace;
 3. Any available drug counseling, rehabilitation, and employee assistance programs;
 4. The penalties that may be imposed upon employees for drug violations occurring in the workplace;
 5. Making it a requirement that each employee engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- c. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—
 1. Abide by the terms of the statement;
 2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
- d. Notifying the agency within ten days after receiving notice under subparagraph (c)(2) from an employee or otherwise receiving actual notice of such conviction;
- e. Taking one of the following actions, within 30 days of receiving notice under subparagraph (c)(2), with respect to any employee who is so convicted—
 1. Taking appropriate personnel action against such an employee, up to and including termination;
 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- f. Making a good faith effort to continue to maintain a drug-free workplace through implementation of all of the paragraphs above.

POLITICAL ACTIVITY (HATCH ACT)

(applies to all subrecipients as well as States)

The State will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

CERTIFICATION REGARDING FEDERAL LOBBYING

(applies to all subrecipients as well as States)

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

RESTRICTION ON STATE LOBBYING (applies to subrecipients as well as States)

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION (applies to all subrecipients as well as States)

INSTRUCTIONS FOR PRIMARY TIER PARTICIPANT CERTIFICATION (STATES)

1. By signing and submitting this proposal, the prospective primary tier participant is providing the certification set out below and agrees to comply with the requirements of [2 CFR parts 180](#) and [1200](#).
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective primary tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary tier participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default or may pursue suspension or debarment.
4. The prospective primary tier participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary tier participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms **covered transaction, civil judgment, debarment, suspension, ineligible, participant, person, principal, and voluntarily excluded**, as used in this clause, are defined in [2 CFR parts 180](#) and [1200](#). You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under [48 CFR part 9, subpart 9.4](#), debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with [2 CFR parts 180](#) and [1200](#).
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under [48 CFR part 9, subpart 9.4](#), debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or

otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov/>).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under [48 CFR part 9, subpart 9.4](#), suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate the transaction for cause or default.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS— PRIMARY TIER COVERED TRANSACTIONS

1. The prospective primary tier participant certifies to the best of its knowledge and belief, that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
 - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
2. Where the prospective primary tier participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.

INSTRUCTIONS FOR LOWER TIER PARTICIPANT CERTIFICATION

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of [2 CFR parts 180](#) and [1200](#).
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms **covered transaction, civil judgment, debarment, suspension, ineligible, participant, person, principal, and voluntarily excluded**, as used in this clause, are defined in [2 CFR parts 180](#) and [1200](#). You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under [48 CFR part 9, subpart 9.4](#), debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with [2 CFR parts 180](#) and [1200](#).
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under [48 CFR part 9, subpart 9.4](#), debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or

otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov>).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under [48 CFR part 9, subpart 9.4](#), suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION— LOWER TIER COVERED TRANSACTIONS

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

BUY AMERICA

(applies to subrecipients as well as States)

The State and each subrecipient will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a State, or subrecipient, to purchase with Federal funds only steel, iron and manufactured products produced in the United States, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification for approval by the Secretary of Transportation.

CERTIFICATION ON CONFLICT OF INTEREST

(applies to subrecipients as well as States)

GENERAL REQUIREMENTS

No employee, officer, or agent of a State or its subrecipient who is authorized in an official capacity to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any subaward, including contracts or subcontracts, in connection with this grant shall have, directly or indirectly, any financial or personal interest in any such subaward. Such a financial or personal interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or personal interest in or a tangible personal benefit from an entity considered for a subaward. Based on this policy:

1. The recipient shall maintain a written code or standards of conduct that provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents.
 - a. The code or standards shall provide that the recipient's officers, employees, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from present or potential subawardees, including contractors or parties to subcontracts.
 - b. The code or standards shall establish penalties, sanctions, or other disciplinary actions for violations, as permitted by State or local law or regulations.
2. The recipient shall maintain responsibility to enforce the requirements of the written code or standards of conduct.

DISCLOSURE REQUIREMENTS

No State or its subrecipient, including its officers, employees, or agents, shall perform or continue to perform under a grant or cooperative agreement, whose objectivity may be impaired because of any related past, present, or currently planned interest, financial or otherwise, in organizations regulated by NHTSA or in organizations whose interests may be substantially affected by NHTSA activities. Based on this policy:

1. The recipient shall disclose any conflict of interest identified as soon as reasonably possible, making an immediate and full disclosure in writing to NHTSA. The disclosure shall include a description of the action which the recipient has taken or proposes to take to avoid or mitigate such conflict.
2. NHTSA will review the disclosure and may require additional relevant information from the recipient. If a conflict of interest is found to exist, NHTSA may (a) terminate the award, or (b) determine that it is otherwise in the best interest of NHTSA to continue the award and include appropriate provisions to mitigate or avoid such conflict.
3. Conflicts of interest that require disclosure include all past, present, or currently planned organizational, financial, contractual, or other interest(s) with an organization regulated by NHTSA or with an organization whose interests may be substantially affected by NHTSA activities, and which are related to this award. The interest(s) that require disclosure include those of any recipient, affiliate, proposed consultant, proposed subcontractor, and key personnel of any of the above. Past interest shall be limited to within one year of the date of award. Key personnel shall include any person owning more than a 20 percent interest in a recipient, and the officers, employees or agents of a recipient who are responsible for making a decision or taking an action under an award where the decision or action can have an economic or other impact on the interests of a regulated or affected organization.

PROHIBITION ON USING GRANT FUNDS TO CHECK FOR HELMET USAGE (applies to all subrecipients as well as States)

The State and each subrecipient will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

POLICY ON SEAT BELT USE

In accordance with Executive Order 13043, Increasing Seat Belt Use in the United States, dated April 16, 1997, the Grantee is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles. The National Highway Traffic Safety Administration (NHTSA) is responsible for providing leadership and guidance in support of this Presidential initiative. For information and resources on traffic safety programs and policies for employers, please contact the Network of Employers for Traffic Safety (NETS), a public-private partnership dedicated to improving the traffic safety practices of employers and employees. You can download information on seat belt programs, costs of motor vehicle crashes to employers, and other traffic safety initiatives at www.trafficsafety.org. The NHTSA website (www.nhtsa.gov) also provides information on statistics, campaigns, and program evaluations and references.

POLICY ON BANNING TEXT MESSAGING WHILE DRIVING

In accordance with Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, and DOT Order 3902.10, Text Messaging While Driving, States are encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted driving, including policies to ban text messaging while driving company-owned or rented vehicles, Government-owned, leased or rented vehicles, or privately-owned vehicles when on official Government business or when performing any work on or behalf of the Government. States are also encouraged to conduct workplace safety initiatives in a manner commensurate with the size of the business, such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

RESOLUTION NO. 54-24

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
AUTHORIZING AMENDMENT TO THE CITY'S FISCAL YEAR
2024-25 OPERATING AND CAPITAL BUDGET**

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

WHEREAS, the City of Morro Bay is required to appropriate and expend public funds to conduct its day-to-day business activities; and

WHEREAS, the City Council adopted the Fiscal Year (FY) 2024-25 Operating and Capital Budget on June 25, 2024, by Resolution No. 47-24; and

WHEREAS, the California Office of Traffic Safety has awarded the City a grant to purchase hydraulic extrication equipment; and

WHEREAS, City staff did not include this award or associated expenditures in the adopted budget; and

WHEREAS, the City Council deems it necessary to amend said budgets.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, authorizes a budget adjustment to recognize \$45,145 in grant revenue received and \$48,133 in expenditures as outlined in Table 1.

Table 1. Budget Amendment Detail

Type	Account	Description	Increase (Decrease)
Revenue	001-4210-3303	Federal Grant Other Govt Svc	\$45,145
Expense	001-4210-7302	Equipment Acquisition	\$48,133

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 27th day of August 2024, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

CARLA WIXOM, Mayor

ATTEST:

DANA SWANSON, City Clerk



AGENDA NO: 7.c

MEETING DATE: August 27, 2024

Staff Report

TO: Honorable Mayor and City Council

DATE: August 20, 2024

FROM: Airlin Singewald, Community Development Director

SUBJECT: Approval of Amendment No. 6 to Environmental Impact Report (EIR) Contract with Rincon Consultants for the Vistra Battery Energy Storage System (BESS) Project at 1290 Embarcadero

RECOMMENDED ACTION

Approve Amendment No. 6 to the EIR contract for the Vistra Battery Energy Storage System (BESS) project EIR at 1290 Embarcadero. The City Attorneys' Office has reviewed Amendment No. 6 (Attachment 2) as to form, such Amendment subject to final approval as to form by the City Attorney.

ALTERNATIVES

None.

FISCAL IMPACT

No fiscal impact to the City as the Rincon EIR and Power Plant Master Plan contract is a reimbursable contract which is covered by the executed Vistra Deposit and Reimbursement Agreement (Attachment 3).

SUMMARY / BACKGROUND:

The City has an original contract with Rincon Consultants to perform the environmental work and prepare an Environmental Impact Report (EIR) for the Battery Energy Storage System (BESS) project that was executed March 19, 2021 (Attachment 1) for a not to exceed amount of \$158,548. The EIR contract was subsequently amended five times for various reasons (see Table below).

Version	Date	Amount	New Total	Reason
Original Contract	3/19/2021	\$158,548	\$158,548	BESS Project EIR
Amendment #1	4/4/2022	\$123,203	\$281,751	Project revisions including power plant and stack demolition; extended term from 12/31/22 to 3/31/23
Amendment #2	5/1/2022	\$23,180	\$304,931	Analysis of geologic and hazard impacts
Amendment #3	7/25/2022	\$172,342	\$477,273	Include Master Plan Phase 1; extended term to 4/30/23
Amendment #4	5/1/2023	\$6,610	\$483,883	Community survey analysis for Master Plan; extend term to 12/31/23
Amendment #5	1/25/2024	\$47,508	\$531,391	Additional rounds of review of administrative draft EIR; extend term to 12/31/24

Prepared By: AS

Dept Review: _____

City Manager Review: YK

City Attorney Review: LNL

Rincon Consultants submitted a sixth fee authorization request, dated August 19, 2024, seeking an additional \$94,126 for a new contract amount of \$625,517(Attachment 2, Exhibit A). A primary reason for this request is to cover Rincon’s cost to review and prepare responses to a higher-than-expected volume of comments on the Draft EIR. The City received 213 written comment letters totaling over 1,000 pages in response to the Draft EIR. Rincon will also provide written responses to the verbal comments received during the Draft EIR Scoping Workshop. Additionally, Rincon is seeking additional budget for hearing attendance, community engagement, and additional revisions to the Draft Master Plan, and project management.

The requested Amendment No. 6 does not propose to extend the term of the EIR contract, since Rincon’s proposed schedule still anticipates completion of work by December 31, 2024 (the current expiration date). The Community Development Director will continue to update the Council on the project timeline, as the BESS Project progresses through the environmental review and public hearing process. If the project timeframe extends beyond December 31, 2024, the City Manager will have the authority to extend the term of the agreement, without returning to the Council.

Pursuant to the City’s Master Fee Schedule, Vistra has previously paid the City an amount of \$197,439 which represents cost plus 25% for the original contract, which was the requirement prior to the execution of the Deposit and Reimbursement Agreement. The Amendment No. 1 and Amendment No. 2 are covered by a deposit of \$175,000 paid by Vistra, which is a Deposit and Reimbursement Agreement executed in January 2022. To keep up with expenditures, Vistra has replenished the deposit four times since January 2022 in the amount of \$175,000 each (February 2023, May 2023, November 2023, and March 2024).

DISCUSSION

The original EIR contract authorized the City Manager to approve additional work not to exceed 25% of the amount of the original contract (\$158,548). City Council approval is needed to authorize additional work in excess of this amount. Since the requested Amendment No. 6 (\$94,126) is greater than 25% of the original contract amount, Council approval is required per the original contract. The contract amount, however, is fully reimbursable under the terms of the Deposit Reimbursement Agreement executed between the City and Vistra (Attachment 3).

CONCLUSION

Staff is recommending Council approve Amendment No. 6 to the Rincon Consultants EIR contract for the BESS Project, in the amount of \$94,126 for a new contract amount of \$625,517.

ATTACHMENTS

1. Rincon Consultants, Inc. Agreement for Consultant Services, March 19, 2021 - [Link](#)
2. Rincon Consultants Amendment #6 – Requested
3. Vistra Deposit and Reimbursement Agreement, January 24, 2022 - [Link](#)

AMENDMENT NO. 6 TO THE AGREEMENT
FOR CONSULTANT SERVICES
BETWEEN THE CITY OF MORRO BAY AND RINCON CONSULTANTS, INC.

This Amendment No. 6 to the Agreement for Consultant Services (“Amendment”) is entered by and between the City of Morro Bay, a municipal corporation (“City”) and Rincon Consultants, Inc., a California corporation (“Consultant”), effective as of August ___, 2024 (the “Effective Date”). City and Consultant are sometimes referred to herein collectively as the “Parties” and individually as a “Party.”

RECITALS

WHEREAS, City and Consultant entered into an Agreement for Consultant Services dated effective as of March 19, 2021 (as amended by that certain Amendment No. 1 to the Agreement for Consultant Services, dated April 4, 2022, and that certain Amendment No. 2 to the Agreement for Consultant Services, dated May 1, 2022, and that certain Amendment No. 3 to the Agreement for Consulting Services, dated July 25, 2022, and that certain Amendment No. 4 to the Agreement for Consulting Services, dated March 23, 2023, and that certain Amendment No. 5 to the Agreement for Consulting Services, dated January 25, 2024, all collectively referred to as the “Amendments”) for certain services to be performed by Consultant to prepare CEQA documents and studies in connection with a proposed Battery Energy Storage project (“Project”) by Morro Bay Power Company, LLC, a California limited liability company (“MBPC”) to be located at 1290 Embarcadero Road, in the City of Morro Bay, i.e., the former Morro Bay Power Plant, (the “Site”). The March 19, 2021 Agreement with all Amendments are collectively referred to as the “Agreement”; and

WHEREAS, the Parties now agree to further amend the Agreement to provide for the additional work that has been determined to be required of Consultant to respond to a higher-than-expected volume of comments on the Draft Environmental Impact Report (DEIR); participate in additional public meetings for the DEIR and Draft Master Plan; and prepare additional revisions to the Draft Master Plan; and

WHEREAS, due to the additional work required to be provided under the Agreement via this Amendment, the compensation payable pursuant to the Agreement must be amended, and therefore, the Parties desire to amend the Agreement as set forth herein.

TERMS

NOW THEREFORE, the Parties mutually agree to amend the Agreement as follows:

1. Additional Work Required Under the Agreement: The services to be provided by Consultant, pursuant to the Agreement as amended by this Amendment, shall be generally the same as set forth on Exhibit A to the Agreement and its prior Amendments and incorporated herein by this reference, plus those additional services added pursuant to the terms in Exhibit A hereto (the “Additional Work”). The Additional Work further clarified in Exhibit A attached hereto and incorporated herein is intended to be an expansion of, not replacement of, services specified in the

Agreement and all prior Amendments. The Additional Work shall be satisfactorily completed in accordance with the schedule set forth in the Exhibit A to the Agreement and its prior Amendments, except as extended in Section 3 below.

2. Amendment to Compensation: The compensation to be paid for the Additional Work described in Exhibit A to the Agreement and its prior Amendments shall not exceed \$94,126. The total not to exceed amount stated in Section 5(a) of the Agreement shall be amended and revised to be \$625,517.

3. Term of the Agreement. The Agreement shall remain and continue in effect until all tasks required under the Agreement (including the Additional Work) are satisfactorily completed, but in no event later than December 31, 2024, unless sooner terminated pursuant to the provisions of the Agreement.

4. Continuing Effect of Agreement. Except as expressly amended by this Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Amendment, whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement, as amended by this Amendment.

5. Affirmation of Agreement. City and Consultant each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement. Each Party represents and warrants to the other that there have been no written or oral modifications to the Agreement other than as provided herein. Each Party represents and warrants to the other that the Agreement is currently an effective, valid, and binding obligation.

6. Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

7. Authority. The persons executing this Amendment on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Amendment on behalf of said Party, (iii) by so executing this Amendment, such Party is formally bound to the provisions of this Amendment, and (iv) the entering into this Amendment does not violate any provision of any other agreement to which said Party is bound.

8. Counterparts. This Amendment may be executed in counterparts, and all so executed shall constitute an agreement binding on the Parties. The Parties further agree that a digital or electronic signature shall have the same force and effect as a manual or wet-ink signature, and that a facsimile copy or a copy in pdf format of the executed counterparts shall have the same force and effect as an original.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties shall be deemed to have caused this Amendment to be executed by their duly authorized representatives as of the Effective Date.

CITY

CITY OF MORRO BAY

By: _____

Name: Yvonne Kimball

Title: City Manager

CONSULTANT

RINCON CONSULTANTS, INC.

By: _____

Name: Richard Daulton,

Title: Principal / Secretary

By: _____

Name: Lacrissa Davis

Title: Principal / Chief Financial Officer

Attest:

Dana Swanson, City Clerk

Approved As To Form:

Chris Neumeyer, City Attorney

EXHIBIT A

[Attached]



Rincon Consultants, Inc.

1530 Monterey Street, Suite D
San Luis Obispo, California 93401

805 547 0900 OFFICE AND FAX

info@rinconconsultants.com
www.rinconconsultants.com

August 19, 2024
Project No: 19-08915

Attn: Kim Fowler, Interim Planning Manager
595 Harbor Street
Morro Bay, California 93442
805-772-6577 | kfowler@morrobayca.gov

Subject: Fee Authorization Request #6 to Provide Additional Responses to Comments Effort and Additional Master Plan Support for the Morro Bay Battery Energy Storage System Project EIR

Dear Ms. Fowler,

The purpose of this letter is to request an authorization of additional fees and work scope beyond those specified in the contract scope of work and budget between Rincon Consultants, Inc. (Rincon) and the City of Morro Bay for environmental services for the Morro Bay Battery Energy Storage System Project EIR.

Rincon's contract scope of work for responding to public comments on the Draft EIR was originally prepared in February 2021 and was subsequently amended in February 2022 when the project description was modified to include demolition of the Power Plant building and stacks, and again in June 2022 with the addition of the Master Plan. Since that time the level of public interest in the project has increased substantially; the City has received 213 written comment letters totaling over 1,000 pages in response to the Draft EIR, and the public comments address the technical EIR analysis, conclusions, and mitigation. The public comments also include letters from public stakeholder agencies (San Luis Obispo Air Pollution Control District, the Department of Toxic Substances Control, California Coastal Commission, and California Department of Fish and Wildlife).

Rincon's contract scope of work for the Master Plan included facilitating two community meetings with support from City staff. Due to the high level of public interest in the BESS project, the Master Plan engagement and level of staff engagement required to support the community meetings has exceeded what was assumed in our previous scope of work.

In order to respond to these changes in the project, the requested authorization would add budget and services to our contract scope of work to provide the required environmental analysis necessary to fully respond to the volume of comments received on the Public Review Draft EIR, and to complete the Master Plan public outreach process, incorporating guidance received from the public and from City staff regarding the scope of the Master Plan. The additional services included in this authorization request are:

- Additional professional staff time and technical expertise to support the expanded response to public comments on the Draft EIR;
- Additional staff and project management attendance at public hearings;
- Additional professional staff time to support the expanded community engagement component of the Master Plan;



- Corresponding updates to the Draft Master Plan to incorporate public input provided on the Master Plan’s vision and policy as well as Planning Commission’s feedback into the various sections of the draft Master Plan; and
- Project management and contract administration to support these additional tasks and extend the duration of Rincon’s schedule by 6 months (through January 2025).

The following section presents the additional scope of work that would be implemented for this effort. With City authorization, these tasks would be incorporated into the contract as new subtasks under Task 6 (Prepare Administrative Final EIR and Responses to Comments), Task 9 (Public Meeting and Hearing Attendance), and Task 12 (Master Plan). The additional environmental analysis will be completed alongside Task 6 through Task 12 of the contract scope of work.

Scope of Work

Task 6.4: Additional Responses to Comments Effort

Rincon’s current tasks that allocate professional staff time to responding to public comments on the Draft EIR – Tasks 6.1, 11.6.1, and 13.3.1 – include a total of 114 hours of professional staff time allocated among a range of planners and document production staff. These tasks did not account for the volume and technical depth of public input provided on the Draft EIR or verbal comments during the Draft EIR Scoping Workshop, which was not anticipated in our original schedule for the project. The City received 214 written comment letters totaling over 1,000 pages in response to the Draft EIR, which include comments that address the technical EIR analysis, conclusions, and mitigation, as well as letters from public stakeholder agencies (San Luis Obispo Air Pollution Control District, the Department of Toxic Substances Control, California Coastal Commission, and California Department of Fish and Wildlife).

Effectively responding to the large volume of public comments received on the Draft EIR, and preparing a Final EIR that will adequately support the needs of City staff and decision makers requires engaging Rincon’s technical experts, including our biological resources specialists, cultural resources specialists, hazards and hazardous materials experts, and regulatory permitting experts, as well as a robust coordination effort among our senior project management team and additional effort from our planners and document production staff. We also anticipate this effort will require coordination with resource agency staff. Rincon intends to consolidate responses to public comments to the maximum extent practicable, preparing Topical Responses to key issues raised by multiple commenters, and focusing technical expertise on responding effectively to comments submitted by public stakeholder agencies where feasible. Based on the anticipated effort to respond to the volume of public comments received on the Draft EIR, Rincon has budgeted a total of 314 additional hours of professional staff time to address the full range of public input provided on the Draft EIR, which would provide a total average of approximately 2 hours of staff time per comment letter.

Task 6.5: Final EIR Project Management Extension

Rincon will continue to manage the preparation of environmental review, coordinate the environmental review process schedule, and provide City staff project updates for the environmental analysis. Consistent with Rincon’s approved contract for this project, Rincon’s principal in charge or project manager will review and comment on regular meeting minutes and agendas. To support the professional effort associated with Task 6.4 and Task 9.2, Rincon will continue to attend biweekly status



meetings via conference call with the City's Project Manager for an additional duration of 6 months (through January 2025) and will attend up to 8 additional meetings with City staff and resource agency staff, including representatives of the Coastal Commission. These meetings can be scheduled and selected at the City's discretion. We can conduct additional coordination with the City and complete other project management or technical tasks on a time-and-materials basis, in accordance with our schedule of fees, as authorized by the City.

Task 9.2: Additional Public Hearing (Final EIR)

Rincon attended a Draft EIR Scoping Workshop, which was not included in our original scope of work. As a result, the budget for this effort came from our existing Task 9.1: Public Hearings (2), which included scope and budget to attend two public hearings. We anticipate City staff will need Rincon to attend two public hearings in support of the Final EIR; therefore, we are requesting additional budget be added to the contract to provide staff time to support two public hearings on the Final EIR.

Task 12.5: Master Plan Project Management Extension

Rincon will continue to manage the preparation of the Master Plan. To support the professional effort associated with Task 12.7 and 12.8, Rincon will continue to attend biweekly status meetings via conference call with the City's Project Manager for an additional duration of 6 months (through January 2025) and will attend up to 4 additional meetings with City staff. These meetings can be scheduled and selected at the City's discretion. We can conduct additional coordination with the City and complete other project management or technical tasks on a time-and-materials basis, in accordance with our schedule of fees, as authorized by the City.

Task 12.6: Additional Community Engagement

Rincon facilitated and attended two community meetings, as included in our original scope of work, Task 12.3.3. This authorization would add budget to our existing contract scope of work to support the robust community engagement efforts needed and requested by City staff to adequately identify community priorities and vision for the Master Plan. Our original scope of work and budget assumed two staff members would attend the community meetings with support from City staff. Due to the high level of public interest in the BESS project, the Master Plan engagement and level of staff engagement required to support the community meetings was greater than what was assumed under the existing contract budget.

The additional scope and budget included in this task will support the following efforts that have been identified by City staff as necessary to complete a thorough series of community meetings as part of the Master Plan process and in support of the project overall:

- The need for four staff members to help facilitate the first community meeting (up to two staff members were originally assumed to be sufficient for each meeting).
- Travel and cost for a senior public engagement specialist to develop and attend the second community meeting to assist with facilitating various interest groups anticipated to be in attendance.



- Preparation of an additional memorandum deliverable to summarize the results of the second community meeting, due to requests from the community for a complete summary of comments made during the community meeting.

Task 12.7: Additional Public Hearing (Master Plan)

Rincon attended a Planning Commission Study Session, which was not included in our original scope of work. As a result, the budget for this effort came from our existing Task 12.3.4: Public Hearings, which included scope and budget to attend two public hearings. We anticipate City staff will need Rincon to attend two public hearings in support of the Master Plan; therefore, we are requesting additional budget be added to the contract to provide staff time to support two public hearings on the Master Plan.

Task 12.8: Additional Revisions to the Draft Master Plan

Rincon's current scope and budget under Task 2.2.5 to prepare the Draft Master Plan did not account for the depth of public input provided on the Master Plan's vision and policy or additional input from the Planning Commission received during the out-of-scope study session. Additional professional staff time is necessary to adequately incorporate public input provided on the Master Plan's vision and policy as well as Planning Commission's feedback into the various sections of the draft Master Plan and compile a complete Draft Master Plan for City review.

Budget Amendment

Rincon is requesting a budget amendment of \$94,126 to complete the scope of work tasks described in this request, as shown in the attached cost spreadsheet.

We are committed to working with the City of Morro Bay through the successful completion of this project. Please contact us if you have any questions regarding this scope and cost augmentation.

Sincerely,

Rincon Consultants, Inc.

Chris Bersbach, MESM

Supervising Environmental Planner/Project Manager

Richard Daulton, MURP

Vice President/Principal-in-Charge

Attachments: Cost Estimate

Cost Estimate

	Rate	Hours	Labor Budget	Total Budget
Final EIR Tasks		401.00	68,997.00	68,997.00
Task 6.4: Additional Responses to Comments Effort		314.00	51,374.00	51,374.00
<i>Senior Principal</i>	247.00	16.00	3,952.00	
<i>Principal</i>	227.00	24.00	5,448.00	
<i>Senior Supervisor Planner II</i>	211.00	36.00	7,596.00	
<i>Senior Biologist I</i>	165.00	24.00	3,960.00	
<i>Senior Archaeologist I</i>	165.00	8.00	1,320.00	
<i>Senior Environmental Scientist I</i>	165.00	24.00	3,960.00	
<i>Senior Planner I</i>	165.00	34.00	5,610.00	
<i>Planner III</i>	134.00	132.00	17,688.00	
<i>Technical Editor</i>	115.00	16.00	1,840.00	
Task 6.5: Final EIR Project Management Extension		72.00	14,520.00	14,520.00
<i>Senior Principal</i>	247.00	12.00	2,964.00	
<i>Senior Supervisor Planner II</i>	211.00	36.00	7,596.00	
<i>Senior Planner I</i>	165.00	24.00	3,960.00	
Task 9.2: Additional Public Hearing (Final EIR)		15.00	3,103.00	3,103.00
<i>Senior Principal</i>	247.00	2.00	494.00	
<i>Senior Supervisor Planner II</i>	211.00	12.00	2,532.00	
<i>Admin Assistant/Billing Specialist</i>	77.00	1.00	77.00	
Master Plan Tasks		151.00	25,129.00	25,129.00
Task 12.5: Master Plan Project Management Extension		47.00	8,695.00	8,695.00
<i>Senior Supervisor Planner II</i>	211.00	30.00	6,330.00	
<i>Senior Planner I</i>	165.00	12.00	1,980.00	
<i>Admin Assistant/Billing Specialist</i>	77.00	5.00	385.00	
Task 12.6: Additional Community Engagement		34.00	5,224.00	5,224.00
<i>Senior Supervisor Planner II</i>	211.00	10.00	2,110.00	
<i>Senior Planner I</i>	165.00	6.00	990.00	
<i>Planner II</i>	118.00	18.00	2,124.00	
Task 12.7: Additional Public Hearing (Master Plan)		30.00	5,560.00	5,560.00
<i>Senior Supervisor Planner II</i>	211.00	20.00	4,220.00	
<i>Planner III</i>	134.00	10.00	1,340.00	
Task 12.8: Additional Draft Master Plan Revisions		40.00	5,650.00	5,650.00
<i>Senior Supervisor Planner II</i>	211.00	10.00	2,110.00	
<i>Planner II</i>	118.00	30.00	3,540.00	
Amendment Total		552.00	94,126.00	94,126.00



AGENDA NO: 7.d

MEETING DATE: August 27, 2024

Staff Report

TO: Honorable Mayor and City Council

DATE: August 21, 2024

FROM: Cindy Cecil, SE/CE – City Engineer
Austin Della, PE – Senior Civil Engineer

SUBJECT: Award of Contract to AAAA Engineering Contracting, Inc., for the Sequoia Court Storm Drain Repair Project

RECOMMENDED ACTION

Award a contract to AAAA Engineering Contracting, Inc., for the Sequoia Court Storm Drain Repair Project for a total of \$433,840, which includes a 10% contingency budget executable by the City Manager. The contract (Attachment 1) has been reviewed and approved as to form by the City Attorneys' Office.

ALTERNATIVE

The City Council may alternatively reject the bid and provide other direction to staff.

FISCAL IMPACT

Funding for the Sequoia Court Storm Drain Repair Project comes from a grant received from the Department of Water Resources (DWR), City General Fund budgeted in Fiscal Year 2023, and mid-year 2023 Transfer from Capital Project 915-9949 (Elena Street Slope Repair).

Revenue Sources

DWR Grant: California State Budget Act of 2023	\$ 300,000.00
FY23 Budget Adoption	\$ 120,000.00
23 MY Transfer 9949 to 9950	\$ 164,041.00

Total Revenue Sources for Project \$ 584,041.00

Estimated Expenditures

Contract Costs

Award (Base Bid)	\$ 394,400.00
Contingency (10%)	\$ 39,440.00
	\$ 433,840.00

Other costs (already approved / implemented for project)

Design, Construction Management, Inspection, and Testing	\$ 125,364.52
--	---------------

Total Expenditures Authorized by Council for Project \$ 559,204.52

Prepared By: <u>AD</u>	Dept Review: <u>GK</u>
City Manager Review: <u>YK</u>	City Attorney Review: <u>LNL</u>

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BACKGROUND

The Sequoia Court Storm Drain Replacement Project addresses a critical need for infrastructure improvement in response to recent weather events. The storm drain in question has required replacement for some time, and the severe storms in January and March of 2023 exacerbated the existing damage, making the need for immediate action clear.

In response to this urgency, the City secured grant funding of \$300,000 from the California Department of Water Resources (DWR). This financial support has enabled the City to move forward with the necessary planning and design work. In 2023, the City contracted MNS Engineers to provide plans, specifications, and an engineer's estimate for the storm drain replacement. The design phase of the project was completed in early 2024.

The project was originally approved by the City Council in 2023 with the adoption of the FY 23 budget, which allocated \$120,000 for this purpose. Additionally, during the mid-year budget review in 2023, the City transferred funds from Capital Project 915-9949, the Elena Slope Repair Project, to further support the Sequoia Court Storm Drain Replacement Project.

The storm drain is located within a City easement on private property, where existing landscaping materials and structures present challenges for maintenance and replacement activities. To address these challenges, the City has collaborated closely with the private property owners to ensure that the work is carried out in the least intrusive manner possible. The City has communicated to the property owner that City will not restore any landscaping improvements that need to be removed to facilitate the storm drain replacement.

DISCUSSION

The City posted a notice to bidders, and a public bid opening conducted on Wednesday, July 10, 2024, at City Hall. The lowest and only bid received is responsive to the City's Invitation to Bid, and the bidder is well regarded as having successfully completed similar public works projects in the recent past.

PROJECT DATA

Low Bid:	\$540,400
No. Bids Received:	1
Engineer's Estimate:	\$328,795
Bid Opening:	2:00 p.m. on 07/10/2024
Contract Time Allowed:	90 WORKING DAYS

The selection process for the project took into account both the base bid and the bid alternate to determine the apparent low bid. This combined total was used to ensure a fair comparison among all bids. However, the contract amount will be based solely on the base bid amount, which is \$394,400. If the bid alternate option is employed during the project, it is anticipated that the overall construction costs will decrease. This alternate method, if applicable, offers a more cost-effective solution to install a pipe liner inside the damaged drainpipe.

The work shall include, but is not limited to, providing all tools, materials, labor, equipment, and incidentals necessary for the removal of a 36" CMP Storm Drainpipe, replacement with a 36" HDPE storm drainpipe, connection to existing headwall, laterals, and storm drain manhole, curb & gutter, sidewalk, curb opening catch basin, pavement restoration, and specified hardscape restoration. All utilities not replaced will be protected in place including manholes and returned to their prior condition. The work will also include any required traffic control, signage, public notifications, stormwater control, formwork, and all other work necessary to render the infrastructure/facility complete and operational, as shown on the Project Plans and Specifications.

IMPACT TO THE COMMUNITY

The work is being performed on Sequoia Court. Motorists, cyclists, and the walking public may experience inconveniences during the project's construction due to temporary closures of streets, traffic lanes, the presence of the construction equipment, and traffic control efforts. Project rollout will include public notification and temporary "No Parking" signs as applicable. These efforts are intended to allow residents to prepare for the project impacts by adjusting their routes of travel and/or schedules during construction work.

ATTACHMENT(S)

1. Form of Agreement for Services

**CITY OF MORRO BAY
STATE OF CALIFORNIA
CONTRACT FOR**

**2023-SD03 SEQUOIA COURT STORM DRAIN REPAIR PROJECT
IN THE CITY OF MORRO BAY, CALIFORNIA**

THIS AGREEMENT (“this Contract” or “this Agreement”) is made and entered into in triplicate this 27th day of August, 2024, by and among the **City of Morro Bay**, a municipal corporation, hereinafter referred to as “City” and **AAAA Engineering Contracting, Inc.**, hereinafter referred to as “Contractor”. City and Contractor may be referred to, sometimes individually or collectively, as “party” or “parties.” In consideration of the mutual covenants, conditions, promises, and agreements herein contained, City and Contractor hereby mutually covenant and agree as follows:

ARTICLE I – SCOPE OF WORK:

Each work order issued pursuant to this Agreement and each amendment, as provided herein, shall be based on the unit prices included in the Bid Documents upon which this Agreement was awarded. For all work provided pursuant to this Agreement and every amendment provided for herein (the “Work”), Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor and materials necessary to perform and complete in a workmanlike manner, and in strict accordance with the Contract Documents (defined in Article 6 herein) the Work of: **SEQUOIA COURT STORM DRAIN REPAIR PROJECT: 2023-SD03**, (“Project”) in the City of Morro Bay, State of California, as called for in the drawings and specifications adopted by City, which said drawings and specifications are identified by the signature of the parties of this Agreement, and such documents incorporated into this Agreement and made part hereof. It is understood and agreed the tools, equipment, apparatus, facilities, labor, and materials shall be furnished, and the Work performed and completed as required in said Contract Documents, and subject to the approval of City and duly authorized representatives.

ARTICLE 2 - TIME OF COMPLETION:

- A. The Work, as defined in the specifications, per the following: The Work shall include, but is not limited to, providing all tools, materials, labor, equipment, and incidentals necessary for the replacement or lining of the failed storm drain and restoration of all asphalt, curb and gutter in the roadway and restoration of landscaping as indicated in the Project Plans and Specifications (included in the Bid Documents). All utilities will be protected in place or adjusted and returned to their prior condition. The Work will also include traffic control, public notifications, and all Work necessary to render the infrastructure/facility complete and operational.
- B. Once the Notice to Proceed has been issued, the Contractor shall have Ninety (90) working days to complete their installation. The Contractor shall pay to the City the sum of One Thousand Dollars (\$1,000.00), for each and every calendar day, or portion thereof, delay in finishing that installation Work in excess of the above-required completion time. This Article 2 both does not exclude recovery of damages under provisions of the Contract Documents and is also expressly in addition to the City’s ability to seek other damages.
- C. City and Contractor recognize time is of the essence, and the City will suffer losses if the Work is not completed in the time specified in Subparagraphs 2.A and 2.B above. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by City if the Work is not completed on time. Accordingly, instead of requiring any such proof, City and Contractor agree, as liquidated damages for delay (but not as a penalty) Contractor shall

pay City amounts for each day, or portion thereof, that expires after the time and amounts specified in Subparagraphs 2.A and 2B above.

ARTICLE 3 - CONTRACT PRICE:

The Work shall be compensated at a “Maximum Contract Price” of: **THREE HUNDRED NINETY-FOUR THOUSAND, FOUR HUNDRED DOLLARS. (\$394,400.00).**

However, by accepting the Bid Documents, the parties accept and acknowledge that many Project Work elements are unknown and will be unknowable until such time that Project ground may be broken and further field conditions may be known, including the possibility of an option to line the existing storm drain pipe (such being the preferred option). To this end, the Bid Documents include a “bid alternate” in the amount of a Contract Price of ONE HUNDRED FORTY-SIX THOUSAND DOLLARS EVEN (\$146,000.00). As appropriate, the Contract Price may be adjusted or reduced to accommodate the preferred option and attendant bid alternate, so long as the Maximum Contract Price is not exceeded. Adjustments to the Contract Price (not-to-exceed the Maximum) shall be processed as knowledge of field conditions develops, with Work compensation developed on a task and materials basis as described in Article 4 below.

Any increase in Contract Price of up-to the amount of contingency approved by the City Council at the time the Project was awarded to Contractor, if any, taken either separately or in the aggregate, or any increase in the time to perform of up to one hundred eighty (180) days and which are not detrimental to the Work or to the interest of the City, may be approved by the City’s Director of Public Works or City Engineer, or either of their designees. Any greater increases, taken either separately or in the aggregate, must be approved by the City Council.

ARTICLE 4 – PAYMENT PROCEDURES:

Without exceeding the Maximum Contract Price, payments for Work will proceed based on field conditions. Contractor shall provide the City a written description of the required tasks, including all additive and deductive components and subtasks, utilizing the pricing itemized under the base bid or the alternate bid as specified in the Bid Documents and as appropriate to field conditions:

- A. If it is determined that the alternate bid option to line the existing storm drainpipe is the preferred option, Contractor shall submit a revised overall Contract Price estimate (not to exceed the Maximum Contract Price set forth above).
- B. Each task of Work shall be indicated by Contractor in a written request produced to the City with a description of the Work to be performed including all components and subtasks, the time needed for completion of each task, the costs to perform each task, and a schedule for completion of each task with the aim of completing the Project in accordance with the Project deadline in Section 2.B above. The information required here may be included in the revised Contract Price submittal as specified in Section 4.A above or may cross-reference relevant information or data already-provided in the Bid Documents.
- C. Payment(s) will be processed following the satisfactory completion of scheduled tasks and the Work in the next regularly scheduled check run following submittal of invoice(s).

D The acceptance by Contractor of final payment shall be and shall operate as a full and unconditional release to the City of all claims from Contractor, and all liability from City to Contractor, for all things done or furnished in connection with the Work and for every act and neglect of City and others relating to or arising out of the Work. No payment, however, final or otherwise, shall operate to release Contractor or sureties from any obligations under this Contract or the Performance and Payment Bond. The amount of retention on the Project shall be five percent (5%) of the Work completed to date including stored materials, if any.

ARTICLE 5 – CONTRACTOR’S REPRESENTATIONS:

In order to induce City to enter into this Agreement the Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."
- E. Contractor has considered the information known to Contractor; information commonly known to Contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor’s safety precautions and programs.
- F. Based on the information and observations referred to in this Article 5, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Work timeframes set forth herein, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of Work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 6 – CONTRACT DOCUMENTS:

This Contract shall consist of the following identified documents herein referred to as the Contract Documents: (A) the Invitation to Bidders, Instructions for Bidders, Bid Form, Supplements to Bid Form, Project bid and proposal(s) from Contractor (collectively the “Bid Documents”) and (B) this Agreement, Bond Requirements and Bond Forms, Substitution of Securities, Guarantees, Insurance and Indemnification Requirements, Specifications, City Standard Specifications, and attached supplemental information, Drawings, and any Addenda, for the project, as those documents exist on the date of the first signature to this Contract. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though it were included herein; if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party, the Agreement shall forthwith be physically amended to make such insertion or correction. There are no other Contract Documents except those listed above. This Contract shall include all labor, materials, equipment, transportation, and services necessary for the proper execution of the Work. This Agreement and the Contract Documents may only be amended, modified, or supplemented in writing mutually executed by the parties. The Contract Documents are incorporated into this Agreement and made part hereof. In the event of any conflict between the terms of the Contract Documents and this Agreement, the terms of this Agreement shall govern.

ARTICLE 7 – LAW AND VENUE:

This Agreement has been executed and delivered in the County of San Luis Obispo, State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. The duties and obligations of the parties created hereunder are performable in the City of Morro Bay and as such the County shall be the venue for any action of proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

ARTICLE 8 - CONFLICTS OF INTERESTS:

No official of City who is authorized on behalf of City to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction, or material supply contract or any subcontract in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part thereof. No officer, employee, architect, attorney, engineer, or inspector of or for City who is authorized on behalf of City to exercise any executive, supervisory or other similar function in connection with the construction of the Project shall become directly or indirectly interested personally in this Contract or in any part thereof. Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Contractor’s performance of services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

ARTICLE 9 – ASSIGNMENT:

No assignment by a party hereto of any rights under or interests in this Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

ARTICLE 10 – SUCCESSORS:

City and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

ARTICLE 11 – SEVERABILITY:

Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon City and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

ARTICLE 12 – CONFLICTS:

In the event of a conflict between the Contract Documents and this Agreement, the terms and conditions of this Agreement shall control.

ARTICLE 13 – BONDS:

- A. PERFORMANCE BOND: Pursuant to application of requirements of Section 20129 of the California Public Contract Code to this Agreement, the successful Bidder shall, within ten (10) working days after award of this Contract simultaneously with the execution and delivery of this Agreement, execute a Faithful Performance Bond in an amount equal to one hundred percent (100%) of the Contract price, secured from a surety company admitted in the State of California and satisfactory to City. The Bond shall be issued on the Performance Bond form contained in these Contract Documents.
- B. PAYMENT BOND: Pursuant to Sections 9550 through 9560, inclusive, of the California Civil Code, the successful bidder shall, within eight (8) working days after award of this Contract exceeding \$25,000, simultaneously with the execution and delivery of the Agreement, execute a Payment Bond in the amount equal to 100% of the Contract price, secured from a surety company admitted in the State of California and satisfactory to City. The Bond shall be issued on the Payment Bond form contained in these Contract Documents.

ARTICLE 14 - SUBSTITUTIONS OF SECURITIES FOR RETENTION AMOUNTS:

Substitution of certain securities for retention amounts are allowed under the Public Contract Code at the option of the Contractor. The Contractor is required to formally request the substitution and to conform to the specific provisions of Public Contract Code section 22300.

- A. Acceptable Securities: Whenever retention of monies is authorized to ensure performance of Contract conditions, the Contractor shall be permitted to substitute securities for the amount withheld in accordance with Public Contract Code section 22300. Securities eligible for deposit under this procedure shall consist of bank or savings and loan certificates of deposit, interest

- B. Value of Securities: The value of securities being deposited shall be based upon market value as of the date of deposit and not necessarily on face value of the securities. Market value shall be determined by the City Public Works Director. If deposit is made into an escrow, escrow instructions must clearly state, in addition to the items mentioned in, that the escrow agent must convert the securities to cash in whole or in part upon a unilateral written demand for such conversion by the City Manager; and further, that any amount demanded by City shall be paid to City upon unilateral written demand for payment. Escrow instructions used must be substantially similar to the form set forth in Public Contract Code section 22300. City will only make such demand for conversion in payment when the conditions of the Contract would have warranted an expenditure by City of a cash retention expenditure without any securities substitution. All escrow expenses shall be paid by Contractor.
- C. Release of Securities: Securities deposited hereunder shall be released back to Contractor when the City Manager has certified in writing to the escrow holder that the Project has been satisfactorily completed. The recording of Notice of Completion does not constitute such certification. All retention times called for in these Contract Documents must have passed, including the time after recording of Notice of Completion, before City will certify to satisfactory completion of the Contract.

ARTICLE 15 – GUARANTEES AND WARRANTIES:

- A. GUARANTEE FOR TOTAL WORK: Prior to acceptance of the Work by City, the Contractor shall submit a guarantee in the form of a written warranty on Contractor’s own letterhead as follows:
“WARRANTY FOR SEQUOIA COURT STORM DRAIN REPAIR PROJECT: 2023-SD03:
 This Work has been constructed in accordance with the Contract Documents, and the Work as installed will fulfill the requirements of this warranty, and any other warranty therefor, included in the Contract Documents. We agree to repair or replace any and all of our Work together with any other adjacent Work which may be displaced by so doing, that prove to be defective in its workmanship or material for the period of one (1) year (except when otherwise required in this Contract to be for a longer period) from date of acceptance of the above mentioned structure by City, ordinary wear and tear and unusual abuse or neglect excepted. Said date of acceptance shall be the date of acceptance and filing of the Notice of Completion by the City Council.

In the event of our failure to comply with the above-mentioned conditions within seven (7) calendar days after being notified in writing, we collectively or separately, do hereby authorize City to proceed to have said defects repaired and made good at our expense and we will honor and pay the cost and charges therefor on demand.

Signed:



 Contractor

913871

 License Number

- B. Contractor warrants all Work under this Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty

- B. Contractor warrants all Work under this Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Contractor shall within seven (7) calendar days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Agreement, commence and prosecute with due diligence all w\Work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act as soon as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair, remove and/or replace any portions of the Work (or Work of other contractors or subcontractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective work. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one-year period, commencing with the date of acceptance of such corrected work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any Work damaged by such Work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.
- C. **ADDITIONAL GUARANTEES:** Additional Guarantees shall be provided as required in the technical sections of the Contract Documents.

ARTICLE 16 – INSURANCE:

The parties expressly agree the indemnification and insurance clauses in this Contract are an integral part of the performance exchanged in this Contract. The compensation stated in this Contract includes compensation for the risks transferred to Contractor by the indemnification and insurance clauses.

Attention is invited to the provisions of the Insurance Code of the State of California with reference to the writing of insurance policies and bonds covering risks located in this state, and the premiums and

commissions thereon. Contractor shall obtain, and maintain, at his own expense, all the insurance required by this section. The insurance requirements must be met within the time period allowed for Contract execution as defined in the 00 41 13 BID FORM herein.

Required insurance forms are attached as Appendix “A” to these Specifications.

The Notice to Proceed with the Work under this Contract will not be issued, and Contractor shall not commence Work, until such insurance has been approved by City. Contractor shall not allow any subcontractor to commence Work on his subcontract until all similar insurance required for the subcontractor has been obtained. Such insurance shall be maintained in full force and effect at all times during the prosecution of the Work and until the final completion and acceptance thereof.

A. General Requirements: The following requirements apply to all insurance to be provided by Contractor:

1. A Certificate of Insurance and all required insurance endorsements and documents shall be furnished to City along with Contract Documents within three (3) days of the receipt of the Notice of Award.
2. Certificates and policies shall state the policies not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to City, except if cancelation is for non-payment and then notice shall be ten (10) days.
3. Approval of the insurance by City shall not relieve or decrease the extent to which the Contractor may be held responsible for payment of damages resulting from Contractor’s services or operations pursuant to this Contract.

B. Commercial General Liability (CGL):

1. Contractor shall maintain in full force and effect, for the period covered by this Contract, Commercial General Liability insurance with the following coverages.
 - a. Personal Injury and Bodily Injury, including death resulting therefrom.
 - b. Property Damage.
2. The amount of insurance shall not be less than the following: single limit coverage applying to bodily and personal injury, including death resulting therefrom and property damage coverage in in an amount not less than \$2,000,000 per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO “insured contract” language will not be accepted.
3. The following endorsements must be provided in the policy:
 - a. If the insurance policy covers an “accident” basis, it must be changed to “occurrence”.
 - b. The policy must cover personal injury as well as bodily injury.
 - c. Blanket contractual liability must be afforded and the policy must be afforded and the policy must contain a cross liability or severability of interest endorsement.
4. The City of Morro Bay, its officials, officers, employees and agents shall be named as additional insurer under the policy using standard ISO endorsement No. CG 2010. Contractor also agrees to require all subcontracting to do likewise. The policy shall provide that the insurance will operate as primary insurance. No other insurance effected by the City, whether commercial or self-insurance will be called upon to contribute to a loss hereunder. Nothing

contained in this Contract shall be construed to require Contractor's insurance to indemnify City in contravention of Insurance Code 11580.04.

- C. **Workers' Compensation and Employer's Liability Insurance:** Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000) for Contractor's employees in accordance with the laws of the State of California, Section 3700 of the Labor Code. In addition, Contractor shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California, Section 3700 for all of the subcontractor's employees.

Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

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

- E. **Umbrella or excess liability insurance.** *[if required to meet higher limits.]* Contractor shall obtain and maintain an umbrella liability insurance policy with limits that will provide bodily injury, personal injury, and property damage liability coverage, including commercial general liability, auto liability, and employer's liability. Such policy or policies shall include the following terms and conditions:

- a. A drop-down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason, other than bankruptcy or insolvency of said primary insurer;
- b. "Pay on behalf of" wording as opposed to "reimbursement";
- c. Concurrency of effective dates with primary policies.

Should Contractor obtain and maintain an excess liability policy, such policy shall be excess over commercial general liability, auto liability, and employer's liability policies. Such policy or policies shall include wording that the excess liability policy follows the terms and conditions of the underlying policies.

- F. **Waiver of subrogation.** All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against Agency, its elected or appointed officers, agents, officials, employees, and volunteers or shall specifically allow Vendor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Vendor hereby waives its own right of recovery against Agency and shall require similar written express waivers and insurance clauses from each of its subconsultants.

- G. **Duration of coverage.** Contractor shall procure and maintain for the contract period, and any additional length of time required thereafter, insurance against claims for injuries to persons or

damages to property, or financial loss which may arise from or in connection with the performance of the Work hereunder by Contractor, their agents, representatives, employees, or subconsultants. Contractor must maintain general liability and umbrella or excess liability insurance for as long as there is a statutory exposure to completed operations claims. Agency and its officers, officials, employees, and agents shall continue as additional insureds under such policies.

- H. **Products/completed operations coverage.** Products/completed operations coverage shall extend a minimum of three (3) years after Project completion. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the Policy must include Work performed “by or on behalf” of the insured. Policy shall contain no language that would invalidate or remove the insurer’s duty to defend or indemnify for claims or suits expressly excluded from coverage. Policy shall specifically provide for a duty to defend on the part of the insurer. The Agency, its officials, officers, agents, and employees, shall be included as additional insureds under the Products and Completed Operations coverage.

ARTICLE 17 – INDEMNIFICATION:

- A. Except as otherwise provided in Subparagraphs B. and C. below, Contractor shall defend, indemnify and save harmless City, and entities’ agents, officials, officers and employees, from any and all claims demands, damages, costs expenses, judgments, attorney fees or liability relating to any act or omission by the Contractor, or its agents, employees, or certain independent Contractors (described below) which relates in any way to this Contract; regardless of whether said act or omission is willful, negligent or non-negligent. The preceding sentence applies to any theory of recovery relating to said act or omission, including but not limited to the following:
1. Violation of statute, ordinance, or regulation.
 2. Professional malpractice.
 3. Willful, intentional or other wrongful acts, or failures to act.
 4. Negligence or recklessness.
 5. Furnishing of defective or dangerous products.
 6. Completed operations.
 7. Premises liability.
 8. Strict liability.
 9. Inverse condemnation.
 10. Violation of civil rights.
 11. Violation of any federal or state statute, regulation, or ruling resulting in a determination by the Internal Revenue Service, California Franchise Tax Board or any other California public entity responsible for collecting payroll taxes, when Contractor is not an independent contractor. The certain “independent contractors” referenced above refer to independent contractors which are either hired by Contractor, directly responsible to Contractor, or under the direction or control of Contractor.
- B. Nothing contained in the foregoing indemnity provision shall be construed to require indemnification for liability arising from proven willful misconduct of City.
- C. Nothing contained in the foregoing indemnity provision shall be construed to require indemnification for that portion of any liability attributable to the active negligence of City provided, however, this exception for active negligence shall not apply to (1) liability arising from

the passive negligence of City, or (2) that portion of any liability attributable to any act or omission, whether willful misconduct or active or passive negligence on the part of the Contractor.

- D. Contractor shall have the burden of proving the exception described in paragraphs B and C above.
- E. It is the intent of the parties to provide City the fullest indemnification, defense, and “hold harmless” rights allowed under the law. If any word(s) contained herein are deemed by a court to be in contravention of applicable law, then said word(s) shall be severed from this Contract and the remaining language shall be given full force and effect.

ARTICLE 18 – COMPLIANCE WITH LAWS:

Federal and State Laws and Regulations: All services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules and regulations of City and any federal, state or local governmental agency having jurisdiction in effect at the time services are rendered. City, and its elected and appointed officers, employees, agents, designated volunteers, attorneys, successors and assigns shall not be liable at law or in equity for failure of Contractor to comply with this Article 18. The Project shall be constructed under the complete jurisdiction of all applicable laws of the United States and State of California governing construction including, without limitation, the following:

- A. The California Health and Safety Code and all applicable administrative code regulations pursuant thereto.
- B. All laws governing the employment of labor, qualifications for employment of aliens, payment of employees, convict-made materials, domestic and foreign materials and accident prevention.
- C. Title 19 of the California Administrative Code entitled “Public Safety” Chapter 1, State Fire Marshall, Sub-Chapter 1, “General Fire and Panic Safety”.
- D. General Industrial Safety Orders: Each and every Contractor shall observe and conform to the provisions of Title 8, California Administrative Code bearing upon safe and proper use, construction, disposal, etc., of materials, machinery, and building appurtenances as therein set forth.
- E. Code Rules and Safety Orders: All Work and materials shall be in full accordance with the latest - substantive rules and regulations of the State Fire Marshall, the safety orders of the Division of Industrial Safety, Department of Industrial Relations; the Uniform Building Code, National Electric Code, Uniform Mechanical Code, Uniform Plumbing Code, and other applicable State Laws or Regulations. Nothing in these plans and specifications is to be construed to permit Work not conforming to these codes.

Note: The procedural aspects of the Uniform Codes referred to above may not apply to the Work of this Contract, but the substantive provisions do apply. All of the above laws and regulations though referred to herein, are as much a part of the Agreement as if they were incorporated in their entirety herein.

- F. Licenses, Fees, Permits and Assessments: Contractor shall maintain obtain and maintain, at its sole cost and expense, such licenses, permits, registrations, and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor’s performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its

officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

G. Prevailing Wage Law:

a.) Public Work. The parties acknowledge that the Work to be performed under this Agreement is a “public work” as defined in Labor Code section 1720 and that this Agreement is therefore subject to the requirements of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works contracts and the rules and regulations established by the Department of Industrial Relations (“DIR”) implementing such statutes. The Work performed under this Agreement is subject to compliance monitoring and enforcement by the DIR. Contractor shall post job site notices, as prescribed by regulation.

b.) Registration with DIR. Pursuant to Labor Code section 1771.1, Contractor and all subcontractors must be registered with, and pay an annual fee to, the DIR prior to and during the performance of any Work under this Agreement.

c.) Prevailing Wages. Contractor shall pay prevailing wages to the extent required by Labor Code section 1771. Pursuant to Labor Code section 1773.2, copies of the prevailing rate of per diem wages are on file at City Hall and will be made available to any interested party on request. By initiating any Work under this Agreement, Contractor acknowledges receipt of a copy of the DIR determination of the prevailing rate of per diem wages, and Contractor shall post a copy of the same at each job site where Work is performed under this Agreement. Contractor assumes responsibility for the payment of prevailing wages and shall indemnify City and hold City harmless from any and all claims made by the State of California, the DIR, any subcontractor, any worker, or any other third party with respect thereto.

d.) Penalty for Failure to Pay Prevailing Wages. Contractor shall comply with and be bound by the provisions of Labor Code sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Contractor shall, as a penalty to the City, forfeit two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Agreement by Contractor or by any subcontractor.

e.) Payroll Records. Contractor shall comply with and be bound by the provisions of Labor Code section 1776, which requires Contractor and each subcontractor to: keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform the City of the location of the records.

f.) Apprentices. Contractor shall comply with and be bound by the provisions of Labor Code sections 1777.5, 1777.6, and 1777.7 and California Code of Regulations Title 8, section 200 *et seq.* concerning the employment of apprentices on public works projects. Contractor shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing Work under this Agreement, Contractor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after

concluding Work pursuant to this Agreement, Contractor and each of its subcontractors shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Agreement.

g.) Eight-Hour Work Day. Contractor acknowledges that eight (8) hours labor constitutes a legal day's work. Contractor shall comply with and be bound by Labor Code section 1810.

h.) Penalties for Excess Hours. Contractor shall comply with and be bound by the provisions of Labor Code section 1813 concerning penalties for workers who work excess hours. The Contractor shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the performance of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half (1½) times the basic rate of pay.

i.) Workers' Compensation. California Labor Code sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees if it has employees. In accordance with the provisions of California Labor Code section 1861, Contractor certifies as follows: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

j.) Contractor's Responsibility for Subcontractors. For every subcontractor who will perform Work under this Agreement, Contractor shall be responsible for such subcontractor's compliance with Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code, and shall make such compliance a requirement in any contract with any subcontractor for Work under this Agreement. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a review of the certified payroll records of the subcontractor on a periodic basis or upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Contractor shall diligently take corrective action to halt or rectify any such failure by any subcontractor.

ARTICLE 19 – INDEPENDENT CONTRACTOR:

Neither City, nor any of its officers, employees or agents, shall have any control over the manner or means by which Contractor, or its officers, employees, agents or subcontractors, perform the services required herein, except as otherwise set forth herein. Contractor shall perform all services required herein as an independent contractor of City and shall remain under only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it, or any of its officers, employees, agents or subcontractors, are officers, employees or agents of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor

in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor. Contractor shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner. Contractor represents and warrants that the personnel used to provide services to City pursuant to this Agreement shall at all times be under Contractor's exclusive control and direction. No City employee benefits shall be available to Contractor, its officers, employees, agents or subcontractors, in connection with the performance of this Agreement. City shall not be liable for compensation or indemnification to Contractor, its officers, employees, agents or subcontractors, for injury or sickness arising out of performing services hereunder. In the event that Contractor or any officer, employee, agent, or subcontractor of Contractor providing services under this Agreement claims or is determined by a federal or state agency, a court of competent jurisdiction, or the California Public Employees' Retirement System, to be classified as other than an independent contractor for City, then Contractor shall indemnify, defend, and hold harmless City for the payment of any and all assessed fines, penalties, judgments, employee and/or employer contributions, and any other damages and costs assessed to City as a consequence of, or in any way attributable to, the assertion that Contractor, or any officer, employee, agent, or subcontractor Contractor used to provide services under this Agreement, is/are employees of City.

ARTICLE 20 – PROTECTION AND CARE OF WORK AND MATERIALS:

The Contractor shall adopt reasonable methods, including providing and maintaining storage facilities, during the life of the Agreement, to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the Work by City, except such losses or damages as caused by City's own negligence. Stored materials shall be reasonably accessible for inspection. Contractor shall not, without City's consent, assign, sell, mortgage, hypothecate, or remove equipment or materials which have been installed or delivered and which may be necessary for the completion of the work.

ARTICLE 21 - ENFORCEMENT OF AGREEMENT AND TERMINATION:

- A. California Law. This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of San Luis Obispo, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of San Luis Obispo, State of California.
- B. Default of Contractor.
 - i. It is City's right to suspend or terminate this Agreement upon the occurrence of any of the following events by default of Contractor: (1) Contractor refuses or fails to perform the work required under this Agreement with diligence to ensure timely completion of the Work; (2) Contractor fails to comply with the provisions of this Agreement; (3) Contractor violates any ordinance, regulation, state or federal law which applies to its performance under this Agreement; (4) Contractor files bankruptcy or otherwise becomes insolvent; (5)

Contractor makes a general assignment for the benefit of creditors; (6) a trustee or receiver is appointed for the Contractor or his property; (7) Contractor repeatedly fails to supply sufficient skilled workers or suitable materials or equipment; (8) Contractor has abandoned the Work, and/or; (9) Contractor disregards proper directives of the architect, inspector, or City's project manager under the Contract Documents. It will be at City's sole discretion to allow Contractor to remedy each cause for the termination without waiving City's right to terminate this Contract or restricting any other right or remedy under this Contract or law.

- ii. In the event that Contractor is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default and can terminate or suspend this Agreement immediately by written notice to Contractor. If the City's project manager determines that Contractor is in default in the performance of any of the terms or conditions of this Agreement, the City's project manager shall cause to be served upon Contractor a written notice of the default. Contractor shall have ten (10) calendar days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that Contractor fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.
 - iii. Contractor shall be liable for damages sustained by City from the termination of the Agreement under this Subsection B, including, but not limited to, all cost necessary for repair and completion of the work. City shall have the right to withhold monies otherwise payable to Contractor until the Work is complete. If City incurs additional costs, expenses, or other damages due to the failure of Contractor to perform the Work pursuant to this Agreement, said expenditures shall be deducted from the amounts withheld (and if such deduction does not fully compensate City for said expenditures, then Contractor remains fully liable for the remaining balance owed to City). Should there be a balance of monies held after all expenses have been paid, the balance will be paid to Contractor upon completion of the Work.
- C. Suspension or Termination. The City may at any time, for any reason (including but not limited to for City's convenience, environmental considerations, or when it is in the best interests of the City), with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon Contractor at least ten (10) calendar days prior written notice. Upon receipt of said notice, Contractor shall immediately cease all Work under this Agreement, unless the notice provides otherwise. If the City suspends a portion of this Agreement such suspension shall not make void or invalidate the remainder of this Agreement. Upon termination, Contractor shall be entitled to compensation for completion of any portion of the Work accepted by City up to the effective date of termination unless any portion of the Work is accepted by City after termination in which event Contractor shall be paid for such completed portion. Upon receipt of a termination notice, Contractor shall immediately discontinue the Work and placement of orders for materials, facilities and supplies in connection with the performance of this Agreement, unless otherwise directed in

the notice. Contractor shall promptly deliver to City all completed work, including plans, as-builts, forms, reports, and products. Any dispute regarding the amount owed to Contractor shall not diminish the right of City to receive and use such documents or materials. Contractor shall not be entitled to any claim or lien against City for any additional compensation or damages in the event of termination of this Agreement.

- D. Dispute Resolution Process. In the event of any dispute or controversy with the City over any matter whatsoever, the Contractor shall not cause any delay or cessation in or of work, but shall proceed with the performance of the Work in dispute. The Contractor shall retain any and all rights provided that pertain to the resolution of disputes and protests between the parties. The disputed Work will be categorized as an “unresolved dispute” and payment, if any, shall be as later determined as set forth below. The Contractor shall keep accurate, detailed records of all disputed work, claims and other disputed matters. Section 20104 *et seq.* of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial-supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less, and Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims, said processes being incorporated herein by reference.
- E. Rights and Remedies Are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.
- F. Unfair Business Practices Claims. Pursuant to Public Contract Code section 7103.5, in entering into this Agreement, Contractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2, (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials related to this Agreement. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor without further acknowledgment by the parties.
- G. Legal Action. In addition to any other rights or remedies, and as consistent with this Agreement and applicable law, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Contractor shall file a statutory claim pursuant to Government Code sections 905 *et seq.* and 910 *et seq.*, in order to pursue a legal action under this Agreement.
- H. Attorneys’ Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys’ fees. Attorneys’ fees shall include attorneys’ fees on any appeal, and a party entitled to attorneys’ fees shall be entitled to all other reasonable costs for investigating such action, consultants’ fees, taking depositions

and discovery and all other necessary costs the court allows which are incurred in such litigation. Such fees and costs shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 22 – WAIVER:

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any Work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any requirement of this Agreement imposes no additional obligations on City nor does it waive any rights hereunder. Payment to Contractor for Work performed pursuant to this Agreement shall not be deemed to waive any defects in Work performed by Contractor.

ARTICLE 23 – MISCELLANEOUS PROVISIONS:

A. Non-Liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

B. Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement, headings used, or any other rule of construction which might otherwise apply.

C. Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

--SIGNATURES ON NEXT PAGE--

IN WITNESS, WHEREOF, the parties to these presents have hereunto set their hands the year and date first above written.

CITY OF MORRO BAY

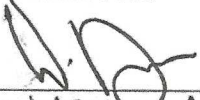
ATTEST:

Yvonne Kimball, City Manager

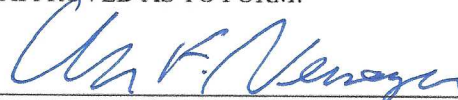
DANA SWANSON, City Clerk

CONTRACTOR:

APPROVED AS TO FORM:



By: Weston Arthurs
Its: President



CHRIS F. NEUMEYER, City Attorney



By: Jesse Arthurs
Its: Vice President

Licensed in accordance with an act providing for the registration of Contractors.

License No. 913871; Classification A; Expires 04/30/2026



AGENDA NO: 7.e

MEETING DATE: August 27, 2024

Staff Report

TO: Honorable Mayor and City Council

DATE: August 21, 2024

FROM: Cindy Cecil, SE/CE – City Engineer
Austin Della, PE – Senior Civil Engineer

SUBJECT: Award of Contract to Hartzell General Engineering Contractor, Inc., for Lift Station 1 Force Main Replacement Project and Approval of Resolution No. 55-24 Amending the Fiscal Year (FY) 2024-25 Operating & Capital Budget

RECOMMENDED ACTION

1. Award a contract to Hartzell General Engineering Contractor, Inc., (Hartzell) for the Lift Station 1 Force Main Replacement Project for a total of \$414,568, which includes a 10% contingency budget executable by the City Manager. The contract (Attachment 1) has been reviewed and approved as to form by the City Attorneys' Office; and
2. Adopt Resolution No. 55-24 amending the FY 2024-25 Operating & Capital Budget to add \$69,568 to the Lift Station 1 Force Main Replacement Project budget.

ALTERNATIVE

The City Council may alternatively reject the bid and provide other direction to staff.

FISCAL IMPACT

The City Council allocated \$400,000 for the [Lift Station 1 Force Main Replacement Project](#) during FY 2022-23 budget adoption. To date, \$34,056 has been spent for Design services. Staff estimates up to \$20,944 of additional funds may be required to support the completion of the project for engineering during construction services, inspection, and testing.

The low bid for construction received by the City was \$376,880. With a recommended 10% contingency of \$37,688, the total construction budget amount is \$414,568. With design and support services totaling \$55,000, the total recommended project budget is \$469,568. This represents a budget shortfall of \$69,568.

Budget Category	Amount
Design	\$34,056
Support	\$20,944
Construction Bid	\$376,880
Construction Contingency	\$37,688
Total Recommended Project Budget	\$469,568

Allocated Budget	\$400,000
Budget Shortfall	\$69,568

Prepared By: AD Dept Review: GK
 City Manager Review: YK City Attorney Review: LNL
 Page 74 of 230

Staff recommends supplementing the project budget with \$69,568 from the Sewer Operating Fund via adoption of Resolution No. 55-24. As of June 30, 2024, the Sewer Operating Fund's available working capital fund balance is estimated to be approximately \$19 million, satisfying the City reserve policies for that fund.

BACKGROUND

In April 2022, the Lift Station 1 force main experienced a significant leak under State Route 1, necessitating its removal from service and the implementation of a temporary fix. While temporary repairs are still in place, a permanent solution is required to prevent further issues with the force main.

The OneWater Plan, which assessed the City's water and sewer infrastructure, had initially identified the need for the force main's replacement between the years 2029-2040. However, the recent leak has highlighted the urgency of addressing this deficiency sooner to minimize the risk of a Sanitary Sewer Overflow (SSO).

The Lift Station 1 Force Main Replacement Project implements an upsizing of the 225 foot force main from 6" diameter to 8" diameter to connect Lift Station No. 1 to the manhole on Main Street on the other side of Highway 1.

In response to this need, the City Council authorized \$400,000 from the Sewer Fund during the adoption of the FY 22/23 Budget for this capital project.

DISCUSSION

Engineering plans and specifications were created and a notice to bidders posted with a public bid opening conducted on Thursday, July 11, 2024, at City Hall. The lowest and only bid received is responsive to the City's Invitation to Bid, and the bidder is well regarded as having successfully completed similar public works projects in the recent past.

PROJECT DATA

Apparent Low Bid:	\$376,880
No. Bids Received:	1
Engineer's Estimate:	\$274,550
Bid Opening:	2:00 p.m. on 07/11/2024
Contract Time Allowed:	30 WORKING DAYS

The work shall include, but is not limited to, providing all tools, materials, labor, equipment, and incidentals necessary for work including horizontal directional drilling for, installation of a new force main pipe within casing, connecting it to existing upstream piping and downstream manholes, and other work included in the project plans and specifications. All utilities not replaced will be protected in place including manholes and returned to their prior condition. The work will also include any required traffic control, signage, public notifications, stormwater control, formwork, and all other work necessary to render the infrastructure/facility complete and operational, as shown on the Project Plans and Specifications.

IMPACT TO THE COMMUNITY

The work is being performed on either side of Highway 1 near the Lift Station 1. Motorists, cyclists, and the walking public may experience inconveniences during the project's construction due to temporary closures of streets, traffic lanes, the presence of the construction equipment, and traffic control efforts. Project rollout will include public notification and temporary "No Parking" signs as applicable. These efforts are intended to allow residents to prepare for the project impacts by adjusting their routes of travel and/or schedules during construction work.

ATTACHMENTS

1. Form of Agreement for Services
2. Resolution No. 55-24 Authorizing the Budget Amendment
3. Site Map

**CITY OF MORRO BAY
STATE OF CALIFORNIA
CONTRACT FOR**

**MB2022-UT02 - LIFT STATION 1 FORCE MAIN REPLACEMENT PROJECT
IN THE CITY OF MORRO BAY, CALIFORNIA**

THIS AGREEMENT (“this Contract” or “this Agreement”) is made and entered into in triplicate this 13th day of August, 2024, by and among the **City of Morro Bay**, a municipal corporation, hereinafter referred to as “City” and **Hartzell General Engineering Contractor, Inc.**, hereinafter referred to as “Contractor”. City and Contractor may be referred to, sometimes individually or collectively, as “party” or “parties.” In consideration of the mutual covenants, conditions, promises, and agreements herein contained, City and Contractor hereby mutually covenant and agree as follows:

ARTICLE 1 – SCOPE OF WORK:

Each work order issued pursuant to this Agreement and each amendment, as provided herein, shall be based on the unit prices included in the Bid Documents upon which this Agreement was awarded. For all work provided pursuant to this Agreement and every amendment provided for herein (the “Work”), Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor and materials necessary to perform and complete in a workmanlike manner, and in strict accordance with the Contract Documents, (defined in Article 6 herein) the Work of: **LIFT STATION 1 FORCE MAIN REPLACEMENT PROJECT: MB2022-UT02**, (“Project”) in the City of Morro Bay, State of California, as called for in the drawings and specifications adopted by City, which said drawings and specifications are identified by the signature of the parties of this Agreement, and such documents incorporated into this Agreement and made part hereof. It is understood and agreed the tools, equipment, apparatus, facilities, labor, and materials shall be furnished, and the Work performed and completed as required in said Contract Documents, and subject to the approval of City and duly authorized representatives.

ARTICLE 2 - TIME OF COMPLETION:

- A. The Work, as defined in the specifications, per the following: The Work shall include, but is not limited to, providing all tools, materials, labor, equipment, and incidentals necessary for work including horizontal directional drilling for installation of a new force main pipe within casing, connecting it to existing upstream piping and downstream manholes, and other work as indicated in the Project Plans and Specifications (included in the Bid Documents). All utilities will be protected in place or adjusted and returned to their prior condition. The Work will also include traffic control, signage, removal and reinstallation of traffic striping and pavement markings, public notifications, stormwater control, shoring, formwork and all Work necessary to render the infrastructure/facility complete and operational, as shown on the Project Plans and Specifications, as specified herein, and in accordance with latest editions of the City of Morro Bay Standard Specifications and Drawings, Caltrans Standard Specifications, and Greenbook with whichever is more restrictive applying if conflict arises.
- B. Once the Notice to Proceed has been issued, the Contractor shall have THIRTY (30) working days to complete their installation. The Contractor shall pay to the City the sum of Five Hundred Dollars (\$500.00), for each and every calendar day, or portion thereof, delay in finishing that installation Work in excess of the above-required completion time. This Article 2 both does not exclude recovery of damages under provisions of the Contract Documents and is also expressly in addition to the City’s ability to seek other damages.

- C. City and Contractor recognize time is of the essence, and the City will suffer losses if the Work is not completed in the time specified in Subparagraphs A and B above. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by City if the Work is not completed on time. Accordingly, instead of requiring any such proof, City and Contractor agree, as liquidated damages for delay (but not as a penalty) Contractor shall pay City amounts for each day, or portion thereof, that expires after the time and amounts specified in Subparagraphs 2.A and 2B above.

ARTICLE 3 - CONTRACT PRICE:

The Work shall be compensated at the "Contract Price" of: **THREE HUNDRED SEVENTY-SIX THOUSAND, EIGHT HUNDRED EIGHTY DOLLARS, ZERO CENTS (\$376,880.00).**

Any increase in Contract Sum of up to the amount of contingency approved by the City Council at the time the Project was awarded to Contractor, if any, taken either separately or in the aggregate, or any increase in the time to perform of up to one hundred eighty (180) days and which are not detrimental to the Work or to the interest of the City, may be approved by the City's Director of Public Works or City Engineer, or either of their designees. Any greater increases, taken either separately or in the aggregate, must be approved by the City Council.

ARTICLE 4 - PAYMENT PROCEDURES:

Applications for Payment will be processed by the City as provided below.

- A. Payment(s) will be processed following the satisfactory completion of scheduled work and in the next regularly scheduled check run following submittal of invoice(s). The acceptance by Contractor of final payment shall be and shall operate as a full and unconditional release to the City of all claims from Contractor, and all liability from City to Contractor, for all things done or furnished in connection with the Work and for every act and neglect of City and others relating to or arising out of the Work. No payment, however, final or otherwise, shall operate to release Contractor or sureties from any obligations under this Contract or the Performance and Payment Bond.
- B. The amount of retention on the Project shall be five percent (5%) of the Work completed to date including stored materials, if any.

ARTICLE 5 - CONTRACTOR'S REPRESENTATIONS:

In order to induce City to enter into this Agreement the Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and

(2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."

- E. Contractor has considered the information known to Contractor; information commonly known to Contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in this Article 5, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Work Time frames set forth herein and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of Work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 6 – CONTRACT DOCUMENTS:

This Contract shall consist of the following identified documents herein referred to as the Contract Documents: (A) the Invitation to Bidders, Instructions for Bidders, Bid Form, Supplements to Bid Form, Project Bid and proposals(s) from Contractor (collectively the "Bid Documents") and (B) this Agreement, Bond Requirements and Bond Forms, Substitution of Securities, Guarantees, Insurance and Indemnification Requirements, City Standard Specifications, and attached supplemental information, Drawings, and any Addenda, for the Project, as those documents exist on the date of the first signature to this Contract. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though it were included herein; if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party, the Agreement shall forthwith be physically amended to make such insertion or correction. There are no other Contract Documents except those listed above. This Contract shall include all labor, materials, equipment, transportation, and services necessary for the proper execution of the Work. This Agreement and the Contract Documents may only be amended, modified, or supplemented in writing mutually executed by the parties. The Contract Documents are incorporated into this Agreement and made part hereof. In the event of any conflict between the terms of the Contract Documents and this Agreement, the terms of this Agreement shall govern.

ARTICLE 7 – LAW AND VENUE:

This Agreement has been executed and delivered in the County of San Luis Obispo, State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. The duties and obligations of the parties created hereunder are performable in the City of Morro Bay and as such the County shall be the venue for any action of proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

ARTICLE 8 - CONFLICTS OF INTERESTS:

No official of City who is authorized on behalf of City to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction, or material supply contract or any subcontract in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part thereof. No officer, employee, architect, attorney, engineer, or inspector of or for City who is authorized on behalf of City to exercise any executive, supervisory or other similar function in connection with the construction of the Project shall become directly or indirectly interested personally in this Contract or in any part thereof. Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Contractor's performance of services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

ARTICLE 9 – ASSIGNMENT:

No assignment by a party hereto of any rights under or interests in this Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

ARTICLE 10 – SUCCESSORS:

City and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

ARTICLE 11 – SEVERABILITY:

Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon City and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

ARTICLE 12 – CONFLICTS:

In the event of a conflict between the Contract Documents and this Agreement, the terms and conditions of this Agreement shall control.

ARTICLE 13 – BONDS:

- A. PERFORMANCE BOND: Pursuant to application of requirements of Section 20129 of the California Public Contract Code to this Agreement, the successful Bidder shall, within ten (10)

working days after award of this Contract simultaneously with the execution and delivery of this Agreement, execute a Faithful Performance Bond in an amount equal to one hundred percent (100%) of the Contract Price, secured from a surety company admitted in the State of California and satisfactory to City. The Bond shall be issued on the Performance Bond form contained in these Contract Documents.

- B. PAYMENT BOND: Pursuant to Sections 9550 through 9560, inclusive, of the California Civil Code, the successful bidder shall, within eight (8) working days after award of this Contract exceeding \$25,000, simultaneously with the execution and delivery of the Agreement, execute a Payment Bond in the amount equal to 100% of the Contract Price, secured from a surety company admitted in the State of California and satisfactory to City. The Bond shall be issued on the Payment Bond form contained in these Contract Documents.

ARTICLE 14 - SUBSTITUTIONS OF SECURITIES FOR RETENTION AMOUNTS:

Substitution of certain securities for retention amounts are allowed under the Public Contract Code at the option of the Contractor. The Contractor is required to formally request the substitution and to conform to the specific provisions of Public Contract Code section 22300.

- A. Acceptable Securities: Whenever retention of monies is authorized to ensure performance of Contract conditions, the Contractor shall be permitted to substitute securities for the amount withheld in accordance with Public Contract Code section 22300. Securities eligible for deposit under this procedure shall consist of bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, securities listed in Government Code section 16430, or any other security mutually agreed to by the Contractor and the public agency. The Contractor shall be the beneficiary of the City of any securities substituted for monies withheld and shall receive any interest thereon.
- B. Value of Securities: The value of securities being deposited shall be based upon market value as of the date of deposit and not necessarily on face value of the securities. Market value shall be determined by the City Public Works Director. If deposit is made into an escrow, escrow instructions must clearly state, in addition to the items mentioned in, that the escrow agent must convert the securities to cash in whole or in part upon a unilateral written demand for such conversion by the City Manager; and further, that any amount demanded by City shall be paid to City upon unilateral written demand for payment. Escrow instructions used must be substantially similar to the form set forth in Public Contract Code section 22300. City will only make such demand for conversion in payment when the conditions of the Contract would have warranted an expenditure by City of a cash retention expenditure without any securities substitution. All escrow expenses shall be paid by Contractor.
- C. Release of Securities: Securities deposited hereunder shall be released back to Contractor when the City Manager has certified in writing to the escrow holder that the Project has been satisfactorily completed. The recording of Notice of Completion does not constitute such certification. All retention times called for in these Contract Documents must have passed, including the time after recording of Notice of Completion, before City will certify to satisfactory completion of the Contract.

ARTICLE 15 – GUARANTEES AND WARRANTIES:

separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any Work damaged by such Work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

- C. **ADDITIONAL GUARANTEES:** Additional Guarantees shall be provided as required in the technical sections of the Contract Documents.

ARTICLE 16 – INSURANCE:

The parties expressly agree the indemnification and insurance clauses in this Contract are an integral part of the performance exchanged in this Contract. The compensation stated in this Contract includes compensation for the risks transferred to Contractor by the indemnification and insurance clauses.

Attention is invited to the provisions of the Insurance Code of the State of California with reference to the writing of insurance policies and bonds covering risks located in this state, and the premiums and commissions thereon. Contractor shall obtain, and maintain, at his own expense, all the insurance required by this section. The insurance requirements must be met within the time period allowed for Contract execution as defined in the 00 41 13 BID FORM herein.

Required insurance forms are attached as Appendix "A" to these Specifications.

The Notice to Proceed with the Work under this Contract will not be issued, and Contractor shall not commence Work, until such insurance has been approved by City. Contractor shall not allow any subcontractor to commence Work on his subcontract until all similar insurance required for the subcontractor has been obtained. Such insurance shall be maintained in full force and effect at all times during the prosecution of the Work and until the final completion and acceptance thereof.

- A. **General Requirements:** The following requirements apply to all insurance to be provided by Contractor:

1. A Certificate of Insurance and all required insurance endorsements and documents shall be furnished to City along with Contract Documents within three (3) days of the receipt of the Notice of Award.
2. Certificates and policies shall state the policies not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to City, except if cancelation is for non-payment and then notice shall be ten (10) days.
3. Approval of the insurance by City shall not relieve or decrease the extent to which the Contractor may be held responsible for payment of damages resulting from Contractor's services or operations pursuant to this Contract.

B. **Commercial General Liability (CGL):**

1. Contractor shall maintain in full force and effect, for the period covered by this Contract, Commercial General Liability insurance with the following coverages.
 - a. Personal Injury and Bodily Injury, including death resulting therefrom.
 - b. Property Damage.

2. The amount of insurance shall not be less than the following: single limit coverage applying to bodily and personal injury, including death resulting therefrom and property damage coverage in an amount not less than \$2,000,000 per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.
3. The following endorsements must be provided in the policy:
 - a. If the insurance policy covers an "accident" basis, it must be changed to "occurrence".
 - b. The policy must cover personal injury as well as bodily injury.
 - c. Blanket contractual liability must be afforded and the policy must be afforded and the policy must contain a cross liability or severability of interest endorsement.
4. The City of Morro Bay, its officials, officers, employees and agents shall be named as additional insurer under the policy using standard ISO endorsement No. CG 2010. Contractor also agrees to require all subcontracting to do likewise. The policy shall provide that the insurance will operate as primary insurance. No other insurance effected by the City, whether commercial or self-insurance will be called upon to contribute to a loss hereunder. Nothing contained in this Contract shall be construed to require Contractor's insurance to indemnify City in contravention of Insurance Code 11580.04.

C. Workers' Compensation and Employer's Liability Insurance: Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000) for Contractor's employees in accordance with the laws of the State of California, Section 3700 of the Labor Code. In addition, Contractor shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California, Section 3700 for all of the subcontractor's employees.

Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

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

E. Umbrella or excess liability insurance. *[if required to meet higher limits.]* Contractor shall obtain and maintain an umbrella liability insurance policy with limits that will provide bodily injury, personal injury, and property damage liability coverage, including commercial general liability, auto liability, and employer's liability. Such policy or policies shall include the following terms and conditions:

- a. A drop-down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason, other than bankruptcy or insolvency of said primary insurer;

- b. "Pay on behalf of" wording as opposed to "reimbursement";
- c. Concurrency of effective dates with primary policies.

Should Contractor obtain and maintain an excess liability policy, such policy shall be excess over commercial general liability, auto liability, and employer's liability policies. Such policy or policies shall include wording that the excess liability policy follows the terms and conditions of the underlying policies.

- F. Waiver of subrogation.** All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against Agency, its elected or appointed officers, agents, officials, employees, and volunteers or shall specifically allow Vendor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Vendor hereby waives its own right of recovery against Agency and shall require similar written express waivers and insurance clauses from each of its subconsultants.
- G. Duration of coverage.** Contractor shall procure and maintain for the contract period, and any additional length of time required thereafter, insurance against claims for injuries to persons or damages to property, or financial loss which may arise from or in connection with the performance of the Work hereunder by Contractor, their agents, representatives, employees, or subconsultants. Contractor must maintain general liability and umbrella or excess liability insurance for as long as there is a statutory exposure to completed operations claims. Agency and its officers, officials, employees, and agents shall continue as additional insureds under such policies.
- H. Products/completed operations coverage.** Products/completed operations coverage shall extend a minimum of three (3) years after Project completion. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the Policy must include Work performed "by or on behalf" of the insured. Policy shall contain no language that would invalidate or remove the insurer's duty to defend or indemnify for claims or suits expressly excluded from coverage. Policy shall specifically provide for a duty to defend on the part of the insurer. The Agency, its officials, officers, agents, and employees, shall be included as additional insureds under the Products and Completed Operations coverage.

ARTICLE 17 – INDEMNIFICATION:

- A. Except as otherwise provided in Subparagraphs B. and C. below, Contractor shall defend, indemnify and save harmless City, and entities' agents, officials, officers and employees, from any and all claims demands, damages, costs expenses, judgments, attorney fees or liability relating to any act or omission by the Contractor, or its agents, employees, or certain independent Contractors (described below) which relates in any way to this Contract; regardless of whether said act or omission is willful, negligent or non-negligent. The preceding sentence applies to any theory of recovery relating to said act or omission, including but not limited to the following:
 - 1. Violation of statute, ordinance, or regulation.
 - 2. Professional malpractice.
 - 3. Willful, intentional or other wrongful acts, or failures to act.
 - 4. Negligence or recklessness.
 - 5. Furnishing of defective or dangerous products.

6. Completed operations.
 7. Premises liability.
 8. Strict liability.
 9. Inverse condemnation.
 10. Violation of civil rights.
 11. Violation of any federal or state statute, regulation, or ruling resulting in a determination by the Internal Revenue Service, California Franchise Tax Board or any other California public entity responsible for collecting payroll taxes, when Contractor is not an independent contractor. The certain "independent contractors" referenced above refer to independent contractors which are either hired by Contractor, directly responsible to Contractor, or under the direction or control of Contractor.
- B. Nothing contained in the foregoing indemnity provision shall be construed to require indemnification for liability arising from proven willful misconduct of City.
 - C. Nothing contained in the foregoing indemnity provision shall be construed to require indemnification for that portion of any liability attributable to the active negligence of City provided, however, this exception for active negligence shall not apply to (1) liability arising from the passive negligence of City, or (2) that portion of any liability attributable to any act or omission, whether willful misconduct or active or passive negligence on the part of the Contractor.
 - D. Contractor shall have the burden of proving the exception described in paragraphs B and C above.
 - E. It is the intent of the parties to provide City the fullest indemnification, defense, and "hold harmless" rights allowed under the law. If any word(s) contained herein are deemed by a court to be in contravention of applicable law, then said word(s) shall be severed from this Contract and the remaining language shall be given full force and effect.

ARTICLE 18 – COMPLIANCE WITH LAWS:

Federal and State Laws and Regulations: All services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules and regulations of City and any federal, state or local governmental agency having jurisdiction in effect at the time services are rendered. City, and its elected and appointed officers, employees, agents, designated volunteers, attorneys, successors and assigns shall not be liable at law or in equity for failure of Contractor to comply with this Article 18. The Project shall be constructed under the complete jurisdiction of all applicable laws of the United States and State of California governing construction including, without limitation, the following:

- A. The California Health and Safety Code and all applicable administrative code regulations pursuant thereto.
- B. All laws governing the employment of labor, qualifications for employment of aliens, payment of employees, convict-made materials, domestic and foreign materials and accident prevention.
- C. Title 19 of the California Administrative Code entitled "Public Safety" Chapter 1, State Fire Marshall, Sub-Chapter 1, "General Fire and Panic Safety".
- D. General Industrial Safety Orders: Each and every Contractor shall observe and conform to the provisions of Title 8, California Administrative Code bearing upon safe and proper use, construction, disposal, etc., of materials, machinery, and building appurtenances as therein set forth.

- E. Code Rules and Safety Orders: All Work and materials shall be in full accordance with the latest - substantive rules and regulations of the State Fire Marshall, the safety orders of the Division of Industrial Safety, Department of Industrial Relations; the Uniform Building Code, National Electric Code, Uniform Mechanical Code, Uniform Plumbing Code, and other applicable State Laws or Regulations. Nothing in these plans and specifications is to be construed to permit Work not conforming to these codes.

Note: The procedural aspects of the Uniform Codes referred to above may not apply to the Work of this Contract, but the substantive provisions do apply. All of the above laws and regulations though referred to herein, are as much a part of the Agreement as if they were incorporated in their entirety herein.

- F. Licenses, Fees, Permits and Assessments: Contractor shall maintain obtain and maintain, at its sole cost and expense, such licenses, permits, registrations, and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

- G. Prevailing Wage Law:

a.) Public Work. The parties acknowledge that the Work to be performed under this Agreement is a "public work" as defined in Labor Code section 1720 and that this Agreement is therefore subject to the requirements of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works contracts and the rules and regulations established by the Department of Industrial Relations ("DIR") implementing such statutes. The Work performed under this Agreement is subject to compliance monitoring and enforcement by the DIR. Contractor shall post job site notices, as prescribed by regulation.

b.) Registration with DIR. Pursuant to Labor Code section 1771.1, Contractor and all subcontractors must be registered with, and pay an annual fee to, the DIR prior to and during the performance of any Work under this Agreement.

c.) Prevailing Wages. Contractor shall pay prevailing wages to the extent required by Labor Code section 1771. Pursuant to Labor Code section 1773.2, copies of the prevailing rate of per diem wages are on file at City Hall and will be made available to any interested party on request. By initiating any Work under this Agreement, Contractor acknowledges receipt of a copy of the DIR determination of the prevailing rate of per diem wages, and Contractor shall post a copy of the same at each job site where Work is performed under this Agreement. Contractor assumes responsibility for the payment of prevailing wages and shall indemnify City and hold City harmless from any and all claims made by the State of California, the DIR, any subcontractor, any worker, or any other third party with respect thereto.

d.) Penalty for Failure to Pay Prevailing Wages. Contractor shall comply with and be bound by the provisions of Labor Code sections 1774 and 1775 concerning the payment of prevailing rates of

wages to workers and the penalties for failure to pay prevailing wages. The Contractor shall, as a penalty to the City, forfeit two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Agreement by Contractor or by any subcontractor.

e.) Payroll Records. Contractor shall comply with and be bound by the provisions of Labor Code section 1776, which requires Contractor and each subcontractor to: keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform the City of the location of the records.

f.) Apprentices. Contractor shall comply with and be bound by the provisions of Labor Code sections 1777.5, 1777.6, and 1777.7 and California Code of Regulations Title 8, section 200 *et seq.* concerning the employment of apprentices on public works projects. Contractor shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing Work under this Agreement, Contractor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding Work pursuant to this Agreement, Contractor and each of its subcontractors shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Agreement.

g.) Eight-Hour Work Day. Contractor acknowledges that eight (8) hours labor constitutes a legal day's work. Contractor shall comply with and be bound by Labor Code section 1810.

h.) Penalties for Excess Hours. Contractor shall comply with and be bound by the provisions of Labor Code section 1813 concerning penalties for workers who work excess hours. The Contractor shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the performance of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half (1½) times the basic rate of pay.

i.) Workers' Compensation. California Labor Code sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees if it has employees. In accordance with the provisions of California Labor Code section 1861, Contractor certifies as follows: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

j.) Contractor's Responsibility for Subcontractors. For every subcontractor who will perform Work under this Agreement, Contractor shall be responsible for such subcontractor's compliance with

Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code, and shall make such compliance a requirement in any contract with any subcontractor for Work under this Agreement. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a review of the certified payroll records of the subcontractor on a periodic basis or upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Contractor shall diligently take corrective action to halt or rectify any such failure by any subcontractor.

ARTICLE 19 – INDEPENDENT CONTRACTOR:

Neither City, nor any of its officers, employees or agents, shall have any control over the manner or means by which Contractor, or its officers, employees, agents or subcontractors, perform the services required herein, except as otherwise set forth herein. Contractor shall perform all services required herein as an independent contractor of City and shall remain under only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it, or any of its officers, employees, agents or subcontractors, are officers, employees or agents of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor. Contractor shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner. Contractor represents and warrants that the personnel used to provide services to City pursuant to this Agreement shall at all times be under Contractor's exclusive control and direction. No City employee benefits shall be available to Contractor, its officers, employees, agents or subcontractors, in connection with the performance of this Agreement. City shall not be liable for compensation or indemnification to Contractor, its officers, employees, agents or subcontractors, for injury or sickness arising out of performing services hereunder. In the event that Contractor or any officer, employee, agent, or subcontractor of Contractor providing services under this Agreement claims or is determined by a federal or state agency, a court of competent jurisdiction, or the California Public Employees' Retirement System, to be classified as other than an independent contractor for City, then Contractor shall indemnify, defend, and hold harmless City for the payment of any and all assessed fines, penalties, judgments, employee and/or employer contributions, and any other damages and costs assessed to City as a consequence of, or in any way attributable to, the assertion that Contractor, or any officer, employee, agent, or subcontractor Contractor used to provide services under this Agreement, is/are employees of City.

ARTICLE 20 – PROTECTION AND CARE OF WORK AND MATERIALS:

The Contractor shall adopt reasonable methods, including providing and maintaining storage facilities, during the life of the Agreement, to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the Work by City, except such losses or damages as caused by City's own negligence. Stored materials shall be reasonably accessible for inspection. Contractor shall not, without City's consent, assign, sell, mortgage, hypothecate, or remove equipment or materials which have been installed or delivered and which may be necessary for the completion of the work.

ARTICLE 21 - ENFORCEMENT OF AGREEMENT AND TERMINATION:

- A. California Law. This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of San Luis Obispo, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of San Luis Obispo, State of California.
- B. Default of Contractor.
- i. It is City's right to suspend or terminate this Agreement upon the occurrence of any of the following events by default of Contractor: (1) Contractor refuses or fails to perform the work required under this Agreement with diligence to ensure timely completion of the Work; (2) Contractor fails to comply with the provisions of this Agreement; (3) Contractor violates any ordinance, regulation, state or federal law which applies to its performance under this Agreement; (4) Contractor files bankruptcy or otherwise becomes insolvent; (5) Contractor makes a general assignment for the benefit of creditors; (6) a trustee or receiver is appointed for the Contractor or his property; (7) Contractor repeatedly fails to supply sufficient skilled workers or suitable materials or equipment; (8) Contractor has abandoned the Work, and/or; (9) Contractor disregards proper directives of the architect, inspector, or City's project manager under the Contract Documents. It will be at City's sole discretion to allow Contractor to remedy each cause for the termination without waiving City's right to terminate this Contract or restricting any other right or remedy under this Contract or law.
 - ii. In the event that Contractor is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default and can terminate or suspend this Agreement immediately by written notice to Contractor. If the City's project manager determines that Contractor is in default in the performance of any of the terms or conditions of this Agreement, the City's project manager shall cause to be served upon Contractor a written notice of the default. Contractor shall have ten (10) calendar days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that Contractor fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.
 - iii. Contractor shall be liable for damages sustained by City from the termination of the Agreement under this Subsection B, including, but not limited to, all cost necessary for repair and completion of the work. City shall have the right to withhold monies otherwise payable to Contractor until the Work is complete. If City incurs additional costs, expenses, or other damages due to the failure of Contractor to perform the Work pursuant to this Agreement, said expenditures shall be deducted from the amounts withheld (and if such deduction does not fully compensate City for said expenditures, then Contractor remains

fully liable for the remaining balance owed to City). Should there be a balance of monies held after all expenses have been paid, the balance will be paid to Contractor upon completion of the Work.

- C. Suspension or Termination. The City may at any time, for any reason (including but not limited to for City's convenience, environmental considerations, or when it is in the best interests of the City), with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon Contractor at least ten (10) calendar days prior written notice. Upon receipt of said notice, Contractor shall immediately cease all Work under this Agreement, unless the notice provides otherwise. If the City suspends a portion of this Agreement such suspension shall not make void or invalidate the remainder of this Agreement. Upon termination, Contractor shall be entitled to compensation for completion of any portion of the Work accepted by City up to the effective date of termination unless any portion of the Work is accepted by City after termination in which event Contractor shall be paid for such completed portion. Upon receipt of a termination notice, Contractor shall immediately discontinue the Work and placement of orders for materials, facilities and supplies in connection with the performance of this Agreement, unless otherwise directed in the notice. Contractor shall promptly deliver to City all completed work, including plans, as-builts, forms, reports, and products. Any dispute regarding the amount owed to Contractor shall not diminish the right of City to receive and use such documents or materials. Contractor shall not be entitled to any claim or lien against City for any additional compensation or damages in the event of termination of this Agreement.
- D. Dispute Resolution Process. In the event of any dispute or controversy with the City over any matter whatsoever, the Contractor shall not cause any delay or cessation in or of work, but shall proceed with the performance of the Work in dispute. The Contractor shall retain any and all rights provided that pertain to the resolution of disputes and protests between the parties. The disputed Work will be categorized as an "unresolved dispute" and payment, if any, shall be as later determined as set forth below. The Contractor shall keep accurate, detailed records of all disputed work, claims and other disputed matters. Section 20104 *et seq.* of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial-supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less, and Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims, said processes being incorporated herein by reference.
- E. Rights and Remedies Are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.
- F. Unfair Business Practices Claims. Pursuant to Public Contract Code section 7103.5, in entering into this Agreement, Contractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2, (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods,

services or materials related to this Agreement. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor without further acknowledgment by the parties.

- G. Legal Action. In addition to any other rights or remedies, and as consistent with this Agreement and applicable law, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Contractor shall file a statutory claim pursuant to Government Code sections 905 *et seq.* and 910 *et seq.*, in order to pursue a legal action under this Agreement.
- H. Attorneys' Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees. Attorneys' fees shall include attorneys' fees on any appeal, and a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, consultants' fees, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. Such fees and costs shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 22 – WAIVER:

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any Work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any requirement of this Agreement imposes no additional obligations on City nor does it waive any rights hereunder. Payment to Contractor for Work performed pursuant to this Agreement shall not be deemed to waive any defects in Work performed by Contractor.

ARTICLE 23 – MISCELLANEOUS PROVISIONS:

A. Non-Liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

B. Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement, headings used, or any other rule of construction which might otherwise apply.

C. Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

--SIGNATURES ON NEXT PAGE--

IN WITNESS, WHEREOF, the parties to these presents have hereunto set their hands the year and date first above written.

CITY OF MORRO BAY


ATTEST:

Yvonne Kimball, City Manager

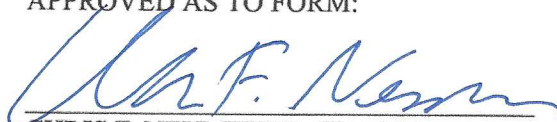
DANA SWANSON, City Clerk

CONTRACTOR:

APPROVED AS TO FORM:



By: Charles Hartzell
Its: President



CHRIS F. NEUMEYER, City Attorney

By: _____
Its: _____

Licensed in accordance with an act providing for the registration of Contractors.

License No. 1024896 ; Classification A ; Expires 8 / 31 / 20 26

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ATTEST:

Yvonne Kimball, City Manager

DANA SWANSON, City Clerk

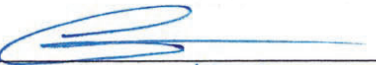
CONTRACTOR:

APPROVED AS TO FORM:



By: Charles Hartzell
Its: President

CHRIS F. NEUMEYER, City Attorney



By: Charles Hartzell
Its: Secretary

Licensed in accordance with an act providing for the registration of Contractors.

License No. 1024896 ; Classification A ; Expires 8/31/2026

RESOLUTION NO. 55-24

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
AUTHORIZING AMENDMENT TO THE CITY'S FISCAL YEAR
2024-25 OPERATING AND CAPITAL BUDGET**

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

WHEREAS, the City of Morro Bay is required to appropriate and expend public funds to conduct its day-to-day business activities; and

WHEREAS, the City Council adopted the Fiscal Year (FY) 2024-25 Operating and Capital Budget on June 25, 2024, by Resolution No. 47-24; and

WHEREAS, in FY 2022-23, the City allocated \$400,000 to fund the Lift Station No. 1 Force Main Replacement project (Project); and

WHEREAS, the City has carried forward unspent appropriation each year, resulting in approximately \$365,944 remaining for project completion as of June 30, 2024; and

WHEREAS, City staff request an additional \$69,568 to complete the Project; and

WHEREAS, the City Council deems it necessary to amend said budgets.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, authorizes the budget adjustment of \$69,568 as a transfer out of the Sewer Operating Fund (321) to the Sewer Capital Improvement Fund (922) for the purposes of completing the Lift Station No. 1 Force Main Replacement Project, as outlined in Table 1.

Table 1. Budget Amendment Detail

Type	Account	Description	Increase (Decrease)
Expense	321-7710-8540	Transfer to Capital Improvement Fund	\$69,568
Revenue	922-8227-3801	Transfer In	\$69,568
Expense	922-8227-6106	Contractual Services	\$69,568

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 27th day of August 2024, by the following vote:

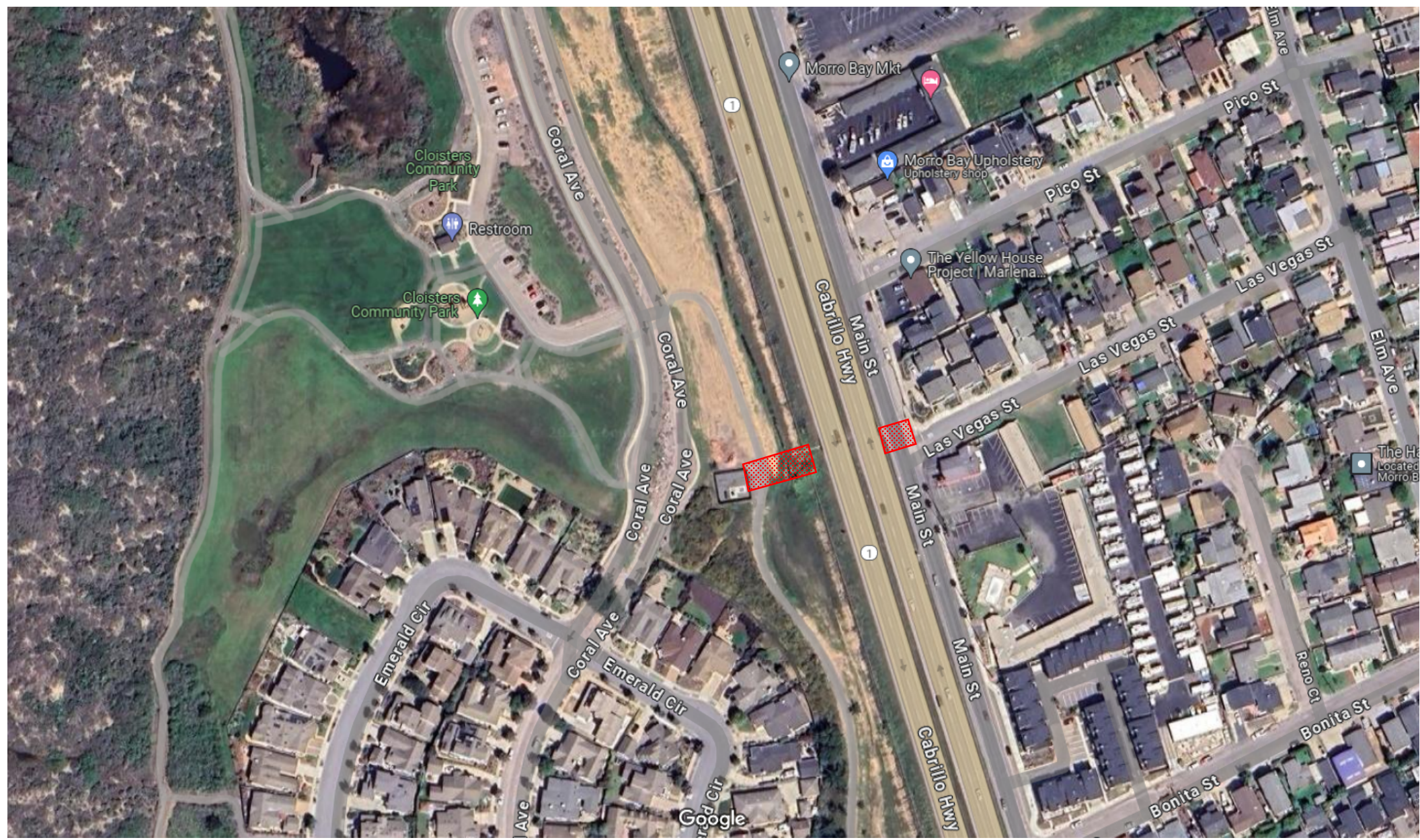
AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

CARLA WIXOM, Mayor

ATTEST:

DANA SWANSON, City Clerk

Site Map



which is the revenue stream set aside for the maintenance and rehabilitation of roadways. SB-1 generates over \$5 billion annually at full implementation for the State, \$1.5 billion of which will be distributed to local agencies and counties through the RMRA. The City of Morro Bay is projected to receive \$260,000 in revenue from the RMRA for FY24/25. Revenue has remained steady for the last 2-3 years between \$250,000-\$300,000 of state funds dedicated to roadway projects.

SB-1 includes accountability and transparency provisions to enable local residents to remain aware of the projects proposed to be funded by SB-1 in their local area. As part of these provisions, it is a requirement for local agencies to adopt project lists before the start of every fiscal year. The project list must include all projects proposed to receive funding from the RMRA. The required list includes a description and the location of each proposed project, a proposed schedule for the project's completion, and the estimated useful life of the improvement. Per the requirements of SB-1, the list must be approved by the City Council through resolution and sent to the California Transportation Commission (CTC) no later than September 30, 2024, to be eligible for RMRA funding for the current fiscal year.

The primary focus of the RMRA is maintenance of the existing infrastructure within the City's rights-of-way. Other transportation funding sources, such as Measure Q and E, General Fund, Growth Mitigation, and other grant programs are available for capital expenditures through the normal budget process. Project selection is developed by the Public Works Department utilizing the City's pavement management system, Street Saver, in coordination with recommendations from Public Works staff and engineering/pavement consultants. Streets that are heavily traveled generally will be prioritized because of the high volume of usage by the public. Critical point management, which targets treating roads that are at the bottom of one category of maintenance before they fall into another more costly treatment category, is widely used by many jurisdictions and is a factor in Morro Bay's street selection. These strategies are standard best practices for pavement management and are incorporated to utilize the limited funds on streets that will have the best possible impact on the pavement condition index (PCI) of the City's collective road network. Additionally, when possible, the City will make efforts to distribute projects equitably geographically in the community.

The FY 24/25 pavement management project design was recently completed, and City staff followed up with an advertisement for construction bids in early August 2024. The project will include base material digouts where required based on road condition, placement of a 1/2 inch to 1 inch leveling course, and 1-4 inches of overlay and sealing. Construction is planned to begin in mid-September of 2024 and be complete by January 2025.

The City's FY 24/25 pavement project includes a \$1,619,999 budget with \$260,000 coming from SB-1 grant funding, \$350,000 from Measure Q&E, and the remainder from the General Fund. The target project for this fiscal year is rehabilitating some of the lowest pavement condition index (PCI) residential roads that are in poor and very poor condition in order to slow down the rapidly declining PCI citywide. The following project list is proposed for use of SB-1 funds in FY24/25 and illustrates the City has sufficient work to justify the SB-1 allocation:

Annual Pavement Management Project (FY 24/25)

Description:

This project consists of rehabilitating and restoring pavement on several residential/local streets in the City of Morro Bay. SB-1 funds will be used during the construction phase of the project.

Location:

Various Streets throughout the City, some of which include:
Island Street, Java Street, Oahu Street, Panay Street, Beach Street, Birch Avenue, Coral Avenue, Embarcadero, Harbor Street, Koa Avenue, La Jolla Street, Main Street, Pacific Street and Sequoia Street.

Project Costs (includes contingencies)

Design Consultant:		\$204,070
Construction:	:	\$3,985,087
Project management, testing:		\$336,437

Estimated Project Schedule:

Start construction - 9/2024
Complete construction - 1/25

Estimated Useful Life:

15-20 years (rehabilitation)

CONCLUSION

In order to meet the SB-1 funding requirements for FY24/25, staff will submit to the California Transportation Commission (CTC) the proposed project and adopted resolution once approved. Submittal of this list to the CTC does not preclude the City from making modifications due to changes in circumstances and scope, such as budget, addition and subtraction of streets from final list, and bidding or Council priorities. The final project details will be reported to the CTC in the project completion expenditure report after the project is complete. The obligation by the City is to spend SB-1 funds appropriately and to not reduce the amount of general fund expenditures due to the Maintenance of Effort requirements.

ATTACHMENT

1. Resolution No. 56-24

RESOLUTION NO. 56-24

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING THE FISCAL YEAR 2024/25 PROJECT LIST FOR SENATE
BILL 1 (ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017) ROAD
MAINTENANCE AND REHABILITATION ACCOUNT FUNDING**

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

WHEREAS, Senate Bill 1 (SB-1), the Road Repair and Accountability Act of 2017 (Chapter 5, Statutes of 2017) was passed by the Legislature and signed into law by the Governor in April 2017 to address the significant multi-modal transportation funding shortfalls statewide; and

WHEREAS, SB-1 includes accountability and transparency provisions that will ensure the residents of Morro Bay are aware of the projects proposed for funding in our community and which projects have been completed each fiscal year; and

WHEREAS, the City of Morro Bay must adopt by resolution a list of projects proposed to receive fiscal year funding from the Road Maintenance and Rehabilitation Account (RMRA), created by SB-1, which must include a description and the location of each proposed project, a proposed schedule for the project's completion, and the estimated useful life of the improvement; and

WHEREAS, the City of Morro Bay will receive an estimated \$260,799 in funding in Fiscal Year 2024/25 from the RMRA of SB-1; and

WHEREAS, this is the 8th year in which the City of Morro Bay is receiving RMRA funding which will enable the City to continue essential road maintenance and rehabilitation projects, safety improvements, repairing and replacing aging bridges, and increasing access and mobility options for the traveling public that would not have otherwise been possible without SB-1; and

WHEREAS, staff has undergone a robust public process to ensure public input into our community's transportation priorities/the project list, including public meetings with the City of Morro Bay's Public Works Advisory Board, City Council's and their review of the capital improvement program and Operating and Capital Budget; and

WHEREAS, the City of Morro Bay consulted with Pavement Engineering, Inc. to develop the SB-1 project list to ensure revenues are being used on high-priority and cost-effective projects that also meet the community's priorities for transportation investment; and

WHEREAS, the funding from SB-1 will help the City of Morro Bay maintain and rehabilitate approximately 2.5 centerline miles of roadway segments this fiscal year and additional street segments each year into the future, as SB-1 funds remain available; and

WHEREAS, the 2020 California Statewide Local Streets and Roads Needs Assessment found that the City's streets and roads are in an "at-risk" condition, and this revenue both will help us increase the overall quality of our road system, as well as over the next decade, with additional local funds, may help bring our streets and roads into a better condition; and

WHEREAS, the SB-1 project list and overall investment in our local streets and roads infrastructure, with a focus on basic maintenance and safety, and investing in complete streets infrastructure, and using cutting-edge technology, materials and practices, will have significant positive co-benefits statewide.

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

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. The following is the proposed project that will be funded in-part or solely with fiscal year 2024/25 Road Maintenance and Rehabilitation Account revenues:

Annual Pavement Management Project (FY 24/25)

Description:

This project consists of rehabilitating and restoring pavement on several residential/local streets in the City of Morro Bay. SB-1 funds will be used during the construction phase of the project.

Location:

Various Streets throughout the City, some of which include: Island Street, Java Street, Oahu Street, Panay Street, Beach Street, Birch Avenue, Coral Avenue, Embarcadero, Harbor Street, Koa Avenue, La Jolla Street, Main Street, Pacific Street and Sequoia Street.

Project Costs (includes contingencies)

Design Consultant:		\$204,070
Construction:	:	\$3,985,087
Project management, testing:		\$336,437

Estimated Project Schedule:

Start construction - 9/2024
Complete construction - 1/25

Estimated Useful Life:

15-20 years (rehabilitation)

3. The City Council has approved funding more than the SB-1 allocation for the Project List in the FY 2024/25 budget, in accordance with City Council goals and priorities.

PASSED AND ADOPTED by the City Council of the City of Morro Bay, California, at a regular meeting held on the 27th day of August 2024, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

CARLA WIXOM, Mayor

ATTEST:

DANA SWANSON, City Clerk



AGENDA NO: 7.g

MEETING DATE: August 27, 2024

Staff Report

TO: Honorable Mayor and City Council

DATE: August 21, 2024

FROM: Cindy Cecil, SE/CE – City Engineer
Austin Della, PE – Senior Civil Engineer

SUBJECT: Approval of Contract with Filippin Engineering for Performing Construction Management and Inspection Services for the 2024 Pavement Rehabilitation Project

RECOMMENDED ACTION

Approve and execute contract in the amount of \$334,936.80, which includes a 10% contingency executable by the City Manager, with Filippin Engineering (FE), to perform Construction Management and Inspection Services for the 2024 Pavement Management project (Attachment 1). The City Attorneys' Office has reviewed and approved the contract with FE (Attachment 1) as to form.

ALTERNATIVES

1. City Council may direct staff to not approve the proposed contract or suggest modifications to the scope of work.
2. City Council may provide other direction to staff.

FISCAL IMPACT

The recommended contract of \$334,936.80 is included in the City Council approved FY24/25 Pavement Management project budget. This action does not require additional project budget.

BACKGROUND/ DISCUSSION

The 2024 Pavement Rehabilitation Project is aimed at maintaining and improving the condition of the City's roadway infrastructure. This project involves the resurfacing and repair of various streets throughout the City, focusing on extending pavement life, enhancing road safety, and improving the overall quality of our transportation network.

Given the scale and complexity of the project, the most efficient and effective means of implementation strategy for project construction is to hire a firm with the expertise and capacity to manage and oversee the construction contractor. Pavement rehabilitation projects of this nature are fast-paced, requiring quick decision-making, immediate response to issues as they arise, and meticulous coordination of resources and activities. This environment necessitates full-time, on-site construction management and inspection to ensure that work is carried out in compliance with project specifications, within budget, and on schedule.

To secure these services, the City released a Request for Proposals (RFP) on July 18, 2024, inviting qualified firms to submit proposals for construction management and inspection services for the project. A total of five firms responded to the RFP. The selection process was based on qualifications, with evaluations focused on each firm's experience, technical qualifications, and cost-effectiveness.

Prepared By: AD

Dept Review: _GK_

City Manager Review: _YK_

City Attorney Review: _LNL_
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FE was identified as the top candidate through this selection process. The firm's extensive experience in managing similar infrastructure projects, coupled with their technical expertise and ability to provide dedicated full-time staff, made them the most qualified for the job. Their proposal demonstrated a deep understanding of the complexities involved in pavement rehabilitation and a commitment to delivering the project efficiently and effectively.

The involvement of FE will provide the necessary oversight to maintain high-quality standards throughout the construction process, ensuring maximization of the City's investment in its roadway infrastructure.

ATTACHMENT(S)

1. Professional Services Contract with Scope of Services

**AGREEMENT FOR SERVICES
BETWEEN CITY OF MORRO BAY AND
FILIPPIN ENGINEERING, INC.**

THIS AGREEMENT FOR SERVICES (“**Agreement**”) is made and entered into this 27th day of August, 2024 by and between City OF MORRO BAY, a California municipal corporation (“**City**”) and Filippin Engineering, Inc., a California corporation (“**Consultant**”). City and Consultant may be referred to individually as “**Party**” or collectively as “**Parties**.” In consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. SERVICES OF CONSULTANT

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Consultant shall provide those services specified in the “Scope of Services” attached hereto as Exhibit A and incorporated herein by this reference, which may be referred to herein as the “**services**” or “**work**” hereunder. As a material inducement to City entering into this Agreement, Consultant represents and warrants: a) all services set forth in the Scope of Services will be performed in a competent and satisfactory manner; b) all materials used for services will be both of good quality as well as fit for the purpose intended; and, c) Consultant shall follow the highest professional standards and practices in performing the services required hereunder.

1.2 Consultant’s Proposal. The Scope of Services shall include the scope of services or work included in Consultant’s proposal or bid, which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal or bid, and this Agreement, the terms of this Agreement shall govern. No other terms and conditions from Consultant’s proposal or bid, other than description of scope of services or work, shall apply to this Agreement, unless specifically agreed to by City in writing.

1.3 Compliance with Law. All services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules and regulations of City and any federal, State or local governmental agency having jurisdiction in effect at the time services are rendered. City, and its officers, employees and agents, shall not be liable at law or in equity for failure of Consultant to comply with this Section.

1.4 Licenses, Permits, Fees and Assessments. Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Consultant’s performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

1.5 Additional Services and Compensation. City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes to the work by altering, adding to

or deducting from said work. No such extra work may be undertaken unless a written order, consistent with both Section 9.4 as well as Morro Bay Municipal Code (“**MBMC**”) section 3.08.060 (and as amended), is first given by City to Consultant, incorporating therein any adjustment in the Contract Sum for the actual costs of the extra work and/or the time to perform this Agreement, which said adjustments are subject to the written approval of Consultant. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other consultants.

1.6 Familiarity with Work. By executing this Agreement, Consultant represents and warrants Consultant: a) has thoroughly investigated and considered services to be performed, b) has carefully considered how services should be performed, and c) fully understands the facilities, difficulties and restrictions attending performance of services under this Agreement.

1.7 Software and Computer Services. If the Scope of Services includes the provision and/or installation of any software, computer system, or other computer technology, Consultant represents and warrants that it is familiar with and/or has inspected City’s current infrastructure, equipment, computer system and software and that the software, computer system, or other computer technology provided and/or installed by Consultant under this Agreement is compatible, and shall be fully functional, with such infrastructure, equipment, computer system and software of City. Consultant acknowledges that City is relying on this representation by Consultant as a material consideration in entering into this Agreement.

1.8 Prevailing Wages. If services include any “public work” or “maintenance work,” as those terms are defined in California Labor Code section 1720 *et seq.* and California Code of Regulations, Title 8, section 16000 *et seq.*, and if the total compensation is \$1,000 or more, Consultant shall pay prevailing wages for such work and comply with the requirements in California Labor Code section 1770 *et seq.* and 1810 *et seq.*, and all other applicable laws.

1.9 Special Requirements. Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the “Special Requirements” attached hereto as Exhibit B and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit B and any other provisions of this Agreement, the provisions of Exhibit B shall govern.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT

2.1 Contract Sum. Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the “Schedule of Compensation” attached hereto as **Exhibit C** and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed Three Hundred Eleven Thousand Six Hundred Eighty-Eight Dollars (\$311,688) (“**Contract Sum**”), unless additional compensation is approved pursuant to Section 1.5. Compensation may include reimbursement, for actual and necessary expenditures, if both specified in the Schedule of Compensation, as well as approved by City in advance. The Contract Sum shall include the attendance of Consultant at all project meetings

reasonably deemed necessary by City. Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto.

2.2 Invoices. Unless some other method of payment is specified in Exhibit C, Schedule of Compensation, in any month in which Consultant wishes to receive payment, no later than the first business day of such month, Consultant shall submit to City, in a form approved by City's Finance Director, an invoice for services rendered prior to the date of the invoice. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of this Agreement. Except as provided in Sections 7.3, 7.4 and 7.5, City shall pay Consultant for all expenses stated thereon which are approved by City pursuant to this Agreement generally within thirty (30) days, and City will use its best efforts to make payment no later than forty-five (45) days, from the submission of an invoice in an approved form. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by City for any invoice provided by Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law. Each invoice is to include (unless otherwise specified by City): 1) line items for all personnel describing the work performed, the number of hours worked, and the hourly rate; 2) line items for all materials and equipment properly charged to the Services; 3) line items for all other approved reimbursable expenses claimed, with supporting documentation; and 4) line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

ARTICLE 3. PERFORMANCE SCHEDULE

3.1 Time of Essence. Time is of the essence in the performance of this Agreement.

3.2 Term. Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services, which shall be no later than January 31, 2025.

3.3 Schedule of Performance. Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as **Exhibit D** and incorporated herein by this reference.

3.4 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including City, if Consultant shall within ten (10) days of the commencement of such delay notify City in writing of the causes of the delay. City shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of City such delay is justified. City's determination shall be final and conclusive upon the Parties to this

Agreement. In no event shall Consultant be entitled to recover damages against City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of this Agreement pursuant to this Section.

ARTICLE 4. COORDINATION OF WORK

4.1 Representative of Consultant. The representative of Consultant is Gino Filippin, President, who is authorized to act on Consultant's behalf with respect to the work or services specified herein and to make all decisions in connection therewith. It is expressly understood that the experience, knowledge, capability and reputation of the representative was a substantial inducement for City to enter into this Agreement. Therefore, the representative shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. For purposes of this Agreement, the representative may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City.

4.2 Contract Officer for City. The Contract Officer for City is Yvonne Kimball (or such person as may be designated by the City Manager). The Contract Officer shall be the primary person on behalf of City responsible for the administration of the Agreement. It shall be Consultant's responsibility to assure that the Contract Officer is kept informed of both the progress of the performance of the services as well as any decisions which must be made by City.

4.3 Approvals from City. City approvals or actions, pursuant to the authority of this Agreement, are to be made (unless otherwise specified) either by the City Manager or by their delegate as provided for in writing.

4.4 Independent Contractor. Neither City, nor any of its officers, employees or agents, shall have any control over the manner or means by which Consultant, or its officers, employees, agents or subcontractors, perform the services required herein, except as otherwise set forth herein. Consultant shall perform all services required herein as an independent contractor of City and shall remain under only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it, or any of its officers, employees, agents or subcontractors, are officers, employees or agents of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant. Consultant shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner. Consultant represents and warrants that the personnel used to provide services to City pursuant to this Agreement shall at all times be under Consultant's exclusive control and direction. No City employee benefits shall be available to Consultant, its officers, employees, agents or subcontractors, in connection with the performance of this Agreement. City shall not be liable for compensation or indemnification to Consultant, its officers, employees, agents or subcontractors, for injury or sickness arising out of performing services hereunder. In the event that Consultant or any officer, employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a federal or state agency, a court of competent jurisdiction, or the California Public Employees' Retirement System, to be classified as other than an independent contractor for City, then Consultant shall indemnify, defend, and hold harmless City for the payment of any and all assessed fines, penalties, judgments, employee and/or employer

contributions, and any other damages and costs assessed to City as a consequence of, or in any way attributable to, the assertion that Consultant, or any officer, employee, agent, or subcontractor Consultant used to provide services under this Agreement, is/are employees of City.

4.5 Subcontracting or Assignment. The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for City to enter into this Agreement. Therefore, without express written approval of City, Consultant shall not contract with any other entity to perform in whole or in part services required hereunder without express written approval of City, and neither this Agreement nor any interest herein may be transferred or assigned. No approved transfer shall release Consultant, or any surety or insured of Consultant, of any liability hereunder without express written consent of City.

ARTICLE 5. INSURANCE AND INDEMNIFICATION

5.1 Insurance Coverages. Prior to commencement of any services under this Agreement, and without limiting Consultant's indemnification obligation to City, Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, for the duration of the Agreement, primary policies of insurance of the type and amounts below, issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by City, which shall cover all elected and appointed officers, employees and agents of City. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to Consultant, City and Consultant may renegotiate Consultant's compensation.

(a) **Commercial General Liability Insurance.** A policy of commercial general liability insurance, with coverage at least as broad as Insurance Services Office ("ISO") form CG 00 01, written on a per occurrence basis for bodily injury, personal injury and property damage. Defense costs must be paid in addition to limits. Coverage for an additional insured shall not be limited to its vicarious liability. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted. Limits shall be no less than \$1,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregate.

(b) **Worker's Compensation Insurance.** A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for Consultant against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Consultant in the course of carrying out the work or services contemplated in this Agreement.

(c) **Automobile Liability.** A policy of comprehensive automobile liability insurance, at least as broad as ISO form CA 00 01, written on a per occurrence basis covering bodily injury and property damage in an amount not less than \$1,000,000 combined single limit

for each accident. Said policy shall include coverage for owned, non-owned, leased, hired cars and any automobile.

(d) **Professional Liability.** Professional liability insurance appropriate to Consultant's profession. This coverage may be written on a "claims made" basis and must include coverage for contractual liability. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of, or related to services performed under this Agreement. The insurance must be maintained for at least five (5) consecutive years following the completion of Consultant's services or the termination of this Agreement. During this additional 5-year period, Consultant shall annually and upon request of City submit written evidence of this continuous coverage. Limits shall be no less than \$1,000,000 per claim and no less than \$1,000,000 general aggregate.

(e) **Cyber Liability.** Cyber liability insurance appropriate to Consultant's profession and the services hereunder, written on a per occurrence basis, with limits not less than \$1,000,000 per occurrence/loss, and \$2,000,000 in the aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations undertaken by Consultant pursuant to this Agreement and shall include, but not be limited to, claims involving: infringement of intellectual property; copyright; trademark; invasion of privacy violations; data breach; electronic information theft, loss, damage, destruction, alteration or misuse; release of private information; extortion; and, network security. The policy shall provide coverage for breach response costs, regulatory fines and penalties, and credit monitoring expenses, with limits sufficient to respond to these obligations.

(f) **Excess Liability Insurance.** Excess liability insurance may be used to satisfy the obligations herein. If excess liability insurance is used then the policy shall meet all the requirements herein and be at least as broad as the primary coverages set forth herein. Such policy shall: 1) include a drop down feature requiring the policy to respond if primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason; 2) be payable on behalf of wording as opposed to reimbursement; 3) have concurrency of effective dates with primary policies; 4) "follow form" to the underlying primary policies; and, 5) provide insureds, under primary policies required herein, shall be insureds under the excess liability policy.

(g) **Subcontractors.** In the event Consultant subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, Consultant shall either: 1) include each subcontractor as insureds under its policies of insurance required herein; or, 2) Consultant shall furnish to City all documentation, required in Article 5 for Consultant, for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.

5.2 **General Insurance Requirements.**

(a) **Proof of Insurance, Enforcement and Notice.** No work or services under this Agreement shall commence until both Consultant has provided City with insurance certificates, endorsement forms and appropriate insurance binders evidencing the above insurance coverages, as well as said documentation is approved by City. City reserves the right to inspect complete, certified copies of, and endorsements to, all required insurance policies, at any time.

Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City. In the event any insurance policy required under this Agreement is cancelled or amended (and the insurance policy is not replaced pursuant to subsection (b) below), or does not comply with Article 5, then: 1) City has the right but not the duty to obtain insurance required herein and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments; or, 2) City, notwithstanding any other provisions of this Agreement, may immediately terminate this Agreement. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required insurance policies.

(b) **Cancellation/Amendment.** All of herein required policies of insurance shall provide the insurance may not be amended or cancelled by insurer or any Party hereto without providing thirty (30) calendar days prior written notice (with exception of ten (10) calendar days prior written notice for nonpayment) to City. In the event any of said policies of insurance are amended or cancelled, Consultant shall, five (5) business days prior to the cancellation date, submit new evidence of insurance in conformance with this Agreement to City.

(c) **Additional Insureds.** The commercial general liability policy provided for in Section 5.1(a) and the automobile liability policy provided for in Section 5.1(c) both shall name City and its elected and appointed officers, employees and agents ("**City Parties**") as additional insureds and such coverage shall contain no special limitations on the scope of protection afforded to City and City Parties. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability, and policies of insurance shall not contain any cross-liability exclusions.

(d) **Primary, Subrogation, Contribution and Coverage.** All of the above policies of insurance shall be primary insurance. The insurers for above policies, Consultant and any subcontractors are all deemed hereof to waive all rights of subrogation and contribution they may have against City or City Parties, and their respective insurers, and all insurance policies required herein shall be endorsed to waive such rights. Any insurance maintained by City or City Parties will apply in excess of, and not contribute with, Consultant's insurance. If Consultant maintains broader coverage and/or higher limits than the minimum amounts provided herein, City requires and shall be entitled to the broader coverage and/or higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City and City Parties. None of the coverages required herein will be in compliance with this Agreement if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing. Requirements of specific coverage features or limits contained herein are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any Party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

(e) **Limitations, Self-Insured Retention and Deductibles.** Consultant agrees that requirements of Article 5 shall not be construed as limiting in any way the extent to which

Consultant may be held responsible for the payment of damages to any persons or property resulting from Consultant's activities or the activities of any person or persons for which Consultant is otherwise responsible nor shall it limit Consultant's indemnification liabilities as provided in Section 5.3. All insurance policies must specify that where the primary insured does not satisfy any self-insured retention, any additional insured may satisfy the self-insured retention. Any deductibles or self-insured retentions must be declared to and approved by City. At City's option, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City and City Parties, or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, attorney's fees, defense expenses and claims.

5.3 Indemnification.

(a) **General Obligations.** Consultant agrees, to the full extent permitted by law, to indemnify, defend and hold harmless City and its elected and appointed officers, employees and agents (each an "**Indemnitee**" and collectively, "**Indemnitees**") against, and will hold and save them and each of them harmless from, whether actual or threatened, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities (herein "**Claims or Liabilities**") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable (each an "**Indemnitor**" and collectively, "**Indemnitors**"), or arising from Indemnitors' reckless or willful misconduct, or arising from Indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith: 1) Consultant will defend any action or actions filed or threatened in connection with any such Claims or Liabilities, or at option of Indemnitee(s) will reimburse and pay for all costs and expenses, including legal costs and attorneys' fees, incurred by Indemnitee(s) in connection therewith; and, 2) Consultant will promptly pay any judgment rendered against Indemnitee(s) for any such Claims or Liabilities, and will save and hold Indemnitee(s) harmless therefrom.

(b) **Further Provisions.** The indemnity obligation herein shall be binding on successors, assigns and heirs of Consultant and shall survive termination of this Agreement. Consultant shall incorporate similar indemnity agreements as provided herein with its subcontractors, and if Consultant fails to do so Consultant shall be fully responsible to indemnify City hereunder therefor. Failure of City and/or City Parties (collectively "City" for solely this Section 5.3(b)) to monitor compliance with any of the indemnification provisions herein shall not be a waiver hereof. The indemnification provisions herein do not apply to claims or liabilities occurring as a result of City's sole negligence or willful misconduct, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnification provided herein includes Claims or Liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Indemnitors in the performance of professional services hereunder. Payment of invoices by City is not a condition precedent to enforcement of the indemnity obligation herein. In the event of any dispute between Consultant and City, as to whether liability arises from the sole negligence or willful misconduct

of City, Consultant will be obligated to pay for City's defense until such time as a final judgment has been entered adjudicating City as solely negligent or responsible for willful misconduct. Consultant will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

(c) **Professional Liability.** When the law establishes a professional standard of care for Consultant's services, to the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless Indemnitees against, and will hold and save them and each of them harmless from, whether actual or threatened, any and all Claims and Liabilities, consistent with all obligations provided for in this Section 5.3, to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission, or reckless or willful misconduct of Indemnitors in the performance of professional services under this Agreement.

ARTICLE 6. RECORDS, REPORTS AND RELEASE OF INFORMATION

6.1 Records. Consultant shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder ("**books and records**") as shall be necessary to perform the services required by this Agreement and enable City to evaluate the performance of such services. Any and all such books and records shall be maintained in accordance with generally accepted accounting principles, shall be complete and detailed, and shall be readily accessible. City shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts. Such books and records shall be maintained for a period of three (3) years following completion of the services hereunder. City shall have access to such books and records in the event any audit is required. Consultant shall fully cooperate with City in providing access to any and all Consultant records and documents if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

6.2 Ownership of Documents. All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials ("**documents and materials**") prepared by Consultant, its officers, employees, agents and subcontractors in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of City and/or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership, use, reuse, or assignment of the documents and materials hereunder. Consultant may retain copies of such documents and materials for its own use. Consultant shall have the right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents and materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom. Moreover, with respect to any Consultant documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed "works made for hire" for City.

6.3 Confidentiality and Release of Information. All information gained or work product produced by Consultant in its performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant.

Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from City. Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from City or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered “voluntary” provided Consultant immediately gives City notice of such court order or subpoena. If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney’s fees, caused by or incurred as a result of Consultant’s conduct. As concerning, regarding or related to, in any way, this Agreement and the work performed thereunder: a) Consultant shall immediately notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party; b) City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding; and, c) Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant, however, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law. This Agreement shall be interpreted, construed and governed both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of San Luis Obispo, State of California, or any other appropriate court in such county, and Consultant agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of San Luis Obispo, State of California.

7.2 Suspension, or Termination, Prior to Expiration of Term. This Section shall govern any termination of this Agreement except as specifically provided in Section 7.4 for termination for cause. City reserves the right to terminate or suspend this Agreement, or any portion hereof, at any time, for any reason, with or without cause, upon ten (10) days’ notice to Consultant, except that where termination or suspension is due to the fault of Consultant, the period of notice may be such shorter time as determined by City. Upon receipt of any notice of termination or suspension, Consultant shall immediately cease all services hereunder, unless the notice provides otherwise, or except such as specifically approved by City. Upon submittal of an invoice consistent with Section 2.2, Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination or suspension and for any services authorized by City thereafter in accordance with the Schedule of Compensation, or such as may be approved by City, except as provided in Section 7.5. In event of termination, or suspension, without cause pursuant to this Section, there is no need to provide opportunity to cure pursuant to Section 7.3.

7.3 Default of Consultant and Opportunity to Cure. In the event that Consultant is

in default under the terms of this Agreement, City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively ten (10) days, but may be extended, or reduced, if circumstances warrant, as determined by City. During the period of time that Consultant is in default, City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices, without liability for interest. In the alternative, City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default by conclusion of noticed timeframe, City may immediately both terminate this Agreement with notice to Consultant as well as pursue the remedy in Section 7.4, without prejudice to any other remedy to which City may be entitled at law, in equity or under this Agreement. Any failure on the part of City to give notice of Consultant's default shall not be deemed to result in a waiver of City's legal rights or any rights arising out of any provision of this Agreement.

7.4 Termination for Default of Consultant. If termination is due to the failure of Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.3, take over the work and prosecute the same to completion by contract or otherwise, and Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to Consultant for the purpose of set-off or partial payment of the amounts owed City therefor.

7.5 Retention of Funds. Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of Consultant to insure, indemnify, and protect City as elsewhere provided herein.

7.6 Waiver. Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any requirement of this Agreement imposes no additional obligations on

City nor does it waive any rights hereunder. Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

7.7 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

7.8 Legal Action. In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant shall file a statutory claim pursuant to Government Code sections 905 *et seq.* and 910 *et seq.*, in order to pursue a legal action under this Agreement.

7.9 Attorneys' Fees. If either Party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees. Attorneys' fees shall include attorneys' fees on any appeal, and a Party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, consultants' fees, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. Such fees and costs shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 8. INDIVIDUAL LIABILITY, CONFLICTS AND NON-DISCRIMINATION

8.1 Non-liability of City Officers and Employees. No officer or employee of City shall be personally liable to Consultant, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest. Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of City. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement. City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict of interest exists upon sending Consultant written notice describing the conflict. No officer or employee of City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to this Agreement which affects their financial interest or the financial interest of any corporation, partnership or association in which they are, directly or indirectly, interested, in violation of any

State statute or regulation. Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination. Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices. Any notice or other communication either Party desires or is required to give to the other Party or any other person in regards to this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, in the case of City addressed to City Clerk at City of Morro Bay, 595 Harbor Street, Morro Bay, CA 93442, and in the case of Consultant, to the person(s) at the address designated on the execution page of this Agreement. Either Party may change its address by notifying the other Party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement, headings used, or any other rule of construction which might otherwise apply.

9.3 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

9.4 Integration; Amendment. This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the Parties as to the Agreement. It is understood that there are no oral agreements between the Parties hereto affecting this Agreement, and this Agreement supersedes and cancels any and all prior and contemporaneous negotiations, arrangements, agreements and understandings, if any, between the Parties, concerning this Agreement, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by Consultant and (consistent with, as amended, Chapter 3.08 of the MBMC) by City.

9.5 Severability. Should a portion of this Agreement be declared invalid or unenforceable by a judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties unless the invalid

provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6 No Undue Influence. Consultant declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of City has or will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling City to remedies in Section 7.4 and any and all remedies at law or equity.

9.7 Corporate Authority. The persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) entering into this Agreement does not violate any provision of any other agreement to which said Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date and year first-above written.

CITY:

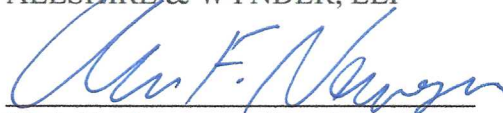
CITY OF MORRO BAY, a California municipal corporation

Yvonne Kimball
City Manager

ATTEST:

Dana Swanson, City Clerk

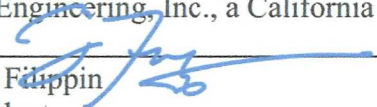
APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP



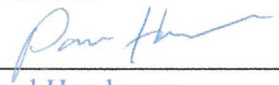
Chris F. Neumeyer, City Attorney

CONSULTANT:

Filippin Engineering, Inc., a California Corporation

By: 

Gino Filippin
President

By: 

Paul Henderson
Vice President
994 Mill Street, Ste. 230
San Luis Obispo, CA 93401

Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairperson of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. (Cal. Corp. Code § 313.) APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY

EXHIBIT A
SCOPE OF SERVICES

- I. Consultant will perform services described in Consultant's Proposal attached hereto.**
- II. All work product is subject to review and acceptance by City, and must be revised by Consultant without additional charge to City until found satisfactory and accepted by City.**

EXHIBIT B
SPECIAL REQUIREMENTS
(Superseding Agreement Boilerplate)

None

EXHIBIT C

SCHEDULE OF COMPENSATION

- I. Consultant will be compensated for Services provided under this Agreement in accordance with description in Consultant's Proposal attached hereto.**
- II. City will compensate Consultant for the Services performed upon submission of a valid invoice, as described in Section 2.2.**
- III. The total compensation for the Services shall not exceed the Contract Sum, as provided in Section 2.1 of this Agreement.**

EXHIBIT D

SCHEDULE OF PERFORMANCE

- I. Consultant shall perform all services and deliver all work products timely in accordance with a construction and deliverables Schedule of Performance to be developed by Consultant and separate agreement with the Project Construction Contractor within ten (10) days of award of the Construction Contract. The Schedule of Performance shall be in writing, with final approval subject to City's review and final written approval, which final Schedule shall be incorporated by this reference herein.**

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Appendix A - Resumes

FILIPPIN ENGINEERING CERTIFICATIONS

SB Certification No. 1796291 (Certified Small Business)
DBE Certification No. 42855 (Disadvantaged Business Enterprise)
FE DUNS No. 06-179-1589

A. COVER LETTER

August 9, 2024

W.O. 245401

Cindy Cecil, SE/CE, City Engineer
City of Morro Bay
Department of Public Works
955 Shasta Avenue
Morro Bay, CA 93442

SUBJECT: CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES FOR THE 2024 PAVEMENT REHABILITATION PROJECT

Dear Ms. Cecil,

Filippin Engineering (FE) is pleased to submit our proposal to provide **CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES FOR THE 2024 PAVEMENT REHABILITATION PROJECT** to the City of Morro Bay. FE is a well-established local certified Disadvantaged Business Enterprise (DBE) providing project management, civil engineering, and construction management services to our clients. FE serves public agencies within Santa Barbara, Ventura, and San Luis Obispo counties and many of our staff have been providing these services to public agencies along the central coast for over 35 years. As a result, the FE team is uniquely qualified to address all technical challenges and City impacts that may be encountered.



Understanding of Project Challenges – FE has reviewed the construction documents and is committed to working with the City to implement a solutions-based approach. We have the experience and expertise to key in on the items that will get the best value before construction, implement proactive public outreach during construction, and use our highly customized approach in working with the City team to come up with economical solutions. We have successfully and recently implemented very similar projects i, so we are able to predict many of the project-specific challenges.



Depth of Construction Management and Inspection Staff: FE currently has more than 30 full-time employees and a number of part-time as needed inspection staff. Our projects are 95% Construction Management Inspection and Testing projects, making our company one of the largest dedicated construction management departments on the Central Coast. The staff we have selected is backed by a depth of resources to help with any issues that inevitably arise during construction. This is particularly important on this assignment given that inspection and construction management needs may vary over the 90 working day duration, and the proposed team will be available to ramp up or down depending on the level of service needed while also maintaining consistency with core staffing.



Sole Local Agency Focus: The FE team works solely for local public agencies, so we have an in-depth understanding of agency needs. Nothing takes precedence over our local agency clients. We understand the realities of balancing tight local budgets, coordinating with agency staff, representing the City to our community, and meeting crucial schedule goals to secure funding. Our staff understands these constraints, can function in multiple roles, and develop solutions to fit the needs of the project. Our staff's focus on the City of Morro Bay's needs is especially important for large pavement resurfacing projects.

FE is committed to providing the City of Morro Bay with the highest quality service available, and we look forward to working with you and the City's staff on this important assignment. If you have any questions or would like to discuss further, please call me at (805)

Sincerely,

FILIPPIN ENGINEERING

Gino Filippin, P.E., President
(805) 729-0041 | gino@fecivil.com

B. FILIPPIN ENGINEERING FIRM INFORMATION

Founded in January 2010, Filippin Engineering, Inc. (FE) is a regional firm providing local services solely to Southern California, including Ventura, Santa Barbara, and San Luis Obispo Counties. FE's emphasis and attention focus on our local public agency projects and relationships.

FE's headquarters are located at 354-D. South Fairview, Goleta, CA. We also have offices in Ventura and San Luis Obispo. Our team members live throughout the region, from North Los Angeles County to San Luis Obispo County, providing local staff who are invested in their communities and associated projects.



San Luis Obispo County Office:

994 Mill Street Suite 230
San Luis Obispo, Ca 93401

Headquarters (For Correspondence):

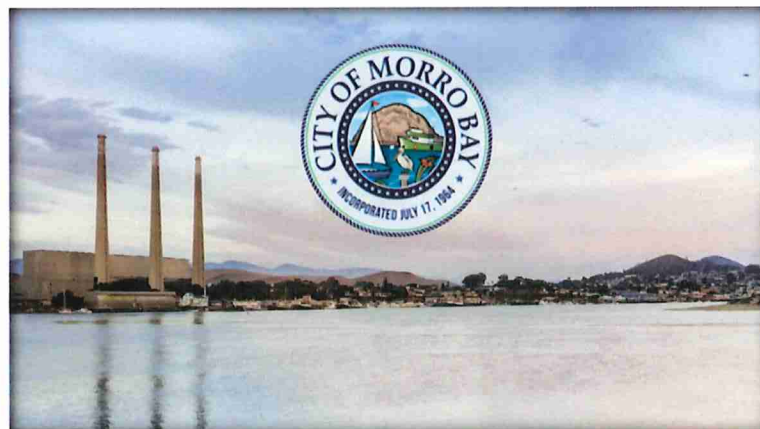
354 S. Fairview Ave., Suite D
Goleta, Ca 93117
(805) 845-4602

Ventura County Office:

950 County Square Dr. Suite 110
Ventura Ca. 93003

FE is a member of the American Council of Engineering Companies, American Society of Civil Engineers, and American Public Works Association and a certified **Disadvantaged Business Enterprise (DBE)** and **Small Business Enterprise**.

The depth of FE staff's knowledge and breadth of experience offers an exceptional level of capability to our clients and their projects. Our firm is fortunate to have assembled a true A-Team of highly experienced and highly qualified individuals from a broad spectrum of construction and engineering backgrounds. Among our 30 full-time, permanent staff, five are Licensed Professional Civil Engineers and 12 are experienced Construction Management/Inspection professionals, eight of whom hold college degrees in engineering or construction fields. We maintain a consistent and deep pool of local qualified resources available to support whatever the City's needs may require, now and in the coming years. Team members are highly skilled and qualified professionals, and we encourage them to build upon their qualifications to meet the expectations of our clients and keep informed of industry trends. We specialize in construction phase services including constructability, construction management, and construction inspection, which allows us to offer the most responsive and efficient construction phase support possible to the City. FE works solely for public agencies, with our target market being small to midsize agencies such as the City of Morro Bay, which gives us the ability to provide the highest possible value to these types of clients.



C. CONSTRUCTION MANAGEMENT TEAM

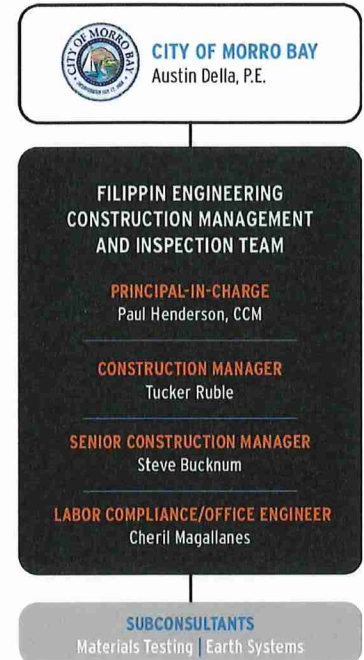
ORGANIZATIONAL CHART

The Construction Management and Inspection team we are proposing for this Project has an extensive history of effective project delivery as well as strong technical and relational expertise to ensure smooth project delivery. FE will partner with Earth Systems for Materials Testing. We believe clear communication throughout the project is paramount to success, including keeping the project on schedule and on budget.

FE confirms that we can perform all of the scope of services requested in the proposal. Below is a breakdown of the services that will be provided.

PROJECT TEAM

The FE team proposed for this project has a long and distinguished history of effective project delivery and the technical and relational expertise to ensure a successful project. We recognize and understand how to manage the delicate and potentially unpredictable relationships that can exist between construction Contractors, public works agencies, design professionals, and the public. We use our depth of experience and breadth of resources on each project we undertake.



Paul Henderson, CPENG, CCM, Principal in Charge



Paul Henderson brings over 20 years of robust experience in civil engineering and construction management to his role as Principal in Charge for the 2024 Pavement Rehabilitation Project. His extensive portfolio includes pivotal roles in public and private sectors across the United States, Australia, and New Zealand, with a focused expertise in transportation and road infrastructure.

Paul's deep-seated knowledge in the design and construction of roadways, bridges, and roundabouts is particularly relevant to his current project, which encompasses critical transportation upgrades including localized digouts, rubberized cape seal, and slurry seal implementations along with new striping configurations. His proven track record of leading similar projects ensures adept management of all phases of construction, from pre-construction planning through to final inspection and compliance verification. A recent example is working as the interim Capital Projects Manager for the City of Arroyo Grande, Paul managed PEI through final design and construction phase for the City annual Pavement Rehabilitation project in 2023. Paul is intimately familiar with PEI staff, the standard details used to develop the City of Morro Bay's plans and specifications and has an excellent grasp on the overall concepts of the design and how the design will be built. Paul was the Construction Manager and utilized PEI inspection and testing staff for the successful delivery of this important project for the City of Arroyo Grande.

As the Principal in Charge Paul will guide and support the Construction Management Team to success, ensuring the City receives higher than satisfactory professional services from FE.

Tucker Ruble, Construction Manager



Tucker Ruble, who is proposed to serve as the Construction Manager for the 2024 Pavement Rehabilitation Project, brings over eight years of dedicated experience in the construction industry. His background in transportation and road projects positions him uniquely for this role, where he focuses on enhancing urban infrastructure through strategic pavement upgrades.

Tucker's career has been marked by significant contributions to transportation projects, including his role in the North Chorro Neighborhood Greenway and the El Camino Real Downtown Infrastructure Enhancement in Atascadero. These projects

involved complex roadway improvements, pedestrian and bicycle enhancements, and extensive utility work, demonstrating his ability to manage and inspect high-stakes construction projects. His expertise encompasses managing roadway paving, handling sewer and storm drainage systems, and implementing safety and environmental management systems, ensuring compliance with stringent project specifications.

Tucker's leadership ensures that all aspects of the project adhere to the highest standards of quality and safety, contributing to durable and sustainable urban transportation solutions.

Steve Bucknum, Senior Construction Inspector



Steve Bucknum, with over 30 years of experience in the construction industry, currently serves as the Senior Construction Inspector for the 2024 Pavement Rehabilitation Project. His extensive background, particularly in transportation and road projects, positions him as a key player in the project's success.

Throughout his career, Steve has demonstrated a deep expertise in managing complex infrastructure projects involving roads, pavement maintenance, and multiuse paths. His role in the 2024 Pavement Rehabilitation Project involves full-time onsite inspection and construction observation of the project, ensuring each phase meets stringent compliance standards.

Steve's prior roles at local construction companies, such as Souza Construction, equipped him with the skills to excel in his current position, where his oversight ensures the durability and safety of public roadways. His adept coordination with public agencies and utility companies further underscores his comprehensive approach to construction management and inspection, making him a pivotal figure in executing large-scale public works projects.

Cheril Magallanes, Office Engineer/Labor Compliance Officer



Ms. Magallanes has more than 25 years of experience in a variety of professional administrative roles, specializing in labor compliance, SWPPP, contract administration per the LAPM, document control, and conflict resolution. She has performed labor compliance and SWPPP tracking compliance efforts over numerous projects in San Luis Obispo, Santa Barbara, and Ventura Counties for the FE team. Recent assignments with FE include the Armitos Park Gardens, San Jose Creek Multiuse Path and Jonny D. Wallis Park Improvements for the City of Goleta, 2020 Waterline and Valve Replacement for the City of Lompoc, Westside Community Paseos for the City of Santa Barbara, and Calle Joaquin Lift Station for the City of San Luis Obispo in her current role as Office Engineer and Labor Compliance Officer.

Sydney Johnson, Material Testing and Special Inspection



Ms. Johnson is a project manager with Earth Systems' San Luis Obispo and Santa Maria offices. Specializing in pavement design and construction with emphasis on quality control and constructability, she manages field operations, assists in design and recommendations for pavement and bridge projects and performs field inspection during grading and paving operations. Her areas of expertise include pavement rehabilitation including overlays and use of recycled materials, asphalt recycling and reclamation, and stabilization of poor subgrade conditions. She is intimately familiar with Caltrans Standard Specifications and reporting procedures, as well as requirements for projects involving Federal funding. Ms. Johnson brings several years of construction experience to her position and has been the project manager for many pavement, and heavy civil construction projects constructed in San Luis Obispo County. She interfaces with project owners, contractors and governing jurisdictions; reviews project plans specifications to develop estimates for construction services; and manages project documentation, budgets, and schedules. Ms. Johnson has a Bachelor of Science degree in Earth Science and a Bachelor of Arts degree in Political Science from the University of California, San Diego.

Full resumes for all above staff are provided in Appendix A

D. RELATED EXPERIENCE

PROJECT EXPERIENCE

The FE team brings considerable experience on past pavement rehabilitation projects. FE brings to the City familiarity with the Caltrans LAPM and Construction Manual, which is necessary to ensure construction QC and documentation are in accordance with federal, Caltrans, and City requirements. We recognize the importance of implementing proper procedures and recordkeeping for avoiding delays and mitigating claims and in project acceptance, so we will utilize our ongoing experience with City staff to ensure that project acceptance is achieved as early as possible.

The following are example projects that FE has performed involving similar scopes of work.

NORTH CHORRO NEIGHBORHOOD GREENWAY

Objective: Filippin Engineering provided Construction Management and Inspection for the City of San Luis Obispo project which consists of providing a route that prioritizes bicycle and pedestrian travel between the Foothill Boulevard and North Chorro neighborhoods to downtown San Luis Obispo. This project includes pedestrian transportation improvements (construction of 45 curb ramps, 375 feet of retaining walls, sidewalks, crosswalks, pedestrian lighting, and rectangular rapid flashing beacons); bicycle transportation improvements (construction of 530 feet of Class I bike path, protected bikeways, bikeway striping and pavement markings, and guide signage); roadway improvements (full-depth reconstruction, digout repairs, type II slurry seal, and pavement delineation and signage); storm drainage and sewer improvements (construction of new storm drain systems, catch basins, manholes, an energy dissipation structure, and bioretention areas, and installation of a new sewer main, laterals, and manholes); and landscape improvements.



Client	City of San Luis Obispo
Contact	Jennifer Rice, Project Manager, (805) 781-7058
Project Timeline	Start: April 2023 Finish: August 2024
FE Staff	Gino Filippin, P.E., QSD, Resident Engineer Raul Estrada, Assistant Construction Manager Tucker Ruble, Construction Manager/Inspector Jerry Missamore, Assistant Construction Manager/Inspector Dean Johe, Assistant Construction Manager/Inspector
FE Services	Construction Management and Inspection
Project Cost	\$7.4M

EL CAMINO REAL DOWNTOWN INFRASTRUCTURE ENHANCEMENT

Objective: Filippin Engineering is actively handling the Construction Management and Inspection for the El Camino Real Downtown Infrastructure Enhancement Project. This initiative aims to upgrade the downtown area's aesthetic, functionality, and safety through various infrastructure improvements. The project includes: roadway and sidewalk enhancements, such as installing ADA ramps and upgrading curbs and gutters; traffic and pedestrian safety improvements through updated signal systems and new RRFB systems; and environmental management, including new stormwater systems and sewer upgrades—replacing old clay pipes with new 8-inch SDR 35 piping and related infrastructure.



Client	City of Atascadero
Contact	Ryan Hayes, P.E., Deputy Director of Public Works (805) 470-3424
Project Timeline	Start: July 2024 Finish: In-Progress
FE Staff	Lyle Nemeth, P.E., QSD, Resident Engineer Tucker Ruble, Assistant Construction Manager Jerry Missamore, QSP, QSD, CPESC, Chief Construction Inspector
FE Services	Construction Management and Inspection
Project Cost	\$9.5M

CABRILLO BOULEVARD ROUNDABOUT

Objective: Filippin Engineering is currently providing Construction Management and Inspection responsibilities for the Cabrillo Roundabout which is located at the intersection of Cabrillo Boulevard and Los Patos Way and the project aims to enhance traffic flow and safety by replacing the existing stop-controlled intersection with a modern roundabout. Key elements of the project include removal of existing pavement and portions of the southeast median island, removal and relocation/replacement of various trees, relocation of water and sewer mains, installation of new splitter islands, construction of a new center median apron with a raised, landscaped island, installation of all necessary storm drainage facilities, installation of new street lights and protection of existing utilities as per project plans and specifications. The project is designed to improve traffic efficiency and safety while integrating seamlessly with the surrounding environment.



Client	City of Santa Barbara
Contact	Eric Bittle, Supervising Engineer, 805-335-7685
Project Timeline	Start: February 2024 Finish: In-Progress
FE Staff	Kevin Connors, P.E., QSD, Resident Engineer Steve Bucknum, Senior Construction Inspector
FE Services	Construction Management and Inspection
Project Cost	\$7.2M

2022 ROADWAY SEALING

Objective: Filippin Engineering provided Construction Management and Inspection for the Roadway Sealing Project, which included the application of slurry seal, striping, pavement markings, concrete work, and signage to pavement project limits in and around the Cerro San Luis Neighborhood, including reconfiguring Higuera Street and Marsh Street in the Downtown Corridor.



Client	City of San Luis Obispo
Contact	Brian Nelson, PE, Deputy Director of Public Works, 805-781-7113
Project Timeline	Start: July 2022 Finish: February 2023
FE Staff	Kelly Wheeler, P.E., QSD, Resident Engineer Raul Estrada, Assistant Construction Manager Jerry Missamore, QSP, QSD, CPESC, Chief Construction Inspector
FE Services	Construction Management and Inspection
Project Cost	\$4.5M

2022 ROADWAY REHABILITATION

Objective: Filippin Engineering provided Construction Inspection for the 2022 Pavement Rehabilitation project which included digouts; reconstruction; striping; markings, and curb paintings. Additional work includes traffic control and storm water pollution control planning.



Client	City of Guadalupe
Contact	Shannon Sweeney, P.E. (Former)
Project Timeline	Start: December 2022 Finish: April 2023
FE Staff	Lyle Nemeth, QSD, P.E., Resident Engineer Ron Faria, Senior Construction Inspector
FE Services	Construction Inspection
Project Cost	\$1.4m

2022 MEASURE F-14 PAVING PROJECT

Objective: Filippin Engineering provided Construction Management and Inspection for the 2022 Measure F-14 Paving project which included pavement rehabilitation of approximately 3.3 miles of full roadway reconstruction and overlay.



Client	City of Atascadero
Contact	Ryan Hayes, P.E., Deputy Director of Public Works (805) 470-3424
Project Timeline	Start: July 2022 Finish: November 2022
FE Staff	Gino Filippin, P.E., QSD, Resident Engineer Ron Faria, Senior Construction Inspector
FE Services	Construction Management and Inspection
Project Cost	\$2.5M

2022 PAVEMENT REHABILITATION

Objective: Filippin Engineering is currently providing Construction Management and Inspection for the 2022 Pavement Rehabilitation Project in Carpinteria aims to enhance the city's road infrastructure. The scope of work includes removing and replacing asphalt concrete pavement, installing concrete curbs, gutters, cross gutters, spandrels, driveway approaches, curb ramps, and sidewalks. The project also involves storm drain improvements, temporary traffic control, stormwater pollution control, and traffic striping. Mobilization efforts will include preparatory work and establishing temporary facilities. The contractor is responsible for coordinating with utility companies, ensuring site cleanliness, controlling dust and air pollution, and providing necessary water supply.



Client	City of Carpinteria
Contact	John Ilasin, P.E., Public Works Director/City Engineer, (805) 684-5404
Project Timeline	Start: June 2024; Finish: In Progress
FE Staff	Gino Filippin, P.E., QSD, Resident Engineer Zach Bryant, Associate Construction Manager Javier Licon, Senior Construction Inspector
FE Services	Construction Management and Inspection
Project Cost	\$5.4M

2020 PAVEMENT REHABILITATION, PARKING LOT #2 AND CACTUS LANE IMPROVEMENTS

Objective: Filippin Engineering provided Construction Management and Inspection on this 2-part improvement project for the City of Carpinteria. The 2020 Pavement Rehabilitation portion of the project consisted of removing asphalt concrete and replacing it with the 2,740 LF of new asphalt concrete pavement; placing concrete curbs, gutters, sidewalks, curb ramps, and driveway approaches and traffic striping. The Parking Lot No. 2 and Cactus Lane Improvements portion of the project consisted of full demo of existing pavement; traffic signing and striping; placing over 1,300 LF of concrete curb, multiple large bioswales, gutters, sidewalks, and placement of 3,500 SF of hand laid permeable pavers; installing lighting, joint utility trench, stormwater quality, and irrigation facilities and landscaping.



Client	City of Carpinteria
Contact	John Ilasin, Public Works Director, City Engineer, (805) 684-5405
Project Timeline	Start: June 2020 Finish: December 2020
FE Staff	Kevin Connors, P.E., QSD, Resident Engineer
FE Services	Construction Management and Inspection
Project Cost	\$1.6M

OLD TOWN CAMARILLO ANNUAL OVERLAY

Objective: Filippin Engineering provided construction inspection for the Annual Overlay for the City of Camarillo. The work includes roadway paving, concrete, and slurry in Old Town Camarillo. Concrete improvement includes access ramps, curb and gutter, curb only, and sidewalk replacement. Asphalt work will consist of full-width grind and new AC paving but will also include pavement repair, crack seal, weed kill, slurry seal, utility lowering and raising, and traffic striping. Alternative work also includes trip hazard profile grinding, pavement repairs, crack sealing, slurry seal, and striping at the Camarillo Ranch House parking areas and pathways.



Client	City of Camarillo
Contact	Kyle Butler, Associate Engineer, (805) 388-5319
Project Timeline	Start: May 2023 Finish: October 2023
FE Staff	Rafael Medina, Assistant Construction Manager
FE Services	Construction management and inspection
Project Cost	City of Camarillo

LOS POSITAS MULTI-USE PATH

Objective: Filippin Engineering provided construction management and inspection for the Las Positas and Modoc Roads Multiuse Path Project, which consisted of 2.6 miles of separated multiuse Class I trails for bicyclists and pedestrians. The project included conventional cut-and-fill grading, construction of about 3,269 feet of retaining walls (1.3–7.4-feet high), subgrade preparation, and paving. The project also includes two mid-block, on-grade pedestrian crossings along Modoc Road; a new pedestrian crosswalk across the southbound turn lane at the intersection of Modoc and Las Positas roads; and a new stoplight and crosswalk at the Jerry Harwin Parkway intersection for pedestrians.



Client	City of Santa Barbara
Contact	Alex Ubaldo, Supervising Civil Engineer, (805) 897-2668
Project Timeline	Start: September 2020 Finish: January 2022
FE Staff	Kevin Connors, P.E., QSD, Resident Engineer
FE Services	Jerry Missamore, QSP, Senior Construction Inspector
Project Cost	Dustin Snider, Senior Construction Inspector

REFERENCES

FILIPPIN ENGINEERING		
<p>Brian Nelson, P.E. Director of Public Works City of San Luis Obispo Phone: (805) 781-7113</p>	<p>Ryan Hayes Deputy Director Public Works City of Atascadero Phone: (805) 470-3424</p>	<p>John Ilasin, P.E. Public Works Director/City Engineer City of Carpinteria Phone: (805) 684-5404</p>

SPECIFIC EXPERIENCE AND CAPABILITIES

PUBLIC WORKS CONSTRUCTION EXPERIENCE

- The FE team brings considerable experience from past municipal public agency projects. A large number of our projects are contracted and administered under state and federal guidelines, and FE manages the majority of projects using the Caltrans LAPM and Caltrans Construction Manual procedures. This familiarity with using a standardized system company-wide creates a CM documentation package unparalleled by other consultants, with quick and efficient closeout, providing the City with an organized, complete package at completion.
- FE participates solely in municipal public agency assignments, rather than residential, commercial, or private development projects. Consequently, our project management controls and our firm's staff maintain a consistent and intimate familiarity with LAPM and Construction Manual practices. This familiarity is a necessary component to ensure that construction QC and documentation remain in accordance with the goals of our public agency clients.
- We recognize the importance of implementing proper procedures and recordkeeping for avoiding delays and mitigating claims and in project acceptance, so we will utilize our ongoing experience with City and Caltrans staff to ensure that project acceptance is achieved as early as possible.
- We know that agency budgets are tight and scrutiny by the community leaders and constituents is high, especially in active communities like Morro Bay. Not only does our efficiency and standardization of documentation provide a great value to the City in responding to inquiries, but our team goes above and beyond to engage community members with interest in the project during construction, providing the City with a trusted partner to limit public complaints and work with the City team for consistent messaging to their constituents.

APPROPRIATE & PROFESSIONAL EXPERIENCE

- FE's staff brings the specific technical experience and knowledge necessary for the infrastructure scope.
- Our experience comes directly from the construction phase of projects, gained directly in the field.
- The FE team's expertise extends far beyond mere observation; our commitment to comprehensive practices encompasses detailed, informative reporting; meticulous documentation; and meticulous recordkeeping—a standard that should be upheld across every project.

DEPTH OF CONSISTENT STAFF

- FE has the depth of staff resources to ensure that qualified support is always available; our depth ensures that we can react to the City's requests and remain adaptable to fluctuations in the project.
- Our firm maintains full-time permanent staff so we can ensure that the individuals assigned to your projects have the knowledge and experience that we claim and that our clients expect.
- FE's model and goal is to always maintain consistent staff on assigned projects from start to finish to ensure the highest quality and value available.

UNDERSTANDING OF THE PROJECT AND ROLES

- The FE staff understands the roles, limitations, and expectations of all parties involved, so they will come to the project prepared to address the assignment efficiently and effectively.

E. SCOPE OF WORK

TASK 1: CONSTRUCTION MANAGEMENT SERVICES

During the project's Construction Phase, our team will perform the necessary services required in execution of construction management and observation (including the following), in addition to those requested by Agency staff during construction. This list outlines typical services we provide and expect will be necessary:

Construction Management Plan/Coordination of Execution – FE believes strongly in the value of a Construction Management Plan. This Plan is analogous to Project Management Plans we routinely prepare for our public agency projects. The purpose of this Plan is to define the roles and responsibilities of each of the participating parties. The Plan should address the flow of communications and decision-making so that, at all times during the construction process, all relevant parties are involved to the extent necessary and desired.

Project Communication and Coordination – Correspondence will be handled in accordance with procedures established in the Construction Management Plan and per the Caltrans *Local Assistance Procedures Manual* (LAPM). FE will prepare logs, files, transmittals, agendas, minutes, and other documents as necessary to ensure comprehensive dissemination of information, as well as the ability to locate documents in the future, should that be necessary.

Schedules – FE puts great emphasis on monitoring of and compliance with schedules, this is particularly important when grant funding is tied to project completion. We recognize that during the construction of a project, unforeseen factors may affect the actual schedule in relation to the submitted schedule. Schedule tracking will not only include collecting information for analyzing the three-week look ahead, but also include review and acceptance of a baseline schedule and monthly schedule updates. FE will maintain a master schedule of all phases, approval processes, and other pertinent actions required of the Agency, consultants, and contractors, and provide monthly updates. On a monthly basis, we will compare the Contractor's progress to the updated schedule. We will also verify that all assumptions regarding logic and items included are still valid.

Submittal Management – FE will log and distribute submittals (e.g., shop drawings, color samples, product "cut sheets") to the engineer or appropriate reviewer. Prior to receipt, as a proactive measure, FE will identify submittal requirements and their relationship to the critical path schedule, to remind the Contractor of submittals that could impact the schedule. Copies of the submittal log will be included with each weekly coordination meeting's agenda/minutes, and FE will follow up to ensure an appropriate and timely response by the engineer. FE will utilize Procore, or BridgDoc as the Project Document Management system, including submittals to ensure an up to date digital record of exists. FE will encourage the Contractor to submit documentation directly through the Project Document Management system, if the Contractor is unable or unwilling FE will complete the upload from Contractor emails.

RFI Management – Similar to the process for submittals, FE will utilize the Project Document Management system for RFIs that is easily updated and included with transmittals and weekly meeting agendas/minutes. Within the Construction Manager's authority (established in the Construction Management Plan). Responses will be coordinated by FE and provided by the appropriate person(s) to mitigate delays.. If necessary, the Potential Change Order (PCO) associated with an RFI will be logged and tracked for cost-tracking purposes.

Material Substitution Requests – As with RFIs, submittals, and similar items, FE has an established procedure for logging material substitution requests and will utilize it to track the status of all such documents. To the extent authorized, the construction manager will respond; otherwise, the request will be forwarded to the appropriate Agency and engineer personnel for review. Logs for these requests will be included with all meeting agendas and minutes and will be reviewed to ensure a timely response.

Change Order Management – By establishing a PCO process, FE can track all items and issues that are likely to result in change orders. Such issues may be a result of design changes, requests from Agency staff, or requests from the Contractor (cost or time). A log will be established, indicating the type of PCO; the potential impacts to cost, schedule, and other matters; and an action

deadline. This log will be attached to each week's meeting agenda/minutes and will be reviewed in weekly meetings to prevent PCOs from going unresolved indefinitely.

FE reviews all Contractor Requests for Change Orders to determine whether appropriate procedure has been followed and that the necessary information has been provided. The request is logged and distributed to the Agency, with necessary documentation, such as inspection reports, sketches, photos, or other materials necessary for evaluation. FE will make a recommendation regarding the disposition of each change order request. Often, this recommendation involves gathering additional information from several parties, preparing an independent cost estimate, and suggesting alternatives. Upon Agency review and determination, FE can prepare change orders for signature by Agency staff using the Agency's template, obtain the Contractor's signature, facilitate approval by the Agency, and distribute the order.

Materials Testing – FE will coordinate Earth Systems for Acceptance Testing to ensure construction is being performed to contract document specifications and standards. Earth Systems scope of services are detailed in the Task 3 and Task 4.

Progress Reporting & Recordkeeping – FE staff keeps records in accordance with the Caltrans LAPM. We file all project documentation electronically and keep hard copies in a binder of documentation for turnover to the Agency at project end. At any time, documentation will be available for Agency review.

Construction Safety – FE documents and monitors the Contractor's construction operations and safety practices per California Division of Occupational Safety and Health requirements and the project Traffic Control Plan. The Contractor remains the sole responsible party for safety requirements. FE will monitor per our safety program and notify the Contractor and the Agency of any observed deficiencies.

Pre-Construction Meeting – FE's construction manager will coordinate, run and document the pre-construction meeting. The pre-construction meeting is a forum for the City, designer Contractor and CM team to formally kick-off the construction phase of the project, introductions, confirm contract execution status, expectations and requirements for communication and documentation, discussing the overall project schedule and the look ahead schedule. The pre-construction meeting sets the scene for the construction phase, discussing the systematic approach to contract administration and construction quality assurance.

Pre-Paving Meeting(s) – Just as the pre-construction meeting sets the scene and confirms expectations and requirements for the overall project the pre-paving meeting does the same for paving. Paving operations can be complex and stakeholders need to know their responsibilities as it relates to construction and schedule of paving operations. General items discussed at the pre-paving meeting(s) include: responsibilities for QA and QC, mix design submittals statuses, paving plan, traffic control plan, testing protocols, lift thicknesses, temperature requirements, environmental considerations, designated stockpile/laydown areas, material delivery routes, coordination with other work/projects, access to properties and businesses, communication and reporting, community noticing in advance of the work, equipment, personnel, communication and reporting, surface preparation expectations, risk management, Caltrans encroachment permit, reasons for stop work and rejection of work, open discussion.

Progress Meetings – FE Construction Managers utilize a template customized for each project to prepare agendas and minutes. The template also comes with attachments, such as schedule updates, logs, and other pertinent information. This helps us distribute documentation, so all recipients can arrive at the meetings ready to provide input. The agendas/minutes and attachments are distributed by email several days prior to each meeting. Minutes are clear in assigning responsibility and time frames for action items.

Coordination With Utilities and Public Agencies – FE frequently coordinates with utilities and other agencies, such as those in The City of Morro Bay, San Luis Obispo County and Caltrans. FE will confirm the appropriate permits, including Caltrans Encroachment Permits, are in place.

Payment Applications – We will review the Contractor's progress pay estimates in accordance with the construction contract. Payments on progress estimates will be supported by source documents that represent measured quantities by FE's full-time onsite inspector. A complete and accurate pay estimate will be forwarded to the Agency with a recommendation for payment. FE will maintain a current estimate of overall construction costs.

CONSTRUCTION PHASE DELIVERABLES

- » Weekly Meeting Agendas and Minutes
- » Submittal Log and Tracking of Response
- » RFI Log and Tracking of Response
- » Shop Drawing/Sample Log and Tracking of Response
- » CCO Log and Tracking of Response
- » Independent Cost Evaluation of PCOs
- » Materials Testing Log and Reports
- » As-Built Redline Drawings
- » Labor Compliance Log
- » SWPPP Compliance Log
- » Daily Inspection Reports
- » Daily Photographic Records
- » Organize and Assemble Documentation for Closeout
- » Documentation in Accordance With LAPM
- » Weekly Statements of Working Days

TASK 2: CONSTRUCTION INSPECTION SERVICES

FE Inspection staff will provide thorough inspection services utilizing a team of qualified inspectors across various disciplines to ensure strict adherence to contract documents.

FE's full-time inspector is experienced in all facets of road construction and rehabilitation, including: slurry seal, HMA digouts, Cape seal, leveling course, HMA surface course, utility raising, concrete work, striping etc.

Construction Observation/Inspection – Perform daily inspection/monitoring of construction activities. Determine that work complies with plans, specifications, and permits. FE will be responsible for observation and documentation of all construction tasks and will follow Agency procedures. The Inspector's Daily Reports will include information such as workers and equipment actively engaged in the project, weather conditions, work accomplished that day, records of time and materials for work performed, pictures (either separately or as part of the report document), documentation of conversations with Contractor personnel, and problems anticipated or encountered. Generally daily report notes are associated with Bid Items to make tracking of various contract administrative items efficient

During pavement construction operations FE, and Earth Systems, will provide inspection of laydown including monitoring thickness and temperature as well as placement of the HMA. Earth Systems will provide field density tests using a nuclear density gauge to monitor the contractor's compaction efforts in compliance with project specifications and plans. Nuclear gauge correlation will be included. If the tonnage exceeds 1,000 tons per day, a second inspector will be added, at the direction of the City. We have included a contingency sum in our fee for a second inspector, if needed. The Contingency will not be used without written agreement with the City.

Specific to paving operations FE's daily reports will include an account of the work performed each day related to production rates, calibration readings, temperatures, thickness, and placement. FE and Earth systems are seasoned pavement construction professionals. Should areas of pavement not meet the requirements of the plans and specifications we will work expediently to ensure corrective action is taken as soon as possible. Based on our significant experience we will work with the Contractor to support them in meeting requirements in advance, rather than wait for failure.

INSPECTION SERVICES PHASE DELIVERABLES

- » Daily Field Report records
- » Photographic records
- » Punch List Construction redlines for inclusion in Record Drawings

TASK 3: LABORATORY TESTING

MATERIALS TESTING AND INSPECTION

Earth Systems will be responsible for material sampling and testing and asphalt sampling and inspection during construction of the City of Morro Bay's 2024 Pavement Rehabilitation project. We understand that the project primarily includes asphalt concrete digouts, followed by a 1-inch leveling course, and a rubberized cape-seal surface course, which is comprised of a rubberized chip seal followed by a polymer-modified slurry seal. We further understand that the project includes two bid alternates that are of the same scope and a third alternate that is primarily an asphalt concrete mill-and-overlay.

HOT MIX ASPHALT TESTING AND INSPECTION

It is assumed that quality control testing will be performed by the contractor during hot mix asphalt (HMA) placement. Earth Systems will provide quality assurance testing, including compaction testing, as requested by the construction manager, as well as sampling of the site-delivered HMA. Hot mix asphalt material samples will be tested for theoretical maximum density, binder content, air voids, voids in mineral aggregate, stability, and gradation. Density testing of the HMA is planned to be by nuclear density, although core density will be used in case of necessary density verification or dispute, and has been included as a separate fee.

MATERIALS SAMPLING AND TESTING

Earth Systems will perform sampling and laboratory testing of 3/8-inch HMA that will be placed for the leveling course as requested by the construction manager. It is assumed that quality control testing will be performed by the contractor. The 3/8-inch HMA will be tested for binder content and gradation. Sampling and testing of the aggregate to be used during placement of the rubberized cape seal will also be sampled and tested for sand equivalent, durability index and gradation, where specified. Polymer-modified asphaltic emulsion and asphalt-rubber emulsion will be sampled and retained for testing in the case of observed anomalies during placement. We have assumed that monitoring of placement and measurement of the specified coverage of emulsion/aggregate will be performed by the construction manager's on-site inspector.

PROJECT MANAGEMENT, REPORT PREPARATION, SITE MEETINGS AND FINAL REPORTS

Earth Systems will provide compaction testing reports and final inspection and laboratory testing reports. Earth Systems will attend a pre-construction, pre-paving meeting as well as preparation meetings for the major work elements. Certified payroll reporting and typical testing and special inspection oversight and communication with the construction manager will also be provided.

LABORATORY TESTING PHASE DELIVERABLES

- » Sample Collection Reports
- » Field Test Results
- » Laboratory Test Results
- » Coordination and Communication Logs
- » Testing Frequency Documentation
- » Non-Compliance Reports
- » Daily Testing Summaries
- » Final Laboratory Testing Report

TASK 4: VERIFICATION AND DETERMINATION OF COMPLIANCE AND ACCEPTANCE

For the Verification and Determination of Compliance and Acceptance section of the 2024 Pavement Rehabilitation Project RFP, Filippin Engineering will prepare a comprehensive final report summarizing all laboratory test results. This report will address the contractor's adherence to project specifications, plans, and applicable standards. It will include detailed copies of compaction reports and highlight any areas of non-compliance, and reference any agreement for the City's acceptance of non-complaint work. By providing a thorough analysis and documentation, we ensure that all construction activities meet the required quality and regulatory standards, thereby facilitating the project's acceptance and successful completion.

VERIFICATION AND DETERMINATION OF COMPLIANCE AND ACCEPTANCE PHASE DELIVERABLES

- » Final Acceptance Report
- » Compaction Reports
- » Non-Compliance Documentation
- » Summary of Inspections
- » Photographic Evidence
- » Communication Logs
- » Testing Logs
- » Certification of Compliance

TASK 5: POST-CONSTRUCTION PHASE SERVICES

Final Inspection and Punchlist – FE will conduct a final inspection and prepare a list of project construction deficiencies for resolution by the Contractor.

Record Drawings – FE will provide final markups of the project drawings to reflect Contractor-provided as-built drawings and all changes made to the contract documents, for preparation of final record drawings by the designer.

Final Documentation Turnover – FE will provide the Agency with all operations and maintenance manuals, along with all project documentation in hard copy (in binders) and electronic files. All documentation will be filed in accordance with LAPM categories and recommendations.

Final Project Report – When each construction contract is completed, FE will prepare a final report to the Agency summarizing all expenditures and change orders, showing pictures and providing a final accounting of all project expenditures in relation to the budget.

Notice of Completion – When all punchlist items have been completed, the FE construction manager will prepare a Notice of Completion, Statement of Final Quantities, and any final documentation requested by the Agency. Thereafter, the Contractor’s final payment will be processed.

CLOSEOUT PHASE DELIVERABLES

- » Complete set of record drawings
- » Recommendation for final payment
- » Notice of Completion Statement of Final Quantities and/or Final Balancing Change Order
- » Compiled outstanding claim information for closeout
- » Electronic files and Hard copies (in binders) of all project files following Caltrans standard recordkeeping guidelines
- » Project files kept and submitted in accordance with the Caltrans file system

F. FIRM APPROACH TO SERVICES

FE understands the 2024 Pavement Rehabilitation Project will include treatment of a number roads throughout the City of Morro Bay. The scope of work involves a comprehensive approach to road rehabilitation, including all necessary tools, materials, labor, equipment, and incidentals to complete the project successfully. This includes a combination of treatments such as slurry seal, cape seal, localized digouts, and full-depth rehabilitation, all in strict accordance with the provided plans and specifications.

Key tasks include thorough surface preparation, precise application of treatments using approved materials and methods, and ensuring full compliance with quality and safety standards throughout the project. We will protect all utilities not slated for replacement, including manholes and other utility structures, which will be adjusted to grade as required by the specific rehabilitation method.

The work also encompasses necessary traffic control measures, signage, public notifications, stormwater management, shoring, formwork, and any additional tasks needed to complete and operationalize the infrastructure as outlined in the Project Plans and Specifications. All work will adhere to the City of Morro Bay Standard Specifications and Drawings, Caltrans Standard Specifications, and the Greenbook, applying the most stringent requirements in case of any conflicts.

In the preparation of this proposal, we also understand the following constraints:

- The construction period 90 working days.
- FE is to comply with all federal, state, and local laws and ordinances applicable to the work, including but not limited to, compliance with prevailing wage rates and submission of certified payrolls weekly for field personnel.
- FE understands that the City uses the Caltrans procedures for administering its construction projects

KEY CHALLENGES

Major challenges with this project will be coordinating construction on arterial streets and in residential neighborhoods with all adjacent businesses, schools, and residences.

In addition, it is critical that the construction management team assists with providing clear, concise, and consistent communication through all stages of the project to all stakeholders. The more community engagement and outreach we provide, the less likely the City Council and City Manager's offices will be inundated with concerns about this project.

FE understands that while pavement rehabilitation projects are a great benefit to the community, they are also very disruptive to residents and commuters during construction. These services will require a high level of coordination and teamwork with the Design Engineer, City Project Manager, Contractor, and the public. Our team approach to this and every project is to communicate early and often, creating clarity and efficiency to keep all stakeholders on the same page.

This project has potential challenges beyond just construction technicalities. Recognizing and addressing the challenges that we can predict and remaining ready and agile to field those we cannot, is part of FE's plan to achieve a positive project outcome for all stakeholders. Some of the main elements that we believe are critical for success on this project include:

- **CONSTRUCTION COST CONTROL:** During construction of a 90 working day project, potentially though 6 pay periods, it is important to closely monitor Contractor costs and forecast potential financial impacts. An example of a potential cost impact is the quantities related to digouts/subgrade replacement. Since the time that the designer completed their pavement investigation areas of failed subgrade may have increased in dimension, which could result in a significant increase in the quantity for Bid Item 10 (6" Deep Lift Stabilization), which will affect the project budget and the City's ability to include the alt bid parts of the project. The CM Team will ensure the project schedule considers such variable quantity items so that unknowns are completed before moving forward with alt bid items. By maintaining detailed daily reports and records of quantities, our team can accurately track project costs on a daily, weekly, and

monthly basis. We will forecast and report quantity over- or underruns, thus ensuring that the City is not left with unnecessary surprises with contingency amounts, or commencing alt bid items with insufficient budget. Our team is

- adept at staying ahead of Contractors and identifying potential changes before there are costly delays. It is paramount to be proactive rather than reactive during these types of projects. We will also, well in advance, work with the design engineer and the City to implement strategies to mitigate issues with unknown quantities, such as growing digouts.
- **CONSTRUCTION SCHEDULE CONTROL:** Our greatest opportunity for scheduling success is thorough and continuous schedule evaluation. Our staff has expert CPM evaluation skills that allow us to analyze the baseline and monthly schedules and employ control measures in accordance with the Contract Documents. We will critically analyze the Contractor's schedule to ensure activities have realistic construction sequencing and durations. Some Contractors can deliberately show activity durations that are too long, or too short, to manipulate proposed bid production rates when it comes to a claim.
- **COMMUNITY OUTREACH AND COMMUNICATION:** Clear, consistent, and concise communication with all stakeholders and the public on a project of this size is key to its overall success. The first tool in our kit is to utilize the requirements of the Contract and ensure the Contractor is meeting their requirements for early noticing to the public for road closures, parking closures and temporary loss of access. In addition, success with community noticing be achieved by partnering with the City's public outreach team and providing updates throughout all phases of construction, with a primary focus on pre-construction notification. We will work to anticipate potential issues and ensure the appropriate information is relayed to the necessary City team members as soon as possible, and to the public, if necessary, along with any impacts, corrective actions, and/or potential solutions. During paving operations we will be in constant contact with the City providing updates on progress and the activities of the near-term schedule. Even the best Contractors run into issues that are outside of their control that affect schedule – we will help the City to communicate with stakeholders without delay.

FIRM APPROACH TO WORK AND HOW IT WILL BENEFIT THE CITY

- **PROJECT CHALLENGES AND OPPORTUNITES FOR SUCCESS:** Anticipating potential challenges ahead of the project and having a strategy for resolution is critical to success. Our plan for achieving a positive project outcome is to recognize and address the challenges we can predict. Once a potential problem is identified, our experienced FE team considers solutions that provide the most time and cost-efficient benefits, while meeting quality requirements. In addition, the construction manager will work closely with the Contractor to incorporate any additional solutions or cost-saving opportunities. The identified solutions are provided to the City for final determination. FE believes that working together to solve identified issues/challenges in advance, in contrast to fighting with the Contractor, yields the most successful project for the City.
- **TECHNICAL AND INTRICATE PROJECT MANAGEMENT:** Proactive problem identification and resolution require strong team leadership, expertise from a wide variety of technical disciplines, and effective execution and coordination of many work activities. FE is poised to meet these challenges with knowledge, experience, and professionalism. We know the difference between watching construction and effectively managing it. Recognition and understanding of the technicalities, attention to organization of the details throughout the work, and emphasis on thorough planning/sequencing at the start of, and during, the project are critical aspects of a successful project. This process not only keeps the project on schedule, but also allows for budget forecasting and tracking.
- **CLAIMS MANAGEMENT:** Two key objectives of the FE team are claims avoidance and claims management through intricate project management. We believe our experienced and dedicated team offers tremendous value to the City

and will maximize the opportunity for success by minimizing claim exposures. Our team is familiar with pavement rehabilitation methods and critical path scheduling, has a thorough understanding of the Contract Documents, and will put in the time upfront on the critical submittals. A team that understands the work and can anticipate and effectively mitigate or deter potential claims is the City's biggest tool in cost and schedule management.

- **QUALITY ASSURANCE:** FE has developed a Corporate Quality Assurance Plan to document the company's best business practices, better satisfy the requirements and expectations of our clients, and improve overall management of the company. FE believes the following characteristics indicate the quality of our product deliverables and our services:
 - **Complete** – Our deliverables will be accurate and thorough and include all relevant project details.
 - **Consistent** – Our project administration, products, and deliverables will be consistent with Agency standards and requirements and will comply with all applicable guidelines.
 - **Clear** – Correspondence and documentation will be clear and concise.
- **QUALITY—TRUST, BUT VERIFY:** FE's approach to project quality is "Trust, but verify." We approach the Contractor with respect and trust that they will approach the project with integrity; we trust the Contractor has done the "right thing" but we verify and document to confirm the "right thing" has in fact been done. Taking an approach that outwardly lacks trust is disrespectful and will be returned in kind, so we avoid this approach.

QUALITY DELIVERABLES

PROCORE AND BRIDGEDOC CAPABILITIES



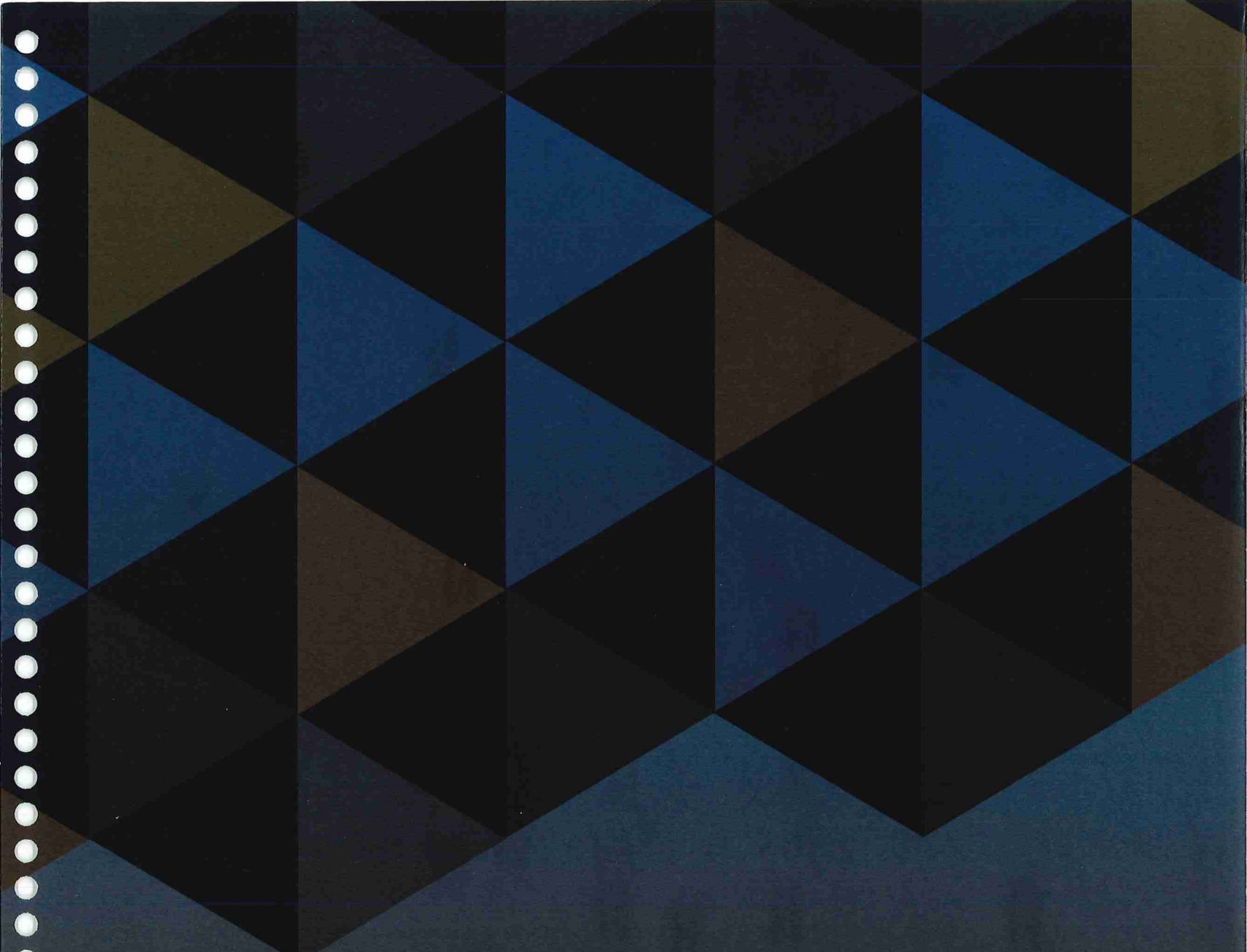
FE is proud to share that we offer full-service Procure Project Management software on many of our projects, and at no cost to the City, Contractor, or other users. Utilization of the Procure tools will ensure standardization of Quality, increased efficiency in document control, continuous transparency to the City staff (and any number of desired/authorized stakeholders). This software platform is one of the best available technologies in the field and will be used to successfully manage the document control procedures, still in keeping with the Caltrans Construction Procedures Manual and LAPM. As one of Procure's very first users FE is very familiar with Procure's functionality. FE can also offer the use of BridgeDoc, which we understand the City is currently utilizing. Whichever software preference the City has we will maximize the capabilities for excellent document management.



FE is proud to share that we utilize BridgeDoc for our document control for construction management and inspection. This software platform provides access for both FE and the Agency for weekly statements of working days, daily reports, photo records, RFI's, submittals, quantity tracking, bulletins, and viewing of the contract documents in the field. BridgeDoc prioritizes simplicity to promote standardization, compliance, and efficiency specifically on public works projects, ensuring the Agency that your document control procedures comply with public record and funding requirements, and that standard filing procedures are used on every single project so your documents are in the same spot, with the same quality, for every single project performed. Using a cloud-based application also ensures that the Agency and other stakeholders have transparency throughout the entirety of a project so that you are well informed about project status and documentation. FE believes that BridgeDoc is a highly effective and valuable tool for document control on all public projects.

PROJECT CONTROL AND DOCUMENTATION

The FE Team possesses deep experience in managing municipal public agency projects, strictly adhering to State and Federal guidelines. Although this project is not directly associated with Caltrans, we implement the Local Assistance Procedures Manual (LAPM) and Caltrans Construction Manual methods, which are industry standards for public works in California. Our team's thorough understanding of these procedures ensures that construction quality assurance and documentation align with the objectives of all stakeholders. Recognizing the significance of proper procedures and meticulous record-keeping, we leverage our established expertise to prevent delays, handle claims effectively, and expedite project acceptance.



APPENDIX A

STAFF RESUMES

REGISTRATION

- Registered Professional Engineer Queensland (RPEQ), Queensland, Australia
- Chartered Professional Engineer (CPEng) Australia
- Certified Construction Manager (CCM), United States

EDUCATION

- Bachelor of Engineering (Hons) Civil and Environmental USQ, Queensland, Australia, 2012
- Bachelor of Engineering Technology USQ, Queensland, Australia, 2010
- Diploma in Civil Engineering Otago Polytechnic, Dunedin, New Zealand, 2003

AREAS OF EXPERTISE

- Civil Engineering
- Emergency Projects
- Project Management
- Construction Management
- Construction Engineering

Mr. Henderson has over 20 years of public and private work experience in the United States, Australia, and New Zealand. Paul's experience in all aspects of civil engineering projects, including roles as Project Manager, Design Manager, Construction Manager, and Resident Engineer. Paul's extensive public works experience includes the design and construction of bridges, roadways, roundabouts, utilities, water storage structures, shoreline protection, living shorelines, marine and coastal structures and emergency works for critical public infrastructure.

Well-versed in construction administration and civil engineering design, Paul has served as design manager, construction manager, inspector, and cost estimator during all phases for projects in communities throughout the California. Paul is very familiar with the requirements of local, state, and federal agencies as they relate to engineering design and construction projects.

RELEVANT PROJECT EXPERIENCE

SR 49/108 ROUNDABOUT PROJECT (Tribe of Mi Wuk Indians, Chicken Ranch Casino) Project Manager and Resident Engineer for \$5M Tribe funded roundabout project on state highway that included design and construction of a new roundabout as a safety improvement. Paul's dual role as overall project manager for the design team and construction manager during the design phase provided the Tribe and Caltrans an efficient approach to delivery of this important safety improvement project. The roundabout construction project includes complex phasing to allow minimum disruption to highway users and the construction of a large resort project (\$300M), that uses the same intersection that the roundabout is being constructed in as the primary delivery access location. The project is located in Jamestown on a 2-lane conventional highway and includes bulk earthworks, storm drainage, utilities, HMA paving, curb & gutter, concrete median and splitter islands, lighting, flashing beacons and other typical new highway project aspects.

PILLAR POINT LIVING SHORELINE (San Mateo County Harbor District) Through the design phase Paul provided constructability review, value engineering, and design support for the Pillar Point West Trail shoreline restoration. The project involved reconstruction of the failed shoreline trail with an engineered rock revetment and construction of the new living dune shoreline, and construction into the intertidal zone and the adjacent wetland system, which is environmentally sensitive. Following the design phase Paul supported the SMCH with contractor procurement through pre-qualification and bidding. As the construction manager Paul managed the team of inspectors, surveyors and materials testers to support the SMCHD in delivering this landmark project on time and on budget. The project is a success story for future living shoreline projects.

PACIFIC MOTORWAY UPGRADE B (Queensland Department of Transport and Main Roads, Australia) On this large and complex design-build highway interchange project Paul lead construction staging and temporary works design and modelling for the Pacific Motorway Upgrade (PMU), including Daisy Hill and Paradise Road Interchange upgrades. PMU-B was used as an example of the new "benchmark" for temporary traffic design in Queensland, Australia. Temporary works design involved major interchange design for multiple construction stages and options of the project.

BRUCE HIGHWAY UPGRADE (C2C (Queensland Department of Transport and Main Roads, Australia) Design and development of longitudinal drainage and minor cross drainage for the Bruce Highway upgrade project. The design included hydrological and hydraulic analysis for a section of new national highway as part of the \$800M project.

CITY OF ARROYO GRANDE CAPITAL IMPROVEMENT PROJECTS MANAGER (City of Arroyo Grande) From late 2022 through early 2024 Paul served as the City's CIP Manager, managing Capital Improvements budgets and program for projects including: storm damage repair, bridges, streets, paving, ADA upgrades, buildings, utilities and a variety of other City projects. Paul managed engineering & environmental consultants and contractors to deliver projects on schedule and within the City's approved budgets. Paul also serves as Construction Manager during the construction phase of the CIP projects.

BRIDGE REPLACEMENT PROGRAM, QLD, AUSTRALIA (Somerset Regional Council) Project Manager and Construction Manager for the Somerset Regional Council bridge replacement program (3 years). Paul's role included the management of the delivery of new concrete bridges from concept design through to the completion of construction. Under Paul's management, 25 bridges were designed and 11 bridges were constructed. Paul's hands-on approach during construction delivery included the construction management, special inspections, quality verification, and resolution of contractual queries and disputes. Paul was on site, providing guidance and inspections, for all project milestones. Many of the bridges required piling in challenging geotechnical and conditions, and all bridges were constructed in and over waterways. Funding requirements meant project timeframes needed to be strictly adhered to, for risk of funding being withdrawn. Thorough understanding of project / program management, solid procurement process, and bridge construction techniques enabled the multi-bridge program to be completed on time and on budget.

OAK PARK BOULEVARD ECR STORM DRAIN IMPROVEMENT (City of Arroyo Grande) Associate Construction Manager for the Oak Park Boulevard ECR Storm Drain Improvement project which included the removing and replacing of an existing drainage inlet, installing a new manhole, concrete junction boxes, and a new HDPE pipe within the City and Caltrans right-of-way. Work also included connecting to an existing box culvert within the Highway 101 right-of-way; restoring landscaping; providing traffic control, stormwater control and compliance with the Caltrans permit.

MILAGRA CREEK OUTFALL REPAIR PROJECT (City of Pacifica) Pacifica experiences significant coastal bluff erosion: in one case, the bluff has retreated significantly from the 80-inch pipe outlet to the Pacific Ocean, leaving the end sections of the pipe in a failed state. The project involved installing micropiles from within the pipe to support the concrete pipe sections as the bluff continues to recede. The work was performed within a restricted space and in less-than-ideal conditions. Possesses piling and deep foundation construction experience, which provided the City with confidence that the project will be constructed as designed. Paul worked with the contractor and the City to overcome a number of challenges, including significant delays related to the COVID-19 global pandemic.

BEACH BOULEVARD SEAWALL EMERGENCY REPAIRS (City of Pacifica) Through the winter of 2020/2021 The City of Pacifica experienced several large wave events that caused damage to the City's municipal fishing pier abutment, putting the structure critically at risk and undermining the adjoining Beach Boulevard Roadway. Paul supported the City with inspection of the damage, immediate mitigating repairs and a permanent repair solution. Paul was onsite working with the Contractor and City to make the area safe and mitigate further damage. Wave action caused a blow-hole to develop which was blowing aggregate and rock backfill 50 ft in the air. The repair included construction of a formed concrete 'plug' to stop the blow-hole, then slurry backfill was utilized to fill voids and backfill the large hole in the roadway, which was approximately 40 ft deep. Construction conditions were challenging with large overtopping waves at the seawall limiting shifts and causing safety issues.

CARDIFF BEACH LIVING SHORELINE (City of Encinitas) Paul supported the construction management team on this innovative coastal resiliency project involving beach trenching, placement of rock revetment in the trenching, and grading new dunes over the rock revetment. This project protects California's Highway 101 infrastructure which is threatened with anticipated sea level rise. Provided assistance with constructability review, review of design amendments during construction, and general contract administration support (i.e., review of change orders, schedule, RFIs, and submittals.)

400 ESPLANADE AVENUE SHORELINE PROTECTION (City of Pacifica) Served as Construction Engineer for the repair of the existing failed rock revetment along the coastal bluff at 400 Esplanade Avenue in Pacifica. The project included regrading the existing, washed-out access ramp, removing debris from infrastructure that has eroded along the bluff, cutting the native Franciscan Complex Greenstone rock formation to create a key pursuant to the engineering design, and placement of filter fabric followed by large and small rip rap. Because the project was funded with California Governor's Office of Emergency Services (Cal OES) funds, Paul provided construction management and project documentation services. The project was constructed within the tidal and surf zones. Paul worked with the contractor to develop a protective berm to ensure the project was completed without delay before adverse winter ocean conditions arrived.

NDRRA FLOOD RECOVERY, QLD, AUSTRALIA (Somerset Regional Council) Provided management of the Somerset Regional Council Flood Recovery Works Program, including management of multi-discipline design teams, bidding, bid assessment, contract administration, and delivery of more than \$40 million of infrastructure, including nine new bridges. Of the total flood recovery program cost, approximately 75% would be considered pavement related. Pavement engineering in this flood recovery program includes identification of mode of failure, selection, and design of various types of road pavement for reconstruction and rehabilitation.

EDUCATION

- The Citadel – The Military College of South Carolina, Political Science/Pre-Law (Magna Cum Laude), Charleston SC, December 2019
- Air Force Institute of Technology, May 2023
 - Project Management Course
 - Lifecycle Cost Estimating Course
- Defense Acquisition University, May 2023
 - Construction Contracting Course
 - Construction Management Course

AREAS OF EXPERTISE

- 30-hour Outreach Training for Construction -OSHA
- 40-hour EM 385-1-1 Safety and Health - USACE
- Construction Quality Control for Contractors – USACE
- Fall Protection 24-hour Competent Person for EM 385-1-1 – USACE
- Lane Closure Systems – Caltrans
- Heartsaver, Certified in Adult First Aid/CPR/AED

Mr. Ruble has over 8 years of construction management, administration and inspection experience in both the private and public sectors. Before joining FE, he worked as a project manager for a private contractor at Vandenberg SFB overseeing a variety of mechanical, electrical and civil projects. Prior to joining the private sector, Tucker served in the U.S. Air Force as a contracting officer managing performance, spending and timelines for a large portfolio of design and construction projects. This multifaceted experience has equipped Tucker with the skills necessary to navigate complex challenges and deliver successful outcomes in a range of construction settings.

RELEVANT PROJECT EXPERIENCE

DOVER CANYON ROAD AT JACK CREEK BRIDGE REPLACEMENT (County of San Luis Obispo) Currently providing Construction Management services for the Dover Canyon Road at Jack Creek Bridge Replacement for the replacement of the existing bridge at Dover Canyon Road over Jack Creek in San Luis Obispo County. The project included the complete removal of the existing bridge structure, including all deck, trusses, and major components. The construction of a new bridge with updated design specifications to support increased vehicular load capacity and improved safety features. Work also included the adjustments and enhancements to the approaching roadways to ensure smooth transition onto the new bridge structure, traffic control and development and implementation of a dewatering and diversion plan to manage creek flow during construction, ensuring minimal environmental impact.

LIFT STATION #13 AND FORCE MAIN REPLACEMENT (City of Atascadero) Construction Manager for the construction of a new lift station, demolition of mechanical equipment at the existing lift station site, replacement & upsizing of approximately 2 miles of sewer force main on a new alignment, and repaving of approximately one mile of roadway. The lift station portion of the project included the installation of pumps, controls, alarm systems, wet-wells, wet-well linings, flow meters, and a back-up power generator within a permanent easement acquired by the City at the northwest corner of an undeveloped property. The force main replacement included abandoning the existing force main alignment. and constructing a new force main, connecting to the existing gravity sewer. Following completion of the force main, the roadway was paved with deep lift asphalt.

NORTH CHORRO NEIGHBORHOOD GREENWAY (City of San Luis Obispo) Provided Construction Management services for the City of San Luis Obispo project which consists of providing a route that prioritizes bicycle and pedestrian travel between the Foothill Boulevard and North Chorro neighborhoods to downtown San Luis Obispo. This project includes pedestrian transportation improvements (construction of 45 curb ramps, 375 feet of retaining walls, sidewalks, crosswalks, pedestrian lighting, and rectangular rapid flashing beacons); bicycle transportation improvements (construction of 530 feet of Class I bike path, protected bikeways, bikeway striping and pavement markings, and guide signage); roadway improvements (full-depth

reconstruction, digout repairs, type II slurry seal, and pavement delineation and signage); storm drainage and sewer improvements (construction of new storm drain systems, catch basins, manholes, an energy dissipation structure, and bioretention areas, and installation of a new sewer main, laterals, and manholes); and landscape improvements.

EL CAMINO REAL DOWNTOWN INFRASTRUCTURE ENHANCEMENT (City of Atascadero) Construction Manager responsible for the El Camino Real Downtown Infrastructure Enhancement Project. The project encompasses a variety of infrastructure improvements designed to enhance the aesthetic appeal, functionality, and overall safety of the downtown region. Work included: Roadway and Sidewalk Improvements (installation of ADA ramps, driveways, sidewalks, and curb and gutter enhancements), Traffic and Pedestrian Safety Enhancements (modifications to existing traffic signal and lighting systems, and the implementation of Rectangular Rapid Flashing Beacon (RRFB) systems to improve pedestrian safety), Drainage and Environmental Management (installation of new plastic pipes, biofiltration soil media, and stormwater management systems to address water runoff and environmental concerns) and Sewer (removal

of 2,100 linear feet of 8-inch clay pipe and replacement with 8-inch SDR 35 pipe, including the replacement of manholes and installation of new lateral runs.)

SPOT AIR & MOTOR CONTROLS CENTER REPLACEMENT (USACE / National Reconnaissance Office, VSBF) Project manager for the \$1.5M effort to replace the spot air conditioning and associated controls feeding a satellite assembly facility. The project included the demolition and replacement of air handlers, condensers, supply lines, ducts, controls and electrical components. Key activities included system design, procurement, and installation to ensure seamless integration with existing building systems. Testing and commissioning confirmed optimal functionality. Completed on time and within budget.

RENOVATION OF ENTRY CONTROL FACILITIES (30th Security Forces Squadron, VSBF) Project manager for the \$1.1M renovation of four entry control facilities which house security personnel during base entry operations. The project included the complete replacement of all electrical, mechanical, and plumbing systems, upgrading all bulletproof glass to meet stringent security standards and installation of interior furnishing and accessories. Due to the facility's anti-terrorism mission, special attention was given to maintaining and protecting communication capabilities throughout the renovation. The project was successfully completed on time and within budget, delivering enhanced security and operational efficiency.

WAREHOUSE CONVERSION (National Geospatial Intelligence Agency, VSBF) Project manager for \$250,000 office conversion into a secure warehouse for survey equipment. Project scope included the installation of a new loading bay and accompanying driveway, installation of two survey pedestals required excavation to a depth of 10 feet below grade, new flooring, secure doors and windows and a new dedicated sub-panel. Coordinated closely with stakeholders to address conversion challenges, ensuring that the facility was completed on time, within budget, and to the highest standards of security.

FIRE ALARM MASS NOTIFICATION REPLACEMENT (532nd Training Squadron, VSBF) Project manager for the \$480,000 replacement of a training facilities mass notification system. The project included the installation of a new sub-panel, new conduit runs, and the integration of new strobes, speakers, and controllers to ensure a fully functional notification system. To ensure continuous facility functionality and avoid any downtime, all new system components were installed and fully operational before the decommissioning and removal of the old system. Project resulted in a seamless transition which maintained essential communication capabilities throughout the upgrade. The project was completed on schedule and within budget.

ROOFTOP AIR HANDLER REPLACEMENT (Training Device Design and Engineering Center, VSBF) Project manager for the \$340,000 replacement of three rooftop air handlers and exhaust units. The project included the removal of existing equipment and the installation of new, high-efficiency air handlers and exhaust units. Given the elevated nature of the work, a fall protection plan and standard lift plan were developed to ensure the safety of all personnel involved. Due to the project's proximity to an active airfield, FAA waiver was required for the lift operations to ensure compliance with aviation safety regulations. The project was completed without disruption on time and within budget.

CM CONSTRUCTION SERVICES / PROJECT MANAGER

MAY 2023 - MAY 2024, LOMPOC CA

Managed a wide variety of Department of Defense (DoD) construction projects including renovations, modernizations, and ground up builds. Lead design and constructability reviews prior to construction ensuring a buildable end product meeting the needs and goals of DoD personnel. Developed and processed material submittals and performance plans in accordance with regulations, installation requirements and the whole building design guide. Developed baseline schedules based on project scope, work breakdown structures, and resource availability, ensuring alignment with project objectives and timelines. During construction, interfaced with superintendents and foremen to identify and address both evident and potential shortfalls, issuing corrective actions as necessary. Managed project budgets and applied for progress payments to ensure prompt payment and financial stability throughout each projects lifecycle. In the event of changes or differing site conditions, dispute resolution while maintaining clear and open communication with all parties involved. Developed and implemented fair and equitable solutions to address conflicts, ensuring minimal disruption to the project schedule and budget.

UNITED STATES AIR FORCE / CONTRACTING OFFICER

DECEMBER 2019 - MAY 2023, LOMPOC CA

Managed spending, timelines, and performance for a design and construction portfolio worth approximately \$24M. Developed statements of work in compliance with applicable unified facility codes, base requirements, laws, and regulations. Issued Requests for Proposals (RFPs) and evaluated submissions using lowest-price-technically-acceptable or best value factors. Negotiated directly with contractors on line item prices and quantities. Determined the scope of projects during disputes by utilizing case law and federal acquisition regulations. Conducted routine inspections and audits during the construction phase to ensure that contractor personnel were properly qualified and compensated. Managed the contract budget and negotiated equitable adjustments to address changes and differing site conditions, ensuring project success and compliance with all contractual and regulatory requirements.

AREAS OF EXPERTISE

- OSHA 10 hours
- Crew Leadership
- Materials Management
- Resource Allocation
- Construction Operation Support

Mr. Bucknum is a construction professional with 30 years of industry experience. Prior to joining Filippin Engineering, Steve worked for Souza Construction in a Superintendent and Foreman capacity on major infrastructure projects such as roads, pavement maintenance, structures, bridges, multiuse paths, parks, flood control facilities, and water and sewer pipelines. His experience as both a hands-on contractor and a construction foreman representing public agencies and other clients is exceptionally useful in his roles in management and inspection of public works projects. As a Senior Construction Inspector for FE, Steve provides inspection of new road construction, underground utilities, grading, asphalt concrete paving, concrete placement, calculation of pay quantities for process billing, processing of

contract change orders and coordination with public agencies and utility companies. Duties include construction management, inspection, plan check, value engineering, constructability review, contract and specification review and supervision of crew and subcontractor activities. He has an extensive background working on Public Works projects administered per the California Department of Transportation (Caltrans) methods and procedures, in accordance with the Local Assistance Procedures Manual. His diverse background working construction management and inspection provides him with the skillset necessary to tackle complicated and diverse project issues. His depth of experience, strong communication skills and problem-solving abilities, make him an effective and essential addition to any construction management team.

RELEVANT PROJECT EXPERIENCE

CABRILLO ROUNDABOUT PROJECT (City of Santa Barbara) Provided Senior Construction Inspection responsibilities for the Cabrillo Roundabout which is located at the intersection of Cabrillo Boulevard and Los Patos Way and the project aims to enhance traffic flow and safety by replacing the existing stop-controlled intersection with a modern roundabout. Key elements of the project include removal of existing pavement and portions of the southeast median island, removal and relocation/replacement of various trees, relocation of water and sewer mains, installation of new splitter islands, construction of a new center median apron with a raised, landscaped island, installation of all necessary storm drainage facilities, installation of new street lights and protection of existing utilities as per project plans and specifications. The project is designed to improve traffic efficiency and safety while integrating seamlessly with the surrounding environment.

STATE STREET UNDERCROSSING (City of Santa Barbara) Senior Construction Manager for this project which is located in downtown Santa Barbara on the iconic State Street roadway that connects downtown Santa Barbara with the Waterfront. The project is which is partially located in the Caltrans Right-of-way, is both a major facelift and includes many safety features to appropriately rebalance space for vehicles, pedestrians, and cyclists through the undercrossing between Yanonali and Gutierrez Streets. Work generally includes widening sidewalks (Both on Slab and Raised on Slab) on both sides of the street, increasing bike lanes widths and adding 2-3 foot protected buffers, new pedestrian lighting and railing for safety and decorative tile columns for aesthetics. This project also includes the installation of a large SiteSaver System to improve storm water quality and debris from the storm drain system.

MARSH STREET BRIDGE REPLACEMENT (City of San Luis Obispo) Superintendent for a \$4.3M bridge replacement project that included removing and replacing a concrete bridge and roadway approaches, relocating domestic water facilities, constructing concrete channel walls utilizing rock slope protection and soldier pile wall, micropile foundation on the abutments, planting landscape materials and irrigation systems, installing storm drainage facilities, installing street lights, and protecting existing utilities.

2022 F-14 PAVING (City of Atascadero) Superintendent for this \$2.8M project inspecting the pavement rehabilitation of approximately 3.3 miles of roadway. Work included full reconstruction and overlay and minor drainage improvements.

2022 PAVEMENT REHABILITATION (City of Guadalupe) Provided Superintendent responsibilities for the City of Guadalupe. This project involves removing and replacing existing asphalt, lime/cement treatment of base, raising and lowering utility lids, striping and markings, and survey monuments. The work also included traffic control, stormwater pollution control programs.

HIGHWAY 101 MEDIAN BARRIER IMPROVEMENTS (City of Paso Robles) Caltrans - Provided Foreman Superintendent project which included the installation of a new mile long concrete median along the southbound lanes of highway 101. Work began on the south of the Spring Street bridge and also included the installation and improvements of area storm drains.

MEASURE K-14 STREET REHABILITATION PROJECT (City of Grover Beach) Foreman Superintendent on this \$6.3M project which provided pavement rehabilitation and repair, concrete curb, gutter, cross gutter and sidewalk work; accessibility improvements; water utility piping improvement, sewer piping improvements, service upgrades, and fire hydrant installations and relocations; and utility valve box and sewer manhole improvements.

SAN PEDRO TRANSITION STRUCTURE PROJECT (Santa Barbara County Flood Control & Water Conservation District) Provided Foreman Superintendent duties on this \$665K project occurred in and along San Pedro Creek banks upstream of Calle Real, in the City of Goleta, within permanent Flood Control District. Work included providing water pollution control; traffic control; removal of existing reinforced concrete channel; temporary shoring; structural excavation and backfill; slope paving; structural concrete; rock slope protection; masonry wall; protection of existing facilities and utilities.

LAS VEGAS SAN PEDRO CREEKS CAPACITY IMPROVEMENT PROJECT (Santa Barbara County Flood Control & Water Conservation District) Foreman Superintendent of a \$1.4 Million County Flood Control District project which included all construction management, observation, and coordination with Flood Control staff. The project includes creek channel widening for both Las Vegas and San Pedro Creeks to improve flow capacity and the construction of an 840' channel floodwall and channel protection in San Pedro Creek to increasing the hydraulic capacity of the two creeks from a 10-year to a 25-year storm water event. Construction management effort includes coordination with adjacent Caltrans US 101 Drainage Improvement project and Union Pacific Railroad (UPRR). Portion of work is being performed in Caltrans Right-of-Way under a Caltrans encroachment permit.

2023 RUSTIC VALLEY FARMS RECYCLED WATER PIPELINE PROJECT (County of Ventura Water and Sanitation District) Provided Senior Construction Inspection services for this new waterline project which consisted of installing 3,466 LF of 6 to 12-inch PVC recycled water main, installing 3 2-inch Air Vacs, a 4-inch blowoff, and a 6-inch meter, tying in existing watermain to new watermain and coordinating with the Water Agency for pressure testing, and flushing velocities.

CALLE JOAQUIN LIFT STATION REPLACEMENT (City of San Luis Obispo) Provided Construction Inspection responsibilities for the \$6M construction of a new 6-inch and 12-inch gravity sewers, 10-inch sewer forcemain, San Luis Obispo Creek crossing consisting of a 6-inch double-barrel inverted siphon by horizontal directional drilling methods, 30-inch jack and bore under US-101, duplex pumping station with wet well and immersible pumps, and associated piping and manhole improvements, and removal, demolition, and abandonment of the existing lift station, equipment, piping and appurtenances. Additional work included the construction of a 16-inch jack and bore under two box culverts.

COMMUNITY GARDEN, SAN JOSE CREEK MULTI-PURPOSE PATH AND ARMITOS PARK IMPROVEMENTS (City of Goleta) Provided Senior Construction Inspector responsibilities for improvements of the Community Garden, San Jose Creek Multi-Purpose Path, and Armitos Park. The improvements include clearing, grubbing, and rough grading of the full two-acre site, along with earthwork and the construction of a new community garden with raised garden beds, an outdoor classroom, an outdoor picnic area with a pizza oven; installation of new playground equipment and surfacing material; construction of Americans with Disabilities Act (ADA)-accessible walkways, ramps, and curbs; stabilized decomposed granite (DG); construction of a bike path in a riparian area along San Jose Creek; and all associated clearing, grubbing, grading, porous asphalt concrete (AC), bioretention and bioswales, concrete, drainage, fencing, signage and landscape work.

JONNY D. WALLIS PARK SPLASH PAD AND DRAINAGE IMPROVEMENTS (City of Goleta) Provided Senior Construction Inspector responsibilities for improvements the Jonny D. Wallis Park. Improvements included the construction of a new splash pad installation complete with a new pump house and storage building, shade structures, fencing, security lighting, and cameras. This project also involves addressing drainage issues around the park. Challenges to this project include significant public interaction given that this is an active park in a busy downtown corridor.

SOUZA CONSTRUCTION – SUPERINTENDENT/FOREMAN – APRIL 2015 – MAY 2023

- Delegated responsibilities to crew members and contractors based on project requirements.
- Supervised crew and subcontractors' performance and provided consistent feedback.
- Promoted worksite safety and adherence to OSHA protocols.

EDUCATION

- A.A., Business Management, Santa Barbara City College
- Human Resources Management – University of California, Santa Barbara

AREAS OF EXPERTISE

- Federal Aid
- Labor Compliance
- SWPPP Compliance
- Procure Project Manager Pro
- American Red Cross, Certified in Adult & Child First Aid/CPR/AED
- National Register Emergency Medical Technician

Ms. Magallanes has over 20 years of experience in a variety of professional administrative roles, specializing in Labor Compliance, SWPPP, contract administration per the Local Assistance Procedures Manual, document control, and conflict resolution. Ms. Magallanes has performed Labor Compliance and SWPPP Compliance services for all of Filippin Engineering's state and federally funded projects for the past 6 years and is well versed in working with Contractors on completeness of documentation, and has passed multiple mid project and post project audits.

Her strength is keeping the entire team compliant with funding requirements and is meticulous with document control organization to make sure that the entire team sticks to the Quality Control Plan throughout the entirety of a project.

RELEVANT PROJECT EXPERIENCE

LABOR COMPLIANCE AND SWPPP COMPLIANCE OFFICER

Performed labor compliance tracking according to the frequencies outlined in the Local Assistance Procedures Manual and SWPPP compliance tracking, including upload to SMARTS (as applicable) for the following projects:

- Armitos Park Community Garden Improvements, San Jose Creek Multiuse Path and Jonny D. Wallis Park Splash Pad and Improvements (City of Goleta)
- State Street Undercrossing (City of Santa Barbara)
- Bridge Street Bridge Replacement (City of Arroyo Grande)

- North Chorro Neighborhood Greenway (City of San Luis Obispo)
- Westside Community Paseos (City of Santa Barbara)
- Las Positas Multi-use Path Project (City of Santa Barbara)
- Railroad Safety Trail Project (City of San Luis Obispo)
- De La Guerra Street Bridge Replacement (City of Santa Barbara) Marsh Street Bridge Replacement (City of San Luis Obispo)
- Roadway Sealing Project 2022 (City of San Luis Obispo)

- Old Town Sidewalk Improvements (City of Goleta)
- 2017 Street Repair Project (City of Arroyo Grande)
- Calle Joaquin Lift Station and Force Main Project (City of San Luis Obispo)
- Pipe Gallery Improvements (City of San Luis Obispo)
- Citywide Street Improvement Project 2015–16 (City of Santa Paula)
- Santa Road Widening Project (City of Camarillo)
- Ward Drive Class 2 Bike Lanes (City of Goleta)

OFFICE ENGINEERING SERVICES

Performed office engineering duties including document control system creation and maintenance, Quality Control Plan tracking, file maintenance, and full documentation closeout for the following projects:

- Via Avenue Bridge Replacement (City of Atascadero)
- Santa Lucia Bridge Replacement (City of Atascadero)
- Bradley Road Bridge Replacement (County of Ventura)
- 2020 Waterline and Valve Replacement (City of Lompoc)
- ATP Cycle 3 Funded Pedestrian Improvements (City of Guadalupe)
- 2020 Pavement Rehabilitation Project – Parking Lot NO. 2 and Cactus Lane (City of Carpinteria)
- Measure K Rehabilitation Project (City of Grover Beach)
- Cota Street Bridge Replacement (City of Santa Barbara)
- Donlon Road Realignment Project (County of Ventura)
- Quinientos Street Bridge Replacement Project (City of Santa Barbara)
- Romero Canyon Debris Basin (County of Santa Barbara Flood Control District)
- Maria Ygnacio Debris Basin (County of Santa Barbara Flood Control District)
- Old Town Sidewalk Improvements (City of Goleta)
- Jonny D. Wallis Neighborhood Park Project (City of Goleta)
- Fairview Avenue Sidewalk Infill at Stow Canyon (City of Goleta)

Robert Down, PE

Managing Principal, Supervising Engineer



REGISTRATIONS AND CERTIFICATIONS
Registered Professional Engineer (Civil)
State of California (No. 70206)

ICC Certified Soil Special Inspector

ICC Certified Structural Masonry Special
Inspector

ICC Certified Reinforced Concrete
Special Inspector

Hazardous Waste Operations and
Emergency Response, 40-hour and 8-
hour refresher courses (OSHA 29 CFR
1910.120 and Title 8, CCR 5192)

Certified Nuclear Gauge Operator

EDUCATION

B.S., Civil Engineering, California
Polytechnic State University, San Luis
Obispo

PROFESSIONAL AFFILIATIONS

Member — American Society of Civil
Engineer

Member — American Public Works
Association

Member — ASTM International

Member — Central Coast International
Code Council

Member — Engineers Without Borders

EMAIL

rdown@earthsystems.com

Robert Down is the managing principal of Earth Systems' central coast division. As such, he is responsible for executive management of Earth Systems' San Luis Obispo, Santa Maria, and Paso Robles offices, ensuring that high standards of technical accuracy and quality are consistently met. His role for this project will be Earth Systems' Project Manager. A Registered Civil Engineer, Mr. Down has over 27 years of experience in the geotechnical engineering and construction materials testing/inspection profession. He has conducted numerous geotechnical engineering investigations for high profile projects in San Luis Obispo County and has extensive experience overseeing materials testing and inspection and special inspection of construction projects of varying sizes and complexities. During his career, he has been actively involved in CalGeo, the Society of Civil Engineers, and Engineers Without Borders. His education consists of Bachelor of Science degree in Civil Engineering from California Polytechnic State University, San Luis Obispo, where he also taught senior level courses in soil mechanics, foundation design, and civil engineering materials. He has been employed with the Earth Systems companies in San Luis Obispo since 1998.

AREAS OF EXPERTISE

- Geotechnical engineering investigations
- Interpretation of laboratory and field data
- Supervision and project management of materials testing and special inspection projects
- Development of geotechnical solutions for adverse soil conditions, including unstable subgrades, saturated soils, caving or unstable trench conditions, expansive soils, and hydro collapse of soils
- Special inspection of construction materials, including soils, reinforced concrete, masonry, steel, and bolting
- Pavement construction and rehabilitation, including use of recycled materials
- Evaluation of acceptability of construction materials
- Resolution of special inspection issues and non-compliance

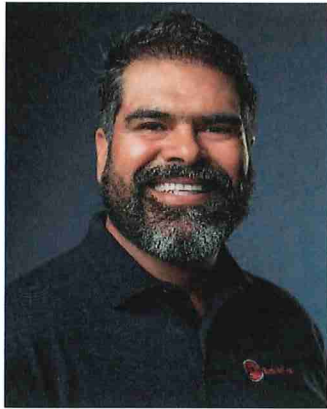
PROJECT EXPERIENCE

- Downtown District Pavement Rehabilitation, Atascadero, CA
- City of Atascadero 2023, 2020 & 2019 Measure F-14 Pavement Rehabilitation, Atascadero, CA
- Golden Hill & Union Road Roundabout, Paso Robles, CA
- Tank Farm Roundabout, San Luis Obispo, CA
- Chorro Neighborhood Greenway Project, San Luis Obispo, CA
- 2023 Arterials Project, San Luis Obispo, CA
- South El Camino Real Resurfacing Project 2022, City of Atascadero, CA
- Santa Lucia Bridge Replacement, Atascadero, CA
- Via Avenue Bridge Replacement, Atascadero, CA
- Shell Beach Streetscape Project, Pismo Beach, CA



Jose Zarate

Soil and Material Testing Technician



REGISTRATIONS AND CERTIFICATIONS

ACI Concrete Field Testing Technician
(No. 1334662)

Caltrans-certified for Test Methods: 231,
375, 504, 518, 539, 540, 543, 556, 557

Certified Nuclear Gauge Operator

Certified by U.S. Department of
Transportation and International Air
Transport Association, Hazardous
Materials Regulations (49CFR 172
Subpart H), transportation of nuclear
gauges

Asphalt Institute, Paving Inspector
Certification

EDUCATION

Civil Engineering, San Jose State
University, California

A.A., Alan Hancock Community College

EMAIL

izarate@earthsystems.com

Mr. Zarate has 16 years of experience in geotechnical testing and special inspection. Mr. Zarate's responsibilities include observation and density testing of mass grading operations, engineered fills, overexcavation, keyways, benching, and drainage installations, utility excavation and backfill, roadway grading and paving, and concrete sampling and testing. Mr. Zarate's vast project experience includes inspection and testing associated with shallow and deep foundation excavation, landslide repairs, basement and pool excavations, soil nails and helical anchors, storm retention and dissipation systems, and subdrain installation. He has undergone the Asphalt Institute's paving inspection training course, earning the Paving Inspector Certificate, and is certified for Caltrans Test Methods 231, 375, 504, 518, 539, 540, 543, 556, and 557. He is a Grade I ACI Concrete Field Testing Technician, and a certified nuclear gauge operator. Mr. Zarate has been with Earth Systems since 2015.

AREAS OF EXPERTISE

- Inspection of general earthwork operations
- Inspection of keyway and bench construction for hillside grading
- Sampling of soils, sand, aggregate base and concrete/asphalt aggregates
- In-place density testing of soils and asphalt
- Inspection of hot mix asphalt paving operations
- Inspection of subdrain materials and construction
- Verification of geotextile/geogrid stabilization procedures
- Sampling and testing of reinforced concrete
- Inspection of concrete batching operations

PROJECT EXPERIENCE

- Downtown District Pavement Rehabilitation, Atascadero, CA
- City of Atascadero 2023, 2020 & 2019 Measure F-14 Pavement Rehabilitation, Atascadero, CA
- Golden Hill & Union Road Roundabout, Paso Robles, CA
- Tank Farm Roundabout, San Luis Obispo, CA
- Chorro Neighborhood Greenway Project, San Luis Obispo, CA
- 2023 Arterials Project, San Luis Obispo, CA
- South El Camino Real Resurfacing Project 2022, City of Atascadero, CA
- 2022 Arterial Digout & Overlays, Santa Maria, CA
- Santa Lucia Bridge Replacement, Atascadero, CA
- Via Avenue Bridge Replacement, Atascadero, CA
- County of San Luis Obispo, Tefft Street Offramp, Nipomo, CA
- Measure K-14 Pavement Rehabilitation Projects, Grover Beach, CA
- Shell Beach Streetscape Project, Pismo Beach, CA



Sydney Johnson

Project Manager



REGISTRATIONS AND CERTIFICATIONS
ACI Concrete Field Testing Technician,
Grade 1, No. 2076090

Caltrans Certified Tester, Caltrans Test
Methods 504, 518, 539, 540, 543, 556,
557

Certified by U.S. Department of
Transportation and International Air
Transport Association, Hazardous
Materials Regulations (49CFR 172
Subpart H), transportation of nuclear
gauges

U.S. Army Corps of Engineers –
Construction Quality Management for
Contractors

Certified Nuclear Gauge Operator

Asphalt Institute –
Paving Inspector Certification

EDUCATION

B.S., Earth Science, University of
California, San Diego

B.A., Political Science, University of
California, San Diego

EMAIL

sjohnson@earthsystems.com

Ms. Johnson is a project manager with Earth Systems' San Luis Obispo and Santa Maria offices. Specializing in pavement design and construction with emphasis on quality control and constructability, she manages field operations, assists in design and recommendations for pavement and bridge projects and performs field inspection during grading and paving operations. Her areas of expertise include pavement rehabilitation including overlays and use of recycled materials, asphalt recycling and reclamation, and stabilization of poor subgrade conditions. She is intimately familiar with Caltrans Standard Specifications and reporting procedures, as well as requirements for projects involving Federal funding. Ms. Johnson brings several years of construction experience to her position and has been the project manager for many pavement, and heavy civil construction projects constructed in San Luis Obispo County. She interfaces with project owners, contractors and governing jurisdictions; reviews project plans specifications to develop estimates for construction services; and manages project documentation, budgets, and schedules. Ms. Johnson has a Bachelor of Science degree in Earth Science and a Bachelor of Arts degree in Political Science from the University of California, San Diego.

AREAS OF EXPERTISE

- Coordination and oversight of geotechnical investigations
- Pavement rehabilitation, including overlays and use of recycled materials
- Asphalt recycling and reclaiming processes
- Stabilization of poor subgrade conditions
- Sampling and testing of soil and asphalt
- Sampling and testing of Portland cement concrete
- Expertise and experience with Caltrans Standard Specifications
- Field testing and geotechnical observation of mass grading operations
- Hot mix asphalt paving inspection

PROJECT EXPERIENCE

- Downtown District Pavement Rehabilitation, Atascadero, CA
- City of Atascadero 2023, 2020 & 2019 Measure F-14 Pavement Rehabilitation, Atascadero, CA
- Golden Hill & Union Road Roundabout, Paso Robles, CA
- Tank Farm Roundabout, San Luis Obispo, CA
- Chorro Neighborhood Greenway Project, San Luis Obispo, CA
- 2023 Arterials Project, San Luis Obispo, CA
- County of San Luis Obispo, Tefft Street Offramp, Nipomo, CA
- Measure K-14 Pavement Rehabilitation Projects, Grover Beach, CA
- Shell Beach Streetscape Project, Pismo Beach, CA
- South El Camino Real Resurfacing Project 2022, Atascadero, CA
- Traffic Way and Ardilla Avenue, City of Atascadero, CA
- Union Road Rehabilitation, Paso Robles, CA



2024 PAVEMENT REHABILITATION PROJECT

CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES

CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES

Client: City of Morro Bay

Project: CM for the 2024 Pavement Rehabilitation Project (2024_ST04)

Date: 08/9/2024

		Filippin Engineering					Earth Systems		Total		
		Paul Henderson Principal & PM	Tucker Ruble CM	Steve Bucknum Senior Inspector	Backup Senior Inspector	Cheril Magallanes Office Engineer	FE Labor Total	FE Expenses	Sub Contract Earth Systems	Sub & Expense Markup 10%	Total
Date: 08/9/2024		\$ 240	\$ 195	\$ 180	\$ 180	\$ 135					
1 Pre-Construction Phase											
1.1	Project Management	10	8			4	\$ 4,500			\$ -	\$ 4,500
1.2	Project Familiarization		6	6			\$ 2,250			\$ -	\$ 2,250
1.3	Pre-Construction Meeting		4	4			\$ 1,500			\$ -	\$ 1,500
Task 1 Total Hours		10	18	10	0	4	\$ 8,250	\$ -	\$ -	\$ -	\$ 8,250
2 Construction Phase											
2.1	Project Management	36					\$ 8,640			\$ -	\$ 8,640
2.2	Construction Management & Inspection	72	360	720		36	\$ 221,940			\$ -	\$ 221,940
2.3	Laboratory Testing / Construction QA						\$ -	\$ 23,985	\$ 2,399	\$ 26,384	\$ 26,384
Task 2 Total Hours		108	360	720	0	36	\$ 230,580	\$ -	\$ 23,985	\$ 2,399	\$ 256,964
3 Post-Construction Phase											
3.1	Project Management	16					\$ 3,840			\$ -	\$ 3,840
3.2	Closeout & Final Contract Administration		16	8		2	\$ 4,830			\$ -	\$ 4,830
3.3	Final Report	1	12	4		2	\$ 3,570			\$ -	\$ 3,570
Task 3 Total Hours		17	28	12	0	4	\$ 12,240	\$ -	\$ -	\$ -	\$ 12,240
PROJECT TOTAL		135	406	742	0	44	\$ 251,070	\$ -	\$ 23,985	\$ 2,399	\$ 277,454

Notes:

- We have assumed the following durations for the project:
 - 2 Weeks duration for Pre-Construction Phase
 - 18 Weeks duration for Construction Phase On-Site (90 Contract Working Days)
 - 2 Weeks duration for Post-Construction
- We have allowed for the following effort during the construction phase of the project:
 - 40 hrs/wk for Steve Bucknum, Construction Inspector, onsite full-time
 - 20 hrs/wk for Tucker Ruble, Construction Manager
 - 2 hrs/wk for Cheril Magallanes, Office Engineer, to support Procure Administration, document control and Labor Compliance.
- We have assumed 8 hours shifts, no weekends and no overtime
- For FE's prevailing wage assignments, overtime rates for construction inspection = 1.3 X regular rate. Double time rates = 1.5 X regular rates. Overtime will not be performed unless authorized in writing by the client.
- FE has allowed for 90 working days for CM and Inspection. If the inclusion of Alt Bids means the contract working days are extended FE will coordinate with the City on budget increase to be onsite for longer, if needed.
- Additional cost for Materials Testing are estimated as follows:

Alt Bid 1	\$ 6,626.57	+10% markup
Alt Bid 2	\$ 6,626.57	+10% markup
Alt Bid 3	\$ 11,323.39	+10% markup
- Contingency allowance for 2nd Inspector on days where HMA placement exceeds 1,000 tons is \$7,200, based on \$180/hr for a total of 40 hours
- Total for Additional Testing for Alt Bids and 2nd Inspector Contingency = \$34,324

		Contingencies
Additional Testing For Alt Bids		\$ 27,034.18
2nd Inspector for days of over 1000 ton of HMA Placement		\$ 7,200
Total Contingencies		\$ 34,234





AGENDA NO: 7.h

MEETING DATE: August 27, 2024

Staff Report

TO: Honorable Mayor and City Council

DATE: August 20, 2024

FROM: Lori Thompson, Harbor Business Coordinator

SUBJECT: Adoption of Resolution No. 57-24 Approving Amendment #1 to the Master Lease Agreement with WBAM LLC, Lease Site 30W-33W, Bayfront Marina located at 201 Main Street.

RECOMMENDED ACTION

Adopt Resolution No. 57-24, approving Amendment 1 to the Master Lease Agreement.

ALTERNATIVES

The City Council can elect to not approve the amendment as proposed and/or can propose changes, and direct staff accordingly.

FISCAL IMPACT

None at this time.

BACKGROUND

The Bayfront Marina lease site is one of the City's water-only leases on the southern waterfront, where the adjacent property is private under fee-simple ownership. Craig and Kathy Shaffer, WBAM, LLC (Tenant) purchased Bayfront Marina in early 2022 and were assigned the Master Lease Agreement.

In the past few months, the City and Tenant have been in negotiations to correct, clarify and amend requirements within the current lease agreement.

DISCUSSION

The following are recommended corrective sections to the lease agreement that are addressed in Amendment 1:

SECTION 2.03 D. Calculation of New Minimum Rent-

During a recent CPI adjustment in 2023, staff recognized the standard calculation language was missing from the Master Lease Agreement for lease site 30W-33W in calculating the annual rent increase which is identified in the Harbor Lease Management Policy Master Lease template. The standard language is recommended to be added to the amendment.

SECTION 2.04 A. Percentage Rent-

The lease's eastern boundary abuts the Tenant's private property, where a few of the tenant's

Prepared By: LS

Dept Review: DM

City Manager Review: YK

City Attorney Review: CFN

buildings are encroaching onto the lease site. It was determined the area of all the buildings are 3,314 square feet. 600 square feet of those buildings are encroaching on the State Tidelands lease site. Therefor staff proposed Tenant pay the recommended 5% rent on the real estate rental fees multiplied by 18% to cover the 600 feet of encroachment.

SECTION 13.03 TENANT Shall Commit to Clean Marinas Program Certification-

As in the Morro Bay Yacht Club and Morro Bay Marina leases the previous leaseholder agreed to obtaining Clean Marina certification. At that time the deadline committing to the program was 2 years from the date of initiation of the lease. The deadline was not met before the Tenant was assigned the lease. Staff has acknowledged Tenant is in the process to become compliant and has agreed to extend the deadline to December 31, 2025 to ensure compliance with the lease.

SECTION 13.05-

By adding this new section to the lease agreement, Tenant agrees to comply with a City of Morro Bay Fire Safety inspection, and to affirm uses allowed under the lease as well as the State policy of no residential use on Tidelands Trust property.

CONCLUSION

Staff recommends the City Council adopt Resolution No. 57-24, approving Amendment 1 to the Master Lease Agreement.

ATTACHMENTS

1. Resolution No. 57-24
2. Proposed Amendment 1, Lease Site 30W-33W

RESOLUTION NO. 57-24

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING AMENDMENT #1 TO THE MASTER LEASE AGREEMENT FOR
LEASE SITE 30W-33W, BETWEEN THE CITY OF MORRO BAY AND WBAM, LLC.,
LOCATED AT 201 MAIN STREET**

**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, WBAM, LLC., a California limited liability company (Tenant) is the current master leaseholder at Lease Site 30W-33W; and

WHEREAS, the City and Tenant agree to amend the Master Lease to incorporate percentage rent for the privately owned buildings within the Tidelands Trust lease boundary, and to conform with the standard new minimum rent calculation method in the Harbor Lease Policy; and

WHEREAS, the City and Tenant agree to amend the Master Lease to provide for Clean Marinas Program certification, compliance with a Morro Bay Fire Department safety inspection, and to affirm uses allowed under the lease as well as the State policy of no residential use on Tidelands Trust property.

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

1. The attached Amendment #1 to the Master Lease Agreement with WBAM, LLC. for Lease Site 30W/33W is hereby approved.
2. The Mayor is hereby authorized to execute said Agreement.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 27^h day of August 2024 on the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

CARLA WIXOM, Mayor

ATTEST:

DANA SWANSON, City Clerk

**AMENDMENT #1 TO THE LEASE AGREEMENT FOR
LEASE SITE 30W-33W,
LOCATED AT 201 MAIN STREET**

This Amendment ("this Amendment #1") is deemed to have been made and entered into as of 1st day of July, 2024, by and among the City of Morro Bay, a municipal corporation of the State of California, hereinafter called "City," and WBAM, LLC., a California limited liability company, hereinafter called "Tenant." (Collectively, City and Tenant are sometimes referred to herein as the "Parties.")

WHEREAS, this Amendment #1 is to that certain Lease, which was signed on behalf of the Parties and is effective as of January 28, 2014, (the "Master Lease");

WHEREAS, the Master Lease for site 30W-33W was assigned to WBAM, LLC, a California limited liability company (hereinafter, referred to as "Assignee"); and

WHEREAS, the Parties agree to amend the Master Lease to add percentage rent to include the privately owned buildings in the Tidelands Trust lease boundary lines, as well as to amend the Master Lease to provide for a standard provision for calculation of new minimum rent; and

WHEREAS, the Parties agree to add language to the Master Lease concerning use of privately owned buildings in the Tidelands Trust lease boundary lines, and further provide for Clean Marinas Program certification and compliance with a Morro Bay Fire Department safety inspection.

NOW THEREFORE, Tenant and City agree, as follows: Tenant and City shall provide for the amendment of Lease as follows:

1. SECTION 2.03 D. Calculation of New Minimum Rent: Is hereby amended by adding a last sentence, thereto to read as follows:

The Base Index shall be adjusted upon each Calculation of new Minimum Rent as set out in this section so that the Base Index for CPI adjustment shall be the Consumer Price Index for January 1 of the year of the calculation of new Minimum Rent.

2. SECTION 2.04 A. Percentage Rent: Is hereby amended by replacing in its entirety the paragraph with the following language.

In addition to the Minimum Rent, TENANT agrees to pay to CITY at the time and in the manner hereinafter specified, as additional Rent for the use and occupancy of the Premises, a sum equal to the following for all TENANT'S Gross Sales as hereinafter defined: ten percent (10%) for vessel slip and tie-up fees and five percent (5%) of eighteen percent (18%) of the total income derived from the land based real estate/rental fees generated at the Master Lease for site 30W-33W, less the amount of the Minimum Rent paid pursuant to this Lease (the "Percentage Rent").

3. SECTION 13.03 TENANT Shall Commit to Clean Marinas Program Certification: Is hereby amended thereto to read as follows.

TENANT shall commit to certification under the Clean Marinas Program CleanMarina.org, or equivalent as determined by CITY, at TENANT's sole cost and expense by December 31, 2025.

4. SECTION 13.05: Is hereby added with the following language.

- 1. Tenant agrees to no residential use on their Tidelands Trust lease property and affirms that all uses of the Tidelands Trust lease property shall be as provided in section 3.01 including but not limited to common areas which are accessible to all subtenants.
- 2. Tenant will provide written confirmation of passage of a current safety inspection of their Tidelands Trust lease property to the City in conformance with a City of Morro Bay Fire Safety inspection no later than October 31, 2024.

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

6. The effective date of this Amendment # 1 shall be deemed to be date first noted above.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment #1 as of the date written above.

CITY OF MORRO BAY

WBAM, LLC
a California limited liability company

By: _____
Carla Wixom, Mayor

By: _____
Craig Shaffer, Managing Member

APPROVED AS TO FORM:

Chris F. Neumeyer, City Attorney

By: _____
Kathleen Shaffer, Managing Member

ATTEST:

Dana Swanson, City Clerk



AGENDA NO: 7.i

MEETING DATE: August 27, 2024

Staff Report

TO: Honorable Mayor and City Council

DATE: August 21, 2024

FROM: Yvonne Kimball, City Manager

SUBJECT: Central Coast Community Energy Proposed Amendment to Joint Powers Agreement

RECOMMENDED ACTION

Receive and file.

FISCAL IMPACT

None

BACKGROUND/DISCUSSION

The City of Morro Bay has been a member of Central Coast Community Energy (3CE) since 2018. 3CE is formed through a JPA for the stated purposes of a.) reducing greenhouse gas emissions related to the use of power, b.) providing electric power and other forms of energy to customers at affordable rates, c.) carrying out programs to facilitate electrifying the transportation, public infrastructure, and building sectors, d.) stimulating and sustaining the local economy by lowering electric generation charges and creating local jobs, and e.) promoting long-term electric rate stability and energy security and reliability for residents through local control of electric generation resources (JPA Recitals C., page 2).

Under the current structure, there are 19 members each on the Policy Board and the Operation Board. 3CE is considering reducing the number of members on both boards from 19 to 11. As a result, Morro Bay will likely lose our rotations on both boards which would have taken place January 2025 as we are sharing one seat with the City of San Luis Obispo (SLO). Out of the 7 cities in SLO County, Morro Bay is the only city that has not served on either board. Mayor Wixom wrote a letter to Mayor Stewart at the City SLO to express her support to allow more time for participation in the amendment.

The City Managers group met to discuss the proposed changes. All managers had concerns ranging from regional representation to individual representation. In summary, the managers believe more time would have been ideal to determine how to change the governing structures.

The amendment is slated for a formal vote at 3CE governing board meeting on September 19. Given Morro Bay is not one of the 19 voting members, it is important that we team up

Prepared By: YK

Dept Review: _____

City Manager Review: YK

City Attorney Review: _____

with other cities and county. Once the change is decided, additional agreements and implementation arrangements are anticipated.

ATTACHMENT(S)

1. August 16, 2024 letter from 3CE regarding proposed amendments to JPA
2. August 21, 2024 letter from Mayor Wixom to City of San Luis Obispo's Mayor Stewart
3. [Link](#) to 2020 3CE Joint Powers Agreement
4. [Link](#) to Amended Agreement between the City of San Luis Obispo and City of Morro Bay regarding the shared 3CE Policy Board and Operations Board seats



RECEIVED
City of Morro Bay

AUG 20, 2024

Administration

Marina S. Pantchenko
Deputy General Counsel

August 16, 2024

City of Morro Bay City Hall
Attn: Office of the City Clerk
595 Harbor Street
Morro Bay, CA 93442

Dear Member Agency:

Please accept this letter as notice that on September 19, 2024, at 9:00AM, the Policy Board will convene to consider a potential amendment to the existing Joint Exercise of Powers Agreement (hereinafter "JPA").

On August 14, 2024, the Operations Board met to consider forwarding a recommendation of its Ad Hoc Committee to the Policy Board, to modify board composition and seat allocations for both the Operations and Policy Boards. After discussion and consideration, the Operations Board voted to move forward the following recommendation:

Reduce the size of the Operations and Policy Boards from nineteen (19) to eleven (11) seated directors each, and restructure the seat allocation as follows:

- 1) Four (4) permanent non-rotating seats allocated as follows: one per County to Santa Barbara County, San Luis Obispo County, Monterey County, and Santa Cruz County.
- 2) Any large city jurisdiction with a population of greater than 100,000 (currently, Santa Maria and Salinas) allocated each a seat.
- 3) Four (4) shared seats allocated as follows: one per County as selected by agreement among the parties or through the City Selection Committee in Santa Barbara County, San Luis Obispo County, Monterey County, and Santa Cruz County respectively. Such seats shall have a term of two years and be appointed by agreement of the parties or through the City Selection Committee within the appropriate County.

- 4) One shared seat allocated to the County of San Benito, Hollister, and San Juan Bautista. The seat shall rotate every two years as determined by an agreement of the parties.

These proposed changes anticipate an effective date of February 1, 2025, and may require substantial amendments to Article 3, Sections 3.1.4 and 3.1.5 as follows below and may be subject to additional modifications made by the Policy Board at its publicly noticed meeting on September 19, 2024.

Section 3.1.4 ~~The Policy and Operations Boards shall each be governed by eleven (11) voting members. These Board seats shall be allocated as follows. Board seats will be allocated under the following formulas. Policy and Operations Board seats for these jurisdictions that pass a CCA ordinance by February 28, 2017 ("Initial Participants") will be allocated on a one jurisdiction, one seat basis until such time as the number of member jurisdictions exceeds eleven. The Counties of Santa Cruz, Monterey, San Luis Obispo, and Santa Barbara shall each be allocated one (1) permanent non-rotating seat. An additional four seats shall be allocated by agreement among the parties or City Selection Committee in the Counties of Santa Cruz, Monterey, San Luis Obispo, and Santa Barbara. Cities with populations more than 100,000 people, currently the Cities of Salinas and Santa Maria, shall each be allocated one seat. The County of San Benito shall be allocated one (1) seat to be shared with the Cities of Hollister and San Juan Bautista as follows. The seat shall rotate every two years as determined by an agreement of the parties. Once the JPA reaches more than eleven member agencies, the Policy and Operations Boards' composition shall shift to a regional allocation based on population size. This allocation shall be one seat for each jurisdiction with a population of 50,000 and above, and shared seats for jurisdictions with populations below 50,000 allocated on a sub-regional basis, as set forth in Exhibit C. Notwithstanding the above, the County of San Benito shall be allotted one seat.~~

Section 3.1.5 Shared board seats, as set forth in Exhibit C, Regional Allocation shall have a term of two years and will be determined either by agreement among the parties sharing the seat or through City Selection Committee in the respective County. Following appointment, either by agreement or by the City Selection Committee, Directors may be reappointed and serve multiple terms. In the event the addition of new parties requires that an established board seat transition to a shared seat or that a shared seat expands to include new parties, the sitting Director will automatically be the first representative for that shared seat to ensure continuity and maintain experience.

Prior to the September 19, 2024 Policy Board meeting, a special meeting of the Policy Board may be called to conduct a study session regarding these proposed changes. We encourage all member jurisdictions to attend and participate in the discussion as provided for in the Operating Rules and Regulations.

This notice is provided consistent with Article 7, Section 7.4 of the Sixth Amended JPA. If you have any questions, please contact:

Heather Vowell,
Board Clerk
hvowell@3ce.org

Thank you,

Marina S. Pantchenko

Deputy General Counsel
MPantchenko@3ce.org

August 21, 2024

Via Email

Mayor Erica Stewart
City of San Luis Obispo

RE: Central Coast Community Energy (3CE) Joint Powers Agreement proposed amendments

Dear Mayor Stewart,

Thank you for our recent discussion regarding the proposed changes to 3CE's Joint Powers Agreement. The amendment under consideration seeks to reduce the number of directors on the Operations and Policy Boards from 19 to 11. This proposal is scheduled for a formal vote by 3CE's Policy Board on September 19. I understand that the City of San Luis Obispo City Council will be holding a special meeting on this issue on August 21, 2024, and I want to express my full support for your position, which advocates for broader participation from all member cities in this amendment process.

As we discussed, this proposed amendment was developed without sufficient input from all member cities. My city only received an official notification from 3CE about this potential change yesterday, with the vote just a few weeks away. Both my City Manager and I were made aware of this matter only a few days ago. The lack of outreach by 3CE is disappointing and concerning.

It's my understanding that other city agencies share similar concerns. At last week's 3CE Operations Board meeting, all three board directors from San Luis Obispo County—Hill (City of SLO), Downing (City of Arroyo Grande), and Campbell (County of SLO)—voted against moving this amendment forward. The City Managers group will also be discussing this matter separately, and I hope that the collective voices of our sister cities and county leadership will have an impact.

This proposed change has a particularly significant and immediate impact on the City of Morro Bay. Under the current structure and applicable MOU, the City of San Luis Obispo and the City of Morro Bay each share one seat on both boards, with San Luis Obispo representing both cities since 2018. Morro Bay was scheduled to take over these seats beginning in 2025. However, if the amendment passes in September, it could potentially eliminate Morro Bay's representation on both boards. This prospect is deeply troubling to me.

In recent years, Morro Bay has emerged as a hub for renewable energy projects, including the largest battery storage project application and the Biden-Harris administration's Morro Bay 300 offshore wind area, located off our coast. As a small city with limited resources, 3CE could be a critical partner as we navigate the challenges of these projects. I was looking forward to the

opportunity for my city to be closely involved with 3CE through direct representation on its boards. The proposed change, however, is an unwelcome surprise that may undermine Morro Bay's ability to become a leader in energy issues.

While I recognize the potential benefits of smaller boards and am open to discussion, Morro Bay, along with several other cities, has not been given a fair opportunity to participate effectively in the deliberation process. Our cities joined the Central Coast Community Energy (3CE) for the common purpose of collectively studying, promoting, developing, conducting, operating, and managing energy programs. It is mission-critical that all members are involved in this important discussion.

I reiterate my support for you, as well as for other city and county elected officials and city managers, in urging 3CE to postpone the vote on this amendment. This postponement would allow all member cities, regardless of their size, the proper time to participate in the discussion.

Sincerely,

Carla Wixom

[Carla Wixom \(Aug 21, 2024 13:41 PDT\)](#)

Carla Wixom

Mayor of Morro Bay







2024.08.21 Mayor Wixom letter to Mayor Stewart re Proposed 3CE Policy Amendments

Final Audit Report

2024-08-21

Created:	2024-08-21
By:	Dana Swanson (dswanson@morrobayca.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAYhKt5dBp41o-q3vQM_WaMZXCMRkI3AtU

"2024.08.21 Mayor Wixom letter to Mayor Stewart re Proposed 3 CE Policy Amendments" History

-  Document created by Dana Swanson (dswanson@morrobayca.gov)
2024-08-21 - 8:40:00 PM GMT
-  Document emailed to cwixom@morrobayca.gov for signature
2024-08-21 - 8:40:18 PM GMT
-  Email viewed by cwixom@morrobayca.gov
2024-08-21 - 8:40:34 PM GMT
-  Signer cwixom@morrobayca.gov entered name at signing as Carla Wixom
2024-08-21 - 8:41:29 PM GMT
-  Document e-signed by Carla Wixom (cwixom@morrobayca.gov)
Signature Date: 2024-08-21 - 8:41:31 PM GMT - Time Source: server
-  Agreement completed.
2024-08-21 - 8:41:31 PM GMT



AGENDA NO: 9.a

MEETING DATE: August 27, 2024

Staff Report

TO: Honorable Mayor and City Council

DATE: August 27, 2024

FROM: Cindy Cecil, SE/CE – City Engineer
Austin Della, PE – Senior Civil Engineer

SUBJECT: Award of Contract to Souza Construction for the 2024 Pavement Rehabilitation Project

RECOMMENDED ACTION

Award a contract to Souza Construction (Souza), for the 2024 Pavement Rehabilitation Project for a total of \$4,383,595.98, which includes a 10% contingency budget executable by the City Manager. The City Attorneys’ Office has reviewed the contract with Souza (Attachment 1) as to form, such contract subject to final approval as to form by the City Attorney prior to full execution.

ALTERNATIVE

The City Council may alternatively reject the bid and provide other direction to staff.

FISCAL IMPACT

The recommended action falls within existing project budget and as such, there is no request for additional project budget at this time. The City Council allocated, over the last 3 FY budgets, a total of \$5,457,845.00 for a pavement management project made up from the following FY Budgets:

FY Allocation	Amount
22-23	\$1,737,846.00
23-24	\$2,100,000.00
24-25	\$1,619,999.00
Total	\$5,457,845.00

The remaining available funding from these prior year allocations is \$5,037,669.

The low bid for construction received by the City was \$3,023,108.70. for the base bid. The project includes four bid alternates. The low bidders base and bid alternates are outlined in the table below:

Bid	Amount
Base	\$3,023,108.70
Bid Alternate 1	\$137,374.70
Bid Alternate 2	\$358,532.60
Bid Alternate 3	\$200,584.80
Bid Alternate 4	\$265,486.45
Total Base + Alternates	\$3,985,087.25

Prepared By: <u>AD</u>	Dept Review: <u>GK</u>
City Manager Review: <u>YK</u>	City Attorney Review: <u>LNL</u>

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With a recommended 10% contingency of \$398,508.50, the total construction budget amount is \$4,383,595.98. The total budget for the 2024 Pavement Rehabilitation Project is as follows:

Budget Category	Amount
Design	\$164,130.00
Construction Management & Materials Testing + 10% Contingency	\$334,936.80
Construction Bid + Alternates	\$3,985,087.25
Construction Contingency	\$398,508.50
Total Recommended Project Budget	\$4,882,662.78

Available Funding	\$5,037,669.00
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BACKGROUND

In August of 2023, the City completed its FY 21/22 Annual Pavement Management Program Project, which included digouts throughout the City including Main Street and South Bay boulevard. A slurry project was slated for the FY 22/23 Annual Pavement Management Program Project, but due to the delay of the FY21/22 Annual Pavement Management Program project, the Slurry project was delayed.

Staff has consolidated the FY 22/23, FY 23/24, and FY 24/25 allocated budgets to complete the 2024 Pavement Rehabilitation Project. This project will consist of Slurry Seal, Cape Seal, and digouts, in order to cost-effectively manage the City's pavement infrastructure.

DISCUSSION

Engineering plans and specifications were created and a notice to bidders posted with a public bid opening conducted on Thursday, August 15, 2024, at City Hall. A report of the bids received, summarizing the detailed proposal of the bidder, can be found in Attachment 1. The City received 3 bids. The lowest bid received is responsive to the City's Invitation to Bid, and the bidder is well regarded as having successfully completed similar public works projects in the recent past.

Project Data

Low Bid:	\$3,023,108.70
High Bid:	\$3,708,186.40
No. Bids Received:	3
Engineer's Estimate:	\$4,641,309.06
Bid Opening:	2:00 p.m. on 8/15/2024
Contract Time Allowed:	90 WORKING DAYS

The work shall include, but is not limited to, providing all tools, materials, labor, equipment, and incidentals necessary for the successful rehabilitation of specified roads utilizing a combination of treatments such as slurry seal, cape seal, localized dig-outs, and full rehabilitation techniques according to the prepared plans and specifications. All utilities not replaced will be protected in place including manholes and returned to their prior condition. The work will also include any required traffic control, signage, public notifications, stormwater control, formwork, and all other work necessary to render the infrastructure/facility complete and operational, as shown on the Project Plans and Specifications.

IMPACT TO THE COMMUNITY

The work is being performed throughout the City. Motorists, cyclists, and the walking public may experience inconveniences during the project's construction due to temporary closures of streets, traffic lanes, the presence of the construction equipment, and traffic control efforts. Project rollout will include public notification and temporary "No Parking" signs as applicable. These efforts are intended to allow residents to prepare for the project impacts by adjusting their routes of travel and/or schedules during construction work. The community should note that both the Slurry and Cape seal operations will keep some segments of roads closed for the whole day.

ATTACHMENTS

1. Form of Agreement for Services

**CITY OF MORRO BAY
STATE OF CALIFORNIA
CONTRACT FOR**

**MB2024-ST04 – PAVEMENT REHABILITATION PROJECT
IN THE CITY OF MORRO BAY, CALIFORNIA**

THIS AGREEMENT (“this Contract” or “this Agreement”) is made and entered into in triplicate this 27th day of August, 2024, by and among the City of Morro Bay, a municipal corporation, hereinafter referred to as “City” and Souza Engineering Contracting, Inc., a California stock corporation, dba Souza Construction, hereinafter referred to as “Contractor”. City and Contractor may be referred to, sometimes individually or collectively, as “party” or “parties.” In consideration of the mutual covenants, conditions, promises, and agreements herein contained, City and Contractor hereby mutually covenant and agree as follows:

ARTICLE 1 – SCOPE OF WORK:

Each work order issued pursuant to this Agreement and each amendment, as provided herein, shall be based on the unit prices included in the Bid Documents upon which this Agreement was awarded. For all work provided pursuant to this Agreement and every amendment provided for herein (the “Work”), Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor and materials necessary to perform and complete in a workmanlike manner, and in strict accordance with the Contract Documents, (defined in Article 6 herein) the Work of: **PAVEMENT REHABILITATION PROJECT: MB2024-ST04**, (“Project”) in the City of Morro Bay, State of California, as called for in the drawings and specifications adopted by City, which said drawings and specifications are identified by the signature of the parties of this Agreement, and such documents incorporated into this Agreement and made part hereof. It is understood and agreed the tools, equipment, apparatus, facilities, labor, and materials shall be furnished, and the Work performed and completed as required in said Contract Documents, and subject to the approval of City and duly authorized representatives.

ARTICLE 2 - TIME OF COMPLETION:

- A. The Work, as defined in the specifications, per the following: General work description: The work shall include, but is not limited to, providing all tools, materials, labor, equipment, and incidentals necessary for the successful rehabilitation of specified roads utilizing a combination of treatments such as slurry seal, cape seal, localized digouts, and full rehabilitation techniques according to the plans and specifications provided. Tasks include thorough surface preparation, application of appropriate treatments using approved materials and methods, and ensuring compliance with all quality and safety standards throughout the project duration. All utilities not called out to be replaced will be protected in place. Manholes and other utility rings will be protected in place and adjusted to grade if necessary, depending on the rehabilitation treatment. The work will also include any required traffic control, signage, public notifications, stormwater control, shoring, formwork, and all other work necessary to render the infrastructure/facility complete and operational, as shown on the Project Plans and Specifications, as specified herein, and in accordance with the latest editions of City of Morro Bay Standard Specifications and Drawings, Caltrans Standard Specifications, and Greenbook with whichever is more restrictive applying if a conflict arises.

- B. Once the Notice to Proceed has been issued, the Contractor shall have NINETY (90) working days to complete their installation. The Contractor shall pay to the City the sum of Five Hundred Dollars (\$500.00), for each and every calendar day, or portion thereof, delay in finishing that installation Work in excess of the above-required completion time. This Article 2 both does not exclude

recovery of damages under provisions of the Contract Documents and is also expressly in addition to the City's ability to seek other damages.

- C. City and Contractor recognize time is of the essence, and the City will suffer losses if the Work is not completed in the time specified in Subparagraphs A and B above. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by City if the Work is not completed on time. Accordingly, instead of requiring any such proof, City and Contractor agree, as liquidated damages for delay (but not as a penalty) Contractor shall pay City amounts for each day, or portion thereof, that expires after the time and amounts specified in Subparagraphs 2.A and 2B above.

ARTICLE 3 - CONTRACT PRICE:

The Work shall be compensated at the maximum "Contract Price" of: **THREE MILLION, NINE HUNDRED EIGHTY-FIVE THOUSAND, EIGHTY-SEVEN DOLLARS, TWENTY-FIVE CENTS (\$3,985,087.25).**

The maximum Contract Price includes the following:

- Base Bid: THREE MILLION, TWENTY-THREE THOUSAND, ONE HUNDRED EIGHT DOLLARS, SEVENTY CENTS (\$3,023,108.70).
- Bid Alternate 1: ONE HUNDRED THIRTY-SEVEN THOUSAND, THREE HUNDRED SEVENTY-FOUR DOLLARS, SEVENTY CENTS (\$137,374.70).
- Bid Alternate 2: THREE HUNDRED FIFTY-EIGHT THOUSAND, FIVE HUNDRED THIRTY-TWO DOLLARS, SIXTY CENTS (\$358,532.60).
- Bid Alternate 3: TWO HUNDRED THOUSAND, FIVE HUNDRED EIGHT-FOUR DOLLARS, EIGHTY CENTS (\$200,584.80).
- Bid Alternate 4: TWO HUNDRED SIXTY-FIVE THOUSAND, FOUR HUNDRED EIGHTY-SIX, FORTY-FIVE CENTS (\$265,486.45).

The City reserves the right to award any number or combination of the Bid Alternates or none of the Bid Alternates. Award of Bid Alternates to be made in writing by the City.

Any increase in Contract Price of up-to the amount of contingency approved by the City Council at the time the Project is awarded to Contractor, if any, taken either separately or in the aggregate, or any increase in the time to perform of up to one hundred eighty (180) days and which are not detrimental to the Work or to the interest of the City, may be approved by the City's Director of Public Works or City Engineer, or either of their designees. Any greater increases, taken either separately or in the aggregate, must be approved by the City Council.

ARTICLE 4 – PAYMENT PROCEDURES:

Applications for Payment will be processed by the City as provided below.

- A. Payment(s) will be processed following the satisfactory completion of scheduled work and in the next regularly scheduled check run following submittal of invoice(s). The acceptance by Contractor of final payment shall be and shall operate as a full and unconditional release to the City of all claims from Contractor, and all liability from City to Contractor, for all things done or furnished in connection with the Work and for every act and neglect of City and others relating to or arising out of the Work. No payment, however, final or otherwise, shall operate to release Contractor or sureties from any obligations under this Contract or the Performance and Payment Bond.

- B. The amount of retention on the Project shall be five percent (5%) of the Work completed to date including stored materials, if any.

ARTICLE 5 – CONTRACTOR’S REPRESENTATIONS:

In order to induce City to enter into this Agreement the Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."
- E. Contractor has considered the information known to Contractor; information commonly known to Contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor’s safety precautions and programs.
- F. Based on the information and observations referred to in this Article 5, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Work Time frames set forth herein and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of Work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 6 – CONTRACT DOCUMENTS:

This Contract shall consist of the following identified documents herein referred to as the Contract Documents: (A) the Invitation to Bidders, Instructions for Bidders, Bid Form, Supplements to Bid Form, Project Bid and proposals(s) from Contractor (collectively the “Bid Documents”) and (B) this Agreement, Bond Requirements and Bond Forms, Substitution of Securities, Guarantees, Insurance and Indemnification Requirements, City Standard Specifications, and attached supplemental information, Drawings, and any Addenda, for the Project, as those documents exist on the date of the first signature to this Contract. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though it were included herein; if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party, the Agreement shall forthwith be physically amended to make such insertion or correction. There are no other Contract Documents except those listed above. This Contract shall include all labor, materials, equipment, transportation, and services necessary for the proper execution of the Work. This Agreement and the Contract Documents may only be amended, modified, or supplemented in writing mutually executed by the parties. The Contract Documents are incorporated into this Agreement and made part hereof. In the event of any conflict between the terms of the Contract Documents and this Agreement, the terms of this Agreement shall govern.

ARTICLE 7 – LAW AND VENUE:

This Agreement has been executed and delivered in the County of San Luis Obispo, State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. The duties and obligations of the parties created hereunder are performable in the City of Morro Bay and as such the County shall be the venue for any action of proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

ARTICLE 8 – CONFLICTS OF INTERESTS:

No official of City who is authorized on behalf of City to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction, or material supply contract or any subcontract in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part thereof. No officer, employee, architect, attorney, engineer, or inspector of or for City who is authorized on behalf of City to exercise any executive, supervisory or other similar function in connection with the construction of the Project shall become directly or indirectly interested personally in this Contract or in any part thereof. Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Contractor’s performance of services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

ARTICLE 9 – ASSIGNMENT:

No assignment by a party hereto of any rights under or interests in this Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

ARTICLE 10 – SUCCESSORS:

City and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

ARTICLE 11 – SEVERABILITY:

Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon City and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

ARTICLE 12 – CONFLICTS:

In the event of a conflict between the Contract Documents and this Agreement, the terms and conditions of this Agreement shall control.

ARTICLE 13 – BONDS:

- A. PERFORMANCE BOND: Pursuant to application of requirements of Section 20129 of the California Public Contract Code to this Agreement, the successful Bidder shall, within ten (10) working days after award of this Contract simultaneously with the execution and delivery of this Agreement, execute a Faithful Performance Bond in an amount equal to one hundred percent (100%) of the Contract Price, secured from a surety company admitted in the State of California and satisfactory to City. The Bond shall be issued on the Performance Bond form contained in these Contract Documents.
- B. PAYMENT BOND: Pursuant to Sections 9550 through 9560, inclusive, of the California Civil Code, the successful bidder shall, within eight (8) working days after award of this Contract exceeding \$25,000, simultaneously with the execution and delivery of the Agreement, execute a Payment Bond in the amount equal to 100% of the Contract Price, secured from a surety company admitted in the State of California and satisfactory to City. The Bond shall be issued on the Payment Bond form contained in these Contract Documents.

ARTICLE 14 - SUBSTITUTIONS OF SECURITIES FOR RETENTION AMOUNTS:

Substitution of certain securities for retention amounts are allowed under the Public Contract Code at the option of the Contractor. The Contractor is required to formally request the substitution and to conform to the specific provisions of Public Contract Code section 22300.

- A. Acceptable Securities: Whenever retention of monies is authorized to ensure performance of Contract conditions, the Contractor shall be permitted to substitute securities for the amount withheld in accordance with Public Contract Code section 22300. Securities eligible for deposit under this procedure shall consist of bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, securities listed in Government Code section 16430, or any other security mutually agreed to by the Contractor and the public agency. The Contractor shall be the beneficiary of the City of any securities substituted for monies withheld and shall receive any interest thereon.
- B. Value of Securities: The value of securities being deposited shall be based upon market value as of the date of deposit and not necessarily on face value of the securities. Market value shall be

determined by the City Public Works Director. If deposit is made into an escrow, escrow instructions must clearly state, in addition to the items mentioned in, that the escrow agent must convert the securities to cash in whole or in part upon a unilateral written demand for such conversion by the City Manager; and further, that any amount demanded by City shall be paid to City upon unilateral written demand for payment. Escrow instructions used must be substantially similar to the form set forth in Public Contract Code section 22300. City will only make such demand for conversion in payment when the conditions of the Contract would have warranted an expenditure by City of a cash retention expenditure without any securities substitution. All escrow expenses shall be paid by Contractor.

- C. Release of Securities: Securities deposited hereunder shall be released back to Contractor when the City Manager has certified in writing to the escrow holder that the Project has been satisfactorily completed. The recording of Notice of Completion does not constitute such certification. All retention times called for in these Contract Documents must have passed, including the time after recording of Notice of Completion, before City will certify to satisfactory completion of the Contract.

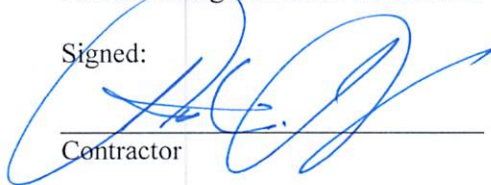
ARTICLE 15 – GUARANTEES AND WARRANTIES:

- A. GUARANTEE FOR TOTAL WORK: Prior to acceptance of the Work by City, the Contractor shall submit a guarantee in the form of a written warranty on Contractor’s own letterhead as follows:

“WARRANTY FOR PAVEMENT REHABILITATION PROJECT: MB2024-ST04: This Work has been constructed in accordance with the Contract Documents, and the Work as installed will fulfill the requirements of this warranty, and any other warranty therefor, included in the Contract Documents. We agree to repair or replace any and all of our Work together with any other adjacent work which may be displaced by so doing, that prove to be defective in its workmanship or material for the period of one (1) year (except when otherwise required in this Contract to be for a longer period) from date of acceptance of the above mentioned structure by City, ordinary wear and tear and unusual abuse or neglect excepted. Said date of acceptance shall be the date of acceptance and filing of the Notice of Completion by the City Council.

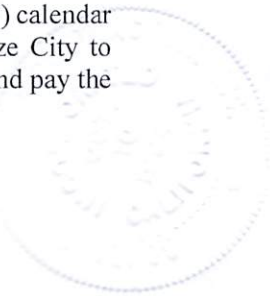
In the event of our failure to comply with the above-mentioned conditions within seven (7) calendar days after being notified in writing, we collectively or separately, do hereby authorize City to proceed to have said defects repaired and made good at our expense and we will honor and pay the cost and charges therefor on demand.”

Signed:



Contractor

479476
License Number



- B. Contractor warrants all Work under this Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Contractor shall within seven (7) calendar days after being

notified in writing by the City of any defect in the Work or non-conformance of the Work to the Agreement, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act as soon as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair, remove and/or replace any portions of the Work (or Work of other contractors or subcontractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective work. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any Work damaged by such Work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

C. ADDITIONAL GUARANTEES: Additional Guarantees shall be provided as required in the technical sections of the Contract Documents.

ARTICLE 16 – INSURANCE:

The parties expressly agree the indemnification and insurance clauses in this Contract are an integral part of the performance exchanged in this Contract. The compensation stated in this Contract includes compensation for the risks transferred to Contractor by the indemnification and insurance clauses.

Attention is invited to the provisions of the Insurance Code of the State of California with reference to the writing of insurance policies and bonds covering risks located in this state, and the premiums and commissions thereon. Contractor shall obtain, and maintain, at his own expense, all the insurance required by this section. The insurance requirements must be met within the time period allowed for Contract execution as defined in the 00 41 13 BID FORM herein.

Required insurance forms are attached as Appendix "A" to these Specifications.

The Notice to Proceed with the Work under this Contract will not be issued, and Contractor shall not commence Work, until such insurance has been approved by City. Contractor shall not allow any subcontractor to commence Work on his subcontract until all similar insurance required for the subcontractor has been obtained. Such insurance shall be maintained in full force and effect at all times during the prosecution of the Work and until the final completion and acceptance thereof.

A. General Requirements: The following requirements apply to all insurance to be provided by Contractor:

1. A Certificate of Insurance and all required insurance endorsements and documents shall be furnished to City along with Contract Documents within three (3) days of the receipt of the Notice of Award.
2. Certificates and policies shall state the policies not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to City, except if cancelation is for non-payment and then notice shall be ten (10) days.
3. Approval of the insurance by City shall not relieve or decrease the extent to which the Contractor may be held responsible for payment of damages resulting from Contractor's services or operations pursuant to this Contract.

B. Commercial General Liability (CGL):

1. Contractor shall maintain in full force and effect, for the period covered by this Contract, Commercial General Liability insurance with the following coverages.
 - a. Personal Injury and Bodily Injury, including death resulting therefrom.
 - b. Property Damage.
2. The amount of insurance shall not be less than the following: single limit coverage applying to bodily and personal injury, including death resulting therefrom and property damage coverage in an amount not less than \$2,000,000 per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.
3. The following endorsements must be provided in the policy:
 - a. If the insurance policy covers an "accident" basis, it must be changed to "occurrence".
 - b. The policy must cover personal injury as well as bodily injury.
 - c. Blanket contractual liability must be afforded and the policy must be afforded and the policy must contain a cross liability or severability of interest endorsement.
4. The City of Morro Bay, its officials, officers, employees and agents shall be named as additional insurer under the policy using standard ISO endorsement No. CG 2010. Contractor also agrees to require all subcontracting to do likewise. The policy shall provide that the insurance will operate as primary insurance. No other insurance effected by the City, whether commercial or self-insurance will be called upon to contribute to a loss hereunder. Nothing contained in this Contract shall be construed to require Contractor's insurance to indemnify City in contravention of Insurance Code 11580.04.

C. Workers' Compensation and Employer's Liability Insurance: Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000) for Contractor's employees in accordance with the laws of the State of California, Section 3700 of the Labor Code. In addition, Contractor shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California, Section 3700 for all of the subcontractor's employees.

Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

- D. Business Auto Coverage** on ISO Business Auto Coverage from CA 00 01 including symbol 1 (Any Auto) or an acceptable equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If Contractor owns no vehicles, then this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described in B., above. If Contractor or Contractor's employees or subcontractors will use personal autos in any way on this Project, then Contractor shall provide evidence of personal auto liability coverage for each such person.
- E. Umbrella or excess liability insurance.** *[if required to meet higher limits.]* Contractor shall obtain and maintain an umbrella liability insurance policy with limits that will provide bodily injury, personal injury, and property damage liability coverage, including commercial general liability, auto liability, and employer's liability. Such policy or policies shall include the following terms and conditions:
- a. A drop-down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason, other than bankruptcy or insolvency of said primary insurer;
 - b. "Pay on behalf of" wording as opposed to "reimbursement";
 - c. Concurrency of effective dates with primary policies.

Should Contractor obtain and maintain an excess liability policy, such policy shall be excess over commercial general liability, auto liability, and employer's liability policies. Such policy or policies shall include wording that the excess liability policy follows the terms and conditions of the underlying policies.

- F. Waiver of subrogation.** All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against Agency, its elected or appointed officers, agents, officials, employees, and volunteers or shall specifically allow Vendor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Vendor hereby waives its own right of recovery against Agency and shall require similar written express waivers and insurance clauses from each of its subconsultants.
- G. Duration of coverage.** Contractor shall procure and maintain for the contract period, and any additional length of time required thereafter, insurance against claims for injuries to persons or damages to property, or financial loss which may arise from or in connection with the performance of the Work hereunder by Contractor, their agents, representatives, employees, or subconsultants. Contractor must maintain general liability and umbrella or excess liability insurance for as long as there is a statutory exposure to completed operations claims. Agency and its officers, officials, employees, and agents shall continue as additional insureds under such policies.
- H. Products/completed operations coverage.** Products/completed operations coverage shall extend a minimum of three (3) years after Project completion. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the Policy must include Work performed "by or on behalf" of the insured.

Policy shall contain no language that would invalidate or remove the insurer's duty to defend or indemnify for claims or suits expressly excluded from coverage. Policy shall specifically provide for a duty to defend on the part of the insurer. The Agency, its officials, officers, agents, and employees, shall be included as additional insureds under the Products and Completed Operations coverage.

ARTICLE 17 – INDEMNIFICATION:

- A. Except as otherwise provided in Subparagraphs B. and C. below, Contractor shall defend, indemnify and save harmless City, and entities' agents, officials, officers and employees, from any and all claims demands, damages, costs expenses, judgments, attorney fees or liability relating to any act or omission by the Contractor, or its agents, employees, or certain independent Contractors (described below) which relates in any way to this Contract; regardless of whether said act or omission is willful, negligent or non-negligent. The preceding sentence applies to any theory of recovery relating to said act or omission, including but not limited to the following:
1. Violation of statute, ordinance, or regulation.
 2. Professional malpractice.
 3. Willful, intentional or other wrongful acts, or failures to act.
 4. Negligence or recklessness.
 5. Furnishing of defective or dangerous products.
 6. Completed operations.
 7. Premises liability.
 8. Strict liability.
 9. Inverse condemnation.
 10. Violation of civil rights.
 11. Violation of any federal or state statute, regulation, or ruling resulting in a determination by the Internal Revenue Service, California Franchise Tax Board or any other California public entity responsible for collecting payroll taxes, when Contractor is not an independent contractor. The certain "independent contractors" referenced above refer to independent contractors which are either hired by Contractor, directly responsible to Contractor, or under the direction or control of Contractor.
- B. Nothing contained in the foregoing indemnity provision shall be construed to require indemnification for liability arising from proven willful misconduct of City.
- C. Nothing contained in the foregoing indemnity provision shall be construed to require indemnification for that portion of any liability attributable to the active negligence of City provided, however, this exception for active negligence shall not apply to (1) liability arising from the passive negligence of City, or (2) that portion of any liability attributable to any act or omission, whether willful misconduct or active or passive negligence on the part of the Contractor.
- D. Contractor shall have the burden of proving the exception described in paragraphs B and C above.
- E. It is the intent of the parties to provide City the fullest indemnification, defense, and "hold harmless" rights allowed under the law. If any word(s) contained herein are deemed by a court to be in contravention of applicable law, then said word(s) shall be severed from this Contract and the remaining language shall be given full force and effect.

ARTICLE 18 – COMPLIANCE WITH LAWS:

Federal and State Laws and Regulations: All services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules and regulations of City and any federal, state or local governmental agency having jurisdiction in effect at the time services are rendered. City, and its elected and appointed officers, employees, agents, designated volunteers, attorneys, successors and assigns shall not be liable at law or in equity for failure of Contractor to comply with this Article 18. The Project shall be constructed under the complete jurisdiction of all applicable laws of the United States and State of California governing construction including, without limitation, the following:

- A. The California Health and Safety Code and all applicable administrative code regulations pursuant thereto.
- B. All laws governing the employment of labor, qualifications for employment of aliens, payment of employees, convict-made materials, domestic and foreign materials and accident prevention.
- C. Title 19 of the California Administrative Code entitled “Public Safety” Chapter 1, State Fire Marshall, Sub-Chapter 1, “General Fire and Panic Safety”.
- D. General Industrial Safety Orders: Each and every Contractor shall observe and conform to the provisions of Title 8, California Administrative Code bearing upon safe and proper use, construction, disposal, etc., of materials, machinery, and building appurtenances as therein set forth.
- E. Code Rules and Safety Orders: All Work and materials shall be in full accordance with the latest - substantive rules and regulations of the State Fire Marshall, the safety orders of the Division of Industrial Safety, Department of Industrial Relations; the Uniform Building Code, National Electric Code, Uniform Mechanical Code, Uniform Plumbing Code, and other applicable State Laws or Regulations. Nothing in these plans and specifications is to be construed to permit Work not conforming to these codes.

Note: The procedural aspects of the Uniform Codes referred to above may not apply to the Work of this Contract, but the substantive provisions do apply. All of the above laws and regulations though referred to herein, are as much a part of the Agreement as if they were incorporated in their entirety herein.

- F. Licenses, Fees, Permits and Assessments: Contractor shall maintain obtain and maintain, at its sole cost and expense, such licenses, permits, registrations, and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor’s performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

- G. Prevailing Wage Law:

a.) Public Work. The parties acknowledge that the Work to be performed under this Agreement is a “public work” as defined in Labor Code section 1720 and that this Agreement is therefore subject to the requirements of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works contracts and the rules and regulations established by the Department of Industrial Relations (“DIR”) implementing such statutes. The Work

performed under this Agreement is subject to compliance monitoring and enforcement by the DIR. Contractor shall post job site notices, as prescribed by regulation.

b.) Registration with DIR. Pursuant to Labor Code section 1771.1, Contractor and all subcontractors must be registered with, and pay an annual fee to, the DIR prior to and during the performance of any Work under this Agreement.

c.) Prevailing Wages. Contractor shall pay prevailing wages to the extent required by Labor Code section 1771. Pursuant to Labor Code section 1773.2, copies of the prevailing rate of per diem wages are on file at City Hall and will be made available to any interested party on request. By initiating any Work under this Agreement, Contractor acknowledges receipt of a copy of the DIR determination of the prevailing rate of per diem wages, and Contractor shall post a copy of the same at each job site where Work is performed under this Agreement. Contractor assumes responsibility for the payment of prevailing wages and shall indemnify City and hold City harmless from any and all claims made by the State of California, the DIR, any subcontractor, any worker, or any other third party with respect thereto.

d.) Penalty for Failure to Pay Prevailing Wages. Contractor shall comply with and be bound by the provisions of Labor Code sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Contractor shall, as a penalty to the City, forfeit two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Agreement by Contractor or by any subcontractor.

e.) Payroll Records. Contractor shall comply with and be bound by the provisions of Labor Code section 1776, which requires Contractor and each subcontractor to: keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform the City of the location of the records.

f.) Apprentices. Contractor shall comply with and be bound by the provisions of Labor Code sections 1777.5, 1777.6, and 1777.7 and California Code of Regulations Title 8, section 200 *et seq.* concerning the employment of apprentices on public works projects. Contractor shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing Work under this Agreement, Contractor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding Work pursuant to this Agreement, Contractor and each of its subcontractors shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Agreement.

g.) Eight-Hour Work Day. Contractor acknowledges that eight (8) hours labor constitutes a legal day's work. Contractor shall comply with and be bound by Labor Code section 1810.

h.) Penalties for Excess Hours. Contractor shall comply with and be bound by the provisions of Labor Code section 1813 concerning penalties for workers who work excess hours. The Contractor shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the

performance of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half (1½) times the basic rate of pay.

i.) Workers' Compensation. California Labor Code sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees if it has employees. In accordance with the provisions of California Labor Code section 1861, Contractor certifies as follows: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

j.) Contractor's Responsibility for Subcontractors. For every subcontractor who will perform Work under this Agreement, Contractor shall be responsible for such subcontractor's compliance with Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code, and shall make such compliance a requirement in any contract with any subcontractor for Work under this Agreement. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a review of the certified payroll records of the subcontractor on a periodic basis or upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Contractor shall diligently take corrective action to halt or rectify any such failure by any subcontractor.

ARTICLE 19 – INDEPENDENT CONTRACTOR:

Neither City, nor any of its officers, employees or agents, shall have any control over the manner or means by which Contractor, or its officers, employees, agents or subcontractors, perform the services required herein, except as otherwise set forth herein. Contractor shall perform all services required herein as an independent contractor of City and shall remain under only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it, or any of its officers, employees, agents or subcontractors, are officers, employees or agents of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor. Contractor shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner. Contractor represents and warrants that the personnel used to provide services to City pursuant to this Agreement shall at all times be under Contractor's exclusive control and direction. No City employee benefits shall be available to Contractor, its officers, employees, agents or subcontractors, in connection with the performance of this Agreement. City shall not be liable for compensation or indemnification to Contractor, its officers, employees, agents or subcontractors, for injury or sickness arising out of performing services hereunder. In the event that Contractor or any officer, employee, agent, or subcontractor of

Contractor providing services under this Agreement claims or is determined by a federal or state agency, a court of competent jurisdiction, or the California Public Employees' Retirement System, to be classified as other than an independent contractor for City, then Contractor shall indemnify, defend, and hold harmless City for the payment of any and all assessed fines, penalties, judgments, employee and/or employer contributions, and any other damages and costs assessed to City as a consequence of, or in any way attributable to, the assertion that Contractor, or any officer, employee, agent, or subcontractor Contractor used to provide services under this Agreement, is/are employees of City.

ARTICLE 20 – PROTECTION AND CARE OF WORK AND MATERIALS:

The Contractor shall adopt reasonable methods, including providing and maintaining storage facilities, during the life of the Agreement, to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the Work by City, except such losses or damages as caused by City's own negligence. Stored materials shall be reasonably accessible for inspection. Contractor shall not, without City's consent, assign, sell, mortgage, hypothecate, or remove equipment or materials which have been installed or delivered and which may be necessary for the completion of the work.

ARTICLE 21 - ENFORCEMENT OF AGREEMENT AND TERMINATION:

- A. California Law. This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of San Luis Obispo, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of San Luis Obispo, State of California.
- B. Default of Contractor.
 - i. It is City's right to suspend or terminate this Agreement upon the occurrence of any of the following events by default of Contractor: (1) Contractor refuses or fails to perform the work required under this Agreement with diligence to ensure timely completion of the Work; (2) Contractor fails to comply with the provisions of this Agreement; (3) Contractor violates any ordinance, regulation, state or federal law which applies to its performance under this Agreement; (4) Contractor files bankruptcy or otherwise becomes insolvent; (5) Contractor makes a general assignment for the benefit of creditors; (6) a trustee or receiver is appointed for the Contractor or his property; (7) Contractor repeatedly fails to supply sufficient skilled workers or suitable materials or equipment; (8) Contractor has abandoned the Work, and/or; (9) Contractor disregards proper directives of the architect, inspector, or City's project manager under the Contract Documents. It will be at City's sole discretion to allow Contractor to remedy each cause for the termination without waiving City's right to terminate this Contract or restricting any other right or remedy under this Contract or law.

- ii. In the event that Contractor is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default and can terminate or suspend this Agreement immediately by written notice to Contractor. If the City's project manager determines that Contractor is in default in the performance of any of the terms or conditions of this Agreement, the City's project manager shall cause to be served upon Contractor a written notice of the default. Contractor shall have ten (10) calendar days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that Contractor fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.
 - iii. Contractor shall be liable for damages sustained by City from the termination of the Agreement under this Subsection B, including, but not limited to, all cost necessary for repair and completion of the work. City shall have the right to withhold monies otherwise payable to Contractor until the Work is complete. If City incurs additional costs, expenses, or other damages due to the failure of Contractor to perform the Work pursuant to this Agreement, said expenditures shall be deducted from the amounts withheld (and if such deduction does not fully compensate City for said expenditures, then Contractor remains fully liable for the remaining balance owed to City). Should there be a balance of monies held after all expenses have been paid, the balance will be paid to Contractor upon completion of the Work.
- C. Suspension or Termination. The City may at any time, for any reason (including but not limited to for City's convenience, environmental considerations, or when it is in the best interests of the City), with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon Contractor at least ten (10) calendar days prior written notice. Upon receipt of said notice, Contractor shall immediately cease all Work under this Agreement, unless the notice provides otherwise. If the City suspends a portion of this Agreement such suspension shall not make void or invalidate the remainder of this Agreement. Upon termination, Contractor shall be entitled to compensation for completion of any portion of the Work accepted by City up to the effective date of termination unless any portion of the Work is accepted by City after termination in which event Contractor shall be paid for such completed portion. Upon receipt of a termination notice, Contractor shall immediately discontinue the Work and placement of orders for materials, facilities and supplies in connection with the performance of this Agreement, unless otherwise directed in the notice. Contractor shall promptly deliver to City all completed work, including plans, as-builts, forms, reports, and products. Any dispute regarding the amount owed to Contractor shall not diminish the right of City to receive and use such documents or materials. Contractor shall not be entitled to any claim or lien against City for any additional compensation or damages in the event of termination of this Agreement.
- D. Dispute Resolution Process. In the event of any dispute or controversy with the City over any matter whatsoever, the Contractor shall not cause any delay or cessation in or of work, but shall proceed with the performance of the Work in dispute. The Contractor shall retain any

and all rights provided that pertain to the resolution of disputes and protests between the parties . The disputed Work will be categorized as an “unresolved dispute” and payment, if any, shall be as later determined as set forth below. The Contractor shall keep accurate, detailed records of all disputed work, claims and other disputed matters. Section 20104 *et seq.* of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial-supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less, and Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims, said processes being incorporated herein by reference.

- E. Rights and Remedies Are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.
- F. Unfair Business Practices Claims. Pursuant to Public Contract Code section 7103.5, in entering into this Agreement, Contractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2, (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials related to this Agreement. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor without further acknowledgment by the parties.
- G. Legal Action. In addition to any other rights or remedies, and as consistent with this Agreement and applicable law, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Contractor shall file a statutory claim pursuant to Government Code sections 905 *et seq.* and 910 *et seq.*, in order to pursue a legal action under this Agreement.
- H. Attorneys’ Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys’ fees. Attorneys’ fees shall include attorneys’ fees on any appeal, and a party entitled to attorneys’ fees shall be entitled to all other reasonable costs for investigating such action, consultants’ fees, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. Such fees and costs shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 22 – WAIVER:

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver

of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any Work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any requirement of this Agreement imposes no additional obligations on City nor does it waive any rights hereunder. Payment to Contractor for Work performed pursuant to this Agreement shall not be deemed to waive any defects in Work performed by Contractor.

ARTICLE 23 – MISCELLANEOUS PROVISIONS:

A. Non-Liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

B. Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement, headings used, or any other rule of construction which might otherwise apply.

C. Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

--SIGNATURES ON NEXT PAGE--

IN WITNESS, WHEREOF, the parties to these presents have hereunto set their hands the year and date first above written.

CITY OF MORRO BAY

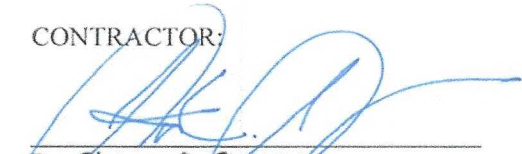
ATTEST:

Yvonne Kimball, City Manager

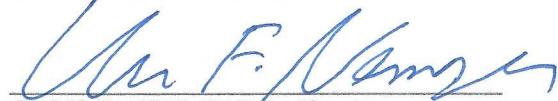
DANA SWANSON, City Clerk

CONTRACTOR:


APPROVED AS TO FORM:



By: Steve A Souza
Its: President



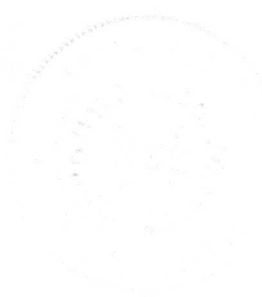
CHRIS F. NEUMEYER, City Attorney



By: Lisa Elliott
Its: Secretary

Licensed in accordance with an act providing for the registration of Contractors.

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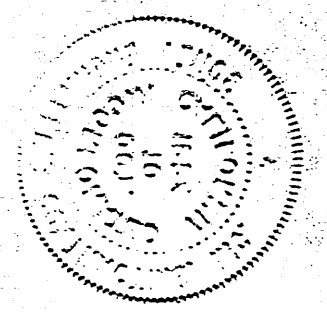


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AGENDA NO: 9.b

MEETING DATE: August 27, 2024

Staff Report

TO: Honorable Mayor and City Council **DATE:** August 20, 2024

FROM: Airlin Singewald, Community Development Director

SUBJECT: Authorization to Submit a Grant Application for California Coastal Commission (CCC) Local Coastal Program (LCP) Local Assistant Grant Program Funding and Increase Grant Budget for the Waterfront Master Plan Update

RECOMMENDED ACTION

Adopt Resolution No. 58-24 authorizing staff to submit a grant application for California Coastal Commission (CCC) LCP Local Assistance Grant Program to fund the update of the City’s 1996 Waterfront Master Plan in the amount of \$750,000. This is a \$250,000 increase to the amount (\$500,000) authorized by the City Council for the same grant application on September 26, 2023.

ALTERNATIVES

- A. Direct staff to discontinue application for the Coastal Commission Grant.
- B. Decrease amount of grant request or provide other direction to staff regarding funding strategy.

FISCAL IMPACT

Should the City be successful in obtaining grant funding, the funds received would pay for consultant services, with staff time spent working on the Waterfront Master Plan (WMP) update to be paid from the City’s General Fund portion of the budget. No cash match is required in order to apply for the grant.

SUMMARY

The purpose of this item is to increase the budget of the City’s previously authorized LCP amendment grant application for the Waterfront Master Plan Update from \$500,000 to \$750,000 to fund a parking relocation plan, a comprehensive vision for Embarcadero pedestrian plazas, and robust public outreach. While the cover page of the attached application packet states the grant maximum is \$500,000, Coastal Commission staff confirmed that higher amounts will be considered.

Prepared By: <u>AS</u>	Dept Review: _____
City Manager Review: <u>YK</u>	City Attorney Review: <u>LNL</u>
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BACKGROUND/DISCUSSION
Waterfront Master Plan Update

Plan Morro Bay Policy LU-8.1 calls for an update to the City's Waterfront Master Plan with a focus on addressing issues of sea level rise and future planning for Morro Rock.

On September 26, 2023, the City Council voted unanimously to authorize the Community Development Director to submit a grant application to the California Coastal Commission to fund the update of the City's Waterfront Master Plan in the amount of \$500,000.

Adopted in 1996 and certified by the Coastal Commission in 1997, the City's Waterfront Master Plan establishes a vision, design guidelines, and standards for public and private land uses and development on the Embarcadero. The plan also contains important background and historical information about the waterfront, which provides applicants, staff, the public, and decision-makers with context for land use planning decisions on the waterfront. The current Waterfront Master Plan boundary area includes the waterfront area from the north at Little Morro Creek and Morro Rock to the T-Piers/ Fishermen Working Area, to Embarcadero Visitor Area, and extending south to Tidelands Park which is characterized by the natural features of the bluff, sandspit, recreation/park use and the public boat launch and ramp area.

The proposed Waterfront Master Plan Update would involve significant public engagement to revisit the community's vision for the waterfront, preparation of technical studies, and updated design guidelines and standards for development along the waterfront. Per Council direction on September 26, 2023, the update would expand the area covered by the Waterfront Master Plan to include both sides of the Embarcadero from Tidelands Park to the pedestrian bridge across Morro Creek, the old wastewater treatment plant property (pending discussions with the Cayucos Sanitary District), and offshore wind.

Because the grant funding requires a sea level rise adaptation planning component, the WMP update would also include a new chapter to address these grant funding components, as well as update the existing document. This is consistent with multiple LCP Policies including LU-8.2 which addresses planning for Morro Rock and to incorporate sea level rise projections and an updated coastal hazard vulnerability assessment; Policy LU-8.7 which requires relocation of underdeck utilities, decks, piers, etc. in the Embarcadero area to a location above the sea level rise zone; and Policy LU-8.12 which requires the City to continue to gather information the effects of sea level rise and other coastal hazards on Morro Bay's shoreline.

The purpose of this item is to increase the LCP grant application budget from \$500,000 to \$750,000 to expand the scope of work to include a parking relocation plan that addresses the redevelopment of existing street-end parking lots west of the Embarcadero with pedestrian-oriented plazas as required by the City's General Plan / Local Coastal Plan:

Morro Bay General Plan / LCP Policy CIR-2.2: Street End Pedestrian Connections. Create safer and more distinct lateral access connections across the street ends on the west side of the Embarcadero and Dunes, Harbor, Morro Bay Boulevard, Front, Pacific, Marina, and Driftwood Streets including by relocating parking from these areas (See also Policies LU-4.1, LU-4.5, LU-4.6, LU-7.1 through LU-7.6, and OS-1.6 and Implementation Action LU-19).

In addition to a parking relocation plan, the additional budget would fund a comprehensive vision for the design of the street-end plazas and other public spaces along the Embarcadero. The additional budget would also allow for robust public outreach during the update process.

LCP Grant Program

The California Coastal Commission (CCC) has announced grant funding availability under the LCP Local Assistance Grant Program. This is rolling non-competitive grant funding available to local governments to assist with either development of or amendments of Local Coastal Programs (LCP). According to CCC LCP Grant staff, there is no funding cap for an application. However, applications up to \$500,000 may be approved at the Coastal Commission staff level, and larger amounts will require CCC approval. Funds may be used for projects that are designed to assist local governments in assessing impacts and planning for coastal resiliency, including adapting to the impacts of climate change and sea level rise.

The City was previously successful in obtaining approximately \$600,000 of CCC grant funding to update the City's General Plan/Local Coastal Program Land Use Plan (LCP) known as Plan Morro Bay which was adopted by the City Council in 2021 and certified by the Coastal Commission also in 2021.

Coastal staff has offered assistance and guidance to City staff in submitting an application that would meet the eligibility criteria related to coastal resilience and sea level rise adaptation planning. Staff discussed with Coastal Commission staff the Waterfront Master Plan update as an application. Coastal staff confirmed this update would be an eligible project and encouraged the City to apply.

The LCP grant funding opportunity was made available to local governments as a result of the State's Budget Act of 2021 which appropriated \$31 million to the Coastal Commission to support this program. Upon submittal of an application, funding decisions are made by CCC within 30 days of application. The funding program allows grants to be stacked which means that the City could seek out additional funding sources to supplement the cost of the Waterfront Master Plan Update project.

GRANT APPLICATION

Upon execution of a grant agreement with CCC and authorization from Council, staff would work to develop an application that includes releasing a Request for Proposal (RFP) for professional planning consulting services similar to the consulting services utilized for the Plan Morro Bay update project.

CONCLUSION

The newly available grant funding program from the Coastal Commission and support by Coastal staff presents an excellent opportunity to apply for needed funding to update the 1996 Waterfront Master Plan which would not only incorporate coastal resilience and sea level rise adaptation planning but also provide an opportunity to update other portions of the WMP including waterfront design guidelines. Staff recommends the Council adopt Resolution No. 58-24 authorizing Staff to submit a grant application in the amount of \$750,000 to the California Coastal Commission in support of the update for the City's 1996 Waterfront Master Plan to be developed and adopted as a future amendment to the City's Local Coastal Program (LCP) with a staff time in-kind match of 10% or approximately \$75,000.

ATTACHMENT(S)

1. Resolution No. 58-24

RESOLUTION NO. 58-24

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING THE GRANT APPLICATION FOR THE COASTAL COMMISSION LCP LOCAL
ASSISTANCE GRANT PROGRAM**

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

WHEREAS, the State's Budget Act of 2021 provides up to \$31 million to support the Coastal Commission's LCP Local Assistance Grant Program which awards grants to local governments to support coastal resiliency and updates to Local Coastal Programs (LCPs); and

WHEREAS, the California Coastal Commission, under the authority of the California Coastal Act, may provide financial assistance to support coastal planning and has approved a grant program to provide such financial assistance for LCP planning; and

WHEREAS, the goal of the grant program is to develop new or updated LCPs in conformance with the California Coastal Act and to promote coastal resiliency and address the effects of climate change; and

WHEREAS, grant proposals submitted under this grant program must complete Local Coastal Program (LCP) planning work with special emphasis on coastal resiliency and addressing the effects of climate change and sea-level rise; and

WHEREAS, the City of Morro Bay, has an effectively certified LCP; and

WHEREAS, the City of Morro Bay, adopted the Waterfront Master Plan in 1996 and is included in the City's LCP; and

WHEREAS, Policy LU-8.1 of the City's LCP states the Waterfront Master Plan should be updated with a focus on addressing issues of sea level rise and future planning for Morro Rock; and

WHEREAS, the City of Morro Bay, desires to pursue an update of the Waterfront Master Plan project that would result in the completion and submittal for certification by the California Coastal Commission of an Amendment to the LCP [in whole or in part]; and

WHEREAS, the City of Morro Bay commits to and agrees to fully support a planning effort intended to amend a certified LCP pursuant to the provisions of the California Coastal Act, with full public participation and coordination with the Coastal Commission staff.

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

1. Directs City of Morro Bay staff to submit the grant application package attached hereto as Attachment 1 to the California Coastal Commission to provide financial and planning

assistance, under authority of the California Coastal Act, in the amount of \$750,000 to fund the project more particularly described in the grant application package.

2. Authorizes the Community Development Director, of the City of Morro Bay, to execute, in the name of the City of Morro Bay, all necessary applications, contracts and agreements and amendments thereto to implement and carry out the grant application package attached hereto and any project approved through approval of the grant application.

PASSED AND ADOPTED by the Morro Bay City Council, at a regular meeting held on this 27th day of August 2024 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RECUSE:

CARLA WIXOM, Mayor

ATTEST:

DANA SWANSON, City Clerk

CALIFORNIA COASTAL COMMISSION

455 MARKET STREET, SUITE 300
SAN FRANCISCO, CA 94105-2421
VOICE (415) 904-5200
FAX (415) 904-5400



CALIFORNIA COASTAL COMMISSION LCP LOCAL ASSISTANCE GRANT PROGRAM NON-COMPETITIVE GRANT APPLICATION FORM

The California Coastal Commission is pleased to announce the availability of rolling grant funding to support local government coastal resiliency efforts. Funding is provided by the Budget Act of 2021, which appropriates \$31 million to the Coastal Commission to support its LCP Local Assistance Grant Program. The grant program is intended to provide assistance to local governments responsible for developing and amending Local Coastal Programs. Funds may be used for projects that are designed to assist local governments in assessing impacts and planning for coastal resiliency, including adapting to the impacts of climate change and sea level rise, and which contain an LCP planning component.

As part of the recently adopted grant program updates, the Coastal Commission developed a non-competitive, rolling application process that is separate from the Commission’s competitive grant rounds. **This rolling application process is designed for targeted projects up to \$500,000** which have a high likelihood of success over a shorter grant term, such as a single feasibility study with targeted LCP changes. The application form and additional details are provided below. More information on eligible grantees and projects, program priorities, and evaluation criteria can be found in the recently adopted [LCP Grant Program Updates](#).

Coastal Commission staff is available to assist during the application process. Applicants are encouraged to reach out to the LCP Grant team with any questions as they develop their applications. Contact information is provided below.

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Attachment C: Program Priorities and Evaluation Criteria.....	14



1. APPLICATION FORM

APPLICANT INFORMATION

Applicant name (agency): City of Morro Bay	
Address: 955 Shasta Ave, Morro Bay CA 93442	
Primary Contact name: Kim Fowler	Title: Planning Manager
Telephone: 805-772-6577	Fax: 805-772-6568
Email: kfowler@morrobayca.gov	
Federal Tax ID#: 95-230-8629	

Person authorized to sign grant agreement, amendments, and Request for Funds:	
Name: Airlin Singewald	Title: Community Development Director
Telephone: 805-772-6291	Email: asingewald@morrobayca.gov

PROJECT INFORMATION

Project Title: Waterfront Master Plan Update	
LCP/LCP Segment: Morro Bay	
Project Location	
City/Geographic area: Morro Bay	
County: San Luis Obispo	
Project Timeline	
Start date: 10/01/2024	End date: 9/30/2026

Signature: _____

Date: 8/27/2024



2. PROJECT DESCRIPTION

The City of Morro Bay is a small coastal community of approximately 10,700 in San Luis Obispo County located on Highway 1. The majority of the city is located in the Coastal Zone. The city has an active harbor and thriving commercial fishing industry, and its coastal amenities are a regional visitor destination. The community's coastal resources, such as the 2,300-acre Morro Bay Estuary, also provide key habitat for a number of permanent and migratory species, including keystone and sensitive species. As the city evolves, it is critical to maintain coastal resources and be environmentally responsible while continuing to provide economic and recreation benefits.

To support the City's waterfront area, a key economic market for the local economy, the city is seeking funding to update its 1996 Waterfront Master Plan (WMP) through funding support from the California Coastal Commission. An update to the Waterfront Master Plan is included as an integral implementation action within the City's LCP. Policy LU-8.1 states "Update the 1996 Waterfront Master Plan with a focus on addressing issues of sea level rise and future planning for Morro Rock".

The City's combined General Plan/ Local Coastal Program (LCP) Coastal Land Use Plan (LUP), also known as Plan Morro Bay, was adopted by the City and certified by the Coastal Commission in 2021. The City of Morro Bay LCP consists of the City's LUP (Plan Morro Bay), associated maps, the Waterfront Master Plan, and the City's Local Implementation Plan (IP), which consists of portions of the Zoning Code and Zoning map. Plan Morro Bay and the IP update received funding support from the Ocean Protection Council, the California Coastal Commission (CCC), and the City's General Fund. The comprehensive update of the Plan Morro Bay project involved extensive community and stakeholder engagement with over 80 public meetings during the period from 2015-2021. The City's successful outreach and coordination efforts also included our close partnership with Coastal Commission staff during the grant administration for Plan Morro Bay.

The current 1996 Waterfront Master Plan (WMP) boundary area covers the waterfront area from the north at Little Morro Creek and Morro Rock to the T-Piers/ Fishermen Working Area, to Embarcadero Visitor Area, and extending south to Tidelands Park which is characterized by the natural features of the bluff, sandspit, recreation/park use and the public boat launch and ramp area. The WMP includes identification of planning areas, transportation and harbor improvements, proposals for four separate planning areas, and waterfront design guidelines which are part of the City's Implementation Plan/Zoning Code.

With limited local financial resources, the City believes the opportunity for grant funding availability to support local government coastal resiliency efforts uniquely matches the goal of the Waterfront Master Plan update project. The goal of the Update project would be to expand the scope of the WMP to:

- 1) Incorporate updates to sea level rise (SLR) projections from the previous SLR technical studies performed in support of the 2021 LCP;
- 2) Develop a feasibility and adaption study to address Embarcadero commercial and waterfront industrial development in the Harbor which would identify triggers for implementing sea-level rise adaptation strategies, including potentially raising infrastructure along the waterfront. Existing policies in Plan Morro Bay are designed to address these issues through adaptation and mitigation, and implementation will be tailored to the areas with the highest risk. The goal of the feasibility and adaptation study would be to develop triggers that would mark the need for implementation of an action. This is consistent with Plan Morro Bay Policy LU-8.12 to develop information on effects of coastal hazards with a goal to increase funding for improvements related to vulnerabilities and impacts to infrastructure associated with changes in sea level elevation. In addition, Policy C-7.19,



which states that the City shall consider the relocation of critical water and wastewater infrastructure to protect services from effects of sea level rise and coastal hazards;

- 3) Expand the area covered by the WMP to include both sides of the Embarcadero from Tidelands Park to the pedestrian bridge across Morro Creek, the old wastewater treatment plant property (pending discussions with the Cayucos Sanitary District), and offshore wind; and
- 4) Update design and development standards for the planning areas of the Waterfront Master Plan. The final goal of the project would be to complete an updated WMP to submit for certification as an LCP amendment. The City Council's resolution in support of this application is provided as **Attachment B**.

The WMP Update would seek to build upon the policies in the LCP – Plan Morro Bay by updating the WMP to incorporate policies specifically for the waterfront area, Morro Rock, extending north to Morro Creek and incorporating the “Pit” beach parking area along with the old Waste Water Treatment Plant site which would allow for implementation of identified sea level rise adaptation policies and also serve as update to previously adopted SLR policies in response to continued updated SLR projections.

The WMP update would be consistent with Plan Morro Bay which is organized around a framework for resiliency. Each element of the plan addresses different aspects of the community and identifies measurable actions to guide residents, decision-makers, businesses, and City staff toward achieving the vision. The plan includes goals and policies for increased resiliency to natural hazards and climate change effects. The plan also includes special emphasis on planning for strategies to reduce greenhouse gas emissions, sea level rise, increased drought and increased fires, and maximizes benefits to disadvantaged and low-income communities as a portion of central Morro Bay is designated as AB1550 Low Income Community status. Previous funding received by Coastal Commission and the Ocean Protection Council allowed the City to develop the technical studies and background reports used to inform policy that includes strategies for adaptation planning. These completed background technical reports include a community baseline assessment, community vulnerability and resilience assessment, key issues and policies report, vision and value statement, as well as both an Environmentally Sensitive Habitat Area (ESHA) 2050 Sea Level Rise Scenario Report, and a H++ Update Coastal Resources & Resiliency Report based on OPC's 2018 report detailing a new Extreme Risk Aversion scenario out to 2100.

It is this framework for resiliency that the WMP would be modeled after to ensure consistency with Plan Morro Bay. The age of the existing Waterfront Master Plan has resulted in difficulty for planning along with the waterfront. The City's IP creates a Waterfront Master Plan overlay which recognizes the need to update this document to incorporate adapting to the impacts of climate change and sea level rise. The update of the WMP would be submitted to Coastal Commission as an IP amendment to the LCP.

The scope of the WMP update is consistent with the funding priorities of the LCP rolling grant funding announcement. The grant announcement includes funding project priorities that expressly match the City's need with the Waterfront Master Plan update including LCP update which include: assessing impacts and planning for coastal resiliency, including adaptation to the impacts of climate change and sea level rise. These policies are included in Plan Morro Bay and address reduction of greenhouse gas emissions, adapting to sea level rise; focused policies addressing environmental justice concerns particularly related to climate resilience and to ensure protection of coastal resources and provision of public coastal access and lower-cost recreation for everyone, regardless of race, ethnicity, socio-economic status, or place of residence.

In addition, the City's updated LCP places special emphasis on planning policies that seek to address effects of climate change, reduce and/or facilitate reduction of greenhouse gas emissions, provide co-benefits to the State of California, and maximize benefits to the AB 1550 low income community designation in north Morro Bay through new policies on coastal resilience planning and environmental justice policies. This is specifically addressed in the Environmental Justice Element with policies addressing health effects of



Climate Change including vulnerable populations, public awareness, infectious disease, and emergency housing. Furthermore, the City's LUP includes Policy LU7.8 which includes establishing updated triggers to monitoring lease sites to implement floating lateral accessways to improve design resiliency to sea level rise and evaluate existing bayside lateral access in the two-foot inundation zone.

The grant funding requested would enable the city to pursue the long overdue update of the Waterfront Master Plan by utilizing funding for an updated vulnerability assessment, sea level rise planning, economic feasibility study, and updated design guideline standards for development along the waterfront. It would also allow for the formation of a WMP Advisory Committee to be appointed by the Council consisting of community members and stakeholders to inform policy development and provide recommendations as liaisons between the community, the Planning Commission and City Council.

3. Task Descriptions and Schedule.

A. Task Descriptions:

Task 1 – Grant Administration and Project Management: The City will coordinate essential project management tasks, including project team check-ins, milestone reporting, and grant administration. This will be an ongoing task throughout the project.

Deliverables

- Quarterly progress reports and Requests for Funds submitted to CCC staff.
- Quarterly check-in meetings between City and CCC staff to coordinate on grant reporting, deliverables, and WMP consistency with Coastal Act and CCC staff guidance.
- Request for proposals and contract to hire consultant(s) to prepare SLR vulnerability assessment update (Task 1), facilitate public engagement (Task 2), and prepare the WMP Update (Task 3).

Task 2 – Prepare Sea Level Rise Vulnerability Assessment Update/ Adaptation Report, and Feasibility Study. The City will utilize the latest guidance on sea level rise projections to update the previous technical studies done which include the ESHA 2050 Sea Level Rise Scenario Report and a H++ Update Coastal Resources and Resiliency Report based on OPC's 2018 guidance. These reports will be focused on the boundary area of the updated Waterfront Master Plan. This will assist the City in implementation of LCP Goal LU-8 and specifically for consistency with Policy LU-8.7 regarding Embarcadero/Harbor Coastal Hazard Standards and requirements relating to developing a timeline to relocate underdeck utilities, decks, piers, and other immobile bayside lateral accessways raised to heights above the sea level rise inundation zone.

Deliverables:

- Draft Sea Level Rise Vulnerability Assessment Update for 6-8 week CCC staff review
- Final Sea Level Rise Vulnerability Assessment Update
- Draft Adaptation Report and Feasibility Study for 6-8 week CCC staff review
- Final Adaptation Report and Feasibility Study



Task 3 – Community Engagement: Similar to the approach utilized with Plan Morro Bay: GP/LCP Update, the City will form a WMP Advisory Committee (WMPAC) consisting of community members and local stakeholders to act in an advisory capacity and provide recommendations to the Planning Commission and City Council for consideration. Community engagement strategies would also include 2 community workshops, and online survey to solicit community and stakeholder feedback and input. The City will take proactive steps to involve underserved communities, such as the AB 1550 low-income area, in its public engagement efforts. This may include placing additional focus on low-income areas when advertising public meetings and workshop for the WMP update, providing a wide range of options for public participation, and establishing a focus group to represent the interests of underserved neighborhoods.

Deliverables

- If necessary, City Council staff report regarding formation of WMPAC
- 2 community workshop agendas and meeting minutes
- Summary of community feedback from online survey
- At least 8 public meetings held of the WMPAC
- Memo summarizing the WMPAC meetings and recommendations

Task 4 – Develop Waterfront Master Plan Update. This task includes developing an Administrative Draft of the Waterfront Master Plan which would include the deliverable of coordinating with Coastal staff on content of the WMP and conclusions, as well as Coastal Act compliance. The Draft WMP would also be reviewed with the WMPAC (see Task 3), the Planning Commission and City Council with the goals of seeking maximum community input.

Deliverables

- Administrative Draft WMP Update for 6-8 week CCC staff review
- Draft WMP Update posted online for public review and comment
- Summary of public comments and City staff responses
- Final WMP Update

Task 5 - Adoption Hearings of WMP Update – final document. This task includes finalizing the WMP Update based on technical studies completed, community engagement and input received, and producing the final document. Adoption hearings with Planning Commission and City Council will be held followed by submittal of an LCP amendment to the Coastal Commission to the Implementation Plan (IP).

Deliverables

- Planning Commission staff report with attached WMP Update
- City Council staff report with attached WMP Update
- LCP Amendment submittal to CCC

B. Schedule:

Proposed Start/End Dates: 10/1/2024 – 9/30/2026

Task 1. Grant Administration & Project Management	Projected start/end dates:
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1.1 Project Management	Projected start/end dates: 10/1/2024-9/30/2026
1.2 Grant Reporting	Projected start/end dates: 10/1/2024-9/30/2026
1.3 RFP and consultant contract	Projected start/end dates: 10/1/2024 – 12/31/2024
<p>Outcome/Deliverables:</p> <ul style="list-style-type: none"> a. Grant Administration to oversee project and stay on track b. Request for Proposals c. Executed contract with consultant 	<ul style="list-style-type: none"> a. Completion date 9/30/2026 b. Completion date 10/1/2024 c. Completion date 12/31/2024
Task 2. Prepare SLR Technical Feasibility Studies / Resiliency Updates	Projected start/end dates:
2.1 Develop Draft Technical Studies to inform WMP Update	Projected start/end dates: 3/1/2025 – 5/1/2025
Review Draft with CCC staff	5/1/2025—6/30/2025
2.2 Develop Final Technical Studies to Inform WMP Update	Projected start/end dates: 6/30/2025-9/30/2025
<p>Outcome/Deliverables</p> <ul style="list-style-type: none"> a. Draft SLR Assessment b. Updated SLR Vulnerability Assessment Completed 	<ul style="list-style-type: none"> a. Completion date 6/30/2025 b. Completion date 9/30/2025
Task 3. Community Engagement	Projected start/end dates:
3.1 Community workshops on visioning	Projected start/end dates: 3/1/2025 – 4/30/2025
3.2 Community survey on preferences (resiliency and design)	Projected start/end dates: 5/1/2025-6/30/2025
3.3 Commence WMP Update Advisory committee (WMPAC) of residents and stakeholders to hold monthly public meetings to provide recommendations on policy and design components of the WMP.	Projected start/end dates: 10/1/2024-6/30/2026
<p>Outcome/Deliverables</p> <ul style="list-style-type: none"> a. Workshop, Meeting minutes, survey results of community feedback received and public meetings held of the WMPAC. 	<ul style="list-style-type: none"> a. Completion date 6/30/2026



Task 4. Develop Waterfront Master Plan	Projected start/end dates:
4.1 Develop Admin Draft of WMP Update	Projected start/end dates: 1/1/2025 – 4/30/2025
4.2 Review Draft with CCC staff	Projected start/end dates: 5/1/2025 – 5/31/2025
4.3 Produce Final Draft for public review	Projected start/end dates: 1/1/2026 – 3/31/2026
Outcome/Deliverables a. Admin Draft completed b. Submit to CCC staff for review c. Final Draft completed	a. Completion date 4/30/2025 b. Completion date 5/1/2025 c. Completion date 3/31/2026
Task 5. Adoption Hearings of Waterfront Master Plan Update – final document & LCP Amendment	Projected s tart/end dates:
5.1 Adoption Hearings with Planning Commission and City Council	Projected start/end dates: 3/1/2026-4/30/2026
5.2. Submit adopted WMP for LCP Amendment.	Projected start/end dates: 5/1/2026 – 5/31/2026
Outcome/Deliverables a. Planning Commission staff report b. Adopted Waterfront Master Plan c. Application for LCP Amendment	a. Completion date 4/30/2026 b. Completion date 4/30/2026 c. Completion date 5/31/2026

C. Benchmark Schedule:

ACTIVITY	COMPLETION DATE
Quarterly and annual grant reports, consistent with Coastal Commission requirements	5/31/2026
Task 2 – Updated Technical Studies	9/30/2025
Task 3 – Community Engagement	6/30/2026
Task 4 – Develop Waterfront Master Plan Update	3/31/2026
Task 5 – Adoption Hearings & LCP Amendment	9/30/2026



4. Budget.

Application Budget Information

Funding Request: \$ 750,000

Total Project Cost: \$825,000

<i>Jurisdiction Name</i>	<i>CCC Grant Total</i>	<i>Match/Other Funds</i>	<i>Total (LCP Grant Funds + Match/Other Funds)</i>
LABOR COSTS¹			
County/City Staff Labor			
Task 1 – Grant Administration	0	5,000	
Task 2 – Technical Study Reports Update	0	10,000	
Task 3 – Community Engagement	0	20,000	
Task 4 – Prepare Admin Draft of WMP	0	20,000	
Task 5 – Adopt Final WMP Update document	0	20,000	
Total Labor Costs	0	75,000	
DIRECT COSTS			
County/City Staff Project Supplies			
A	0		
B, etc.	0		
Total	0		
County/City Staff Travel In State²			
Mileage	0		
Hotel, etc.	0		
Total	0		
Consultants³/Partners			
Consultant A (Primary Consultant)			
Task 1 – Grant Administration	35,000		
Task 2 – Technical Study Updates	110,000		
Task 3- Community Engagement	150,000		

¹ Amount requested should include total for salary and benefits.

² Travel reimbursement rates are the same as similarly situated state employees.

³ All consultants must be selected pursuant to a bidding and procurement process that complies with all applicable laws.



<i>Jurisdiction Name</i>	<i>CCC Grant Total</i>	<i>Match/Other Funds</i>	<i>Total (LCP Grant Funds + Match/Other Funds)</i>
<i>Task 4 – Waterfront Master Plan</i>	250,000		
<i>Task 5 – Adoption Hearings & LCP Amendment</i>	45,000		
Consultant B, etc (Technical Consultant).			
<i>Task 1 –Grant Administration</i>	10,000		
<i>Task 2 – Technical Study Updates</i>	110,000		
<i>Task 3- Community Engagement</i>	15,000		
<i>Task 4 – Waterfront Master Plan</i>	25,000		
<i>Task 5 – Adoption Hearings & LCP Amendment</i>			
Consultants Total	750,000		
Total Direct Costs	750,000		
OVERHEAD/INDIRECT COSTS⁴			
Total County/City Staff Overhead/Indirect Costs		75,000	
TOTAL PROJECT COST	750,000	75,000	825,000

1. **Supplementary Information** (optional). Additional photos, maps and/or other information may be included as attachments if such materials will help illustrate or support the proposed project. This may include maps or other information identifying disadvantaged and low-income communities within the planning area; maps, photos, or other information regarding project areas identified to be significantly impacted by climate change or sea level rise; brief descriptions or links to previously completed studies or other work upon which the proposed project will build; or letters of support from relevant stakeholders.

Please note: All photos, maps, and additional information submitted is subject to the unqualified and unconditional right of the State of California to use, reproduce, publish, or display it, free of charge. All items submitted will be considered a public record upon submittal and will be treated in accordance with Public Records Act requirements. Please indicate if credit is requested for any photos and/or maps or documents.

⁴ Indirect costs include, for example, a pro rata share of rent, utilities, and salaries for certain positions indirectly supporting the proposed project but not directly staffing it. Amount requested for indirect costs should be capped at 10% of amount requested for "Total Labor."



Attachment A: Resolution⁵

WHEREAS, the Budget Act of 2021 provides up to \$31 million to support the Coastal Commission's LCP Local Assistance Grant Program which awards grants to local governments to support coastal resiliency and updates to Local Coastal Programs (LCPs); and

WHEREAS, the California Coastal Commission, under the authority of the California Coastal Act, may provide financial assistance to support coastal planning and has approved a grant program to provide such financial assistance for LCP planning; and

WHEREAS, the goal of the grant program is to develop new or updated LCPs in conformance with the California Coastal Act and to promote coastal resiliency and address the effects of climate change; and

WHEREAS, grant proposals submitted under this grant program must complete Local Coastal Program (LCP) planning work with special emphasis on coastal resiliency and addressing the effects of climate change and sea-level rise; and

WHEREAS, (insert name of jurisdiction), has [does not yet have] an effectively certified LCP [or LCP segment]; and

WHEREAS, the (name of jurisdiction), desires to pursue a project that would result in the completion and submittal for certification by the California Coastal Commission of an Amendment to the LCP [in whole or in part]; and

[For uncertified areas] WHEREAS, the (name of jurisdiction), desires to pursue a project that would result in the completion and submittal for certification by the California Coastal Commission of an LCP and desires to assume permit issuing authority; and

WHEREAS, the (name of jurisdiction) commits to and agrees to fully support a planning effort intended to [complete or] amend a certified LCP pursuant to the provisions of the California Coastal Act, with full public participation and coordination with the Coastal Commission staff.

NOW, THEREFORE, BE IT RESOLVED, that the [name of legislative or policy body], of the [name of jurisdiction], hereby:

1. Directs [name of jurisdiction] staff to submit the grant application package attached hereto as Attachment 1 to the California Coastal Commission to provide financial and planning assistance, under authority of the California Coastal Act, in the amount of \$_____ to fund the project more particularly described in the grant application package.

⁵ This sample is provided for informational purposes only; please contact your attorney before using this sample.



2. Authorizes the (title of official), of the (name of jurisdiction), to execute, in the name of the (name of jurisdiction), all necessary applications, contracts and agreements and amendments thereto to implement and carry out the grant application package attached hereto and any project approved through approval of the grant application.

PASSED AND ADOPTED by the (name of legislative or policy body), of the (name of jurisdiction), on this ____ day of _____, 2021 on the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Attest:

Signed:

(name and title of official authorized to sign resolutions of the governing body)



Attachment B: Application Checklist

A complete Grant Application Packet includes the following components. Please submit all documents in a single PDF file as well as a Word Document of the Project Proposal details, as noted below. **It is very important to receive the PDF file and a Word document for efficiency in preparing grant agreement documents.** Thank you for your attention to these important components of the application.

- Signed LCP Grant Application Form (.pdf)

- Project Proposal (.docx)
 - Project Description, Task Descriptions, Schedule, Budget, and Supplemental Information

- Signed Resolution (.pdf)

- All documents combined into a single PDF file (.pdf)



Attachment C: Program Priorities and Evaluation Criteria

Eligible Grantees and Projects

LCP update, an LCP amendment (e.g., updates to coastal hazards policies; incorporation of new sea level rise related policies or programs), targeted LCP changes (e.g., changes to LCP policies/zoning to allow for implementation of identified sea level rise adaptation strategies or climate resiliency projects; updates to previously adopted SLR policies in response to continued planning),

Program Priorities

Evaluation Criteria

Staff will evaluate grant applications against the following selection criteria. The criteria will be considered as a whole, not weighted.

Public Benefit/Significance

The Commission will consider the extent to which the proposed project will address issues of statewide significance and maximize public benefits of the coast. These can include reducing greenhouse gases and addressing the impacts of climate change and sea level rise; preserving and enhancing coastal habitat; protecting, providing and enhancing public access; protecting priority land uses such as agriculture, coastal dependent development, or recreation; protecting and providing lower cost visitor and recreational opportunities. The Commission will consider the extent to which priority Coastal Act resources are addressed and the public benefits maximized.

Application Response:

Public Benefit/Significance: Morro Bay's coastline especially the Waterfront and Morro Rock area is a critically important resource to the residents and businesses of Morro Bay, San Luis Obispo County, as well as the rest of California. Almost the entirety of the City resides in the coastal zone as shown on the attached map. The tasks described in the Work Program include a comprehensive update of the City's Waterfront Master Plan which was adopted in 1996 and certified by the Coastal Commission in 1997. The City's LCP (Plan Morro Bay), certified in 2021 was developed around a framework of resiliency. Each element of Plan Morro Bay includes a resiliency approach which identifies the element's role in the City's overall goal for increased resiliency to natural hazards, climate change effects, and any potential social disruption. The Waterfront Master Plan which is a component of the LCP has not been updated since its adoption in 1996. Updating the document will allow the City to update its technical studies including vulnerability assessment, sea level rise modeling based on the newest guidance and promote resiliency in the context of updated WMP policies that is void in the current 1996 document. An updated document that is incorporated as an LCP amendment to the IP/Zoning Code will enhance safe, extensive, and resilient planning for the Morro Bay waterfront and Morro Rock area. The City depends heavily on the waterfront as a regional economic driver, supporting ecotourism, recreational activities, and commercial fishing.



Public benefits to the public would also include transportation and circulation enhancements. Much of Morro Bay's transportation infrastructure and facilities are also vulnerable to the effects of sea level rise and climate change. The update of the Waterfront Master Plan would enable the City to establish a plan for when and how to modify current design and maintenance practices which will be essential to preventing infrastructure damage in the long term. Adding in multi-modal circulation improvements will allow the City to meet the needs of all users. This could also include access across Morro Creek where there is an existing bike/pedestrian bridge but does not include vehicular access.

Environmental Justice

In 2016, the Legislature passed AB 2616 giving the Coastal Commission explicit authority to consider environmental justice, defined in California Government Code Section 65040.12(e), as updated in 2020, as: "The fair treatment and meaningful engagement of people of all races, cultures, incomes, and national origins with respect to the development, adoption, implementation and enforcement of environmental laws, regulations, and policies." Low-income communities, indigenous communities, communities of color, and other marginalized communities often bear a disproportionate burden of pollution or other environmental harms, while suffering from a lack of environmental services, such as clean drinking water, clean air, and access to parks and open space. Addressing these types of disparities and barriers to meaningful involvement is critical for ensuring that Coastal Act goals of protecting coastal resources for all are equitably fulfilled, particularly as climate change results in evolving risks, without creating new or continuing to exacerbate existing environmental burdens in environmental justice communities. The Coastal Commission will consider the extent to which environmental justice issues are addressed when evaluating grant proposals.

Application Response:

Plan Morro Bay includes an Environmental Justice element that specifically address health effects of Climate Change for vulnerable populations, with policies on public awareness, infectious disease, and emergency housing. This element complements the City's Climate Action Plan (CAP) by ensuring that the community has a strong base that is able to recover from the natural disasters and economic changes caused by climate change impacts. The update of the Waterfront Master Plan will ensure that protection of coastal resources and coastal access is maintained through proper planning of waterfront infrastructure.

Addressing the Effects of Climate Change

Climate change is one of the most significant policy areas to emerge since many of the LCPs have been certified. The Commission is seeking LCP updates and amendments that address the effects of climate change, including land use, housing, transportation, and habitat restoration and conservation policies that facilitate reductions in greenhouse gases and vehicle miles traveled, as well as the planning and implementation of strategies to adapt to sea level rise and other issue areas affected by climate change, such as changes in habitats and fire hazards.

Application Response:



As stated previously, the City's Plan Morro Bay (LCP) is a document that has resilience planning at its very core. Each element of the Plan includes a resiliency approach to its organization. For example, two specific elements which showcase this resiliency approach include the Conservation Element and the Public Safety Element. The Conservation Element goals and policies promote a resilient, sustainable community offering a balance of open spaces, coastal access, and quality built and natural environments both along the coastline and inland. The Conservation Element includes greenhouse gas reduction strategies, emissions reduction targets, climate action plan policies, and policy which directs the City to seek out grant funding to support implementation of greenhouse gas reduction projects for the City. The Public Safety Element minimizes community risks associated with natural and man-made hazards. This element identifies hazards that could be made more severe by the City's location on the coast and anticipated climate change impacts. Public Safety Element goals and policies address natural hazards, coastal adaptation, and emergency response to protect residents, visitors, and wildlife from anticipated impacts and appropriately plan for the future of the Morro Bay waterfront through updated climate resiliency policies and updated design guidelines.

In addition, the Circulation Element recognizes that transportation is a significant contributor to greenhouse gas emissions and is a critical component of the city's ability to function. The Waterfront Master Plan update project will incorporate adaptation planning strategies to adapt to climate change impacts. This will be done by identifying appropriate transportation improvements such as the planned circulation improvement identified in Plan Morro Bay which includes Embarcadero north of Beach Street. This improvement identified providing sidewalks and a vehicular connection shifting traffic away from Beach Street for the redeveloped Morro Bay Power Plant site. Multimodal improvements can include identifying need for expanding electric trolley service access, bike pathway improvements, and potentially other roadway improvements. Planning and implementation of strategies to adapt to climate change impacts is also consistent with Land Use Policy LU-8.10 which requires that beaches be monitored for sea level rise impacts such as erosion and changes in beach widths in order to identify trigger points for various adaptation strategies.

Relative Need for LCP Update

Related to the public benefits of a proposal, the Commission will consider the relative need for an LCP update, considering the length of time since an LCP or LCP segment has been updated and the significance of the issues proposed to be updated. For example, many jurisdictions seek to assess vulnerability and develop adaptation solutions to address sea level rise, fire, or other climate change impacts to critical infrastructure, residential areas, recreational amenities and open space, or significant wetland and habitat areas. Others have identified needs to reduce vehicle miles traveled, encourage smart growth, increase climate-resilient housing supply, improve public transit, and enhance pedestrian and bicycle options, particularly to and along the coast. A proposal to complete technical studies, economic analyses, mapping, public outreach, and development of LCP policies in support of these options may be important.

Application Response:

The City's Waterfront Master Plan was adopted in 1996 and certified by CCC in 1997 and included as a component of the 2021 LCP. Due to the age of the document, the WMP does not include policies specifically addressing sea level rise or climate adaptation planning. The WMP focus includes identification of planning areas within its boundaries, transportation and harbor improvements key



improvements for four separate planning areas, and waterfront design guidelines which in 1997 were certified with an LCP amendment as part of the City's Implementation Plan/Zoning Code.

The 2021 LCP recognized the age of the document and need to update it with Policy LU-8.1 which states the City will update the WMP with a focus on addressing issues of sea level rise and future planning for Morro Rock. With rapidly changing science as it relates to sea level rise modeling, the City proposes to update the technical studies done in support of Plan Morro Bay to ensure the latest guidance. In addition, recognizing the unique need for habitat restoration within the bay and greater estuary area, the proposal would also include incorporation of eelgrass policy development into the updated Waterfront Master Plan.

Likelihood of Success/Effectiveness

Overall, the success of the Commission's grant program will be measured by the progress made toward development and implementation of climate resilience strategies, including through LCP certification, update, or amendment. The Commission will consider the likelihood of success of each proposal, including evaluating the practicality, feasibility, and effectiveness of a proposed work program that may lead to successful implementation. Proposals must address the need for coordination with the public and the Commission, and provide for practicable benchmarks for development and review of studies, plans, LCP policies, and other project-specific deliverables.

Applicants will be asked to describe any LCP planning work that has been initiated or is already underway at the local level and how this grant program is needed to substantially further that effort. A resolution from the applicant committing to completing an LCP Amendment submittal to the Commission will be required as part of the application.

For new LCP development, the local government should demonstrate its willingness and capacity to assume local coastal development permit processing. Relatedly, some areas of the coastal zone remain uncertified because the Commission and local government have been unable to reach agreement on the resolution of issues or the issue is particularly intractable. The Commission will consider the likelihood that such areas and specific policy questions can be successfully addressed, leading to certification of the area.

Application Response:

The City's recently completed a comprehensive update of its LCP Land Use Plan and Coastal Implementation Plan. The LUP was adopted by the City Council in 2021 and certified by the Coastal Commission three months later with Commissioner public comment including the LUP would be a model document for other coastal cities. Following that the City adopted a comprehensive update of its Implementation Plan in 2022 with amendments completed in December 2023. The IP is currently pending certification by the Coastal Commission. Both documents had significant community input and feedback. Multiple forms of community engagement were utilized including community-wide workshops, online surveys, telephone surveys to reach underrepresented populations, stakeholder and focus group interviews, as well as the City Council convening of the General Plan Advisory Committee (GPAC) which was a cross-section of the community appointed to act as liaisons between the community and the Planning Commission. The City seeks to utilize the same strategy with the Waterfront Master Plan Update project. Upon adoption of the Waterfront Master Plan, the City will submit for an LCP amendment to its Implementation Plan to incorporate the WMP. The City would also be prepared and



willing to assume local coastal development permit processing for those portions of the waterfront which are currently included within the CCC original retained jurisdiction.

Project Integration/Leverage/Matching Funds

The Commission will consider the relationship of the LCP work program to other planning work being undertaken by the jurisdiction. There are several statewide grant programs underway which may positively integrate with this LCP Planning Grant program. Applicants will be asked to describe any other related grant awards (such as through past Coastal Commission grant rounds, or from the Ocean Protection Council, Coastal Conservancy, Caltrans, or the Strategic Growth Council) that may support the LCP planning work. The Commission will consider the ability to integrate and leverage any additional program funds available that could help support LCP certification, update, or amendment.

The City completed a comprehensive update of its previous 1984 LCP with a new LCP adopted and certified by CCC in 2021. This update process was successful due in large part to receipt of three previous LCP planning grants; a Round 2 grant for \$147,000 a Round 3 grant for \$200,000, and a Round 6 grant for \$65,000. In addition prior to that, the City received a \$250,000 grant from the Ocean Protection Council. This funding was matched by \$707,000 in City General Fund contributions as well as in-kind staff. This funding was used to provide the background technical reports listed below as well as prepare administrative and public draft documents of Plan Morro Bay.

These prior grants funded:

- Completion of the draft LCP / Plan Morro Bay (adopted 2021)
- Community Vulnerability and Resiliency Assessment
- Key Issues and Policies Report
- Community Baseline Assessment
- Downtown Waterfront Strategic Plan (adopted 2018)
- Zoning Code (IP) Diagnosis Memo and Draft IP
- Circulation Element Update Technical Report
- Low Cost Visitor Serving Accommodations Technical Memo
- Lateral Access Technical Memo
- Environmentally Sensitive Habitat (ESHA) Analysis: 2050 Sea Level Rise Scenario
- Sea Level Rise Adaptation Strategy Report
- Coastal Resources & Resiliency, H++ Update

These documents were developed to inform policy and integrated into the City's draft LCP / Plan Morro Bay. As stated in the proposed budget, the City's request is for \$750,000 with an additional City match of \$75,000 to update the City's 1996 Waterfront Master Plan. The City update will focus on addressing issues of sea level rise and future planning for Morro Rock. With the final budget request, it is the City's desire to proceed with the update of the Waterfront Master Plan and not only incorporate coastal resilience and sea level rise adaptation planning but also update other portions including waterfront Design Guidelines. The City aims to proceed to adoption documents and subsequently submit for certification to the Coastal Commission within two years of grant award or by September of 2026 as noted in the project schedule.

Members shall not use public resources unavailable to the public in general, such as City staff time, equipment, supplies or facilities, for private gain or personal purposes.

City Council has identified community engagement as a priority of the council. City Council recognizes that limited meeting spaces are available in the City of Morro Bay. In supporting individual council members' effort to reach the general public for the overall interest of the City of Morro Bay, council members, Mayor included, are allowed to use city's meeting facility free of charge for up to six times per calendar year for outreach meetings, including Town Hall, Listening sessions and like, except during the election season beginning 120 days prior to an election to fill a City office, provided those sessions require only limited staff support for facility use. The outreach events must demonstrate a reasonable connection to the city council adopted goals. Council members shall request facility usage through the City Manager.

The 120 days restriction was adopted to provide a broad and strict prohibition on use of public resources during election season. California law prohibits use of public resources for either personal or political purposes.

Under California law, using public resources for either personal or political purposes is illegal. "Public resources" include such things as: 1) Money (for example, charges made on an agency credit card or account); 2) Staff time; 3) Equipment (for example, machinery, vehicles, technology, tools, telephones, furniture and computers); and, 4) Supplies (for example, items one would otherwise purchase at office supply or hardware stores). "Use" means the use of public resources that is substantial enough to result in a gain or advantage for the user and a loss to the local agency that can be estimated as monetary value.

Public officials face both criminal and civil penalties for using public resources for personal or political benefit.

DISCUSSION

At the August 13, 2024, Council meeting, at the request of Council Member Landrum to fine tune Section 5.5, the Council directed staff to bring back an agenda item to allow for exceptions, for a Council member who is *not* running for reelection during that election season, to the 120 days restriction in the policy during election season.

Council could amend the policy to either:

Option A: affirm that Council by agendized action may consider specific exceptions to the restrictions in Section 5.5 during election season for Council Members not running that election season for re-election ; or,

Option B: provide that the restrictions in Section 5.5 during election season do not apply to a Council Member not running for re-election that election season.

Two alternative resolutions are attached that can amend the policy for either of the above options at the direction of the Council.

Furthermore, for expediency's sake, Council tonight could approve, at the desire of Council

Member Landrum, exception(s) to Section 5.5 of the Policy for potential upcoming town hall meetings by Council Member Landrum. Topics may be ones such as homelessness, the downtown, harbor issues such as infrastructure needs and waterfront sustainability, and what can local government do about issues of what is in our water, air and food.

CONCLUSION

Staff recommends the Council discuss and consider amending Section 5.5 of the Policy and also consider at the present meeting granting Council Member Landrum exception(s) to Section 5.5 of the Policy as outlined above and presented at the Council meeting.

ATTACHMENTS

1. [Link](#) to City Council Policies & Procedures
2. Resolution No. 59-24 adopting Option A Policy Revisions
3. Resolution No. 59-24 adopting Option B Policy Revisions

RESOLUTION NO. 59-24 (OPTION A)

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AMENDING THE CITY COUNCIL
POLICIES AND PROCEDURES MANUAL**

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

WHEREAS, the Council Policies and Procedures Manual for the City of Morro Bay (the "Manual") is a combination of City Council actions, policies, references, and information regarding the City Council; and

WHEREAS, to ensure all Councilmembers are familiar with and understand the City of Morro Bay's philosophies and policies regarding serving on the City Council, on July 23, 2001, the City Council adopted Resolution 47-01 approving an early version of the Manual; and

WHEREAS, the Manual has been amended several times throughout the years; and

WHEREAS, the City Council has identified community engagement as a priority of the Council; and

WHEREAS, promoting community engagement by Council Members with the public concerning City Council adopted goals promotes a good government mandate of responsiveness, transparency and accountability; and

WHEREAS, the City Council recognizes that limited meeting spaces are available in the City of Morro Bay; and

WHEREAS, a limited use of public resources to promote the Council goals of community engagement is a worthy and proper endeavor for the City; and

WHEREAS, the City Council recently added Section 5.5 to establish a policy for use of public resources for community engagement by elected officials, so as to promote responsive government, transparency, and accountability, while also actualizing a Council priority of community engagement; and

WHEREAS, Section 5.5 provides that, in supporting individual council members' effort to reach the general public for the overall interest of the City of Morro Bay, council members, Mayor included, are allowed to use city's meeting facility free of charge for up to six times per calendar year for outreach meetings, including Town Hall, Listening sessions and like, provided those sessions require only limited staff support for facility use, and they demonstrate a reasonable connection to the city council adopted goals; and

WHEREAS, Section 5.5 also provides that such use of City facilities pursuant to Section 5.5 is not permitted, without exception, during the election season beginning 120 days prior to an election to fill a City office;

WHEREAS, the City Council desires to amend Section 5.5 to provide the exception that Council Members not running for re-election during said election season shall have an opportunity to use City facilities pursuant to Section 5.5; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay does hereby amend Section 5.5 of the City Council Policies and Procedures Manual as follows (added text in **bold**):

5.5 Use of Public Resources

Members shall not use public resources unavailable to the public in general, such as City staff time, equipment, supplies or facilities, for private gain or personal purposes.

City Council has identified community engagement as a priority of the council. City Council recognizes that limited meeting spaces are available in the City of Morro Bay. In supporting individual council members' effort to reach the general public for the overall interest of the City of Morro Bay, council members, Mayor included, are allowed to use city's meeting facility free of charge for up to six times per calendar year for outreach meetings, including Town Hall, Listening sessions and like, except during the election season beginning 120 days prior to an election to fill a City office, provided those sessions require only limited staff support for facility use. ***However, during the time period of 120 days prior to an election to fill a City office, a council member who is not running for re-election at that election shall be able to hold such outreach meetings free of charge upon approval of Council through an agenda item at a public meeting.*** The outreach events must demonstrate a reasonable connection to the city council adopted goals. Council members shall request facility usage through the City Manager.

PASSED AND ADOPTED by the City Council, City of Morro Bay at a regular meeting thereof held on the 27th day of August 2024 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

CARLA WIXOM, Mayor

ATTEST:

DANA SWANSON, City Clerk

RESOLUTION NO. 59-24 (OPTION B)

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AMENDING THE CITY COUNCIL
POLICIES AND PROCEDURES MANUAL**

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

WHEREAS, the Council Policies and Procedures Manual for the City of Morro Bay (the "Manual") is a combination of City Council actions, policies, references, and information regarding the City Council; and

WHEREAS, to ensure all Councilmembers are familiar with and understand the City of Morro Bay's philosophies and policies regarding serving on the City Council, on July 23, 2001, the City Council adopted Resolution 47-01 approving an early version of the Manual; and

WHEREAS, the Manual has been amended several times throughout the years; and

WHEREAS, the City Council has identified community engagement as a priority of the Council; and

WHEREAS, promoting community engagement by Council Members with the public concerning City Council adopted goals promotes a good government mandate of responsiveness, transparency and accountability; and

WHEREAS, the City Council recognizes that limited meeting spaces are available in the City of Morro Bay; and

WHEREAS, a limited use of public resources to promote the Council goals of community engagement is a worthy and proper endeavor for the City; and

WHEREAS, the City Council recently added Section 5.5 to establish a policy for use of public resources for community engagement by elected officials, so as to promote responsive government, transparency, and accountability, while also actualizing a Council priority of community engagement; and

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WHEREAS, the City Council desires to amend Section 5.5 to provide the exception that Council Members not running for re-election during said election season shall have an opportunity to use City facilities pursuant to Section 5.5; and

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PASSED AND ADOPTED by the City Council, City of Morro Bay at a regular meeting thereof held on the 27th day of August 2024 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

CARLA WIXOM, Mayor

ATTEST:

DANA SWANSON, City Clerk



AGENDA NO: 9.d

MEETING DATE: August 27, 2024

Staff Report

TO: Honorable Mayor and City Council

DATE: August 22, 2024

FROM: Yvonne Kimball, City Manager

SUBJECT: Update on Fiscal Year (FY) 2023-24 and 2024–25 City Council Goals and Action Items

RECOMMENDED ACTION

Receive a progress report on the City Council goals, goals’ statements, and action Items, acknowledge accomplishments and overall workload, and provide direction remaining goals.

ALTERNATIVES

None

FISCAL IMPACT

There is no immediate fiscal impact related to the recommendation, however, many of the action items have associated fiscal impacts, some of which will result in costs to the City and other items may bring revenue enhancements to the City.

BACKGROUND/DISCUSSION

In April 2023, the Council adopted a set of goals, goals statements and short-term action items following a deliberated process.

The Council adopted four goals for FY 2023-24 and FY 2024-25:

1. Public Infrastructure
2. Economic Vitality
3. Housing / Homelessness Response
4. Community Engagement

Each of the goals have several corresponding action items. Together there are 27 short-term goals. As of August 2024, we have completed 14 of them and 7 are near completion. A couple of short-term goals need clarification or further direction.

Progress on Goals which are nearly complete.

Infrastructure

- Street paving
- Development Impact fee study

Prepared By: YK Dept Review: _____

City Manager Review: YK City Attorney Review: _____

- Public safety needs assessment (standards of cover)
- Improve streetscape

Economic Vitality

- Monitor and stay engaged in OSW

Housing and Homelessness Response

- Continue participation in county's 5-year plan

Community Engagement

- Develop and implement outreach and communication plan

Many goals have been completed as far as we can go at this point, but the overall activities likely become ongoing efforts. They are:

Economic Vitality

- Pursue grant opportunities
- Review of city owned properties [with focus on key catalyst properties], strategy to optimize use revenues [investment explore use of commercial realtor to manage commercial rental property]
- Streamline permit process for ADU and commercial development
- Presentation to Council on paid parking study, and proposed pilot program.

Housing / Homelessness Response

- Housing Element Program implementation
- Review possible upzone of Seashell Estates property
- Explore achievable options at the city level including emergency warming shelters
- Homeless Outreach Case Manager
- Speed up processing of ADU permits

Community Engagement

- Leverage partnerships with Chamber, Visit Morro Bay, local service clubs, etc.
- Explore available communication tools
- Conduct joint Council/Advisory Board meetings periodically and consider biannual or annual advisory reports to council
- Continue Morro Bay Police Department Citizens Academy, consider other community outreach opportunities, including work sessions
- Ad Hoc Committee review of Planning Process

Some goals need further direction from the City Council. They are:

Economic Vitality

- Market Plaza development: This project has been evolving over many years. It would make sense to clarify or reaffirm the scope before additional resources, both public and private, are further spent.
- A related short-term was the review of city owned properties. The city owns real estate properties; some are occupied for long term uses, such as the library property, the Chamber/Visit Morro Bay property, and two residences occupied by city staff due to special circumstances. Key opportunity properties that are impactful would include 781 Market St.

and surrounding properties, 231 Atascadero, 160 Atascadero, 525 Harbor. 1130 Napa has also been considered for exploration.

Housing

- Identify affordable housing incentive program: This has evolved into the discussion with the Downtown Design District.

Community Engagement

- Development Historical Preservation Ordinance using draft ordinance prepared by Historical Society as a standing point. A new ordinance requires substantial resources to develop. The Downtown Design District discussion has identified that the first achievable step is to work with the historical society to generate a list of properties of historical interest or value. Staff seeks concurrence.

When considering the progress of the 27- short-term goals, it is appropriate to acknowledge that there is a full list of existing or unfinished priorities from previous cycles that staff also has to tackle. Examples are:

- WRF remaining tasks: IPR, decommissioning
- Regional water supply portfolio monitoring
- Grant-initiated projects including EV charging stations
- BESS application processing
- Panorama project processing
- Tennis court rehab
- Pickleball court resurfacing
- Short-Term Rental related analysis
- 60th anniversary celebrations

Further, key position changes in the last year also play a role in the progress of things we do. All these matters keep city staff and city council very busy.

ATTACHMENT(S)

1. FY 2023-24 & 2024-25 Goals, Goals' Statements & Action Items
2. Progress report

City of Morro Bay

2023-2025 Goals and Short Term Actions



CITY PURPOSE

In order to preserve the high quality of life in Morro Bay, the City's purpose is to provide essential public service and infrastructure to maintain a safe, clean and healthy place for residents and visitors to live, work and play. To achieve that purpose, the City invests the vast majority of its resources in services such as city planning, infrastructure maintenance and improvement, public safety, public utilities, recreation services, and the internal financial, human resources, and technology to support these public services.

CITY GOALS, GOAL STATEMENTS, AND SHORT-TERM ACTION ITEMS

The City is able to successfully provide these core services thanks to community support

and volunteerism that resource and supplement the City's talented professional staff. As a result of this success, the City is also able to dedicate some resources to address the emerging challenges and future-facing opportunities. In April 2023, the City Council adopted four (4) City goals and twenty-seven corresponding short-term action items. The City goals each have goal statements that outline what the City aims to achieve. The short-term action items are the area of focus related to the goals that the City will work on in Fiscal Years 2023-24 and 2024-25 (all listed below). Combining the City's work on core services with future oriented goals will help ensure our community remains a great place to live, work and play for current and future generations.



CITY COUNCIL GOALS

1. PUBLIC INFRASTRUCTURE

2. ECONOMIC VITALITY

3. HOUSING / HOMELESSNESS RESPONSE

4. COMMUNITY ENGAGEMENT

PUBLIC INFRASTRUCTURE



GOAL STATEMENTS:

- (1) Assess and provide report on state of infrastructure including streets, sewer lines, sidewalks, storm drains and Harbor infrastructure.
- (2) January 2023 storm response and future mitigation.
- (3) Repair, update and enhance Veterans Hall so it can continue to serve the community.
- (4) Striping program to improve sidewalks, crosswalks & accessible parking.

SHORT-TERM ACTIONS

- Street Paving
- Complete Capital Needs Assessments
- Complete Development Impact Fee Study
- Update Council Chamber:
A/V upgrades, web-based agenda management system for closed captioning and improved accessibility for visually impaired
- Prioritize storm recovery efforts, maximizing FEMA/insurance reimbursement opportunities; Hazard mitigation / climate resiliency (grant funding eligibility)
- Public safety needs assessment (Standards of Cover)
- Improve streetscape with road striping, parking lines & curb painting

GOAL STATEMENTS:

- (1) Pursue grant writing opportunities.
- (2) Evaluate opportunities for City-owned properties.
- (3) Streamline permit process for residential and commercial development.

ECONOMIC VITALITY



SHORT-TERM ACTIONS

- Market Plaza development opportunities (currently under negotiations)
- Monitor and stay engaged in offshore wind development
- Pursue grant opportunities, including:
 - RFP for full-service Grant Writer & Grant Administration (if successful)
 - Coleman Beach area
 - Climate Action Plan & Waterfront Master Plan
 - DBW grant funding for boat ramp replacement
- Review of City-owned properties, strategy to optimize use or revenues. Explore use of commercial realtor to manage commercial rental property
- Streamline permit processing for residential (including ADUs) and commercial development (also supports Housing goal)
- Presentation to Council on Paid Parking Study and proposed Pilot Program; implement, as directed

GOAL STATEMENTS:

- (1) Identify low-income housing opportunities.
- (2) Explore achievable options for unhoused residents.
- (3) Speed up processing of ADU permits to increase availability of affordable housing.

HOUSING

HOMELESSNESS RESPONSE



SHORT-TERM ACTIONS

- Housing Element Program Implementation (Housing by-right Policy and Objective Design Guidelines projects underway – \$275K rec'd in grant funding)
- Review possible upzone of Seashell Estates property for proposed housing project
- Explore achievable options at the City level (emergency warming shelters, pallet homes, etc.)
- Continue participation in County's 5-year Housing & Infrastructure Plan
- Continue participation in the County-wide 5-year Strategic Plan to address homelessness
 - *Homeless Outreach Case Manager*
- Identify affordable housing incentive program
- Speed up processing of ADU permits to increase availability of affordable housing

COMMUNITY ENGAGEMENT



GOAL STATEMENTS:

- (1) Build relationships and improve the purpose of advisory bodies to attract and retain members.
- (2) Hold community workshops and study sessions on upcoming development.
- (3) Improve City website and social media presence.

SHORT-TERM ACTIONS

- Leverage partnerships with Chamber, Visit Morro Bay, local service clubs and community organizations, and other event hosts
- Explore/assess available communication tools
- Conduct joint Council/advisory board meetings periodically and consider biannual or annual advisory board reports to Council
- Develop Historic Preservation Ordinance using draft ordinance prepared by Historical Society as a starting point
- Continue MBPD Citizens Academy, Consider Community Academy and other opportunities for project / community outreach, including study sessions and workshops
- Develop and implement outreach and communication plan using different formats to reach broad spectrum of residents
- Ad hoc Committee review of Planning Process

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You may contact the City Council via email at council@morrobayca.gov

You can follow the City of Morro Bay on social media



Goal #1: Public Infrastructure

Goal Statements: (1) Assess and provide report on state of infrastructure including streets, sewer lines, sidewalks, storm drains and Harbor Infrastructure; (2) January 2023 storm response and future mitigation; (3) Repair, update and enhance Veterans Hall so it can continue to serve the community; (4) Striping program to improve sidewalks, crosswalks & accessible parking.

Item #	Action Items	Departments Involved	Lead Department	CURRENT STATUS (As of August 2024)	NEXT STEPS (As of August 2024)
1)	Street Paving	Public Works	Public Works	Proposals were received from five construction management firms and Filippin Engineering has been selected to project construction management and testing services during construction. Construction Bids due 8/15/2024. Paving is expected to begin in September 2024.	Bring construction management and construction contracts to City Council on 8/27/24; <u>prior miles stones</u> : - with weather consideration performed small work weekly mostly in North Morro Bay. - finalized contract to enable a Contractor short-term rehab of Preston Ln. -paved PD parking lot and Lila Kieser parking
2)	Complete Capital Needs Assessments	Public Works, Harbor	Public Works	Continued effort to secure Congressional funding; in June 2024 City consolidated the Harbor/non-Harbor budgets to focus on the Harbor revetments. Brady Engineering performed site survey work on the revetment wall June 20th through July 19th. Brady is analyzing the data collected and preparing the draft assessment report. Brady expects to submit the draft report by the end of September.	Review and provide comments to the consultant on the draft revetment wall assessment report when received. When the final assessment report is received, present a summary of the findings to Council.
3)	Complete Development Impact Fee Study	Admin Svcs, Public Works, Comm Dev, Harbor, Fire, Police	Admin Services	Preparing RFP, form staff project team. Evaluated other fees as a part of the Project Team selected DTA and work is underway. Selected Teams meetings occur every 2-4 weeks.	Draft report from (consultant) DTA will go to CFAC for review/feedback (Oct. 15th 2024). Goal is to take to Council for approval in time to implement new fees by January 1, 2025.
4)	Update Council Chamber: A/V upgrades, web-based agenda management system for closed captioning and improved accessibility for visually impaired	Public Works, City Clerk, IT	Public Works	In process of signing contract with consultant to review decision points as part of A/V upgrade. Staff will continue transition/implementation of web based agenda system (eScribe) with full implementation to be aligned with Vets Hall A/V upgrades. Staff researched other cities' systems completed exploration of space functionalities and funding option through FY 24/25 budget, came up with RFQ with help of IT and city clerk to assist scope decisions. Consultant on board	Complete staff report to the City Council on decision points related the the A/V upgrade and bring to Council in October
5)	Prioritize storm recovery efforts, maximizing FEMA/insurance reimbursement opportunities; Hazard mitigation / climate resiliency (grant funding opportunities)	Public Works, Admin Services, Risk Mgmt, Comm Dev	Public Works	The City has received \$583,425.62 in insurance proceeds primarily for damage to WWTP buildings, Harbor docks and Maintenance vehicles. Invoices in the amount of \$40,225.34 for damaged tools / equipment that were replaced was submitted for reimbursement on 8/12/24. FEMA Claims - 23 projects claims have been submitted to FEMA. Two claims have been rejected due to 100% of loss covered by insurance. <> Individual project milestones: Sequoia storm drain project out to bid in July 2024; council approval of contract in August.	Continue to work with FEMA to provide information as requested by FEMA reviewers.
6)	Public safety needs assessment (Standards of Cover)	Fire, Police	Fire	Met with consultant, submitted all required data and completed interviews . We are awaiting draft report from consultant.	Report is expected in a few weeks.

7)	Improve streetscape with road striping, parking lines & curb painting	Public Works	Public Works	See Street Paving goal above. Completed Local Safety plan which was funded by a grant. The plan can be utilized in a variety of street related work, including possible grants.	See street paving goal above.

Not yet initiated
Underway
Nearing Completion
Complete

Goal #2: Economic Vitality

Goal Statements: (1) Pursue grant writing opportunities; (2) Evaluate opportunities for City-owned properties; (3) Streamline permit process for residential and commercial development.

Item #	Action Items	Departments Involved	Lead Department		
1)	Market Plaza development opportunities	Comm Dev, City Manager	Comm Dev	City has been in negotiations for a sale and redevelopment of the property. The property is currently being leased with an annual income of \$60k a year. Updated appraisal received in March 2024; Leasor expressed interest in property. Development scope needs to be redefined.	Given new information, clear direction is needed- option - continue w. original scope; modify original scope; restart a process for a new RFP;
2)	Monitor and stay engaged in offshore wind development	Council Sub-Committee, City Manager, Harbor, Community Development	City Manager	SLO county MOU funded study inc. local meetings; continue to engage with state, federal, and local groups, inc. Cal Poly, Port San Luis, REACH, Chamber, Fishing, etc. as well as lease holders for disucssussions. Possible legislative platform to refine city council priorities. possible appointment staff liaisons w. energy focus	An MOU with County may be formed by the end of 2024, regarding a grant for port feasibility study
3)	Pursue grant opportunities, including RFP for full-service grant writer & grant administration (if succerssrful); Coleman Beach area; Climate Action Plan & Waterfront Master Plan; DBW grant funding for boat ramp replacement	All	Finance	Looking into development of a grant management systems given compliance difficulties with auditing requirements given \$12-14 million in grants awarded in last two years. Nonetheless, Harbor Dept has applied for and obtained the following grants for use in 2023/2024: Sea Tow Life Jacket Loaner Grant (equipment, non monetary), HUD Congressional Appropriation to improve North T-Pier (\$1.5M), MBCFO Grant to repair commercial fishing docks (\$100k) and fund the Washington DC trip (\$8k), DBW Grant for Flare Disposal (\$50k), DBW Grant for Oil/Fuel Containment Equipement (\$40k), (2) SAVE Grants for vessel disposal and salvage (\$15k) (\$38k). In addition to these grants, the Harbor Dept was appropriated \$14.5 M to dredge the Harbor inlet and back channel. The Fire Dept was recently awarded \$48k for extrication tools from the Office of Traffic Safety. Two grant applications pending with FEMA -- one grant is for mobile radios and the second is a SAFER grant for 3 Firefighter positions. The Department also received the Diablo Canyon Nuclear Preparedness grant for three handheld radios and a laptop compter for \$30,827. Fire- tentatively awarded a grant from the California Office of traffic Safety for a second set of battery powered hydraulic extrication tools. Grant award up to \$45,145 with no cost share.	Utilizing grants that have been awarded; continued working with Townsend as grant resources; waterfront master plan award; Fire - two grant applicaitons pending; Harbor / City Manager expect SLO County wind funding RFP in December 2023; City Manager connecting w/ state and federal lobbyists re: funding for infrastructure, community facility improvements, harbor dredging.

4)	Review of City-owned properties, strategy to optimize use or revenues. Explore use of commercial realtor to manage commercial rental property	City Manager, Comm Dev, Harbor, Admin Svcs	Comm Dev	City is exploring opportunities with other governmental agencies (CS discussion). The Harbor Department has had negotiations and/or working on negotiations with multiple Master Lease Holders to improve annual revenue. These meetings and negotiations include: Bayfront Marina, Three Stacks and a Rock, Giovanni's, TLC enterprises, Morro Bay Paddle Sports, Associated Pacific, State Parks Marina, Libertine, Windows on the Water, Kickers, Morro Bay Fish Company, Dockside Restaurant, Van Buerden Investments, Cal Poly and MBCFO Storage. Community Development is negotiating a purchase and sale agreement for 781 Market Street property for development of a mixed use hotel project. Staff is also looking at alternative uses for the Teen Center property located on Atascadero Road. staff also met with commercial realtors and concluded that multiple firms would be needed to perform current tasks. Harbor Dept. personnel changes. City also purchased software to help finance dept. conduct real property monitoring.	Ongoing. Real property discussions as needed. A few important sites: 781 Market St., 231 Atascadero, 1130 Napa, 525 Harbor, 160 Atascadero, etc.
5)	Streamline permit processing for residential (including ADUs) and commercial development (also supports Housing goal)	Comm Dev	Comm Dev	CDD has implemented an online portal that allows applicants to submit application electronically. Plans can also be checked electronically removing the need for paper plans. Objective Design Standards were also adopted in November 2023. The final update to the new Zoning Code significantly reduces the number of projects that are required to go to PC and Council (approved by Coastal in March)	Update: the Coastal Commission approved the City's Zoning Code on March 15, 2024.
6)	Presentation to Council on Paid Parking Study and proposed Pilot Program; implement, as directed.	City Manager, Police Department, Comm Dev, Harbor,	City Manager	study was presented late 2023. Council direction no paid parking as of now but directed staff looking into paid parking at Rock to address traffic management, emergency response and maintenance needs. Staff to consult with CCC	obtain Coastal approval, design process, implement paid parking at Morro Rock;

Not yet initiated
Underway
Nearing Completion
Complete

Goal #3: Housing / Homelessness Response

Goal Statements: (1) Identify low-income housing opportunities; (2) Explore achievable options for unhoused residents; (3) Speed up processing of ADU permits

Item #	Action Items	Departments Involved	Lead Department	Status (as of August 2024)	Next Steps
1)	Housing Element Program Implementation (Housing by-right Policy and Objective Design Guidelines projects underway - \$275K rec'd in grant funding)	Comm Dev	Comm Dev	The Coastal Commission approved the City's updated Zoning Code on March 15, 2024. This included objective design standards for housing development projects pursuant to State housing laws.	completed as of March 15, 2024.
2)	Review possible upzone from low density to medium or height density for the Seashell Estates property located off of Teresa Drive for possible housing project	Comm Dev	Comm Dev		Project was canceled.
3)	Explore achievable options at the City level (emergency warming shelters, pallet homes, etc.)	City Manager, Fire, Comm Dev, Police	City Manager	Warming shelters have been determined not suitable in Morro bay. during weather events, county's warming shelters are open to MB residents. Instead, city partner with 805 Street Outreach, the County public library to utilize parking lot and operate a shower program since February 2024. Reviewing recent Supreme Court decision and how it affects MBMC ordinance .	ongoing effort can be on new opportunities, such as working with county's Homelessness "home key" program, and new grant for encampment cleaning up.
4)	Continue participation in County's Regional Housing & Infrastructure Plan	Comm Dev	Comm Dev	SLOCOG published the County's Regional Housing and Infrastructure Plan in August (SLO COG is lead)	waiting to hear from SLOCOG, will update accordingly
5)	Continue participation in the County-wide 5-year Strategic Plan to address Homelessness; Homeless Outreach Case Manager	City Manager, Comm Dev, Police, Fire	City Manager	see item 3	ongoing effort can be on new opportunities, such as working with county's Homelessness "home key" program, and new grant for encampment cleaning up.
6)	Identify affordable housing incentive program	Comm Dev	Comm Dev	With the work of the DDD ad-hoc committee, a near term recommendation is to utilize the density bonus ordinance, which city has adopted.	The DDD Ad-hoc Subcommittee work will culminate with a public forum to be held in the fall of 2024.
7)	Speed up processing of ADU permits to increase availability of affordable housing	Comm Dev	Comm Dev	Stock ADU plans are complete and posted to the City's website: https://ca-morrobay2.civicplus.com/1056/Pre-Approved-ADU-Program	The Pre-Designed ADUs are complete. CDD staff is finalizing the public brochure, checklist, and website announcements.

Not yet initiated
Underway
Nearing Completion
Complete

Goal #4: Community Engagement
 Goal Statements: (1) Build relationships and improve the purpose of advisory bodies to attract and retain members; (2) Hold community workshops and study sessions on upcoming development; (3) Improve City website and social media presence

Item #		Departments Involved	Lead Department	Status(as of August 2024)	Next Steps
1)	Leverage partnerships with Chamber, Visit Morro Bay, local service clubs and community organizations, and other event hosts	All	City Manager	new contract w. Chamber of Commerce, CM participate in VMB board meetings and other events	enhance partnerships through interactions with council and staff
2)	Explore/assess available communication tools	All	City Clerk	renewed contracts with tools, incl. survey money, pocol.	the assistant to the CM to coordinate city wide communication needs, including website updates - rec (short-term goal for next cycle)
3)	Conduct joint Council/advisory board meetings periodically and consider biannual or annual advisory board report to Council	City Manager, Admin Svcs, Comm Dev, Public Works, Harbor, Recreation & All dept	Mayor and Council	Held council joint meetings with PC, PWEB, CFAC. Joint meetings between boards were also held.	complete, with the joint meeting effort will continue as necessary.
4)	Develop Historic Preservation Ordinance using draft ordinance prepared by Historical Society as a starting point	Comm Dev	Comm Dev	Work has not yet started on the Historic Preservation Ordinance. Based on DDD's ad-hoc committee discussions, Staff recommends working with the Historical Society on a list of character defining buildings that can be used in CDD's review of discretionary projects to preserve locally important historic architecture.	a final Downtown Design District Ad-hoc committee is scheduled for late August, followed up a public meeting. Results will be short-term actions and long term actions, which among other things could include a historic Preservation ordinance.
5)	Continue MBPD Citizens Academy; consider Community Academy and other opportunities for project / community outreach, including study sessions and workshops	All	City Manager	Police hosted National Night Out and Coffee with a Cop events. Comm Dev, Fire, Rec and others attended Rotary Club meetings, Chamber of Commerce "Squeaky Wheel" events, "Listening Tour" and "Breakfast on the Bay" events. Fire- Conducted a community outreach presentation at Bayside Care Facility, Hosted Morro Bay Rotary with a presentation on Fire Department operations and updates.	a citizens academy is long term goal. Hiring of the Asst to CM would enhance coordinated efforts.
6)	Develop and implement outreach and communication plan using different formats to reach broad spectrum of residents	All Depts. & council members	City Manager, City Clerk	Adopted a council policy supporting individual ccm's use of public resources for outreach events; Fire: Continued training on countywide evacuation planning processes and technology. Includes digital services for public notification. City Mgr., CDD, PW D and Chiefs met with residents and businesses, interest groups. Ongoing web content updates by all departments. Resumed the monthly CM updates newsletter.	Hire the Assistant to the CM to coordinate website update, design and publish a variety of information flyers, coordinate cross-departmental activities, draft communication plan, manage and streamline communication actions.
7)	Ad hoc Committee review of Planning Process	Comm Dev	Comm Dev	The Coastal Commission approved the City's updated Zoning Code on March 15, 2024. The zoning code update significantly streamlined the permit process for many planning case types by allowing for ministerial approval.	Accomplished in light of zoning code adoption. Recommending implementation and possible review in future if necessary.

Not yet initiated
Underway
Nearing Completion
Complete