NOTICE OF MEETING

CITY OF PACIFIC GROVE

CITY COUNCIL

REGULAR MEETING AGENDA

Wednesday, March 2, 2022, 6:00 P.M.

Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

The Council will not begin consideration of any item on this agenda later than 10:00 p.m. unless such consideration is approved. Any items on this agenda not considered this evening will be continued to a future meeting.

Copies of the agenda packet are available for review at the Pacific Grove Library, in the Finance Department, and electronically at www.cityofpacificgrove.org/agendas. The most effective method of communication with the City Council is by sending an email to citycouncil@cityofpacificgrove.org. In order to allow the City Council adequate time to review communication related to an agenda item, it is recommended that the communication be sent no later than 9:00 AM on the day prior to the City Council meeting.

THIS MEETING WILL BE HELD IN PERSON AND VIRTUALLY (HYBRID).

CHAMBER CAPACITY SEATING IS LIMITED AND PROVIDED ON A FIRST COME, FIRST SERVED BASIS.

THE VIRTUAL MEETING IS COMPLIANT WITH THE GOVERNOR'S EXECUTIVE ORDERS ALLOWING FOR A DEVIATION OF TELECONFERENCE RULES REQUIRED BY THE BROWN ACT.

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https://us02web.zoom.us/j/209579290

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669 900 9128
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Help Line 831-648-3128

MEETING INSTRUCTIONS

The public may also view the meeting on the Peninsula Channel 25.

AGENDA

CALL TO ORDER

A. Remote Teleconference - AB 361 **PG 9**

Reference: Sandra Kandell, City Clerk

Recommended Action: Ratify Resolution No. 21-029 Emergency Teleconferencing authorizing remote teleconference meetings of all City legislative bodies for the following 30 days in accord with the Ralph M. Brown Act.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

PLEDGE OF ALLEGIANCE: Councilmember Coletti

1. APPROVAL OF AGENDA

2. PRESENTATIONS

A. Central Coast Community Energy Annual Update by Gabe Ruiz, Key Account Specialist

Reference: Gabe Ruiz, Key Account Specialist **PG 14**

Recommended Action: Receive presentation.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

3. COUNCIL AND STAFF ANNOUNCEMENTS (City-Related Items Only)

A. Other

4. GENERAL PUBLIC COMMENT

General Public Comment must deal with matters subject to the jurisdiction of the City and the Council that are not on the Regular Agenda. This is the appropriate place to comment as to items on the Consent Agenda, only if you do not wish to have the item pulled for individual consideration by the Council. Comments from the public will be limited to three minutes and will not receive Council action. Comments regarding items on the Regular Agenda shall be heard prior to Council's consideration of such items at the time such items are called. Whenever possible, written correspondence should be submitted to the Council in advance of the meeting, to provide adequate time for its consideration.

CONSENT AGENDA

The Consent Agenda deals with routine and non-controversial matters, and may include action on resolutions, ordinances, or other public hearings for which testimony is not anticipated. The vote on the Consent Agenda shall apply to each item that has not been removed. Any member of Council, staff, or the public may remove an item from the Consent Agenda for individual consideration. When items are pulled for discussion, they will be automatically placed at the end of their respective section within the Regular Agenda. One motion shall be made to adopt all non-removed items on the Consent Agenda.

5. APPROVAL OF CITY COUNCIL MEETING MINUTES

Items pulled from this section will be placed under 12. Unfinished and Ongoing Business

A. Minutes of the February 16, 2022 City Council Special and Regular Meetings **PG 38**
Reference: Sandra Kandell, City Clerk
Recommended Action: Approve minutes.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

6. RESOLUTIONS

Items pulled from this section will be placed under 12. Unfinished and Ongoing Business or 13. New Business

A. Resolution in Support of Conveyance of the NOAA **PG 50**
Reference: Amy Tomlinson, Councilmember
Recommended Action: Approve a resolution in support of conveyance of the National Oceanic Atmospheric Administration (NOAA) Property on Lighthouse Avenue to a joint venture between the Center for Ocean Art, Science, and Technology (CAOST) and Central Coast community Energy (3CE)
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

7. ORDINANCES

Items pulled from this section will be placed under 11. Public Hearings

8. REPORTS – INFORMATION ONLY

Items pulled from this section will be placed under 12. Unfinished and Ongoing Business or 13. New Business

A. Monterey Salinas Transit Meeting Minutes for December 13, 2021 and January 10, 2022
Reference: Joe Amelio, Councilmember **PG 55**
Recommended Action: Receive minutes.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

9. REPORTS – REQUIRING ACTION

Items pulled from this section will be placed under 12. Unfinished and Ongoing Business or 13. New Business

A. Ratification of New Local Emergency Actions **PG 69**
Reference: Ben Harvey, City Manager
Recommended Action: Receive report of emergency directives/modifications.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

B. Contract Amendment with Rincon Consultants, Inc. ***This item was continued from the February 16, 2022 meeting.*** **PG 71**
Reference: Joseph Sidor, Contract Planner
Recommended Action: Approve the Proposed Contract Amendment and Reimbursement Agreement with Rincon Consultants, Inc. based on the Scope of Work and Cost Estimate provided for preparation of a revised Initial Study-Mitigated Negative Declaration (IS-MND) relating to a development project located at 1661 Sunset Drive.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

C. Committee and Liaison Appointments **PG 95**
Reference: Bill Peake, Mayor
Recommended Action: Approve appointments of Kathleen Balke to the Administrative Enforcement Hearing Officer Panel and Chip Rerig to the Economic Development Commission both for a term ending January 31, 2024. Endorse Councilmember Coletti as Council liaison for the Beautification and Natural Resources Commission.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

D. Contract Amendment with Alvarez Technology Group for Information Technology Services
Reference: Mohammed Khasimi, Chief Information Officer PG 100
Recommended Action: Approve amendment to the contract with Alvarez Technology Group in amount not to exceed $73,500.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

E. Veteran's Home in Monterey County **PG 102**
Reference: Bill Peake, Mayor
Recommended Action: Approve support letter for Veteran's Home in Monterey County.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

10. **MEETING MINUTES OF COMMISSIONS, BOARDS, AND COMMITTEES**
Items pulled from this section will be placed under 13. New Business

A. Beautification and Natural Resources Commission Minutes: December 21, 2021 and January 18, 2022 **PG 105**
Reference: Daniel Gho, Public Works Director / Deputy City Manager
Recommended Action: Receive minutes.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

B. Diversity, Equity, and Inclusion Task Force Minutes: December 6, 2021, December 13, 2021, January 10, 2022 and January 24, 2022 **PG 110**
Reference: Sandra Kandell, City Clerk
Recommended Action: Receive minutes.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

C. Museum Board Minutes: February 9, 2021, May 11, 2021, and November 30, 2021
Reference: Joyce Halabi, Deputy Public Works Director **PG 122**
Recommended Action: Receive minutes.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

REGULAR AGENDA

11. **PUBLIC HEARINGS**
For public hearings involving a quasi-judicial determination by the Council, the proponent of an item may be given 10 minutes to speak and others in support of the proponent's position may be given three minutes each. A designated spokesperson for opposition to the item may be given 10 minutes to speak and all others in opposition may be given three minutes each. Very brief rebuttal and surrebuttal may be allowed in the sole discretion of the Council. In public hearings not involving a quasi-judicial determination by the Council, all persons may be given three minutes to speak on the matter. Public hearings on non-controversial matters or for which testimony is not anticipated may be placed on the Consent Agenda, but shall be removed if any person requests a staff presentation or wishes to be heard on the matter.

A. Vacation of Excess Right-of-Way on Sloat Avenue Pursuant to §§ 8300-8368 of the California Streets and Highways Code ***This item was continued from the February 16, 2022 meeting.*** **PG 133**
Reference: Alyson Hunter, AICP, CDD Director
Recommended Action: Hold a public hearing and approve a resolution conditionally authorizing the vacation of excess right-of-way (ROW) for a portion of Sloat Avenue pursuant to Sections 8830-8368 of the California Streets and Highways Code.
CEQA: Environmental Impact Report

B. City Council Salary and Health Benefits ***This item was continued from the February 16, 2022 meeting.*** **PG 146**
Reference: Jenny McAdams, Mayor Pro Tem and Amy Tomlinson, Councilmember
Recommended Action: Introduce and hold first reading of an ordinance to (1) amend the salary classification schedule to modify salary ranges for City Council Member and Mayor and (2) direct a summary of a proposed ordinance be published as approved by the City Attorney.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

C. Amend Pacific Grove Municipal Code Chapter 23.73.050 – Time Limits and Extensions
Reference: Laurel O'Halloran, Associate Planner **PG 152**
Recommended Action: Introduce and hold first reading of an Ordinance to Amend Pacific Grove Municipal Code Chapter 23.73.050 - Time Limits and Extensions, and direct publication of a summary of the ordinance as approved by the City Attorney.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

12. UNFINISHED AND ONGOING BUSINESS

A. Local Water Project Business Plan Peer Review ***This item was continued from the February 16, 2022 meeting.*** **PG 157**
Reference: Daniel Gho, Public Works Director / Deputy City Manager; Tori Hannah, Administrative Services Director / Assistant City Manager
Recommended Action: Receive the Peer Review of Pacific Grove Local Water Project Business Plan prepared by DTA, validating the City's assumptions noted in the Business Plan, and authorize staff to being negotiations with CourseCo; and approve a loan repayment plan for the Sewer Fund Interfund Loan.
CEQA: Environmental Impact Report

B. Hybrid Meeting Update ***This item was continued from the February 16, 2022 meeting.***
Reference: Sandra Kandell, City Clerk **PG 220**
Recommended Action: Approve staff recommendation to commence hybrid meetings by phases as outlined in the Discussion section of agenda report.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

C. PG Hotel Homekey Project ***This item was continued from the February 16, 2022 meeting.***
Reference: Bill Peake, Mayor **PG 242**
Recommended Action: Direct City Manager to begin public outreach on a potential Homekey project no later than March 16, 2022.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

D. FY21/22 Street Rehabilitation Project – Ocean View Blvd ***This item was continued from the February 16, 2022 meeting.*** **PG 272**

Reference: Joyce Halabi, Deputy Public Works Director

Recommended Action: Authorize an agreement with Monterey Peninsula Engineering for the FY21/22 Street Rehabilitation Project on Ocean View Blvd in an amount not to exceed $1,145,323 plus a 15% contingency.

CEQA: Categorical Exemption, CEQA Guidelines Section 15301, Class I, Existing Facilities

13. NEW BUSINESS

14. FULL PRESENTATIONS

15. CLOSED SESSION

A. Conference with Real Property Negotiators (Government Code § 54956.8)
Property: Portions of Sloat Avenue east of Dewey Avenue and west of Eardley Avenue and portions of Ocean View Boulevard
Agency Negotiator(s): Tori Hannah, Administrative Services Director/Assistant City Manager, Special Counsel Elizabeth Hull, Alyson Hunter, Community Development Director
Negotiating Party(ies): Debra Geiler and Mike Zimmerman
Under negotiation: Price and terms of payment

B. Conference with Legal Counsel – Pending Litigation (Government Code § 54956.9) *Pacific Grove Coast Watch and Anthony A. Ciani v. City of Pacific Grove; Pacific Grove City Council; Foursome Development Company; Paul Living Trust; CCS Pacific Grove Manager LLC., et al.* **PG 306**
Monterey Superior Court Case No. 22CV000387
Reference: David Laredo, City Attorney
Recommended Action: Receive report and provide direction.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

C. Conference with Legal Counsel – Pending Litigation (Gov. C. §54956.9)
Michael Gonzalez v. City of Pacific Grove, California; Police Chief Cathy Madalone; City Manager Ben Harvey; Does 1 -10. **PG 340**
U.S. District Court, Northern District Action No. 5:22-cv-1079 SVK
Reference: David Laredo, City Attorney
Recommended Action: Receive report and provide direction.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

ADJOURNMENT

NOTICE OF ADA COMPLIANCE: Pursuant to Title II of the Americans with Disabilities Act (Codified At 42 United States Code Section 12101 and 28 Code of Federal Regulations Part 35), and Section 504 of the Rehabilitation Act of 1973, the City of Pacific Grove does not discriminate on the basis of race, color, religion, national origin, ancestry, sex, disability, age or sexual orientation in the provision of any services, programs, or activities. The City of Pacific Grove does not discriminate against persons with disabilities. City Hall is an accessible facility. A limited number of assisted listening devices will be available at this meeting. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting or provide the requested agenda format.

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Sandra Kandell, City Clerk
MEETING DATE:	March 2, 2022
SUBJECT:	Remote Teleconference - AB 361
CEQA:	Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Ratify Resolution No. 21-029 Emergency Teleconferencing authorizing remote teleconference meetings of all City legislative bodies for the following 30 days in accord with the Ralph M. Brown Act.

DISCUSSION

Governor Newsom signed AB 361 into law on September 16, 2021 to become effective on October 1, 2021. AB 361 extends the provisions of the Governor's Executive Order N-29-20 and Executive Order N-35-20 and is effective until January 1, 2024. AB 361 amends sections of the Brown Act to allow legislative bodies to continue to hold teleconference meetings during a state of emergency if the legislative body finds that as a result of the proclaimed state of emergency, meeting in person would present imminent risks to the health or safety of attendees.

Assembly Bill 361 requires the City within 30 days of holding a virtual meeting for the first time, and every 30 days thereafter, to make findings ratifying the state of emergency.

The exact language of the Bill is as follows:

If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(ii) State or local officials continue to impose or recommend measures to promote social distancing.

At its October 6, 2021 meeting, Council approved Resolution No. 21-029 Proclaiming a Local Emergency, Ratifying the State of Emergency Proclaimed on March 4, 2020, and Authorizing Remote

Teleconference Meetings of All City Legislative Bodies for the Following 30 days in Accord wth the Ralph M. Brown Act. Resolution No. 21-029 has effect for only 30 days. The Council has ratified that resolution each month since. The Council must now renew the effect of the resolution by ratifying it again or adopting another.

Update: AB 361 expires in January 2024, so long as the Governor has declared a state of emergency. The Governor's Executive Order declaring a state of emergency is set to expire on March 31, 2022. It is unknown at this time whether it will be extended by a further order. A County of Monterey State of Emergency Declaration could continue the virtual meetings; however, it is unknown whether the County of Monterey will issue one. AB 361 and Executive Order N-1-22 are attached for the Council's ease of reference .

This item will continue to be added to the Council's first meeting of the month as the first item of business so long as the Governor's Executive Order is extended beyond March 31, 2022.

OPTIONS

Take no action and resume in person meetings.

FINANCIAL IMPACT:

There is no fiscal impact.

GOAL ALIGNMENT: Transparency, Accountability and Communication: Implement programs, processes, revisions, and training to improve and advance the City's efforts.

Attachments

Reso

RESOLUTION NO. 21-029

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE PROCLAIMING A LOCAL EMERGENCY, RATIFYING THE STATE OF EMERGENCY PROCLAIMED ON MARCH 4, 2020, AND AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF ALL CITY LEGISLATIVE BODIES FOR THE FOLLOWING 30 DAYS IN ACCORD WITH THE RALPH M. BROWN ACT

FACTS

1. The City of Pacific Grove (City) is a charter city and public entity established under the laws of the State of California.

2. The City is committed to preserving and nurturing public access and participation in meetings of the City Council and all its Boards and Commissions; and

3. All meetings of City legislative bodies are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963), so that any member of the public may attend, participate, and observe City legislative bodies conduct business; and

4. The Brown Act, Government Code section 54953(e), enables remote teleconferencing participation in meetings by members of a legislative body, without strict compliance with requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

5. One required condition is that a state of emergency has been declared by the Governor of the State of California pursuant to Government Code section 8625, proclaiming existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558; and

6. A proclamation is made that there is an actual incident, threat of disaster, or extreme peril to the safety of persons and property within the City's jurisdiction, caused by natural, technological, or human-caused disasters; and

7. State or local officials have imposed or recommended measures to promote social distancing, or that having the legislative body meet in person would present imminent risks to the health and safety of attendees; and

8. The City Council affirms these conditions now exist in the City. Specifically, on March 4, 2020, the Governor proclaimed a State of Emergency to exist as a result of the threat of COVID-19. That Proclamation has not been terminated by either the Governor or the Legislature pursuant to Government Code section 8629; and

9. Despite sustained efforts to remedy this circumstance, the City determines that meeting in person poses an imminent risk to health and safety of attendees due to the COVID-19 virus and its variants; and

10. The City Council finds the emergency created by the COVID-19 virus and its variants has caused, and will continue to cause, conditions of peril to the safety of persons within the City that are likely to be beyond the control of services, personnel, equipment, and facilities of the City, and desires to proclaim a local emergency and ratify the proclamation of state of emergency by the Governor and similar local health orders that require social distancing; and

11. As a consequence of the local emergency, the City Council determines that all legislative bodies of the City of Pacific Grove are required to conduct their meetings without full compliance with paragraph (3) of subdivision (b) of Government Code section 54953, as authorized by subdivision (e) of section 54953, and that those City legislative bodies shall comply with the requirements to provide public access to the meetings as prescribed in paragraph (2) of subdivision (e) of section 54953; and

12. Each City legislative body shall continue to conduct meetings with public access available via call-in or internet-based service options and the public shall be allowed to address the legislative body directly in real time; and

13. This Resolution shall authorize the City Manager to establish and maintain platforms necessary for each City legislative body to hold teleconference meetings and provide an avenue for real-time public comments for such meetings; and

14. The City Council finds the introduction and adoption of this resolution is not subject to the California Environmental Quality Act (CEQA) as the activity is not a project as defined in Section 15378) of the CEQA Guidelines.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE:

SECTION 1. RECITALS. The foregoing Findings are true and correct and are adopted by the City Council as though set forth in full.

SECTION 2. PROCLAMATION OF LOCAL EMERGENCY. The Council hereby proclaims that a local emergency now exists throughout the City, and meeting in person would present imminent risk as a result of the COVID-19 virus and its variants.

SECTION 3. RATIFICATION OF PROCLAMATION OF A STATE OF EMERGENCY. The Council hereby ratifies the Governor of the State of California's Proclamation of State of Emergency, effective as of its issuance date of March 4, 2020.

SECTION 4. REMOTE TELECONFERENCE MEETINGS. The City Manager and legislative bodies of City of Pacific Grove are hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution including, conducting open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.

SECTION 5. EFFECTIVE DATE OF RESOLUTION. This Resolution shall take effect immediately upon its adoption and shall be remain in effect for a period of 30 days, or until such time the City Council adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which City legislative bodies may continue to teleconference without compliance with paragraph (3) of subdivision (b) of section 54953.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 6th day of October 2021, by the following vote:

AYES: Mayor Peake, Mayor Pro Tem Smith, Councilmembers Amelio, Coletti, McAdams, Poduri, and Tomlinson.

NOES: None.

ABSENT: None.

APPROVED:

DocuSigned by:
Bill Peake
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BILL PEAKE, Mayor

ATTEST:
DATED: 10/25/2021

DocuSigned by:
Sandra Kandell
4E11A61C850B4F1...

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

DocuSigned by:
David C. Laredo
F06545E32D2846E...

DAVID C. LAREDO, City Attorney

Agenda No. 2 A

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Sandra Kandell, City Clerk
MEETING DATE:	March 2, 2022
SUBJECT:	Central Coast Community Energy Annual Update by Gabe Ruiz, Key Account Specialist
CEQA:	Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Receive presentation.

Attachments

CCC Update

Annual Member Agency Update

City of Pacific Grove

March 02, 2022

Central Coast Community Energy

How Does CCA Work?

"A Partnership to support shared customers"

Central Coast Community Energy

Did You Know?

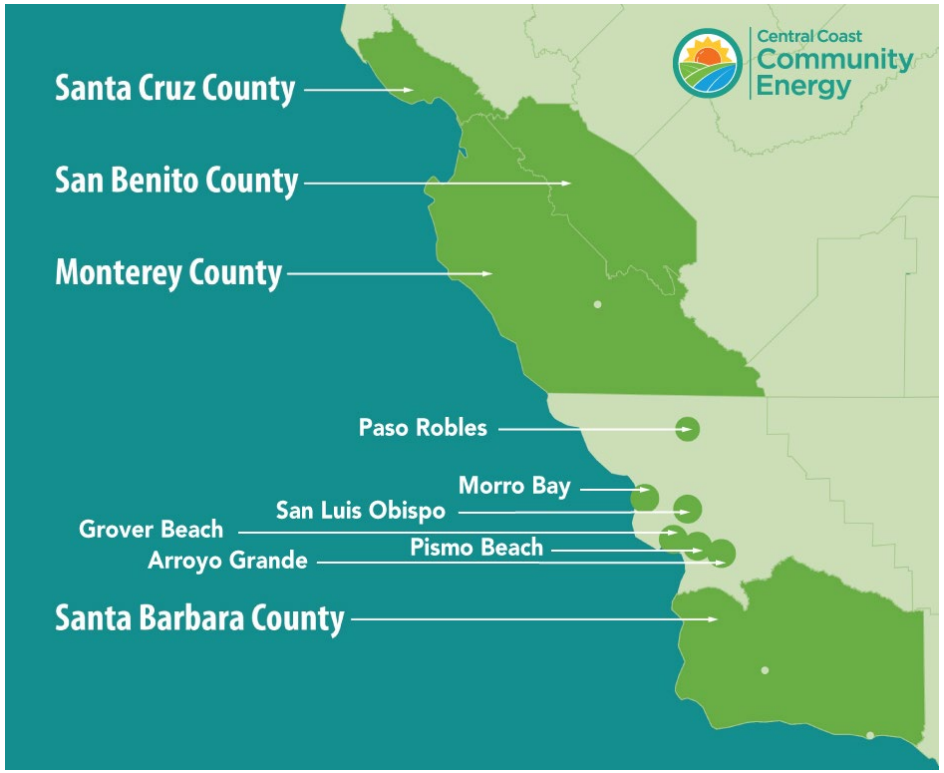
California's Community Choice Aggregation (CCA) Community

- **Serves 11 million electricity customers**
- **Supports equity, choice and renewable energy**
- **Is a positive force in 200+ communities**

Central Coast Community Energy
CLEAN ENERGY. LOCAL CONTROL.

CALCCA
ADVANCING LOCAL ENERGY CHOICE

WHO WE ARE?


Central Coast Community Energy
Santa Cruz County
San Benito County
Monterey County
Paso Robles
Morro Bay
San Luis Obispo
Grover Beach
Pismo Beach
Arroyo Grande
Santa Barbara County

CCCE GOVERNANCE

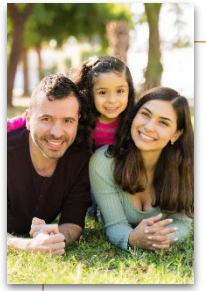
Policy Board:	Meets 4 Times Annually including Annual Meeting
Operations Board:	Meets 10 Times Annually including Annual Meeting
Community Advisory Council:	Meets 7 Times Annually including Annual Meeting

County of Santa Cruz	City of Santa Cruz	City of Watsonville	County of Monterey	City of Salinas	County of San Benito	County of Santa Barbara	City of Santa Maria
Coastal Cities Marina Sand City* Seaside Del Rey Oaks	**Peninsula Cities** Carmel Monterey Pacific* Grove	**Salinas Cities** Greenfield Gonzales Soledad*	**San Benito Cities** Hollister* San Juan Bautista	**Santa Cruz Cities** Capitola* Scotts Valley	**San Luis Obispo Cities** San Luis Obispo* Morro Bay Paso Robles	**South County Cities** Arroyo Grande Grover Beach Pismo* Beach	**SB County Cities** Guadalupe Solvang* Buellton	**SB County Cities** Goleta Carpinteria*

*City representative currently serving in a shared seat.

Central Coast Community Energy

CCCE Accomplishments



Local Choice

- 3Cchoice-clean and renewable offering
- 94% enrollment
- Largest CCA service area

Economic Vitality

- $27 million – Energy programs
- Est. $50 million – Customer savings
- $25 million – Resiliency Fund

Local Support

- $1 million in Local Vendor Contracts
- 38 full time employees
- 2 offices – Monterey & San Luis Obispo

Clean Energy

- 889 MWs of Renewables – solar, wind, geothermal
- 261 MWs of battery storage
- Pathway to 100% clean and renewable

Financial Stability

- Received "A" Rating from S&P
- Over $140 Million in Rate Stabilization Fund
- Service and Loans Paid Off

Central Coast Community Energy

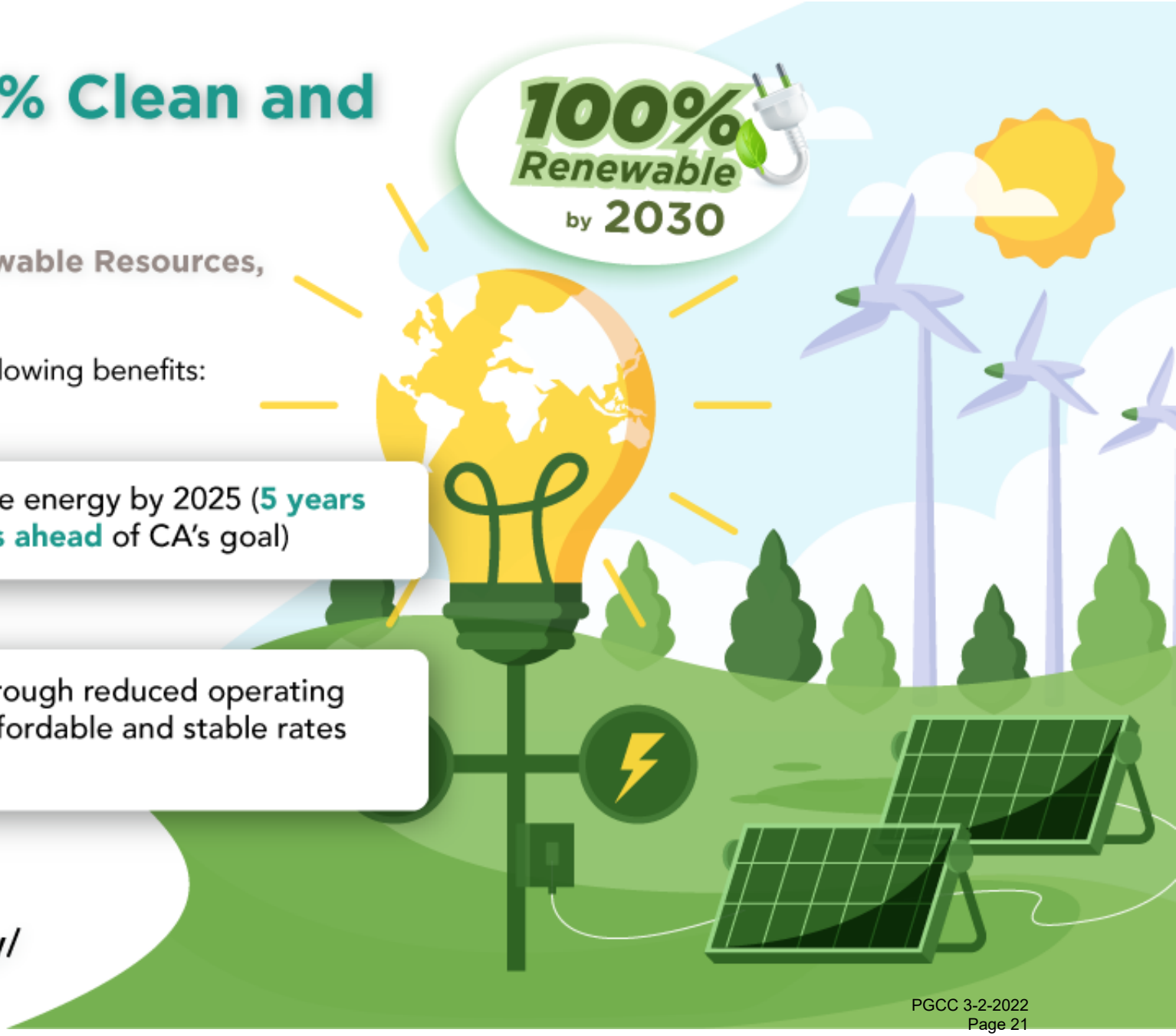
CCCE's Pathway to 100% Clean and Renewable by 2030

Supporting Affordable Rates, Increasing Renewable Resources, and Accelerating Greenhouse Gas Reduction

CCCE's new energy-supply strategy will provide the folllowing benefits:

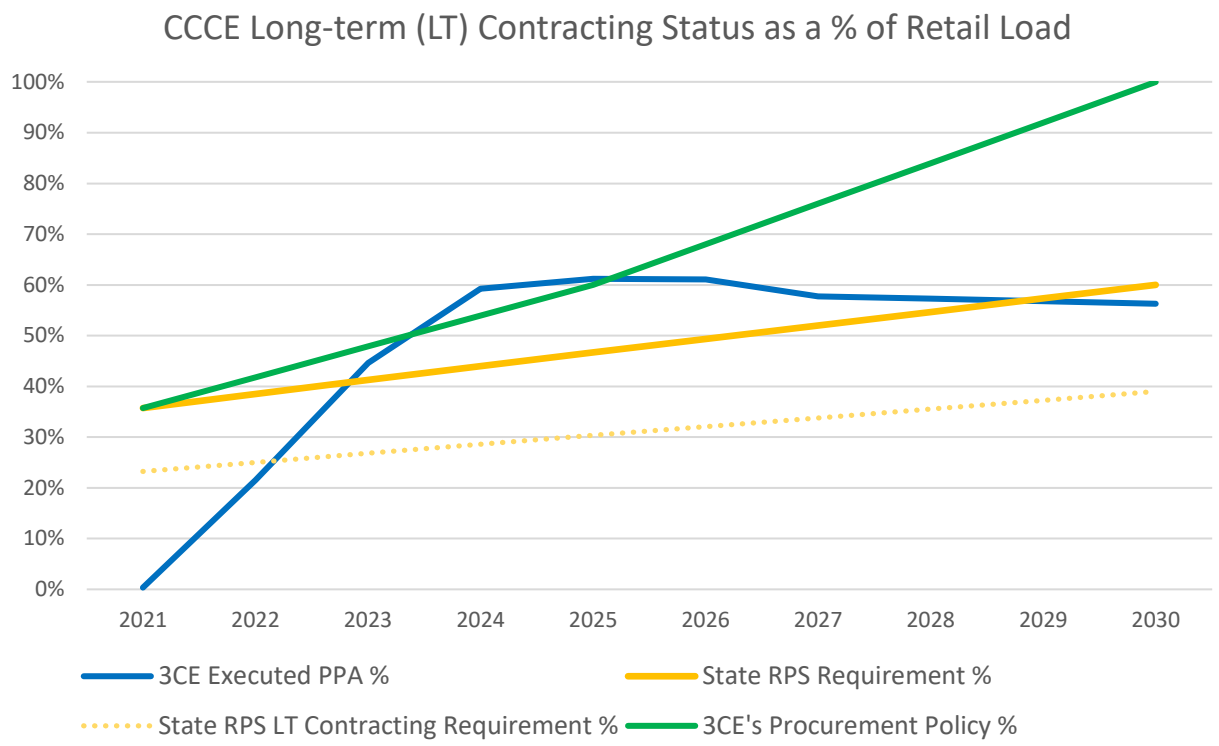
- CCCE's goal is to reach 60% clean and renewable energy by 2025 (**5 years ahead** of CA's goal) and 100% by 2030 (**15 years ahead** of CA's goal)

- Financially beneficial to customers and CCCE through reduced operating costs of **$8-15 million/year** allowing for more affordable and stable rates while supporting economic development



Learn more at
3cenergy.org/understanding-clean-energy/

FAST TRACKING NEW ENERGY DEVELOPMENT



CCCE's Executed Contract Summary			
Project Type	Count	Gen Capacity (MW)	Storage Capacity (MW)
Solar + Storage PPAs	9	633	201
Solar Only PPAs	1	150	
Wind PPAs	1	33	
Geothermal PPAs	2	73	
RA Only Agreement	1		60
	14	889	261

These projects will serve about 61% of CCCE's retail load when all are online, expected in 2025.

Central Coast Community Energy

CCCE Commitment to Renewable Procurement

- contracted for approximately $1 billion in long term solar plus storage contracts since 2018
- shortlisted 7 local projects through its local renewables RFP
- Joined other CCAs to advance long duration storage RFP to support grid reliability through existing and new technologies
- issued an RFQ for up to 100MW of front of the meter battery storage, with the potential to island projects for increased resiliency

Central Coast Community Energy

CCCE HISTORIC RATES & COVID-19 RESPONSE

2018	2019	Jan – April 2020	May & June 2020	July 2020 – Feb 2022
3% rebate	5% rebate	7% monthly discount	50% Bill Reduction	2% discount

Central Coast Community Energy

GOALS OF 2022 CCCE SERVICE OFFERINGS

Long-term rate adoption increases predictability and rate stability

Customer choices and transparency improve with simplified customer classes

New rates increase customer rate equity throughout customer segments

New rate structure maintains competitive rates across all customer segments

https://3cenergy.org/2022-energy-choices/

Central Coast Community Energy

APPROVED APPROACH TO RATE DESIGN

1. Estimate the total cost necessary to serve all 3CE customers
    - Power procurement
    - Energy Programs
    - Rate stabilization fund
    - Administrative costs
2. Create simple, easily understood customer classes based on size and usage profile
3. Allocate total cost across customer classes
4. Adjust allocations so each class will save a minimum of 1% relative to PG&E
5. Design rates for each customer class to recover costs allocated to that class
6. Rates will go live effective March 1, 2022 for customers within PG&E's service territory

Central Coast Community Energy

CCCE Energy Programs

Overview:

- $1.3 million in FY 18/19
- $5.4 million in FY 19/20
- $6.2 million in FY 20/21
- Estimated $14.1 million in FY 21/22
  - 4% of operating revenue in FY 21/22

Electrification in building and transportation sectors could result in $3 billion of untapped revenue market wide

FY 21/22 Energy Programs

- Electrify Your Ride - $2.8 million – NOVEMBER 2021
- School Bus Electrification - $1 million - OCTOBER 2021
- Agriculture Electrification - $600k - OCTOBER 2021
- Residential Electrification - $1.6 million
- New Construction Electrification - $1.5 million – OCYOBER 2021
- Reach Code - $60k
- Battery Energy Storage Pilot - $350k
- Summer Readiness - $400k
- Energy Education, Workforce Development and Innovation Grants - $1 million
- Greenhouse Gas Inventory - $64k

Electrification and Innovation Grant Program

Planning and Implementation

- Funding for planning and implementation projects related to electrification
- Intended for member agencies to electrify their vehicle fleets, municipal properties, and the community infrastructure that serves households and businesses.

Innovation

- Funding to deploy new and innovative electrification or other clean energy-related technology for municipal or community buildings and/or fleets.
- Intended to foster market transformation, demonstrate scalable and replicable solutions, and identify potential future CCCE energy program concepts.

Central Coast Community Energy

Locally Sited Front of the Meter Distributed Energy Storage Projects

Benefits

- **Rate Stability** *reduced energy cost & reduced RA cost*
- **Grid Stability** local power supply, critical period imports reduced => fewer outages
- **Grid services** balance power flows
- **Reduced GHGs** evening dispatch of day-time “solar” electrons
- **Local jobs** building and maintaining facilities
- **Potential “microgrid”** islanding => resiliency

Central Coast Community Energy

Medium and Heavy-Duty Vehicle Electrification Program

- Intended to support the electrification of Member Agency medium and heavy-duty fleet vehicles
- Potential applications include street sweepers, refuse trucks, dump trucks, and first response vehicles
- CCCE will reserve funds for qualifying projects and funds will be dispersed once purchases and/or projects are completed
- Intended to work in coordination with city/county purchasing schedules and policies
- Incentives likely to be tied to increased cost of electric models from standard internal combustion options

Central Coast Community Energy

Central Coast Community Energy

CLEAN ENERGY. LOCAL CONTROL.

ELECTRIFY YOUR RIDE

on Electric Vehicles and Chargers

REDUCE EMISSIONS

Reducing emissions, getting more electric vehicles (EVs) on the road and building more charging stations will increase local and regional adoption rates to meet state and regional climate action goals

EQUITABLE ACCESS

Providing extra funding for disadvantaged communities and low-income customers will tighten up gaps in equitable access to clean-energy resources

ELECTRIC VEHICLE REBATES

$2,000 - $4,000 in rebates available for purchase or lease of new or used electric vehicles, including motorcycles and e-bikes. Additional stackable funds available, including up to $15,000 for income-qualified customers

EV CHARGER REBATES

$2,400 - $10,000 available for Level 2 electric vehicle chargers at home or workplace. Includes the labor and material costs for installation, including electrical panel upgrades or replacments

Learn more and apply at 3cenergy.org/electrify-your-ride-program

City of Pacific Grove by The Numbers (96.4% Enrollment)

- 8,318 total enrolled customers

- 7,513 Residential
- 802 Commercial
- 0 Agricultural

ENERGY PROGRAM FUNDS

- *Electrify Your Ride* $38,020

Central Coast Community Energy

FIELD PROMOTION 2021

Provided lunch & PPE to almost 500 workers and counting

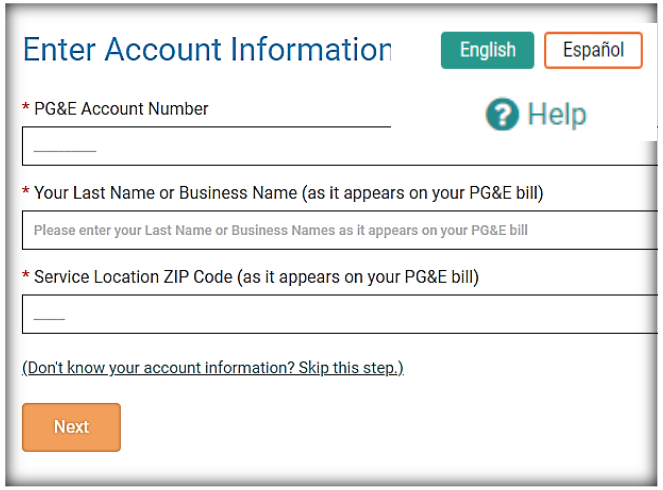
Salinas & San Luis Obispo

Central Coast Community Energy

Customer Resources & Tools

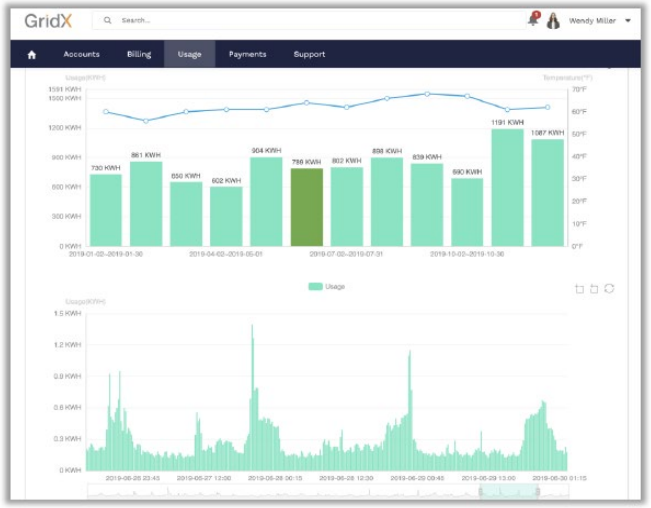
Phase 1

- Creating resources to help customers get access to data and make informed rate decisions
  - Customer Energy Portal
  - Rate Comparison Tool for Cost of Service



Phase 2

- Harnessing customer data to integrate energy programs and opportunities for electrification



Central Coast Community Energy

Vendor Registry

DON'T MISS OUT!

IF YOU'RE A BUSINESS IN THE CENTRAL COAST, SIGN UP FOR CENTRAL COAST COMMUNITY ENERGY'S VENDOR REGISTRY

This Vendor Registry allows CCCE to know what organizations and services are available. Vendors registered with CCCE will be contacted directly with business specific Requests for Proposals as they are applicable.

VISIT BIT.LY/CCCE-VENDOR-REGISTRY

Central Coast Community Energy
CLEAN ENERGY. LOCAL CONTROL.

A Unified Central Coast CCA

Key Updates:

- Adopted Cost of Service rate structure to achieve agency goals
- Working with CCCE member agencies on regulatory and legislative matters that ensure customer fairness and equal access to resources
- Pathway to achieve 100% clean and renewable energy by 2030
- Leveraging Community Advisory Council for outreach and non-voting seat participation on Operations & Policy Boards
- Engaging with the community around development of future programs
- Enrollment of over 140k customers in 2021 & 2022 across 12 communities

Central Coast Community Energy

Stay Connected with CCCE

www.3Cenergy.org

info@3CE.org

1.888.909.6227

@3CEnergy

@3CEnergy

@3CEnergyEnEspanol

Follow us online, join our newsletter and board agenda notification list, and check our extensive FAQ section on the website.

Central Coast Community Energy

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Sandra Kandell, City Clerk
MEETING DATE:	March 2, 2022
SUBJECT:	Minutes of the February 16, 2022 City Council Special and Regular Meetings
CEQA:	Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Approve minutes.

Attachments

Draft Minutes

DRAFT MEETING MINUTES

CITY OF PACIFIC GROVE

CITY COUNCIL

CLOSED SESSION MEETING

Wednesday, February 16, 2022, 5:00 P.M.
Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

THIS MEETING WILL BE HELD VIRTUALLY AND IS COMPLIANT WITH THE GOVERNOR'S EXECUTIVE ORDERS ALLOWING FOR A DEVIATION OF TELECONFERENCE RULES REQUIREDBY THE BROWN ACT.

Join the Zoom Meeting to participate live at:
https://us02web.zoom.us/j/692219855

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CALL TO ORDER
Mayor Peake called the meeting to order at 5:00 p.m. City Clerk Kandell conducted roll call with the following Council present via Zoom Meeting: Mayor Peake, Mayor Pro Tem McAdams, Councilmembers Amelio, Coletti, Poduri, Smith, and Tomlinson.

APPROVAL OF AGENDA

Action: Upon motion by Councilmember Smith and seconded by Councilmember Amelio, the Council approved the agenda.

Motion carried 5-0-2, by the following roll call vote:

AYES: Mayor Peake, Councilmembers Amelio, Coletti, Smith, and Tomlinson.
NOES: None.
ABSENT: Mayor Pro Tem McAdams and Councilmember Poduri.

CLOSED SESSION

PUBLIC COMMENT ON CLOSED SESSION MATTERS
Public comment was received from Jane Haines.

A. Public Employment, Government Code Section 54957
Title: City Attorney (For the Purposes of Discussing Request for Qualifications Process)

DRAFT MEETING MINUTES

CITY OF PACIFIC GROVE

CITY COUNCIL

REGULAR MEETING

Wednesday, February 16, 2022, 6:00 P.M.
Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

THIS MEETING WILL BE HELD VIRTUALLY AND IS COMPLIANT WITH THE GOVERNOR'S EXECUTIVE ORDERS ALLOWING FOR A DEVIATION OF TELECONFERENCE RULES REQUIRED BY THE BROWN ACT.

JOIN THE ZOOM WEBINAR TO PARTICIPATE LIVE AT:
https://us02web.zoom.us/j/209579290

draft

CALL TO ORDER
Mayor Peake called the meeting to order at 6:00 p.m. City Clerk Kandell conducted roll call with the following Council present via Zoom Webinar: Mayor Peake, Mayor Pro Tem McAdams, Councilmembers Amelio, Coletti, Poduri, Smith, and Tomlinson. Councilmember Amelio left the webinar meeting at approximately 9:00 p.m.

PLEDGE OF ALLEGIANCE
Councilmember Amelio led the pledge of allegiance.

1. **APPROVAL OF AGENDA**

Action: Upon motion by Mayor Pro Tem McAdams and seconded by Councilmember Coletti, the Council voted to consider 12. Unfinished and Ongoing Business agenda items prior to 11. Public Hearing agenda items.

Motion carried 5-2, by the following roll call vote:

AYES:	Mayor Peake, Mayor Pro Tem McAdams, Councilmembers Amelio, Coletti and Poduri.
NOES:	Councilmembers Smith and Tomlinson.
ABSENT:	None.

Action: Upon motion by Mayor Pro Tem McAdams and seconded by Councilmember Coletti, the Council voted to table Regular Agenda item 11A. Vacation of Excess Right - of-Way on Sloat Avenue Pursuant to §§ 8300-8368 of the California Streets and Highways Code due the Coastal Commission Appeal and the pending litigation.

Motion failed 3-4, by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem McAdams, and Councilmember Coletti.
NOES: Councilmembers Amelio, Poduri, Smith, and Tomlinson.
ABSENT: None.

Action: Upon motion by Councilmember Tomlinson and seconded by Councilmember Smith, the Council voted to approve the agenda as amended, and continue Regular Agenda item 11C Amendment to AP/UP 16-203 previously approved AP/UP 16-203 (Council Resolution 18-030; September 5, 2018) to the Council's March 16, 2022 meeting.

Motion carried 7-0, by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem McAdams, Councilmembers Amelio, Coletti, Poduri, Smith, and Tomlinson.
NOES: None.
ABSENT: None.

2. **PRESENTATIONS**

A. Boards, Committees, and Commissions Certificates
Action: Mayor Peake presented certificates.
CEQA: Does not constitute a "Project" per California Environmental Quality Act GuidelinesSection 15378

3. **COUNCIL AND STAFF ANNOUNCEMENTS (City-Related Items Only)**

A. Report on Closed Session

Public Employment, Government Code Section 54957
Title: City Attorney (For the Purposes of Discussing Request for Qualifications Process)

Mayor Peake reported that Council met with respect Closed Session Agenda item A. Upon motion by Councilmember Tomlinson and seconded by Mayor Pro Tem McAdams, Council voted to establish a subcommittee consisting of Mayor Peake, Councilmember Coletti and Councilmember Smith for posting a City Attorney RFQ.

Motion carried 7-0, by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem McAdams, Councilmembers Amelio, Coletti, Poduri, Smith, and Tomlinson.
NOES: None.
ABSENT: None.

B. Council and staff made general announcements.

4. **GENERAL PUBLIC COMMENT**
Public comment was received from Rebecca Lee, Inge Lorentzen Daumer, Lisa Ciani and Anthony Ciani.

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CONSENT AGENDA

Action: Consent Agenda item 9A was pulled and considered as Regular Agenda item 12H. Consent Agenda item 9B was pulled and considered as Regular Agenda item 12I.

Action: Upon motion by Councilmember Tomlinson and seconded by Councilmember Amelio, Council approved the Consent Agenda, as amended.

Motion carried 7-0, by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem McAdams, Councilmembers Amelio, Coletti, Poduri, Smith, and Tomlinson.
NOES: None.
ABSENT: None.

5. **APPROVAL OF CITY COUNCIL MEETING MINUTES**

A. Minutes of the January 19, 2022, City Council Special and Regular Meetings
Action: Approved minutes as amended via Errata.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

B. Minutes of the February 2, 2022 Special and Regular Meeting
Action: Approved minutes.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

6. **RESOLUTIONS**

A. CalRecycle Grant Resolution
Action: Adopted Resolution No. 22-008 authorizing submittal of grant applications to the California Department of Resources Recycling and Recovery for grants the City may be eligible for independently or as part of a regional application in which Monterey Regional Waste Management District or another member City serves as lead.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

7. **ORDINANCES**

A. Ordinance to Amend PGMC 23.80 - Accessory Dwelling Units
Action: Held second reading and adopted Ordinance No. 22-002 to amend Chapter 23.80 of the PGMC pertaining to Accessory Dwelling Units (ADUs).
CEQA: Statutory Exemption, CEQA Guidelines 15282(h) - Adoption Regarding Second Units in a Single or Multi Family Residential Zone

8. **REPORTS – INFORMATION ONLY**

A. Second Quarter Capital Improvement Budget Report
Action: Received the report.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

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B. Check Register Report – January 2022
Action: Received the report.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

C. Core Revenue Report Status for January 2022
Action: Received the Core Revenue Status Report for January 2022.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

9. **REPORTS – REQUIRING ACTION**

A. Ratification of New Local Emergency Actions ***This item was pulled and considered as Regular Agenda 12H.***
Reference: Ben Harvey, City Manager
Action: Receive report of emergency directives/modifications.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

B. Contract Amendment with Rincon Consultants, Inc. ***This item was pulled and considered as Regular Agenda 12I.***
Reference: Joe Sidor, Contract Planner
Action: Approve the Proposed Contract Amendment and Reimbursement Agreement with Rincon Consultants, Inc. based on the Scope of Work and Cost Estimate provided for preparation of a revised Initial Study-Mitigated Negative Declaration (IS-MND) relating to a development project located at 1661 Sunset Drive.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

C. Thomas Horvath Appointment to Administrative Enforcement Hearing Officer Panel
Action: Approved appointment of Thomas Horvath to Administrative Enforcement Hearing Officer Panel for a term ending January 31, 2024.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

10. **MEETING MINUTES OF COMMISSIONS, BOARDS, AND COMMITTEES**

A. Architectural Review Board Minutes: October 12, 2021
Action: Received minutes.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

B. Planning Commission Meeting Minutes: November 4 and December 9, 2021 Meetings
Action: Received minutes.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

REGULAR AGENDA

12. **UNFINISHED AND ONGOING BUSINESS –** ***During the Approval of the Agenda, this section was moved to considered prior to 11. PUBLIC HEARINGS.***

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A. Annual Comprehensive Financial Report (ACFR) for the Fiscal Year Ending June 30, 2021 ***This item was continued from the January 19, 2021 meeting.***
No public comment was received.

Action:

- Council received the Annual Comprehensive Annual Financial Report, which includes the Auditor's Opinion on the City's financial statements, from the City's independent auditor, Chavan & Associates, LLP
- Council received the Transportation Safety and Investment Plan Account Fund (TAMC MeasureX) Report, which includes the Auditor's Report by the City's independent auditor, Chavan & Associates, LLP
- Council received a status on improvements based on the auditor's recommendations that are being implemented and provided direction.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

B. Cannabis Outreach Subcommittee Update
Public comment was received from Inge Lorentzen Daumer, Marsha, Lisa Ciani, Michelle Raine, Kimberly Brown, Anthony Ciani, Ezra, Brian McCarthy, and Wendi Giles.

Action: Motion by Councilmember Smith to extend the subcommittee 180 days died for lack of a second.

Action: Motion by Councilmember Tomlinson to table this item died for lack of a second.

Action: Council received report.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

Council took a break until 8:15 p.m.

C. Special Events Calendar for Fiscal Year 2022-2023
Public comment was received from Heather Mothershead Zunguze, George Powell, Brian McCarthy, Kathy Biala, Harvey Biala, Cristina Medina Dirksen, David Kong, Dr. Phuong Nguyen, Peter Mounteer, Shannon Warto, Caroline Haskell, Molly Daniels, Susan Schiavone, Amelia Murphy, Julia Goldman, Ana Chow, Deb Miller, Elena Loomis, Michael Ipson, Karen Andersen, Sharon Miller, Andrew Gonzalez, Angie Tran, Jihua, Eloise Shim, Klarity Coleman, Ezra, Jane Haines, Lisa Ciani, Janet Cohen, Leila, Wendy Root Askew, Anthony Ciani, Bruce Delgado, Sandy Lydon, Randy Sabado, Marsha, and Inge Lorentzen Daumer.

Action: Upon motion by Councilmember Tomlinson and seconded by Councilmember Coletti, Council voted to approve the Special Event Calendar for Fiscal Year 2022-2023, approve 13 proposed special events as City Sponsored Events and waive fees for City Staff support and facility/equipment use, approve 9 proposed special events as Full Cost Recovery Events and not approve the Legends of Autobahn event.

draft

Motion carried 6-0-1, by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem McAdams, Councilmembers Coletti, Poduri, Smith, and Tomlinson.
NOES: None.
ABSENT: Councilmember Amelio.

Action: Upon motion by Mayor Peake and seconded by Councilmember Tomlinson, Council voted to direct staff to return to Council with an ordinance to allow municipal code exceptions for designated events to allow pets in the parks

Motion carried 6-0-1, by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem McAdams, Councilmembers Coletti, Poduri, Smith, and Tomlinson.
NOES: None.
ABSENT: Councilmember Amelio.

Action: A Motion by Mayor Pro Tem McAdams and seconded by Councilmember Tomlinson to direct the DEI Task Force to return with a draft event policy within six (6) months or a timeline within six (6) months when they can return with a policy was substituted by a motion from Councilmember Poduri.

Action: Upon motion by Councilmember Poduri and seconded by Councilmember Smith, Council voted to direct the DEI Task Force to examine the Special Events Policy in an expedited basis timeline and return with three (3) month progress reports.

Motion carried 6-0-1, by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem McAdams, Councilmembers Coletti, Poduri, Smith, and Tomlinson.
NOES: None.
ABSENT: Councilmember Amelio.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

Upon motion by Councilmember Tomlinson and seconded by Councilmember Smith, Council voted to continued past 10:00 p.m., consider Public Hearing item 11B, and continue all other matters.

Motion carried 6-0-1, by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem McAdams, Councilmembers Coletti, Poduri, Smith, and Tomlinson.
NOES: None.
ABSENT: Councilmember Amelio.

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D. Local Water Project Business Plan Peer Review ***Due to time constraints this item was continued.***
Reference: Daniel Gho, Public Works Director / Deputy City Manager and Tori Hannah, Administrative Services Director / Assistant City Manager
Recommended Action: Receive the Peer Review of Pacific Grove Local Water Project Business Plan prepared by DTA, validating the City's assumptions noted in the Business Plan, and authorized staff to being negotiations with CourseCo; and approve a loan repaymentplan for the Sewer Fund Interfund Loan.
CEQA: Environmental Impact Report

E. Hybrid Meeting Update ***Due to time constraints this item was continued.***
Reference: Sandra Kandell, City Clerk
Recommended Action: Approve staff recommendation to commence hybrid meetings by phases as outlined in the Discussion section of agenda report.
CEQA: Does not constitute a "Project" per California Environmental Quality Act GuidelinesSection 15378

F. Financial Report Subcommittee ***Due to time constraints this item was continued.***
Reference: Chaps Poduri, Councilmember and Bill Peake, Mayor
Recommended Action: Direct staff to implement Financial Report Subcommittee recommendations listed in the agenda report.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

G. Monarch Resort Homekey Project ***Due to time constraints this item was continued.***
Reference: Bill Peake, Mayor
Recommended Action: Direct City Manager to begin public outreach on the Homekey project no later than March 16, 2022.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

H. Ratification of New Local Emergency Actions ***This item was pulled from the Consent Agenda. Due to time constraints this item was continued.***
Reference: Ben Harvey, City Manager
Recommended Action: Receive report of emergency directives/modifications.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

I. Contract Amendment with Rincon Consultants, Inc. ***This item was pulled from the Consent Agenda. Due to time constraints this item was continued.***
Reference: Joe Sidor, Contract Planner
Recommended Action: Approve the Proposed Contract Amendment and Reimbursement Agreement with Rincon Consultants, Inc. based on the Scope of Work and Cost Estimate provided for preparation of a revised Initial Study-Mitigated Negative Declaration (IS-MND)relating to a development project located at 1661 Sunset Drive.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

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11. **PUBLIC HEARINGS**

A. Vacation of Excess Right-of-Way on Sloat Avenue Pursuant to §§ 8300-8368 of the California Streets and Highways Code ***Due to time constraints this item was continued.***
Reference: Alyson Hunter, AICP, CDD Director
Recommended Action: Hold a public hearing and approve a resolution conditionally authorizing the vacation of excess right-of-way (ROW) for a portion of Sloat Avenuepursuant to Sections 8830-8368 of the California Streets and Highways Code.
CEQA: Environmental Impact Report

B. State Community Development Block Grant (CDBG) Program Application
Public comment was received from Anthony Ciani, Esther Malkin, Anais Broer, Megan Hunter and Marsha.

Action: Upon motion by Council Tomlinson and seconded by Councilmember Poduri, Council conducted a Public Hearing on the State Community Development Block Grant (CDBG) Program to solicit public input on possible competitive and over the counter activities to be included in the application, and approved Housing staff to submit an application and Resolution No. 22-009 approving a funding application and the execution of a grant agreement and any amendments to the State CDBG Program.

Motion carried 6-0-1, by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem McAdams, Councilmembers Coletti, Poduri, Smith, and Tomlinson.
NOES: None.
ABSENT: Councilmember Amelio.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

C. Amendment to AP/UP 16-203 previously-approved AP/UP 16-203 (Council Resolution No. 18-030; September 5, 2018) ***During the Approval of the Agenda, this item was continued to the Council's March 16, 2022 meeting.***
Reference: Joseph Sidor, Contract Senior Planner
Recommended Action: Approve Amendment (No. 21-0457) to the previously-approvedAP/UP 16-203 (Council Resolution No. 18-030; September 5, 2018). The proposed Amendment is in substantial conformance with the original project, which demonstrated consistency with the General Plan and Zoning Ordinance.
CEQA: Environmental Impact Report

D. City Council Salary and Health Benefits ***Due to time constraints this item was continued.***
Reference: Jenny McAdams, Mayor Pro Tem and Amy Tomlinson, Councilmember
Recommended Action: Introduce and hold first reading of an ordinance to (1) amend the salary classification schedule to modify salary ranges for City Council Member and Mayor and (2) direct a summary of a proposed ordinance be published as approved by

draft

the City Attorney.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

13. **NEW BUSINESS**

A. FY21/22 Street Rehabilitation Project – Ocean View Blvd ***Due to time constraints this item was continued.***
Reference: Joyce Halabi, Deputy Public Works Director
Recommended Action: Authorize an agreement with Monterey Peninsula Engineering for the FY21/22 Street Rehabilitation Project on Ocean View Blvd in an amount not to exceed $1,145,323 plus a 15% contingency.
CEQA: Categorical Exemption, CEQA Guidelines Section 15301, Class I, Existing Facilities

B. City of Pacific Grove Youth Commission ***Due to time constraints this item was continued.***
Reference: Jenny McAdams, Mayor Pro Tem
Recommended Action: Direct the City Manager to return with a draft ordinance and resolution to form a Youth Commission.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

C. Removal of Library Fines and Forgiveness of Current Outstanding Overdue Fines ***Due to time constraints this item was continued.***
Reference: Jenny McAdams, Mayor Pro Tem
Recommended Action: Discuss and provide direction as to removal of library fines and forgiveness of current outstanding overdue fines and directed the City Manager to return with a resolution and amendment to the Master Fee Schedule.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

14. **FULL PRESENTATIONS**

15. **CLOSED SESSION**

draft

ADJOURNMENT
Council adjourned the regular meeting at approximately 11:20 p.m.

Respectfully Submitted,

Sandra Kandell
City Clerk

Approved by Mayor: _____Date_____

Attest by City Manager: _____Date_____

draft

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Amy Tomlinson, Councilmember
MEETING DATE:	March 2, 2022
SUBJECT:	Resolution in Support of Conveyance of the NOAA
CEQA:	Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Approve a resolution in support of conveyance of the National Oceanic Atmospheric Administration (NOAA) Property on Lighthouse Avenue to a joint venture between the Center for Ocean Art, Science, and Technology (CAOST) and Central Coast community Energy (3CE)

DISCUSSION

The National Oceanic and Atmospheric Administration (NOAA) building on Lighthouse Avenue, Pacific Grove, California has been put up for auction by the General Services Administration (GSA) of the federal government as part of a high-value asset sale through the Federal Assets Sale Transfer Act (FASTA).

The property appears to no longer qualify as a high-value asset under the FASTA process, as acknowledged in a December 2021 Public Buildings Reform Board (PBRB) report highlighting the failure of the property to meet the minimum criteria for subsequent FASTA round.

Rather than allowing the auction of the property to continue, the Federal government has an opportunity to enable the community to restore the building in a way that would be of significant benefit to current and future generations, of both local community residents and visitors.

Renovation of the building to provide the community with a Center for Ocean Art, Science, and Technology (COAST) as well as headquarters for a regional renewable energy community choice aggregate leader Central California Community Energy (CCCE) would advance cutting-edge scientific and technological innovation in the region; promote the region's international reputation in ocean-inspired art, education, and public outreach; and bring significant benefits to both local community residents.

The building, with sea murals by Guggenheim-honored artist Ray Troll, overlooking Monterey Bay and the Great Tide Pool, could be transformed into an environmentally appropriate business workspace and art gallery, enabling the convergence of regional community business partners with and cutting-edge marine scientific and technological innovation with ocean-inspired art and virtual reality.

Project Supporters include: The Honorable Congressman Jimmy Panetta, Dr. Steve Palumbi, former Director of Stanford's Hopkins Marine Station; Dr. Drew Harvell, Cornell Professor of Marine Biology and author of the award-winning books Sea of Glass and Ocean Outbreak; Dr. Kenneth Parker, climate change oceanographer and fine art photographer; Dr. Jennifer Carson, astrophysicist and former science museum manager; Dixie Layne, local historian, writer and board member of the Heritage Society of Pacific Grove; Moe Ammar, President of the Pacific Grove Chamber of Commerce; Donna Gates, board member of the Heritage Society of Pacific Grove; Frank Miscione, artist and civil engineer; Rick Steres, architect, researcher and board member of the Heritage Society of Pacific Grove; Lisa Ledin, radio announcer for NPR's KAZU.

Next steps for a COAST and 3CE joint venture including:

1. Continuing to work with the Honorable Congressman Jimmy Panetta who strongly supports conveyance of the property to the local community, 3CE and COAST under a federal public benefit conveyance process.
2. Create a detailed plan for 3CE and COAST joint venture partnership
3. Engage and develop community support

GOAL ALIGNMENT:
Environmental Stewardship: Adopt and develop policies and ordinances that preserve and protect the environment.
City Asset Stewardship: Repair, maintain and improve City assets, including streets, sidewalks, sewer systems, buildings, parks, and trails to better serve the community, anticipate future needs and prevent further degradation.
Transparency, Accountability and Communications: implement programs, processes, revisions, and training to improve and advance the City's efforts

OPTIONS
Provide alternate direction.

FINANCIAL IMPACT:
None associated with proposed resolution.

GOAL ALIGNMENT: See Goal Alignment within Discussion section.

Attachments

Reso

RESOLUTION NO. 22-XXX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE SUPPORTING CONVEYANCE OF THE NATIONAL OCEANIC ATMOSPHERIC ADMINISTRATION PROPERTY ON LIGHTHOUSE AVENUE TO A JOINT VENTURE BETWEEN THE CENTER FOR OCEAN ART, SCEINCE, AND TECHNOLOGY AND CENTRAL CALIFORNIA COMMUNITY ENERGY

FINDINGS

1. WHEREAS, the City of Pacific Grove is committed to restoring and preserving the archeologically and environmentally sensitive landscapes and ecosystems along the City's Monterey Bay shoreline; and

2. WHEREAS, the City has recently completed a project to restore the shoreline adjacent to the Pacific Grove Golf Links; and

3. WHEREAS, the City, the Heritage Society, and the community have recently completed a project to restore the Point Pinos Lighthouse, the oldest continuously operating Lighthouse on the west coast; and

4. WHEREAS, the City, assisted by the Monterey County Parks District, the Transportation Agency of Monterey County, and others, has developed the Recreation Trail along the City's shoreline, making Pacific Grove one of the few cities on the west coast to preserve virtually the entire coastline in public ownership for the enjoyment and education of the public;

5. WHEREAS, the City is actively working to acquire or otherwise ensure that the remaining railroad right of way is retained as a nature path open to the public; and

6. WHEREAS, the National Oceanic and Atmospheric Administration (NOAA) has surplused 4.3 acres of land and a building in the midst of the City's natural habitat restoration areas; and

7. WHEREAS, NOAA has not had either adequate resources or the interest to preserve and restore the land to its native state; and

8. WHEREAS, the General Services Administration (GSA) of the federal government is attempting to auction the NOAA property in its high-value asset sale through the Federal Assets Sale Transfer Act (FASTA) process; and

9. WHEREAS, the Public Buildings Reform Board (PBRB) failed to engage with community stakeholders, as required, prior to determining the eligibility of the property for inclusion as a high-value asset in the FASTA process; and

10. WHEREAS, the PBRB has not disclosed publicly how the NOAA property was originally determined to be of sufficient value, given the many constraints on its use, for inclusion as a high-value asset in the FASTA process; and

11. WHEREAS, the property appears to no longer qualify as a high-value asset under the FASTA process, as acknowledged in a December 2021 PBRB report highlighting the failure of the property to meet the minimum criteria for the subsequent FASTA round ; and

12. WHEREAS, as a condition of receiving a determination of concurrence letter from the California Coastal Commission (CCC) that transfer of ownership of the NOAA property would not adversely impact coastal

resources, the GSA agreed to disclose all relevant Pacific Grove Local Coastal Program land-use policies to potential auction bidders ; and

13. WHEREAS, as requested in the CCC's determination letter, the GSA has not adequately informed potential auction bidders in its disclosure documents that the Pacific Grove Local Coastal Program's land-use policy limits uses of the property to "coastal-dependent marine research and educational activities, aquaculture, and coastal dependent recreational access that is compatible with maintenance of coastal-dependent scientific and educational uses"; and

14. WHEREAS, rather than allowing the auction of the property to continue, the Federal government has an opportunity to enable the community to restore all of the lands between Lighthouse Avenue, Asilomar Avenue, and Ocean View Boulevard, and fully integrate those restored lands into the City's other nature restoration and preservation and areas; and

15. WHEREAS, this restored land would be of significant benefit to current and future generations, of both local community residents and visitors; and

16. WHEREAS, renovation of the building to provide the community with a Center for Ocean Art, Science, and Technology (COAST) as well as headquarters for a regional renewable energy community choice aggregate leader Central California Community Energy (CCCE) would advance cutting-edge scientific and technological innovation in the region; promote the region's international reputation in ocean-inspired art, education, and public outreach; and bring significant benefits to both local community residents and visitors; and

17. WHEREAS, COAST, with its goal of highlighting ocean art, science and technology while preserving the building's spectacular and unique ocean-themed mural by world-renowned artist Ray Troll, has garnered over 2,000 signatories on a petition to save the decommissioned NOAA facility; and

18. WHEREAS, the City passed a resolution (No. 21-011) in 2021 in support of COAST's efforts to garner community support for saving the mural, for securing the NOAA building for the community, and for developing a plan for housing an ocean science- and art-related program in the building, and

19. WHEREAS, restoration of the land and renovation of the building, when combined with the other projects the City has underway, would significantly increase the overall benefit to the local environment, residents, and the tens of thousands of visitors each year from throughout the United States and around the world, takes on added value to our community and nation; and

20. WHEREAS, the Honorable Congressman Jimmy Panetta strongly supports conveyance of the property to the local community and has demonstrated his support through letters to the Director of the Office of Management and Budget, the Secretary of Commerce, and the Administrators of the GSA and NOAA, and

21. WHEREAS, the Pacific Grove City Council has continually indicated its support for a community supported reuse as evident by their passage of a previous resolution (No. 12-025) in 2012 requesting that the Lighthouse Avenue property be conveyed to the City for under a federal public benefit conveyance process.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE:

1. The Council determines that each Finding set forth above is true and correct, and by this reference incorporates those Findings as an integral part of this Resolution.

2. The Council authorizes adoption of this resolution to support a joint venture between the Center for Ocean Art, Science, and Technology and Central Coast Community Energy.

3. This Resolution shall become effective immediately following passage and adoption thereof.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 2nd day of March 2022, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

_____
BILL PEAKE, Mayor

ATTEST:
DATED: _____

_____
SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

_____
DAVID C. LAREDO, City Attorney

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Joe Amelio, Council Member
MEETING DATE:	March 2, 2022
SUBJECT:	Monterey Salinas Transit Meeting Minutes for December 13, 2021 and January 10, 2022
CEQA:	Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Receive minutes.

Attachments

December 2021

January 2022

MEETING OF THE MST BOARD OF DIRECTORS

MEETING MINUTES

December 13, 2021
10:00 am (Pacific)

Present:	Jeff Baron	City of Carmel-by-the-Sea
	Lorraine Worthy	City of Gonzales
	Yanely Martinez	City of Greenfield
	Mike LeBarre	City of King
	David Burnett	City of Marina
	Dan Albert	City of Monterey
	Joe Amelio	City of Pacific Grove
	Tony Barrera	City of Salinas
	Mary Ann Carbone	City of Sand City
	Dave Pacheco	City of Seaside
	Anna Velazquez	City Soledad
	Luis Alejo	County of Monterey
Absent:	John Gaglioti	City of Del Rey Oaks
Staff:	Carl Sedoryk	General Manager/CEO
	Lisa Rheinheimer	Assistant General Manager
	Norman Tuitavuki	Chief Operating Officer
	Michael Kohlman	Chief Information Officer
	Kelly Halcon	Director of HR & Risk Management
	Michelle Overmeyer	Director of Planning & Innovation
	Andrea Williams	General Accounting & Budget Manager
	Jeanette Alegar-Rocha	Deputy Secretary
	Ikuyo Yoneda-Lopez	Marketing & Customer Service Manager
	Sonia Wills	Customer Service Supervisor
	Matthew Deal	Grants Analyst
	Scott Taylor	IT Manager
	Ezequiel Rebollar	IT Technician
	Oscar Lemus	Inventory Clerk
	Paul Lopez	Facilities Manager
	Sherman Upshaw	Facilities Technician
	Deanna Smith	Civil Rights Officer

	Lisa Cox	Risk and Safety Manager
	Elena Grigorichina	Operations Analyst
	Marzette Henderson	Contract Services Manager
	Claudia Valencia	Mobility Specialist
	Ruben Gomez	Mobility Specialist
	Lesley vanDalen	Mobility Specialist
	Sandra Amorim	Procurement & Contracts Manager
	Beronica Carriedo	Community Relations Coordinator
	Sloan Campi	Planning Manager
	Emma Patel	Associate Planner
Counsel:	David Laredo	General Counsel, De Lay & Laredo
	Michael D. Laredo	Associate Counsel, De Lay & Laredo
Public:	Douglas Thomson	MV Transportation
	Don Gilchrest	Thomas Walter and Associates
	Madilyn Jacobsen	Caltrans District 5 Planning

Apology is made for any misspelling of a name.

1. CALL TO ORDER

1-1. Roll Call.

1-2. Pledge of Allegiance.

1-3. Review Highlights of the agenda. (Carl Sedoryk)

Chair Albert called the meeting to order at 10:03 a.m. and led the pledge of allegiance. Roll call was taken as the meeting was held via ZOOM teleconference. A quorum was established. General Manager/CEO Carl Sedoryk reviewed the highlights of the agenda.

2. PUBLIC COMMENTS ON MATTERS NOT ON THE AGENDA

There were no public comments.

3. CLOSED SESSION

3-1. Review General Manager/CEO Performance Incentive Gov. Code § 54957. (Dan Albert)

There were no public comments.

General Counsel, Dave Laredo reported that the Board reviewed Closed Session item 3-1 and would act on the matter during Agenda item #7-6.

4. CONSENT AGENDA

4-1. Approve Resolution 2022-16 Authorizing Remote Teleconference Meetings. (Carl Sedoryk)

4-2. Adopt Resolution 2022-17 Recognizing Oscar Lemus, Inventory Clerk, as Employee of the Month for December 2021. (Frank Marcos)

4-3. Approve Minutes of the MST Board Meeting on November 15, 2021. (Jeanette Alegar-Rocha)

4-4. Receive Draft Minutes of the MST Board Administrative Performance Committee Meeting on November 15, 2021. (Jeanette Alegar-Rocha)

4-5. Financial Reports – October 2021. (Lori Lee)

a) Accept Reports of October 2021 Cash Flow
b) Approve October 2021 Disbursements
c) Accept Report of October Treasury Transactions

4-6. Receive Report on Lost and Found Items Left on MST Property for the Month of August. (Sonia Wills)

4-7. Receive 2022 MST Board Meeting Calendar and Committee Meeting Schedules. (Jeanette Alegar-Rocha)

4-8. Receive Results of the Federal Transit Administration's (FTA) FY2021 COVID-19 Relief Electronic Clearing House Operation System (ECHO) Drawdown Review. (Deanna Smith)

End of Consent Agenda

There were no public comments on the Consent Agenda.

On a motion by Director Amelio, seconded by Director Carbone and carried by the following vote, which was conducted by roll call, the Board approved all items on the Consent Agenda:

AYES:	**12**	**Albert, Alejo, Amelio, Baron, Barrera, Burnett, Carbone, LeBarre, Martinez, Pacheco, Velazquez, and Worthy**
NOES:	**0**	
ABSENT:	**1**	**Gaglioti**
ABSTAIN:	**0**	

5. RECOGNITIONS AND SPECIAL PRESENTATIONS

5-1. December 2021 Employee of the Month – Oscar Lemus, Inventory Clerk. (Norman Tuitavuki)

5-2. Recognition of 25 Years of Service – Fernando Andrade, Coach Operator. (Norman Tuitavuki)

5-3. Recognition of 25 Years of Service – Daniel Vohl, Coach Operator. (Norman Tuitavuki)

5-4. Recognition of 25 Years of Service – Sherman Upshaw, Facilities, Technician. (Paul Lopez)

5-5. Recognition of 20 Years of Service – Rommel Nieves, Utility Service Technician. (Norman Tuitavuki)

5-6. Receive Staff Report on Activities Related to the COVID-19 Pandemic Incident Response and Recovery Planning to Date and Provide Direction, If Needed. (Carl Sedoryk)

The MST Board received a report from the General Manager/CEO on activities related to COVID-19 pandemic incident response and recovery planning.

Chair Albert provided direction to staff to make the matter of hybrid meetings as an action item on the January 2022 agenda.

6. PUBLIC HEARINGS

None

7. ACTION ITEMS

7-1. Approve 2022 State Legislative Program. (Michelle Overmeyer)

There were no public comments.

On a motion by Director Amelio, seconded by Director Worthy and carried by the following vote, which was conducted by roll call, the Board approved the 2022 State Legislative Program:

AYES:	**12**	**Albert, Alejo, Amelio, Baron, Barrera, Burnett, Carbone, LeBarre, Martinez, Pacheco, Velazquez, and Worthy**
NOES:	**0**	
ABSENT:	**1**	**Gaglioti**
ABSTAIN:	**0**	

7-2. Approve 2022 Federal Legislative Program. (Carl Sedoryk)

There were no public comments.

On a motion by Director Amelio, seconded by Director Alejo and carried by the following vote, which was conducted by roll call, the Board approved the 2022 Federal Legislative Program:

AYES:	**12**	**Albert, Alejo, Amelio, Baron, Barrera, Burnett, Carbone, LeBarre, Martinez, Pacheco, Velazquez, and Worthy**
NOES:	**0**	
ABSENT:	**1**	**Gaglioti**
ABSTAIN:	**0**	

7-3. Adopt Resolution No. 2022-18 Approving Monterey-Salinas Transit District's (MST) Zero-Emissions Bus (ZEB) Rollout Plan for Submission to the California Air Resources Board (CARB) in Compliance with the Innovative Clean Transit (ICT) Regulation. (Norman Tuitavuki)

There were no public comments.

On a motion by Director LeBarre, seconded by Director Burnett and carried by the following vote, which was conducted by roll call, the Board adopted Resolution No. 2022-18 approving Monterey-Salinas Transit District's (MST) Zero Emissions Bus (ZEB) Rollout Plan for submission to the California Air Resources Board (CARB) in Compliance with the Innovative Clean Transit (ICT) Regulation:

AYES:	**12**	**Albert, Alejo, Amelio, Baron, Barrera, Burnett, Carbone, LeBarre, Martinez, Pacheco, Velazquez, and Worthy**
NOES:	**0**	
ABSENT:	**1**	**Gaglioti**
ABSTAIN:	**0**	

7-4. Authorize General Manager/CEO to Execute a Contract with Kimley-Horn for SURF! Busway and Bus Rapid Transit (BRT) Project Final Design Services in an Amount Not to Exceed $5,000,000 Pending Execution of a Measure X Funding Agreement with the Transportation Agency for Monterey County, Certifying that a Skilled and Trained Workforce Will be Used for the SURF! Busway and BRT Project and Directing Kimley-Horn to Incorporate Such Requirements into the Bidding Process, as Provided in Attachment 1. (Lisa Rheinheimer)

There were no public comments.

On a motion by Director Amelio, seconded by Director Velazquez and carried by the following vote, which was conducted by roll call, the Board authorized the General Manager/CEO to execute a contract with Kimley-Horn for SURF! Busway and Bus Rapid Transit (BRT) Project final design services in an amount not to exceed $5,000,000 pending execution of a Measure X funding agreement with the Transportation Agency for Monterey County, certifying that a skilled and trained workforce will be used for the SURF! Busway and BRT Project, and directing Kimley-Horn to incorporate such requirements into the bidding process:

AYES:	**12**	**Albert, Alejo, Amelio, Baron, Barrera, Burnett, Carbone, LeBarre, Martinez, Pacheco, Velazquez, and Worthy**
NOES:	**0**	
ABSENT:	**1**	**Gaglioti**
ABSTAIN:	**0**	

7-5. Authorize General Manager/CEO to Execute a Contract with California State University, Monterey Bay (CSUMB) for a Free Fare Program in an Amount not to Exceed $120,000 for the Spring 2022 Semester. (Michelle Overmeyer)

There were no public comments.

On a motion by Director Worthy, seconded by Director Velazquez and carried by the following vote, which was conducted by roll call, the Board authorized the General Manager/CEO to execute a contract with California State University, Monterey Bay (CSUMB) for a Free Fare Program in an amount not to exceed $120,000 for the Spring 2022 semester:

AYES:	**12**	**Albert, Alejo, Amelio, Baron, Barrera, Burnett, Carbone, LeBarre, Martinez, Pacheco, Velazquez, and Worthy**
NOES:	**0**	
ABSENT:	**1**	**Gaglioti**
ABSTAIN:	**0**	

7-6. Approve the Recommendation of the General Manager Performance Evaluation Ad Hoc Committee of 4.7% Incentive Pay for the General Manager/CEO. (Dan Albert)

There were no public comments.

On a motion by Director Amelio, seconded by Director Velazquez and carried by the following vote, which was conducted by roll call, the Board approved the recommendation of the General Manager Performance Evaluation Ad Hoc Committee of 4.7% Incentive Pay for the General Manager/CEO:

AYES:	**11**	**Albert, Amelio, Baron, Barrera, Burnett, Carbone, LeBarre, Martinez, Pacheco, Velazquez, and Worthy**
NOES:	**1**	**Alejo**
ABSENT:	**1**	**Gaglioti**
ABSTAIN:	**0**	

8. REPORTS & INFORMATION ITEMS

The Board received and filed these reports, which do not require action by the Board.

8-1. General Manager/CEO Report – November 2021

8-2. Federal Legislative Advocacy Report – December 2021

8-3. State Legislative Advocacy Update - None

8-4. Staff Trip Reports

8-5. Correspondence – None

9. BOARD REPORTS, COMMENTS, AND REFERRALS

9-1. Reports on Meetings Attended by Board Members at MST Expense. (AB 1234)

9-2. Board Member Comments and Announcements.

a) Recognition of Ikuyo Yoneda-Lopez, Marketing and Customer Service Manager, Graduation from Leadership Monterey County.

The MST Board congratulated Ikuyo Yoneda-Lopez on her recent graduation from the Leadership Monterey County program.

9-3. Board Member Referrals for Future Agendas.

10. RETURN TO CLOSED SESSION AND REPORT

10-1. Conference with Labor Contract Negotiator - General Manager/CEO Contract Gov. Code § 54957. (Dan Albert)

General Counsel, Dave Laredo reported that the MST Board provided direction to the Chair to meet with the General Manager/CEO for further contract negotiation with the intent to discuss with the full Board in closed session of the January 2022 Board meeting.

11. ATTACHMENTS

11-1. The Detailed Monthly Performance Statistics and Disbursement Journal for October 2021 can be viewed online within the GM Report at http://mst.org/about-mst/board-of-directors/board-meetings/

12. ADJOURN

With no further business to discuss, the meeting was adjourned at 12:29 p.m. (Pacific) in memory, and in honor of Lupe Galaviz, a long-time transit services advocate from the City of Soledad who recently passed away.

PREPARED BY:_____ REVIEWED BY:_____
Jeanette Alegar-Rocha Carl G. Sedoryk

MEETING OF THE MST BOARD OF DIRECTORS

MEETING MINUTES

January 10, 2022
10:00 am (Pacific)

Present:	Jeff Baron	City of Carmel-by-the-Sea
	John Gaglioti	City of Del Rey Oaks
	Lorraine Worthy	City of Gonzales
	Yanely Martinez	City of Greenfield
	Mike LeBarre	City of King
	David Burnett	City of Marina
	Dan Albert	City of Monterey
	Joe Amelio	City of Pacific Grove
	Tony Barrera	City of Salinas
	Mary Ann Carbone	City of Sand City
	Dave Pacheco	City of Seaside
	Anna Velazquez	City Soledad
	Luis Alejo	County of Monterey
Absent:	None	
Staff:	Carl Sedoryk	General Manager/CEO
	Lisa Rheinheimer	Assistant General Manager
	Norman Tuitavuki	Chief Operating Officer
	Michael Kohlman	Chief Information Officer
	Kelly Halcon	Director of HR & Risk Management
	Michelle Overmeyer	Director of Planning & Innovation
	Andrea Williams	General Accounting & Budget Manager
	Jeanette Alegar-Rocha	Deputy Secretary
	Ikuyo Yoneda-Lopez	Marketing & Customer Service Manager
	Sonia Wills	Customer Service Supervisor
	Matthew Deal	Grants Analyst
	Scott Taylor	IT Manager
	Ezequiel Rebollar	IT Technician
	Deanna Smith	Civil Rights Officer
	Lisa Cox	Risk and Safety Manager
	Elena Grigorichina	Operations Analyst
	Marzette Henderson	Contract Services Manager
	Claudia Valencia	Mobility Specialist

	Ruben Gomez	Mobility Specialist
	Lesley vanDalen	Mobility Specialist
	Beronica Carriedo	Community Relations Coordinator
	Sloan Campi	Planning Manager
	Emma Patel	Associate Planner
	David Bielsker	Transit Scheduler
Counsel:	David Laredo	General Counsel, De Lay & Laredo
	Michael D. Laredo	Associate Counsel, De Lay & Laredo
Public:	Douglas Thomson	MV Transportation

Apology is made for any misspelling of a name.

1. CALL TO ORDER

1-1. Roll Call.

1-2. Pledge of Allegiance.

1-3. Review Highlights of the agenda. (Carl Sedoryk)

Chair Albert called the meeting to order at 10:00 a.m. and led the pledge of allegiance. Roll call was taken as the meeting was held via ZOOM teleconference. A quorum was established. General Manager/CEO Carl Sedoryk reviewed the highlights of the Agenda.

2. PUBLIC COMMENTS ON MATTERS NOT ON THE AGENDA

There were no public comments.

3. CLOSED SESSION

3-1. Conference with Labor Contract Negotiators - General Manager/CEO Contract Gov. Code § 54957. (Dan Albert/ Dave Laredo)

3-2. Conference with Legal Counsel to Provide Direction on Pending Litigation: Ortiz v. Monterey-Salinas Transit District, et al Monterey Superior Court, Case No. 20CV002253. (Kelly Halcon/Dave Laredo)

There were no public comments on the Closed Session agenda.

General Counsel, Dave Laredo reported that the Board reviewed Closed Session item 3-1 and is on the Action Items agenda under item #7-1.

General Counsel, Dave Laredo reported that the Board reviewed Closed Session item 3-2 and general direction was provided but no reportable action was taken.

4. CONSENT AGENDA

4-1. Approve Resolution 2022-19 Authorizing Remote Teleconference Meetings. (Carl Sedoryk)

4-2. Approve Resolution 2022-20 Recognizing David Bielsker, Transit Scheduler, as Employee of the Month for January 2022. (Sloan Campi)

4-3 Approve Resolution 2022-21 Recognizing **Team MST** as Employee of the Year for 2021. (Carl Sedoryk)

There were no public comments on the Consent Agenda.

Director LeBarre pulled agenda item 4-1 from the Consent Agenda for comment.

On a motion by Director Amelio, seconded by Director Carbone and carried by the following vote, which was conducted by roll call, the Board approved items 4-2 and 4-3 on the Consent Agenda:

AYES:	**13**	**Albert, Alejo, Amelio, Baron, Barrera, Burnett, Carbone, Gaglioti, LeBarre, Martinez, Pacheco, Velazquez, and Worthy**
NOES:	**0**	
ABSENT:	**0**	
ABSTAIN:	**0**	

Chair Albert opened Board member comments and discussion on pulled Consent Agenda item 4-1.

On a motion by Director Baron, seconded by Director Alejo and carried by the following vote, which was conducted by roll call, the Board approved Consent Agenda item 4-1 Resolution 2022-19, unmodified and as presented by staff proclaiming a state of emergency and authorizing remote teleconference meetings in accordance with the Brown Act:

AYES:	**9**	**Albert, Alejo, Baron, Barrera, Burnett, Carbone, Martinez, Pacheco, and Velazquez**
NOES:	**4**	**Amelio, Gaglioti, LeBarre, and Worthy**
ABSENT:	**0**	
ABSTAIN:	**0**	

5. RECOGNITIONS AND SPECIAL PRESENTATIONS

5-1. January 2022 Employee of the Month – David Bielsker (Sloan Campi)

5-2. 2021 Employee of the Year Presentation. (Carl Sedoryk)

5-3. 2021 Management Excellence Award – Lisa Cox, Risk and Security Manager (Carl Sedoryk)

6. PUBLIC HEARINGS

None

7. ACTION ITEMS

7-1. Approve 5-Year Employment Agreement with Carl G. Sedoryk, General Manager/CEO. (Kelly Halcon)

There were no public comments.

On a motion by Director Worthy, seconded by Director Amelio and carried by the following vote, which was conducted by roll call, the Board approved the 5-year Employment Agreement with Carl G. Sedoryk, General Manager/CEO:

AYES:	**13**	**Albert, Alejo, Amelio, Baron, Barrera, Burnett, Carbone, Gaglioti, LeBarre, Martinez, Pacheco, Velazquez, and Worthy**
NOES:	**0**	
ABSENT:	**0**	
ABSTAIN:	**0**	

7-2. Approve an In-Person/Virtual Hybrid Meeting Option for MST Board and Committee Meetings for Remainder of the Calendar Year, Pending Mandatory Changes Implemented by the County of Monterey, State, or Federal Government. (Carl Sedoryk)

There were no public comments.

On a motion by Director Baron, seconded by Director Velazquez and carried by the following vote, which was conducted by roll call, the Board approved an in-person /virtual hybrid meeting format to allow Board members and members of the public to attend and participate in Board and Committee meetings. Board members, MST staff, and those from the public may attend in-person meetings adhering to certain requirements including proof of a COVID-19 vaccination, wearing an approved face covering and social distancing in the Board room. Staff will provide approved face coverings to those in attendance lacking such and provide rapid COVID antigen tests to Board members who wish to test in advance of the meeting. The Chair will not seat any member of the Board who does not comply with requirements listed above.

AYES:	**11**	**Albert, Alejo, Amelio, Baron, Barrera, Burnett, Carbone, Gaglioti, Martinez, Pacheco, and Velazquez**
NOES:	**2**	**LeBarre and Worthy**

ABSENT: 0
ABSTAIN: 0

7-3. Receive FY 2021/22 and 2022/23 Project Action Plan Update. (Carl Sedoryk)

There were no public comments.

The MST Board received the FY 2021/22 and 2022/23 Project Action Plan Update from the General Manager/CEO. The following items were deferred to the February Agenda for further review and discussion:

a. Salinas Transit Center (STC) Relocation Request by Taylor Farms;
b. Receive Presentation from ELT on Strategic Planning items; and
c. Governor's Proposed Budget for FY 2022/23.

8. REPORTS & INFORMATION ITEMS

None.

9. BOARD REPORTS, COMMENTS, AND REFERRALS

9-1. Reports on Meetings Attended by Board Members at MST Expense. (AB 1234)

9-2. Board Member Comments and Announcements.

Chair Albert announced the APTA Transit Board Member Virtual Seminar which runs from January 26 - February 2 is open for registration. Any board member who wants to attend should inform the MST Board Clerk by Friday, January 14 for registration.

9-3. Board Member Referrals for Future Agendas.

10. ATTACHMENTS

None.

11. ADJOURN

With no further business to discuss the meeting was adjourned at 12:17 p.m. (Pacific).

PREPARED BY:_____ REVIEWED BY:_____
Jeanette Alegar-Rocha Carl G. Sedoryk

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Ben Harvey, City Manager
MEETING DATE:	March 2, 2022
SUBJECT:	Ratification of New Local Emergency Actions
CEQA:	Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Receive report of emergency directives/modifications.

DISCUSSION

The City Manager during this Local Emergency is authorized to directly mitigate effects of the Local Emergency to protect life or property.

This report apprises the City Council of emergency directives taken under the continuing local emergency proclaimed by Resolution 20-007. This report fulfills the City Council's review obligation under that Resolution and Government Code 8630. This agenda item also enables ratification of select actions taken since the City Council's last review.

City expenditures for legal services related to COVID-19 issues (specifically to related to COVID 19-COM (Communications); COVID 19-TRN (Training); COVID 19-LAW (Legal Support); and COVID-19 (Other)) are eligible for State and Federal Emergency Service reimbursement, including but not limited to FEMA or other emergency grant funding.

Actions not subject to Ratification. Since the time of the revised Monterey County Shelter in Place Order issued Friday, April 3, 2020, the City Manager has taken the following new or modified actions pursuant to the Emergency Proclamation:

- None to report at this time.

No action is necessary with respect to the above new or modified measures, as each is responsive to requirements of the revised Monterey County Shelter in Place Order falling within the regular management discretion of the City Manager.

Actions subject to Ratification. Certain mitigation measures that have been enacted by the City Manager in response to the Monterey County Shelter in Place Order issued Friday, May 8, 2020, and in accord with Council's Local Emergency under Article 19, subparagraph l, of the Pacific Grove City Charter, and Chapter 3.20 of the Pacific Grove Municipal Code (PGMC), are subject to ratification. Any mitigation measures that qualify are subject to ratification as required by Government Code 8630

and City Council Resolution 20-007, and are listed below:

1. None to report at this time.

Discussion of Circumstances Needing Emergency Response. The discussion part of this item allows comment on circumstances which may benefit from further or different emergency responses. Matters identified will be referred to the City Manager for appropriate consideration in accord with the Emergency Management System protocols set by PGMC Chapter 3.20. These delegate exclusive emergency management response authority to the City Manager.

CEQA Exemption. Actions taken to prevent or mitigate an emergency are exempt from CEQA pursuant to section 15260 of the CEQA Guidelines.

OPTIONS

Actions not subject to ratification are reported for information only.

FINANCIAL IMPACT:

There is no financial impact in receiving the report.

GOAL ALIGNMENT: Not Applicable.

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Joseph Sidor, Contract Planner

MEETING DATE: March 2, 2022

SUBJECT: Contract Amendment with Rincon Consultants, Inc. ***This item was continued from the February 16, 2022 meeting.***

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Approve the Proposed Contract Amendment and Reimbursement Agreement with Rincon Consultants, Inc. based on the Scope of Work and Cost Estimate provided for preparation of a revised Initial Study-Mitigated Negative Declaration (IS-MND) relating to a development project located at 1661 Sunset Drive.

DISCUSSION

BACKGROUND

On August 12, 2021, at a noticed public hearing, the Planning Commission received testimony and approved an Architectural Permit, Coastal Development Permit, and Parcel Merger (AP/CDP/PM 19-0645) and adopted the Initial Study and Mitigated Negative Declaration for the demolition of an existing home, the merger of two (2) parcels and the development of a new single-family residence. The Planning Commission's agenda report can be viewed on the City's website. The home proposed and approved for demolition had previously been determined, through the City's Initial Historic Screening (IHS) process, to be ineligible for the City's Historic Resources Inventory (HRI) and, therefore, not a historic resource. Prior to the Planning Commission public hearing, an attorney representing a neighbor submitted a letter which included a historic assessment prepared by a local architectural historian, Kent Seavey, that contradicted the previous report utilized for the IHS process. Additionally, the neighbor filed an appeal within the appeal period following the Commission's action on August 12th.

Per Section 15064(g) of the CEQA Guidelines, *after application of the principles set forth above in Section 15064(f), and in marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.*

Given that two (2) local, notable expert architectural historians provided opposing expert opinions on the historicity of the home in question, the Community Development Dept. (CDD) determined that an EIR needed to be prepared. Based on this determination, on November 17, 2021, CDD brought before

the City Council a contract with Rincon Consultants, Inc. to prepare a Focused EIR for the project at 1661 Sunset Drive. The City Council approved the contract.

After approval of the contract for a Focused EIR, the applicant (Elstob Family Investments LP) decided to retain rather than demolish the existing on-site structures. Due to this change of project scope which is anticipated to eliminate a potential significant and unavoidable impact, CDD determined that a Focused EIR is no longer required and requested Rincon Consultants, Inc. submit a scope of work and cost estimate (attached) to revise the previously-prepared Initial Study-Mitigated Negative Declaration (IS-MND). Following completion of the revised IS-MND, this project will be returned to the Planning Commission with the revised CEQA document for final action on the permits. As a result of the amended project, the neighbor's appeal will be nullified.

The draft Professional Services contract and Reimbursement Agreement are attached.

OPTIONS

The Council could provide alternative direction to Staff.

FINANCIAL IMPACT:

Given that the costs associated with the preparation of the revised IS-MND will be born by the applicant, there is no financial impact on the City.

GOAL ALIGNMENT: Not Applicable.

Attachments

Draft Contract, Scope, and Cost Estimate

Draft Reimbursement Agreement

CITY OF PACIFIC GROVE AGREEMENT FOR PROFESSIONAL SERVICES (OVER $40,000)[1]

This Professional Services Agreement ("Agreement") is made by and between the City of Pacific Grove, a political subdivision of the State of California (hereinafter "City") and Rincon Consultants, Inc., (hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1. **SERVICES TO BE PROVIDED.** The City hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The services are generally described as follows: Preparation of a revised (biological and cultural resources) initial study/mitigated negative declaration for the 1661 Sunset Drive project, Pacific Grove, California.

2. **PAYMENTS BY CITY.** City shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by City to CONTRACTOR under this Agreement shall not exceed the sum of **$ 58,841.00.**[1]

3. **TERM OF AGREEMENT.** The term of this Agreement is from December 1, 2021, to December 31, 2022, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and City and with City signing last, and CONTRACTOR may not commence work before City signs this Agreement.

4. **ADDITIONAL PROVISIONS/EXHIBITS.** The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:
Exhibit A: Scope Amendment Request for the 1661 Sunset Drive Project, Pacific Grove, California (dated January 14, 2022)

5. **PERFORMANCE STANDARDS.**

5.01. CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the City, or immediate family of an employee of the City.

5.02. CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

5.03. CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use City premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

[1] Approved by the Pacific Grove City Council on _____.

6. **PAYMENT CONDITIONS.**

6.01. CONTRACTOR shall submit to the Contract Administrator an invoice on a form acceptable to City. If not otherwise specified, the CONTRACTOR may submit such invoice monthly or at the completion of each phase of the project, as provided on page 6 of the proposal, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice as the City may require. The Contract Administrator or his or her designee shall certify the invoice, either in the requested amount or in such other amount as the City approves in conformity with this Agreement, and shall promptly submit such invoice to the City Auditor-Controller for payment. The City Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

6.02. CONTRACTOR shall not receive reimbursement for travel.

7. **TERMINATION.**

7.01. During the term of this Agreement, the City may terminate the Agreement, with or without cause, by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, CONTRACTOR shall cease immediately all work in progress.

7.02. CONTRACTOR may terminate this Agreement at any time upon thirty (30) days' written notice of termination to City.

7.03. If either CONTRACTOR or City fail to perform any material obligation under this Agreement, then, in addition to any other remedies, either CONTRACTOR or City may terminate this Agreement immediately upon written notice.

7.04. Upon termination of this Agreement by either CONTRACTOR or City, all property belonging exclusively to City which is in CONTRACTOR's possession shall be returned to City. CONTRACTOR shall furnish to City a final invoice for work performed and expenses incurred by CONTRACTOR, prepared as set forth in Section 6 of this Agreement. This final invoice shall be reviewed and paid in the same manner as set forth in Section 6 of this Agreement.

8. **INDEMNIFICATION.**

8.01. As respects all acts or omissions which do not arise directly out of the performance of professional services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, CONTRACTOR shall indemnify, defend, and hold harmless the City, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death to the extent caused by CONTRACTOR's negligence, negligent acts, errors or omissions.

❑ Exemption/Modification (Justification attached; subject to approval).

9. **INSURANCE.**

9.01. Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance, no less broad than Insurance Services Office (ISO) CG 00 01, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products/Completed Operations, with minimum limits: $1,000,000 per Occurrence; $2,000,000 General Aggregate; $2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Umbrella Liability Insurance. If CONTRACTOR maintains higher limits than the specified minimum limits, City requires and shall be entitled to coverage for the higher limits maintained by CONTRACTOR.

❑ Exemption/Modification (Justification attached; subject to approval).

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than $1,000,000 per occurrence.

❑ Exemption/Modification (Justification attached; subject to approval).

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than $1,000,000 each person, $1,000,000 each accident and $1,000,000 each disease.

❑ Exemption/Modification (Justification attached; subject to approval).

Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than $1,000,000 per claim and $2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the retroactive date shall be no later than the commencement of the work. Coverage applicable to the work performed under this Agreement shall be continued for three (3) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.

❑ Exemption/Modification (Justification attached; subject to approval).

9.02. Other Insurance Requirements. All insurance required by this Agreement shall be with a company acceptable to the City and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

CONTRACTOR shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, CONTRACTOR shall forthwith obtain and submit proof of substitute insurance. Should CONTRACTOR fail to immediately procure other insurance, as specified, to substitute for any canceled policy, the City may procure such insurance at CONTRACTOR's sole cost and expense.

Commercial general liability and automobile liability policies shall provide an endorsement naming the City of Pacific Grove, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that

such insurance is primary insurance to any insurance or self-insurance maintained by the City and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured **is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000)**. The required endorsement form for Automobile Additional Insured endorsement is **ISO Form CA 20 48 02 99**.

The general liability policy shall cover inter-insured suits and include a "separation of Insureds" or "severability" clause which treats each insured separately.

CONTRACTOR shall provide to City an endorsement that the insurer waives the right of subrogation against the City, its officers, officials, employees, agents and volunteers.

Prior to the execution of this Agreement by the City, CONTRACTOR shall file certificates of insurance with the City's contract administrator and City's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by City, annual certificates to City's Contract Administrator and City's Contracts/Purchasing Division. If the certificate is not received by the expiration date, City shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement which entitles City, at its sole discretion, to terminate this Agreement immediately.

10. **RECORDS AND CONFIDENTIALITY.**

10.01. Confidentiality. CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the City or prepared in connection with the performance of this Agreement, unless City specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to City any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.

10.02. City Records. When this Agreement expires or terminates, CONTRACTOR shall return to City any City records which CONTRACTOR used or received from City to perform services under this Agreement.

10.03. Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and City rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.

10.04. Access to and Audit of Records. The City shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of $10,000, the parties to this Agreement may be subject, at the request of

the City or as part of any audit of the City, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

10.05. Royalties and Inventions. City shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of City.

11. **NON-DISCRIMINATION**. During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12. **COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT.** If this Agreement has been or will be funded with monies received by the City pursuant to a contract with the state or federal government in which the City is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, City will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

13. **INDEPENDENT CONTRACTOR.** In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the City. No offer or obligation of permanent employment with the City or particular City department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from City any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold City harmless from any and all liability which City may incur because of CONTRACTOR's failure to pay such taxes.

14. **NOTICES.** Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the City's and CONTRACTOR'S contract administrators at the addresses listed below:

FOR CITY:	**FOR CONTRACTOR:**
Alyson Hunter, AICP, Community Development Dir.	Megan Jones, Principal
Name and Title	Name and Title
300 Forest Avenue Pacific Grove, CA 93950	2511 Garden Road, Suite C-250 Monterey, CA 93940
Address	Address

(831) 648-3127	(831) 333-0310
Phone	Phone

15. **MISCELLANEOUS PROVISIONS.**

15.01. Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement which would directly or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.

15.02. Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the City and the CONTRACTOR.

15.03. Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the City and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.

15.04. Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.

15.05. Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute. Contractor and the CITY hereby agree to make good faith efforts to resolve disputes as quickly as possible. In the event any dispute arising from or related to this Agreement results in litigation or arbitration, the prevailing party shall be entitled to recover all reasonable costs incurred, including court costs, attorney fees, expenses for expert witnesses (whether or not called to testify), expenses for accountants or appraisers (whether or not called to testify), and other related expenses. Recovery of these expenses shall be as additional costs awarded to the prevailing party, and shall not require initiation of a separate legal proceeding.

15.06. Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the City. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the City. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.

15.07. Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the City and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.

15.08. Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.

15.09. Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.

15.10. Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.

15.11. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.

15.12. Non-exclusive Agreement. This Agreement is non-exclusive and both City and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.

15.13. Construction of Agreement. The City and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.

15.14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

15.15. Authority. Any individual executing this Agreement on behalf of the City or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.

15.16. Integration. This Agreement, including the exhibits any documents incorporated by reference, represent the entire Agreement between the City and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the City and the CONTRACTOR as of the effective date of this Agreement, which is the date that the City signs the Agreement.

15.17. Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

15.18 Severability. If any of the provisions contained in the Contract are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability and indemnities shall survive termination of the Contract for any cause. If a part of this Contract is valid, all valid parts that are severable from the invalid part remain in effect. If a part of this Contract is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

This space is left blank, intentionally.

IN WITNESS WHEREOF, City and CONTRACTOR have executed this Agreement as of the day and year written below.

CITY OF PACIFIC GROVE

By: _____
City Mayor

Date: _____

By: _____
Department Head

Date: _____

Approved as to Form

By: _____
City Attorney

Date: _____

[2]

Approved as to Fiscal Provisions

By: _____
Finance

Date: _____

Approved as to Liability Provisions [3]

By: _____
Risk Management

Date: _____

CONTRACTOR

Rincon Consultants, Inc.
Contractor's Business Name*

By: _____
(Signature of Chair, President, or Vice-President)*

_____
Name and Title

Date: _____

By: _____
(Signature of Secretary, Asst. Secretary, CFO, or Asst. Treasurer)*

_____
Name and Title

Date: _____

City Agreement Number: _____.

[2] Approval by Finance necessary only if financial questions or issues raised in Council approval of agreement.
[3] Approval by Risk Management is necessary only if changes are made in paragraph 8 or 9.

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

EXHIBIT A

Rincon Consultants, Inc.

2511 Garden Road, Suite C-250
Monterey, California 93940

831 333 0310

info@rinconconsultants.com
www.rinconconsultants.com

January 14,2022
Project No: 21-11891

Alyson Hunter, Senior Planner
City of Pacific Grove
Community Development Department
300 Forest Avenue, 2nd Floor
Pacific Grove, California 93950
via email: ahunter@cityofpacificgrove.org

Subject: Scope Amendment Request for the 1661 Sunset Drive Project, Pacific Grove, California

Dear Ms. Hunter:

The purpose of this letter is to request an amendment to the December 1, 2021 contract scope of work and budget between Rincon Consultants, Inc. (Rincon) and the City of Pacific Grove (city) for the proposed 1661 Sunset Drive Project. The current scope of work includes preparation of a Focused EIR. Per City direction provided during the January 5, 2022 project kickoff meeting, the applicant intends to retain the existing on-site structures, which is anticipated to eliminate a potential significant and unavoidable impact. Therefore, based on City direction, this amendment includes the preparation of a revised Initial Study-Mitigated Negative Declaration (IS-MND) for the project. The tasks associated with preparation of a revised IS-MND are outlined below, and are intended to replace the existing tasks associated with the Focused EIR scope of work.

Scope of Work

Task 1: Cultural Resources Peer Reviews[1]

Task 1.1: Historical Resources Peer Review and Evaluation

A historic resources evaluation was prepared by Anthony Kirk in December of 2018, which included an evaluation of the existing on-site residence. The City received a comment letter from Kent Seavey in August 2021 that included a peer review of the 2018 report. The Seavey letter provided several comments, including the suggestion that a potentially historic adobe studio was located on the project site, but was not evaluated. A Rincon qualified architectural historian will review the December 2018 report completed by Anthony Kirk and the August 2021 Kent Seavey letter, to identify potential deficiencies in the original report and update the historic analysis accordingly. An update/response memorandum will be prepared to address deficiencies, if any, from the original report and to strengthen the cultural resources analysis defensibility for the EIR. The memorandum will also serve to address concerns outlined in the Seavey letter, where appropriate. Additional analysis is anticipated to include an evaluation of the adobe structure and preparation California Department of Parks and Recreation

[1] This scope of work for this task is the same as under the current (Focused EIR) contract.

(DPR) forms for the site. The memorandum will also make recommendations related to impacts to historical resources and mitigation measures. Should the analysis of additional structures (beyond the adobe structure) be required, a change order would be necessary.

Task 1.2: Archaeological Resources Peer Review and Evaluation

A Phase I archaeological resources assessment was prepared by Patricia Paramoure Archaeological Consulting in June 2020 and a Phase II resource evaluation was prepared by Patricia Paramoure and Charles Mikulik in March 2021. Rincon proposes to complete a peer review of these documents focused on the adequacy of analysis and soundness of conclusions of the reports and on the sufficiency of the reports to support CEQA analysis. A response memorandum will be prepared outlining any concerns and recommending revisions and/or additional work to resolve identified concerns. If deemed necessary and at the discretion of the City, Rincon can submit a scope augmentation to conduct additional work needed to fully address archaeological resources.

Task 2: Administrative Draft Initial Study

The applicant has revised the project description to retain the existing buildings on parcel APN 007-041-033 and transfer the existing water meter to the proposed new single-family residence on APN 007-041-033. Based on this revised project description and public comments received, Rincon will update the existing IS-MND. This will include revisions to the *Description of the Project* and known environmental issue areas of concern, *Biological Resources* and *Cultural Resources*. In addition, other sections of the IS-MND will be updated and bolstered where needed, to address prior public comment and improve defensibility. This scope of work assumes that all issue areas will be less than significant or less than significant with mitigation, and that preparation of an Environmental Impact Report will not be warranted. The revised IS-MND will be prepared in accordance with the most recent CEQA Statutes and Guidelines. The following describes our approach to revising the IS-MND:

Project Description. The Draft IS-MND project description will be revised to reflect the retention of the existing buildings located on the project site and the transfer of the existing water meter to the new development. The project description will also be bolstered to provide project background information, including prior public review and hearing (i.e., opportunities for input), and to explain the difference between proposed project design features and mitigation measures (per prior comments on the IS-MND).

Aesthetics. This analysis will contain a qualitative discussion of long-term visual impacts including changes to visual character and alteration of views, that may occur as a result of the retention of the existing buildings on site. Applicable design guidelines will also be described. Mitigation for the maintenance of the buildings may be proposed to reduce impacts to the surrounding visual character.

Biological Resources. Rincon conducted a peer review of the Biological Evaluation prepared for the project site in June 2020 and concluded that additional evaluation of impacts to biological resources would be necessary to sufficiently support the CEQA analysis. Rincon will use the existing Biological Evaluation to provide background information on the project site and support the biological resources analysis. In addition, to confirm no new special-status species have been recorded in the project vicinity Rincon will prepare a desktop literature and agency database review. Rincon will review project plans, aerial imagery, agency databases (i.e., California Department of Fish and Wildlife's *California Natural Diversity Database*, California Native Plant Society's *Inventory of Rare and Endangered Plants*,

and U.S. Fish and Wildlife Service's *Information for Planning and Conservation* database) as well as other relevant background information for context and understanding of the biological concerns related to the project.

Upon completion of the desktop analysis, Rincon will recommend any additional species-specific or protocol level studies necessary. The biological resources analysis will rely on information in the existing studies in lieu of a reconnaissance site visit and will not include seasonally timed or protocol surveys for rare plants or wildlife and does not include a formal jurisdictional delineation. This scope of work assumes no project disturbance will occur within a stream channel and no permits from the California Department of Fish and Wildlife or the Regional Water Quality Control Board will be required. The impact analysis will be based on habitat assessment for species known to occur in the region. Rincon will utilize the findings of the literature review and desktop analysis to update the existing Initial Study with a bolstered impacts analysis and recommended enforceable, non-deferral mitigation measures to reduce impacts to biological resources resulting from the proposed project to a less than significant level.

Cultural Resources**.** Rincon understands the project site contains a potential historical resource and an archaeological resource. Using the previous cultural resources documentation prepared for the project, the peer reviews included under Task 1 above, as well as AB 52 consultation conducted by the City as part of the prior IS-MND, Rincon will identify potential impacts related to the preservation of the historical resource on site and impacts to archaeological resources associated with development of the second parcel, and present mitigation measures that could reduce impacts to the extent feasible. Mitigation measures related to the maintenance of the existing buildings to remain on site will also be developed to reduce significant impacts to existing resources, if necessary. If Task 1 identifies that additional work is necessary, such additional work (whether completed by Rincon or another firm) will be incorporated into the Initial Study section.

Hydrology and Water Quality. The hydrology and water quality analysis will evaluate potential impacts relating to hydrological conditions and flooding, as well as potential impacts to surface and groundwater quality. Rincon will revise the existing IS-MND analysis to account for increased impervious surfaces on the project site and further address potential impacts from increased impervious surfaces to the surrounding area.

Noise. The noise analysis will include evaluations of temporary impacts associated with project construction and long-term impacts associated with operation of the project. The analysis of temporary noise and vibration impacts associated with construction will be based on typical construction noise and vibration levels and standard noise and vibration attenuation factors. Noise and vibration levels associated with construction activities will be quantified and projected at the nearest noise-sensitive land uses and compared to applicable thresholds.

Population and Housing. This analysis will consider the potential for future use of APN 007-041-033 as a residence, to address prior public comments on the IS-MND.

Utilities and Service Systems. The revised project description includes the transfer of the existing water meter to the proposed new residence. This analysis will address California American Water requirements for the transfer of the water meter and if necessary, water supply requirements for the existing buildings. The evaluations of service systems will involve contact with the service providers.

Cumulative Impacts. The IS-MND will include a discussion of cumulative impacts, relying on a list of past, present, and reasonably foreseeable projects in the vicinity.

Rincon will submit an electronic copy of the Administrative Draft IS-MND in Word format.

Task 3: Public Review Draft Initial Study

Rincon will respond to one round of consolidated City comments on the Administrative Draft IS-MND. This document will be submitted in Microsoft Word with revisions shown in track changes. Upon receipt of any final comments on the revisions, Rincon will prepare a Draft IS-MND for publication. Any comments at this stage will be limited to minor typographical or formatting edits, if any. The Public Draft IS-MND will be submitted in PDF format. No hard copies will be provided. This scope of work does not include formatting the document to meet accessibility requirements.

Rincon will prepare a Notice of Intent (NOI) to Adopt an Initial Study. Rincon will transmit the NOI and other required forms of the Initial Study electronically to the City. It is our understanding that the City will transmit the NOI and other required forms to the State Clearinghouse. We assume that the City will be responsible for mailing copies and notices to the County Clerk; responsible agencies, if any; neighboring or nearby property owners or residents; and other interested parties. It is also assumed that City will be responsible for other noticing required under CEQA or City procedures, including posting at the site or newspaper ads. However, Rincon can assist with these tasks for an additional fee on a time and materials basis.

Task 4: Final Initial Study and MMRP

Upon receipt of public comments on the Draft IS-MND, Rincon will prepare draft response to comments and an Administrative Final IS-MND for review by City staff. This scope of work assumes that up to three comment letters will be received, including one lengthy (over twenty pages) and/or substantive letter, that can be adequately responded to in a maximum of 60 professional staff hours. The actual level of effort required to respond will depend on the length, detail, and sophistication of the comments, in addition to the number of letters received. We reserve the right to reevaluate the effort level and request a scope amendment upon close of the public comment period.

Upon receipt of comments on the Administrative Final IS-MND, we will incorporate changes and prepare the Final IS-MND. This task will also include preparation of the Mitigation Monitoring and Reporting Program (MMRP), which will include a list of mitigation measures, monitoring timing, and responsibility. One electronic copy of the Final Initial Study (PDF) will be provided. If the project is approved, Rincon will prepare a Notice of Determination (NOD) for the City to file with the County Clerk. The City or applicant will be responsible for payment of County Clerk and California Department of Fish & Wildlife (CDFW) CEQA fees.

Task 5: Meetings and Public Hearings

During preparation of the Initial Study, key Rincon staff will attend up to two virtual meetings with staff (one hour in length each). These meetings would be scheduled at the discretion of the City. Rincon's Project Manager and/or Principal-in-Charge will also attend and present the conclusions of the Initial Study at one virtual Planning Commission and one virtual City Council hearing.

Project Management

This task includes management and coordination through the duration of the IS-MND, including coordination with City staff; project oversight; budget and schedule management; and project accounting including billing and accounts receivable efforts.

Assumptions

Rincon assumes the following:

- The City will conduct appropriate notification to all responsible agencies and to the public
- One round of consolidated City comments will be provided on each deliverable
- No project disturbance will occur within a stream channel and no permits from CDFW or RWQCB will be required
- The Initial Study will rely on AB 52 consultation already completed by the City for the previous IS-MND
- One lengthy (over 20 pages) and substantive letter will be submitted by from Wanger Jones Helsley PC (or other law firm representing the neighbors), and up to two additional short (under two pages) and non-substantive letters will be submitted, which can be adequately responded to in a maximum of 60 professional staff hours
- The City will be responsible for payment of the County Clerk and California Department of Fish and Wildlife filing fees
- Rincon will not provide hard copies of any deliverables

Estimated Timeline

Rincon has an excellent reputation for adhering to schedules and meeting milestones. Based on our project understanding and the analysis required Rincon proposes to adhere to a schedule that allows for completion of the environmental review process in approximately three to four months depending on timing of our receipt of a complete and stable project description and plan set, City review times, and number and complexity of public comments.

1. Cultural Resources Peer Reviews. Rincon will perform peer reviews within three weeks of authorization to proceed, project kickoff, and receipt of technical reports from the City and applicant. We assume the technical reports will require up to three weeks for revisions.
2. Administrative Draft Initial Study. Rincon will submit the Administrative Draft Initial Study within eight weeks of receipt of a complete and stable project description, plan set, and revised technical reports from the City and applicant.
3. Public Review Draft Initial Study. Revisions to address City comments will be provided within three weeks and submitted to the City in track changes. Upon approval of revisions, the Public Draft IS-MND will be provided in PDF format in one week.
4. Final Initial Study and MMRP. The Administrative Final IS-MND and MMRP will be completed within approximately three to six weeks of receipt of all public comments, depending on the

number and complexity of public comments received. We will submit the Final IS-MND and MMRP within two weeks of receipt of City comments on the draft responses.

Cost

Rincon can complete the proposed work program for a cost not to exceed **$51,375,** a reduction of $32,856 from the originally proposed Focused EIR cost of $84,231. The revised cost is in addition to the work already completed for this project, including the January 5, 2022 kick-off meeting and project management tasks. When added to the work in progress balance of $2,116, the total revised budget would be **$53,491**. We also recommend including an approximately 10 percent contingency (or $5,350), only to be released upon City approval. A breakdown of our cost by task is summarized in the table on the next page. All services would be provided on a time and expense reimbursement basis and will be billed in accordance with our standard fee schedule for professional services.

If you have any questions regarding this request, please do not hesitate to contact us.

Sincerely,
Rincon Consultants, Inc.

Leslie Trejo, MUP
Project Manager
Phone: 510-984-6155
Email: ltrejo@rinconconsultants.com

Megan Jones, MPP
Principal-in-Charge
Phone: 831-920-5424
Email: mjones@rinconconsultants.com

1661 Sunset Drive IS-MND Cost Estimate

	Rate	Hours	Labor Budget	Total Budget
Task 1: Cultural Resources Peer Reviews		68.00	12,104.00	12,104.00
Principal I	250.00	8.00	2,000.00	
Supervisor Archaeologist I	215.00	22.00	4,730.00	
Archaeologist IV	164.00	12.00	1,968.00	
Archaeologist II	135.00	20.00	2,700.00	
GIS/CADD Specialist II	135.00	2.00	270.00	
Technical Editor	120.00	2.00	240.00	
Production Specialist I	98.00	2.00	196.00	
Task 2: Administrative Draft Initial Study		93.00	13,516.00	13,516.00
Principal I	250.00	5.00	1,250.00	
Supervisor Archaeologist I	215.00	3.00	645.00	
Senior Biologist II	195.00	3.00	585.00	
Archaeologist IV	164.00	4.00	656.00	
Planner IV	164.00	12.00	1,968.00	
Biologist III	152.00	12.00	1,824.00	
Archaeologist II	135.00	8.00	1,080.00	
GIS/CADD Specialist II	135.00	8.00	1,080.00	
Planner I	120.00	30.00	3,600.00	
Technical Editor	120.00	2.00	240.00	
Production Specialist I	98.00	6.00	588.00	
Task 3: Public Review Draft Initial Study		28.00	4,402.00	4,402.00
Principal I	250.00	3.00	750.00	
Senior Archaeologist II	195.00	4.00	780.00	
Biologist IV	164.00	2.00	328.00	
Planner IV	164.00	7.00	1,148.00	
Planner I	120.00	10.00	1,200.00	
Production Specialist I	98.00	2.00	196.00	
Task 4: Finial Initial Study and MMRP		78.00	12,874.00	12,874.00
Principal I	250.00	9.00	2,250.00	
Supervisor Archaeologist I	215.00	4.00	860.00	
Senior Biologist II	195.00	8.00	1,560.00	
Archaeologist IV	164.00	10.00	1,640.00	
Planner IV	164.00	21.00	3,444.00	
Planner I	120.00	24.00	2,880.00	
Technical Editor	120.00	2.00	240.00	
Task 5: Meetings and Public Hearings		17.00	3,355.00	3,355.00
Principal I	250.00	6.00	1,500.00	
Supervisor Archaeologist I	215.00	1.00	215.00	
Planner IV	164.00	10.00	1,640.00	
Project Management		26.00	5,124.00	5,124.00
Principal I	250.00	10.00	2,500.00	
Planner IV	164.00	16.00	2,624.00	
Project Total		**310.00**	**51,375.00**	**51,375.00**

REIMBURSEMENT AGREEMENT
FOR CONSULTANT PLANNING SERVICES FOR THE 1661 SUNSET DRIVE PROJECT

PREAMBLE

This Reimbursement Agreement ("Agreement") is by and between Elstob Family Investments LP, a California limited partnership ("Elstob Family Investments") and the City of Pacific Grove, California, a chartered California municipal corporation ("City"). Elstob Family Investments may also be referred to as "Applicant." City and Applicant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

A. The Applicant desires to redevelop various parcels collectively referred to as 1661 SUNSET DRIVE; Assessor's Parcel Numbers 007-041-033, 007-041-034, and 007-041-035 (Proposed Project).

B. The City will incur various costs and expenses including preparation of a revised Initial Study and Mitigated Negative Declaration (revised IS/MND) for the Proposed Project. The City has retained an Environmental Planning consultant, Rincon Consultants Inc., to assist in the analysis of environmental clearance documents for conformance to the California Environmental Quality Act (CEQA), the preparation of a revised IS/MND and attendant notifications, reports and presentations, and attendance at relevant meetings, associated with the Proposed Project.

C. Applicant is willing to reimburse City for Eligible Costs to be incurred by City in connection with the utilization of Rincon Consultants, Inc. to provide environmental review in compliance with CEQA on the 1661 Sunset Drive site(s), as set forth herein.

In consideration of the recitals and mutual promises contained herein, the Parties agree as follows:

AGREEMENT PROVISIONS

1. PURPOSE OF AGREEMENT

The purpose of this Agreement is to provide for payment by Applicant of all Eligible Costs (defined below) directly or indirectly incurred by City in connection with the Proposed Project.

2. REIMBURSEMENT OBLIGATION

A. The Applicant shall reimburse the City for Planning fees associated with the preparation of a revised IS/MND, notifications and presentation preparation of the Proposed Project, including Planning Consultant and/or dedicated staff fees and costs incurred in connection with the review of Planning Applications for the Proposed Project (collectively, the "Eligible Costs") in accordance with this Agreement.

B. The total amount of Eligible Costs is estimated to be $58,841 including a 10 percent contingency fee. This includes reimbursement for contract expenses, fees and direct consultant costs associated with contract or project management. All direct City staff costs will be billed at the fully-burdened hourly rate, which is determined annually by the City. City agrees to use its best efforts to stay within the Estimated Budget. In the event that additional services are required that would exceed the Estimated Budget, City shall give the Applicant 10 business days' advance written notice prior to authorizing any work that would cause the Eligible Costs to exceed the Estimated Budget, which notice shall document the budget for additional services that would exceed the Estimated Budget ("Additional Budget"). If City and Applicant cannot agree to the scope and cost of said additional services in writing, this Agreement may be terminated or extended pursuant to Section 7. Applicant shall provide an amount to cover additional costs prior to the commencement of additional services, unless the Parties agree to an alternate funding allocation as part of the review and approval of the scope and cost of said additional services.

3. PAYMENT OF ELIGIBLE COSTS

A. Upon execution of this Agreement, Applicant shall deposit with City the sum equivalent to $58,841 in cash or other immediately available funds ("Payment"). The Payment will be retained as a "Deposit" in satisfaction of Applicant's obligation to pay Applicant's Share of Eligible Costs.

B. If the City provides notice pursuant to Section 2.B of this Agreement that services are required that would cause the Eligible Costs to exceed the Estimated Budget, the Applicant shall deposit with City the sum equivalent to [Additional Budget] in cash or other immediately available funds ("Additional Payment") in satisfaction of Applicant's obligation to pay Eligible Costs. Upon mutual agreement of the City and Applicant, the Applicant may provide the Additional Payments in accordance with Section 3.A.

C. City shall withdraw from the Payment and Additional Payment, if any, as necessary to cover the Eligible Costs. On a monthly basis, City shall provide written notice to all Applicant documenting: (1) the amount of Eligible Costs

incurred to date; (2) the amount of Payments and Additional Payments, if any, that the City has used to pay Eligible Costs incurred to date; and (3) the remaining balance of the Applicant's Payment and Additional Payments, if any.

D. The Applicant makes this commitment without regard to the City's ultimate decision whether to approve the Proposed Project.

4. REFUND OF UNEXPENDED BALANCE

A. In the event this Agreement is terminated as provided in Section 6 below, City shall return to each Applicant within 45 days following the effective date of termination that portion of the Payment or Additional Payment, if any that has not been expended or committed by City as provided herein. If unexpended funds are returned and the City is invoiced for any direct costs that were completed prior to the date of termination, the Applicant shall be billed for those costs.

B. Any unexpended funds shall be returned to the Applicant within 45 days after (1) the City approves or denies all relevant planning applications associated with the Proposed Project. City shall provide copies of invoices and other documents to verify final costs for services.

5. NO COMMITMENT AS TO FUTURE APPROVALS

Nothing in this Agreement shall be construed as a commitment to grant or issue any preliminary or final approvals in connection with the Proposed Project. Each Applicant acknowledges and agrees that nothing in this Agreement limits City's discretion, in any manner, with respect to any aspect of the Proposed Project. Each Applicant agrees that it shall remain obligated to pay Applicant's Share of all Eligible Costs, regardless of whether any aspect of the Proposed Project is approved.

6. TERM; TERMINATION OF AGREEMENT

A. The term of this Agreement shall be from the Effective Date until the date the services identified in Recital B have been fully performed and paid for, unless terminated earlier.

B. Any Party may terminate this Agreement without cause by giving the other Parties written notice ("Notice of Termination") which clearly expresses that Party's intent to terminate the Agreement. Notice of Termination shall become effective no less than ten (10) calendar days after all Parties receive such notice. No Applicant shall have an obligation to pay any Eligible Costs incurred on or after the effective date of the termination, but shall remain responsible for any Eligible Costs incurred prior to the effective date of the termination.

C. In the event of termination of this Agreement, City shall prepare a statement for all services rendered by City. City will refund any unexpended balance of Applicant's funds to Applicant in accordance with Section 4 of this Agreement.

7. APPLICANT STANDING

Applicant is a California LP. Applicant shall maintain limited partnership existence and good standing in its jurisdiction of registration and maintain qualification in each jurisdiction in which it is required under applicable law. Applicant shall maintain in force all licenses, approvals, and agreements, the loss of which could have a Material Adverse Effect. Applicant shall provide to City a Certificate of Good Standing or Certificate of Existence from the appropriate authority, submitted within ten days upon request by City certifying that Applicant is in good standing as a limited partnership in the State of California.

8. ASSIGNMENT

An Applicant may assign its interest in this Agreement with the prior written notice and consent of City.

9. INTEGRATED DOCUMENT

This Agreement represents the entire agreement between City and Applicant. No other understanding, agreements, conversations, or otherwise, with any representative of any Party prior to execution of this Agreement shall affect or modify any of the terms or obligations of this Agreement. Any verbal agreement shall be considered unofficial information and is not binding upon any Party.

10. SEVERABILITY CLAUSE

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

11. WAIVER

Waiver of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

12. NOTICES

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Pacific Grove
Attention: Alyson Hunter, AICP, Director Community Development Dept.
300 Forest Avenue
Pacific Grove, California 93950
Phone: 831-648-3192
Fax: 831-648-3184
Email: ahunter@cityofpacificgrove.org

to Elstob Family Investments addressed as follows:

Elstob Family Investments, LP
Attention: Mark Elstob
415 Crocker Avenue
Pacific Grove, California 93950
Phone: 831-655-9858
Email: melstob@romarcoproperties.com

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

13. CAPTIONS

The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

14. LAW GOVERNING CONTRACT AND VENUE

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by any Party shall be vested in the state courts of the County of Monterey, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

15. COUNTERPARTS AND SIGNATURES

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

[Signatures on following pages]

CITY OF PACIFIC GROVE, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM: Dated: _____

_____
DAVID C. LAREDO
City Attorney

_____
BEN HARVEY
City Manager
300 Forest Avenue
Pacific Grove, CA 93950
Telephone: (831) 648-3106
Fax: (831) 657-9361

ATTEST:

_____
SANDRA KANDELL
City Clerk

"CITY"

ELSTOB FAMILY INVESTMENTS, LP
a California limited partnership

Dated: _____

By: _____
(Signature)

Name: Mark Elstob

Title: General Partner

By: _____
(Signature)

Name: _____

Title: _____

Local Address: 415 Crocker Avenue
Pacific Grove, CA 93950

Email Address: melstob@romarcoproperties.com

Telephone: (925) 915-9338

Fax: _____

"ELSTOB FAMILY INVESTMENTS"

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Bill Peake, Mayor

MEETING DATE: March 2, 2022

SUBJECT: Committee and Liaison Appointments

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Approve appointments of Kathleen Balke to the Administrative Enforcement Hearing Officer Panel and Chip Rerig to the Economic Development Commission both for a term ending January 31, 2024. Endorse Councilmember Coletti as Council liaison for the Beautification and Natural Resources Commission.

DISCUSSION

Boards, commissions, and committees (committees) play a vital role in city government and provide opportunities for residents to become engaged in civic activities and work to improve local governance.

Mayoral appointments to City committees must be confirmed by Council (Charter Article 26). Further regulations and policy regarding appointments can be found in PGMC Chapter 3.02 and Policy 000-5. Terms are nominally 2 years for non-Charter committees.

Council liaisons are designated for each of our city boards, committees, and commissions. The liaison role is described in the Boards, Committees and Commissions Handbook. Currently, the Council liaison position for the Beautification and Natural Resources Commission is vacant.

OPTIONS

None.

FINANCIAL IMPACT:

None.

GOAL ALIGNMENT: Not Applicable.

Attachments

Redacted Apps

CITY OF PACIFIC GROVE
www.ci.pacific-grove.ca.us

Application for Appointment to a Public Board, Commission, or Committee

Persons interested in being appointed to serve on a board, commission, or committee of the City of Pacific Grove are invited to complete the following application.

Name: Kathleen Balke

Street Address: [redacted]

City: Pacific Grove | **State:** CA | **ZIP Code:** 93950

Residence Telephone Number: [redacted] | **Work Telephone Number:** n/a | **E-Mail Address:** [redacted]

Name of Board, Commission, or Committee on which you would like to serve: Administrative Enforcement Hearing Officer Panel

Brief Description of Background and Qualifications (Additional Information May Be Attached on Separate Sheets): ATTACHMENT OF A RESUME IS DESIRABLE. see attached

RECEIVED
CITY MANAGER'S OFFICE
2022 FEB -7 P 2:02
CITY OF PACIFIC GROVE

I hereby certify that I am a registered voter of the City of Pacific Grove (not required for EDC appointees) [redacted]

Signature of Applicant [redacted] | **Date:** 2.4.2022

[redacted] CITY USE ONLY

Appointed to: _____

Date of Appointment: _____ ***Expiration:*** _____

Date of Reappointment: _____ ***End of Term:*** _____

Date Certification of Appreciation Awarded: _____

KATHLEEN M. BALKE
[redacted]
Pacific Grove, CA 93950
Phone: [redacted] Email: [redacted]

SUMMARY OF QUALIFICATIONS

A professional, caring, and dedicated individual with a strong desire to use a lifetime of experiences and learning to enhance the life of communities and individuals. Expertise in managing projects and coordinating multiple priorities and tasks. Demonstrated success working with people of diverse backgrounds, working and learning styles, nationalities, and races. Strong leadership, interpersonal, analytical, planning, execution, and organizational skills. Strong communication skills: written and oral. Proven ability to quickly learn new skills.

EDUCATION

Master of Arts in Human Resources Development, December 2005
Western Michigan University, Kalamazoo, MI
Program Concentration: *Coaching, Learning, Development, and Training*

Bachelor of Arts in Communication Studies, May 2002
New Mexico State University, Las Cruces, NM

PROFESSIONAL EXPERIENCE

Western Michigan University – College of Engineering and Applied Science, Kalamazoo, MI
Technical Communication Instructor August 2005 – May 2020

- Instruct and evaluate engineering and aviation students in Technical Communication, a required writing class for their majors.
- Plan and deliver curriculum that includes principles of objective presentation of factual material in written, oral, and electronic communication, with emphasis on the research process.
- Facilitate learning through a variety of collaborative and individual assignments using various forms of technical communication.
- Provide instruction in remedial grammar as required.
- Provide instruction that is effective to a variety of learning styles and knowledge levels.

Community Homeworks & LISC AmeriCorps, Kalamazoo, MI
Education Coordinator January 2011 – September 2011

- Develop and implement a collaborative, multi-agency homeowner education program utilizing existing curriculum and serve as a community liaison for the program between the organization and other area community development corporations.
- Create and execute a marketing campaign to draw eligible low and very low income homeowners.
- Coordinate with other local housing agencies to execute a comprehensive curriculum that meets the needs of each agency.
- Coordinate and schedule workshops several months in advance.

- Develop and implement an evaluation program for each workshop and program as a whole.
- Assist instructors during workshops as well as teach individual classes as required.
- Research and identify new workshops that would be beneficial to clients.
- Institutionalize all workshops and prop inventories for handoff to Director by end of term.
- Maintain statistics of all program activity.

Kalamazoo and Portage Public Schools, Kalamazoo and Portage, MI
Substitute Teacher Intermittently 2005 – 2007

- Provide, on call, coverage for teachers for middle and high schools.

Census 2000, Las Cruces, NM
Recruiting and Selection Supervisor July 1998 – August 2000

- Initiate Census activity with two other employees in southeastern New Mexico which included ten counties.
- Recruit, test, select, and train individuals for a variety of Census positions.
- Develop relationships with organizations for collaboration to attain staffing goals as well as to achieve Census goals of producing quality data that benefits all Americans.

Bank of America, Monterey, CA and Las Cruces, NM 1977 – 1991 and 1995 -1998
Assistant Branch Manager
Financial Services Officer
Teller Supervisor
Bookkeeping Supervisor
Utility
Teller

COMMUNITY SERVICE

- 2011 - High school tutor for Kalamazoo Community in Schools, Kalamazoo, MI
- 2009 - Campaign for Change Food Drive Organizer, Kalamazoo, MI
- 2008 - Barack Obama's Campaign for Change, Kalamazoo, MI
  Neighborhood Phone Bank Captain, Recruiter, Canvasser, Data Entry
- 2008 – Camp Millie Michigan Democratic Progressive Caucus, Kalamazoo, MI
- 2004 – Human Services Board Member, Portage, MI
- 2004 – Junior Achievement Facilitator, Moorsbridge Elementary School 5th Grade, Portage, MI
- 1998 – 2002 – Board of Directors for Southwest Counseling Center, Las Cruces, NM
- 1998 – 2000 – Board of Directors for Court Appointed Special Advocates (CASA), Las Cruces, NM

CITY OF PACIFIC GROVE

www.cityofpacificgrove.org

Application for Appointment to a Public Board, Commission, or Committee

Persons interested in being appointed to serve on a board, commission, or committee of the City of Pacific Grove are invited to complete the following application.

Name:
Chip Rerig

Street Address:
[redacted]

City:	**State:**	**ZIP Code:**
Pacific Grove		93950

Residence Telephone Number:	**Work Telephone Number:**	**E-Mail Address:**
[redacted]	[redacted]	[redacted]

Name of Board, Commission, or Committee on which you would like to serve:
Economic Development Commission

Brief Description of Background and Qualifications (Additional Information May Be Attached on Separate Sheets and Attachment of Resume is Desirable):

- Advanced degree in land use planning and economic development.
- 25 years experience in land use, economic development, public works, affordable housing, and engineering.
- 13-year employee of City of Monterey - Chief of Planning, Engineering, & Environmental Compliance
- 17-year employee of City of Carmel-by-the-Sea in Community Development and City Management

I hereby certify that I am a registered voter of the City of Pacific Grove (not required for EDC appointees.

Signature of Applicant:	**Date:**
[redacted]	2-10.22

FOR CITY USE ONLY Appointed to:

Appointment: _____ **Expiration:** _____ **Date of**
Reappointment: _____ **End of Term:** _____ **Date of**
Certification of Appreciation Awarded: _____ **Date**

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Mohammed Khasimi, Chief Information Officer
MEETING DATE:	March 2, 2022
SUBJECT:	Contract Amendment with Alvarez Technology Group for Information Technology Services
CEQA:	Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Approve amendment to the contract with Alvarez Technology Group in amount not to exceed $73,500.

DISCUSSION

In November of 2021, when the City's Information Technology department experienced sudden staffing shortages, the staff employed Alvarez Technology Group for on-site IT support services. The City also contracts with Alvarez Technology Group on an annual basis for after-hours support. The term of the annual contract coincides with the City's fiscal year.

Last year's contract was renewed at $7,000, which only covered retention of the active after-hours support agreement. However, the City incurred additional expenses for on-site IT support services due to position vacancies, and therefore, amended and increased the contract from $7,000 to $39,000 in December of 2021, under the City Manager's spending authority.

Staff has tried to recruit for a 3/4 interim Management Analyst-Information Technology to assist during an employee leave of absence; and a half-time Information Technology Support Specialist to fill a vacant position. The interim Management Analyst recruitment did not yield any applicants; and the recruitment for the Information Technology Specialist produced one viable candidate. The City was in the process of scheduling a second interview with the candidate; however the individual withdrew because he did not want to accept a half-time position.

Due to continued staffing shortages in the Information Technology department, the staff is requesting Council approval to increase the contract amount by $34,500, bringing the total contract amount to $73,500. This amount represents the $7,000 in after-hours support and $66,500 for temporary on-site managed services. The additional funding of $34,500 represents the estimated costs to provide support until the Management Analyst returns in mid to early April; and a reduced level of support while staff conducts a second recruitment for the Information Technology Support Specialist; or while other alternatives are considered.

OPTIONS

1. Approve the amendment to the contract
2. Provide alternate direction

FINANCIAL IMPACT:

There is no fiscal impact associated with this action. The funds to support the contract amendment will be compensated from staff vacancies in the Fiscal Year 21/22 in the Information Technology Budget.

GOAL ALIGNMENT: Not Applicable.

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Bill Peake, Mayor

MEETING DATE: March 2, 2022

SUBJECT: Veteran's Home in Monterey County

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Approve support letter for Veteran's Home in Monterey County.

DISCUSSION

The construction of a new Veterans Home in Monterey County would help to alleviate the long wait times and keep our Veterans in the State. It is our joint obligation to do all we can to care for those who have selflessly served for the freedoms we have today. This home will decrease the risk of these veterans becoming homeless.

The location in Monterey County, will provide an attractive geographical location with a rich Military History and current Military presence. Residents of the Veterans Home would have easy access to the Major General William H. Gourley VA-DoD Outpatient Clinic, Commissary's, Post Exchanges, Military Gyms and other Military / Veteran accessible facilities. There are a large variety of beaches, walking / bike trails and County / State / National parks that will promote outdoor activity.

Additionally, Monterey County is interested in contributing land for a new CalVET Veterans Home and Federal Grants are available for 65% of construction costs of the new Veteran Home.

OPTIONS

N/A

FINANCIAL IMPACT:

None.

GOAL ALIGNMENT: Not Applicable.

Attachments

Support Letter

CITY OF PACIFIC GROVE
300 Forest Avenue ▫ Pacific Grove, California

March 2, 2022

The Honorable Dianne Feinstein
331 Hart Senate Office Building
Washington, DC 20510

The Honorable Jimmy Panetta
406 Cannon House Office Building
Washington, DC 20515

The Honorable Alex Padilla
112 Hart Senate Office Building
Washington, DC 20510

The Honorable Anna Caballero
12th Senate District
1021 O Street, Rm 7620
Sacramento, CA 95814

The Honorable John Laird
17th Senate District
1021 O Street, Rm 8720
Sacramento, CA 95814

The Honorable Robert Rivas
30th Assembly District
1021 O Street, Rm 5110
Sacramento, CA 95814

The Honorable Mark Stone
29th Assembly District
1021 O Street, Rm 5740
Sacramento, CA 95814

Re: Support for a Veteran's Home in Monterey County

Dear Monterey Bay Region Federal and State Legislators:

Pacific Grove supports Monterey County's request for authorizing legislation allowing a Veteran's Home to be built in the region.

Currently, there are extended wait times to access the established Veterans Homes in the State for much needed services. If Veterans are unable to access Veteran Home services timely, they will have to seek other options, potentially out of the State of California or even risk becoming homeless. For Veterans in need of Skilled Nursing and Memory Care must wait years before they get admitted. The construction of a new Veterans Home in Monterey County would help to alleviate the long wait times and keep our Veterans in the State. Current wait times for these services are:

- Yountville: 5 years wait time for admittance.

- West Los Angeles: 2 years wait time for admittance.
- Fresno: 4 years wait time for admittance.
- Redding: 5 years wait time for admittance.

California is losing veterans at an alarming rate – much faster than the next 2 largest veteran population states (Texas and Florida). We owe all we have to the veterans of this Nation, and it is our joint obligation to do all we can to care for those who have selflessly served for the freedoms we have today. Currently California Veterans receive more than 8 Billion in Federal VA Compensation and Pension Payments. In addition, many receive Post 9/11 GI Bill, Chapter 33 Education Benefits and DoD Retirements. If Veterans leave the state so will the need for Veteran Serving organizations that create high paying jobs with the Federal VA, State, Counties, Private Sector and Non-Profits that serve our Veterans. Veterans positively impact the California Ecosystem.

The construction of a new Veteran's Home will lower or eliminate wait times for admittance into the CalVET Veterans Homes for services including combined skilled nursing & memory care services. Adding an additional Veterans Home will increase the number of homes to 9 in the state. Homes are available to Disabled and Aged Veterans as well as spouses. This home will provide much needed care to our states heroes and decrease the risk of these veterans becoming homelessness. In addition, the location in Monterey County, will provide an attractive geographical location with a rich Military History and current Military presence. Residents of the Veterans Home would have easy access to the Major General William H. Gourley VA-DoD Outpatient Clinic, Commissary's, Post Exchanges, Military Gyms and other Military / Veteran accessible facilities. There are a large variety of beaches, walking / bike trails and County / State / National parks that will promote outdoor activity.

Additionally, Monterey County is interested in contributing land for a new CalVET Veterans Home and Federal Grants are available for 65% of construction costs of the new Veteran Home. Please support Monterey County's request for State authorization to build a Veteran's Home in the region.

Thank you for giving this your consideration.

Sincerely,

Bill Peake, Mayor
cc: Mayor Pro Tempore McAdams
Councilmember Smith
Councilmember Tomlinson
Councilmember Amelio
Councilmember Coletti
Councilmember Poduri

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Daniel Gho, Public Works Director/Deputy City Manager
MEETING DATE:	March 2, 2022
SUBJECT:	Beautification and Natural Resources Commission Minutes: December 21, 2021 and January 18, 2022
CEQA:	Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Receive minutes.

Attachments

December 2021

January 2022

SUBJECT: December 21, 2021, BNRC meeting minutes
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1. Call to order at 4:01 p.m.
Roll Call: Six commissioners present at start: Thom Akeman, Sara Green, Megan McKenna, Susan Myers, Colleen Ingram, Cathy Wooten. Tardy: Claudia Vierneisel

2. Approval of December Agenda: approved Agenda 6:0.

3. Commission and staff announcements (City-related items only):
- Staff Gho announced this day as Caleb Schneider's last day of work. He thanked him for his commitment and service.
- Wooten thanked Caleb for his service, his ability to work with diverse and strong personalities.
- Chair Akeman thanked Caleb and recalled their first meeting and being honored and awed by him.
- McKenna announced that she and Ingram attended the first Monterey County Climate Action Workshop. Both met later as climate action subcommittee members and will be attending the second meeting when it is held. The subcommittee will likely be activated after that meeting.
- Chair Akeman announced that last week the judge in the Jewell Park elm tree case decided the City had the right to remove the tree and it was removed promptly.
- Chair Akeman shared information concerning Goals B3- Shoreline and The Whale Trail. After attending a presentation by The Whale Trail's founder, it was confirmed that the project does not align with Pacific Grove. He suggested that if we were going to add any signage that it would be about grey whales, humpbacks, etc.

4. Council Liaison announcements
- Council member Nick Smith-absent.

5. General Public Comments
Written: 3 emails
- Clemencia Macias regarding interest in the Monarch Butterfly Sanctuary subcommittee
- Anthony Ciani letter to Community Development Dept concerning the Jewell Park tree planting plan for the 5 replacement trees
- Lisa Ciani requesting the IPM be posted on the BNRC website as well as two natural resource documents and the CWPAC Report, clarifying previous meeting comments, requesting that BNRC goal Coastal Trail Access Project be broken out into specific regions for clarity, requesting the 'wildlife advisory board' be described as the Coastal Wildlife Protection Advisory Committee in order to clearly link it to the CWAPC report, and encouraging everyone's personal participation in the City Council hearing on January 12th for the ATC Hotel Project.

Oral
• Lisa Ciani reiterating the concerns covered in her written comments

6A. Action: Approval of the minutes of the October 19th 2021 meeting
• Wooten motioned to approve the minutes, Green 2nd 7:0 approval.

7. Regular Agenda:
7A. **Update on the Management Plan for the Monarch Butterfly Sanctuary**
Reference: Caleb Schneider, Environmental Program Manager
Recommended Action: Receive report.
Public Comment:
•Dixie Layne supported Caleb's concerns as well as watering needs/lack of need, wind damage to the butterflies, and suggested that we should reconsider eliminating the play area in George Washington Park instead of using 50K to update it in a natural habitat area.
•Dominic Sinicropi commented concerning the needs of monarchs at night before the sun goes down. Agreed with the need to continue MBS restoration as well as around town. Last week's storm created a 15% loss of monarchs.

•Mary Dainton echoed Caleb's value, asked who to refer to in his absence and Gho saidthat he would be the point person. Stated there has been a very high volume of visitors, the need to get rid of the sour grass but cannot during the overwintering, and the need for more natives and native nectar plants.

Commissioner Comment:

•Wooten stated she volunteers at the Sanctuary and that having a habitat management plan is critical, and hopes that the City, BNRC, PW and Council will push this through. It may be expensive, but it is at the core of our city. She hopes that Caleb's replacement has the needed knowledge to move this forward.

•Chair Akeman commented that the best part about the report is that the City will be part of the Monarch plans.

7B. **Tree Appeal: 718 Sunset Drive**

Reference: Dan Gho, Public Works Director

Recommended Action: Uphold the City Arborist decision for tree permit application #21-104 denying the removal of one Monterey Pine at 718 Sunset Drive and deny the appeal of Moe Ammar

Public Comment:

•Lisa Ciani commented that she understands Ammar's concerns. Single pines are scary.

•Kim Akeman agreed with the concerns and commented that who trims the trees and how they trim makes a difference. We need these upper canopy trees.

Commissioner Comment:

•Wooten asked arborist Weisfuss to comment if the trimming of the tree would make it safer. Weisfuss suggested removing some branches around the power lines and reduce/remove one of the lateral branches. Taking too many limbs will expose other limbs.

•Appellant Ammar was given permission to share that Tope's has trimmed the tree and they are knowledgeable and reputable.

•Wooten asked Weisfuss if the tree was trimmed as suggested, would it make it safer long term? Weisfuss said that based on Ammar's tree, which is a mature canopy, the answer is not to remove the tree- it has to do with maintaining the tree.

•Chair Akeman confirmed with Weisfuss and staff that the tree is structurally sound.

•Ingram commented that mature tree limbs hang over houses all around town, there is always a chance of limbs falling and it does happen. Some properties aren't suited for ADUs because of the landscape. Agreed with Ammar that the accident in the Monarch Sanctuary was tragic, but the resulting action was over correcting and damaging. The tree was there first.

Action: Ingram motion to uphold City Arborist decision to deny removal, Myers 2nd, 7-0 approval

7C. **Lovers Point Beautification Project**

Reference: Colleen Ingram on behalf of Sustainable Pacific Grove

Recommended Action: Receive report- request to submit to Council for concept approval

No Comments:

Action: Chair Akeman moved to submit to Council for concept approval, Myers 2nd, 7-0 approval

7D. **George Washington Park Volunteer Opportunity**

Reference: Chair Akeman (GWP subcommittee)

Recommended Action: Receive report and share informational flyer

Public Comment:

•Lisa Ciani commented that the flyer is great and thanked Chair Akeman and volunteers for the work.

8. **NEXT MEETING**: January 18th, 2022.

9. **ADJOURNMENT**: Wooten motion to adjourn Ingram 2nd, 7-0 approval of 5:30 adjournment

Submitted by Colleen Ingram, Secretary

SUBJECT January 18, 2022, BNRC meeting minutes
RECOMMENDATION
Approve the meeting minutes.
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1. Call to order at 4:01 p.m.
Roll Call: All commissioners present: Thom Akeman, Sara Green, Colleen Ingram, Megan McKenna, Susan Myers, Claudia Vierneisel, Cathy Wooten.

2. Approval of January 18 agenda
Ingram motion to approve change, Wooten 2nd, 7-0 approval.

3. Commission and staff announcements (City-related items only)
Commissioners

- McKenna- For anyone interested, The Monterey Community Climate Action Working Group will be meeting on the January 27th to go over the greenhouse gas inventory. You can read it online, but it will be presented by the Alternative Energy and Environment Commission will be putting that on. It is all on the county's website so you can register to attend online.

Staff

- Gho- Thanked Akeman for his years of service – this being the last meeting with Akeman as Chair. He has been on the BNRC for the 8 years that Gho has been attending BNRC meetings.

4. Council liaison announcements

- Council member Nick Smith – absent

5. General Public Comments
Written
Rebecca Lee

- Concerned with the root system of the existing trees that surround the removed Elm tree. Questioned the need for concrete walkway, questioned the need for an extra wide sidewalk, the need for a sidewalk at all (not in Caledonia, George Washington, Berwick). Requested consideration of alternatives to concrete sidewalks, and for public inclusion in the planning of the 5 trees in Jewell Park.

Public
Luke Coletti

- Thanked Thom for all of his service and passion, everything that he has done for Pacific Grove

Rebecca Lee

- Thanked Thom for his service, and voiced concern for the remaining trees around the Elm tree that was removed in Jewell Park. Further root pruning and replacement of the sidewalk damaged the stability of these trees and continued business as usual. An opportunity to change our methods was missed. Please include in goals- protect street trees, assess need for such a large sidewalk at Forest Ave at Jewell, and plan the 5 replacement trees in Jewell and include the public in the process.

6. Approval of the minutes of the December 2021, BNRC meeting

- Wooten motion to approve the minutes, Myers 2nd. 7-0 approval.

7. Regular Agenda
7A. Restoration Project at George Washington Park
Reference: Thom Akeman
Recommended Action: Discuss and accept report.

Public comment: -none
Commissioner comments: -none

7B. Monarch Butterfly Sanctuary Update
Reference: Cathy Wooten
Recommended Action:

- Receive presentation and report.

Public comments:
Dominic Sinicropi

- Thanked Wooten for the update. Good to see the BNRC form a subcommittee on the Sanctuary and to have regular updates. Agree that the Monarch Sanctuary Management Plan be formed as soon as possible. Will there be opportunities for public discussion? What is the timeline for the development of the Plan? Can we have a plan sooner than Caleb's notion of several years in the making? Friends of the Monarchs made recommendations that could use discussion. We have trees ready to plant per the recommendations of Dr. Leon.

Commissioner comments:
Vierneisel

- Thanked Wooten for the presentation. Some visitors were questioning what kinds of nectar plants were there, but the signage had worn away.

Ingram

- Wondered about the decline – what would account for the big decline in December? Wooten answered weather- the big storm.
- Asked if the decline could be the result of the increase in visitors to the Sanctuary? It has been speculated that activities in George Washington Park affected the butterfly population there. Should there be a cap on the number of visitors at one time? Wooten thought it was a good question, but did not have the information to answer, and suggested that it could be examined by the management planning. The butterflies do respond to predators – such as dogs, which is one of the reasons they aren't allowed in the Sanctuary.

McKenna

- Thanked Wooten for the presentation. Has visited the Sanctuary several times and has enjoyed it.

Wooten

- Question for Gho: What is the status of the replacement for the Environmental Programs Manager? Gho answered that they are interviewing now. There were 8 qualified applicants and 4 are being interviewed now.

Action: Accept the report
Myers motioned to accept, Green 2nd 7-0 approval

8. Next Meeting February
Additional Commissioners Comments:
Wooten, Vierneisel, Myers– Thanked Thom for all his efforts and positive contributions to Pacific Grove: George Washington Park and all of the trees that he has cared for, the harbor seals, and everything before the BNRC.
ADJOURNMENT 4:35
Green motioned, Akeman 2nd 7-0
Colleen Ingram, Secretary

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Sandra Kandell, City Clerk
MEETING DATE:	March 2, 2022
SUBJECT:	Diversity, Equity, and Inclusion Task Force Minutes: December 6, 2021, December 13, 2021, January 10, 2022 and January 24, 2022
CEQA:	Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Receive minutes.

Attachments

DEI Minutes

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MEETING MINUTES

CITY OF PACIFIC GROVE
DIVERSITY, EQUITY, AND INCLUSION TASK FORCE

SPECIAL STUDY SESSION MEETING
Monday, December 6, 2021, 6:00 P.M.
Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

THIS MEETING WILL BE HELD VIRTUALLY AND IS COMPLIANT WITH THEGOVERNOR'S EXECUTIVE ORDERS ALLOWING FOR A DEVIATION OF TELECONFERENCE RULES REQUIRED BY THE BROWN ACT.

JOIN THE ZOOM WEBINAR TO PARTICIPATE LIVE AT:
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To participate telephonically, call any number below:

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Webinar ID: 891 7920 8141#
If prompted to enter a participant ID, press #.

1. **CALL TO ORDER / ROLL CALL**
Chair Tina Rau called the meeting to order at 6:03 pm. City Manager Harvey conducted roll call with the following Task Force members present via Zoom Meeting: Task Force Members (Members) Kim Bui, Edward Juarez-Lefevre, and Tina Rau. Members Mark and Markowitz were absent.

2. **APPROVAL OF AGENDA**
Action: Upon motion by Chair Rau and seconded by Vice Chair Juarez-Lefevre the Task Force approved the Agenda as amended.

Motion carried 3-0-2, by the following roll call vote:

AYES:	Members Bui, Juarez-Lefevre, and Rau.
NOES:	None.
ABSENT:	Members Mark and Markowitz

3. **TASK FORCE AND STAFF ANNOUNCEMENTS (City-Related Items Only)**
Secretary Bui and Chair Rau made announcements.

4. **COUNCIL LIAISON ANNOUNCEMENTS**
Councilmember Poduri made announcements.

5. **GENERAL PUBLIC COMMENT**
Public Comment was received from Lisa Ciani.

6. **REGULAR AGENDA**

A. Best Practices for Diversity, Equity, and Inclusion in Local Government

Secretary Bui gave a PowerPoint Presentation.

Task Force Members received the presentation and facilitated discussion.

No Public Comment was received.

Chair Rau proposed a Study Session on January 24, 2022, to discuss Principles, Vision, Goals and Outcomes for the Task Force. A City Organization DEI Assessment, Terms and Best Communication Practices were also suggested for discussion.

7. **NEXT MEETING:** Regular Meeting on December 13, 2021, at 6:00 p.m.
Special Study Session Meeting on January 24, 2022, at 6:00 p.m.

8. **ADJOURNMENT**
Chair Rau adjourned the Special Study Session meeting at 7:29 p.m.

Respectfully Submitted,

DocuSigned by:
CCCFCF4EF8E44BD...
Kim Bui
Secretary

Approved by Chair: DocuSigned by: 3DDF71C2D84D4D1... Date 2/10/2022

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MEETING MINUTES

CITY OF PACIFIC GROVE
DIVERSITY, EQUITY, AND INCLUSION TASK FORCE

REGULAR MEETING
Monday, December 13, 2021, 6:00 P.M.
Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

THIS MEETING WILL BE HELD VIRTUALLY AND IS COMPLIANT WITH THEGOVERNOR'S EXECUTIVE ORDERS ALLOWING FOR A DEVIATION OF TELECONFERENCE RULES REQUIRED BY THE BROWN ACT.

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If prompted to enter a participant ID, press #.

1. **CALL TO ORDER / ROLL CALL**
Chair Tina Rau called the meeting to order at 6 pm. City Clerk Kandell conducted roll call with the following Task Force members present via Zoom Meeting: Task Force Members (Members) Kim Bui, Edward Juarez-Lefevre, Kristi Markowitz, and Tina Rau. Member Nadja Mark was absent.

2. **APPROVAL OF AGENDA**
Action: Upon motion by Secretary Bui and seconded by Member Markowitz the Task Force approved the Agenda as amended.

Motion carried 4-0-1, by the following roll call vote:

AYES:	Members Bui, Juarez-Lefevre, Markowitz, and Rau.
NOES:	None.
ABSENT:	Member Mark.

3. **TASK FORCE AND STAFF ANNOUNCEMENTS (City-Related Items Only)**
Secretary Bui made announcements.

4. **COUNCIL LIAISON ANNOUNCEMENTS**
Councilmember Poduri made announcements.

5. **GENERAL PUBLIC COMMENT**
No public comment was received.

6. **APPROVAL OF THE MINUTES**

A. **Action:** Upon motion by Vice Chair Juarez-Lefevre and seconded by Member Markowitz, the Task Force approved the Minutes of the November 8, 2021 Regular Meeting as follows:

Motion carried 4-0-1 by the following vote:

AYES:	Members Bui, Juarez-Lefevre, Markowitz, and Rau.
NOES:	None.
ABSENT:	Mark

7. **REGULAR AGENDA**

A. Feast of Lanterns Subcommittee Recommendations

Vice Chair Juarez-Lefevre and Secretary Bui gave a PowerPoint presentation.

Public comment was received from Kathy Biala, Michael Ipson, and Carmelita Garcia.

Action: Upon motion by Secretary Bui and seconded by Vice Chair Juarez-Lefevre the Task Force approved the following recommendations:

- The City Council ratifies into the City's Municipal Code an anti-discrimination policy, based upon Federal Civil Rights Act of 1964 and the Restoration Act of 1987 to make clear the protections based on race, color, sex, age, disability, national origin and other protected classes, in line with State and Federal law, to ensure a safe environment free of harassment, exclusion and discrimination throughout the City;
- The City Council put into place measures to ensure that this policy is monitored or enforced, such as an Equity Officer, Office of Equity, Office of Civil Rights, or Civil Rights Officer;
- The City put into place measures to express its commitment to inclusivity and non-discrimination through the Special Events application process, including the application and review by the Recreation Board and City Council; and
- The City promote community healing around the topic of Feast of Lanterns with support from community partners

Motion carried 4-0-1 by the following vote:

AYES:	Members Bui, Juarez-Lefevre, Markowitz, and Rau.
NOES:	None.
ABSENT:	Mark

B. Chinese Fishing Village Community Subcommittee

Secretary Bui gave an update for the Chinese Village Community Subcommittee.

Public Comment was received from Randy Sabado.

Action: The Subcommittee update was received.

C. Hispanic Heritage Month

Vice Chair Juarez-Lefevre and Member Markowitz gave the recommendation and research.

Public Comment was received from Lisa Ciani.

Action: Upon motion by Secretary Bui and seconded by Vice Chair Juarez-Lefevre the Task Force approved the following recommendations:

- The City Council commence annual recognition of Hispanic Heritage Month during the September 15 - October 15 timeframe by acknowledging and celebrating the accomplishments and contributions of the Hispanic community of Pacific Grove.
- The City engage in public outreach efforts, via survey, in order to solicit feedback, especially from the Hispanic community of Pacific Grove, on an appropriate name/title for this celebration.
- The City create an annual cultural calendar to be shared with the public that lists federal, state, and local celebrations of cultural significance reflective Pacific Grove's diverse community.

Motion carried 4-0-1 by the following vote:

AYES:	Members Bui, Juarez-Lefevre, Markowitz, and Rau.
NOES:	None.
ABSENT:	Mark

8. **NEXT MEETING:** Regular Meeting on January 10, 2022, at 6:00 p.m.
Study Session on January 24, 2022, at 6:00 p.m.

9. **ADJOURNMENT**
Chair Rau adjourned the regular meeting at 7:01 p.m.

Respectfully Submitted,

DocuSigned by:
CCCFCF4BF8E44BD...
Kim Bui
Secretary

Approved by Chair: DocuSigned by: 3DDF71C2D6404D1... Date 2/10/2022

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MEETING MINUTES

CITY OF PACIFIC GROVE
DIVERSITY, EQUITY, AND INCLUSION TASK FORCE

REGULAR MEETING
Monday, January 10, 2022, 6:00 P.M.
Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

THIS MEETING WILL BE HELD VIRTUALLY AND IS COMPLIANT WITH THEGOVERNOR'S EXECUTIVE ORDERS ALLOWING FOR A DEVIATION OF TELECONFERENCE RULES REQUIRED BY THE BROWN ACT.

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1. **CALL TO ORDER / ROLL CALL**
Chair Tina Rau called the meeting to order at 6 pm. City Manager Harvey conducted roll call with the following Task Force members present via Zoom Meeting: Task Force Members (Members) Kim Bui, Edward Juarez-Lefevre, Kristi Markowitz, and Tina Rau. Member Nadja Mark was absent.

2. **APPROVAL OF AGENDA**
Action: Upon motion by Member Bui and seconded by Member Markowitz the Task Force approved the Agenda.

Motion carried 4-0-1, by the following roll call vote:

AYES:	Members Bui, Juarez-Lefevre, Markowitz, and Rau.
NOES:	None.
ABSENT:	Member Mark

3. **TASK FORCE AND STAFF ANNOUNCEMENTS (City-Related Items Only)**
Secretary Bui made announcements.

4. **COUNCIL LIAISON ANNOUNCEMENTS**
Council member Poduri made announcements.

5. **GENERAL PUBLIC COMMENT**
No public comment was received.

6. **APPROVAL OF THE MINUTES**
Secretary Bui provided a correction to the Next Meeting Dates in the Minutes.

Action: Upon motion by Vice-Chair Juarez-Lefevre and seconded by Member Mark, the Task Force approved the Minutes of the December 6, 2021 Special Study Session and December 13, 2021 Regular Meeting as corrected, as follows:

Motion carried 4-0-1 by the following vote:

AYES:	Members Bui, Juarez-Lefevre, Markowitz, and Rau.
NOES:	None.
ABSENT:	Member Mark

7. **REGULAR AGENDA**

A. Chinese Village Community Subcommittee Update

Secretary Bui provided an update from the Chinese Village Community Subcommittee.

Public comment was received from Michael Ipson, Kathy Biala and Carmelita Garcia.

City Manager Harvey clarified the City's use of Action Minutes and the likely date of Council's receipt of Task Force Recommendations.

Action: The Subcommittee Update was received.

B. Inclusive Crosswalk

Chair Rau and Vice Chair Juarez-Lefevre provided a presentation.

Public Comment was received from Inge Lorentzen Daumer, Carmelita Garcia, Colleen, Lisa Ciani and Sharon Miller

Action: Upon motion by Secretary Bui and seconded by Vice Chair Juarez-Lefevre, the Task Force approved a recommendation to City Council to move forward with an inclusive crosswalk to welcome diversity.

Motion carried 4-0-1 by the following vote:

AYES:	Members Bui, Juarez-Lefevre, Markowitz, and Rau.
NOES:	None.
ABSENT:	Member Mark

8. **NEXT MEETING:** Special Study Session on January 24, 2022, at 6:00 p.m. and Regular

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Meeting on February 14, 2022 at 6:00 p.m.

9. **ADJOURNMENT**
Chair Rau adjourned the regular meeting at approximately 7:02 p.m.

Respectfully Submitted,

DocuSigned by:
Kim Bui
Kim Bui
Secretary

Approved by Chair: DocuSigned by: 3DDF71C2D6404D1... Date 2/15/2022

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MEETING MINUTES

CITY OF PACIFIC GROVE
DIVERSITY, EQUITY, AND INCLUSION TASK FORCE

SPECIAL STUDY SESSION MEETING
Monday, January 24, 2022, 6:00 P.M.
Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

THIS MEETING WILL BE HELD VIRTUALLY AND IS COMPLIANT WITH THEGOVERNOR'S EXECUTIVE ORDERS ALLOWING FOR A DEVIATION OF TELECONFERENCE RULES REQUIRED BY THE BROWN ACT.

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669 219 2599

Webinar ID: 891 7920 8141#
If prompted to enter a participant ID, press #.

1. **CALL TO ORDER / ROLL CALL**
Chair Tina Rau called the meeting to order at 6:00 pm. City Manager Harvey conducted roll call with the following Task Force members present via Zoom Meeting: Task Force Members (Members) Kim Bui, Edward Juarez-Lefevre, Nadja Mark, Kristy Markowitz and Tina Rau.

2. **APPROVAL OF AGENDA**
Action: Upon motion by Vice Chair Juarez-Lefevre and seconded by Secretary Bui the Task Force approved the Agenda.

Motion carried 5-0, by the following roll call vote:

AYES: Members Bui, Juarez-Lefevre, Mark, Markowitz and Rau.
NOES: None.
ABSENT: None

3. **TASK FORCE AND STAFF ANNOUNCEMENTS (City-Related Items Only)**
Chair Rau, Secretary Bui, Member Mark and Member Markowitz made announcements.

4. **COUNCIL LIAISON ANNOUNCEMENTS**
Councilmember Poduri made announcements.

5. **GENERAL PUBLIC COMMENT**
No Public Comment was received.

6. **REGULAR AGENDA**

A. Study Session Discussion

- Principles, Vision, Goals and Outcomes for the Task Force
- A City DEI Assessment
- Terms and Best Communication Practices

Secretary Bui gave a PowerPoint Presentation.

Task Force Members received the presentation and facilitated discussion.

Chair Rau appointed Vice Chair Juarez-Lefevre and Secretary Bui to a City DEI Assessment Subcommittee and Members Mark and Member Markowitz to a DEI Task Force Principles, Values, Goals and Objectives Subcommittee.

7. **NEXT MEETING:** Regular Meeting on February 14, 2022, at 6:00 p.m.

8. **ADJOURNMENT**
Chair Rau adjourned the Special Study Session meeting at 7:35 p.m.

Respectfully Submitted,

DocuSigned by:
CC8ECC8BF8E448D...
Kim Bui
Secretary

Approved by Chair: DocuSigned by: 3DDF71C2D3404D1... Date 2/15/2022

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Joyce Halabi, Deputy Director Public Works
MEETING DATE:	March 2, 2022
SUBJECT:	Museum Board Minutes: February 9, 2021, May 11, 2021, and November 30, 2021
CEQA:	Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Receive minutes.

Attachments

May 11, 2021 Museum Board Minutes

August 10, 2021 Museum Board Minutes

February 9, 2021 Museum Board Minutes

CITY OF PACIFIC GROVE

MUSEUM BOARD

REGULAR MEETING
Tuesday, May 11, 2021 at 5:00 p.m.
Meeting held through ZOOM.com teleconferencing due to COVID-19 restrictions.

CALL TO ORDER
Present: Chair Lisa Max, Vice Chair David Laws, Secretary Broeck Oder, and Board Member Chris Patton and Board member nominee Calvin Tom ; also Museum Executive Director Carla Bitter, Pacific Grove Volunteer Program Director Amy Colony, Pacific Grove Deputy Director of Public Works Joyce Halabi, Museum Collections and Research Manager Nate King, and President of the Board of Directors of the Pacific Grove Museum of Natural History Tama Olver.

1. APPROVAL OF AGENDA
Agenda approval motion seconded and passed unanimously.

2. COMMISSION AND STAFF ANNOUNCEMENTS/COMMENTS
There were no commission and staff announcements/comments.

3. COUNCIL LIAISON ANNOUNCEMENTS
There were no Council Liaison announcements.

4. GENERAL PUBLIC COMMENT
There were no comments from the general public.

5. MUSEUM BOARD MINUTES
Museum Board member nominee Calvin Tom corrected the spelling of his last name, which contains no letter "h." The amended Minutes for the February 9, 2021 meeting were approved.

REGULAR AGENDA

6. CITY COUNCIL LIAISON COMMENTS
There were no City Council Liaison comments.

7. DISCUSSION ITEMS

A. Museum Director's Monthly Reports for January, 2020 through June, 2020.
Because she has just assumed her position, Museum Director Carla Bitter requested that President of the Board of Directors of the Pacific Grove Museum of Natural History

Tama Olver be allowed to conduct this portion of the meeting for purposes of Ms. Bitter observing the process. There were no objections. Ms. Olver reported that the Museum re-opened on April 9, 2021, operating on a four (4) days per week schedule, with hours each day from 10:00 AM to 4:00 PM. Ms. Olver noted that the Museum's on-line programs continued even as the Museum re-opened physically. The Museum carefully observed official limits on numbers of persons in the Museum and also utilized hybrid on-line processes as well. A key goal at this time is to rebuild revenue. Chair Max called for public comments, but there were none. Chair Max then called for questions or comments from Museum Board members. Chair Max inquired from what parts of the community or country museum visitors originate, and Executive Director Bitter said that a substantial number of visitors are not local, but further analysis of visitor demographics will help evaluate whether the hybrid program should be continued. Executive Director Bitter noted she is very impressed with and proud of the Museum's Internet outreach. Museum Board Vice Chair Laws inquired about any current financial information. Board of Trustees President Olver noted that will be a key subject at the Museum Board's August meeting. Early figures can be referenced in recent reports to the City Council. Museum Board member Patton asked if a Zoom program from the Point Pinos Lighthouse is possible; Deputy Public Works Director Halabi noted, "It can be explored." There was no public comment.

B. Deputy Public Works Director Halabi gave an update on the Point Pinos Lighthouse, noting that Saturday, May 8, 2021 saw resumption of exterior tours of the Lighthouse, with forty-four (44) visitors. These tours will continue from 1:00 PM to 3:00 PM each Saturday in May. It is to be determined whether there will be more scheduled hours added in June. There was no public comment. Member Patton said he had served as a docent at the Lighthouse on May 8 and noted the exterior tours generated significant social media comments, which he, and everyone at the meeting, found "very heartening." Deputy Public Works Director Halabi noted that inside access at the Lighthouse is still "up in the air, and Member Patton surmised that the pandemic will likely have to be over before the interior of the Lighthouse can re-open to the public.

C. The Collections Care report came from Museum Collections and Research Manager Nate King. Regarding the year from July, 2019 to June, 2020, Manager King reported 3,353 (three thousand, three hundred, fifty-three) items inventoried. In addition, 9,859 (nine thousand, eight hundred, fifty-nine) image files were added to the data base; 163 (one hundred sixty-three) new records went into the catalog, and zero (-0-) records were removed. 1,032 objects are newly available for viewing on-line, and more will follow. There was no public comment. Museum Board member nominee Tom asked about the Museum's backlog in terms of the cataloging process. Manager King noted his predecessor as Manager had estimated a ten (10) year rotating catalog inventory, meaning the inventory would start at the beginning with the end in ten (10) years, at which point the inventory process would immediately begin again at the beginning of the inventory. Manager King noted there are many items to be cataloged, and, with his other responsibilities, he does not have a significant amount of time to devote to inventory, but he feels he is on track to meet the estimated schedule. Manager King estimates somewhere between fifty thousand (50,000) to sixty thousand (60,000) items are

currently not cataloged. Museum Director Bitter added that it is a priority for her, and she is "eager" to get started as she sees it as an item of "growing importance." She commended Manager King, noting he is doing a great job. Museum Board Chair Max asked if the November report to the Museum Board will cover from June, 2020 to June, 2021, and Manager King noted the November meeting would be perfect.

D. Under the Performance Metrics report, at Museum Executive Director Bitter's request, Board President Olver reported she proceeded by just "carrying things forward," doing "what was done previously." President Olver was happy to answer any questions from the Board, and noted she has a few recommendation for the consideration of Executive Director Bitter regarding further improving the informative and user-friendly qualities of the website. Executive Director Bitter concurred the analysis can aid maximization of what the Museum can provide, especially as things get back to normal. It will be key to note if the on-line popularity continues to be strong after the Museum fully re-opens. Member Patton inquired about "bird adoption;" Manager King noted much information in that realm is available on the Museum's website. Member Patton further expressed support for keeping the on-line presence as an effective form of outreach. Vice Chair Laws noted that the pandemic lockdown complicates matters, making it more difficult to discern meaningful trend information. Chair Max asked if the format change(s), if any, would be executed. Deputy Director Halabi said that making the suggestions directly to the Museum staff is optimal. There is nothing in this realm in the agreement between the Museum and the City, so it can be done with relative ease. The Museum staff can work up a draft that the Board could discuss and upon which the Board could solicit public feedback. It was agreed this should be on the August agenda.

E. Regarding post-pandemic Museum Board meeting frequency, per the request from Mayor Peake to all city boards, Chair Max indicated she favored continuation of the Museum Board's quarterly schedule. Mayor Peake has previously said he believes the Museum Board has an effective meeting schedule. All Board members agreed, so it was moved, voted, and recorded that the Museum Board unanimously supports the continuation of its long-time quarterly schedule of meetings in February, May, August, and November. The Museum Board's next meeting will be on August 10, 2021, at 5:00 pm.

Meeting adjourned at 5:54 PM.

Submitted by Broeck Oder, Secreatary

CITY OF PACIFIC GROVE

MUSEUM BOARD

REGULAR MEETING
Tuesday, August 10th, 2021 at 5:00 p.m.
Meeting held through ZOOM.com teleconferencing due to COVID-19 restrictions.

CALL TO ORDER
Present: Chair Lisa Max, Vice Chair David Laws, Secretary Broeck Oder, and Board Members Chris Patton and Calvin Tom; also Museum Executive Director Carla Bitter, Pacific Grove Volunteer Program Director Amy Colony, Pacific Grove Deputy Director of Public Works Joyce Halabi, and City Council Liaison Joe Amelio.

1. APPROVAL OF AGENDA
Agenda approval motion seconded and passed unanimously.

2. COMMISSION AND STAFF ANNOUNCEMENTS/COMMENTS
There were no commission and staff announcements/comments.

3. COUNCIL LIAISON ANNOUNCEMENTS
Council Liaison Amelio informed the Board that the City Council voted 4-3 to hire someone to review the City water plan. Mr. Amelio also noted the Council awarded a contract to implement electronic traffic citations for the Pacific Grove Police Department; an officer will be able to record and transmit a citation immediately to both the Police Department and to the courts, which puts greater efficiency into the process. Liaison Amelio noted the Council approved a management plan for George Washington Park and placed a temporary moratorium on new matters to be considered by the Council. The Council also heard a presentation on regional matters, which is available on recording to the public. Finally, Council Liaison Amelio noted that a performance evaluation process had been approved for $20,000.00

4. GENERAL PUBLIC COMMENT
There were no comments from the general public.

5. APPROVAL OF MUSEUM BOARD MINUTES
Museum Board member Calvin Tom noted the May meeting minutes of the Board referred to him as a nominee; the Minutes should show that he had already been sworn in by the time of the meting. Amended Minutes for the May meeting will be sent to the proper individuals. The amended minutes were moved, seconded, and unanimously approved.

REGULAR AGENDA

6. Museum Director's Monthly Reports
Museum Executive Director Carla Bitter reported that by June 15, 2021, the Museum was

operating at 100% of its allowed capacity on its five (5) days per week schedule. Over six thousand (6,000) visitors, mostly adults, came to the Museum; membership in the Museum is also up. Director Bitter also noted that the Museum is looking to hire four (4) individuals, a controller and three replacements for departed staff. Director Bitter also noted that the Director of Exhibits and Collections position has been funded for the next year. In addition, two (2) new exhibits were open as of July 16; the highlighted exhibit until September 12 will be the climate change exhibit. Director Bitter also noted new insurance for Museum personnel; a new area of focus will also be injury prevention and safety training. The "big ticket item" Director Bitter next addressed was "How to be better stewards of 60,000 items." Among the goals are improved environmental control and care of materials; a diversity/equity plan, which was being initially implemented at this time; and a new capital campaign for the Children's Gallery. Director Bitter also reported that five hundred (500) volunteer hours had been given to the Museum during this just-ended reporting period. In response to a question, Director Bitter noted that approximately 50% of the Museum's visitors during this period had been from "in- [Monterey] county," along with approximately 50% being from "out of the county." Director Bitter also noted that the members of the Executive Board for the Pacific Grove Museum of Natural History are President Tama Olver; Vice President Erin Myers Madeira; Treasurer John B. O'Sullivan; and Secretary Julie Veitch. Director Bitter also noted that the Capital Campaign has been completed, and thus everything regarding the Museum is in very promising shape, especially in light of the nearly year-and-a-half of coping with the challenges posed by the Covid situation.

There were no public comments. On the Covid aspect, Museum Board Vice Chair Laws inquired about the Museum's coping methods, and Director Bitter noted that with one hundred (100) visitors per day, masks were consistently worn at the Museum. Board Member Calvin Tom reported having been in the Museum during the week of August 2-8 and observed that everyone was cooperating with the mask requirement and that the spacing guidelines were being carefully observed by visitors and staff.

7. Public Works Deputy Director Update on the Point Pinos Lighthouse

Deputy Director of Public Works Halabi reminded all that the outdoor portion of the Lighthouse reserve was re-opened on May 8 and available with docents from 1:00 to 3:00 PM each Saturday since then. On May 30, Sundays were added to the program so that now the outside of the Lighthouse property is open with docents from 1:00 to 3:00 PM on both days of the weekend. The next immediate goal is to re-open the gift shop at the Lighthouse, especially in light of the healthy visitor numbers: 478 in May, 765 in June, and 764 in July. The thinking at this time is that the current construction on the Lighthouse property will be done in early October. Also underway is the cleaning of textiles and the "Docent Diary," a quarterly newsletter for the Lighthouse which launched on July 1. There was no public comment.

Board Member Patten noted it is challenging to get docents to participate in Lighthouse needs beyond simply talking to visitors. Efforts to solicit some helpful thoughts and feedback from docents has met with minimal (only three) docent responses. The docents seem to think their sole function is to be on the property for two hours and then leave, so expanding the docents/visitors interface is a significant need which would be optimized by docent participation in the "creation" of program improvements. Further thought will be devoted to this realm.

8. Audited Financials Summary
Executive Director Bitter reported that the auditors thoroughly examined items from December to August 1 and while they found "No really big red flags," the realities of Covid left the bookkeeping aspects a bit loose, so some "tightening" will be in order as things commence a return to normal. An example is the lack of consistent reconciling of the Morgan Stanley account the Museum has; in that realm, "significant improvement [is] needed" for an "A to Z grant tracking process." Director Bitter is confident the auditors did a thorough job, and that the Museum will implement recommendations in an effective and timely manner. Board Vice Chair Laws noted that "our museum" is doing better than "most museums" in this realm during the Covid situation, Director Bitter noted some generous gifts to the Museum from both the City and donors; combined with austerity measures, the museum remains in a very good state of financial affairs, considering the pandemic, noting "good cash positions [and] portfolio [of investments].

There were no public comments, so Member Tom inquired regarding "restricted funds. Director Bitter noted the endowment is "harvested a bit" each year when it is showing a profit, which it usually does. Director Bitter also noted that the meeting with the Morgan Stanley team went very well, and the thinking was that some more "long-term" investments could be possible going forward.

9. 2021-2022 Budget
Director Bitter said there are several items she considers her "big ones." First is that the Museum's cash position is good at this time, but reasonable precautions and preparations should be made to provide for a possible new shut-down if Covid revives. Secondly, Director Bitter noted that the values of a museum are reflected by "where the money goes". Director Bitter would like to devote more funs to assessing and maintaining the collection. Collection assessment and accreditation will be the two biggest issues in the immediate future, so investments in personnel are a high priority. Thirdly, Director Bitter would like to have more in-person presentations, but those, naturally, entail expenditures. Fourthly, Director Bitter said that, at this relatively late point in the year, Museum staff will be taking a hard financial "look" at where things are in December, and either continue forward or "hold steady."

Director Bitter also noted that two large, fairly recent donations were not reflected in the current presentation, but will be part of the going-forward decision making. She is also giving thought to the donor engagement strategy by making more use of small groups, specific collections, etc. Director Bitter also noted that the Museum needs a better workshop, as there is insufficient space for serious building, painting, etc., so that aspect will need careful evaluation.

There were no public comments. It was further noted that where some items are placed in the budget/bookkeeping had to be adjusted, with several things going under IT, explaining the figures reflected. Member Patten volunteered to assist as "Safety Officer" in planning/implementing changes, one example being the workshop and kitchen cannot occupy the same space. Director Bitter thanked Member Patten for his generosity and will call upon him if necessary.

Next Meeting of the Museum Board --- November 9, 2021
Meeting adjourned at 5:58 PM.

Submitted by Broeck Oder, Secretary

ACTION MINUTES

CITY OF PACIFIC GROVE

MUSEUM BOARD

REGULAR MEETING
Tuesday, February 9, 2021 at 5:00 p.m.
Meeting held through ZOOM.com teleconferencing due to COVID-19 restrictions.

CALL TO ORDER
Present: Chair Lisa Max, Vice Chair David Laws, Secretary Broeck Oder, and Board Member Chris Patton; City Council Liaison Joe Amelio; and Deputy Public Works Director Joyce Halabi; Chair Max noted new, but not yet sworn, Board member Calvin Thom will be on-board by May.

1. APPROVAL OF AGENDA
Chair Max noted two minor clarifications, those being the election of officers for 2021-2022, and that the Planning Calendar is in Museum purview. Agenda approved by consensus.

2. COMMISSION AND STAFF ANNOUNCEMENTS/COMMENTS
Deputy Public Works Director Halabi had no announcements.

3. COUNCIL LIAISON ANNOUNCEMENTS
City Council Liaison Amelio checked with Chamber of Commerce president Moe Ammar and confirmed the Point Pinos Lighthouse is mentioned in the Chamber's free booklet for visitors; City Council Liaison Amelio reported that at the previous City Council meeting H & R Associates are continuing work on the ATC project and that the Traffic Commission made several recommendations regarding maintaining traffic markings on Ocean View Boulevard; City Council Liaison Amelio also indicated the Council reviewed "many other" items during the Council meeting.

4. GENERAL PUBLIC COMMENT
There was no public comment or other public communications to the Board. Viewing the meeting on Zoom were Tama Olver and Craig [no last name?].

5. APPROVAL OF MINUTES
A. The minutes of the regular Board meeting on November 11, 2020 were approved.

B. The minutes of the special Board meeting on January 19, 2021 were amended to note that most viewers of the Lighthouse website view only the first page of material on the website.

Both sets of minutes were moved, seconded, and approved unanimously.

6. REGULAR AGENDA

A. Acting Executive Director Tama Olver discussed the Museum Director's monthly reports for November and December, 2020. Ms. Olver noted these reports are posted on the Museum website for the public to view, and also reported that the Museum is actively looking for a new Executive Director. Ms. Olver indicated as well that new exhibits will not be debuted until April and that the Museum is getting "unprecedented" on-line demand from local schools for various resources, assistance, and information. Ms. Olver also noted that the Museum's interface with Public Works is working well now, and she expressed appreciation for the training assistance rendered by Public Works to Museum staff. Ms. Olver noted that the re-opening of the Museum is still unknown as Monterey County needs to be in the "Red zone" for two weeks before that can happen at the level of 25% of normal capacity; the Museum is considering the possibilities of a five-day week, at least at first, when the Museum re-opens. Lastly, Ms. Olver noted that various items belonging to the Museum but not appropriate to its mission are the subject of de-accession discussions with City Manager Ben Harvey (see also "New Business-B"). There was no public comment on Acting Executive Director Olver's report.

B. Public Works Deputy Director Joyce Halabi gave an update on the Point Pinos Lighthouse. Ms. Halabi affirmed Ms. Olver's report about the re-opening of the Museum and the current COVID status of Monterey County, which still remains in the most restrictive level. In reference to re-opening the Museum, Ms. Halabi directed attention to Attachment 1, "Point Pinos Lighthouse Web Stats." Board Member Patton suggested that "Google users" on that document be amended to "Website statistics."

C. Museum Board Chair Max summarized the Board Chair's Annual Report, and suggested all review the accompanying package. There was no public comment, nor were there any comments questions, or discussion points from Board members.

7. NEW BUSINESS

A. Officer elections were held for the 2021-2022 year. Lisa Max was re-elected as Board Chair; David Laws was re-elected as Board Vice Chair; Broeck Oder was re-elected as Board Secretary.

B. Regarding de-accession of items from the Museum's collection, Ms. Halabi drew the attention of the Board to the document for review. There was no public comment. Vice Chair Laws inquired about the storage and curating of items, and Ms. Halabi noted that the City makes such decision in accord with in-place agreements with the Museum. Ms. Olver noted that if the Museum is requested to store items, it does so. Board Member Patton noted that none of the items were "needed" at the Lighthouse. Ms. Olver noted that after any de-accession, the Museum asks the City for directions; Ms. Halabi said she was willing to follow up with the Heritage Society in case it is interested in any items the Museum de-accesses. Chair Max moved the Board recommend de-accession of the noted items; Vice Chair Laws suggested amending the motion to include City notification of the Heritage Society; the amended motion was passed by the Board four ayes to zero nays.

C. The Museum Board's Planning Calendar was reviewed, and regular meetings will be held on the second Tuesday of the months February, May, August, and November, 2021. The collection

care reports and performance metrics were moved from this (February 9, 2021) meeting to the May 11, 2021 meeting. There was no public comment. Chair Max moved that the Board approve the calendar wit the 2020 collection care and performance metrics moved to the May, 2021 meeting; Vice Chair Laws seconded the motion, which passed 4 ayes to 0 nays. Chair Max noted she is receptive to getting the Museum Board agenda to the public sooner; Ms. Halabi noted that the City's website is being upgraded, and the upgrades will facilitate advancements in this realm.

Adjournment: The meeting adjourned at 5:50 PM.

Submitted by Broeck Oder, Secretary

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Rob Mullane, AICP, Contract Planner

MEETING DATE: March 2, 2022

SUBJECT: Vacation of Excess Right-of-Way on Sloat Avenue Pursuant to §§ 8300-8368 of the California Streets and Highways Code ***This item was continued from the February 16, 2022 meeting.***

CEQA: Environmental Impact Report

RECOMMENDATION

Hold a public hearing and approve a resolution authorizing the vacation of excess right-of-way (ROW) for a portion of Sloat Avenue pursuant to Sections 8830-8368 of the California Streets and Highways Code.

DISCUSSION

On January 12, 2022, the City Council approved the planning permits for the American Tin Cannery Hotel and Commercial development (together, the "ATC Development"), certified the associated Environmental Impact Report (EIR), and adopted a resolution declaring the City's intent to vacate excess ROW on Sloat Avenue. Upon adoption of a resolution declaring the intent to vacate excess ROW, a subsequent resolution authorizing the vacation action is required. A resolution authorizing the vacation of excess ROW has been prepared and is included as Attachment 1. This item was continued from the City Council's meeting of February 2, 2022, at which time, the public hearing was opened and then continued to this evening's meeting.

The vacation of public road ROWs is governed by California Streets and Highways Code (CSHC) Sections 8300 through 8368. The project proposes to utilize a portion of the Sloat Avenue ROW between Eardley and Dewey Avenues for hotel purposes. Under the CSHC, the vacation of a public road ROW is a two-step process, both of which require public hearings and action by resolution of the City Council. In the first step, the City Council must pass a resolution of intent to vacate the ROW. The resolution of intent states the City's intention to vacate the ROW and sets a hearing date for the consideration of the ROW vacation itself.

In the second step, the City Council must pass a resolution authorizing the vacation of excess ROW. It is this second step that is now before the City Council for action. The ATC Development project includes use of the segment of Sloat Avenue between Eardley and Dewey Avenues for hotel uses and development. As noted in Resolution 22-___, the ATC Development has received City approval of the requisite planning permits; however, the project must receive the associated building permits before the subject section of Sloat Avenue would no longer be needed and considered excess ROW.

The City and the ATC project developer are in negotiations on a real property agreement that would compensate the City for the fair market value of ROW, and the vacation of the excess ROW is contingent upon the City Council's approval of the real property agreement.

Resolution 22-___ includes Exhibits A and B, both of which refer to "Sloats Avenue," rather than "Sloat Avenue." The name of the street as shown on 1909 map filed for this area of Pacific Grove is Sloats Avenue. Over time, the "s" in Sloats has been dropped in common usage, and this street is currently known as Sloat Avenue.

Environmental Review under CEQA
Pursuant to the California Environmental Quality Act (CEQA), an Environmental Impact Report (EIR) (SCH # 2019110152) was prepared for this project, including the proposed uses and development within the Sloat Avenue ROW. The City Council certified the project's EIR on January 12, 2022. No additional CEQA analysis is required for the authorization of vacation of excess ROW.

Recommended Motion
It is recommended the City Council adopt the resolution attached to this agenda report as Attachment 1. The recommended motion is as follows:

1. **I MOVE THAT THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE ADOPT RESOLUTION NO. 22-___, CONDITIONALLY AUTHORIZING THE VACATION OF EXCESS RIGHT-OF-WAY LOCATED ON SLOAT AVENUE, EXCEPTING AND RESERVING RIGHTS FOR EXISTING AND PROPOSED PUBLIC UTILITY FACILITIES.**

OPTIONS
The Council may decide not to vacate the subject portion of the Sloat Ave. ROW.

FINANCIAL IMPACT:
There is no financial impact to the City relating to the proposed vacation as the revenue from the existing parking meters is included in the fair market purchase price and all utility and street improvements needed for the approved hotel project will be borne by the project developer as indicated in the project's conditions of approval.

GOAL ALIGNMENT: Not Applicable.

Attachments

Resolution to Vacate
PPT

Attachment 1

RESOLUTION NO. 22-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE, CALIFORNIA CONDITIONALLY AUTHORIZING THE VACATION OF EXCESS RIGHT-OF-WAY LOCATED ON SLOAT AVENUE, EXCEPTING AND RESERVING RIGHTS FOR EXISTING AND PROPOSED PUBLIC UTILITY FACILITIES

WHEREAS, the City of Pacific Grove ("City") passed Resolution No. 22-003 on January 12, 2022, declaring its intention to vacate the excess public right-of-way easement on the real property located on Sloat Avenue (the "Excess Right-of-Way"), which is approximately 26,778 square feet and adjacent to the proposed American Tin Cannery Hotel and Commercial development (together, the "ATC Development"); and

WHEREAS, the proposed adjacent ATC Development includes certain development and uses on a portion of the Excess Right-of-Way which the City will no longer need to maintain once the ATC Development is approved and constructed; and

WHEREAS, the City certified an Environmental Impact Report (EIR) on January 12, 2022, for the ATC Development (SCH #2019110152) and made the requisite CEQA findings for the certification of the EIR. The EIR evaluated the environmental impacts of the project including the development and uses of the subject Excess Right-Of-Way, and as such, no additional CEQA review is required; and

WHEREAS, on October 28, 2021 and November 18, 2021, the Planning Commission conducted a duly-noticed public hearing on the ATC Development and reviewed the vacation for conformity with the General Plan in accordance with Government Code Section 65402; and

WHEREAS, on January 12, 2022, the City Council heard an appeal of the Planning Commission's decision on the ATC Development and reviewed the vacation for conformity with the General Plan in accordance with Government Code Section 65402. The City Council found the vacation of the subject Excess Right-of-Way to be in conformance with the City's General Plan; and

WHEREAS, Division 9, Part 3, Chapter 3 of the Streets and Highways Code of the State of California, allows the City Council to adopt a resolution vacating excess street right-of-ways that are no longer required for street purposes, excepting and reserving rights for existing and proposed public utility facilities; and

WHEREAS, the Excess Right-of-Way described in both legal and map form in Exhibits A and B, is no longer needed for street purposes should the ATC Development receive all necessary Planning entitlements and Building Permits as well as approvals for any associated relocation or rerouting of existing public and private utilities; and

WHEREAS, the City Council has duly considered the staff report and public comments, if any, and desires to vacate the Excess Right-of-Way.

NOW THEREFORE, BE IT FOUND, DETERMINED, AND RESOLVED BY THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE, MONTEREY COUNTY, CALIFORNIA, AS FOLLOWS:

SECTION 1. The Recitals of this Resolution are true and correct and are hereby incorporated into this Resolution as though fully set forth herein.

SECTION 2. The City Council hereby elects to proceed under and pursuant to the provision of Division 9, Part 3, Chapter 3 of the Streets and Highways Code of the State of California, and in particular, Sections 8324 thereof, and hereby orders the vacation of the Excess Right-of-Way described in Exhibit A, and shown on the plot labeled Exhibit B, attached hereto.

SECTION 3. This resolution shall take effect only upon, and the vacation of the Excess Right-of-Way is conditioned upon and shall not be effective until, the occurrence of all of the following:

a. Developer of the ATC Development has submitted a plan or plans for utility relocation and maintenance (including the temporary protection or provision for utility connection to adjacent properties throughout the course of construction) of existing public and private utilities, including but not limited to fiber optics owned by the Monterey Bay Aquarium Foundation, which is approved by the City and the appropriate utility; and
b. The City and Developer have entered into a legally binding Disposition and Development Agreement for the conveyance of the City's interest in the land underlying the existing easement. If the City and Developer do not enter into such Disposition and Development Agreement this Resolution will be null and void; and
c. The City has to its reasonable satisfaction determined that the existing rights of the property owners on the south side of the Excess Right-of-Way, including the right to access, use, and develop their parcels now and in the future, consistent with state and local law, have been maintained or an alternative arrangement has been made consistent with the terms of the Disposition and Development Agreement.
d. Pursuant to that Disposition and Development Agreement the City's interest in the land underlying the Excess Right-of-Way has been conveyed from the City to the Developer; and
e. This resolution has been recorded by the City Clerk with the Monterey County Recorder following the Close of Escrow, as that term is defined in the Disposition and Development Agreement, and the City's interest in the underlying property has been quit claimed from the City to the Developer.

SECTION 4. That from and after the date this resolution is recorded, the Excess Right-of-Way is vacated and no longer constitutes a public right-of-way.

SECTION 5. The Mayor shall sign and the City Clerk shall attest to the passage of this Resolution.

PASSED, APPROVED, AND ADOPTED this 16th day of February, 2022.

AYES:

NOES:

ABSENT:

APPROVED:

_____
Bill Peake, Mayor

ATTEST:

_____
Sandra Kandell, City Clerk

APPROVED AS TO FORM:

_____
David C. Laredo, City Attorney

Exhibit A

EXHIBIT "A"
SLOATS AVENUE
LEGAL DESCRIPTION

Certain real property situate in the City of Pacific Grove, County of Monterey, State of California, described as follows:

Being a portion of that certain street shown as Sloats Avenue on that certain map filed on August 17, 1909 as Volume 2 Cities and Towns at Page 21 of said County, more particularly described as follows:

Being all that right of way of Sloats Avenue lying between Eardley Avenue and Dewey Avenue.

Containing an area of 0.61 acres, more or less.

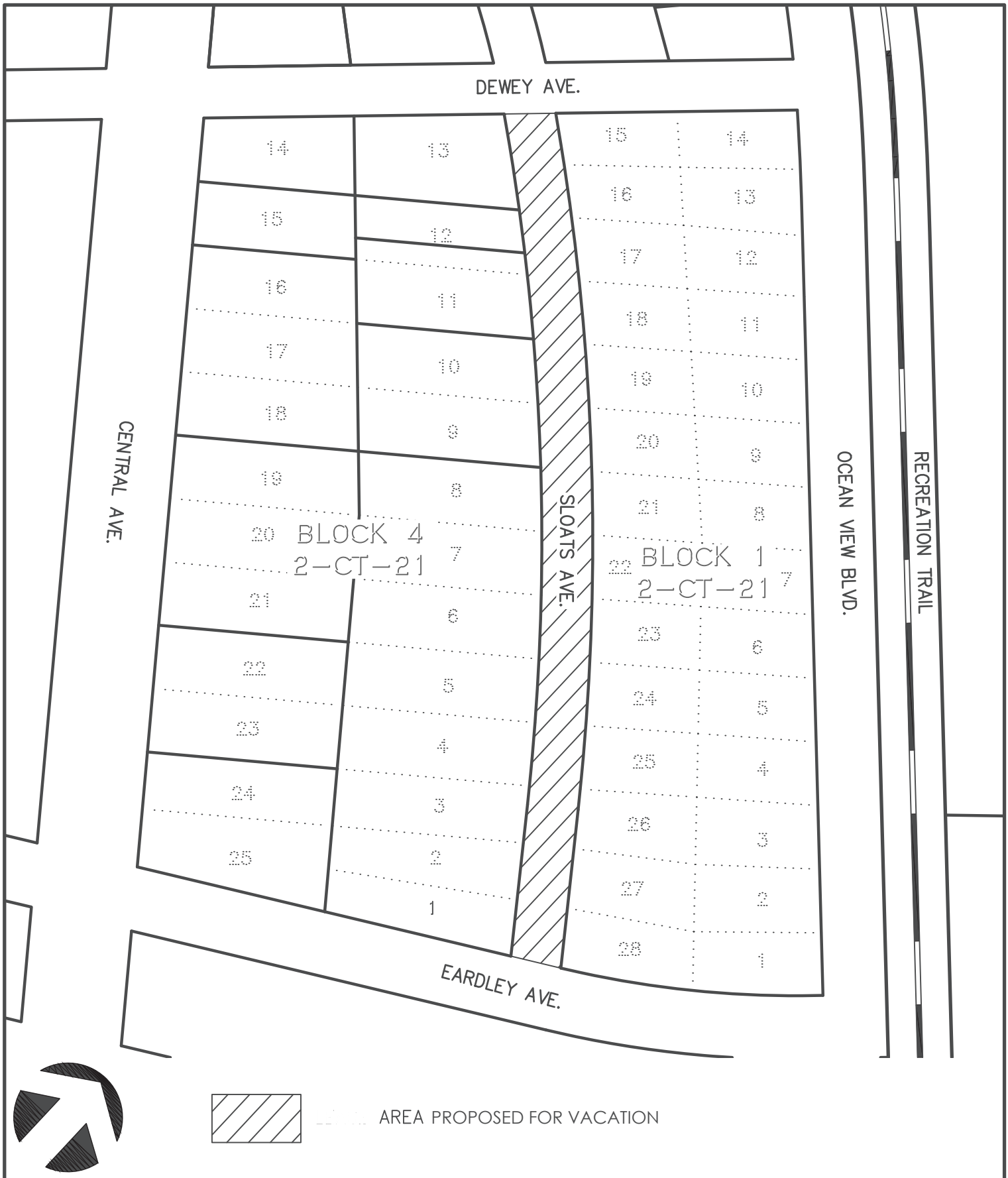
Attached hereto is a plat to accompany legal description, and by this reference made a part hereof

END OF DESCRIPTION

PREPARED BY:
WHITSON ENGINEERS

RICHARD P. WEBER P.L.S.
L.S. NO. 8002
Job No.: 3400.00

Exhibit B



PLAT TO ACCOMPANY LEGAL DESCRIPTION

EXHIBIT "B"

SLOAT AVENUE AREA PROPOSED TO BE VACATED

PACIFIC GROVE, CALIFORNIA

Whitson ENGINEERS

Civil Engineering + Land Surveying
6 Harris Court
Monterey, CA 93940
831.649.5225
whitsonengineers.com

Sloat Avenue ROW Easement Vacation

City of Pacific Grove

City Council

Febuary 16, 2022

ROW Vacation Process

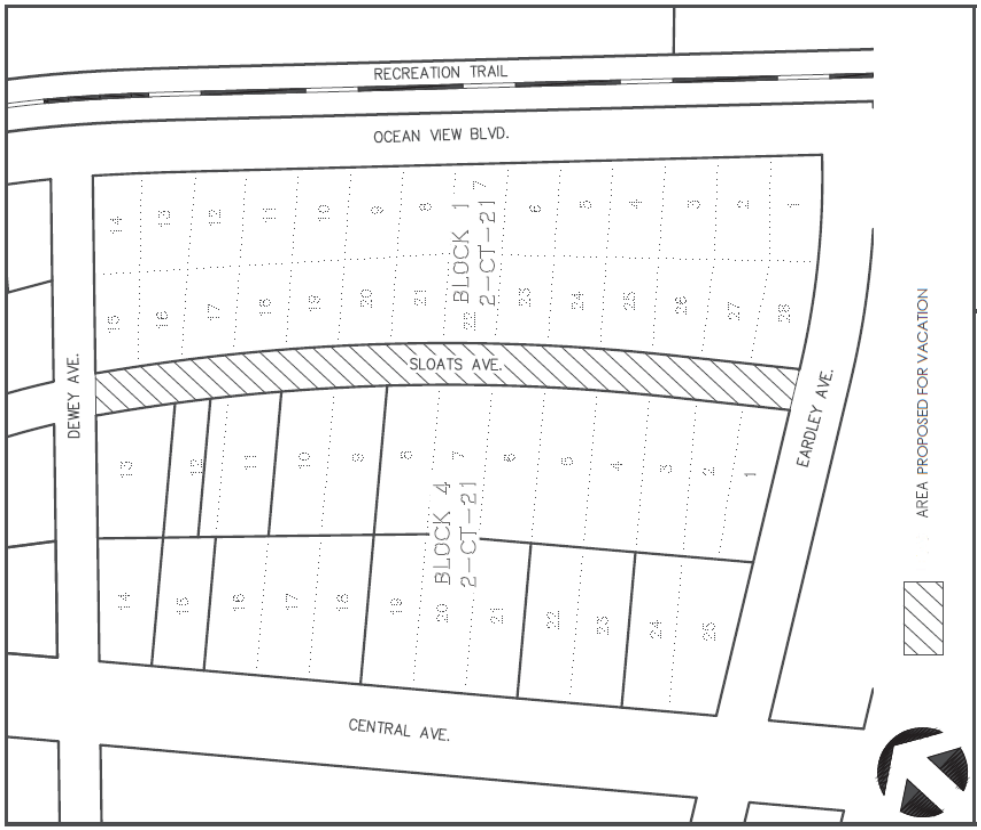
- Governed by California Streets and Highway Code
- Two-Step Process – both are public hearings
  1. City Council adoption of a Notice of Intent to Vacate ROW
  2. City Council adoption of Resolution Vacating the ROW

Sloat Ave. ROW Vacation – Background and Prior Actions

Date	Milestone
1/12/2022	City Council Approved the ATC Hotel Project, Certified the Project's EIR, and Adopted a Resolution of Intent to Vacate
2/2/2022	City Council opened and continued the Public Hearing for the Resolution to Vacate the Sloat Avenue ROW easement
2/16/2022	Continued Public Hearing and Consideration of Resolution to Vacate Excess ROW

Sloat Avenue ROW Vacation

- Vacation of Sloat Avenue ROW between Eardley and Dewey Avenues
- Vacation of ROW is conditioned on several items: final approval of project's permits, satisfactory plan for utility connections of existing public and private utilities, including those for the Monterey Aquarium's properties along the western end of the ROW segment



CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Jenny McAdams, Mayor Pro Tem and Amy Tomlinson, Councilmember
MEETING DATE:	March 2, 2022
SUBJECT:	City Council Salary and Health Benefits ***This item was continued from the February 16, 2022 meeting.***
CEQA:	Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Introduce and hold first reading of an ordinance to (1) amend the salary classification schedule to modify salary ranges for City Council Member and Mayor and (2) direct a summary of a proposed ordinance be published as approved by the City Attorney.

DISCUSSION

At the October 6, 2021 City Council meeting, a discussion was convened regarding City Council Salary and Health Benefits. From that discussion, a City Council Subcommittee (the Subcommittee), comprised of Council Members McAdams and Tomlinson, was appointed to further research City Council salary and total compensation plans and return with proposals for City Council review by January 2022. Since the time of the October 6, 2021 City Council meeting, the Subcommittee has been meeting with City staff in an effort to hone its recommendations.

The result of the Subcommittee's efforts is a proposed ordinance that seeks to increase the City Council salary from $420/month to $624/month, and the Mayor salary from $700/month to $1337/month (48.6% and 91% increases, respectively). In addition, the proposed ordinance seeks to provide the City Council with the option to participate in the City's health benefit program at a City monthly contribution level tied to those received by City Department Heads (the City currently provides up to $1700.00/month plus $149.00 PEMHCA for employee + 2 dependents or more for Department Head level).

Any change to the salary and health benefits of the City Council may not take effect until following the next General Election when at least one (1) of the sitting City Council Members is up for election (November 2022). Should the City Council decide to adopt the proposed ordinance, salary increases, and health benefits may take effect following the November 2022 General Election, and may cost the City as much as an additional $102,787 for the remainder of Fiscal Year 22-23, or less, depending on the City Council's optional participation level.

OPTIONS

1. Take no action.
2. Propose alternate direction.

FINANCIAL IMPACT:

Updated Fiscal Impact Section

Any change to the salary and health benefits of the City Council may not take effect until following the next General Election when at least one (1) of the sitting City Council Members is up for election (November 2022). If the measure is successful, the estimated salary-related costs for the remainder of Fiscal Year 22/23 is estimated to be $13,182, with an annual cost of $22,849. Depending on the participation level, the costs of the optional health benefit for Fiscal Year 22-23 could be up to $89,605, with a maximum annual cost of $155,316.

The combined salary and health benefit increase for Fiscal Year 22-23 is estimated to be $102,787; with an annual cost of $178,165. This amount could be less, depending on the level of enrollment in the optional health benefit.

GOAL ALIGNMENT: Not Applicable.

Attachments

City Council Salary and Health Benefit Ordinance

ORDINANCE NO. 22 -

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE ADJUSTING COMPENSATION FOR THE MAYOR AND MEMBERS OF THE CITY COUNCIL

FINDINGS

1. The City of Pacific Grove desires to provide salary and compensation to the Mayor and Members of the City Council in accordance with California law, the City Charter and Council Policy. State law provides establishment of city council salaries must be by ordinance, not resolution.

2. Article 11 of the City Charter provides: "The Mayor may receive compensation as provided by ordinance, but in no case shall the compensation exceed that amount which is permitted by State Law for General Law cities of comparable size to Pacific Grove."

3. Article 12 of the City Charter provides: "The Councilmembers may receive compensation as provided by ordinance, but in no case shall the compensation exceed that amount which is permitted by the State Law for General Law cities of comparable size to Pacific Grove."

4. The City adopted Policy No. 000-11, a Policy Governing Council Benefits, to address Council Member compensation and benefits. This Policy provides "Council has established compensation at $700.00/month for the Mayor and at $420.00/month for Council Members. (Ordinance No. 98-24)."

5. City Policy No. 000-11 further provides "In addition to salary, elected officials are eligible to participate in the State of California Public Employees' Retirement System (PERS) and, if a member of PERS, may participate in the City's medical insurance program, which is provided through the retirement systems."

6. California Government Code section 36516 allows the City Council to periodically adjust compensation for its Mayor and Members of Council, by ordinance, in an amount not to exceed five percent (5%) per year since the last salary adjustment. The Attorney General has ruled this maximum increase must be applied once, without compounding.

7. State law does not allow for automatic increases in Council Member compensation. Any increase cannot not take effect for Council Members until after one or more Council Members begins a new term of office.

8. Consistent with the City Charter, State law and Council policy, the City now desires to adjust compensation for the Mayor and for Members of the Council.

9. In enacting this Ordinance the City followed guidelines adopted by the State of California and published in the California Code of Regulations, Title 14, Section 15000, et seq. Enactment of this ordinance does not constitute a "project" as defined by California Environmental Quality Act (CEQA) because it is an administrative activity that will not result in direct or indirect physical changes in the environment pursuant Section 15378.

ORDINANCE

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE:

SECTION 1. Findings.

The Findings of the City Council set forth above are incorporated into this Ordinance as an integral part as if set forth in full.

SECTION 2. Mayor and Council Member Compensation & Benefits.

A. Compensation for the Mayor shall be set at $1337 per month.

B. Compensation for each Council Member shall be set at $624 per month.

C. The Mayor and Members of Council shall be entitled to enroll in City health and welfare plans by complying with annual open enrollment procedures. Benefits shall be set at levels allowed for City Department Heads.

D. Amounts paid by the City for retirement, health and welfare, and federal social security benefits shall not be included for purposes of determining salary under this section, provided the same benefits are available and paid by the city for its employees. Determination of permissible health and welfare benefits, and provisions for reimbursement, may be set or modified by resolution.

E. Amounts paid by the City to reimburse the Mayor or any Council Member for actual and necessary expenses shall not be included for purposes of determining salary pursuant to this section. Determination of permissible expenses and provisions for reimbursement may be set or modified by resolution.

F. The Mayor or any Council Member may waive any or all compensation permitted by this section.

SECTION 3. Implementation

Each City Policy shall be amended to conform to the provisions of this Ordinance. The City Manager is directed to execute all documents and to perform all other acts necessary City to implement this Ordinance.

SECTION 4. Severability

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any specific portion thereof.

SECTION 5. Effective Date

This Ordinance shall take effect thirty (30) days from its adoption; however, the any change to compensation or benefits provided for the Mayor or for any Council Member authorized in Section 2 shall not take effect until January 1, 2023 which date is subsequent to terms commencing for Members of the City Council elected in the General Election to be held in November 2022.

SECTION 6. Publication

The City Clerk shall certify to the adoption of this Ordinance and cause a summary of it, as approved by the City Attorney, to be published once within fifteen (15) days of adoption in a newspaper of general circulation for the City of Pacific Grove, and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this _____ day of February __, 2022, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

_____
BILL PEAKE
Mayor

ATTEST:

_____
SANDRA KANDELL
City Clerk

APPROVED AS TO FORM:

_____
DAVID C. LAREDO
City Attorney

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CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Laurel O'Halloran, Associate Planner
MEETING DATE:	March 2, 2022
SUBJECT:	Amend Pacific Grove Municipal Code Chapter 23.73.050 – Time Limits and Extensions
CEQA:	Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Introduce and hold first reading of an Ordinance to Amend Pacific Grove Municipal Code Chapter 23.73.050 - Time Limits and Extensions, and direct publication of a summary of the ordinance as approved by the City Attorney.

DISCUSSION

Since 2009, all vacant properties throughout the City that do not already have a water meter cannot be provided one by California American Water (Cal-Am). Cal-Am has been operating under a de facto moratorium since the State Water Resources Control Board (SWRCB) issued a cease-and-desist order (CDO) reducing Cal-Am Carmel River water diversions thereby limiting the utility's ability to set new water meters on vacant properties. As such, the City maintains a Water Wait List (WWL) for vacant properties where owners are unable to purchase water entitlement.

There are eleven (11) vacant lots on the WWL due to the property owner's current inability to receive a new meter. In August 2021 the City Council adopted Ordinance 21-022, placing a temporary moratorium on new Community Development applications for projects not able to obtain water permits by reason of the CDO. While this is helpful for preventing new applicants from being caught in a situation of expiring Architectural Permits (AP), it does not help people already on the WWL.

At the January 19, 2022 City Council meeting, the Council directed Staff to amend to the City's Municipal Code Title 23.73.050 (c) to allow a permit to be considered valid for five years with a one-time five year renewal option.

This process would create a 10-year lifespan for an Architectural Permit (AP) that is also on the WWL; the applicant would be able to apply directly for a building permit at the time the property is issued a water meter within that lifespan. As with all building permits, Planning staff would conduct a plan check review to ensure compliance with the approved discretionary permit. If there are substantial changes to the original approved AP, the City may require an application for an amendment to the planning approval.

Staff recommends amending the City's Municipal Code Chapter 23.73.050 with the addition of all text shown in bold, italic, underscored text (***bold, italic, underscored text***), as follows:

(c) Extensions of Time by Chief Planner. The chief planner is authorized to renew any community development permit that would otherwise expire after one year. Renewals shall be for one year with a maximum of two renewals. ***If the property is on the Water Wait List as described in Chapter 11.68 PGMC, the community development permit shall be considered valid for five (5) years with a one-time five (5) year renewal option.***

OPTIONS

1. The Council could make further amendments to the proposed ordinance.
2. The Council could not adopt amendments and continue to rely on the existing chapter.

FINANCIAL IMPACT:

Allocation and/or sales of potable water to property owners for property improvements may result in increased property tax revenue for the City. Potential financial benefits include increased sales tax from commercial projects, increased sales taxes from commercial leases on City owned property and increased tourism due to improvements, and potential increased revenue from higher assessed values of residential projects. An update on water entitlement sales is provided as part of the Long-term Financial Planning agenda item.

GOAL ALIGNMENT: Transparency, Accountability and Communication: Implement programs, processes, revisions, and training to improve and advance the City's efforts.

Attachments

Draft Ordinance

ORDINANCE NO. 22-___

AN ORDINANCE OF THE CITY OF PACIFIC GROVE AMENDING CHAPTER 23.73.050 OF THE PACIFIC GROVE MUNICIPAL CODE REGARDING THE CITY'S TIME LIMITS AND EXTENSIONS FOR ARCHITECTRUAL PERMITS ON THE CITY'S WATER WAIT LIST

WHEREAS, this Ordinance amends PGMC Section 23.73.050, entitled "Time Limits and Extensions;"

WHEREAS, since the establishment of the State Water Resources Control Board's (SWRCB) cease-and-desist order (CDO) against California American Water (Cal-Am) on October 20, 2009, owners of vacant properties within the Cal-Am services area have been unable to obtain a water meter necessary to the development of their property;

WHEREAS, in 2019, the City's Local Water Project (LWP) became operational allowing the City to sell water entitlements under certain conditions to those properties with existing meters;

WHEREAS, in an effort to establish a list of future water purchasers who could be "entitled" to the water allotment established through the operation of the LWP, the City created a Water Wait List (WWL) which has been updated and administered by Community Development Department (CDD) staff since its inception;

WHEREAS, several owners of vacant properties received approvals of discretionary Architectural Permits (AP) during this time;

WHEREAS, per PGMC Section 23.73.050, discretionary approvals are allowed to be extended twice, each for one (1) year. As a result, there are 7 expired permits on the WWL;

WHEREAS, given the cost associated with the preparation of plans and permit fees, at the January 19, 2022 City Council meeting City Staff presented the City Council with options to assist the property owners who are on the WWL.

WHEREAS, at the January 19th Council meeting, the Council directed Staff to amend to the City's Municipal Code to allow a permit to be considered valid for five years with a one-time five year renewal option.

WHEREAS, in the enactment of this Ordinance, the City followed the guidelines adopted by the State of California and published in the California Code of Regulations, Title 14, Section 15000, et seq.;

WHEREAS, amendment of PGMC Section 23.73.050 pertaining to the Time Limits and Extensions will not result in a significant impact to the environment and is, therefore, categorically exempt from review under the California Environmental Quality Act (CEQA) per Section 15378 of the CEQA Guidelines.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE:

SECTION 1. The foregoing recitals are adopted as findings of the City Council asthough set forth fully herein.

SECTION 2. Pacific Grove Municipal Code Chapter 23.73.050 shall be amended by deletion of all text shown in strikeout text (~~strikeout text~~) and the addition of all text shown in bold, italic, underscored text (***bold, italic, underscored text***), as follows:

...

(b) Extensions of Time by Review Authority. The initial review authority is authorized to extend the period for use of a community development permit up to two years from the date of approval, as an express provision at the time of approval, where it is anticipated that the processing of other governmental approvals related to the project will delay start of construction beyond the year.

(c) Extensions of Time by Chief Planner. The chief planner is authorized to renew any community development permit that would otherwise expire after one year. Renewals shall be for one year with a maximum of two renewals. ***If the property is on the Water Wait List as described in Chapter 11.68 PGMC, the community development permit shall be considered valid for five (5) years with a one-time five (5) year renewal option.***

(d) Action on Extension Requests. An application for a time extension shall be made prior to the permit expiration date. If a finding is made that the applicant could not have avoided the delay, the application shall be granted up to the maximum allowable under subsection (c) of this section.

...

SECTION 3. The City Manager is directed to execute all documents and to perform all other necessary City acts to implement this Ordinance.

SECTION 4. Severability. If any provision, section, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 5. In accord with Article 15 of the City Charter, this ordinance shall become effective on the thirtieth (30th) day following passage and adoption hereof.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE THIS _____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

_____

BILL PEAKE, Mayor

ATTEST DATED: _____

_____
SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

_____
DAVID C. LAREDO, City Attorney

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Daniel Gho, Public Works Director / Deputy City Manager; Tori Hannah, Administrative Services Director / Assistant City Manager
MEETING DATE:	March 2, 2022
SUBJECT:	Local Water Project Business Plan Peer Review ***This item was continued from the February 16, 2022 meeting.***
CEQA:	Environmental Impact Report

RECOMMENDATION

Receive the Peer Review of Pacific Grove Local Water Project Business Plan prepared by DTA, validating the City's assumptions noted in the Business Plan, and authorize staff to being negotiations with CourseCo; and approve a loan repayment plan for the Sewer Fund Interfund Loan.

DISCUSSION

The Local Water Project (The Plant) is owned by the City of Pacific Grove, who orchestrated the financing and construction of the treatment plant. The Plant is operated and maintained under contract by a third-party vendor, PercWater. The Plant was constructed to ensure long term vitality of the Pacific Grove Golf Links and El Carmelo Cemetery by replacing the potable water source with recycled water for irrigation purposes.

Making the switch to recycled water significantly reduced the City's demand for potable water (approximately 95 acre feet annually), allowed for the repurposing of an abandoned City facility (the former sewer treatment plant at 1313 Oceanview Blvd.), and created a recycled water source for other City facilities and 3rd party customers. To this end, the plant can produce up to .25 Million Gallons of water daily and 125 acre feet annually.

To construct the plant, the City secured $2.4 million in grants and $5.2 million in low-interest loans from the State of California. Total construction cost was $7.6 million. With the reduction in potable water use created by switching the irrigation of the golf course and cemetery over to recycled water, the State allowed the City to sell entitlement water. It was determined that 47.88 acre feet were eligible for entitlement sale, with a price established by the City Council.

The Plant currently operates at a loss. On average, sales of recycled water have totaled approximately $535,000 annually, while The Plant operation and debt service costs total $740,000. Changes to the contract operation of The Plant would not likely yield significant savings, and additional customers of significant scope are not foreseeable at the current time. Water entitlements are recorded as an asset in the City's General Fund. The corresponding entitlement sales, which are currently deposited in the City's General Fund, could be transferred to the plant's enterprise fund to assist with bridge funding;

however this resource is finite and there is no guarantee of annual sales. From a sustainability perspective, long-term solutions are needed to not only cover operating costs, but also identified capital improvements. A repayment plan also needs to be established for the $600,000 Sewer Fund Interfund Loan.

One potential solution that would allow The Plant to be self-sufficient would be to increase or "ramp-up" the rates charged to all customers to allow for full recovery of operating costs and plan for capital improvements. This includes increasing the rates for the LWP's largest customer – CourseCo., who operates the Pacific Grove Municipal Golf Links through a City contract. One-time water entitlement sales could be used to repay the Sewer Fund Interfund Loan to avoid an additional impact to the rate structure; and/or could be used to supplement rates during the ramp-up period.

City staff presented potential adjustments to the CourseCo lease at the City Council's August 4, 2021 closed session meeting, to receive authorization to begin negotiations with CourseCo, in an attempt to balance Plant expenditures with increased revenues. The City Council directed staff to retain a third party vendor to review Plant expenditures and revenues and evaluate a break even cost analysis.

At the October 20, 2021 City Council Meeting, the City approved an agreement with DTA to evaluate Plant revenues and expenditures; and conduct a break even cost analysis. Other options presented included initiating a rate study or working with a CPA firm to conduct an Agreed Upon Procedures Review. Staff worked with DTA to review the Draft Local Water Project Business Plan (Attachment 1), as well as the information included in the report. DTA presented the peer review memo to City staff for review dated January 7, 2022 (Attachment 2). It also included updated information for actual revenues and expenditures for Fiscal Year 20/21 to assist in evaluating operations. For consistency purposes, the Draft Local Water Project Business Plan includes the original information from August 4, 2021; and an updated Scenario IV to reflect the actual Fiscal Year 20/21 data. This provides an additional data point for assessing LWP operations, as well as reflects operating levels under drought conditions. The primary difference between the City's and the DTA's scenario, is that the City is assuming water entitlements will be used to assist in supplementing a ramp-up of rates, as well as a loan repayment source.

DTA has determined after review of the City's Business Plan and rate analysis that the City's analysis of revenues and costs, debt service and available fund balances on an annual basis is rational, supportable and is consistent with industry practice. The City's financial model follows closely with the recommendations of American Water Works Association (AWWA) Manual of Water Supply Practices. Furthermore, DTA has determined that to achieve a sustained, breakeven operation, City must impose steep increases in early years to reach a rate level of over $0.03 per gallon with modest increases thereafter.

With these validations, Staff requests the Council authorize negotiations to begin with CourseCo, using the breakeven cost analysis presented in the DTA memo as a basis for the discussions. Any updates regarding negotiations and proposed adjustments to the lease will be provided to Council in closed session.

Staff is also recommending using the proceeds from the $625,187 promissory note to repay the Sewer Fund Interfund Loan. This note is anticipated to be paid in Fiscal Year 22/23. The use of an alternate repayment source would provide the LWP with a "fresh start". The interest rate on the loan would be based on the percentage earned by the City's investment portfolio from the time the funds were transferred to the LWP Fund to the time of the repayment. The principal would be repaid upon receipt of the promissory note; and interest would be paid to the Sewer Fund at the close of each quarter, with a retroactive payment made for the periods that have elapsed. This would make the Sewer Fund "whole"

by restoring all amounts owed to the Sewer Fund, as well as providing an equivalent amount of interest earnings. Approval of the loan terms will also allow the City to formally book the repayment plan and disclose it in the upcoming audited financial statements.

Council may also request that staff update the scenarios included on Page 14 of the Business Plan to reflect the Fiscal Year 20/21 actual amounts; or the complete plan to assist with decision-making. The original plan was not revised to maintain consistency with the peer review process.

OPTIONS

1. Provide alternate direction
2. Request staff to update the complete LWP Business Plan and related scenarios to reflect the Fiscal Year 20/21 actual amounts.

FINANCIAL IMPACT:

There is no fiscal impact by receiving this report. Any potential lease adjustments, the development of a repayment plan, or amendments to the budget will be brought back to the City Council at a later date.

GOAL ALIGNMENT: Financial Stability: Develop a strategic plan to better address current and future City expenditure and revenue needs.

Attachments

Local Water Project Business Plan

DTA memo

PPT

PACIFIC GROVE LOCAL WATER PROJECT BUSINESS PLAN

CITY HALL

300 FOREST AVENUE

PACIFIC GROVE CA 93950

WWW.CITYOFPACIFICGROVE.ORG

CITY OF PACIFIC GROVE

1313 OCEAN VIEW BOULEVARD

PACIFIC GROVE, CA 93950

Prepared by

Daniel Gho: Public Works Director

Tori Hannah: Administrative Services Director

July 21, 2021

(Includes the original Scenario IV and a revision to reflect FY 20/21 Actual revenues and expenditures)

Executive Summary

The Local Water Project (The Plant) is owned by the City of Pacific Grove, who orchestrated the financing and construction of the treatment plant. The Plant is operated and maintained under contracted by a third-party vendor, PercWater. The Plant was constructed to ensure long term vitality of the Pacific Grove Golf Links and El Carmelo Cemetery by replacing the potable water source with recycled water for irrigation purposes.

Making the switch to recycled water significantly reduced the City's demand for potable water (approximately 95 acre feet annually), allowed for the repurposing of an abandoned City facility (the former sewer treatment plant at 1313 Oceanview Blvd.), and created a recycled water source for other City facilities and 3rd party customers. To this end, the plant can produce up to .25 Million Gallons of water daily and 125 acre feet annually.

To construct the plant, the City secured $2.4 million in grants and $5.2 million in low-interest loans from the State of California. Total construction cost was $7.6 million. With the reduction in potable water use created by switching the irrigation of the golf course and cemetery over to recycled water, the State allowed the City to sell entitlement water. It was determined that 47.88 acre feet were eligible for entitlement sale, with a price established by the City Council. Currently, the established price for entitlement water is $175k/acre foot, a price that is available through the end of December, 2021.

The Plant currently operates at a loss. On average, sales of recycled water have totaled approximately $510,000 annually, while The Plant operation and debt service costs total $740,000 (1). Changes to the contract operation of The Plant would not likely yield significant savings, and additional customers of significant scope are not forseeable at the current time. Entitlement water sales, which currently are deposited to the City's General Fund, could be deposited instead to the plant's enterprise fund. But water entitlement sales do not yield a consistent and steady stream of income. While there has been at least one significant sale of entitlement water (promissory note in the amount of approximately $600k), and another potential promissory note (pending City Council review and approval) of approximately $1.2 million on the horizon, it is not sufficient to supplement long-term operations, or use as set aside funds for identified capital improvements.

One potential solution that would allow The Plant to be self-sufficient would be to increase the rates charged to all customers to allow for full recovery of operating costs and plan for capital improvements. This includes increasing the rates for the LWP's largest customer – CourseCo., who operates the Pacific Grove Municipal Golf Links through a City contract; and the city-owned Cemetery.

(1) This amount reflects the prior year and FY 20/21 budgeted revenues and expenditures. The preliminary revenues are trending approximately $65,000 higher than anticipated, while expenditure accruals are still pending.

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a. Engineer's Equipment Replacement Schedule

b. CalAm Water Company Rate Schedule

c. Sample Operating Statement, Scenario IV

d. Revised Sample Operating Statement, Scenario IV

(Reflects Fiscal Year 20/21 Actual revenues and expenditures, with updates to consumption in the forecast years to reflect the revised three-year average)

THE BUSINESS

Description of Business

The City of Pacific Grove (City) has developed the Pacific Grove Local Water Project (PGLWP). The primary purpose of the project is to produce and distribute high quality recycled water to replace potable water used for non-potable water demands. The PGLWP consisted of the construction of a sewer diversion structure, a 0.25 million gallons per day satellite recycled water treatment plant (SRWTP), waste pump station and force main pipeline, recycled water pump station, approximately 0.50 miles (2,800 linear feet (LF)) of 8-inch pipeline to convey recycled water to existing irrigation systems, connections to two public restroom for toilet flushing, and onsite retrofits required for the use of recycled water and 1,100 feet of 1-inch diameter potable water pipeline. The project can serve up to 125 acre-feet per year (AFY) of recycled water primarily to the City of Pacific Grove Golf Links, Point Pinos Lighthouse and El Carmelo Cemetery. The predominant use of recycled water is for landscape irrigation. Irrigation occurs primarily at night to maximize water management efficiency and minimize public contact.

Competition

The City of Pacific Grove is located on the tip of the Monterey Peninsula on the Central California Coast. The region is dependent on local rainfall for replenishment of its water supplies. Rainfall patterns have resulted in severe droughts. Near coastal groundwater pumping has resulted in increasing total dissolved solids concentrations, seawater intrusion and overdraft of the local aquifers. Diversions and pumping of the under drain of the Carmel River has put critical riparian habitat, as well as federal and state listed endangered and threatened species, at risk.

The City's water purveyor, California American Water Company (CAW), is now subject to pumping restrictions pursuant to State Water Resourced Control Board (SWRCB) Order 95-10, the related issuance of a Cease and Desist Order (CDO) by the SWRCB (Order WR2009-0060), and their reduced pumping of the Seaside Groundwater Basin (SGWB), mandated by its adjudication.

The PGLWP has replaced City irrigation and other demands, that was once met with potable sources, with non-potable supplies creating a new water supply offset up to 125 AFY of potable water. The potable water offset would assist CAW in meeting its obligations to find a replacement to its use of water from the Carmel River and reduce pumping in the SGWB. The PGLWP can reduce the operational production of CAW's up to 125 AFY. The current Cal Am cost for water and delivery for irrigation uses is approximately .029 per gallon, when all surcharges, fees, and taxes are included. The PGLWP is selling reclaimed water at .0173 per gallon, or $5,637 per acre foot.

Marketing / Customers

Sites may use recycled water for a variety of uses approved by the State Department of Public Health. These include but are not limited to: landscape irrigation; agricultural irrigation; construction uses such as dust control, soil compaction, and backfill consolidation; commercial/industrial purposes such as cooling towers, boiler feed, air conditioning, commercial laundries, commercial car washes, concrete mixing, process rinsing and textile dying; landscape impoundments such as fountains and water features; and toilet and urinal flushing in non-residential facilities.

The PGLWP is sized to serve up to 125 acre-feet per year (AFY) of recycled water, mostly to the City of Pacific Grove Golf Links, Point Pinos Lighthouse landscaping and El Carmelo Cemetery. Additionally, the PGLWP provides reclaimed water for construction truck fill and toilet flushing at Crespi Pond bathroom and the golf course restroom on the 5th hole of the links (toilet flushing included in golf totals). The City of Pacific Grove is the responsible party for the distribution and use of the recycled water at the customer sites.

Below is a summary of water sold since the plant began operations:

Acre Feet of Water Sold per Calendar Year			
Location	**2018**	**2019**	**2020 (Jan - Dec)**
Golf Course	80.23	77.09	72.13
Cemetery/ Lighthouse	14.28	17.1	19.17
Truck Fill	1.3	1.52	2.07
Total	95.81	95.71	93.37

The project was sized to deliver up to 125 Acre feet of reclaimed water annually, and as noted above there are numerous uses for reclaimed water, but the challenge is increasing the volume of reclaimed water sales, to maximize the plants capacity, and produce the 125 acre feet. The City is constrained by steep capital costs associated with extending underground infrastructure to expand reclaimed water use to additional sites.

To efficiently expand the PGLWP end users would have to be within proximity of the golf course to keep infrastructure delivery costs down. The golf course has reclaimed pipe running within its 65 acres of turf. Parks that could realize the use of reclaimed water would be Perkins Park, Lovers Point Park and Caledonia Park. Expansion to these parks would only generate an additional 5-6 acre feet of reclaimed water sales annually, but the reduction of potable water for irrigation and not having to rely on the potable source to irrigate these parks has significant environmental and sustainability aspects. Additionally, the potable offset with any expansion, may generate an increase of potable water entitlements.

Location	Distance to connect	Cost of expansion @ $100 L.F	Estimated revenues annually
Lovers Point Park	1100 Linear Feet	$110,000	$15,641
Caledonia Park	549 Linear Feet	$54,900	$11,731
Perkins Park	2900 Linear Feet	$290,000	$10,167

At a potential base price of .024 the expansion of the LWP may produce an additional $37,500 annually; or $48,500 at the estimated plant recovery rate of $.0310. The cost of expansions noted in the table above are only estimates, but a significant expense would need to be approved to initiate the expansion. That cost is estimated at $454,900 for the potential expansion of the service area. Grant opportunities to pursue this effort could also be explored.

In addition to the infrastructure improvements, approvals will have to be granted by the Central Coast Regional Water Board and also by the State Water Resource Control Board, Department of Drinking Water. This approval would come after the completion of a cross connect test and a report specifying the validate of the test to ensure that there are no cross connections of the reclaimed water supply with the potable supply at the noted locations.

Operating Procedures

The City completed construction of the LWP via a design-build contract in January of 2018. The primary purpose of the Project is to produce and distribute high quality recycled water to replace potable water used for non-potable irrigation and toilet flushing demands. The LWP consists of a 0.25 million gallon per day Water Recycling Facility with an annual production capacity of 125 acre-feet per year.

In November of 2017, the City entered into an agreement with PercWater for operations and maintenance of the LWP. The high level scope of the agreement is to provide operations, maintenance, and management of the treatment plant. The operator is also tasked with providing all monitoring, reporting and State compliance. The agreement has a fixed cost for operations at $214,968 per year for a five-year period, with an annual increase tied to the Rider Levett Bucknall Quarterly Construction Cost Report local to Los Angeles. Additionally, there is a charge per acre foot of treated water set at $196.00 per acre foot of all influent.

The Asset Management Agreement is effective for a five-year period. Upon completion of the five-year period, the City may choose to renegotiate and implement a contract extension, if this is the desired approach. PercWater has been meeting the requirements of the Operations and Maintenance Agreement and is a suitable partner to the City for the operations of the plant.

Personnel

To properly manage and operate the plant, PercWater is required to staff the facility at least 6 hours a day during weekdays, and two hours per day on the weekends and holidays, with operators possessing at least a Grade III wastewater certificate. Their team consists of two onsite employees that rotate shifts, an Area Operations Manager that completes all reporting requirements and provides management to the onsite employees, and the Vice President of Operations.

Insurances

PercWater is required to maintain and require all of its subcontractors, consultants and other agents to maintain insurances noted within the agreement also. The required insurances include:

1. Workers Compensation and Employer Liability Insurance
2. General Liability Insurance
3. Automobile Liability Insurance
4. Pollution Liability Insurance
5. Professional Liability/Error & Omissions Insurance
6. Standards for Insurance Companies and Documentation

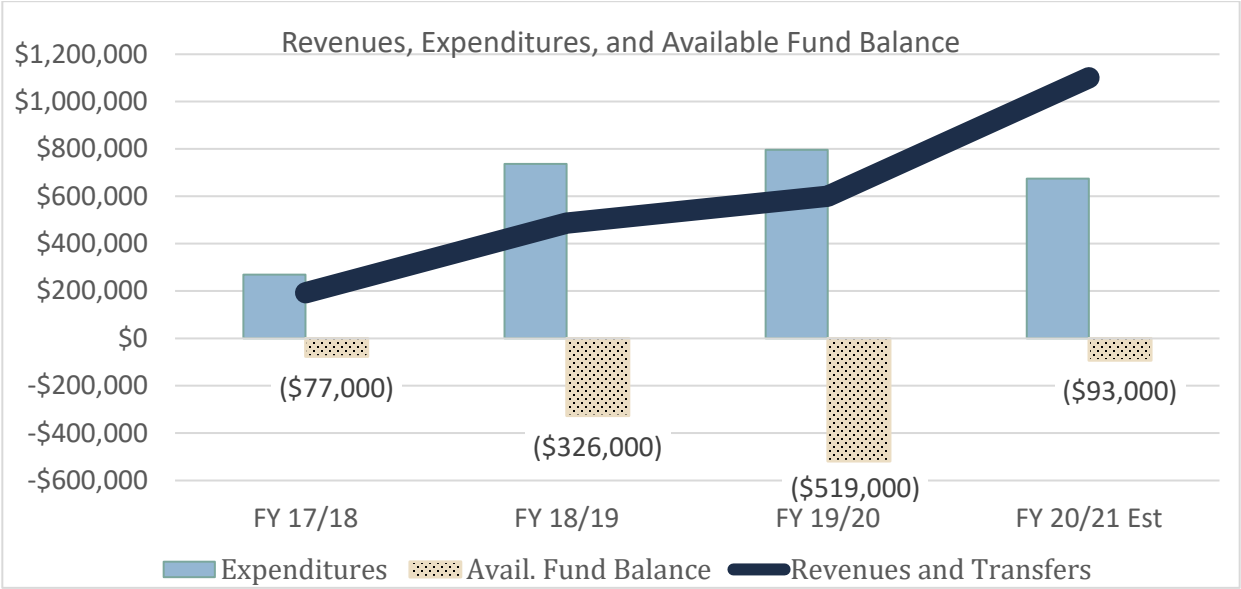
FINANCIAL DATA

Current Financial Condition

The Local Water Project initiated operations in the middle of Fiscal Year 17/18. In the first year of operations, there were remaining project expenditures of approximately $76,500 that were not covered by the State Water Resources Loan. These costs were paid through a transfer from the General Fund in Fiscal Year 19/20. In the first two full years of operations, operational costs continued to exceed operating revenues. The average operational deficit, net of transfers was approximately $260,000. This amount is reduced to $230,000 when the Fiscal Year 20/21 estimates are included in the calculation.

In Fiscal Year 20/21, the City approved a $600,000 loan from the Sewer Fund to the Local Water Project to assist in covering the negative fund balance. This 2021 LWP Interfund Loan was intended to supplement the current deficit fund balance and to allow time to assess the LWP operations and develop a financial sustainability plan. The addition of an unanticipated prior period utility payment is estimated to create a negative fund balance of $93,000 at the end of Fiscal Year 20/21.

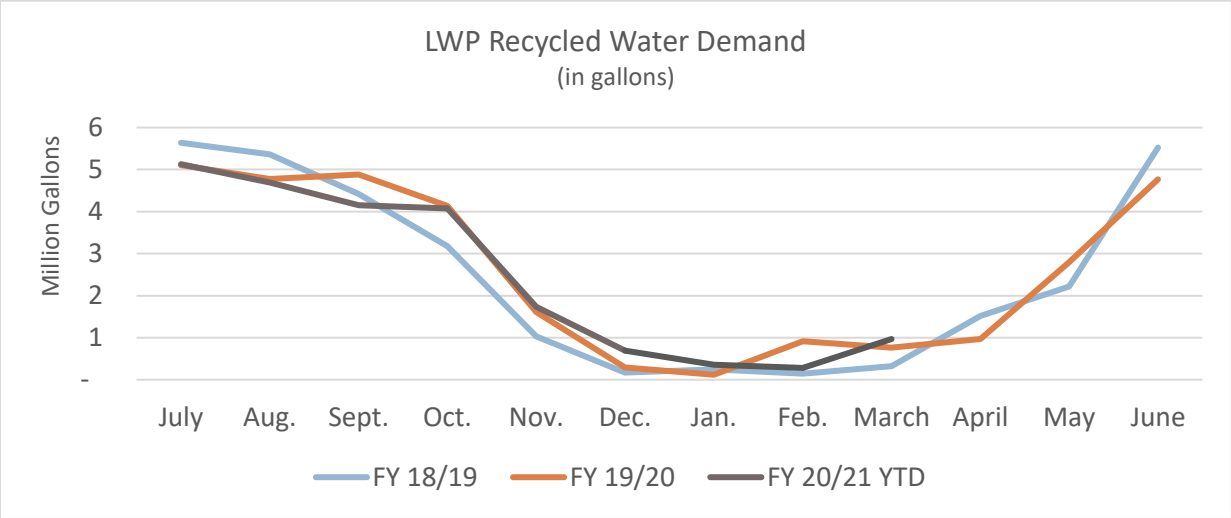
An overview of the operating trends is presented in the chart below.



The additional information included in this document provides a foundation to assist in evaluating fiscal sustainability options, as well as sample recommendations.

Cash Flow

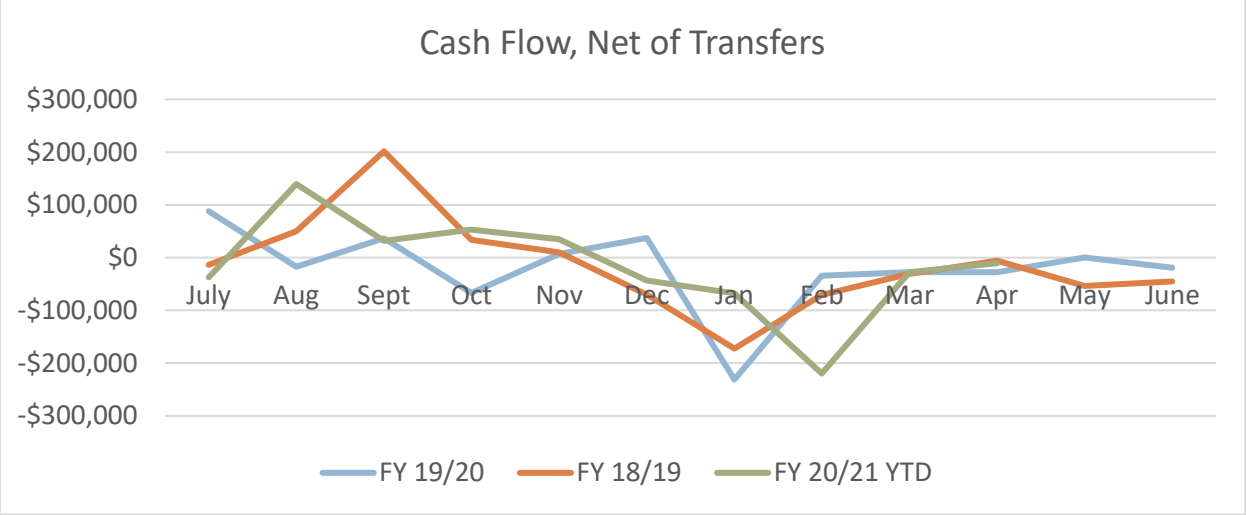
The Local Water Project has uneven cash receipting patterns. Recycled water is consumed on a seasonal basis, with demand peaking in summer months and declining in winter or rainy seasons. An overview of consumption trends is presented in the subsequent chart.



The Local Water Project's revenue receipting patterns is similar to demand trends; however an annual debt service payment of approximately $206,448 is payable in February. In addition to a

reduction in recycled water sales during winter months, this payment contributes to the temporary decline in operating cash. Water sales are billed to external customers in the month following consumption, while cash for internal customers, such as the Cemetery and City are transferred at the point of invoice. Revenues from external customers are typically received within 30 days of billing. The chart listed below represents the Local Water Project's cash receipting trends. Any supplementary loans or transfers have been excluded to illustrate the typical cash flow patterns.

The chart identifies the seasonal troughs which are fairly consistent within the three-year period. The average lowest points within the period is approximately $250,000.



Debt

California State Water Resources Revolving Loan

To construct the project, the City received an $2.4 million California Prop 13, Safe and Reliable Water Sources construction grant and a $5.2 million 1% State Revolving Fund Loan. The term of the loan is from November 17, 2015 to February 1, 2048, with an annual repayment of $206,448.28.

2021 LWP Interfund Loan

In Fiscal Year 20/21, the City approved a loan from the Sewer Fund to the Local Water Project for $600,000. This loan was initiated to assist in covering the deficit fund balance, while providing additional time to review operating solutions.

An overview of recommended repayment strategies and terms are provided in the Recommendations section of this document.

Capital Equipment

There are numerous pieces of equipment associated with the operations of the LWP, some pieces are minor and will not require significant capital to repair or replace. These pieces of equipment are typically flowmeters, smaller pumps, compressors, and control panels.

The major pieces of equipment, which will require replacement or major maintenance and /or repair include the reuse pump station, the screens, UV disinfection, membranes, and permeate pumps.

During the first three full years of operations, there has not been a need to purchase capital equipment. The initial project documents included an Estimated Costs for the Major Maintenance, Repair and Replacement Schedule for the 0.25 MGD facility over a 30-year timeframe. This information is included in the Appendix. In addition to recovering operating costs through a new rate structure, funds for major purchases should also be incorporated into the rate. While debt financing could be considered for significant capital improvements, it is also typical to pay for planned costs through an equipment reserve. The use of financing could also be initially challenging due to debt service coverage ratios that may be required by lenders.

The base engineer's estimate is provided, along with an estimate of the costs adjusted by a 2% CPI for the outlying years.

Capital Replacement and Membranes										
Replacement Interval	Assumed Purchase Year		Membrane Replacement Costs (1)		Capital Expenditure		Total		Adjusted for current dollars at est. 2.0% CPI (2)
1-5	FY 22/23	YR 5			$ 90,750		$ 90,750		$ 104,243
6-10	FY 27/28	YR 10	42,500		619,468		661,968		839,535
11-15			95,000		1,220,558		1,315,558		1,842,099
16-20					1,477,698		1,477,698		2,284,491
21-25			95,000		662,203		757,203		1,292,460
26-30			95,000		1,134,573		1,229,573		2,317,180
			$ 327,500		$ 5,205,250		$ 5,532,750		$ 8,680,008

(1) Membrane costs allocated to be in alignment with capital expenditures.
(2) Capital equipment estimate of $5,205,249 in 2015 dollars, with annual contribution of $173,508

The engineer estimated that an annual accrual of $173,508 the 30-year term totaling $5,205,249 for capital expenditures should be reserved. This amount was represented in 2015 dollars. When this amount is adjusted for inflation, the annual contribution to support capital expenditures and membrane replacements is $289,344 or an average of both rates at approximately $237,000.

Recycled Water Rates

The current rate for recycled water is 0.0173. The break-even rate for the last fiscal years is presented below. The first table includes the cost recovery rate for operating expenditures and debt service. The second table calculates the average cost per gallon using expenditures for the three fiscal years, along with the average capital equipment and membrane costs in 2015 dollars; and the average costs inflated by a 2% CPI over the forecast period.

Cost per Gallon Based on Actual and Estimated Costs			
	FY 18/19	FY 19/20	FY 20/21 Est.
Expenditures	$737,088	$795,819	$675,000
Gallons sold	29,741,422	31,126,940	30,434,000
Avg. Cost per gallon	$0.0248	$0.0256	$0.0222

Avg. Cost per Gallon (CPG) with Capital and Significant Equipment Replacement Costs			
	FY 18/19	FY 19/20	FY 20/21 Est.
CPG with avg. capital costs at $184,000	$0.0310	$0.0315	$0.0282
CPG with avg. capital costs at $232,000	$0.0326	$0.0330	$0.0298

Based on the current and estimated demand, the average cost per gallon is $0.024 when considering only operating costs. When the capital costs are included in the calculation, the average three-year rate is approximately $0.0310. This would increase the rates included in the forecast period by approximately 40% to cover operational costs; or 79% to establish a reserve for capital equipment purchases. The estimated California American Water Company rate per gallon is approximately $0.0290, when surcharges, fees, and taxes are included. This calculation was based on the Cal Am online bill estimation tool, with similar estimates calculated internally and by the Golf Course lessee. A copy of the rate schedule is included in the Appendix.

The current lease agreement for the City's golf course caps the amount the Local Water Project can charge for recycled water. This limitation prohibits full-cost recovery. An increase in demand could assist in funding fixed costs, while variable amounts, such as chemicals and utilities would

increase with consumption. Based on the three-year data, the current demand, and customer base may not be sufficient to yield significant economies of scale. This is largely due to the amount of fixed costs, which include an annual debt service payment of $206,448; and the base operator costs of $214,968 which are adjusted for inflation.

Alternatives

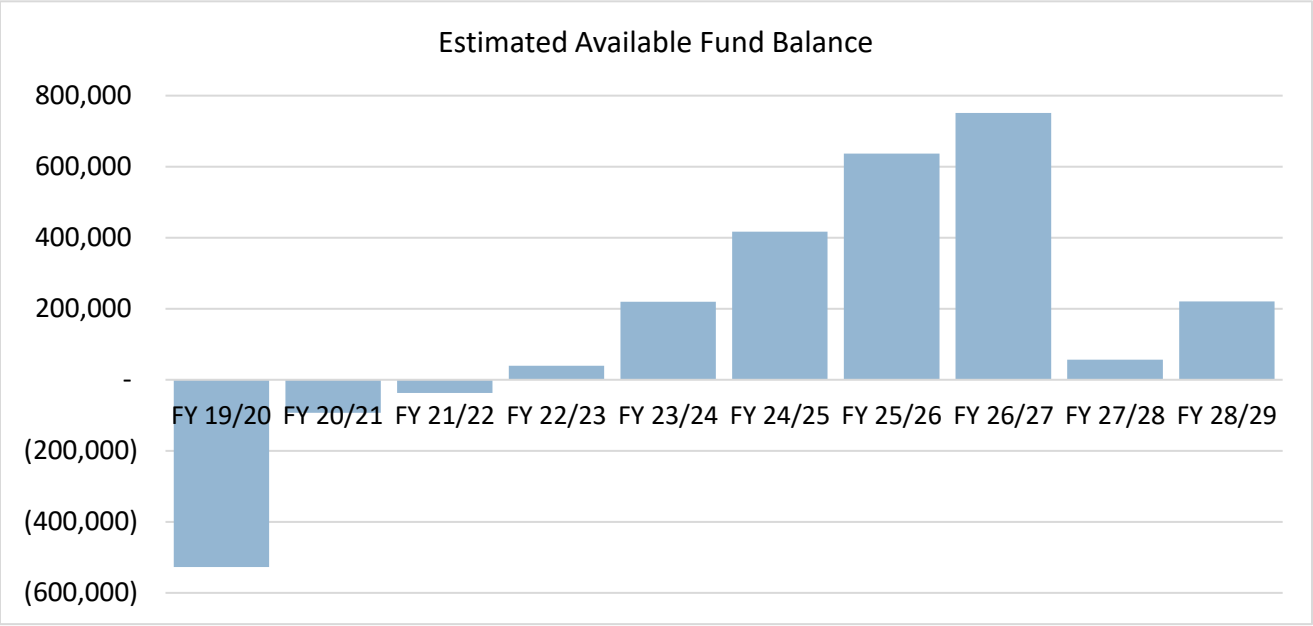
Multiple scenarios were evaluated when reviewing sustainability options for the Local Water Project. The assumptions included an average increase in operating costs of 3%, debt service remaining constant, and increases greater than 2%, being phased-in over the eight-year period.

All scenarios rely on water entitlement sales to assist in repaying the 2021 Temporary Loan or to supplement operating costs through Fiscal Year 25/26. Scenarios I-VI also rely on the use of proceeds from a $625,187 promissory note. Scenarios I, IV, and V are primarily provided for illustration purposes only. They have been included in the analysis to show the potential impact when all or a portion of a potential $1.2 million promissory note is incorporated into the estimates. These three scenarios would not be considered a viable option until an adequate agreement is reached with the developer. An overview is presented below:

	Impact of Alternate Scenarios through Fiscal Year 28/29						
	Eight-Year Increase	Average Increase	Water Entitlement Sales	Promissory Note Water Entitlement	Flat Charge	Projected FY 28/29 rate per gallon	Ending Fund Balance FY 28/29
Scenario I	16%	2.0%	$650,000	$1,853,187	-	0.0202	($630,837)
Scenario II	16%	2.0%	1,025,000	625,187	$1,496,000	0.0202	25,505
Scenario III	16%	2.0%	600,000	625,187	$2,000,000	0.0202	99,087
Scenario IV	55%	6.9%	350,000	1,853,187	-	0.0292	499,010
Scenario V	61%	7.6%	350,000	1,239,187	-	0.0305	402,585
Scenario VI	66%	8.3%	625,000	625,187	-	0.0320	220,188
Scenario VII	70%	8.8%	1,000,000	-	-	0.0332	99,113

A sample financial statement for Scenario VI is included in the Appendix, while an overview of the projected fund balance is presented in the chart on the subsequent page. The chart illustrates the effect of the increased rates on the estimated available fund balance, and the use of equipment reserves to fund capital improvements in Fiscal Year 27/28. In Fiscal Year 28/29, the chart also

identifies the beginning of the fund balance replenishment process. These funds would be used to support cash flow and future improvements.



RECOMMENDATIONS

Debt Repayment Plan

A debt repayment plan needs to be established to repay the Sewer Fund for the $600,000 loan to the Local Water Project.

To assist with fiscal sustainability, consideration may be given to applying the proceeds from a $625,187 water entitlement promissory note to cover the loan repayment. This would provide the Local Water Project with a "fresh start". The annual interest could be established based on the average interest rate that is equivalent to City's investment portfolio. This could be charged annually against the outstanding loan balance. This would provide the Sewer Fund with the amount of interest that it would have earned if the $600,000 was retained in the Sewer Fund. The principal could be repaid to the Sewer Fund when the proceeds from the promissory note are received. It is estimated that this would be take place in Fiscal Year 22/23.

The use of operating cash or an increase in rates beyond the forecasted amount to fund the 2021 LWP Interfund Loan is not recommended due to the increase burden on ratepayers.

If there are concerns that the promissory note would not be fulfilled, the City could elect one of the following alternatives:

- Allocate 100% of all prospective water entitlement sales to the Local Water Project. In most forecast scenarios, approximately 50-70% of the entitlement sales are allocated to the LWP fund, with the balance retained in the General Fund. While this could be an option, there is still some uncertainty as to whether the water entitlement sales will continue to perform at their current level.

- Work with the City's auditors and legal staff to confirm the implications of a longer-term loan from the General Fund's Strategic Opportunities Reserve. This could be a ten-year loan with interest equivalent to the average rate within the City's debt portfolio, the City's investment portfolio, or the current market rate.

Rate Structure and On-Going Operations

A financial plan needs to be established to assist the Local Water Project in becoming self-sufficient. Scenario VI, establishes a rate structure that ramps-up over a two-year period to cover operating costs, as well as begins to set aside funds for the recommended capital purchases through Fiscal Year 27/28. This scenario also includes a variable water rate that is applicable to all customers, rather than a fixed component, cap, or a surcharge. The rate could be adjusted based on cost recovery needs, as well as support any changing capital purchases.

While the Business Plan includes a multi-year forecast, a procedure for rate increases would also need to be established to reflect any significant variations from the Plan estimates. Updates on an annual basis may be difficult to calculate due to lead times, as well as fluctuations that may occur within a single year. An alternative would be to establish a three-year rate schedule that is based on the forecast. This would provide customers with the opportunity to incorporate the new rates into their operating budgets, as well as assist the City with budgetary planning. Future rate adjustments could be based on rolling three-year or historical consumption trends, with financial updates based on more current cost recovery needs.

The implementation of a rate increase would require a change in the contract with the current Golf Course lease. The information related to preliminary discussions with the lessee will be presented outside of this Business Plan.

Reserves

A cash flow reserve should be established at approximately $250,000 to assist the Local Water Project in becoming independent. While pooled cash would be available to supplement short-term cash flow needs, it isn't viable as a long-term solution.

A capital reserve should also be established to retain funds to pay for projected capital improvements and major maintenance costs. Scenario IV presents a plan to support these costs through the forecast period.

Similar capital-intensive entities have established rate stabilization funds to assist in smoothing rates when there is less demand, as well as emergency reserves to support unanticipated costs. These additional reserves could be considered once the Local Water Project's finances have been stabilized.

Appendix

California American Water Company Rate Schedule

The Local Water Project is considered Division 2, with a 4” meter

Schedule No. MO-1C Sheet 1
GENERAL METERED SERVICE in the Monterey Service Area Tariff Area
NON-RESIDENTIAL CUSTOMERS

APPLICABILITY
Applicable to all water furnished on a metered basis to non-residential customers in the service areas defined below.

TERRITORY
The incorporated cities of Monterey, Pacific Grove, Carmel-by-the-Sea, Del Rey Oaks, Sand City, a portion of Seaside, Hidden Hills and Ryan Ranch subdivisions, Bishop subdivision including the area known as Laguna Seca Ranch Estates and vicinity and certain unincorporated areas in the County of Monterey.

RATES

Quantity Rates:

Non-Residential Customers:	**Base Rate Per 100 gal (CGL)**	
Division 1	$1.9329	(I)
Division 2	$2.1745	
Division 3	$2.4161	
Division 4	$4.8322	(I)

Service charge: General Metered:

	Per Meter Per Month	
For 5/8 x 3/4-inch meter	$25.27	(I)
For 3/4-inch meter	$37.90	
For 1-inch meter	$63.16	
For 1-1/2-inch meter	$126.33	
For 2-inch meter	$202.12	
For 3-inch meter	$378.98	
For 4-inch meter	$631.63	
For 6-inch meter	$1,262.26	
For 8-inch meter	$2,021.22	(I)

The Meter Charge is a readiness-to-serve charge which is applicable to all metered service and to which is added the charge for water used computed at the Quantity Rate.

(Continued)

Schedule No. MO-1C (Continued) Sheet 2
GENERAL METERED SERVICE in the Monterey Service Area Tariff Area
NON-RESIDENTIAL CUSTOMERS

DEFINITIONS: (T)

1. WATER FACTOR - "Water Factor" shall mean a rating of water efficiency established by the U.S Environmental Protection Agency and the U.S. Department of Energy through the Energy Star Program. The Water Factor is the number of gallons per cycle per cubic foot that the Clothes Washer uses. The lower the Water Factor, the more efficient the washer is. So, if a Clothes Washer uses 30 gallons per cycle and has a tub volume of 3.0 cubic feet, then the Water Factor is 10.0.
2. WATER EFFICIENT ICE MACHINE – "Water Efficient Ice Machine" shall mean a commercial ice machine that meets or exceeds Energy Star standards for air-cooled ice machines.
3. SUPPLEMENTAL IRRIGATION SYSTEM – "Supplemental irrigation system" shall mean irrigation systems other than natural precipitation.
4. WATER BUDGET FEATURE – "Water budget feature" shall mean percent up/down adjust feature such as a button or dial on an irrigation controller that permits the user to increase or decrease the runtimes or application rate as for each zone by a prescribed amount or percent, by means of one adjustment without modifying the settings for that individual zone.
5. GEAR DRIVE ROTOR SPRINKLERS – "Gear drive rotor sprinklers" shall mean Irrigation sprinklers with high uniformity rates and lower precipitation rates than conventional sprinkler heads or impact rotors resulting in more efficient irrigation.
6. MULTI STREAM, MULTI TRAJECTORY ROTATING SPRINKLERS (MSMTR) – "Multi stream, multi trajectory rotating sprinklers" shall mean slowly turning irrigation sprinklers distributing water in a number of individual streams of varying trajectories with lower precipitation rates and higher uniformity than traditional fixed spray head sprinklers.
7. HIGH EFFICIENCY FIXED SPRAY NOZZLES – "High efficiency fixed spray nozzles" shall mean precision irrigation spray nozzles with larger and more uniform droplet size resulting in better wind resistance, lower precipitation rates and higher irrigation efficiency.
8. DRIP IRRIGATION - "Drip Irrigation" shall mean a low pressure, low volume watering system that applies water slowly to plants, near or at ground level, to minimize runoff and loss to evaporation. The term "Drip Irrigation" shall have the same meaning as "Micro Irrigation" and "Trickle Irrigation."
9. SUB SURFACE LOW VOLUME EMITTERS – "Sub surface low volume emitters" shall mean drip or low volume, low pressure irrigation systems that deliver a low flow of water at or near the root zone of plants - measured in gallons per hour versus gallons per minute.

(Continued)

Schedule No. MO-1C (Continued) Sheet 3
GENERAL METERED SERVICE in the Monterey Service Area Tariff Area
NON-RESIDENTIAL CUSTOMERS

DEFINITIONS (Continued):

10. LOW VOLUME IRRIGATION – "Low volume irrigation" shall mean drip, low volume or Micro Spray Irrigation, includes Low volume fixed spray nozzles. (T)

11. Best Management Practices - "BMP" as referenced in Section V of the Settlement attached to D.13-07-041. (T)

12. Customer Classification Conservation Base Rate – "CCCBR". the "Customer Class Conservation Base Rate" ("CCCBR") is defined as the low block or division quantity rate from each billing customer classification under conservation rates, and is determined as the rate necessary to equal the billing classification revenue requirement given the defined rate design parameters. (T)

SPECIAL CONDITIONS:

General Items:

1. The boundaries in which the above rates apply are as set forth in the Preliminary Statement and delineated on the Tariff Service Area Maps filed as a part of these tariff schedules.

2. This non-residential rate design shall remain in effect and until ordered otherwise by the Commission.

3. Abbreviations as used in this tariff are defined above.

4. Non-residential customers billed under this tariff shall be placed into one of four divisions for billing purposes. The determination of under which Division each individual customer shall be billed will be based on the following:
   a. Division 1: Customers that are indoor/outdoor Rate BMP-compliant and have outdoor landscape irrigation of no more than 10% of total parcel size covered by the meter (or meters) meant to serve such parcel, and excluding from the total parcel size for purposes of the 10% calculation areas of natural, non-irrigated open space. Meters designated as irrigation only meters will not be included in Division 1 regardless of the 10% parcel size allowance noted above.
   b. Division 2: Customers that are indoor/outdoor Rate BMP-compliant and have a business where the watering is essential to the product of the business (nurseries), golf courses and government parks, ball fields, and cemeteries.
   c. Division 3: Customers that are indoor/outdoor Rate BMP-compliant and have outdoor landscape irrigation exceeding the 10% parcel limit for Division 1, as well all Rate BMP-compliant irrigation meters, as previously noted in Special Condition 6 (a).
   d. Division 4: Customers that are not in compliance with Rate BMPs.

5. Upon approval of the tariff all customers who respond to the request to provide self-certified Rate BMP information will be appropriately categorized into Division 1, 2, 3 or 4 immediately so that all bills issued under the new tariff reflect the provision of a completed survey.

6. Customers that are subsequently found to be non Rate BMP compliant will be given 30 days from the date of notification to achieve compliance as noted in the non-compliance letter.

7. All Del Monte Forest golf courses served with emergency potable water from the connection at the Viscaino tank will be assigned an emergency allocation of 30 AF/year. Any potable use within this allotment will be billed at customer Division 1 rates. Usage above the annual allotment would be billed at customer Division 2 rates.

(Continued)

Schedule No. MO-1C (Continued) Sheet 4
GENERAL METERED SERVICE in the Monterey Service Area Tariff Area
NON-RESIDENTIAL CUSTOMERS

SPECIAL CONDITIONS (Continued):
General Items:

8. Rate BMP Compliant will be defined as follows:

a. Indoor Usage
   i. Showerheads – Rain Bars, or Body Spray Nozzles shall be designed and manufactured to emit a maximum of 2.0 gallons per minute GPM.
   ii. Public Washbasins shall emit a maximum of 0.5 GPM.
   iii. Public Washbasins equipped with automatic shut off devices or sensor faucets shall operate with a maximum flow rate of 0.25 gallons per cycle.
   iv. Private Washbasins (e.g.; Washbasins in hotel or motel guest rooms and hospital patient rooms) shall emit a maximum of 1.5 GPM.
   v. All other sinks shall be restricted to flow at a maximum of 1.5 GPM.
   vi. Ultra low flow toilets (1.6 gallons per flush ("GPF")), High Efficiency Toilets (1.28 GPF) or Ultra High Efficiency Toilets (0.8 GPF). All toilets replaced after December 31, 2014 will have to be High Efficiency or Ultra High Efficiency
   vii. Water efficient urinals designed to flush with a maximum of 0.5 GPF. Includes High Efficiency Urinals (0.5 GPF), pint urinals (0.125 GPF), or waterless urinals.
   viii. Water Efficient (1.6 GPM) Pre-Rinse spray valves (as applicable), Medical and laboratory photographic, and/or X-Ray processing systems must recirculate water used in the rinse process.
   ix. All Visitor-Serving Facilities must use Water Efficient Ice Machines
   x. All Clothes Washers must be rated with a Water Factor of 5.0 or below. There is an exception when the existing appliance was purchased between December 31, 2005 and December 31, 2012, and rates a Water Factor of 5.1-6.0.
   xi. Visitor-serving, Public, and Quasi-Public facilities must display placards or decals promoting water awareness and the need for conservation in visible locations in restrooms, kitchens, and dining areas.
   xii. Visitor-serving facilities must offer towel and linen reuse programs by providing written notice in the rooms.
   xiii. Restaurants must provide written notice that drinking water is available only upon request. Notices must be placed on tables and/or menus. Drinking water will not be provided from the Monterey Peninsula Water Resource System, unless specifically requested.

b. Outdoor Usage
   i. All supplemental irrigation systems require the use of an automated irrigation controller, which must include a water budget feature and may include products, which rely on soil or weather sensors to adjust irrigation schedules.
   ii. Turf grass areas that receive supplemental irrigation must be watered with gear drive rotor sprinklers, multi stream, multi trajectory rotating sprinklers, high efficiency fixed spray nozzles or sub surface low volume emitters.
   iii. Low volume irrigation is encouraged for landscaped areas containing trees, shrubs and groundcover. The use of standard fixed spray nozzles will not be allowed in landscape beds measuring 3' or less.
   iv. All automated irrigation controllers must include sensors, or devices that interrupt, or delay a scheduled irrigation event due to rainfall that equals or exceeds an established threshold.
   v. Hoses, used to hand water landscaped areas must be equipped with a positive shut off device.

(Continued)

Schedule No. MO-1C (Continued) Sheet 5
GENERAL METERED SERVICE in the Monterey Service Area Tariff Area
NON-RESIDENTIAL CUSTOMERS

SPECIAL CONDITIONS (Continued):
General Items

9. Every meter will be categorized and issued a single bill unless a customer requests that a single consolidated bill be provided and then only if the system is capable of doing so without loss of any necessary data or delays in billing. (T)

10. **Moratorium:** In portions of the Monterey Service Area served, in whole or part, by Carmel River diversions, and subject to the following conditions and restrictions, California-American Water Company shall deny requests for new service connections and prohibit any increased use of water at existing service addresses resulting from a change in zoning or use: (T)

    a. California-American Water Company shall not deny such requests or prohibit such increased use where all necessary written approvals for project construction and connection to California-American Water Company's system had been obtained prior to October 20, 2009;

    b. California-American Water Company shall not deny the installation of additional meters at an existing service provided that the additional metering does not result in an increase in water use.

    c. This special condition does not authorize California-American Water Company to deny service to:

        i. the area served by the Carmel Area Wastewater District Water Entitlement pursuant to Monterey Peninsula Water Management District Ordinances 39 and 109 and Rule 23.5, prior to January 1, 2017 ;

        ii. the area served by the Sand City Water Entitlement pursuant to Monterey Peninsula Water Management District Ordinance 132 and Rule 23.6;

        iii. Security National Guaranty, Inc. under its frontloading agreement;

        iv. a connection or increased use where an authorized official of the State Water Resources Control Board has given written approval.

(Continued)

Schedule No. MO-1C (Continued) Sheet 6
GENERAL METERED SERVICE in the Monterey Service Area Tariff Area
NON-RESIDENTIAL CUSTOMERS

SPECIAL CONDITIONS (Continued):
General Items

10. **Moratorium(Continued):** In portions of the Monterey Service Area served, in whole or part, by Carmel River diversions, and subject to the following conditions and restrictions, California-American Water Company shall deny requests for new service connections and prohibit any increased use of water at existing service addresses resulting from a change in zoning or use: (T)

    d. California-American Water Company shall not deny a request for new service or prohibit the increased use of water at an existing service address if an authorized official of the State Water Resources Control Board has given written approval for such service or increased use.

    e. This special condition shall expire at the filing by California-American Water Company of a Tier 1 advice letter with the Commission transmitting the written concurrence of the Deputy Director of Water Rights of the State Water Resources Control Board with California-American Water Company's finding that a permanent supply of water is ready to serve as a replacement for the unlawful diversions of Carmel River water

11. Customers that have heretofore been billed as mixed use customers prior to March 1, 2017 will now be reclassified into either a multi-residential or non-residential classification. Those prior mixed use customers with a large number of individual dwelling units on large parcels will be classified as a multi-residential customer after March 1, 2017 and be billed under the same methodology as all other multi-residential customers, which is based on a block use allowance per dwelling unit. All other former mixed use customers will be billed under the divisional billing parameters and rates for non-residential customers. (T)

(Continued)

Schedule No. MO-1C (Continued) Sheet 7
GENERAL METERED SERVICE in the Monterey Service Area Tariff Area
NON-RESIDENTIAL CUSTOMERS

SPECIAL CONDITIONS (Continued):
Fees and Surcharges

1. All bills are subject to the reimbursement fee set forth in Schedule No.UF.

2. A surcharge is included on each bill to collect franchise taxes and/or business license fees paid to various municipalities. The amount collected is based on a percentage of the gross revenues of each bill. The percentages are as follows:
Franchise Fees: Ryan Ranch 1.00%, City of Pacific Grove 2.00%, City of Carmel-by-the-Sea 2.00%, City of Seaside 1.00%, City of Del Rey Oaks Franchise Fee 2.00%, City of Monterey 1.00%, and unincorporated areas of Monterey County 1.00%.
Business Fees: City of Del Rey Oaks 0.11% and City of Sand City 0.12%.

   Per D.18-12-021 a three-year conservation budget of $2,298,500 for 2018-2020 for Monterey Service Area. Effective November 23, 2020, the Conservation Surcharge will be removed from customer bill.

3. Per Advice Letter 1230-B, a surcharge of $1.81 for the Customer Assistance Program (CAP) (C)
Balancing Account will be collected from all non-customer assistance program water and (C)
wastewater customers

4. Per Advice Letter 1152, a fee of 8.325%, imposed by the Monterey Peninsula Water Management District (MPWMD), will be assessed against the customer's monthly base bill to fund MPWMD's environmental mitigation, water supply, and conservation programs, as well as other activities. The fee will remain in effect until otherwise directed by the Commission. This fee is applicable to customers in the Monterey Main, Bishop, Hidden Hills and Ryan Ranch areas.

6. Per Advice Letter 1199, the balance of the 2017 Non-Residential WRAM/MCBA is $2,762,923 as of December 31, 2017. The surcharge is shown in the table below and will remain effective until December 2021.

Non-Residential		
Monterey Main, Hidden Hills, Ryan Ranch, & Bishop Systems:	Surcharge per 100 gal	Months
Division 1	$0.1363	18
Division 2	$0.1533	18
Division 3	$0.1703	18
Division 4	$0.3407	18

(Continued)

Schedule No. MO-1C (Continued) Sheet 8
GENERAL METERED SERVICE in the Monterey Service Area Tariff Area
NON-RESIDENTIAL CUSTOMERS

SPECIAL CONDITIONS (Continued):
Fees and Surcharges

7. In accordance with Decision 16-12-003, the WRAM/MCBA balance through 2014 for the Monterey Service Area shall be recovered over five years with interest at the 90-day commercial paper rate. The surcharge is shown in the table below and will remain effective for 60 months upon approval of Advice Letter 1146-A, ending February 28, 2022.

Meter Size	Meter Surcharge
For 5/8” x 3/4" meter	$4.21
For 3/4" meter	$8.42
For 1” meter	$12.63
For 1-1/2” meter	$21.05
For 2” meter	$33.68
For 3” meter	$63.15
For 4” meter	$102.25
For 6” meter	$210.50
For 8” meter	$336.80

8. Per Advice Letter 1322, the under-collected balance in the Monterey Service Area Consolidated Expense Balancing Account will be recovered through a quantity-based surcharge of $0.0669 per 100 gallons over 12 months effective March 18, 2021. This total amount will be recovered from all classes of customers except Chualar customers. (C) (C) (C)

9. Per D.18-12-021 a meter based bill credit for the 2018 Excess Non-Plant Accumulated Deferred Income Tax will be refunded to customers over the 24-month period beginning October 17, 2019.

Meter Size	Refunds by Meter Equivalents
5/8 x 3/4	$1.47
3/4	$2.21
1	$3.68
1 1/2	$7.35
2	$11.77
3	$22.06
4	$36.77
6	$73.54
8	$117.66
10	$169.14

10. Per Advice Letter 1265-A, the net under-collected balance of the 2018 Non-Residential WRAM/MCBA is $106,180, including interest. D.18-12-021 raises the cap on WRAM/MCBA surcharges to 15% of the authorized revenue requirement. Rates will be established through a separate Tier 1 filing to update the tariff language and surcharge based upon the then current authorized amortization.

(Continued)

Schedule No. MO-1C (Continued) Sheet 9
GENERAL METERED SERVICE in the Monterey Service Area Tariff Area
NON-RESIDENTIAL CUSTOMERS

SPECIAL CONDITIONS (Continued):
Fees and Surcharges:

11. Per Advice Letter 1291-A, the net under-collected balance of the 2019 residential WRAM/MCBA is $982,007, including interest. D. 18-12-021 raises the cap on WRAM/MCBA surcharges to 15% of the authorized revenue requirement. Rates will be established through a separate Tier 1 filing to update the tariff language and surcharge based upon the then current authorized amortization.

12. Per D.18-12-021 a meter-based bill credit for the 2018 Excess Plant Related Accumulated Deferred Income Tax will be refunded to customers over the 12-month periods beginning January 21, 2020.

Meter Size	Refunds by Meter Equivalents
5/8-inch meter	$0.30
3/4-inch meter	$0.45
1-inch meter	$0.75
1-1/2-inch meter	$1.51
2-inch meter	$2.41
3-inch meter	$4.52
4-inch meter	$7.53
6-inch meter	$15.05
8-inch meter	$24.08
10-inch meter	$34.62

13. Per Advice Letter 1311, a surcharge is applied to each bill to offset increases in purchased water costs imposed by Monterey Peninsula Water Management District (MPWMD). The offset results in a needed increase of $405,474 or 0.53%. The surcharge of $0.2011 per cgl is added to the quantity charge beginning October 21, 2020.

14. Per D.18-12-021 a meter-based bill credit for the 2019 Excess Plant Related Accumulated Deferred Income Tax will be refunded to customers over the 12-months periods beginning November 1, 2020. (C)

Meter Size	Refunds by Meter Equivalents
5/8x3/4inch meter	$0.21
3/4-inch meter	$0.32
1-inch meter	$0.53
1-1/2-inch meter	$1.07
2-inch meter	$1.70
3-inch meter	$3.20
4-inch meter	$5.33
6-inch meter	$10.66
8-inch meter	$17.05
10-inch meter	$24.51

(Continued)

Schedule No. MO-1C (Continued) Sheet 90
General Metered Service in the Monterey County District Tariff Area
NON-RESIDENTIAL CUSTOMERS

SPECIAL CONDITIONS
Fees & Surcharges: (continued):

1. Per Decision (D.) 19-12-048, intervenor compensation paid to the Surfrider Foundation will be recovered through a meter surcharge for six billing cycles upon approval of Advice letter 1295. The total amount of $441,448.05 will be recovered from all classes of metered customers.

Meter Size	Surcharge
5/8 x 3/4	$1.21
3/4	$1.82
1	$3.03
1 1/2	$6.07
2	$9.71
3	$18.20
4	$30.34
6	$60.68
8	$97.09
10	$139.57
12	$200.25

(N)

2. Per Decision 19-12-049, intervenor compensation paid to the Salinas Valley Water Coalition will be recovered through a meter surcharge for six billing cycles upon approval of Advice Letter 1302. The total amount of $496,798.25 will be recovered from all classes of metered customers.

Meter Size	Surcharge
5/8 x 3/4	$1.64
3/4	$2.46
1	$4.10
1 1/2	$8.20
2	$13.12
3	$24.60
4	$41.01
6	$82.01
8	$131.22
10	$188.62
12	$270.63

(N)

(Continued)

Schedule No. MO-1C (Continued) Sheet 91
GENERAL METERED SERVICE in the Monterey Service Area Tariff Area
NON-RESIDENTIAL CUSTOMERS

SPECIAL CONDITIONS:
Fees & Surcharges (continued):

3. Per Decision 20-02-060, intervenor compensation paid to Landwatch Monterey County will be recovered through a meter surcharge for three billing cycles upon approval of Advice Letter 1313. The total amount of $107,231.63 will be recovered from all classes of metered customers. (P)

Meter Size	Surcharge
5/8 x 3/4	$0.59
3/4	$0.88
1	$1.47
1 1/2	$2.94
2	$4.70
3	$8.81
4	$14.68
6	$29.37
8	$46.99
10	$67.54
12	$96.91

(P)

4. Per Decision 20-02-058, intervenor compensation paid to the Planning and Conservation League Foundation will be recovered through a meter surcharge for four billing cycles upon approval of Advice Letter 1314. The total amount of $215,019.80 will be recovered from all classes of metered customers. (N)

Meter Size	Surcharge
5/8 x 3/4	$1.18
3/4	$1.77
1	$2.95
1 1/2	$5.90
2	$9.45
3	$17.71
4	$29.52
6	$59.04
8	$94.46
10	$135.78
12	$194.82

(N)

(Continued)

Schedule No. MO-1C (Continued) Sheet 92
GENERAL METERED SERVICE in the Monterey Service Area Tariff Area
NON-RESIDENTIAL CUSTOMERS

SPECIAL CONDITIONS (N)
Fees & Surcharges (Continued):

5. Per Decision 20-08-040, intervenor compensation paid to Public Water Now will be recovered through a meter surcharge for 8 billing cycles upon approval of Advice Letter 1321. The total amount of $10,095 will be recovered from all classes of metered customers.

Meter Size	Surcharge
5/8 x 3/4	$0.02
3/4	$0.03
1	$0.05
1 1/2	$0.10
2	$0.16
3	$0.30
4	$0.49
6	$0.99
8	$1.58
10	$2.27
12	$3.25

(N)

(Continued)

Engineer’s Estimated Capital Purchases

Estimated Major Maintenance, Repair, and Replacement Schedule (Proposal Form 16)

The Estimated Costs for the Major Maintenance, Repair and Replacement Schedule for the 0.25 MGD facility (excluding membrane replacements), in 2015 US dollars are:

Year	Activity/Equipment	Price
1-5	Capital Expenditure	$90,750
6-10	Capital Expenditure	$619,468
11-15	Capital Expenditure	$1,220,558
16-20	Capital Expenditure	$1,477,698
21-25	Capital Expenditure	$662,203
26-30	Capital Expenditure	$1,134,573
	Total	**$5,205,249**

An annual accrual of $173,508 (in 2015 US dollars) for the 30 year term totaling $5,205,249 should be reserved.

PERC Water Corporation
Name of Proposer

Brian Cullen
Name of Designated Signatory

Signature

President
Title

Estimated Membrane Replacement Schedule (Proposal Form 17)

The Estimated Annual Membrane Replacement Costs for the 0.25 MGD facility, in 2015 US dollars are:

Year	Activity/Equipment	Number of Modules	% of Total Modules	Price
1-4	Membrane modules are under warranty	0	0	$0
5-8		1	50%	$42,500
9-17		1	50%	$95,000
18-26		1	50%	$95,000
27-34		1	50%	$95,000
			34 yr Total	**$327,500**

Assumptions:
The Koch Membrane System warranty is defined as follows:
During the first 48 months after the initiation of Warranty, KMS will replace the failed membrane row(s) free of charge. (Shipped FCA Manufacturer facility) Commencing after 48 months from the initiation of warranty any membrane modules or rows that must be repaired, replaced or added hereunder shall be replaced on a pro-rated price basis.
It is due to this warranty the cost for membrane replacement for the first 4 years is zero. And further if a module or row needs replacement between years 5-8 the replacement cost shall be pro-rated per the Koch Warranty.

PERC Water Corporation
Name of Proposer

Brian Cullen
Name of Designated Signatory

Signature

President
Title

Draft Financial Statements

Scenario VI - Original

	Cost per gallon	Cost per gallon	Cost per gallon	Cost per gallon	Cost per gallon
		$ 0.01721	0.0207	0.0248	0.0258
			20.0%	20.0%	4.0%
	Year 2 FY 19/20	Year 3 FY 20/21	Year 4 FY 21/22	Year 5 FY 22/23	Year 6 FY 23/24
Beginning Fund Balance	(326,361)	(527,571)	(93,219)	(37,261)	39,210
Revenues					
Reclaimed Water	524,041	536,000	642,901	771,481	802,340
Interest Earned	421	800	9,721	421	392
Other	-	-	-	-	-
	524,462	536,800	652,622	771,902	802,732
Expenses					
Contract Services	356,606	327,000	336,810	346,914	357,322
Legal Services	-	-	-	-	-
Postage	-	-	-	-	-
Telephone	-	-	-	-	-
Utilities	206,168	140,000	144,200	148,526	152,982
Internal Service Charges	4,357	5,000	4,356	4,356	4,356
Indirect Costs	28,600	24,000	25,200	25,830	26,476
Equipment Repair	-	-	-	-	-
Misc. Expense	-	-	-	-	-
	595,731	496,000	510,566	525,626	541,135
Net operating difference	(71,269)	40,800	142,056	246,276	261,597
Non-Operating					
Capital Outlay				**(104,243)**	
One-time water entitlement sales		**-**	**125,000**	**750,187**	**125,000**
Loan Proceeds - Sewer Loan		**600,000**		**-**	
Debt Service - State Loan	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)
Debt Service - Sewer Loan		**-**	**(4,650)**	**(609,300)**	
Interfund Transfers	76,507	-	-	-	-
	(129,941)	393,552	(86,098)	(169,804)	(81,448)
Net Operating Difference	(201,210)	434,352	55,958	76,471	180,149
Ending Fund Balance	(527,571)	(93,219)	(37,261)	39,210	219,359
Fund Balance Allocation					
Unassigned	(527,571)	(93,219)	(37,261)	-	
Cash Flow	-	-	-	39,210	219,359
Capital Equip. Reserve	-	-	-	-	-
	(527,571)	(93,219)	(37,261)	39,210	219,359

Scenario VI - Original

	Cost per gallon	Cost per gallon	Cost per gallon	Cost per gallon	Cost per gallon
	0.0268	0.0279	0.0290	0.0304	0.0320
	4.0%	4.0%	4.0%	5.0%	5.0%
	Year 7 FY 24/25	Year 8 FY 25/26	Year 9 FY 26/27	Year 10 FY 27/28	Year 11 FY 28/29
Beginning Fund Balance	219,359	417,432	636,504	751,637	56,647
Revenues					
Reclaimed Water	834,434	867,811	902,524	947,650	995,032
Interest Earned	2,194	6,261	9,548	11,275	850
Other	-	-	-	-	-
	836,627	874,073	912,071	958,924	995,882
Expenses					
Contract Services	368,041	379,083	390,455	402,169	414,234
Legal Services	-	-	-	-	-
Postage	-	-	-	-	-
Telephone	-	-	-	-	-
Utilities	157,571	162,298	167,167	172,182	177,348
Internal Service Charges	4,356	4,356	4,356	4,356	4,356
Indirect Costs	27,138	27,816	28,511	29,224	29,955
Equipment Repair	-	-	-	-	-
Misc. Expense	-	-	-	-	-
	557,106	573,553	590,490	607,931	625,893
Net operating difference	279,521	300,520	321,581	350,993	369,989
Non-Operating					
Capital Outlay				**(839,535)**	
One-time water entitleme	**125,000**	**125,000**	**-**	**-**	**-**
Loan Proceeds - Sewer Loa					
Debt Service - State Loan	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)
Debt Service - Sewer Loan					
Interfund Transfers	-	-	-	-	-
	(81,448)	(81,448)	(206,448)	(1,045,983)	(206,448)
Net Operating Difference	198,073	219,072	115,133	(694,991)	163,541
Ending Fund Balance	417,432	636,504	751,637	56,647	220,188

Fund Balance Allocation					
Unassigned	0	(0)	0	(0)	0
Cash Flow	250,000	250,000	250,000	56,647	220,188
Capital Equip. Reserve	167,432	386,504	501,637	-	-
	417,432	636,504	751,637	56,647	220,188

Scenario VI - Updated for Fiscal Year 20/21 Actuals

	Cost per gallon	Cost per gallon	Cost per gallon	Cost per gallon	Cost per gallon
		$ 0.01721	0.0207	0.0248	0.0258
	Actual	***Actual***	20.0%	20.0%	4.0%
	Year 2 FY 19/20	Year 3 FY 20/21	Year 4 FY 21/22	Year 5 FY 22/23	Year 6 FY 23/24
Beginning Fund Balance	(326,361)	(527,571)	(36,689)	31,781	123,745
Revenues					
Reclaimed Water	524,041	597,833	658,348	790,017	821,618
Interest Earned	421	-	9,721	421	1,237
Other	-	-	-	-	-
	524,462	597,833	668,069	790,438	822,855
Expenses					
Contract Services	356,606	335,610	345,678	356,049	366,730
Legal Services	-	-	-	-	-
Postage	-	-	-	-	-
Telephone	-	-	-	-	-
Utilities	206,168	138,317	142,467	146,741	151,143
Internal Service Charges	4,357	5,000	4,356	4,356	4,356
Indirect Costs	28,600	20,000	21,000	21,525	22,063
Equipment Repair	-	1,576	-	-	-
Misc. Expense	-	-	-	-	-
	595,731	500,503	513,501	528,670	544,292
Net operating difference	(71,269)	97,330	154,568	261,768	278,563
Non-Operating					
Capital Outlay				**(104,243)**	
One-time water entitlement sales		**-**	**125,000**	**750,187**	**125,000**
Loan Proceeds - Sewer Loan		**600,000**		**-**	
Debt Service - State Loan	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)
Debt Service - Sewer Loan		**-**	**(4,650)**	**(609,300)**	
Interfund Transfers	76,507	-	-	-	-
	(129,941)	393,552	(86,098)	(169,804)	(81,448)
Net Operating Difference	(201,210)	490,882	68,470	91,964	197,115
Ending Fund Balance	(527,571)	(36,689)	31,781	123,745	320,860
Fund Balance Allocation					
Unassigned	(527,571)	(36,689)	-	-	-
Cash Flow	-	-	31,781	123,745	250,000
Capital Equip. Reserve	-	-	-	-	70,860
	(527,571)	(36,689)	31,781	123,745	320,860

Scenario VI - Updated for Fiscal Year 20/21 Actuals

	Cost per gallon	Cost per gallon	Cost per gallon	Cost per gallon	Cost per gallon
	0.0268	0.0279	0.0290	0.0304	0.0320
	4.0%	4.0%	4.0%	5.0%	5.0%
	Year 7 FY 24/25	Year 8 FY 25/26	Year 9 FY 26/27	Year 10 FY 27/28	Year 11 FY 28/29
Beginning Fund Balance	320,860	536,723	775,041	910,418	236,929
Revenues					
Reclaimed Water	854,483	888,662	924,208	970,419	1,018,940
Interest Earned	3,209	8,051	11,626	13,656	3,554
Other	-	-	-	-	-
	857,691	896,713	935,834	984,075	1,022,494
Expenses					
Contract Services	377,732	389,064	400,736	412,758	425,141
Legal Services	-	-	-	-	-
Postage	-	-	-	-	-
Telephone	-	-	-	-	-
Utilities	155,677	160,347	165,158	170,112	175,216
Internal Service Charges	4,356	4,356	4,356	4,356	4,356
Indirect Costs	22,615	23,180	23,760	24,354	24,962
Equipment Repair	-	-	-	-	-
Misc. Expense	-	-	-	-	-
	560,380	576,947	594,009	611,580	629,675
Net operating difference	297,311	319,765	341,825	372,495	392,819
Non-Operating					
Capital Outlay				**(839,535)**	
One-time water entitleme	**125,000**	**125,000**	**-**	**-**	**-**
Loan Proceeds - Sewer Loa					
Debt Service - State Loan	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)
Debt Service - Sewer Loan					
Interfund Transfers	-	-	-	-	-
	(81,448)	(81,448)	(206,448)	(1,045,983)	(206,448)
Net Operating Difference	215,863	238,317	135,377	(673,488)	186,371
Ending Fund Balance	536,723	775,041	910,418	236,929	423,300

Fund Balance Allocation					
Unassigned	-	-	-	-	-
Cash Flow	250,000	250,000	250,000	56,647	220,188
Capital Equip. Reserve	286,723	525,041	660,418	180,282	203,112
	536,723	775,041	910,418	236,929	423,300

www.FinanceDTA.com

January 7, 2022

To: Tori Hannah

Daniel Gho

From: Andrea Roess, Managing Director, DTA

Steve Runk, Vice President Engineering, DTA

Subject: Peer Review of City Business Plan

The City of Pacific Grove ("City") recently constructed a 0.250 MGD reclaimed water treatment plant ("Plant") for the purpose of replacing potable water deliveries with reclaimed water to three principal customers, Pacific Grove Golf Links, El Carmelo Cemetery and Point Pinos Lighthouse landscaping. A detailed background of the existing physical and financial conditions of the reclaimed water system can be found in Pacific Grove Local Water Project Business Plan dated June 21, 2021 ("Business Plan"). City has asked DTA to conduct a peer review, consisting of: 1) an evaluation of the assumptions, methodology and calculations used to determine the proposed reclaimed water rate described in the Business Plan; and 2) provide a break-even rate analysis.

After review of the City's Business Plan and rate analysis, DTA has determined that the City's analysis of revenues and costs, debt service and available fund balances on an annual basis is rational, supportable and is consisted with industry practice. The City's financial model follows closely with the recommendations of American Water Works Association (AWWA) Manual of Water Supply Practices, M1. Furthermore, DTA has determined that to achieve a sustained, breakeven operation, City must impose steep increases in early years to reach a rate level of over $0.03 per gallon with modest increases thereafter.

EVALUATION OF THE BUSINESS PLAN

City looked at proposed revenues and expected expenses through FY28/29 (Year 11) for seven different revenue and cost assumption scenarios. Scenarios I-VII considered various combinations of supplementary water entitlement sales and debt repayment of operating loans. An overview of the findings for the seven scenarios can be found in the "Alternatives" section of the Business Plan. A rate analysis for Scenario VI, titled LWP Proforma, Scenario VI, was provided by City ("rate model"). This rate model was subsequently updated by City to include actual operating costs for FY20/21 as well as adjustments for recent average water demand. This analysis included one-time water rights sales in years 4 through 8. Also included are proceeds in year 3 from a $600,000 sewer fund loan, with loan repayments plus interest occurring in years 4 and 5. Operating costs were adjusted for inflation in subsequent years. Investment earnings on annual reserve balances included as a revenue source.

Revenues

The rate revenue in any given year is determined by multiplying the expected reclaimed water consumption, in gallons of reclaimed water, by the assumed rate, in dollars per gallon for that year. The expected consumption for each fiscal year is based on historical data and is discussed in the Business Plan. Other revenue shown in Scenario VI included one-time sales of water rights in years 4 through 8, and interest earned on fund balances.

Operating Expenses

Annual expenses such as contract services and utilities are based on actual costs incurred for FY20/21 and adjusted for inflation every year thereafter. In FY20/21 equipment repair and maintenance costs were incorporated into the contract services line item, in the amount of $21,000. Indirect costs are adjusted annually for inflation. Internal service charges are

assumed constant at $4,356 annually. Membranes have a useful life significantly greater than one year and therefore its replacement cost is considered a capital outlay.

Capital Outlay

Capital outlay costs, which include capital expenditures and membrane replacement, are identified in the Business Plan by fiscal year. In this model capital outlays occur in FY22/23 and FY 27/28. The remainder of the 30-year C.I.P. expenses occur in fiscal years beyond this study horizon. Funding for the capital outlay will be on a pay-as-you-go basis from the fund balances and therefore there will be no debt service related to capital outlays. The amount and timing of capital outlays are based on engineering estimates and are as shown in the Business Plan.

Debt Service

The rate model includes annual debt service payments for a State Revolving Loan of $206,448. In FY 21/22 and FY22/23 the project will repay a sewer fund loan of $600,000, with interest, in lump sum payments.

City Rate Increase Recommendations and Fund Balances

In Scenario VI the City proposes rate increases of 20% in Year 4 and Year 5, with 4% and 5% annual increases thereafter. This will result in positive fund balances in year 4 and each year thereafter, with a positive fund balance of $423,300 in Year 11. A substantial fund balance in year 11 is necessary to assist in providing sufficient funds in later years to pay for the remainder of the C.I.P. program.

BREAK EVEN ANALYSIS

As stated in the Business Plan, the project has been operating at an annual loss. City Staff has asked DTA to provide an independent analysis of rates that assumes that 1) annual revenues will cover annual expenses, and 2) provide fund balances that can pay for capital improvements in the near term as well as establish a reserve fund that will assist in funding future capital improvements beyond the horizon of this analysis. For the purposes of DTA's analysis, it is assumed that steep increases are imposed in the first two years to remove all annual negative operating balances, with modest increases thereafter. For instance, the attached model shows that rate increases of 35% and 21% in the first two years are required to prevent negative operating fund balances, and annual increases of 3% thereafter will build a fund balance of just under $500,000 in year 7 that will assist in meeting the C.I.P. requirements in later years.

Revenue, Expense and Debt Service Assumptions

DTA's analysis uses the same annual water consumption and annual expense data shown in the City's rate model discussed above. Also, the Capital Outlay expenses are repeated from the City's rate model. This analysis includes annual debt service payments for a State Revolving Loan. The interfund transfer of $76,507 was provided by the General Fund and repayment was not required. In FY20/21 the project received a loan of $600,000 from the sewer fund, as well as $37,000 in temporary funds to assist with cash flow. City staff assumes that this will be repaid through other sources also, rather than operating revenues shown herein. This analysis also assumes that any water rights sales that occur during this study period are not made a part of this analysis.

Findings

Based on the above assumptions, DTA finds that rate increases of 35% in Year 4, 21% in year 5 and 3% per year in Years 6 through 11 are necessary to achieve positive fund balances from this point forward, while accumulating a fund balance of just under $500,000 by year 11, to be used to fund capital improvements in later years. Steep increases in Years 4 and 5 are necessary to increase the rate levels from 0.017 per gallon to around $0.03 per gallon by Year 8. A rate level of around $0.03 per gallon with modest annual increases thereafter will enable City to not only achieve a break-even operation but allow fund balances to accumulate so that by year 11 these balances can carry forward to help fund future C.I.P. projects.

If the City choses to increase rates at a slower pace, the enterprise will continue to experience annual budget shortfalls, which will need to be offset by other sources.

BREAK EVEN ANALYSIS MODEL

Key Assumptions:

No water rights sales revenue Included in this model

Debt repayment for sewer fund loan made from other sources

Interfund transfer repayment made from other sources

	DTA Break Even Analysis									
	Cost per gallon	Cost per gallon	Cost per gallon	Cost per gallon	Cost per gallon	Cost per gallon	Cost per gallon	Cost per gallon	Cost per gallon	Cost per gallon
		$ 0.01721	0.0232	0.0281	0.0290	0.0298	0.0307	0.0316	0.0326	0.0336
	Actual	***Actual***	35.0%	21.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%
	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11
	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	FY 24/25	FY 25/26	FY 26/27	FY 27/28	FY 28/29
Beginning Fund Balance	(326,361)	(527,571)	311	21,003	77,924	250,740	436,308	635,624	849,180	237,954
Operating Revenues										
Reclaimed Water	524,041	597,833	740,641	896,176	923,061	950,753	979,275	1,008,654	1,038,913	1,070,081
Interest Earned	421	-		107	495	1,643	3,435	5,360	7,424	5,436
Non Opereating Revenues										
One Time Entitlement Sales										
Interfund Transfers	76,507									
Operating Loan Proceeds	-	637,000	-	-	-	-	-	-	-	-
Subtotal - Revenues	600,969	1,234,833	740,641	896,282	923,556	952,396	982,711	1,014,013	1,046,337	1,075,516
Expenses										
Contract Services	356,606	335,610	345,678	356,049	366,730	377,732	389,064	400,736	412,758	425,141
Legal Services	-	-	-	-	-	-	-	-	-	-
Postage	-	-	-	-	-	-	-	-	-	-
Telephone	-	-	-	-	-	-	-	-	-	-
Utilities	206,168	138,317	142,467	146,741	151,143	155,677	160,347	165,158	170,112	175,216
Internal Service Charges	4,357	5,000	4,356	4,356	4,356	4,356	4,356	4,356	4,356	4,356
Indirect Costs	28,600	20,000	21,000	21,525	22,063	22,615	23,180	23,760	24,354	24,962
Equipment Repair	-	1,576	-	-	-	-	-	-	-	-
Misc. Expense	-	-	-	-	-	-	-	-	-	-
subtotal - Expenses	595,731	500,503	513,501	528,670	544,292	560,380	576,947	594,009	611,580	629,675
Net operating difference	5,238	734,330	227,140	367,612	379,264	392,016	405,763	420,004	434,757	445,841
Non-Operating:										
Capital Outlay				**(104,243)**					**(839,535)**	
Debt										
Debt Service - State Loan	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)
Repayment of Interfund Transfer			-	-	-	-	-	-	-	-
Debt Service - Sewer Loan				-						
sub total - Debt	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)
Net Revenue/Deficit	(201,210)	527,882	20,692	56,921	172,816	185,568	199,315	213,556	(611,226)	239,393
Ending Fund Balance	(527,571)	311	21,003	77,924	250,740	436,308	635,624	849,180	237,954	477,347

Local Water Project Business Plan

City Council
City of Pacific Grove

February 16, 2022

dgho@cityofpacificgrove.org

Background

Project Purpose: convert wastewater for irrigation purposes

2010

Project concept originated.
Use of potable is not sustainable/ environmentally sound

2015

City issued RFP for design-build.

Funded by $2.5M grant and 1% State Loan

2018

Construction completed
&
plant operating

Current Operations

- City has agreement with PERC Water for operations
- 5-year agreement commenced in January of 2018
- Customers include: Golf Course (CourseCo) Cemetery, Point Pinos Lighthouse grounds, and truck fill

Reclaimed Water Usage

Reclaimed water is sold at $0.017/gallon

Acre Feet of Water Sold per Calendar Year			
Location	2018	2019	2020
Golf Course	80.23	77.09	72.13
Cemetery/Lighthouse	14.28	17.1	19.17
Truck Fill	1.3	1.52	2.07
Total	**95.81**	**95.71**	**93.37**

2021 Totals 99.7 Acre Feet ; not noted in business plan

Challenges

- LWP is operating in a deficit
  - Primarily due to lack of sales
  - Utility Cost
  - Debt Service
- Need to set aside for reserves

Business Plan Developed

- October 2020: Staff presented potential option to pursue at LWP
  - Perform Energy Audit
  - Renegotiate CourseCo lease
  - Lease facility
  - Perform operations "In House"
  - Do nothing

- Council directed staff to prepare a Business Plan
- Plan presented to City Council in June of 2021
- Council directed staff to obtain a peer review of the plan
- Review to evaluate break even analysis

Peer Review

- October 2021: Council authorized agreement with DTA
- Evaluation costs, revenue needs, and break-even calculations
- DTA provided memo to City Dated January 7, 2022
  - Memo provides peer review of Business Plan
  - DTA determined that City's analysis is rational, supportable and consistent with industry practice
  - DTA recommends increases in water rates

Business Plan Financial Goals

- Assess the current operations

  Understand contributing factors

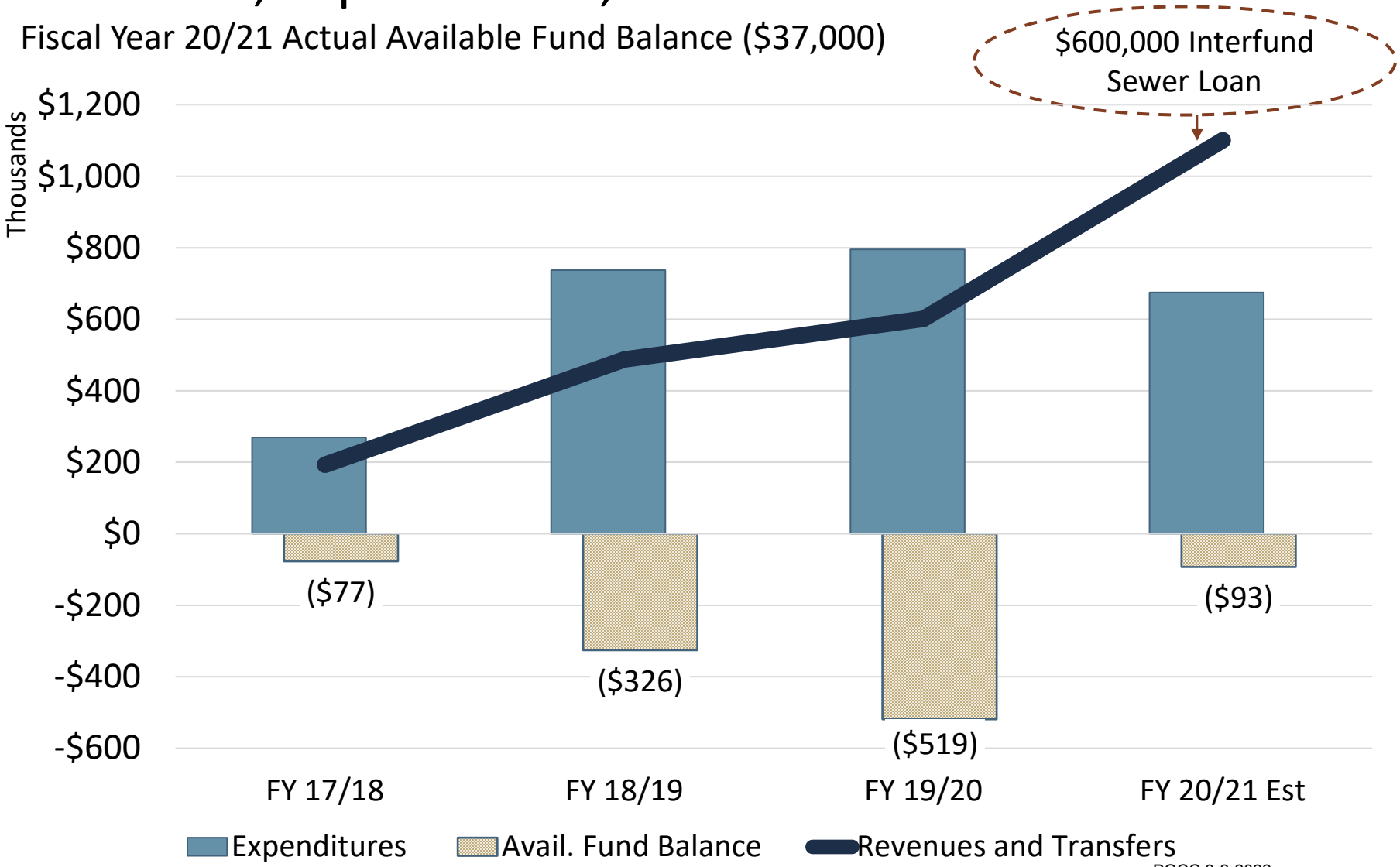
- Resolve immediate operating concerns
  - Repayment of interfund loan
  - Begin process to achieve on-going fiscal sustainability
- Incorporate best practices
- Continually evaluate operations

  Potential rate study in two-three years
- Confirm with peer review

The business plan presents long-term information for the purpose of capital planning; however, it also needs to be evaluated on an on-going basis and short-term basis

Revenues, Expenditures, and Available Fund Balance

Fiscal Year 20/21 Actual Available Fund Balance ($37,000)



Local Water Project Assessment

Challenges

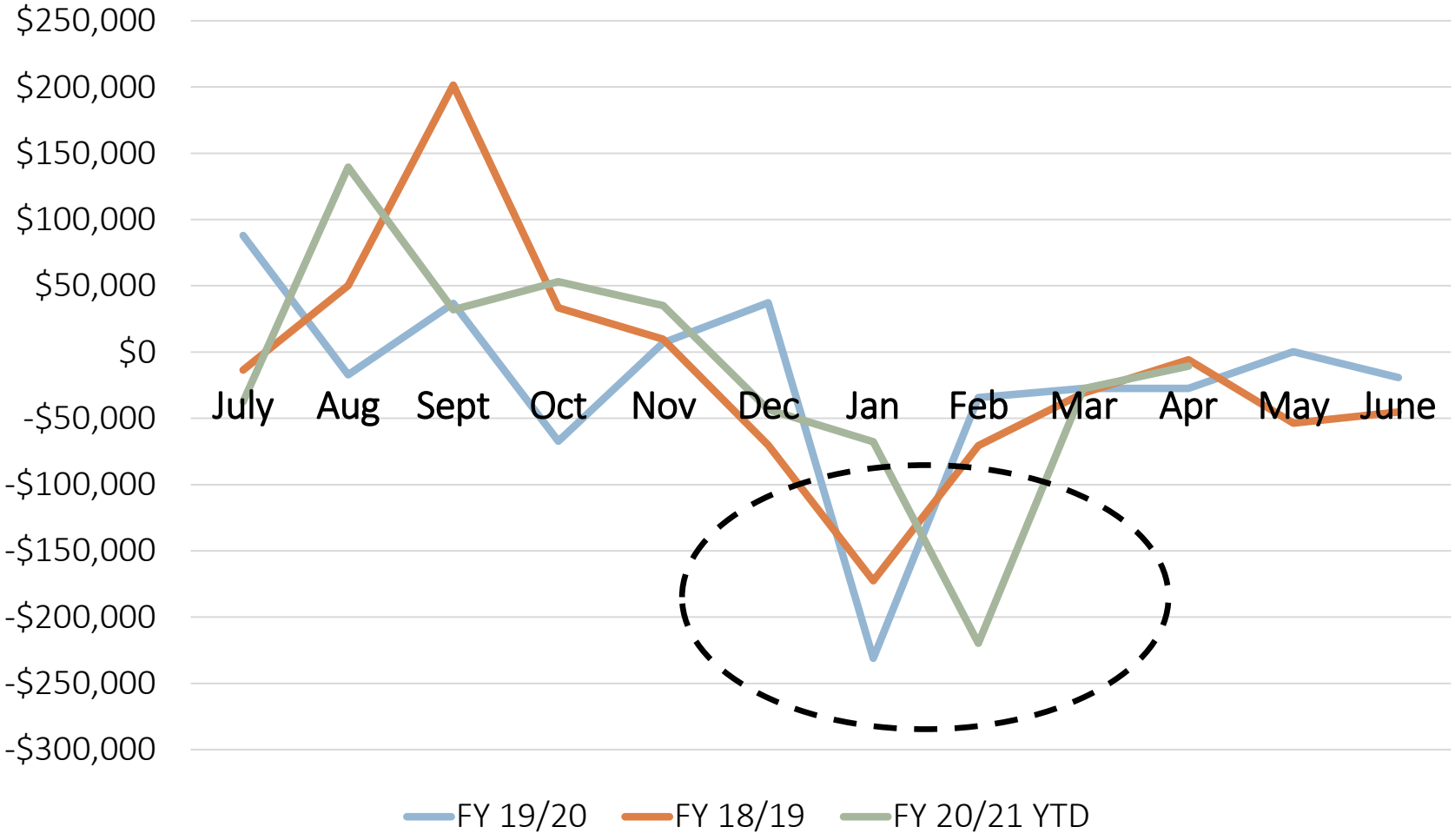
- New operation, three full years of data
- Cap placed on Golf Course water sales, prohibited full cost recovery
- Unplanned water treatment costs
- Initial costs of approx. $79,000 not covered by loan proceeds
- Demand not as high as in original model
- Recovering existing deficit and provide for future planning
  - Cash flow
  - Equipment replacement reserve
  - Rainy day reserve

Opportunities

- Work with golf course concessionaire to remove or adjust cap
- Account for full-cost recovery when developing rate
  - Consider gradual ramp-up of rates
  - Consider supplementing with water entitlement sales
- Seek cost reduction strategies
- Consider applying a percentage or flat amount from water entitlement sales to reduce or pay-off the $600,000 loan from the Sewer Fund.
- Explore other alternatives

Assess Cash Flow Needs

Cash Flow, Net of Transfers



Incorporate Capital Replacements and Membranes

Capital Replacement and Membranes						
Replace Interval	Assumed Purchase Year		Membrane Replace. Costs (1)	Capital Costs	Total	Adjusted for current dollars at est. 2.0% CPI (2)
1-5	FY 22/23	YR 5	$	$ 90,750	$ 90,750	$ 104,243
6-10	FY 27/28	YR 10	42,500	619,468	661,968	839,535
11-15			95,000	1,220,558	1,315,558	1,842,099
16-20				1,477,698	1,477,698	2,284,491
21-25			95,000	662,203	757,203	1,292,460
26-30			95,000	1,134,573	1,229,573	2,317,180
					-	
			$ 327,500	$ 5,205,250	$ 5,532,750	$ 8,680,008

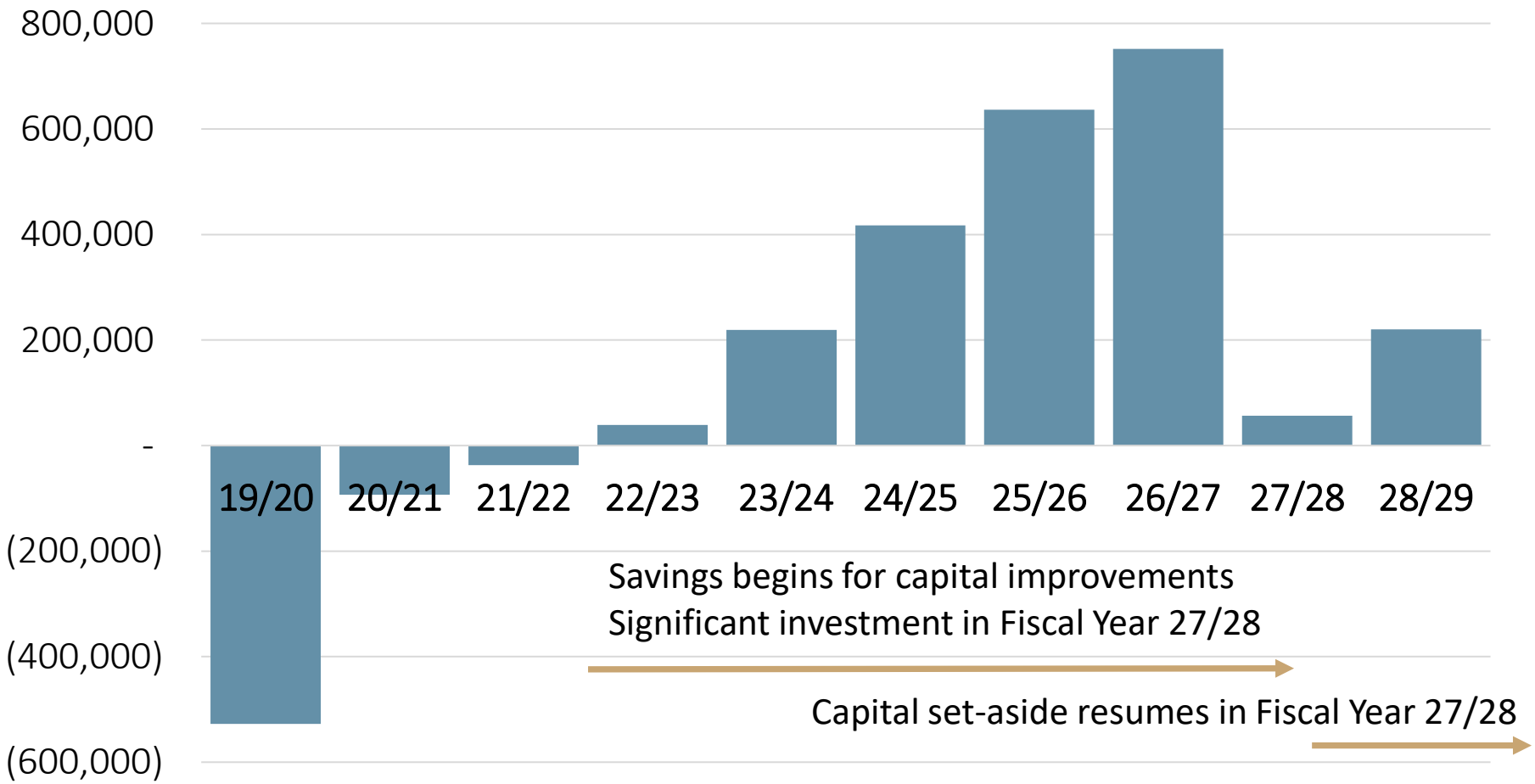
Review Estimated and Actual Information

Cost per Gallon Based on Actual and Estimated Costs			
	FY 18/19	**FY 19/20**	**FY 20/21 Est.**
Expenditures	$737,088	$795,819	$675,000
Gallons sold	29,741,422	31,126,940	30,434,000
Avg. Cost per gallon	$0.0248	$0.0256	$0.0222

Avg. Cost per Gallon (CPG) with Capital and Significant Equipment Replacement Costs			
	FY 18/19	**FY 19/20**	**FY 20/21 Est.**
CPG with avg. capital at $184,000	$0.0310	$0.0315	$0.0282
CPG with avg. capital at $232,000	$0.0326	$0.0330	$0.0298

Multiple Scenarios

Estimated Available Fund Balance: Original Scenario VI



Revised Scenario VI included in packet and analysis to reflect drought demand

City Scenarios and Peer Review

The difference primarily relates to how we get to sustainability

- City Scenarios
  - Include multiple options
    - Gradual ramp-up scenarios
    - Subsidize with water entitlement revenues, not an on-going revenue
    - Combination of rates and subsidies
  - Includes reference to loan repayments, reflects the accounting
  - Estimated break-even point with capital: Approximately $0.03 per gallon
- Consultant Independent Scenario
  - Does not include subsidies
  - Two-year significant increases, lower increases in future years
  - Assumes loan repayment and negative fund balance covered outside of operation
  - Estimated break-even point with capital: Approximately $0.03 per gallon

Loan Repayment Plan

- Option: Provide a "fresh start" by not using operating revenues to cover prior year deficits
  - Commit water entitlement promissory note payment in the amount of $625,187 to be used for the loan repayment
  - Interest on loan charged based on the City's investment portfolio for the complete loan term, with quarterly interest payments
    - Provides the Sewer Fund with the same amount of interest that it would have earned if the funds were retained within the Sewer Fund
  - Lump sum payment of loan principal due upon receipt of the promissory note proceeds

Recommendation

Receive the Peer Review of Pacific Grove Local Water Project Business Plan prepared by DTA, validating the City's assumptions noted in the Business Plan, and authorize staff to being negotiations with CourseCo; and approve a loan repayment plan for the Sewer Fund Interfund Loan.

Questions?

City Council
City of Pacific Grove

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Sandra Kandell, City Clerk
MEETING DATE:	March 2, 2022
SUBJECT:	Hybrid Meeting Update ***This item was continued from the February 16, 2022 meeting.***
CEQA:	Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Approve staff recommendation to commence hybrid meetings by phases as outlined in the Discussion section of agenda report.

DISCUSSION

The City Clerk has been working with the City Manager, IT Department, Public Works, and the Police Department in order to provide this status update. As the Council was informed earlier, all metrics on the technology side have been accomplished except for a time clock. The time clock method currently used will continue to be used until another is put into place. This report provides phases staff believes applicable in commencing hybrid meetings on March 2, 2022. The phases are pursuant to safety recommendations by the City's Human Resources Department, Safety Committee, the California Department of Public Health (CDPH) and the California Joint Powers Insurance Agency (CJPIA). Phases cover masks/vaccination cards, plexiglass inserts, chamber capacity limits, and social distancing.

The State's indoor mask requirement will end February 15, 2022, and will revert to the previous guidance. Effective February 16, 2022, masks will be required for unvaccinated individuals in all indoor public settings, and for all individuals regardless of vaccination status, in higher risk settings such as public transit, etc. Businesses, venue operators, hosts, etc. may determine their own paths forward to protect staff and patrons and may choose to require all patrons to wear masks. The California Department of Public Health's February 7, 2022, is attached for ease of reference. AB 361 expires in January 2024, so long as the Governor has declared a state of emergency. The Governor's Executive Order declaring a state of emergency is set to expire on March 31, 2022. It is unknown at this time whether it will be extended by a further order. A County of Monterey State of Emergency Declaration could continue the virtual meetings, however, it is unknown whether the County of Monterey will issue one. AB 361 and Executive Order N-1-22 are attached for the Council's ease of reference.

The Council should note that the Mayor's State of the City Address set for February 23, 2022, at 6:00 PM will be held via hybrid. The Mayor will attend in-person. Capacity in Chamber limited to approximately 20 will be established for the public and attendance will be on a first come, first served

basis. No public will be allowed to stand in Council Chamber, unless in line for public speaking and then no more than a line of 3 members of the public is recommended. Outdoor speakers will be turned on and chairs will be made available for outdoor seating. Due to inadequate spacing, no hallway seating is recommended. The public may continue attending via Zoom. The City Clerk, Deputy, IT, and AMP staff will attend in-person. Medical grade masks will be required and Chamber will be supplied with hand sanitizer, wipes, and extra masks where needed. Open doors and windows will provide ventilation.

Based on the information above, staff recommends the following phases to ease into hybrid meetings.

Phase 1: For City Council Meetings of March 2, 2022, and March 16, 2022, the Mayor plus three other members of the Council attend in-person. This could alternate for the March 16, 2022, meeting. Capacity in Chamber limited to approximately 20 will be established for the public and attendance will be on a first come, first served basis. No public will be allowed to stand in Council Chamber, unless in line for public speaking and then no more than a line of 3 members of the public is recommended. Outdoor speakers will be turned on and chairs will be made available for outdoor seating. Due to inadequate spacing, no hallway seating is recommended. The public may continue attending via Zoom. The City Clerk, Deputy, IT, and AMP staff will attend in-person. City Staff will continue to attend via Zoom. Medical grade masks will be required and Chamber will be supplied with hand sanitizer, wipes, and extra masks if needed. Open doors and windows will provide ventilation.

Phase 2: For City Council Meetings of April 6, 2022, and April 20, 2022, Mayor plus all members of the Council attend in-person (dependent upon a further State/Local Order). Capacity in Chamber limited to approximately 20 will be established for the public and attendance will be on a first come, first served basis. No public will be allowed to stand in Council Chamber, unless in line for public speaking and then no more than a line of 3 members of the public is recommended. Outdoor speakers will be turned on and chairs will be made available for outdoor seating. Due to inadequate spacing, no hallway seating is recommended. The public may continue attending via Zoom. The City Clerk, Deputy, IT, and AMP staff would attend in-person. Optional attendance of either in-person or Zoom for City Staff. Medical grade masks will be required and Chamber will be supplied with hand sanitizer, wipes, and extra masks if needed. Open doors and windows will provide ventilation.

Phase 3: For City Council Meetings of May 4 to future, Mayor plus all members of the Council attend in-person (dependent upon a further State/Local Order). Capacity in Chamber limited to approximately ~~20~~ 50 will be established for the public and attendance will be on a first come, first served basis. No public will be allowed to stand in Council Chamber, unless in line for public speaking and then no more than a line of 3 members of the public is recommended. Outdoor speakers will be turned on and chairs will be made available for outdoor seating. Due to inadequate spacing, no hallway seating is recommended. The public can continue to attend via Zoom. The City Clerk, Deputy, IT, and AMP staff would attend in-person. Optional attendance of either in-person or Zoom for City Staff. Medical grade masks will be required and Chamber will be supplied with hand sanitizer, wipes, and extra masks if needed. Open doors and windows will provide ventilation.

City staff will continue to review changes that could occur with respect to COVID.

OPTIONS

1. Accept all recommendations.
2. Provide alternate direction.

FINANCIAL IMPACT:

Council budget funds will be used for miscellaneous costs to support hybrid meetings. An approximate cost ranges between $600-800.

GOAL ALIGNMENT: Transparency, Accountability and Communication: Implement programs, processes, revisions, and training to improve and advance the City's efforts.

Attachments

CHPH Letter

AB 361

N-1-22 Order

TOMÁS J. ARAGÓN, M.D., Dr.P.H.
State Public Health Officer & Director

State of California—Health and Human Services Agency

California Department of Public Health

GAVIN NEWSOM
Governor

February 7, 2022

TO: All Californians

SUBJECT: Guidance for the Use of Face Masks

This guidance will take effect on February 16, 2022. For current Guidance for the Use of Face Masks, see the current guidance for face coverings .

Changes Taking Effect February 16, 2022:

- **Universal masking shall remain required in only specified settings.**
- **Only unvaccinated persons are required to mask in all Indoor Public Settings. Fully vaccinated individuals are recommended to continue indoor masking when the risk may be high.**

Related Materials: Face Coverings Q&A | Face Coverings Fact Sheet (PDF) | Face Mask Tips and Resources | Face Shields Q&A (PDF) | Safe Schools for All Hub | More Home & Community Guidance |All Guidance | More Languages

Guidance For the Use of Masks

Background

COVID-19 cases and hospitalization are declining across the state. This is due in large part to the collective efforts of Californians to get vaccinated, get boosted, and wear masks.

A universal indoor masking requirement was reinstated on December 15, 2021, to add a layer of mitigation as the Omicron variant, a Variant of Concern as labeled by the World Health Organization, increased in prevalence across California, the United States, and the world and spread much more easily than the original SARS-CoV-2 virus and

the Delta variant. Implementing the universal masking requirement in all indoor public settings during the winter season was an important tool to decrease community transmission during the highly infectious Omicron surge.

The current hospital census is still over capacity, but the dramatic surge in cases and hospitalizations due to the highly infectious Omicron variant over the last two months has declined significantly. Californians are also increasingly knowledgeable about how to protect themselves and their loved ones with effective masks when there may be risk of COVID-19 exposure. Accordingly, it is now appropriate for the universal indoor masking requirement to expire on February 15, 2022 as scheduled.

The COVID-19 vaccines remain effective in preventing serious disease, hospitalization, and death from the SARS-CoV-2 virus. Unvaccinated individuals are much more likely to become infected when compared to vaccinated and boosted individuals. Vaccination continues to remain the ultimate exit strategy out of the COVID-19 pandemic. While the percentage of Californians fully vaccinated and boosted continues to increase, we continue to have areas of the state where vaccine coverage is low, putting individuals and communities at greater risk for COVID-19.

A series of cross-sectional surveys in the U.S. suggested that a 10% increase in self-reported mask wearing tripled the likelihood of slowing community transmission.[1] Our recently published case-control study conducted in California from February 18 to December 1, 2021 demonstrated that consistently wearing a face mask or respirator in indoor public settings reduces the risk of acquiring SARS-CoV-2 infection. [2]

The masking requirement in California schools has allowed us to keep schools open when compared to other parts of the country. California accounts for roughly 12% of all U.S. students, but accounted for only 1% of COVID-19 related school closures during the Omicron surge. Nationally during the Delta surge in July and August 2021, jurisdictions without mask requirements in schools experienced larger increases in pediatric case rates, and school outbreaks were 3.5 times more likely in areas without school mask requirements.[3], [4].

Maintaining the masking requirements in other specified, high-risk settings continues to be consistent with CDC recommendations and allows us to protect our most vulnerable populations and the workforce that delivers critical services in these settings.

In workplaces, employers are subject to the Cal/OSHA COVID-19 Emergency Temporary Standards (ETS) or in some workplaces the Cal/OSHA Aerosol Transmissible Diseases (ATD) (PDF) Standard and should consult those regulations for additional applicable requirements.

Masking Requirements

Masks are **required for all individuals in** the following indoor settings, regardless of vaccination status. Surgical masks or higher-level respirators (e.g., N95s, KN95s, KF94s) with good fit are highly recommended.

- On public transit[5] (examples: airplanes, ships, ferries, trains, subways, buses, taxis, and ride-shares) and in transportation hubs (examples: airport, bus terminal, marina, train station, seaport or other port, subway station, or any other area that provides transportation)
- **Indoors** in K-12 schools[6], childcare[7]
- Emergency[8] shelters and cooling and heating centers[9]
- Healthcare settings[10]
- State and local correctional facilities and detention centers[11]
- Homeless shelters[12]
- Long Term Care Settings & Adult and Senior Care Facilities[13]

Additionally, masks **are required* for unvaccinated individuals** in indoor public settings and businesses (examples: retail, restaurants, theaters, family entertainment centers, meetings, state and local government offices serving the public). Fully vaccinated individuals are recommended to continue indoor masking when the risk may

be high. Surgical masks or higher-level respirators (e.g., N95s, KN95s, KF94s) with good fit are highly recommended.

See State Health Officer Order, issued on July 26, 2021, for a full list of high-risk congregate and other healthcare settings where surgical masks are required for unvaccinated workers, and recommendations for respirator use for unvaccinated workers in healthcare and long-term care facilities in situations or settings not covered by Cal OSHA ETS or ATD.

For additional information on types of masks, the most effective masks, and ensuring a well-fitted mask, individuals should refer to CDPH Get the Most out of Masking and see CDPH Masking Guidance Frequently Asked Questions for more information.

*Guidance for Businesses, Venue Operators or Hosts

In settings where masks are required only for unvaccinated individuals, businesses, venue operators or hosts may choose to:

- Provide information to all patrons, guests and attendees regarding vaccination requirements and allow vaccinated individuals to self-attest that they are in compliance prior to entry.
- Implement vaccine verification to determine whether individuals are required to wear a mask.
- Require all patrons to wear masks.

No person can be prevented from wearing a mask as a condition of participation in an activity or entry into a business.

Exemptions to masks requirements

The following **individuals** are exempt from wearing masks at all times:

- Persons younger than two years old. Very young children must not wear a mask because of the risk of suffocation.
- Persons with a medical condition, mental health condition, or disability that prevents wearing a mask. This includes persons with a medical condition for whom wearing a mask could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a mask without assistance.
- Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication.
- Persons for whom wearing a mask would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines.

[1] Rader B, White LF, Burns MR, et al. Mask-wearing and control of SARS-CoV-2 transmission in the USA: a cross-sectional study. *The Lancet Digital Health*. 2021;3(3):e148–e157.

[2] Andrejko KL, Pry JM, Myers JF, et al. Effectiveness of Face Mask or Respirator Use in Indoor Public Settings for Prevention of SARS-CoV-2 Infection — California, February–December 2021. MMWR Morb Mortal Wkly Rep. ePub: 4 February 2022

[3] Jehn M, McCullough JM, Dale AP, Gue M, Eller B, Cullen T, Scott SE. Association between K–12 school mask policies and school-associated COVID-19 outbreaks — Maricopa and Pima Counties, Arizona, July–August 2021. *MMWR Morb Mortal Wkly Rep*. 2021; 70(39);1372–1373.

[4] Budzyn SE, Panaggio MJ, Parks SE, Papazian M, Magid J, Eng M, Barrios LC. Pediatric COVID-19 cases in counties with and without school mask requirements — United States, July 1–September 4, 2021. *MMWR Morb Mortal Wkly Rep*. 2021; 70(39);1377–1378.

[5] CDC Requirement for Face Masks on Public Transportation Conveyances and at Transportation Hubs

[6] CDC Guidance for COVID-19 Prevention in K-12 Schools

[7] CDC COVID-19 Guidance for Operating Early Care and Education/Child Care Programs

[8] CDC's Interim Guidance for General Population Disaster Shelters During the COVID-19 Pandemic

[9] CDC COVID-19 and Cooling Centers

[10] CDC Interim Infection Prevention and Control Recommendations for Healthcare Personnel During the Coronavirus Disease 2019 (COVID-19) Pandemic

[11] CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities

[12] CDC Interim Guidance for Homeless Service Providers to Plan and Respond to Coronavirus Disease 2019 (COVID-19)

[13] CDC Nursing Homes and Long-Term Care Facilities

California Department of Public Health
PO Box, 997377, MS 0500, Sacramento, CA 95899-7377
Department Website (cdph.ca.gov)

AB-361 Open meetings: state and local agencies: teleconferences. (2021-2022)

SHARE THIS:

Date Published: 09/17/2021 09:00 PM

Assembly Bill No. 361

CHAPTER 165

An act to add and repeal Section 89305.6 of the Education Code, and to amend, repeal, and add Section 54953 of, and to add and repeal Section 11133 of, the Government Code, relating to open meetings, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 16, 2021. Filed with Secretary of State September 16, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 361, Robert Rivas. Open meetings: state and local agencies: teleconferences.

(1) Existing law, the Ralph M. Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency, as those terms are defined, be open and public and that all persons be permitted to attend and participate. The act contains specified provisions regarding the timelines for posting an agenda and providing for the ability of the public to directly address the legislative body on any item of interest to the public. The act generally requires all regular and special meetings of the legislative body be held within the boundaries of the territory over which the local agency exercises jurisdiction, subject to certain exceptions. The act allows for meetings to occur via teleconferencing subject to certain requirements, particularly that the legislative body notice each teleconference location of each member that will be participating in the public meeting, that each teleconference location be accessible to the public, that members of the public be allowed to address the legislative body at each teleconference location, that the legislative body post an agenda at each teleconference location, and that at least a quorum of the legislative body participate from locations within the boundaries of the local agency's jurisdiction. The act provides an exemption to the jurisdictional requirement for health authorities, as defined. The act authorizes the district attorney or any interested person, subject to certain provisions, to commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that specified actions taken by a legislative body are null and void.

Existing law, the California Emergency Services Act, authorizes the Governor, or the Director of Emergency Services when the governor is inaccessible, to proclaim a state of emergency under specified circumstances.

Executive Order No. N-29-20 suspends the Ralph M. Brown Act's requirements for teleconferencing during the COVID-19 pandemic provided that notice and accessibility requirements are met, the public members are allowed to observe and address the legislative body at the meeting, and that a legislative body of a local agency has a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, as specified.

This bill, until January 1, 2024, would authorize a local agency to use teleconferencing without complying with the teleconferencing requirements imposed by the Ralph M. Brown Act when a legislative body of a local agency holds a meeting during a declared state of emergency, as that term is defined, when state or local health officials

have imposed or recommended measures to promote social distancing, during a proclaimed state of emergency held for the purpose of determining, by majority vote, whether meeting in person would present imminent risks to the health or safety of attendees, and during a proclaimed state of emergency when the legislative body has determined that meeting in person would present imminent risks to the health or safety of attendees, as provided.

This bill would require legislative bodies that hold teleconferenced meetings under these abbreviated teleconferencing procedures to give notice of the meeting and post agendas, as described, to allow members of the public to access the meeting and address the legislative body, to give notice of the means by which members of the public may access the meeting and offer public comment, including an opportunity for all persons to attend via a call-in option or an internet-based service option, and to conduct the meeting in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body. The bill would require the legislative body to take no further action on agenda items when there is a disruption which prevents the public agency from broadcasting the meeting, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments, until public access is restored. The bill would specify that actions taken during the disruption are subject to challenge proceedings, as specified.

This bill would prohibit the legislative body from requiring public comments to be submitted in advance of the meeting and would specify that the legislative body must provide an opportunity for the public to address the legislative body and offer comment in real time. The bill would prohibit the legislative body from closing the public comment period and the opportunity to register to provide public comment, until the public comment period has elapsed or until a reasonable amount of time has elapsed, as specified. When there is a continuing state of emergency, or when state or local officials have imposed or recommended measures to promote social distancing, the bill would require a legislative body to make specified findings not later than 30 days after the first teleconferenced meeting pursuant to these provisions, and to make those findings every 30 days thereafter, in order to continue to meet under these abbreviated teleconferencing procedures.

Existing law prohibits a legislative body from requiring, as a condition to attend a meeting, a person to register the person's name, or to provide other information, or to fulfill any condition precedent to the person's attendance.

This bill would exclude from that prohibition, a registration requirement imposed by a third-party internet website or other online platform not under the control of the legislative body.

(2) Existing law, the Bagley-Keene Open Meeting Act, requires, with specified exceptions, that all meetings of a state body be open and public and all persons be permitted to attend any meeting of a state body. The act requires at least one member of the state body to be physically present at the location specified in the notice of the meeting.

The Governor's Executive Order No. N-29-20 suspends the requirements of the Bagley-Keene Open Meeting Act for teleconferencing during the COVID-19 pandemic, provided that notice and accessibility requirements are met, the public members are allowed to observe and address the state body at the meeting, and that a state body has a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, as specified.

This bill, until January 31, 2022, would authorize, subject to specified notice and accessibility requirements, a state body to hold public meetings through teleconferencing and to make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the state body. With respect to a state body holding a public meeting pursuant to these provisions, the bill would suspend certain requirements of existing law, including the requirements that each teleconference location be accessible to the public and that members of the public be able to address the state body at each teleconference location. Under the bill, a state body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically would satisfy any requirement that the state body allow members of the public to attend the meeting and offer public comment. The bill would require that each state body that holds a meeting through teleconferencing provide notice of the meeting, and post the agenda, as provided. The bill would urge state bodies utilizing these teleconferencing procedures in the bill to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to existing law, as provided.

(3) Existing law establishes the various campuses of the California State University under the administration of the Trustees of the California State University, and authorizes the establishment of student body organizations in

connection with the operations of California State University campuses.

The Gloria Romero Open Meetings Act of 2000 generally requires a legislative body, as defined, of a student body organization to conduct its business in a meeting that is open and public. The act authorizes the legislative body to use teleconferencing, as defined, for the benefit of the public and the legislative body in connection with any meeting or proceeding authorized by law.

This bill, until January 31, 2022, would authorize, subject to specified notice and accessibility requirements, a legislative body, as defined for purposes of the act, to hold public meetings through teleconferencing and to make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the legislative body. With respect to a legislative body holding a public meeting pursuant to these provisions, the bill would suspend certain requirements of existing law, including the requirements that each teleconference location be accessible to the public and that members of the public be able to address the legislative body at each teleconference location. Under the bill, a legislative body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically would satisfy any requirement that the legislative body allow members of the public to attend the meeting and offer public comment. The bill would require that each legislative body that holds a meeting through teleconferencing provide notice of the meeting, and post the agenda, as provided. The bill would urge legislative bodies utilizing these teleconferencing procedures in the bill to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to existing law, as provided.

(4) This bill would declare the Legislature's intent, consistent with the Governor's Executive Order No. N-29-20, to improve and enhance public access to state and local agency meetings during the COVID-19 pandemic and future emergencies by allowing broader access through teleconferencing options.

(5) This bill would incorporate additional changes to Section 54953 of the Government Code proposed by AB 339 to be operative only if this bill and AB 339 are enacted and this bill is enacted last.

(6) The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

(7) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(8) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 89305.6 is added to the Education Code, to read:

89305.6. (a) Notwithstanding any other provision of this article, and subject to the notice and accessibility requirements in subdivisions (d) and (e), a legislative body may hold public meetings through teleconferencing and make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the legislative body.

(b) (1) For a legislative body holding a public meeting through teleconferencing pursuant to this section, all requirements in this article requiring the physical presence of members, the clerk or other personnel of the legislative body, or the public, as a condition of participation in or quorum for a public meeting, are hereby suspended.

(2) For a legislative body holding a public meeting through teleconferencing pursuant to this section, all of the following requirements in this article are suspended:

(A) Each teleconference location from which a member will be participating in a public meeting or proceeding be identified in the notice and agenda of the public meeting or proceeding.

(B) Each teleconference location be accessible to the public.

(C) Members of the public may address the legislative body at each teleconference conference location.

(D) Post agendas at all teleconference locations.

(E) At least one member of the legislative body be physically present at the location specified in the notice of the meeting.

(c) A legislative body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with the notice and accessibility requirements in subdivisions (d) and (e), shall have satisfied any requirement that the legislative body allow members of the public to attend the meeting and offer public comment. A legislative body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

(d) If a legislative body holds a meeting through teleconferencing pursuant to this section and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the legislative body shall also do both of the following:

(1) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and resolving any doubt whatsoever in favor of accessibility.

(2) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to paragraph (2) of subdivision (e).

(e) Except to the extent this section provides otherwise, each legislative body that holds a meeting through teleconferencing pursuant to this section shall do both of the following:

(1) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by this article, and using the means otherwise prescribed by this article, as applicable.

(2) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in the means of public observation and comment, or any instance prior to the effective date of this section in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of the means of public observation and comment, a legislative body may satisfy this requirement by advertising the means of public observation and comment using the most rapid means of communication available at the time. Advertising the means of public observation and comment using the most rapid means of communication available at the time shall include, but need not be limited to, posting such means on the legislative body's internet website.

(f) All legislative bodies utilizing the teleconferencing procedures in this section are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the otherwise applicable provisions of this article, in order to maximize transparency and provide the public access to legislative body meetings.

(g) This section shall remain in effect only until January 31, 2022, and as of that date is repealed.

SEC. 2. Section 11133 is added to the Government Code, to read:

11133. (a) Notwithstanding any other provision of this article, and subject to the notice and accessibility requirements in subdivisions (d) and (e), a state body may hold public meetings through teleconferencing and make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the state body.

(b) (1) For a state body holding a public meeting through teleconferencing pursuant to this section, all requirements in this article requiring the physical presence of members, the clerk or other personnel of the state body, or the public, as a condition of participation in or quorum for a public meeting, are hereby suspended.

(2) For a state body holding a public meeting through teleconferencing pursuant to this section, all of the following requirements in this article are suspended:

(A) Each teleconference location from which a member will be participating in a public meeting or proceeding be identified in the notice and agenda of the public meeting or proceeding.

(B) Each teleconference location be accessible to the public.

(C) Members of the public may address the state body at each teleconference conference location.

(D) Post agendas at all teleconference locations.

(E) At least one member of the state body be physically present at the location specified in the notice of the meeting.

(c) A state body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with the notice and accessibility requirements in subdivisions (d) and (e), shall have satisfied any requirement that the state body allow members of the public to attend the meeting and offer public comment. A state body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

(d) If a state body holds a meeting through teleconferencing pursuant to this section and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the state body shall also do both of the following:

(1) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and resolving any doubt whatsoever in favor of accessibility.

(2) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to paragraph (2) of subdivision (e).

(e) Except to the extent this section provides otherwise, each state body that holds a meeting through teleconferencing pursuant to this section shall do both of the following:

(1) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by this article, and using the means otherwise prescribed by this article, as applicable.

(2) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in the means of public observation and comment, or any instance prior to the effective date of this section in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of the means of public observation and comment, a state body may satisfy this requirement by advertising the means of public observation and comment using the most rapid means of communication available at the time. Advertising the means of public observation and comment using the most rapid means of communication available at the time shall include, but need not be limited to, posting such means on the state body's internet website.

(f) All state bodies utilizing the teleconferencing procedures in this section are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the otherwise applicable provisions of this article, in order to maximize transparency and provide the public access to state body meetings.

(g) This section shall remain in effect only until January 31, 2022, and as of that date is repealed.

SEC. 3. Section 54953 of the Government Code is amended to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all

otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivisions (d) and (e). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) (1) A local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:

(A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

(B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:

(A) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(B) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3. In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(C) The legislative body shall conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body of a local agency.

(D) In the event of a disruption which prevents the public agency from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments using the call-in option or internet-based service option, the body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption which prevents the public agency from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(G) (i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (F), to provide public comment until that timed public comment period has elapsed.

(ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (F), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (F), until the timed general public comment period has elapsed.

(3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(ii) State or local officials continue to impose or recommend measures to promote social distancing.

(4) For the purposes of this subdivision, "state of emergency" means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

(f) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 3.1. Section 54953 of the Government Code is amended to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency in person, except as otherwise provided in this chapter. Local agencies shall conduct meetings subject to this chapter consistent with applicable state and federal civil rights laws, including, but not limited to, any applicable language access and other nondiscrimination obligations.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivisions (d) and (e). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) (1) A local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:

(A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

(B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:

(A) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(B) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3. In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(C) The legislative body shall conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body of a local agency.

(D) In the event of a disruption which prevents the public agency from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments using the call-in option or internet-based service option, the body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption which prevents the public agency from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(G) (i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (F), to provide public comment until that timed public comment period has elapsed.

(ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (F), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (F), until the timed general public comment period has elapsed.

(3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(ii) State or local officials continue to impose or recommend measures to promote social distancing.

(4) For the purposes of this subdivision, "state of emergency" means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

(f) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 4. Section 54953 is added to the Government Code, to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5

(commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) This section shall become operative January 1, 2024.

SEC. 4.1. Section 54953 is added to the Government Code, to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, in person except as otherwise provided in this chapter. Local agencies shall conduct meetings subject to this chapter consistent with applicable state and federal civil rights laws, including, but not limited to, any applicable language access and other nondiscrimination obligations.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) This section shall become operative January 1, 2024.

SEC. 5. Sections 3.1 and 4.1 of this bill incorporate amendments to Section 54953 of the Government Code proposed by both this bill and Assembly Bill 339. Those sections of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2022, but this bill becomes operative first, (2) each bill amends Section 54953 of the Government Code, and (3) this bill is enacted after Assembly Bill 339, in which case Section 54953 of the Government Code, as amended by Sections 3 and 4 of this bill, shall remain operative only until the operative date of Assembly Bill 339, at which time Sections 3.1 and 4.1 of this bill shall become operative.

SEC. 6. It is the intent of the Legislature in enacting this act to improve and enhance public access to state and local agency meetings during the COVID-19 pandemic and future applicable emergencies, by allowing broader access through teleconferencing options consistent with the Governor's Executive Order No. N-29-20 dated March 17, 2020, permitting expanded use of teleconferencing during the COVID-19 pandemic.

SEC. 7. The Legislature finds and declares that Sections 3 and 4 of this act, which amend, repeal, and add Section 54953 of the Government Code, further, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

This act is necessary to ensure minimum standards for public participation and notice requirements allowing for greater public participation in teleconference meetings during applicable emergencies.

SEC. 8. (a) The Legislature finds and declares that during the COVID-19 public health emergency, certain requirements of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) were suspended by Executive Order N-29-20. Audio and video teleconference were widely used to conduct public meetings in lieu of physical location meetings, and public meetings conducted by teleconference during the COVID-19 public health emergency have been productive, have increased public participation by all members of the public regardless of their location in the state and ability to travel to physical meeting locations, have protected the health and safety of civil servants and the public, and have reduced travel costs incurred by members of state bodies and reduced work hours spent traveling to and from meetings.

(b) The Legislature finds and declares that Section 1 of this act, which adds and repeals Section 89305.6 of the Education Code, Section 2 of this act, which adds and repeals Section 11133 of the Government Code, and Sections 3 and 4 of this act, which amend, repeal, and add Section 54953 of the Government Code, all increase and potentially limit the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

(1) By removing the requirement that public meetings be conducted at a primary physical location with a quorum of members present, this act protects the health and safety of civil servants and the public and does not preference the experience of members of the public who might be able to attend a meeting in a physical location over members of the public who cannot travel or attend that meeting in a physical location.

(2) By removing the requirement for agendas to be placed at the location of each public official participating in a public meeting remotely, including from the member's private home or hotel room, this act protects the personal, private information of public officials and their families while preserving the public's right to access information concerning the conduct of the people's business.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that state and local agencies can continue holding public meetings while providing essential services like water, power, and fire protection to their constituents during public health, wildfire, or other states of emergencies, it is necessary that this act take effect immediately.

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

EXECUTIVE ORDER N-1-22

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS on March 12, 2021, I issued Executive Order N-25-20, paragraph 11, and on March 17, 2020, I issued Executive Order N-29-20, paragraph 3, waiving certain requirements that public meetings of state bodies occur in-person; and

WHEREAS on June 11, 2021, I issued Executive Order N-08-21 to roll back certain provisions of my COVID-19-related Executive Orders and to clarify that other provisions remained necessary to help California respond to, recover from, and mitigate the impacts of the COVID-19 pandemic; and

WHEREAS paragraph 42 of Executive Order N-08-21 specified that the waiver of requirements that public meetings of state bodies occur in-person would be valid through September 30, 2021; and

WHEREAS on September 16, 2021, I signed into law Assembly Bill 361 (AB 361), which amended the Government Code and Education Code to provide additional flexibility for state bodies to conduct public meetings via teleconference through January 31, 2022; and

WHEREAS since Thanksgiving, the statewide seven-day average case rate has increased by 805% and the number of COVID-19 hospitalized patients has increased by 154%; and

WHEREAS this surge is being driven by the recent emergence of the Omicron variant, which has recently been estimated to account for approximately 70% of cases sequenced nationally; and

WHEREAS early data suggest that the Omicron variant is more transmissible than the Delta variant; and

WHEREAS requiring large numbers of individuals to gather, and potentially travel long distances, for in-person public meetings could potentially, and unnecessarily, expose numerous people to COVID-19, further contribute to the ongoing surge in cases caused by the Omicron variant, compound disruptions to our economy, and undermine public health measures during the current State of Emergency; and

WHEREAS when the Legislature considered AB 361 this past fall, the Omicron variant had not emerged, and the virus had not demonstrated the ability to evade immunity; and

WHEREAS in light of the present surge in cases due to the Omicron variant, and to protect the public health and safety, it is necessary to temporarily extend the flexibilities for state bodies to conduct teleconferences under AB 361 beyond January 31, 2022, to provide state bodies the option of conducting public meetings remotely to reduce the risk of in-person exposure to members of the staff body, staff, and members of the public; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with the statutes specified in this Order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, and in particular, Government Code sections 8567, 8571, and 8627 do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

1. The sunset dates in Education Code section 89305.6, subdivision (g), and Government Code section 11133, subdivision (g), are suspended until March 31, 2022.

2. This Order shall expire at 11:59 p.m. on April 1, 2022.

I FURTHER DIRECT that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 5th day of January 2022.

GAVIN NEWSOM
Governor of California

ATTEST:

SHIRLEY WEBER, PH.D.
Secretary of State

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Bill Peake, Mayor
MEETING DATE:	March 2, 2022
SUBJECT:	PG Hotel Homekey Project ***This item was continued from the February 16, 2022 meeting.***
CEQA:	Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Direct City Manager to begin public outreach on a potential Homekey project no later than March 16, 2022.

DISCUSSION

INTRODUCTION

On January 19, 2022, Council authorized an application to the CA Department of Housing and Community Development (HCD) for up to $15,000,000 for the conversion of a hotel located in Pacific Grove into a Homekey project. The application was subsequently filed with HCD.

Council also authorized the City Manager to fund, acquire, rehabilitate, and operate (with partners) the hotel located in Pacific Grove Homekey project.

DISCUSSION

Our community has a decades long history of welcoming residents in need. They include: The Bridge Restoration Ministry (addictions), Gateway Center (intellectual disabilities), Vista Point Apartments (low-income seniors), and New Start Recovery Solutions – formerly Beacon House (addictions). The addition of a Homekey project to help those experiencing homelessness, including youth and those with disabilities is in keeping with this tradition of helping others.

As with any new facility or program, Council and the community should understand how the program works and what is city government's role. A sound public outreach program could answer questions and allay concerns including:

City responsibilities

a. What does the state require of the city for the life of this 55-year project?
b. What responsibilities will the city have in its partnership with Shangri La Industries?
c. What responsibilities will the city have in its partnership with Step Up Second Street?

Finances

d. What is the budget and funding sources for the first 5 years (acquisition, rehabilitation, operation, and resident supportive services)?
e. If funding sources decline after 5 years, what is the financial backstop for operation and resident supportive services expenses?
f. What is the expected municipal tax loss?

Neighborhood

g. Will this program attract more homeless people than can be housed?
h. Could local drug use or crime increase and how would that be prevented?
i. What assurance exists that the site will continue to be well maintained and attractive?

Residents

j. Will locals be given priority to rent?
k. Will on site supportive services for residents be available round the clock?
l. Will supportive services include transportation to meet needs not available nearby?
m. What is the quota system for categories of residents?
n. Will residents include families?

OPTIONS

N/A

FINANCIAL IMPACT:

There is no fiscal impact in the writing of this agenda report.

GOAL ALIGNMENT: Transparency, Accountability and Communication: Implement programs, processes, revisions, and training to improve and advance the City's efforts.

Attachments

Summary

Letter of Operating Support

Mayor PPT

Staff PPT

SLI PPT

Homekey Summary (auto populated from Award, Match and Revenue worksheet)					
Maximum Homekey Award		**Applicant Requested Homekey Award**		**Lesser of Maximum and Requested Award**	
Capital Baseline Award	$8,800,000.00	Capital Baseline Award	$8,800,000.00	Capital Baseline Award	$8,800,000.00
Additional Contribution	$4,900,000.00	Additional Contribution	$4,900,000.00	Additional Contribution	$4,900,000.00
Total Maximum Capital Award	**$13,700,000.00**	**Total Requested Capital Award**	**$13,700,000.00**	**Total Capital Award**	**$13,700,000.00**
Operating Subsidy	$1,730,543.23	Operating Subsidy	$1,730,543.23	Operating Subsidy	$1,730,543.23
50% of Relocation Costs	$0.00	50% of Relocation Costs	$0.00	50% of Relocation Costs	$0.00
§207 Bonus Award - app submittal	$490,000.00	§207 Bonus Award - app submittal	$490,000.00	§207 Bonus Award - app submittal	$490,000.00
§207 Bonus Award - full occupancy	$490,000.00	§207 Bonus Award - full occupancy	$490,000.00	§207 Bonus Award-full occupancy	$490,000.00
Total Maximum Homekey Award	**$16,410,543.23**	**Total Requested Homekey Award**	**$16,410,543.23**	**Total Homekey Award**	**$16,410,543.23**

Number of Doors at Acquisition	50	Number of Units Proposed in the Project	50				
Number of At-Risk of Homelessness Units	0	Number of Chronically Homeless Units	24	Number of Homeless Units	15		
Number of Homeless Youth or Youth at Risk of Homelessness Units	10	Number of Assisted Units	49				
Number of Units accessible to persons with mobility disabilities	8	Number of Units accessible to persons with hearing or vision disabilities	5				

Project Overview												
Project Name	Step Up in Pacific Grove, A Shangri-La Community											
Project Address	1111 Lighthouse Avenue				Project City	Pacific Grove		State	CA	Zip	93950	
Project County	Monterey		Is the Project in a Rural Area per H&S Code §50199.21? (use the TCAC Method for determining rural status)									No
Assessor Parcel Number (APN)	006-113-004-000	Enter parcel # 2 APN here	Enter parcel # 3 APN here	Enter parcel # 4 APN here	Enter parcel # 5 APN here	Enter parcel # 6 APN here	Enter parcel # 7 APN here	Enter parcel # 8 APN here	Enter parcel # 9 APN here	Enter parcel # 10 APN here	Enter parcel # 11 APN here	
Assessor Parcel Number (APN)	Enter parcel # 12 APN here	Enter parcel # 13 APN here	Enter parcel # 14 APN here	Enter parcel # 15 APN here	Enter parcel # 16 APN here	Enter parcel # 17 APN here	Enter parcel # 18 APN here	Enter parcel # 19 APN here	Enter parcel # 20 APN here	Enter parcel # 21 APN here	Enter parcel # 22 APN here	
Geographic Set Aside	Central Coast											
Project Type (Transitional Housing and Congregate Shelter are Interim Housing)	Permanent Housing											
Building Type	Motel											

Applicant #1									
Entity name	The City of Pacific Grove					Organization type	City		
Address	300 Forest Avenue			City	Pacific Grove	State	CA	Zip	93950
Auth Rep	Ben Harvey	Title	City Manager	Email	citymanager@cityofpacificgrove.org			Phone	(831) 648-3106
Contact	Anastacia Wyatt	Title	Senior Housing Program Manager	Email	awyatt@cityofpacificgrove.org			Phone	(831) 648-3182
Address	300 Forest Avenue			City	Pacific Grove	State	CA	Zip	93950
File Name	App1 Cert & Legal	See Certifications & Legal worksheet.						Uploaded to HCD?	Yes
File Name	App1 Resolution	Signature required; see Applicant Documents worksheet.						Uploaded to HCD?	Yes
File Name	App1 TIN Form	See Applicant Documents worksheet.						Uploaded to HCD?	Yes
Co-Applicant #1 (if applicable)									
Entity name	Shangri-La Industries, LLC					Organization type	For-profit Corp		
Address	660 South Figueroa Street, Suite 1888			City	Los Angeles	State	CA	Zip	90017
Auth Rep	Andrew Meyers Abdul-Wahab	Title	CEO	Email	ameyers@shangrila.us			Phone	(310) 701-7574
Contact	Cody Holmes	Title	CFO	Email	cholmes@shangrila.us			Phone	(818) 421-4376
Address	660 South Figueroa Street, Suite 1888			City	Los Angeles	State	CA	Zip	90017
File Name	Co-App1 Cert & Legal	See Certifications & Legal worksheet.						Uploaded to HCD?	Yes
File Name	Co-App1 Resolution	Signature required; see Applicant Documents worksheet.						Uploaded to HCD?	Yes
File Name	Co-App1 OrgDoc1, OrgDoc2, etc	See Applicant Documents worksheet.						Uploaded to HCD?	Yes
File Name	Co-App1 OrgChart	See Applicant Documents worksheet.						Uploaded to HCD?	Yes
File Name	Co-App1 Signature Block	See Applicant Documents worksheet.						Uploaded to HCD?	Yes
File Name	Co-App1 Payee Data Record	See Applicant Documents worksheet.						Uploaded to HCD?	Yes
File Name	Co-App1 TIN Form	See Applicant Documents worksheet.						Uploaded to HCD?	N/A
File Name	Co-App1 Cert of Good Standing	Dated 30 days or less from the Application due date.						Uploaded to HCD?	Yes
File Name	Co-App1 Tax-Exempt Status	Evidence of tax-exempt status from IRS and Franchise Tax Board, if applicable						Uploaded to HCD?	N/A
Co-Applicant #2 (if applicable)									
Entity name	Step Up on Second Street, Inc.					Organization type	Non-profit Corp		
Address	1328 Second Street			City	Santa Monica	State	CA	Zip	90401
Auth Rep	Aaron Criswell	Title	Chief Housing Development Officer	Email	acriswell@stepup.org			Phone	(213) 458-6491
Contact	Aaron Criswell	Title	Chief Housing Development Officer	Email	acriswell@stepup.org			Phone	(213) 458-6491
Address	1328 Second Street			City	Santa Monica	State	CA	Zip	90401

THE COALITION
OF HOMELESS SERVICES PROVIDERS

MEMBER AGENCIES

Central Coast Center for Independent Living

Community Homeless Solutions

Community Human Services

CSU Monterey Bay – CHE Center

Dorothy's Place

Housing Authority of the County of Monterey

Housing Resource Center of Monterey County

Interim, Inc.

MidPen Housing Corporation

The Salvation Army - Monterey Peninsula Corps

San Benito County Health & Human Services Agency

Sun Street Centers

Veterans Transition Center

ASSOCIATE MEMBERS

Access Support Network

CHISPA

Downtown Streets Team

Eden Housing

Food Bank for Monterey County

Gathering for Women

Nation's Finest

Neighborhood Services Center of the First United Methodist Church

Victory Mission

YWCA Monterey County

COMMUNITY ADVISORS

City of Marina

City of Salinas

City of Sand City

Monterey County Department of Social Services/CAP

Monterey County Office of Education

January 28, 2022

Gustavo Velasquez, Director
California Department of Housing and Community Development
2020 West El Camino Avenue
Sacramento, CA 95833

RE: Availability Operating Support for Monarch Pacific Grove Development #165

Dear Mr. Velasquez,

The Coalition of Homeless Service Providers is pleased to provide this letter of support to Shangri La Industries, LLC and Step Up to Second Inc. in furtherance of their Homekey development that will utilize the state Homekey Program to acquire and convert the current Monarch Resort into permanent supportive housing. The Coalition of Homeless Services Providers is a 501(c)3 non-profit organization that serves as Monterey and San Benito County's Continuum of Care (CoC) lead. We coordinate services among partner agencies, ensure our community is following federal guidelines, report homeless statistics to federal and state governments, and seek funding for the homeless services community.

The City of Pacific Grove has brought together nonprofit, City and private industry partners to design and implement a permanent supportive housing model targeting persons experiencing chronic homelessness and homeless transitional age youth. The project plan includes leveraging local resources and partnerships for the acquisition and conversion of a hotel site to provide the City's first Housing First program.

To ensure the effective delivery of fifty (50) studio housing units (49 of which will be reserved for the target populations and 1 will be a manager's unit) to those who are in most need, the CoC supports the Monarch Pacific Grove Homekey application and endeavors to commit operating assistance in the range of $200,000 for four years as requested. At this time, the CoC has committed resources to four previously submitted Homekey projects in Monterey County. While these applications have exhausted current County and CoC resources we are planning to review our resources so that we can support all Homekey projects. The CoC is working with the County Department of Social Services and Housing and Community Development Department, to identify the requested funding to support operations. Any additional commitments are subject to approval of the Board of Supervisors and CoC Board. I am pleased to

report that all agencies have expressed support for the Monarch Pacific Grove Homekey application.

Please feel free to contact me at rwilson@chsp.org, should you require any further communications regarding this matter. Thank you for your consideration.

Sincerely,

Roxanne V. Wilson

Executive Officer

PG Hotel Homekey Project

February 16, 2022

Mayor Bill Peake

City of Pacific Grove

PG Hotel Homekey Project

RECOMMENDATION

- Direct City Manager to begin public outreach on a potential Homekey project no later than March 16.

PG Hotel Homekey Project

INTRODUCTION

- January 19 Council authorized an application to HCD for $15,000,000 for a hotel located in PG
- Homekey application was filed January 31.
- Council authorized City Manager to fund, acquire, rehabilitate, and operate with partners.
- Total of 4 Authorizations by Council

PG Hotel Homekey Project

UPDATE

- The original hotel identified is not under consideration.
- A new location is needed.

PG Hotel Homekey Project

Public Outreach needed - <u>City responsibilities</u>

a) What does the state require of the city for the life of this 55-year project?

b) What responsibilities will the city have in its partnership with Shangri La Industries?

c) What responsibilities will the city have in its partnership with Step Up Second Street?

PG Hotel Homekey Project

Public Outreach needed - Finances

a) What is the budget and funding sources for the first 5 years (acquisition, rehabilitation, operation, and resident supportive services)?

b) If funding sources decline after 5 years, what is the financial backstop for operation and resident supportive services expenses?

c) What is the expected municipal tax loss?

PG Hotel Homekey Project

Public Outreach needed - Neighborhood

a) Will this program attract more homeless people than can be housed?

b) Could local drug use or crime increase and how would that be prevented?

c) What assurance exists that the site will continue to be well maintained and attractive?

PG Hotel Homekey Project

Public Outreach needed - Residents

a) Will locals be given priority to rent?

b) Will on site supportive services for residents be available round the clock?

c) Will supportive services include transportation to meet needs not available nearby?

d) What is the quota system for categories of residents?

e) Will residents include families?

End

Project Homekey

February 16, 2022, City Council

City of Pacific Grove

City Council Action

- Direct staff to begin public outreach on Project Homekey no later than March 16th.
- Potential dates available at the Community Center are March 14th or March 28th.

Project Homekey Information

- AN FAQ is posted on the City's Housing Website: https://files.cityofpacificgrove.org/Document_Center/Departments/Community%20Development/Housing/Main%20Page/Memo_Homekey%20FAQS_2-14-22.pdf

- The City will host a public outreach meeting in March to discuss the Homekey program and the development of very-low income housing.

STEP UP IN PACIFIC GROVE

CREATING SOLUTIONS TO HOMELESSNESS

HOMEKEY

- HomeKey = Permanent Supportive Housing (PSH)
- PSH = Solution to Homelessness
- Housing infused with rich supportive services
- Homekey was based in part on work of Step Up and Shangri La (SLI)
  - Over past fifteen years, we've worked to hone the motel conversion to PSH model
  - Step Up and SLI – 8 motel conversions since 2012
  - Poised to do 14 new HomeKey projects
- National experts on motel conversions

OUR HOMEKEY PARTNERSHIP

- City of Pacific Grove – Step Up – Shangri La Industries (SLI) partnership
- Every Homekey project has three components;
  - Acquisition/Rehab
  - Rent Subsidy
  - Services

WHO DOES WHAT?

- Acquisition & Rehab
  - Funded by Homekey and SLI
  - City of PG has no obligation for acqu/rehab costs
- Rental Subsidies
  - All tenants are low income
  - Securing rental subsidies through HomeKey, the county and other sources
- Services Funding
  - Securing funding through Homekey and local sources

WHO DOES WHAT?

- City of Pacific Grove
  - Submitted HomeKey application
  - Support securing rental subsidies from county, HomeKey and other sources
  - Support securing services funding from county, HomeKey and other sources
- Shangri La
  - Secure sale agreement
  - Perform rehab construction to convert motel into studio apartment building
  - Create ownership entity across SLI and Step Up
- Step Up
  - Provide on site supportive services
  - Provide on site property management services

ABOUT STEP UP

- Full service mental health agency since 1984
- Started in Santa Monica, now across CA, GA, TN and FL
- We've housed thousands of chronically homeless individuals
- We have 14 current permanent supportive housing projects
- Recognized as one of the best service providers in the country
- 97% retention rate of individuals who move into housing

THE STEP UP MODEL

- We use Housing First- an evidenced based practice used worldwide
- Three full time supportive services staff on site
  - Dedicated to working solely with tenants on a day-to-day basis
  - That's a 1:16 staff to tenant ratio, about the best in the business
  - Tenants go through a stabilization process in first 3- 12 months
  - Staff assist in transition from sleeping on the floor to sleeping in a bed

SUPPORTIVE SERVICES
ACTIVITIES OF DAILY LIVING AND SERVICE COORDINATION

- Activities of Daily Living (ADL)
  - Cooking, cleaning, shopping, budgeting, etc.
  - Learning or relearning responsibilities of a housed daily life
  - Checking in daily
  - Focus for first 6- 12 months

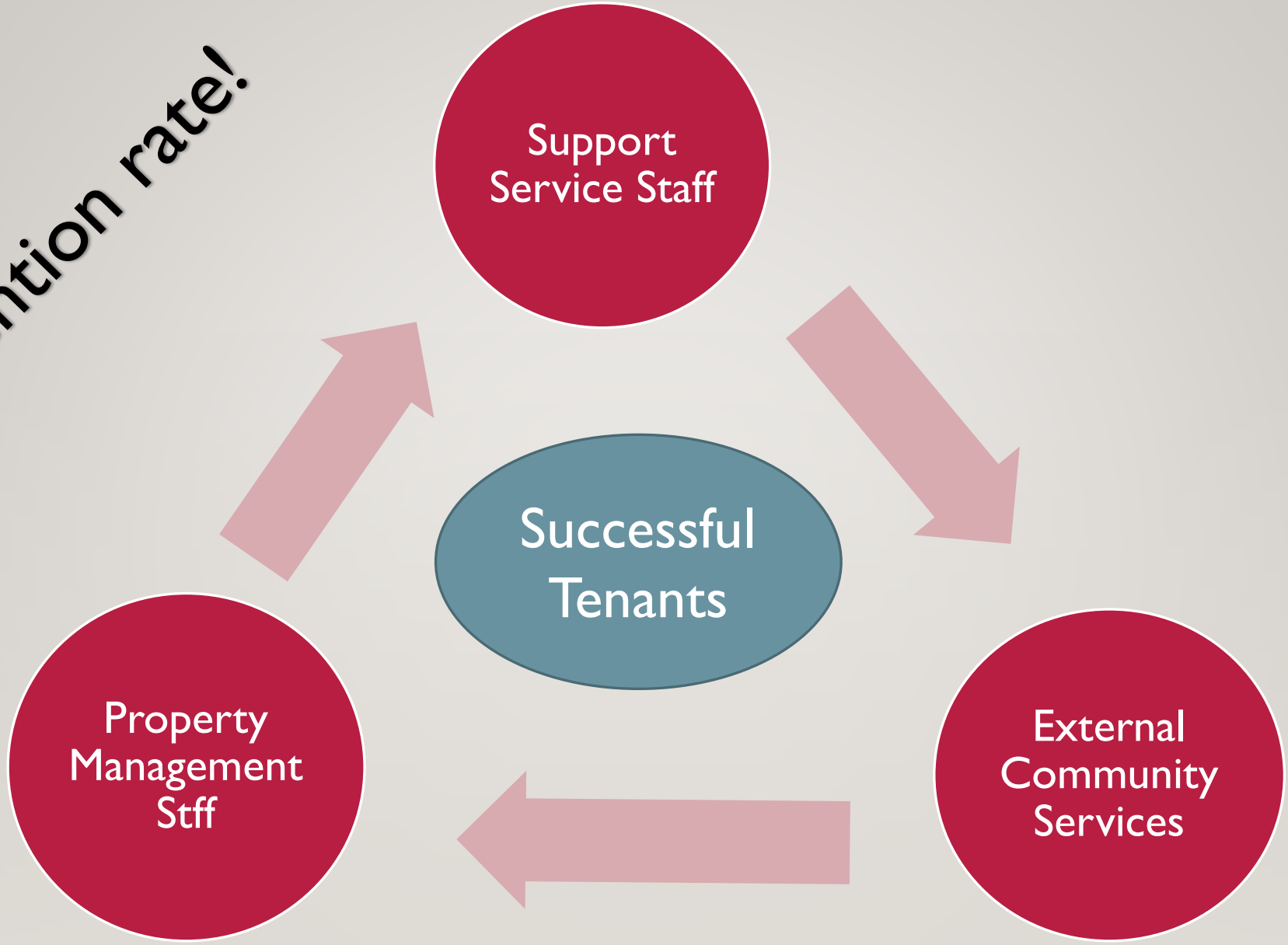
SUPPORTIVE SERVICES
ACTIVITIES OF DAILY LIVING AND SERVICE COORDINATION

- Service Coordination
  - Developing goal plan with each tenant
  - Identify and secure community services to support that plan
  - Aligning all resources to support tenants
  - Transport tenants to appointments as needed
  - 5- 6 days/week coverage

PROPERTY MANAGEMENT SERVICES

- Resident Manager
  - Lives on site
  - Rent collection, maintenance, etc.
  - Eyes and ears on weekends and evening
  - Coordinates with supportive services daily
- Step Up will have four staff on site focused solely on the 49 tenants

97% retention rate!



"In a matter of months, not years, Shangri La and Step Up gave some of the most vulnerable Californians the dignity of a key, a lock a door and a place to call home. This is an example of the kind of innovation we need to take this crisis on."

Governor Newsom on our San Bernardino Homekey project, 2021

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Joyce Halabi, Deputy Public Works Director

MEETING DATE: March 2, 2022

SUBJECT: FY21/22 Street Rehabilitation Project – Ocean View Blvd ***This item was continued from the February 16, 2022 meeting.***

CEQA: Categorical Exemption, CEQA Guidelines Section 15301, Class I, Existing Facilities

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RECOMMENDATION

Authorize an agreement with Monterey Peninsula Engineering for the FY21/22 Street Rehabilitation Project on Ocean View Blvd in an amount not to exceed $1,145,323 plus a 15% contingency.

DISCUSSION

The FY21/22 Street Rehabilitation Project on Ocean View Blvd was approved as part of the FY21/22 Capital Improvement Plan (CIP). This project serves as a vital road rehabilitation project that will address two segments of Ocean View Blvd:

1. Ocean View Blvd from 2nd St to Carmel Ave
2. Ocean View Blvd from 17th St to Sea Palm Ave

These segments were selected for rehabilitation based on a thorough review of the City's Pavement Management Program, existing road conditions, and in-field observations.

Existing Conditions

These heavily trafficked road segments of Ocean View Blvd are currently in "poor" condition with a Pavement Condition Index (PCI) rating ranging from 33-40. Rehabilitation of these segments will vastly improve road conditions and allow for aging stormwater and sewer infrastructure to be addressed prior to road treatments.

Construction documents and specifications were completed in December 2021. On December 13, 2021, the City released a call for bids. 4 bids were received:

Contractor	Bid
Monterey Peninsula Engineering	$1,145,323
Anderson Pacific Engineering Construction Inc.	$1,307,271
Granite Rock Company	$1,398,084
Mckim Corporation	$1,536,301.70

Monterey Peninsula Engineering (MPE) has been qualified as the lowest responsible bidder. MPE has performed numerous street rehabilitation, stormwater and sewer improvement projects for the City and is qualified to perform this work.

Scope of Work

The scope of work for the project includes:

- Approximately 182,000 SF of asphalt concrete (AC) overlay
- Approximately 3,000 SF of pavement patching
- Various stormwater improvements including installation of 184 LF of storm water pipe, reconstruction of 5 catch basins, construction of 2 new catch basins, and 3 storm drain manhole access points
- Reconstruction of 300 SF of sidewalk and 140 LF of curb/gutter
- Reconstruction of 3 curb ramps, construction of 1 new curb ramp
- Thermoplastic pavement markings
- Replacement of 725 LF of sanitary sewer pipe, and
- Rehabilitation of 8 manholes

It is anticipated that construction will be substantially complete before Memorial Day, May 30, 2022.

Additionally, the City has been working closely with California American Water to coordinate vital water main replacements to occur on segments Ocean View Blvd within the project area, between 17th St and Mermaid Ave and 1st St to 11th St, prior to the pavement improvements. Project coordination with California American Water allows for improved long-term pavement preservation.

OPTIONS

1. Authorize an agreement
2. Do not authorize the agreement

FINANCIAL IMPACT:

The proposed construction contract is within the approved project budget. A total budget of $1,576,443 was approved via the FY21/22 CIP and is derived from the General Fund, Road Maintenance and Rehabilitation Account (RMRA)/Senate Bill 1, Measure X, and the Sewer Fund as noted below.

Funding Source	Approved CIP Funding
City of Pacific Grove General Fund	$300,000
RMRA/Senate Bill 1 (SB1)	$310,428
Measure X	$566,015
Sewer Fund	$400,000
Total	$1,576,443

The General Fund allocation will be fully expended first in order to meet Maintenance of Effort (MOE) requirements. It is anticipated that the SB1 allocation will also be fully expended, and project savings will be derived from Measure X and the Sewer Fund.

GOAL ALIGNMENT: City Asset Stewardship: Repair, maintain and improve City assets, including streets, sidewalks, sewer systems, buildings, and parks and trails.

Attachments

Draft Agreement
PPT

CITY OF PACIFIC GROVE
CONSTRUCTION SERVICES AGREEMENT
FY21/22 STREET REHABILITATION PROJECT – OCEAN VIEW BLVD

This CONSTRUCTION SERVICES AGREEMENT ("Agreement"), is made and effective **February 28, 2022,** by and between the City of Pacific Grove, a municipal corporation ("City"), and **Monterey Peninsula Engineering** ("CONTRACTOR"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

   This Agreement shall commence on **February 28, 2022** and shall remain and continue in effect until tasks described herein are completed, but in no event later than **June 30, 2022**, unless sooner terminated pursuant to the provisions of this Agreement.

2. SCOPE OF WORK

   CONTRACTOR shall perform within the time set forth in the project specifications and shall furnish all labor, materials, equipment, tools, utility services, and transportation and perform and complete all work required in connection with the construction of **road rehabilitation, and sewer and stormwater improvements** "Work" for the **FY21/22 Street Rehabilitation Project on Ocean View Blvd** (hereinafter "Project").

   By entering into this Agreement, CONTRACTOR acknowledges that there may be other contractors on the site whose work will be coordinated with that of its own. CONTRACTOR expressly warrants and agrees that it will cooperate with other contractors and will do nothing to delay, hinder, or interfere with the work of other separate contractors, the City, the Construction Manager, the Architect, or utilities. CONTRACTOR also expressly agrees that, in the event its work is hindered, delayed, interfered with, or otherwise affected by a separate contractor, its sole remedy will be a direct action against the separate contractor. To the extent allowed by law, CONTRACTOR will have no remedy, and hereby expressly waives any remedy against the City, the Construction Manager, or the Architect on account of delay, hindrance, interference or other events caused by a separate contractor.

3. PERFORMANCE

   a. CONTRACTOR shall at all times faithfully, competently and to the best of its ability, experience, and talent, perform all tasks described herein. CONTRACTOR shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of CONTRACTOR hereunder in meeting its obligations under this Agreement.

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b. CONTRACTOR shall conform to the rules and regulations pertaining to safety established by the California Division of Industrial Safety. CONTRACTOR further agrees to take all necessary precautions for the safety of its employees and shall comply with all applicable provisions of federal, state and local regulations, ordinances and codes. CONTRACTOR shall be responsible for erecting and properly maintaining at all times as required by the conditions and progress of the work, all necessary safeguards for the protection of workers and the public and shall post danger signs warning against known or reasonably foreseeable or unusual hazards.

c. CONTRACTOR must possess at the time of commencing work and throughout the Project duration, a Contractor's License, issued by the State of California, which is current and in good standing. CONTRACTOR shall ensure that any subcontractor working on the Project possesses at the time of commencing work and throughout the Project duration, a Contractor's License, issued by the State of California, which is current and in good standing.

d. CONTRACTOR shall obtain a valid City Business License and shall maintain said Business License for the term of this Agreement and any extensions.

e. CONTRACTOR shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by CONTRACTOR or in any way affect the performance of its service pursuant to this Agreement. CONTRACTOR shall at all times observe and comply with all such laws and regulations. City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of CONTRACTOR to comply with this Section.

f. CONTRACTOR agrees to comply with all the applicable provisions of Sections 1777.5 and 1777.6 of the Labor Code, which Sections are hereby specifically referred to, incorporated herein by reference and made a part hereof as though set forth at length herein.

g. CONTRACTOR agrees that in the performance of this Agreement or any sub-agreement hereunder, neither CONTRACTOR nor any person acting on CONTRACTOR's behalf shall refuse to employ or refuse to continue in any employment any person on the basis of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sexual preference, sex or age. Harassment in the workplace is not permitted in any form. CONTRACTOR further agrees to comply with all laws with respect to employment when performing this Agreement.

h. CONTRACTOR shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit B attached to and part of this Agreement.

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i. To ensure performance, CONTRACTOR must provide Faithful Performance and Labor and Material Bonds in favor of City, each in the amount of one hundred percent (100%) of the value of the Agreement.

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

4. REGISTRATION REQUIREMENTS

Pursuant to Section 1771.1(a) of the Labor Code:

a. "A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

b. CONTRACTOR must be registered with the Department of Industrial Relations (DIR) of the State of California in order to be eligible to work on public works projects. CONTRACTOR shall ensure registration with the DIR that is active and in good standing.

c. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the DIR pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

d. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the DIR pursuant to Labor Code section 1725.5.

e. This Project is subject to compliance monitoring and enforcement by the DIR.

f. CONTRACTOR is not subject to public works requirements (including registration with the DIR) if the public works project is under $1,000, unless the City knows that

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the same CONTRACTOR will be awarded total project costs in excess of $1,000 for a given year.

5. CONTENTS OF REQUEST FOR PROPOSAL AND PROPOSAL

CONTRACTOR is bound by the contents of City's Request for Proposal on file at the Public Works Department hereto and incorporated herein by this reference, and the contents of the proposal submitted by CONTRACTOR, available on file at the Public Works Department, hereto and incorporated herein by this reference. In the event of conflict, the requirements of City's Request for Proposals and this Agreement shall take precedence over those contained in CONTRACTOR's proposals.

6. CITY MANAGEMENT

Public Works Director shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by CONTRACTOR, but not including the authority to enlarge the Scope of Work or change the compensation due to CONTRACTOR. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Work or change CONTRACTOR's compensation, subject to Section 7 hereof.

7. PAYMENT

a. City agrees to pay CONTRACTOR monthly, in accordance with the bid on file at the Public Works Department attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. **THIS AMOUNT SHALL NOT EXCEED $1,145,323 plus a 15% contingency** which sum shall include all costs, if any, for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

b. The City Manager's contract authority is limited to a total threshold of $40,000, which includes all costs. Contracts, including any contract amendments that exceed the total threshold, require City Council approval. Any contracts, including contract amendments that exceed the total threshold, which do not have City Council approval, shall be void.

c. CONTRACTOR will submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of CONTRACTOR's fees, it shall give written notice to CONTRACTOR within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

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d. Retention of securities: Public Contract Code Section 22300 permits the substitution of securities for any monies withheld by a public agency to ensure performance under a contract, at the request and expense of CONTRACTOR.

e. Final Payment: Final payment, constituting the entire unpaid balance of the Agreement Sum, shall be paid by the City to the CONTRACTOR no sooner than thirty-five (35) days after a Notice of Completion has been recorded, unless otherwise stipulated in the Notice of Completion, provided the work has then been completed, the Agreement fully performed, and a final Certificate for Payment has been issued by the Architect.

8. INSPECTION

City shall at all times have the right to inspect the work and materials. CONTRACTOR shall furnish all reasonable aid and assistance required by City for the proper examination of the work and all parts thereof. Such inspection shall not relieve CONTRACTOR from any obligation to perform said work strictly in accordance with the specifications or any modifications thereof and in compliance with the law.

9. CONTRACTOR'S FAILURE TO PROCURE COMPLETION OF PROJECT

In the event CONTRACTOR fails to furnish tools, equipment, or labor in the necessary quantity or quality, or fails to prosecute the work or any part thereof contemplated by this Agreement in a diligent and workmanlike manner, and if CONTRACTOR for a period of three (3) calendar days after receipt of written demand from City or its designated representative to do so, fails to furnish tools, equipment, or labor in the necessary quantity or quality, and to prosecute its work and all parts thereof in a diligent and workmanlike manner, or after commencing to do so within said three (3) calendar days, fails to continue to do so; then City may exclude the CONTRACTOR from the premises, or any portion thereof, and take possession of said premises or any portion thereof, together with all material and equipment thereon, and may complete the work contemplated by this Agreement or any portion of said work, either by furnishing the tools, equipment, labor or material necessary, or by letting the unfinished portion of said work, or the portion taken over by the City to another contractor or by a combination of such methods. In any event, the procuring of the completion of said work, or the portion thereof taken over by the City, shall be a charge against the CONTRACTOR, and may be deducted from any money due or becoming due to CONTRACTOR from the City, or the CONTRACTOR shall pay the City the amount of said charge, or the portion thereof unsatisfied. The sureties, provided for under this Agreement shall become liable for payment should CONTRACTOR fail to pay in full any said cost incurred by the City.

10. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

a. City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon CONTRACTOR at least thirty (30) days prior written notice. Upon receipt of said notice, CONTRACTOR shall immediately cease all work under this Agreement, unless the notice provides otherwise.

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If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

b. In the event this Agreement is terminated pursuant to this Section, City shall pay to CONTRACTOR the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, CONTRACTOR will submit an invoice to the City pursuant to Section 7.c.

11. DEFAULT OF CONTRACTOR

a. CONTRACTOR's failure to comply with the provisions of this Agreement shall constitute a default. In the event 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 this Agreement immediately by written notice to CONTRACTOR. If such failure by CONTRACTOR to make progress in the performance of work hereunder arises out of causes beyond CONTRACTOR's control, and without fault or negligence of CONTRACTOR, it shall not be considered a default.

b. If the City Manager or designee determines CONTRACTOR is in default in the performance of any of the terms or conditions of this Agreement, they shall cause to be served upon CONTRACTOR a written notice of the default. CONTRACTOR shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event CONTRACTOR fails to cure its default within such period of time, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

12. OWNERSHIP OF DOCUMENTS

a. CONTRACTOR shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. CONTRACTOR shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. CONTRACTOR shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records at CONTRACTORS office; shall permit City to make copies and transcripts there from as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained at the City of Pacific Grove City Hall for a minimum period of three (3) years after receipt of final payment.

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b. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of City and may be used, reused, or otherwise disposed of by City without the permission of CONTRACTOR. With respect to computer files, CONTRACTOR shall make available to City, at City's office and upon reasonable written request by City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

13. RECORD AUDIT

In accordance with Government Code, Section 8546.7, records of both City and CONTRACTOR shall be subject to examination and audit by the Auditor General for a period of three (3) years after final payment.

14. INDEMNIFICATION

CONTRACTOR shall indemnify, defend with legal counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with CONTRACTOR's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole or active negligence or willful misconduct of the City. Should conflict of interest principles preclude a single legal counsel from representing both City and CONTRACTOR, or should City otherwise find CONTRACTOR's legal counsel unacceptable, then CONTRACTOR shall reimburse the City its costs of defense, including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation. The CONTRACTOR shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of the CONTRACTOR's negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

CONTRACTOR obligations under this section apply regardless of whether such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of City under any provision of this agreement, CONTRACTOR shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where

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City's active negligence accounts for only a percentage of the liability involved, the obligation of CONTRACTOR will be for that entire portion or percentage of liability not attributable to the active negligence of City.

15. INSURANCE

Prior to the beginning of and throughout the duration of the Work, CONTRACTOR and its subcontractors shall maintain insurance in conformance with the requirements set forth below. CONTRACTOR will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth herein, CONTRACTOR agrees to amend, supplement or endorse the existing coverage to do so.

CONTRACTOR acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to CONTRACTOR or its subcontractors in excess of the limits and coverage identified in this Agreement and which is applicable to a given loss, claim or demand, will be equally available to City.

16. INDEPENDENT CONTRACTOR

a. CONTRACTOR is and shall at all times remain as to City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of CONTRACTOR shall at all times be under CONTRACTOR's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of CONTRACTOR or any of CONTRACTOR's officers, employees, or agents, except as set forth in this Agreement. CONTRACTOR shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. CONTRACTOR shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner.

b. No employee benefits shall be available to CONTRACTOR in connection with the performance of this Agreement. Except for the fees paid to CONTRACTOR as provided in the Agreement, City shall not pay salaries, wages, or other compensation to CONTRACTOR for performing services hereunder for City. City shall not be liable for compensation or indemnification to CONTRACTOR for injury or sickness arising out of performing services hereunder.

c. Any and all employees or sub-contractors of CONTRACTOR under this Agreement, while engaged in the performance of any work or services required by CONTRACTOR under this Agreement, shall be considered employees or sub-contractors of CONTRACTOR only and not of city. Any and all claims that may arise under the Workers' Compensation Act on behalf of said employees or sub-contractors, while so engaged and all claims made by a third party as a consequence of any negligent act or

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omission on the part of the CONTRACTOR's employees or sub-contractors, while so engaged in any of the work or services provided for or rendered herein shall not be City's obligation.

17. PREVAILING WAGE

Wage rates for this Project shall be in accordance with the "General Wage Determination Made by the Director of Industrial Relations Pursuant to California Labor Code, Part 7, Chapter 1, Article 2, Sections 1770, 1773 and 1773.1", for Monterey County. Wage rates shall conform with those posted by Contractor and at the Project site. The following Labor Code sections are hereby referenced and made a part of this Agreement:

a. Section 1775 - Penalty for Failure to Comply with Prevailing Wage Rates.
b. Section 1777.4 - Apprenticeship Requirements.
c. Section 1777.5 - Apprenticeship Requirements.
d. Section 1813 - Penalty for Failure to Pay Overtime.
e. Sections 1810 and 1811 - Working Hour Restrictions.
f. Section 1775 - Payroll Records.
g. Section 1773.8 - Travel and Subsistence Pay.
h. Section 1778 – Kickbacks.
i. Section 1779, 1780 – Acceptance of Fees.
j. Section 1771.4 – Certified Payroll.

Pursuant to the Labor Code, City is required to withhold from any progress payments owed to a contractor any amount that has been forfeited as penalties, or as wages owed to employees who have not been paid the prevailing wage for work performed. This allows the intervention by the Division of Labor Standards Enforcement, which is headed by the State Labor Commission, in a contractor's lawsuit for recovery of amounts withheld by an awarding body. All withheld wages and penalties will be transferred to the Labor Commissioner for disbursement in those cases where a contractor fails to bring a lawsuit for amounts withheld within ninety (90) days after completion of the public works contract and formal acceptance of the job by the awarding body. The Labor Commissioner is then permitted to intervene in any lawsuit brought by the contractor against an awarding body for recovery of amounts withheld.

18. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for Work to be performed in connection with the Project performed under this Agreement.

19. CONFLICT OF INTEREST

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CONTRACTOR shall at all times avoid conflicts of interest, or the appearance of conflicts of interest, in the performance of this Agreement.

CONTRACTOR covenants that neither they nor any officer or principal of their firm have any interest in, or shall acquire any interest, directly nor indirectly, which will conflict in any manner or degree with the performance of their services hereunder. CONTRACTOR further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent, or sub-contractor. CONTRACTOR further covenants that CONTRACTOR has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area and further covenants and agrees that CONTRACTOR and/or its sub-contractors shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area prior to the completion of the work under this Agreement.

If City determines CONTRACTOR comes within the definition of Contractor under the Political Reform Act (Government Code §87100 et seq.), CONTRACTOR shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with City disclosing CONTRACTOR's and/or such other person's financial interests.

20. NO WAIVER OF BREACH/TIME

The waiver by City of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement. Time is of the essence in carrying out the duties hereunder.

21. CONFIDENTIAL INFORMATION/RELEASE OF INFORMATION

a. All information gained by CONTRACTOR in performance of this Agreement shall be considered confidential and shall not be released by CONTRACTOR without City's prior written authorization. CONTRACTOR, its officers, employees, agents, or sub-contractors, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided CONTRACTOR gives City notice of such court order or subpoena.

b. CONTRACTOR shall promptly notify City should CONTRACTOR, its officers, employees, agents, or sub-contractors 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 person or

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party regarding this Agreement and the work performed there under or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent CONTRACTOR and/or be present at any deposition, hearing, or similar proceeding. CONTRACTOR agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by CONTRACTOR. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

22. SUBSURFACE HAZARDOUS MATERIALS

a. In the event trenches or other excavations extend deeper than four (4) feet below the surface, CONTRACTOR shall promptly, and before the following conditions are disturbed, notify the City in writing of any:

   i. Material that CONTRACTOR believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II or Class III disposal site in accordance with the provisions of existing law.

   ii. Subsurface or latent physical conditions at the site differing from those indicated.

   iii. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the Work or the character provided for in the Agreement.

b. Upon receipt of said notification, City will investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the CONTRACTOR's cost of or the time required for performance of any part of the work, the City will issue a change order under the procedures described in the Specifications.

c. In the event a dispute arises between the City and CONTRACTOR whether the conditions materially differ, or involve hazardous waste or cause a decrease or increase in the CONTRACTOR's cost of or time required for performance of any part of the work, CONTRACTOR shall not be excused from any scheduled completion date provided for by the Agreement, but shall proceed with all work to be performed under the Agreement. CONTRACTOR shall retain any and all rights provided either by Agreement or by law which pertain to the resolution of disputes and protests between the contracting parties.

23. LIQUIDATED DAMAGES

Pursuant to Government Code Section 53069.85, if Work is not completed within the Agreement time or in strict accordance with the Project Schedule, it is understood, acknowledged and agreed that the City will suffer damage. It is therefore agreed that the

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CONTRACTOR shall pay to the City the $1,000 or each and every calendar day of delay beyond the Agreement Time, or beyond any completion schedule, construction schedule or Project milestones established in or pursuant to the Project Schedule, or beyond the time indicated in the Project Schedule for any individual Agreement activity.

CONTRACTOR expressly understands, acknowledges and agrees that such liquidated damages can and shall be imposed if the CONTRACTOR does not meet each and every aspect of any activity schedule, completion schedule, construction schedule or Project milestones established in or pursuant to the Project Schedule. If the City accepts work or makes any payment under this Agreement after a default by reason of delays, the acceptance of such work and/or payment(s) shall in no respect constitute a waiver or modification of any provisions regarding Agreement Time, a completion schedule, the Project Schedule or the accrual of liquidated damages. In the event the same is not paid, the CONTRACTOR further agrees that City may deduct the amount thereof from any money due or that may become due the CONTRACTOR under the Agreement. This Section does not exclude recovery of damages under provisions of the Agreement Documents and is expressly in addition to the City's ability to seek other damages.

Parties will meet and agree on a contract schedule. Liquidated damages may be assessed if any individual activity duration exceeds the time indicated for that activity on the Project Construction Schedule.

24. WARRANTY

In addition to any and all warranties provided or implied by law or public policy, CONTRACTOR warrants that all Services (including but not limited to all equipment and materials supplied in connection therewith) shall be free from defects in design and workmanship, and that CONTRACTOR shall perform all Services in accordance with all applicable engineering, construction and other codes and standards, and with the degree of high professional skill normally exercised by or expected from recognized professional firms engaged in the practice of supplying services of a nature similar to the Services in question. CONTRACTOR further warrants that, in addition to furnishing all tools, equipment and supplies customarily required for performance of work, CONTRACTOR shall furnish personnel with the training, experience and physical ability, as well as adequate supervision, required to perform the Services in accordance with the preceding standards and the other requirements of this Agreement. In addition to all other rights and remedies which City may have, City shall have the right to require, and CONTRACTOR shall be obligated at its own expense to perform, all further services which may be required to correct any deficiencies which result from CONTRACTOR's failure to perform any Services in accordance with the standards required by this Agreement. Moreover, if, during the term of this Agreement (or during the one (1) year period following the term hereof), any equipment, goods or other materials or Services used or provided by CONTRACTOR under this Agreement fail due to defects in material and/or workmanship or other breach of this Agreement, CONTRACTOR shall, upon any reasonable notice from City, replace or repair the same to City's satisfaction. Unless otherwise expressly permitted, all materials

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and supplies to be used by CONTRACTOR in the performance of the Services shall be new and best of kind.

CONTRACTOR hereby assigns to City all additional warranties, extended warranties, or benefits like warranties, such as insurance, provided by or reasonably obtainable from suppliers of equipment and material used in the Services.

25. CLAIM PROCEDURES UNDER PUBLIC CONTRACT CODE SECTION 9204

CONTRACTOR shall comply with the procedure set forth in Public Contracts Code section 9204 for any claim, as that term is defined therein, for one or more of the following: 1) a time extension, including, without limitation, for relief from damages or penalties for delay, 2) payment of money or damages arising from work done pursuant to this Agreement, and/or 3) payment of an amount disputed by the City under this Agreement.

26. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City: Daniel Gho, Public Works Director
City of Pacific Grove
300 Forest Avenue
Pacific Grove, CA 93950

To CONTRACTOR: Peter J Taormina, Manager
Monterey Peninsula Engineering
PO BOX 400
Marina, CA 93933

27. THIRD PARTY BENEFICIARIES

Nothing contained in this Agreement shall be construed to create, and the parties do not intend to create, any rights in third parties.

28. ASSIGNMENT

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CONTRACTOR shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Subject to the foregoing, all terms of the Agreement will be binding upon, enforceable by and inure to the benefit of the parties and their successors and assigns.

29. GOVERNING LAW

City and CONTRACTOR understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in Monterey County, or the federal district court with jurisdiction over the City. CONTRACTOR agrees not to commence or prosecute any dispute arising out of or in connection with this Agreement other than in the aforementioned courts and irrevocably consents to the exclusive personal jurisdiction and venue of the aforementioned courts.

30. ATTORNEY'S FEES AND COURT VENUE

Should either party to this Agreement bring legal action against the other (formal judicial proceeding, mediation or arbitration) the party prevailing in such action shall be entitled to a reasonable attorney's fee which shall be fixed by the judge, mediator or arbitrator hearing the case, and such fee shall be included in the judgment together with all costs.

31. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of CONTRACTOR warrants and represents that they have the authority to execute this Agreement on behalf of the CONTRACTOR and the authority to bind CONTRACTOR to the performance of its obligations hereunder.

32. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

33. AGREEMENT CONTAINS ALL UNDERSTANDINGS: AMENDMENT

a. This document represents the entire and integrated Agreement between City and CONTRACTOR, and supersedes all prior negotiations, representations and agreements, either written or oral.

b. Any modification or amendment to this Agreement must be in writing.

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c. Neither City nor CONTRACTOR shall be deemed to have waived any obligation of the other, or to have agreed to any modification to this Agreement unless it is in writing, and signed by the party giving the waiver.

34. SEVERABILITY

If any term of this Agreement is held invalid by a court of competent jurisdiction or arbitrator the remainder of this Agreement shall remain in effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF PACIFIC GROVE

By:_____
Public Works Director

Date: _____

By: _____
City Mayor

Date: _____

CONTRACTOR

By:_____
.

Date: _____

By: _____

Date: _____

Approved As To Form: _____
City Attorney

_____
Date

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Exhibit A

Scope of Work/Services

CONTRACTOR shall provide construction services per bid specifications and engineered drawings titled "STREET REHABILITATION PROJECT OCEAN VIEW BOULEVARD BETWEEN 2ND & CARMEL AVE AND BETWEEN 17TH ST & SEAL PALM AVE" prepared by Neill Engineers Corp, dated December 13, 2021. The bid specifications and engineered drawings are incorporated herein by reference and are made an integral part of this Agreement.

Contractor and /or sub-contractors shall provide the City of Pacific Grove's project manager daily field observation/inspection reports and testing results. All areas of project requiring compaction testing shall be done in conformance with job specifications.

The work, as indicated by the plans shall be done in accordance with the special provisions/technical specifications as designated and engineered by Neill Engineers Corp, in accordance with the current edition of Standard Specifications of the State of California Department of Transportation.

Contractor shall remove of all existing unused soils, base and asphalt materials and properly dispose said materials at a State approved disposal site.

Contractor shall submit a traffic control plan to the City's Traffic Engineer for approval no less than 10 days prior to the commencement of work.

Contractor shall notice all residents and business properties that abut streets of this project and all residents and business within 300 feet of this project with dates, times, and type of work to be performed no less than 10 days prior to commencement of any work.

All work as outlined in this contract, project specifications and engineered plans shall be performed in a workman like manner and in accordance with industry standards.

All Environmental and water pollution prevention requirements as specified in the plans and specification shall be met and constantly monitored throughout the project.

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Exhibit B

Insurance Specifications

General liability insurance. CONTRACTOR shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than $1,000,000 per occurrence, $2,000,000 general aggregate, for bodily injury, personal injury, and property damage, and a $2,000,000 completed operations aggregate. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile liability insurance. CONTRACTOR shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the CONTRACTOR arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than $1,000,000 combined single limit for each accident.

Workers' compensation 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.

Builder's risk insurance (construction contracts as applicable). Upon commencement of construction and with approval of City, CONTRACTOR shall obtain and maintain builder's risk insurance for the entire duration of the Project until only the City has an insurable interest. The Builder's Risk coverage shall include the coverages as specified below.

The named insureds shall be CONTRACTOR and City, including its officers, officials, employees, and agents. All Subcontractors (excluding those solely responsible for design Work) of any tier and suppliers shall be included as additional insureds as their interests may appear. CONTRACTOR shall not be required to maintain property insurance for any portion of the Project following transfer of control thereof to City. The policy shall contain a provision that all proceeds from the builder's risk policy shall be made payable to the City. The City will act as a fiduciary for all other interests in the Project.

Policy shall be provided for replacement value on an "all risk" basis for the completed value of the project. There shall be no coinsurance penalty or provisional limit provision in any such policy. Policy must include: (1) coverage for any ensuing loss from faulty

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workmanship, Nonconforming Work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project; (4) Ordinance or law coverage for contingent rebuilding, demolition, and increased costs of construction; (5) transit coverage (unless insured by the supplier or receiving contractor), with sub-limits sufficient to insure the full replacement value of any key equipment item; (6) Ocean marine cargo coverage insuring any Project materials or supplies, if applicable; (7) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site or any staging area. Such insurance shall be on a form acceptable to City to ensure adequacy of terms and sublimits and shall be submitted to the City prior to commencement of construction.

1. Other provisions or requirements

Proof of insurance. CONTRACTOR shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by City's risk manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. CONTRACTOR shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by CONTRACTOR, his agents, representatives, employees or subcontractors. CONTRACTOR must maintain general liability and umbrella or excess liability insurance for as long as there is a statutory exposure to completed operations claims. City and its officers, officials, employees, and agents shall continue as additional insureds under such policies.

Primary/noncontributing. Coverage provided by CONTRACTOR shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

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 City, its

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officials, officers, agents, and employees, shall be included as additional insureds under the Products and Completed Operations coverage.

City's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by CONTRACTOR or City will withhold amounts sufficient to pay premium from CONTRACTOR payments. In the alternative, City may cancel this Agreement.

Acceptable insurers. All insurance policies shall be 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 the City's Risk Manager.

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

Enforcement of Agreement provisions (non estoppel). CONTRACTOR acknowledges and agrees that any actual or alleged failure on the part of the City to inform CONTRACTOR of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section 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. If the CONTRACTOR maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Notice of cancellation. CONTRACTOR agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

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Additional insured status. General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass Through Clause. CONTRACTOR agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by CONTRACTOR, provide the same minimum insurance coverage and endorsements required of CONTRACTOR. CONTRACTOR agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. CONTRACTOR agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

City's right to revise requirements. The City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the CONTRACTOR a ninety (90)-day advance written notice of such change. If such change results in substantial additional cost to the CONTRACTOR, the City and CONTRACTOR may renegotiate CONTRACTOR's compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by City.

Timely notice of claims. CONTRACTOR shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from CONTRACTOR's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. CONTRACTOR shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work

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FY21/22 Street Rehabilitation Project Award of Contract

City Council
City of Pacific Grove

February 16, 2022

Joyce Halabi, jhalabi@cityofpacificgrove.org

Recommendation

Authorize an agreement with Monterey Peninsula Engineering for the FY21/22 Street Rehabilitation Project on Ocean View Blvd in an amount not to exceed $1,145,323 plus a 15% contingency.

Background

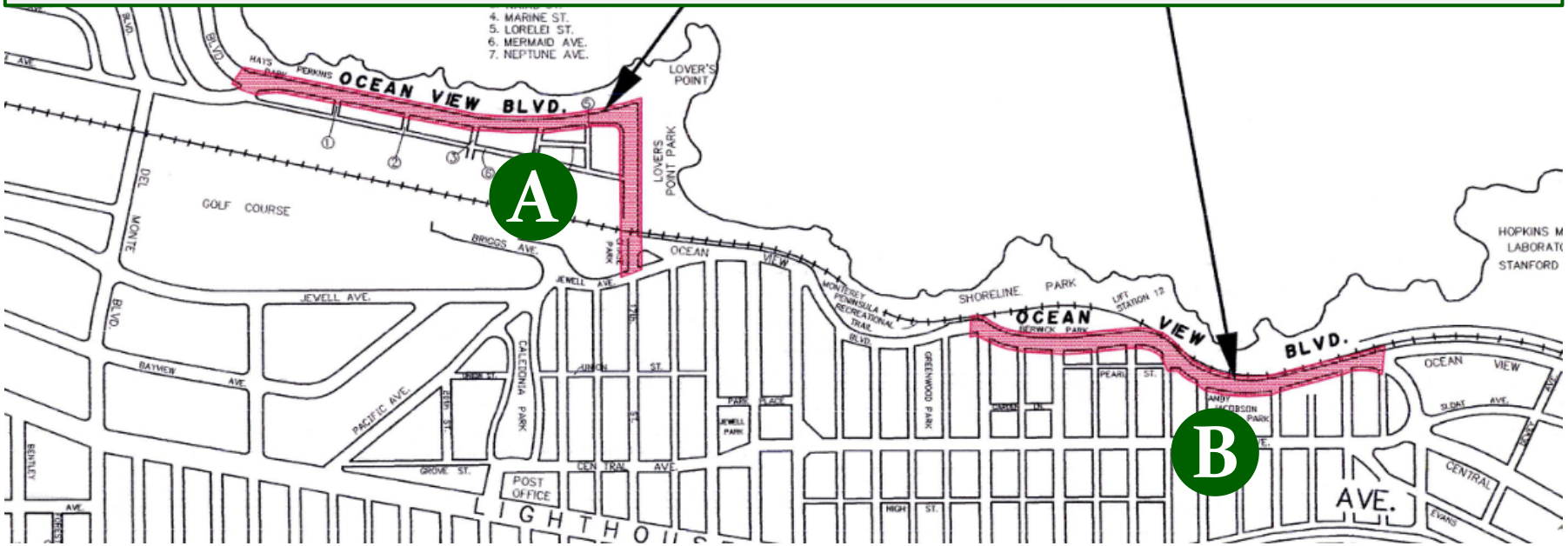
- The FY21/22 Street Rehabilitation Project, addressing segments of Ocean View Blvd, was approved as part of the FY21/22 Capital Improvement Plan (CIP)

- Selected based on review of the Pavement Management Program, existing road conditions and in-field observations.

Project Area

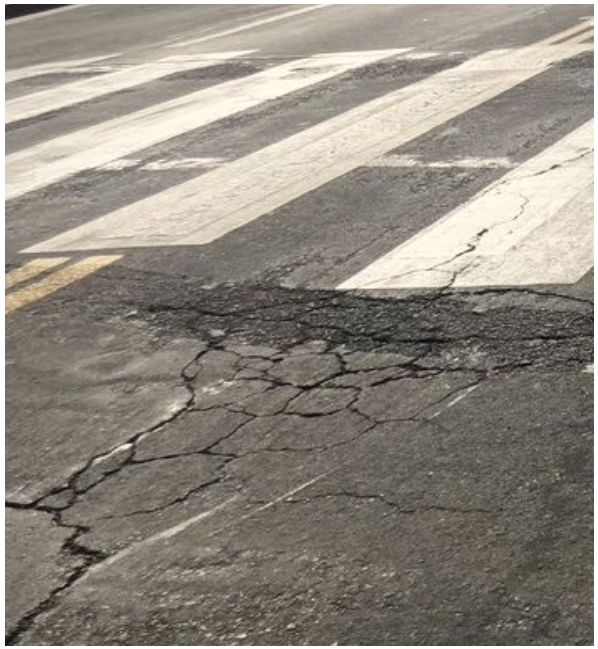
Project will address two segments of Ocean View Blvd (OVB):

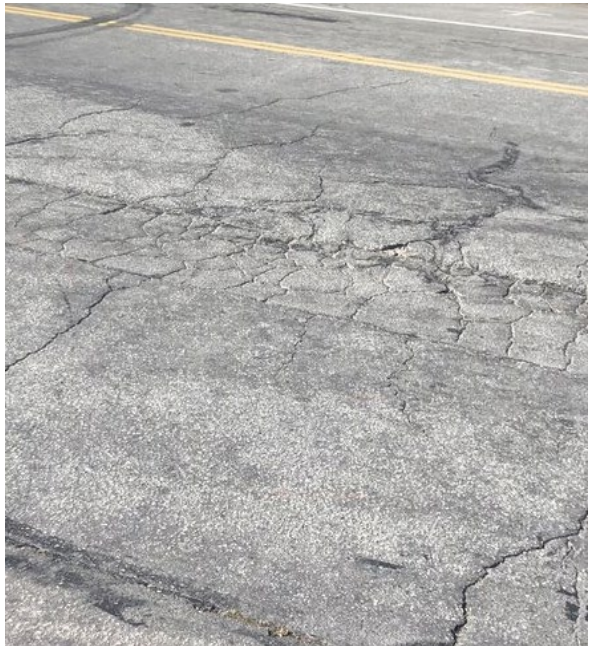
OVB from 17th St to Sea Palm (A) OVB from 2nd to Carmel (B)



Existing Conditions

Both segments are in “Poor” Condition with a PCI ranging from 33-40





Project will significantly improve pavement conditions & underground infrastructure

Scope of Work

- ~182,000 SF of asphalt concrete (AC) overlay
- ~ 3,000 SF of pavement patch
- Install of 184 LF of storm water pipe, reconstruct of 5 catch basins, construct of 2 new catch basins and 3 storm drain manhole access points
- Reconstruct 300 SF of sidewalk and 140 LF of curb/gutter
- Reconstruct 3 curb ramps, construct 1 new curb ramp
- Thermoplastic pavement markings
- Replace of 725 LF of sanitary sewer pipe, and
- Rehabilitation of 8 manholes

Call for Bids Process

- On December 13, 2021, the City released a call for bids.

Contractor	Amount
Monterey Peninsula Engineering	$1,145,323
Anderson Pacific Engineering Construction Inc.	$1,307,271
Granite Rock Company	$1,398,084
Mckim Corporation	$1,536,301.70

MPE Qualified as lowest responsible bidder

Project Funding

- $1.5M allocated for the project from various funding sources

Funding Source	Approved CIP Funding
City of Pacific Grove General Fund	$300,000
RMRA/Senate Bill 1 (SB1)	$310,428
Measure X	$566,015
Sewer Fund	$400,000
Total	**$1,576,443**

Additional Project Info

- CDP Exemption obtained by CDD
- City will work with Archeologist & Tribal Monitor for ground disturbance activities
- City has closely coordinated with California American Water to allow water main replacements to be completed prior to pavement rehab

Recommendation

Authorize an agreement with Monterey Peninsula Engineering for the FY21/22 Street Rehabilitation Project on Ocean View Blvd in an amount not to exceed $1,145,323 plus a 15% contingency.

Questions?

Joyce Halabi, jhalabi@cityofpacificgrove.org

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: David Laredo, City Attorney

MEETING DATE: March 2, 2022

SUBJECT: Conference with Legal Counsel – Pending Litigation (Government Code § 54956.9)
Pacific Grove Coast Watch and Anthony A. Ciani v. City of Pacific Grove; Pacific Grove City Council; Foursome Development Company; Paul Living Trust; CCS Pacific Grove Manager LLC., et al.
Monterey Superior Court Case No. 22CV000387

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Receive report and provide direction.

Attachments

Summons

Complaint

SUM-100

SUMMONS
(CITACION JUDICIAL)

RECEIVED
CITY MANAGER'S OFFICE
2022 FEB 11 A 9:35
CITY OF PACIFIC GROVE

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 2/9/2022 7:07 PM
By: Rowena Esquerra, Deputy

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
City of Pacific Grove; Pacific Grove City Council; and DOES 1 to 100, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
PACIFIC GROVE COAST WATCH, an unincorporated association; and ANTHONY A. CIANI, a taxpayer and resident of Pacific Grove,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (*www.lawhelpcalifornia.org*), the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Monterey County Superior Court
Monterey Courthouse
1200 Aguajito Road, Monterey, California 93940

CASE NUMBER: *(Número del Caso):* 22CV000387

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: *(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):*
Beverly Grossman Palmer, Strumwasser & Woocher LLP, 10940 Wilshire Blvd., #2000, Los Angeles, CA 90024, (310) 576-1233

DATE: 2/10/2022 *(Fecha)* Clerk, by *(Secretario)* /s/ Rowena Esquerra, Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010)).*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. [ ] as an individual defendant.
2. [ ] as the person sued under the fictitious name of *(specify)*:
3. [X] on behalf of (specify): City of Pacific Grove
   under: [ ] CCP 416.10 (corporation) [ ] CCP 416.60 (minor)
   [ ] CCP 416.20 (defunct corporation) [ ] CCP 416.70 (conservatee)
   [ ] CCP 416.40 (association or partnership) [ ] CCP 416.90 (authorized person)
   [X] other *(specify)*: public entity
4. [X] by personal delivery on *(date)*: 02/11/22

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. July 1, 2009]

SUMMONS

Code of Civil Procedure §§ 412.20, 465
www.courts.ca.gov

SHORT TITLE: Pacific Grove Coast Watch, et al. v. City of Pacific Grove	CASE NUMBER:

INSTRUCTIONS FOR USE

→ This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.

→ If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties *(Check only one box. Use a separate page for each type of party.)*:

☐ Plaintiff ☒ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

Real Parties in Interest.
FOURSOME DEVELOPMENT COMPANY, a California general partnership;
PAUL LIVING TRUST;
CCS PACIFIC GROVE MANAGER, LLC, a Delaware limited liability company; and
ROES 1 to 100, inclusive,

Form Adopted for Mandatory Use
Judicial Council of California
SUM-200(A) [Rev. January 1, 2007]

ADDITIONAL PARTIES ATTACHMENT
Attachment to Summons

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

PACIFIC GROVE COAST WATCH, an unincorporated association; and ANTHONY A. CIANI, a taxpayer and resident of Pacific Grove, Petitioners/Plaintiffs, v. CITY OF PACIFIC GROVE; PACIFIC GROVE CITY COUNCIL; and DOES 1 to 100, inclusive, Respondents/Defendants. FOURSOME DEVELOPMENT COMPANY, a California general partnership; PAUL LIVING TRUST; CCS PACIFIC GROVE MANAGER, LLC, a Delaware limited liability company; and ROES 1 to 100, inclusive, Real Parties in Interest.	Case No.: 22CV000387 **VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** (Pub. Res. Code, §§ 21168, 30802; Code Civ. Proc., §§ 525, 1060, 1094.5) CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA") ACTION

INTRODUCTION

1. Petitioners and Plaintiffs Pacific Grove Coast Watch ("PGCW") and Anthony A. Ciani (collectively, "Petitioners") seek to enforce the mandates of two of California's most significant environmental laws, the California Environmental Quality Act ("CEQA") and the California Coastal Act ("Coastal Act"). In approving Real Parties in Interest Foursome Development Company, Paul Living Trust, and CCS Pacific Grove Manager LLC's (collectively, "RPIs'") proposal to construct a 225-room hotel and commercial project, The American Tin Cannery ("ATC") Hotel and Commercial Project, on the site of the historic American Can Company in Pacific Grove ("the Project"), Respondents and Defendants City of Pacific Grove ("the City") and the Pacific Grove City Council ("the City Council") (collectively "Respondents") failed to comply with important state mandates to protect the precious California environment and scarce coastal resources.

2. Respondents prepared an Environmental Impact Report ("EIR") for the Project and adopted mitigation measures that purport to reduce the environmental impacts of the Project. However, the report's analysis is lacking in critical respects and thus fails to properly analyze the true environmental impacts of the Project. The proposed mitigation measures lack enforceable performance standards and specific detail to ensure that the Project's environmental impacts will be adequately mitigated. For these reasons, all the Project's entitlements that were issued in reliance on this defective EIR are void and must be rescinded.

3. Respondents also issued a Coastal Development Permit ("CDP") as legally required to permit development within the Coastal Zone. However, the Project's conditions of approval do not comply with the requirements of the City's recently-certified Local Coastal Program ("LCP") or the requirements of the Coastal Act. For this reason, the CDP is void and invalid and must be rescinded.

4. In light of these manifest deficiencies, the approval of the Project cannot stand. Petitioners ask this Court to issue a writ of mandate requiring Respondents to vacate all Project approvals and to rescind the certification of the EIR. Petitioners also seek to enjoin Respondents from taking any action to further the construction of the Project, and to enjoin Real Parties from any activity in furtherance of the construction of the Project. Only after an adequate environmental analysis, paired with sufficient mitigation measures and proper conditions of approval, can Respondents evaluate

whether it is appropriate to construct and operate a hotel and commercial complex of this size and scope in this sensitive coastal location.

PARTIES

5. Petitioner and Plaintiff PACIFIC GROVE COAST WATCH is an unincorporated association of citizens who are concerned about the protection of Pacific Grove's natural, scenic, and cultural resources, including the impact of coastal development on wildlife and overall environmental quality. Since September 15, 2021, PGCW has sent an email newsletter to roughly 50 persons discussing topics relevant to protection of coastal resources in Pacific Grove, including harbor seals and locally important trees. The newsletter has extensively discussed the Project. PGCW's steering committee members include Michelle Raine, Janet Cohen, and Tony Ciani, residents and voters in Pacific Grove. Other members of PGCW are individuals who are on the unincorporated association's email list. PGCW provided written comments to the City of Pacific Grove Planning Commission and City of Pacific Grove City Council regarding the entitlements requested to construct and operate the Project, and provided oral comments before the City Council and Planning Commission through its members' public comments. PGCW is an aggrieved person as defined by Public Resources Code section 30801.

6. Petitioner and Plaintiff ANTHONY A. CIANI (aka Tony Ciani) is a property owner, resident, taxpayer, and registered voter of the City of Pacific Grove. Mr. Ciani provided written comments on the EIR, wrote letters to the Site Plan Review Committee, Architectural Review Board, the Planning Commission, and the City Council, and attended the hearings of the Site Plan Review Committee, the Architectural Review Board, the Planning Commission and the City Council to present oral comments at the same. Mr. Ciani has been interested in the conservation and use of the Project site for many years due to its status in the City of Pacific Grove's cultural history, its significance at the entrance to the City, and its proximity to the coast and its population of harbor seals.

7. Respondent and Defendant CITY OF PACIFIC GROVE is a charter city and the governmental entity serving the people of the City of Pacific Grove. The City is the lead agency under CEQA for the approval of the Project, and is the local government entity responsible for issuing a Coastal Development Permit under the Coastal Act.

8. Respondent and Defendant PACIFIC GROVE CITY COUNCIL is the seven-member elected body that represents the citizens of Pacific Grove. The Council was the final decision-making body that certified the Project's EIR and approved the Project's entitlements, including the Coastal Development Permit.

9. Respondents and Defendants Does 1 through 100 are or were the agents, employees, contractors, and/or entities acting under the authority of each other respondent or defendant, and each performed acts on which this action is based within the cause and scope of such agency and/or employment. Petitioners do not know the true names and capacities, whether individual, corporate, or otherwise, of Respondent and Defendant Does 1 through 100, inclusive, and therefore sue said Respondent and Defendant under fictitious names. Petitioners will amend their Petition and Complaint to show their true names and capacities when they have been ascertained.

10. Real Party in Interest FOURSOME DEVELOPMENT COMPANY, a California general partnership, is the owner of the properties at 109/125 Ocean View Boulevard in Pacific Grove, and is listed as an owner/applicant on the Final Local Action Notice filed by the City of Pacific Grove with the California Coastal Commission on January 20, 2022.

11. Real Party in Interest PAUL LIVING TRUST is the owner of the parcel at 124 Central Avenue that will serve as a parking facility for the Project, and is listed as an owner/applicant on the Final Local Action Notice filed by the City of Pacific Grove with the California Coastal Commission on January 20, 2022.

12. Real Party in Interest CCS PACIFIC GROVE MANAGER, LLC is a Delaware limited liability company. CCS Pacific Grove Manager, LLC is identified as the "Project Applicant" on the Notice of Determination posted on January 13, 2022 by the Monterey County Clerk, and as an owner/applicant on the Final Local Action Notice filed by the City of Pacific Grove with the California Coastal Commission on January 20, 2022.

13. Real Parties in Interest Roes 1 to 100 are or were the agents, employees, contractors, and/or entities acting under the authority of each other respondent or real party in interest, and each performed acts on which this action is based within the cause and scope of such agency and/or employment. Petitioners do not know the true names and capacities, whether individual, corporate, or

otherwise, of real parties in interest Roes 1 to 100, inclusive, and therefore sue said real parties in interest under fictitious names. Petitioners will amend their Petition and Complaint to show their true names and capacities when they have been ascertained.

VENUE

14. This Court has original jurisdiction over this matter pursuant to article VI, section 10 of the California Constitution, sections 1094.5 of the Code of Civil Procedure, and Public Resources Code section 21168.5.

15. Venue is proper in the County of Monterey pursuant to Code of Civil Procedure section 394 in that Respondents/Defendants are government entities and/or agents of the City of Pacific Grove.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

16. As set forth in paragraph 10 above, Petitioner Pacific Grove Coast Watch has exhausted its administrative remedies in all circumstances when exhaustion of remedies was available to Petitioner. Petitioner submitted comments, by and through its counsel in written letters, and by and through its members' oral testimony, before the Pacific Grove Planning Commission and the Pacific Grove City Council. Because, as set forth herein, the Planning Commission denied all Project approvals, no appeal to the City Council was possible or required for Petitioner.

17. On February 2, 2022, Petitioner appealed the issuance of the CDP to the California Coastal Commission. The appeal concerns only the portion of the Project site within 300 feet of the coastal bluffs, which constitutes a narrow strip running along a portion of the Ocean View Boulevard frontage of the Project. (Public Resources Code, § 30603, subd. (a)(2).) The Commission must make a determination whether the appeal presents a "substantial issue." (*Id*, § 30625, subd. (b)(2).) If the Commission makes this determination, it will consider the Project's CDP *de novo*. (*Id.* at § 30621, subd. (a).)

18. On February 9, 2022, Petitioner notified the City of Pacific Grove, by letter to the City Clerk, carbon copied on the City Attorney, of its intention to file a suit under the California Environmental Quality Act. A true and correct copy of that letter is attached as Exhibit A hereto.

19. On February 10, 2022, Petitioner notified the California Attorney General that it would file this Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief. A true and

correct copy of this notification, omitting its exhibit, is attached as Exhibit B hereto.

STATEMENT OF FACTS

20. The Project is proposed for construction and operation at 109/125 Ocean View Boulevard, a portion of Sloat Avenue, and 124 Central Avenue, a 5.59-acre site in the City of Pacific Grove. The site is current occupied by the American Tin Cannery, a historic cannery operation that is now a partially occupied retail outlet center with stores, restaurants, and recreation uses. The site also contains a surface parking lot with 140 spaces.

21. The Project site is bisected by Sloat Avenue, between Dewey Avenue and Eardley Avenue, a one-way street, and the project includes the City's vacation of Sloat Avenue so as to permit private hotel development on this now-public street.

22. The Project proposes 225 hotel rooms in two separate wings, originally described as the "Family/Group Wing" and the "Executive Wing," now referred to as the Shoreline and Bluffs wings, respectively. The hotel will also include two separate swimming pools. The hotel will also include more than 35,000 square feet of restaurant, bar, ballroom and meeting, space, and lobby/lounge space, as well as more than 10,000 square feet of retail space. Garage and surface parking will provide spaces for 290 cars, with 133 spaces in an underground garage. The total square footage to be constructed on the Project site is 353,489 sq. ft. The site will cover 89 percent of the 243,635 sq. ft. site. Seventy-nine existing on-site trees would be removed from the site.

23. The approval of the Project required the issuance of a Coastal Development Permit (Pacific Grove Municipal Code (PGMC) 23.90.080); Use Permit (PGMC § 23.70.080.a.4); Tree Permit (PGMC § 12.60.080); and Architectural Permit (PGMC § 23.70.060); and the certification of the EIR.

24. The Project is proposed to be located on Ocean View Boulevard, directly across the street from Monterey Bay Coastal Recreation Trail. On the other side of the trail, within 300 feet of the Project site, lies the coastal bluff. Hopkins West Beach and Fisher Beach are located below these bluffs. At these beaches, hundreds of harbor seals haul out of the water during the day. These marine mammals are nocturnal, hunting in the waters of the Pacific Ocean at night and returning to land to rest, sleep, and recharge during the day. In addition, pregnant females give birth to their pups and nurse and wean them on these beaches during the winter and spring seasons, every year. The harbor seals are very sensitive

to noise disturbance and easily "flushed" from the beach into the water if disturbed. The City of Pacific Grove has policies in its Municipal Code and LCP specifically recognizing the importance of these creatures to the City and the need to protect them from human interference.

25. The site contains four adjacent buildings with varying degree of historicity. Three of the buildings are associated with the American Can Company constructed at 109/125 Ocean View Boulevard in 1927 – 1928. The Office (now Archie's American Diner), built in 1927, the Factory and Warehouse (now the American Tin Cannery (ATC)), with retail, commercial, and restaurant uses) were constructed in 1928. In 1929, the factory averaged 70,000,000 cans annually, reflecting the canning of over 420 million fish (sardines). When the factory stopped operations in the early 1950s, the National Automotive Fibres, Inc. of Detroit purchased the property and made components for car interiors. This operator added a building to the site, but the original factory, warehouse and office buildings remained largely unchanged. The Respondent's EIR concluded the ATC complex qualifies as a historic resource eligible for listing on the Pacific Grove Historic Resources Inventory and California Register of Historic Resources inventories for its association with the industrial development of Pacific Grove and direct contributions to the rise of the Monterey Peninsula fish canning industry. The EIR determined these buildings retain their historical significance and integrity of design, materials, workmanship, and feeling. The Project will retain portions of the Factory, but substantially cut into the center of the primary façade to create a courtyard. The Project will demolish the Warehouse building.

26. When Pacific Grove Measure C was enacted by the voters in 1986, hotels and motels were restricted to a specific zone in the city and highly limited in number. In 2016, however, the voters approved Measure X, an initiative that added section 23.31.025 to the Pacific Grove Municipal Code. This ordinance changed the zone on three of the parcels included in the Project site (not including 124 Central Avenue) to C-V-ATC zoning district, and expressly permitted a hotel and accessory uses, to be developed consistent with the requirements of the LCP's Land Use Plan. Without the zone change included in Measure X, no hotel development would be permissible at the Project site.

27. An initial application for the Project was filed on June 11, 2019, and deemed complete on October 4, 2019.

28. On or about November 7, 2019, the City released a "Notice of Preparation of an

Environmental Impact Report for the American Tin Cannery Hotel and Commercial Project and Notice of Public Scoping Meeting" ("NOP"). The Notice requested comments from the public and responsible and trustee agencies, and announced a public scoping meeting on December 3, 2019.

29. The California Coastal Commission ("Coastal Commission") responded to the NOP, noting potential issues with respect to water supply, low cost accommodations, coastal hazards, parking, and coastal community design standards.

30. Numerous other local residents provided responses to the NOP expressing concerns about the size, scope, scale, and intensity of the proposal so close to the coast.

31. The Project's CDP application was filed on July 7, 2020, and deemed complete on November 13, 2020.

32. On July 30, 2020, a Draft EIR (DEIR) was released for a 60-day public review period. The Coastal Commission again commented on the EIR, along with the Monterey Bay Aquarium, Stanford University, the Alliance of Monterey Area Preservationists, and the Monterey Audubon Society. More than 140 comments were received from individuals, including members of PGCW such as Petitioner Ciani, Janet Cohen, and Michelle Raine (however, representing themselves as individuals).

33. Commenters raised concerns about water supply, the impact of the Project's construction on harbor seals, the visual impact and size and scale of the design, the destruction of historic resources, and the loss of 79 trees, parking, and circulation, among other things.

34. The City released the Final EIR ("FEIR") responding to the DEIR comments in December 2020.

35. The Site Plan Review Committee ("SPRC"), a committee composed of directors of various City governmental departments, held a public hearing on December 8, 2020. Petitioner Ciani and others presented concerns regarding the Project's proposed design and height.

36. The City's Architectural Review Board ("ARB") held a public hearing about the Project on December 15, 2020. After receiving written and oral comments from more than 150 people, the ARB moved to send the Project to the Planning Commission with a number of recommended revisions, including specifically to require story balloons for any new construction to improve the public's understanding of the visual impacts and bulk and scale of the Project. The ARB also requested

reductions in height and scale, the reuse of an historic building proposed for demolition and replacement, the elimination of excavation for underground parking from the portions of the property closest to Ocean View Boulevard, and retention of certain trees that were in fair condition. Members of PGCW, including Petitioner Ciani, commented at the ARB hearing.

37. The applicant revised the Project somewhat in response to the ARB's requests, including removing the underground parking in a portion of the site (reducing excavation by a claimed 38 percent), but did not install story balloons or story poles.

38. Instead of the Project going to the Planning Commission in January 2021, as originally scheduled by the Planning Director, the City, working with the applicant, crafted changes to the LCP's development standards that were designed to accommodate the applicant's design, allowing additional height at Sloat Avenue and the Bluff/Executive Wings. The City approved an amended LCP in June 2021, which was certified by the Coastal Commission in August 2021. The applicant then submitted revised plans on September 8, 2021, along with amended CDP application.

39. On October 28, 2021, the Planning Commission held a public hearing on the entitlements requested for the Project. Under the Pacific Grove Municipal Code, the Planning Commission had authority to take initial action on the Use Permit, Architectural Permit, Tree Permit, and the Coastal Development Permit, which could then be appealed to the City Council. The Planning Commission received over 200 written comments and heard oral testimony from more than 40 persons. Petitioner PGCW submitted a written letter, as did individual members of PGCW including Petitioner Ciani, who was granted additional speaking time at the hearing as the representative of a group organized to oppose the Project. Staff of the Coastal Commission also submitted a comment letter, raising concerns about the Project's compliance with the LCP, specifically with respect to water resources, lower-cost accommodations, public amenities, and design.

40. The Planning Commission continued its October 28 hearing to November 18, 2021, during which time it received an additional 32 comments. At that hearing the Planning Commission voted 4-2 against certifying the EIR and to deny all requested approvals, including the CDP. As the City summarized the Planning Commissioners' concerns motivating their denial were "the size and scale of the project, the removal of the on-site trees, and the potential for impacts to the harbor seals on

the shoreline across Ocean View Boulevard."

41. On November 24, 2021, the applicant appealed the Planning Commission's denial to the City Council, contending that the denial was not based on substantial evidence, that the project was consistent with the zoning ordinance, the General Plan, and the LCP, and that the EIR adequately addressed the issues raised by the Planning Commission.

42. On December 1, 2021, the City Council voted to "call up" the Planning Commission action for City Council review as set forth in Municipal Code section 23.74.040.

43. A final amended planning application incorporating additional native trees was submitted in December 2021, dated December 8, 2021.

44. The City Council held a special meeting to consider the appeal and the call up of the Project on January 12, 2022. PGCW submitted comments in a written letter addressing concerns with respect to CEQA and LCP compliance. PGCW's members, including Petitioner Ciani, also submitted written comments. The Coastal Commission again submitted comments raising concerns about the Project's lack of compliance with the LCP, particularly with regard to water supply, lower-cost accommodations, and design standards. Late-received comments were not posted in a manner that members of the public had ready access to these documents prior to the hearing.

45. During the City Council hearing, Tony Ciani, as a representative of PGCW, was afforded additional time at the outset of the hearing to present the case defending the Planning Commission's denial of the requested entitlements and certification of the EIR, reflecting the City Council's recognition of PGCW as one of the primary entities that opposed development of the Project as proposed.

46. The City Council took public comment for several hours and then began debate on the Project, covering topics including water resources, harbor seal protection, lower-cost accommodations and massing and scale.

47. After midnight on January 13, 2022, the City Council voted to 6 to 1 to certify the EIR and approve the Project's entitlements, including the CDP.

48. The Notice of Determination to approve the Project was posted on January 13, 2022 by the Monterey County Assessor.

49. The Final Local Action Notice was received by the Coastal Commission on January 20, 2022, commencing a 10-working-day appeal period which closed on February 3, 2022.

50. On February 2, 2022, PCGW filed an appeal of the determination to issue the CDP to the Coastal Commission. Petitioner Ciani filed an appeal on February 2, 2022. Others also filed appeals, including two Commissioners. At the time of the filing of this Verified Petition, the Coastal Commission has not made a determination whether a substantial issue has been raised by the appeals.

FIRST CAUSE OF ACTION
Violation of California Environmental Quality Act
(Public Resources Code § 21168, Code of Civ. Proc., § 1094.5)

51. Petitioners incorporate by reference all the allegations contained in the previous paragraphs as though fully set forth herein.

52. CEQA reflects the Legislature's determination that "the maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern." (Pub. Resources Code, § 21000, subd. (a).) This includes ensuring that the people of this state have access to clean air and water, and to maintain self-perpetuating levels of fish and wildlife species. (*Id.,* § 21001.) "[I]t is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects." (*Id.*, § 21002.)

53. The purpose of the EIR is to "identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided." (Pub. Resources Code, § 21002.1, subd. (a).) If the EIR does not accurately evaluate and disclose the environmental impacts of a project, CEQA's objectives are stymied.

54. CEQA is not merely a procedural statute; it imposes clear and substantive responsibilities on agencies that propose to approve projects, requiring that public agencies not approve projects that harm the environment unless and until all feasible mitigation measures are employed to minimize that harm. (Pub. Resources Code., §§ 21002, 21002.1, subd. (b).)

55. Failure either to comply with the substantive requirements of CEQA or to carry out the full CEQA procedures so that complete information as to a project's impacts is developed and publicly disclosed constitute a prejudicial abuse of discretion that requires invalidation of the public agency

action regardless of whether full compliance would have produced a different result. (Pub. Resources Code, § 21005.)

56. CEQA authorizes and directs the State Office of Planning and Research to adopt guidelines for the implementation of CEQA by public agencies. (Pub. Resources Code, § 21083.) These guidelines, which are found at title 14, California Code of Regulations section 1500 et seq. ("Guidelines"), are binding on all state and local agencies, including Respondents.

57. The Guidelines establish procedures for calculating the baseline environmental conditions at a proposed project site, providing that "[a]n EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time the environmental analysis is commenced. . . ." (14 Cal. Code Regs., § 15125 (a).)

58. Agencies may not undertake actions that could have a significant adverse effect on the environment, or limit the choice of alternatives or mitigation measures, before complying with CEQA. (14 Cal. Code Regs., § 15004(b)(2).) The "lead agency," which is the public agency that has the principal responsibility for carrying out the project, is responsible for conducting an initial study to determine, in consultation with other relevant state agencies, whether an environmental impact report, a negative declaration, or a mitigated negative declaration will be prepared for a project. (Pub. Resources Code., §§ 21067; 21080.1, subd. (a); 21080.3, subd. (a).)

59. CEQA defines a project as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (14 Cal. Code Regs., § 15378(a).)

60. The City prepared an EIR for the Project, but that EIR fails to satisfy CEQA's mandates in several critical respects.

61. The EIR failed to utilize a proper baseline to measure the water resources impacts of the Project. Rather than determining and reporting the actual water consumed by the quiet retail center and surface parking lot for use as a baseline reflecting the actual physical conditions at the time the Notice of Preparation was published, the EIR utilized a theoretical baseline of water use based on historic entitlements at that site. The record was clear that this facility had long been using significantly less

than its entitled water. The Monterey Peninsula has a documented water shortage, made more significant by legal restrictions on water provider Cal-Am's ability to provide water from the Carmel River. It is highly relevant to know how much additional water over the actual recent water use the 225-room hotel with two swimming pools would be drawing from this scarce resource.

62. The EIR also failed to analyze the impact on water resources resulting from the lack of increased water service due to state agency (State Water Resources Control Board and California Public Utilities Commission) limitations on providing serving for increased water uses resulting from a zone change. As discussed herein, hotel uses were not permissible on the Project site until the zone change that resulted from Measure X in 2016.

63. The EIR also erred by crediting significant water reductions for off-site laundry. Off-site laundry is not a requirement of approval for the Project nor is a mitigation measure for the Project. There is no legal obligation or binding commitment for the Project to have its laundry conducted off site, nor to have it conducted outside of the Monterey Peninsula. The Monterey Peninsula Water Management District recently ordered that water credits for offsite laundry are not permitted to reduce water demand for new users in a recognition that off site use simply shifts the water demand elsewhere. The EIR's reliance on these reductions to find that sufficient water was available to serve the Project was improper.

64. The EIR also erred by failing to adequately analyze the impacts of construction on the nearby harbor seal population. The DEIR failed to disclose the location of the closest harbor seal haul out and pupping location, Fisher Beach, mentioning only Hopkins West Beach which is further from the site. While the FEIR was amended to add Fisher Beach as a haul out location, no new analysis was conducted of the construction noise impacts at Fisher Beach. The EIR instead interpolated between two locations to arrive at an approximate estimate for Fisher Beach, without providing any additional analysis by a noise expert.

65. The EIR did not present any expert analysis of the impact of noise on harbor seal populations, even though acknowledging that animal response to noise is less predictable than human responses. The EIR simply adopted a threshold of significance based on an analysis from 2013 of a brief, 8-day long construction project with 8.5 hours of noise generation without exploring whether

repeated exposure over the 18-24 months of construction required for the Project would have a different impact on this marine mammal. The EIR did not utilize input from the BayNet docents who are recognized by the City as resources with regard to these marine mammals to determine whether any behavioral observations of the harbor seals *in situ* would support the threshold of significance or require alterations to that approach.

66. The EIR's mitigation measures for impact to harbor seals are also inadequate under CEQA. The EIR included three mitigation measures for harbor seal impacts.

a. BIO-1.1 called for "construction perimeter fencing" with "noise attenuating materials." The EIR contained no analysis of how this barrier fencing would reduce noise impacts, particularly from noise above the sight line of the fencing.

b. BIO-1.2 limits "demolition, grading, and excavation for subgrade construction," to the period between July 1 and February 1 to avoid pupping and weaning season. However, there are no limits on other construction activities or tree removal activities, and no requirement to survey for early pups in January and cease such activities if they are on-going.

c. BIO-1.3 requires a "qualified biological monitor" hired by the City to "observe and document behavior of . . . harbor seal . . . populations." Monitoring is "daily" during "initiative demolition and excavation phase," and "twice monthly" during the remainder of the construction program. "Activity or behavior identified by the monitor(s) indicative of unusual stress or threatening relocation shall cause immediate work stoppage and notification of the City and project sponsor. Work shall resume only after noise levels are reduced and additional noise/disturbance protection measures are employed and tested in the field for effectiveness." This measure does not incorporate any standards for disturbance, and the frequency of monitoring is insufficient to ensure that the harbor seals are not disturbed by these impacts. There is no threshold to determine whether noise levels are reduced, because the noise levels are not being measured in the first instance.

67. The Planning Commission specifically recognized the deficiency of these mitigation measures and requested noise monitoring equipment be installed, but this proposal was not accepted. Two Planning Commissioners commented at length that BIO-1.3 was inadequately designed to address noise impacts to harbor seals because it lacked any standards and any plan to follow if disturbance was identified.

68. The EIR also failed to analyze the possible impacts of harbor seal displacement to other nearby recreational beaches, such as Lovers Point Beach, which would limit use of this beach by humans.

69. The EIR failed to adequately mitigate for the loss of historic and architectural resources due to the destruction of the Warehouse building and the remodeling of the historic and character-defining façade of the Factory building without adherence to the Secretary of Interior's Standards for Rehabilitation codified as 36 C.F.R. 67. The EIR determined that "the project is not in compliance with Standards 1, 2, 4, 9, and 10 and the project therefore cannot be said to be in compliance with the Secretary of Interior's Standards for Rehabilitation." The EIR also determined that "[a]s a result of the demolition of Building No. 2 (Warehouse) and the partial demolition of Building No. 1 (Factory), the American Tin Cannery will no longer retain sufficient historical integrity to convey its significance and will no longer be eligible for listing in the California Register of Historical Resources or Pacific Grove Inventory of Historical Resources. Thus, as proposed the American Tin Cannery Hotel & Commercial project will create a significant and unavoidable impact on the historic resource."

70. Moreover, the EIR failed to adequately consider or require a reasonable range of alternatives including an alternative that would retain the historic warehouse building or the entire Factory.

71. The EIR also failed to account for the impacts of truck trips to off site laundry facilities in the Project's greenhouse gas emission analysis.

72. The Final EIR's responses to comments did not satisfy the requirements of CEQA to analyze and respond to relevant comments. For instance, with respect to water resources, the FEIR ignores comments requesting a genuine baseline analysis, defers to the Monterey Peninsula Water Management District instead of addressing issues raised by the Coastal Commission, and states that the

State Water Resources Control Board did not comment on the DEIR as if this silence were a relevant reflection of that Board's concurrence in the DEIR's conclusions. As to harbor seals, the FEIR's responses fail to include any new expert analysis and simply interpolate two data points, without addressing the substantive comments provided by numerous citizens who observe the harbor seals on a regular basis. These and other responses fail to satisfy CEQA's mandate for informed responses on significant environmental issues raised in comments on the DEIR.

73. Petitioners have a direct and beneficial interest in the action herein and have exhausted all other available remedies.

74. Petitioners have a beneficial right to Respondents' performance of their respective duties based on Petitioners' interest in protecting Pacific Grove's coastal resources from impacts of commercial development and construction.

75. Respondents' actions in approving the Project have caused and threatens to cause Petitioners irreparable and substantial harm.

76. Petitioners have no plain, speedy, and adequate remedy at law, in that unless this Court enjoins the Real Parties, they will commence construction of the Project, which will cause the environmental impacts detailed herein, without adequate environmental review and mitigation required by CEQA. No amount of monetary damages or other legal remedy can adequately compensate Petitioner for the irreparable harm that Petitioners, its members, and the residents of the City of Pacific Grove and California will suffer from the violations of law described herein.

SECOND CAUSE OF ACTION
Violation of Coastal Act/Local Coastal Program
(Public Resources Code § 30802; Code of Civ. Proc., § 1094.5)

77. Petitioners incorporate by reference all the allegations contained in the previous paragraphs as though fully set forth herein.

78. The Coastal Act must "be liberally constructed to accomplish its purposes and objectives." (Pub. Resources Code, § 30009.)

79. In the Coastal Act, the Legislature specifically declared that the coastal zone "is a distinct and valuable natural resource of vital and enduring interest to all the people and exists as a delicately balanced ecosystem;" and that "to promote the public safety, health, and welfare, and to protect public

and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction." (Pub. Resources Code, § 30001.)

80. When policy conflicts arise under the Coastal Act, "such conflicts [must] be resolved in a manner which on balance is most protective of significant coastal resources." (Pub. Resources Code, § 30007.5.)

81. The Coastal Act requires local governments like the City to develop a local coastal program ("LCP"). The LCP consists of a land use plan (LUP) and implementing ordinances, all designed to further the objectives of the Coastal Act. (Pub. Resources Code, § 30001.5.) The City's LCP was certified by the Coastal Commission on March 11, 2020. An amendment to the LCP's design standards specifically focused on the ATC Project site was certified by the Coastal Commission on August 12, 2021.

82. Affordable coastal overnight accommodations is a key goal of the Coastal Act. "A lack of affordable accommodations remains a barrier to coastal access. California's historic supply of lower cost coastal accommodations has been reduced, and continues to be diminished, as a result of high coastal property values and economic pressures to develop new coastal accommodations that are too expensive to be affordable to most visitors." (Pub. Resources Code, § 31411.)

83. The Coastal Act also contains policies protecting marine environments. "Marine resources shall be maintained, enhanced, and, where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes." (Pub. Resources Code, § 30230.)

84. Environmentally sensitive habitat areas, which include areas such as the harbor seal rookeries on Hopkins West and Fisher Beaches, are also afforded special protection under the Coastal Act, and such areas "shall be protected against any significant disruption of habitat values," while "[d]evelopment in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and

shall be compatible with the continuance of those habitat and recreation areas. (Pub. Resources Code, § 30240.)

85. "The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting." (Pub. Resources Code, § 30252.)

86. The City prepared an LCP to implement policies of the Coastal Act. The approval of the Project did not conform to numerous policies, as set forth below.

87. With respect to harbor seals and the Project's construction impacts on the nearby harbor seal population, the approval was inconsistent with the following policies of the LCP:

a. BIO-7. The City will preserve its character-defining flora and fauna, such as rosy ice plant (Drosanthemum floribundum), Monterey pine, Monterey cypress, Coast Live Oak, Monarch butterfly, Harbor seal, Southern Sea Otter, Humpback and Gray Whale and Black Oystercatcher.

b. BIO-1. Environmentally Sensitive Habitat Areas, or "ESHAs," are defined as any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. In Pacific Grove these areas include, but are not limited to, dune, wetland, streams, coastal bluff, sandy and rocky beaches, intertidal and subtidal zones, tide pools, kelp forests, offshore reefs, rocks, and islets, and rookery areas.

c. MAR-5. Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to species and areas of special biological significance. Uses of the marine environment shall be carried out in a

manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

88. As set forth in the previous paragraphs regarding CEQA, the approval of the Project did not include adequate protections or mitigation measures to protect harbor seals from the impacts of noise associated with construction activities.

89. The approval of the Project was inconsistent with LCP Policy INF-2: "Development shall only be approved if it is first clearly demonstrated that the development will be served by an adequate existing water allocation and sustainable water supply." As the Coastal Commission staff repeatedly informed the City, this policy requires an assessment of the impact of new development against water current used by the existing site uses. The policy also requires assurance of sustainable water service, which cannot be demonstrated due to the moratorium on increased service resulting from a change of zoning.

90. The LCP requires the provision of lower-cost accommodations and mitigation for projects that fails to provide for such accommodations in PRA-11 and PRA-12. The Implementation Program requires the provision of a feasibility study to analyze the financial feasibility for providing lower-cost accommodations on site or to determine the appropriate value of any in-lieu mitigation fee. (PGMC, § 23.90.220(c).) The approval of the Project was not consistent with these policies because the City permitted, at the last moment after the public hearing was closed, for the applicant to completely substitute an in-lieu fee with a poorly defined on-site program that was not supported by any substantial evidence in the record.

91. The applicant prepared a feasibility study regarding lower cost accommodations which concluded that "providing on-site lower-cost rooms would likely render the development of the ATC Project financially infeasible but that payment of the in-lieu fee may be financially viable." The analysis concluded that providing 56 lower-cost rooms at a rate of $117 on-site would leave the hotel operations with a $9 million financial gap, and therefore was infeasible. Paying an in-lieu fee of $1.8 million, a cost of $32,000 per unit, would be financially feasible.

92. After the feasibility study, the applicant proposed a $1.8 million in-lieu fee to mitigate

the failure to provide on-site lower cost accommodations. The Coastal Commission expressed significant concern that this value was inadequate to serve as a replacement cost for the lower-cost accommodations.

93. After the close of the public hearing at the City Council, one Councilmember raised concerns regarding the Project's lower-cost accommodations proposals. Staff responded and defended the calculation of the in-lieu fee amount, and then the applicant's representative spoke. For the first time, the applicant's representative alleged that it had agreed to pay the in-lieu fee before because the Coastal Commission insisted on it, but that it would instead prefer to provide 56 units on-site, to be made available to "active military, nurses, frontline workers." The applicant stated it would like to work with the City to develop this program. There were no questions asked of the applicant regarding financial feasibility in light of the feasibility study, regarding the proposed lower-cost rate, or regarding the implementation of the program.

94. At the close of the hearing, the condition of approval regarding lower-cost accommodations was re-written to eliminate the in-lieu fee and now provides: "In compliance with the City's requirement for inclusion of lower-cost overnight accommodations for new hotels, prior to the issuance of building permits, the project sponsor shall provide for Community Development Director review and approval, a revised project description noting that 56 hotel rooms will be available as on-site lower-cost overnight visitor accommodations, the eligibility requirements for such rooms, and how the lower-cost overnight visitor accommodations program will be implemented. In addition, the project sponsor shall pay $8,000.00 into the City's fund for development of lower-cost overnight accommodations as the in-lieu contribution for the 0.25-unit fractional remainder to meet the City's 25% minimum number of lower-cost overnight accommodations."

95. The determination that this undefined program satisfied the LCP's and the Coastal Act's lower-cost accommodation policies was not supported by substantial evidence, because there was no evidence in the record of proposed room rates or implementation plans and no evidence supporting the conclusion that the hotel would be able to operate while renting 56 rooms at the rates deemed truly lower-cost.

96. The public, including Petitioners, could not object to this proposal because it was

presented only after the public hearing was closed. Therefore, exhaustion of administrative remedies was infeasible.

97. The project site is located in a popular visitor-destination recreation area on the nearest coastal road paralleling the sea. The project is inconsistent with the public access policies of the LCP and Coastal Act to protect public access to and along the shoreline, including public parking and circulation on Ocean View Boulevard and Sloat Avenue. These policies include:

a. Coastal Act (Pub. Resources Code §§30212.5, 30252, and 30254).

b. PRA-9. New development shall ensure that public access opportunities are maximized, including [through] offsetting any temporary (e.g., during construction) and potential permanent impacts to public access (including in terms of increased traffic leading to impacts to public access use of the City's circulation system) appropriately and proportionally. Development shall provide for public access enhancements and improvements as much as possible, including in terms of providing public access use areas in private development projects (e.g., visitor serving development) as appropriate. Development that does not meet these requirements shall be denied.

98. The Project is also inconsistent with LCP policies regarding protection of public views and visual quality in the coastal area. These include:

a. SCE-1. Public views to and along the shoreline shall be protected and enhanced, and alteration of natural landforms shall be minimized.

b. SCE-2. Preserving and enhancing the scenic qualities of the Coastal Zone is a priority in all City actions and decisions. Development that could adversely impact public views and scenic coastal areas shall only be allowed where it protects, preserves, and, if feasible, enhances such scenic and visual qualities.

c. SCE-3. Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses or are locally important historic areas.

d. SCE-5. The City will designate scenic areas of the Coastal Zone, including those

> areas described in Policy SCE-3, as areas having special scenic significance requiring the imposition of project-specific development standards designed to protect these scenic areas (refer to Figure 4, Scenic Areas).
>
> . . . .
>
> Development within visually prominent settings, including those identified on Figure 4, and on all parcels that abut Ocean View Boulevard and Sunset Drive, shall be sited and designed to avoid blocking or having a significant adverse impact on significant public views, including by situating buildings, access roads, and related development in a manner and configuration that maximizes public viewshed protection, and through such measures as height and story limitations, and bulk and scale limitations. Clustering development to maximize open space views may also be considered.

99. The Project is substantially larger than any other nearby structure and significantly out-of-scale with the community surrounding it. The Project is roughly the size of three of the largest area structures located in Monterey, combined together. The Project's visual impacts were never assessed utilizing story poles or story balloons, or any other form of on-site full-size visual impact assessment, even though the Implementation Program requires such assessment: "Any other information deemed necessary to determine the visual impact of the proposed project, including but not limited to analysis of the heights of existing buildings within 150 feet of the proposed structure; story poles and netting showing proposed ridgelines; and visual simulations to help identify potential visual impacts." (PGMC, § 23.90.160 (b)(1)(E).)

100. The Project also maximizes lot coverage but does not provide for adequate public amenities, removing on street parking, eliminating Sloat Avenue as a right of way, and failing to provide corresponding public benefits.

101. Petitioners have a direct and beneficial interest in the action herein and has exhausted all other available remedies. Petitioners have appealed to the Coastal Commission and awaits a substantial issue determination on Petitioner's appeal.

102. Petitioners have a beneficial right to Respondents' performance of their respective duties

based on Petitioner's interest in protecting Pacific Grove's coastal resources from impacts of commercial development and construction.

103. Respondents' actions in approving the Project have caused and threatens to cause Petitioners irreparable and substantial harm.

104. Petitioners have no plain, speedy, and adequate remedy at law, in that unless this Court enjoins the Real Parties, they will commence construction of the Project, which is inconsistent with the requirements of the LCP and the Coastal Act. No amount of monetary damages or other legal remedy can adequately compensate Petitioner for the irreparable harm that Petitioners, its members, and the residents of the City of Pacific Grove and California will suffer from the violations of law described herein.

THIRD CAUSE OF ACTION
Declaratory Relief
(Code of Civ. Proc., § 1060)

105. Petitioners incorporate by reference all of the allegations of the previous paragraphs, as though fully set forth herein.

106. A dispute has arisen between Petitioners and Respondents, in that Petitioners believe and contend, for the reasons set forth above, that Respondents' actions as set forth above were unlawful and invalid. Petitioners are informed and believe, and on that basis contend, that Respondents contend in all respects to the contrary.

107. Petitioners contend that the approval of the Project did not comply with CEQA, because the EIR failed to comply with CEQA's requirements for analysis, including all reasonable project alternatives and mitigation of the Project's environmental impacts. Petitioners are informed and believe that in response to Petitioners having identified these issues for Respondents, Respondents have disagreed with Petitioners' contentions.

108. Petitioners contend that the approval of the Project did not comply with the LCP or the Coastal Act, including policies for the protection of public access, wildlife, environmentally sensitive habitat, water resources, lower-cost accommodations, and visual impacts. Petitioners are informed and believe that in response to Petitioners have identified this issue for Respondents, that Respondents have disagreed with Petitioners' contentions.

109. A judicial declaration as to the legality of Respondents' actions, as set forth above, is therefore necessary and appropriate to determine the respective rights and duties of the parties.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for relief as follows:

1. As to the First Cause of Action, that this Court issue a peremptory writ of mandate commanding Respondents to rescind the certification of the EIR and all approvals of the Project which rely upon the EIR, including the Use Permit, Architectural Permit, Coastal Development Permit, and Tree Permit; and that this Court issue a temporary restraining order, preliminary injunction, administrative stay, and permanent injunction enjoining Respondents and Real Parties from constructing or operating the Project;

2. As to the Second Cause of Action, that this Court issue a peremptory writ of mandate commanding Respondents to rescind the approval of the Coastal Development Permit; and that this Court issue a temporary restraining order, preliminary injunction, administrative stay, and permanent injunction enjoining Respondents and Real Parties from constructing or operating the Project;

3. As to the Third Cause of Action, that this Court issue declaratory relief that Respondents have not complied with CEQA in their approvals of the Project;

4. Also as to the Third Cause of Action, that this Court issue declaratory relief that Respondents have not complied with the Coastal Act and the Local Coastal Program in their approvals of the Project;

5. That this Court award Petitioners costs and attorneys' fees pursuant to Code of Civil Procedure section 1021.5 or other applicable law; and

6. That this Court grant Petitioners such other, different, or further relief as the Court may deem just and proper.

Dated: February 9, 2022

Respectfully submitted,

STRUMWASSER & WOOCHER LLP
Fredric D. Woocher
Beverly Grossman Palmer

By:
Beverly Grossman Palmer
Attorneys for Petitioner Pacific Grove Coast Watch; and Anthony Ciani

VERIFICATION

I, Anthony A. Ciani, declare:

I am a member of Pacific Grove Coast Watch and a resident of Pacific Grove, California. I am authorized to make this verification for Petitioner and Plaintiff Pacific Grove Coast Watch. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF. I am informed and believe that the contents thereof are true, and on that ground I allege that the matters stated therein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 9th day of February, 2022 at Pacific Grove, California.

Anthony A. Ciani

VERIFICATION

I, Anthony A. Ciani, declare:

I am a resident of Pacific Grove, California and a Petitioner in this action. I make this verification on my own behalf. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF. I am informed and believe that the contents thereof are true, and on that ground I allege that the matters stated therein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 9th day of February, 2022 at Pacific Grove, California.

Anthony A. Ciani

EXHIBIT A

From: Beverly Grossman Palmer
Sent: Wednesday, February 9, 2022 2:44 PM
To: skandell@cityofpacificgrove.org
Cc: david@laredolaw.net
Subject: Notice of Intent to Commence Litigation Under CEQA
Attachments: 220209 Letter to City Clerk re CEQA.pdf

Please see the attached letter notifying the City of Pacific Grove that Pacific Grove Coast Watch and Anthony A. Ciani intend to commence litigation under the California Environmental Quality against the City and the City Council.

Beverly Grossman Palmer
Strumwasser & Woocher LLP
10940 Wilshire Boulevard, Suite 2000
Los Angeles, CA 90024
T: 310-576-1233
F: 310-319-0156
Dir: 310-933-5930

IMPORTANT NOTICE: At this time, Strumwasser & Woocher LLP is CLOSED TO THE PUBLIC. **Packages requiring signatures will be returned undelivered – do not serve papers by this method.** While our office is closed, **Strumwasser & Woocher LLP consents to electronic service in all of its matters**. Please serve by electronic mail to bpalmer@strumwooch.com AND to our Senior Legal Assistant, LaKeitha Oliver, at loliver@strumwooch.com. We reserve the right to object to any notice or delivery of any kind if not actually received by counsel before all statutory deadlines.

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FREDRIC D. WOOCHER
ANDREA SHERIDAN ORDIN
SENIOR COUNSELS

February 9, 2022

Via email to skandell@cityofpacificgrove.org

Sandra Ann Kandell
City Clerk
City of Pacific Grove
300 Forest Ave
Pacific Grove, CA 93950

Re: Notice of Intent to Commence CEQA Action
Pacific Grove Coast Watch v. City of Pacific Grove

Dear Ms. Kandell:

This firm writes on behalf of the Pacific Grove Coast Watch and Anthony A. Ciani.

Please take notice under section 21167.5 of the Public Resources Code, as agent for the City of Pacific Grove and the Pacific Grove City Council, that Pacific Grove Coast Watch and Anthony A. Ciani intend to file a lawsuit under the California Environmental Quality Act (CEQA) in Monterey County Superior Court. The lawsuit will name as Respondents and Defendants the City of Pacific Grove and the Pacific Grove City Council, and will contend that the January 12, 2022 approval of the American Tin Cannery (ATC) Project at 109/125 Ocean View Boulevard and 124 Central Avenue, including the certification of the Environmental Impact Report and the approval of the Use Permit, Architectural Permit, Tree Permit and Coastal Development Permit, did not comply with the requirements of CEQA.

The lawsuit will also object to the issuance of the Coastal Development Permit as inconsistent with the requirements of the City's certified Local Coastal Program and the Coastal Act.

Sincerely,

Beverly Grossman Palmer

Cc: David Laredo (dave@laredolaw.net)

EXHIBIT B

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FREDRIC D. WOOCHER
ANDREA SHERIDAN ORDIN
SENIOR COUNSELS

February 9, 2022

Rob Bonta
Attorney General
Office of the Attorney General
1300 I Street
Sacramento, California 95814

Re: Notice of Intent to Commence CEQA Action
Pacific Grove Coast Watch, et al. v. City of Pacific Grove, et al.

Dear Attorney General:

Pursuant to Public Resources section 21167.5 and Code of Civil Procedure section 388, Petitioners Pacific Grove Coast Watch and Anthony A. Ciani ("Petitioners") hereby gives notice that on February 10, 2022, a verified petition for writ of mandate and complaint for injunctive and declaratory relief will be filed against Defendants and Respondents, the City of Pacific Grove, and the Pacific Grove City Council (collectively "the City") in Monterey County Superior Court, Monterey Courthouse. The action challenges the City's approval of the American Tin Cannery Hotel Project at 109/125 Ocean View Boulevard in the City of Pacific Grove for failure to comply with the California Environmental Quality Act and the California Coastal Act.

A copy of the Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief is attached to this notice.

Sincerely,

Beverly Grossman Palmer

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	David Laredo, City Attorney
MEETING DATE:	March 2, 2022
SUBJECT:	Conference with Legal Counsel – Pending Litigation (Gov. C. §54956.9) *Michael Gonzalez v. City of Pacific Grove, California; Police Chief Cathy Madalone; City Manager Ben Harvey; Does 1 -10*. U.S. District Court, Northern District Action No. 5:22-cv-1079 SVK
CEQA:	Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Receive report and provide direction.

Attachments

Summons

Complaint

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

MICHAEL GONZALEZ, *Plaintiff(s)* v. CITY OF PACIFIC GROVE, CALIFORNIA; POLICE CHIEF CATHY MADALONE; CITY MANAGER BEN HARVEY; DOES 1-10 *Defendant(s)*	)	Civil Action No. 5:22-cv-1079 SVK

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

CITY OF PACIFIC GROVE, CALIFORNIA; POLICE CHIEF CATHY MADALONE;
CITY MANAGER BEN HARVEY
300 Forest Avenue
Pacific Grove, CA 93950

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Caleb E. Mason, Esq. (State Bar No. 246653)
WERKSMAN JACKSON & QUINN, LLP
888 West Sixth Street, Fourth Floor
Los Angeles, California 90017

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Mark B. Busby
CLERK OF COURT

Date: 02/23/2022

Signature of Clerk or Deputy Clerk

Civil Action No. 5:22-cv-1079 SVK

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify)*:

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

Caleb E. Mason, Esq. (State Bar No. 246653)
WERKSMAN JACKSON & QUINN, LLP
888 West Sixth Street, Fourth Floor
Los Angeles, California 90017
cmason@werksmanjackson.com
Telephone: (213) 688-0460
Facsimile: (213) 624-1942

Attorney for Plaintiff
Michael Gonzalez

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE

MICHAEL GONZALEZ, Plaintiffs, v. CITY OF PACIFIC GROVE, CALIFORNIA; POLICE CHIEF CATHY MADALONE; CITY MANAGER BEN HARVEY; DOES 1-10, Defendants.	**Case No.:** **COMPLAINT for:** **1. Retaliation for Exercise of First Amendment Rights, in Violation of 42 U.S.C. § 1983**

INTRODUCTION

1. Plaintiff Michael Gonzalez ("PLAINTIFF" or "MR. GONZALEZ") was a good cop.

2. MR. GONZALEZ was fired from his job as a police officer for the City of Pacific Grove, California, for expressing himself as a citizen, in political discussions on matters of public concern, on his own free time, while off-duty, on his own personal social media account. He was fired because one City Council

member did not like his political views. That should not happen to anyone in this country. It is a fundamental principle of American constitutional democracy that we don't fire public employees for their private expression of their political opinions on their own time. The City of Pacific Grove forgot, or simply doesn't care about, that principle.

3. MR. GONZALEZ is a second-generation Mexican-American who grew up poor in Bakersfield, California. He overcame the hardships of his youth and decided to devote himself to a career of service to others. He signed up for the Kern County Police Academy, graduated, and was hired by Kern County Sheriff's Department, and then by the Pacific Grove Police Department. He spent four years serving the people of Pacific Grove. He had a clean disciplinary record, was named Officer of the Year, and earned the Department's Lifesaving Award for diving in the ocean and pulling a drowning kayaker to safety.

4. This case is not about anything MR. GONZALEZ did as a cop. There was never any allegation or suggestion that he ever did anything improper on the job. Instead, he was fired for expressing his political views as a private citizen, while off-duty, on his own time. While off-duty, on his own time, on his own personal social media account, he posted the phrase "Free Kyle Rittenhouse," and an image that said "Fuck 'Black Lives Matter'."

5. Many people disagree with those statements. That is their right. Others agree with them. That is their right.

6. <u>But the Constitution does not permit the City to fire a public employee for making those statements on his own time, as a private citizen</u>.

7. There is no dispute that Mr. Gonzalez was fired solely and expressly for his private, off-duty political speech. The City Manager stated, in writing, the reason. And the people who engineered his firing, particularly Defendant City Council Member Jennifer McAdams, and one of her allies, a man named Randy Fairgarden, were proud of what they had done, and made no secret of the fact that

they wanted MR. GONZALEZ fired because they didn't like his political views. They destroyed his livelihood, not because of anything he ever did as a police officer, but purely because of his private off-duty expression of his political views. But in the United States, the Constitution prohibits public employers from firing employees for their private off-duty expression of political views.

8. By this lawsuit, MR. GONZALEZ seeks to vindicate his constitutional rights, and help ensure that the constitutional rights of all Americans in public employment—teachers, firefighters, clerks, social workers, and police officers—remain protected.

JURISDICTION, VENUE AND PARTIES

9. Jurisdiction exists in this Court under 28 U.S.C. § 1331, because the claims alleged herein arise under the Constitution and laws of the United States. This case arises under the First and Fourteenth Amendments to the United States Constitution, and Title 42 § 1983 of the United States Code.

10. Venue is proper in this Court because the transactions and occurrences giving rise to the claims for relief asserted herein occurred in this District.

11. Plaintiff MR. GONZALEZ was at all relevant times a police officer with the CITY OF PACIFIC GROVE, California, within this District.

12. Defendant CITY OF PACIFIC GROVE ("CITY," "PACIFIC GROVE,"

13. Defendant POLICE CHIEF CATHY MADALONE was at all relevant times the Chief of Police for the CITY OF PACIFIC GROVE. She committed that acts at issue herein during the course and scope of her employment with the CITY.

14. Defendant CITY MANAGER BEN HARVEY was at all relevant times the City Manager of the CITY OF PACIFIC GROVE. He committed that acts at issue herein during the course and scope of his employment with the CITY

15. PACIFIC GROVE City Council Member Jennifer McAdams was at all relevant times a Councilmember for the CITY OF PACIFIC GROVE. She is

not named as an individual defendant in this Complaint, because the publicly-available evidence Plaintiffs have thus far reviewed does not yet establish that she directly urged CHIEF MADALONE to fire Plaintiff. Discovery may reveal additional information presently unknown to Plaintiffs. If Council Member McAdams did use her official office to attempt to procure Plaintiff's termination, then she is a proper section 1983 defendant, and Plaintiffs will amend their complaint to name her. She would not have absolute legislative immunity, if she used her official title, powers, and status to attempt to procure Plaintiff's termination, because attempting to procure the termination of a single employee is not within the legislative scope of her position as a City Council member. *See, e.g.*, *Kaahumanu v. Cty. of Maui*, 315 F.3d 1215, 1220 (9th Cir. 2003).

16. Randy Fairgarden is not named as an individual defendant in this Complaint, because the publicly-available evidence Plaintiffs have thus far reviewed does not yet establish that he acted as a joint state actor in his actions attempting to procure Plaintiff's termination. Discovery may reveal additional evidence presently unknown to Plaintiffs. If Mr. Fairgarden did act as a joint state actor in attempting to procure Plaintiff's termination, then he is a proper section 1983 defendant, and Plaintiffs will amend their complaint to name him.

17. PLAINTIFFS are ignorant of the true names and capacities of defendants sued herein as DOES 1-10, inclusive, and therefore sues said defendants by fictitious names. PLAINTIFFS will amend this complaint to allege their true names and capacities when they are ascertained.

18. PLAINTIFFS are informed and believe and therefore allege that each of the fictitiously named defendants was responsible in some manner for the occurrences herein alleged, including without limitation aiding and abetting the wrongful acts of Defendants as set forth herein, and that PLAINTIFFS' injuries as herein alleged were proximately caused by said Defendants.

19. PLAINTIFFS are informed and believe and therefore allege that Defendants were the agents of their co-defendants and in doing the acts herein alleged were acting within the scope of such agency and with the participation, ratification, direction, and permission of their co-defendants.

FACTS

20. This case began with a bumper sticker. In the Spring of 2020, MR. GONZALEZ, a Republican, put a "Trump-Pence" bumper sticker on his personal vehicle, a pickup truck. His cousin gave him another bumper sticker as a gift. It read: "Liberty Guns Beer Trump." MR. GONZALEZ put it on his pickup as well, under the Trump-Pence sticker. He drove his pickup back and forth to work each day, like every other CITY employee in Pacific Grove.

21. MR. GONZALEZ's pickup also flew two small American flags, and was decorated with a "Thin Blue Line" bumper sticker. And it had two small circular decals in the rear window. One was a logo of the Marvel comic-book hero "The Punisher," and the other was a picture of a grizzly bear with the word "Three Percenters." "The Punisher" is the crime-fighting lead character in a series of popular comic books, which were adapted to multiple movie and television productions, most recently a film version starring Thomas Jane and John Travolta. The "Three Percenters" slogan is a widely-used reference, likely apocryphal, to the percentage of colonial Americans who fought in the American Revolution.

22. Pacific Grove has an elected CITY Council, and one of those CITY Council members, Jennifer McAdams, saw MR. GONZALEZ's personal vehicle parked in a CITY lot, and grew angry at seeing the stickers.

23. Council Member McAdams immediately and deliberately began using her official powers and office to attempt to learn the identity of the person who had dared express contrary political views to hers. The implication of her communications with CHIEF MADALONE was that whoever it was should be fired.

24. This is a photo of MR. GONZALEZ's personal vehicle as it appeared in May 2020.

25. On Saturday, May 23, 2020, Council Member McAdams emailed the CITY's Police Chief, Cathy Madalone. Council Member McAdams demanded that Chief Madalone find out who the owner of the offending vehicle was, implying that the person should be punished or fired.

26. Council Member McAdams then contacted a reporter named Mary Duan, of the Monterey County Weekly, and proposed that Ms. Duan write an article about the vehicle with the offending stickers. Ms. Duan did so. She filed a Public Records Act request with the CITY for all documents relating to the stickers and the CITY'S response to them.

27. She then called Chief Madalone and asked about the stickers: whose car was it? What was the Chief going to do about it?

28. Council Member McAdams' actions were based expressly on the political viewpoint of his private speech as a citizen on matters of public concern. Attempting to punish, terminate, or otherwise cause adverse employment effects to a public employee based solely on the political viewpoint of his private speech as a citizen on matters of public concern, is outside the scope of a legislator's legislative duties.

29. Specifically, attempting to punish, terminate, or otherwise cause adverse employment effects to a public employee based solely on the political viewpoint of his private speech as a citizen on matters of public concern, is: (1) ad hoc decision-making rather than the formulation of policy; (2) directed solely at one individual rather than the public at large; (3) not formally legislative in character; and (4) lacking in the hallmarks of traditional legislation. *See Kaahumanu v. Cty. of Maui*, 315 F.3d 1215, 1220 (9th Cir. 2003).

30. Chief Madalone was new to the job and new to Pacific Grove—she had been hired from another city less than a year earlier—and she did not want to

antagonize Council Member McAdams. She could have respectfully told Council Member McAdams that it was not appropriate for a Councilmember to demand that CITY employees be punished or fired for their political views. She could have respectfully told Council Member McAdams and Ms. Duan that Americans, including employees of the CITY of Pacific Grove, have the right to put political bumper stickers on their cars.

31. She didn't, though. The very same day that Ms. Duan called—June 1, 2020—Chief Madalone summoned MR. GONZALEZ to a meeting with her and her second-in-command, Commander Rory Lakind. Chief Madalone and Commander Lakind gave MR. GONZALEZ an ultimatum: "These are your two choices. You go home and remove the stickers off your vehicle, or you move your vehicle off CITY property." They demanded that MR. GONZALEZ remove all the bumper stickers from the pickup, including the "Trump-Pence" sticker and the "Thin Blue Line" sticker.

32. MR. GONZALEZ told Commander Lakind that he was uncomfortable with Commander Lakind's command, because the pickup was his personal vehicle. He stated that his political beliefs don't have any impact on his performance of his job, and that he believed he had a right to express his political views in his bumper stickers.

33. Chief Madalone then told MR. GONZALEZ that "the matter is not up for discussion," and that she was immediately placing him on administrative leave. He asked her why, and she responded that there was "an article coming out," and that many people were upset about the killing of George Floyd by police officers in Minneapolis, Minnesota, which had occurred approximately two weeks prior.

34. Chief Madalone placed MR. GONZALEZ on administrative leave, then issued three public statements condemning the political bumper stickers and stating that the Department was "investigating" potential connections to "white-supremacist" and "extremist" groups. Those statements were false and misleading.

35. MR. GONZALEZ is a third-generation Mexican-American. He grew up in a poor neighborhood of Bakersfield. He is not white. He is not a white supremacist. He is not a member of any "white supremacist" or "extremist" group.

36. CHIEF MADALONE and the Department knew all this. There was nothing to "investigate." Displaying political bumper stickers on one's personal vehicle is a core First Amendment right. There was no possible legal basis for punishing or firing MR. GONZALEZ for the bumper stickers on his personal vehicle.

37. Yet the Department chose not to defend its own officer when he was publicly and falsely accused—with no factual basis whatsoever—of being a "white supremacist" and "militia member."

38. Instead, CHIEF MADALONE, not wanting to antagonize Council Member McAdams, hung MR. GONZALEZ out to dry. Here's how Mr. Gonzales himself described his reaction to the news article, in the Department's internal investigation:

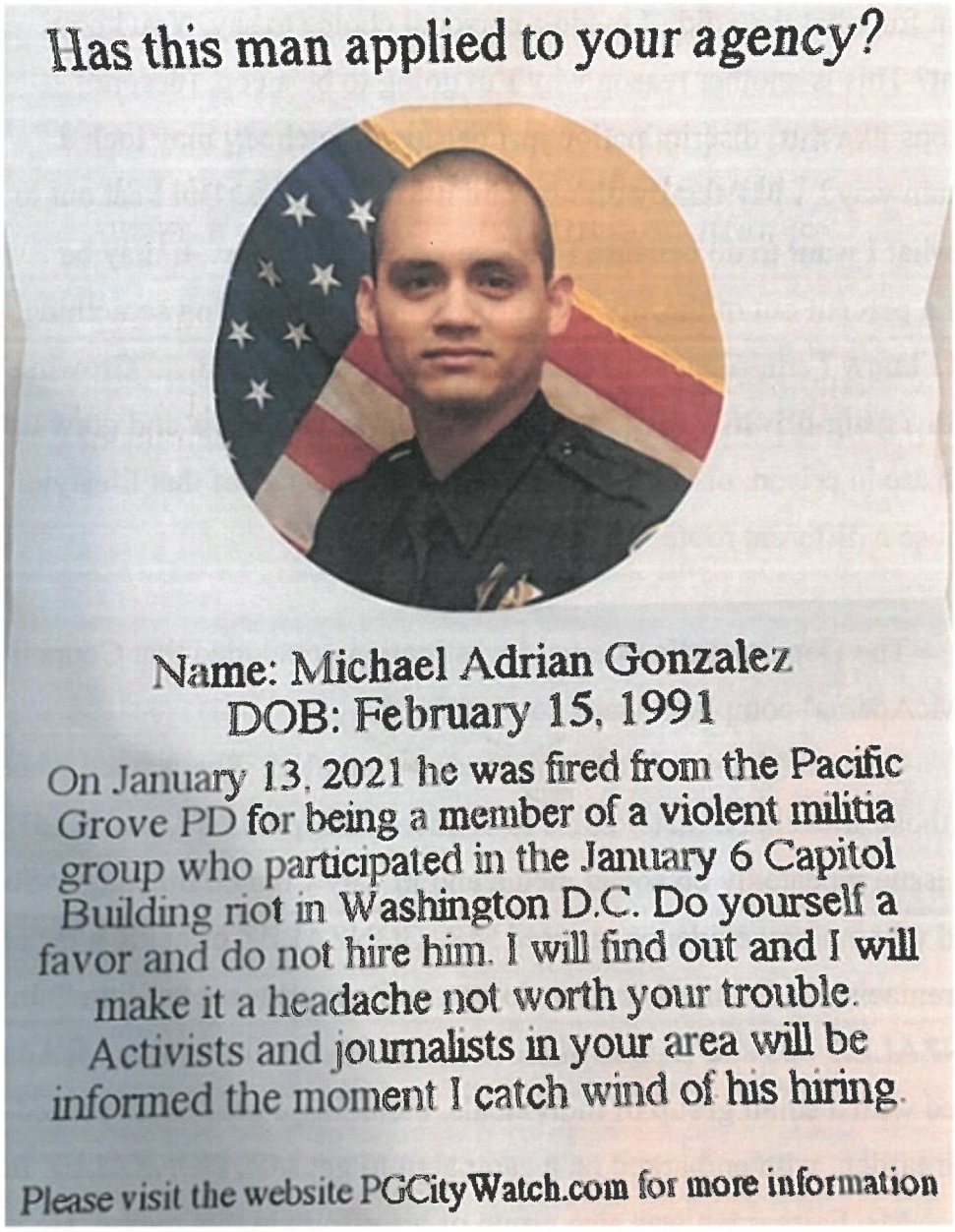
> When I read the article, it was kind of shell-shocking to me. I immediately removed the stickers because, it's just very hurtful because I've worked so hard, it's very upsetting. Because I'm a third-generation Hispanic male, like I said. My grandfather came here to this country, fought [in the military], was subject to discrimination. My grandpa told me all the things that happened to him. That he was kicked around, he was beaten in school, just because he didn't speak English, or because he was a dark-skinned Mexican. And myself? I grew up in a poor, driven community, in the City of Bakersfield. I was pulled over more than I can probably count on my hand, for being this, you know, shaved head, tattooed Mexican kid. I was the stereotype of 'that's a thug.' But what these cops, they didn't know, is that my life-long dream was to always be a cop. And I didn't hate

> them for what they did. I made a personal choice to say, You know what? This is another reason why I'm going to be a cop, [despite] actions like this, discrimination just because somebody may look a certain way.... My family didn't want me to be a cop. But I set out to do what I want to do because I believe I make a change. It may be half a percent out of the whole entire world, but I'm doing something, and I know I am. That's the reason I decided to be a cop.... Growing up in a gang-driven [area], most of the people that I knew and grew up with are in prison, or dead from getting shot, because of that lifestyle. I chose a different route.

39. The Department's internal investigation concluded that Council Member McAdams' complaint was "not sustained."

40. Council Member McAdams was not satisfied. She wanted whoever dared put those stickers on that vehicle to be identified, punished, and fired. She raised the issue repeatedly on social media and in City Council meetings. She falsely and without any evidence accused MR. GONZALEZ of being a racist, a white supremacist, and a member of a violent, anti-government "militia." In fact, MR. GONZALEZ was and is none of those things. Council Member McAdams coordinated with a small group of individuals, including a gentleman named Randy Fairgarden, who embarked on a campaign to get MR. GONZALEZ fired.

41. Mr. Fairgarden was also proud of his efforts in this regard. He wrote about them on social media, and then created a flier that he sent to police departments around the state of California, warning them not to hire MR. GONZALEZ. Mr. Fairgarden falsely stated that MR. GONZALEZ was "a member of a violent militia group who participated in the January 6 Capitol Building riot in Washington, D.C." Here is what he sent to numerous police departments in California:



42. Mr. Fairgarden's statement is a lie. MR. GONZALEZ is not and never has been a member of any militia group, violent group, or extremist group. He has never been to Washington, D.C., he was in California on January 6, 2021. Mr. Fairgarden made the false and defamatory accusations against MR. GONZALEZ with the express goal of destroying MR. GONZALEZ's livelihood.

43. In his flier, Mr. Fairgarden threatened any agency that might hire MR. GONZALEZ: "Do yourself a favor and do not hire him. I will find out and I will make it a headache not worth your trouble."

44. Mr. Fairgarden's actions are relevant to the instant Complaint because Mr. Fairgarden coordinated and strategized with Council Member McAdams and the other state actors who engineered MR. GONZALEZ's firing for his political expression. Mr. Fairgarden's openly stated goals and intentions are strong evidence of theirs. Mr. Fairgarden and Council Member McAdams wanted MR. GONZALEZ fired and his future livelihood destroyed simply because they did not like the contents of his personal, off-duty expressions of his political believes as a private citizen. If discovery reveals that Mr. Fairgarden, who coordinated extensively with Council Member McAdams, engaged in joint state action to an extent that renders him a proper section 1983 defendant, then MR. GONZALEZ will request leave to amend appropriately and name Mr. Fairgarden as a defendant on a joint state actor theory.

45. After the Department's investigation concluded that MR. GONZALEZ's bumper stickers did not violate any policy or law, and determined that Council Member McAdams' complaint was "not sustained," CHIEF MADALONE issued an apologetic public statement. She stated that "the incident created divisiveness in our community and reawakened a stigma of bias and stereotypes from over a decade ago." (CHIEF MADALONE did not say what she meant by "over a decade ago," but whatever it was, it had nothing to do with MR. GONZALEZ as noted above, MR. GONZALEZ had worked at the Department for only four years.)

46. CHIEF MADALONE continued, "We have learned from this incident, and plan to move forward together and heal together as a community."

47. CHIEF MADALONE did not specify what the Department had "learned."

48. One lesson that it might have learned is that public employees—of all political persuasions, and in all types of professions—are at risk of being bullied by elected officials who are willing abuse their offices to punish opposing political speech. CHIEF MADALONE, however, did not identify this as a lesson that she or the Department had learned.

49. CHIEF MADALONE and/or other CITY officials could have made a forthright defense of all citizens' constitutional rights to express their political views—including public employees acting and speaking as private citizens on matters of public concern.

50. If CHIEF MADALONE and/or other CITY officials had done so, then Council Member McAdams and her supporters would have recognized that their efforts to have MR. GONZALEZ fired were inappropriate and potentially in violation of section 1983.

51. But CHIEF MADALONE did not present a defense of all citizens' constitutional rights to speak as citizens on their own time on matters of public concern.

52. Instead, Council Member McAdams, Mr. Fairgarden, and others working with them in a group that identified itself as "Pacific Grove City Watch" were emboldened in their efforts to have MR. GONZALEZ fired.

53. On September 3, 2020, CITY MANAGER BEN HARVEY emailed all Pacific Grove staff to inform them that MR. GONZALEZ would be returning to work. He attached CHIEF MADALONE's statement, quoted above. Neither MR. HARVEY nor CHIEF MADALONE ever referred to MR. GONZALEZ's constitutional rights, or acknowledged that the CITY's investigation had concluded that MR. GONZALEZ was properly exercising his constitutional rights and had not violated any CITY policies.

54. One hour after receiving MR. HARVEY's email, Council Member McAdams wrote to CHIEF MADALONE and all PACIFIC GROVE staff, as follows:

> As a member of the LGBTQ community, I remain offended by the police officers decals and will not forget what I felt (sad, scared, angry, disgust) when I saw the racist decals and underline LGBT message. I can assure you we have lost the public's trust, especially people of color. BLM allies, and our LGBTQ community, L.(iberty) G. (uns) B. (eer) T. (rump) Seriously.....

55. Council Member McAdams wanted MR. GONZALEZ fired because of his political beliefs. So she and Mr. Fairgarden worked together to digitally "stalk" MR. GONZALEZ on the internet, i.e., to attempt to identify any personal social media accounts or statements he might make while off duty, to see if they could find him making any social media statements they could use against him. Mr. Fairgarden and his associates, in coordination with Council Member McAdams, did so, ultimately identifying a "Parler" social media account that they believed was MR. GONZALEZ's.

56. At 12:12 p.m. on November 28, 2020, Council Member McAdams emailed CHIEF MADALONE and told her that she had found a social media account on Parler, an internet discussion forum, that she believed was MR. GONZALEZ's. The account name was MAGS3PER. The account has no mention of MR. GONZALEZ's name, or his employment, or Pacific Grove, or anything else linking the account to Pacific Grove in any way. There was nothing in the account other than a private citizen expressing his views on matters of public concern.

57. Here is the email Council Member McAdams sent to CHIEF MADALONE:

Officer Gonzalez

Jenny McAdams <jmcadams@cityofpacificgrove.org>
Sat 11/28/2020 12:12 PM
To: City Manager <citymanager@cityofpacificgrove.org>; Leticia Livian <llivian@cityofpacificgrove.org>
Cc: Bill Peake <bpeake@cityofpacificgrove.org>; Cathy Madalone <cmadalone@cityofpacificgrove.org>; dave <dave@laredolaw.net>; heidi <heidi@laredolaw.net>

Good Morning,

Hope you all had a wonderful Thanksgiving holiday. The below screen shots were sent to me by a concerned resident taken from Officer Gonzalez's Parley account.

It has also been brought to my attention that as the decals have been removed, they have been replaced with Trump decals and a Trump hairpiece has been added to the Punisher decal. Many see this as antagonistic and question his apology.

I have two questions:

1. Are social media posts like the below acceptable from Ben, Sandra, the Mayor, or any other City employee?

2. How is this content in line with the PGPD's Code of Ethics statement of: " I will keep my private life unsullied as an example to all;"

And

"Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department."

Thank you for your time and assistance. There is plenty of other inappropriate (and recent) content on Officer Gonzalez's social media.

58. Council Member McAdams told CHIEF MADALONE that the screenshots had been "sent to me by a concerned resident." Council Member McAdams did not specify who this "concerned resident" was, or how this person "sent" her the screenshots. In response to a Public Records Act request, the City turned over her emails, and those emails do not include any email from anyone sending her the screen shots she attached. Discovery will reveal whether there is in fact any such "concerned resident," who else was involved, and what methods Council Member McAdams and/or her associates used to identify this Parler account, and. It is unknown at this time whether those methods were legal or illegal, or involved the use of official government resources. What is certain is that Council Member McAdams is the one who emailed CHIEF MADALONE.

59. In her email, Council Member McAdams asked CHIEF MADALONE why the Parler posts did not constitute violations of multiple provisions of Department codes and policies. The clear and obvious message of her email was: fire MR. GONZALEZ now.

60. One of the posts was a re-posting of an image that read "Fuck 'Black Lives Matter'." Another was a re-posting of an image that read "Free Kyle Rittenhouse." Together, these will be referred to as the "Posts." The Posts were posted on MR. GONZALEZ's private and personal social media account, with no mention of or reference to the CITY, his employment, or even his name. They were posted on his own time while off-duty, and they were posted as a private citizen on matters of public concern. The CITY's firing of MR. GONZALEZ was based expressly on the Posts.

61. Council Member McAdams, after using unknown resources and methods to surveil MR. GONZALEZ's personal off-duty social media statements, then coordinated with Mr. Fairgarden to publicize those statements in the media, in order to create a basis for the argument that MR. GONZALEZ needed to be fired because of the "public outcry" over the Posts.

62. The CITY indeed used that argument to justify its termination of MR. GONZALEZ. CITY MANAGER HARVEY relied extensively on it in his September 24, 2021 written decision. CITY MANAGER HARVEY neglected to mention, however, that it was Council Member McAdams who had surveilled MR. GONZALEZ's personal off-duty statements, that it was Council Member McAdams who first identified "Mike20091819" as MR. GONZALEZ, and that it was Council Member McAdams who publicized and circulated the Posts.

63. In short, the CITY itself, through Council Member McAdams, digitally "stalked" one of its own employees as he engaged in political discussions on his own time, while off duty, on his personal social media; then publicized the Posts and worked to create a "public outcry"; then claimed that that "public outcry" justified firing MR. GONZALEZ.

64. The period between June and November, 2020, was one of the most politically charged periods in American history. Every major city in America saw large protests, led and organized by an activist group called "Black Lives Matter." The term denotes the political organizing group that led, promoted, publicized, and conducted these protests. The group also urged, demonstrated for, and called on public officials to support, the "defund the police" agenda. The rhetoric of "Black Lives Matter" was directed against police and police departments, which, Black Lives Matter contended, were racist, violent, and unreformable, and which should be eliminated.

65. "Black Lives Matter" is a political organization. It is not synonymous with "Black people."

66. MR. GONZALEZ was opposed to the ideology, agenda, rhetoric, actions, and proposals of the Black Lives Matter political activist organization. So were millions of other Americans.

67. MR. GONZALEZ expressed that opposition on his own free time, as a private citizen.

68. Many other Americans supported Black Lives Matter.

69. The ideology, agenda, rhetoric, actions, and proposals of Black Lives Matter is a matter of public concern.

70. An American citizen's choice to express his or her support for or opposition to Black Lives Matter is a fundamental Constitutional right protected by the First Amendment.

71. The use of the word "Fuck" to express one's disapprobation for a policy, politician, group, a movement, or institution is fully protected by the Constitution. As the Supreme Court has reminded us in multiple cases since for the past 50 years, an American citizen's right to express his or her views on matters of public concern by saying "Fuck" a particular policy, politician, group, movement, or institution, is a fundamental Constitutional right protected by the First Amendment. *See, e.g.*, *Cohen v. California*, 403 U.S. 15 (1971) ("Fuck the Draft"); *Mahanoy Area School Dist. v. Levy*, 141 S. Ct. 2038 (2021) ("Fuck cheer, fuck softball, fuck school").

72. It is clearly established that a person's saying "Fuck 'Black Lives Matter'" in his personal capacity as a citizen, while off-duty, on his personal social media account, is a protected exercise of his First Amendment rights for which he cannot constitutionally by punished by his municipal employer.

73. DEFENDANTS knew this, but used their official powers, status and color of law to obtain MR. GONZALEZ's termination for those posts anyway.

74. The issues raised in Black Lives Matter protests during the summer of 2020 were issues of public concern. They were widely debated and discussed throughout the country. They were among the core issues animating the presidential election. They were fundamental issues about the shape and direction of public policy in this country. Every American had a fundamental constitutional right to talk about them.

75. Like millions of Americans, MR. GONZALEZ was horrified, appalled, and outraged by the killing of George Floyd by a police officer. As noted above, he himself had been a victim of discrimination and profiling in his youth, and he became a police officer specifically to make policing better and less discriminatory, to make a positive difference in the lives of people who were targeted for abuse by police because of their race, skin color, or social class.

76. Like millions of Americans, MR. GONZALEZ was horrified, appalled, and outraged by the violence, looting, lawlessness, and anarchism displayed daily in the violent protests and riots around the country. MR. GONZALEZ deeply disagreed with the Black Lives Matter agenda and the "defund the police" movement.

77. By November 2020, MR. GONZALEZ knew, from his own experience, what it was like to be on the receiving end of self-styled "activists" and "social justice warriors" whose goal was to purge the Police Department of anyone who expressed a contrary political view. He did not like the fact that Council Member McAdams and her supporters had tried to have him fired for his bumper stickers, and had publicly called him a "white supremacist."

78. For MR. GONZALEZ, the political excesses of the Black Lives Matter movement were crystalized in his own experience with being the target of Council Member McAdams' outrage over his bumper stickers.

79. MR. GONZALEZ had an account on Parler, a widely-used forum in which most participants held conservative views. MR. GONZALEZ used Parler to read commentary posted by, inter alia, Senator Ted Cruz, Sean Hannity, Mark Levin, Tucker Carlson, Dinesh D'Sousa, Congressman Devin Nunes, and Phil Robertson.

80. Like millions of other Americans, MR. GONZALEZ supported Donald Trump in the 2020 election, an election that was fraught with emotion on all sides.

81. Millions of Americans uttered the phrase "Fuck ---" in reference to their political opponents in and around the 2020 election, and it was their constitutional right to do so.

82. MR. GONZALEZ, speaking on Parler as a private citizen, off-duty, on his own time, on his own personal social media account, with no reference to or connection to the City or the Department or his profession, expressed his view on November 28, 2020 in the first of the Posts. He posted: "Fuck 'Black Lives Matter'."

83. He had a right to say that.

84. It's the same right that a Pennsylvania high school student had to post on Instagram: "Fuck softball, fuck, cheer, fuck school, fuck everything." It's the same right that Daniel Cohen had to wear a "Fuck the Draft" patch on his jacket.

85. MR. GONZALEZ, speaking on Parler as a private citizen, off-duty, on his own time, on his own personal social media account, again expressed his view on November 28, 2020 in the second of the Posts. He posted: "Free Kyle Rittenhouse."

86. He had a right to say that.

87. It violates clearly established law for any public employee to be fired for saying "Free Kyle Rittenhouse."

88. Kyle Rittenhouse is an individual who shot three people, two of them fatally, during riots in Kenosha, Wisconsin in the summer of 2020. He contended that the shootings were in self-defense, because he was attacked by those individuals while he was attempting to assist injured people as an informal volunteer medic.

89. The Rittenhouse case was among the most widely-discussed cases in the United States.

90. Millions of people believed that Mr. Rittenhouse should be convicted.

91. Millions of people believe that Mr. Rittenhouse should be acquitted.

92. Expressing an opinion on one side or the other of that issue is core political speech protected by the First Amendment under clearly established law.

93. Mr. Rittenhouse went to trial and was acquitted by a jury of his peers.

94. No reasonable public official could possibly believe that it was constitutionally permissible to fire a public employee for saying "Free Kyle Rittenhouse" as a private citizen, on his own time, while off duty, on his own personal social media account that made no reference to his employment or the City, and indeed did not even include his name.

95. DEFENDANTS knew this, but nonetheless used their official office, powers, status and color of law to terminate MR. GONZALEZ based on his statements.

96. It is unknown at this time what methods Council Member McAdams, Mr. Fairgarden, and "Pacific Grove City Watch" used to surveil MR. GONZALEZ online. Discovery will reveal those methods and MR. GONZALEZ reserves the right to pursue appropriate remedies. If state action was involved, MR. GONZALEZ reserves the right to amend as necessary.

97. On November 28, 2020, Council Member McAdams emailed CHIEF MADALONE. She stated that she had learned from an unnamed "concerned CITY resident" of MR. GONZALEZ's post. CHIEF MADALONE immediately placed MR. GONZALEZ on administrative leave and would investigate.

98. The CITY conducted its investigation very quickly. It concluded that by posting "Free Kyle Rittenhouse" and "Fuck Black Lives Matter" on November 28, 2020, MR. GONZALEZ had violated a Department code of conduct requiring him to "keep [his] private life unsullied," to refrain from "disgraceful conduct," and to refrain from "speech or expression that could reasonably be foreseen as having a negative impact on the credibility of the employee as a witness." The City expressly cited and relied upon both Posts.

99. CHIEF MADALONE terminated MR. GONZALEZ on or about January 13, 2021.

100. An evidentiary hearing was held before the CITY MANAGER HARVEY on February 11, 2021, at which MR. GONZALEZ contested his termination. The hearing revealed that there was no evidence whatsoever that MR. GONZALEZ'S private, off-duty social media comment had had any impact on the operations of the Department.

101. At the hearing, CHIEF MADALONE admitted that she had no basis for believing that MR. GONZALEZ was biased or had engaged in any disrespectful or improper conduct as a police officer. On the contrary, she admitted that in all respects, his performance as a police officer was positive.

102. The CITY admitted that Black Lives Matter is a political and social movement.

103. It was and remains undisputed that the express and sole reason the CITY fired MR. GONZALEZ was the content of his personal off-duty speech as a citizen on matters of public concern.

104. On or about September 24, 2021, CITY MANAGER HARVEY issue his final decision affirming MR. GONZALEZ's termination. HARVEY stated expressly in his order that the conduct for which MR. GONZALEZ was being fired was posting "Free Kyle Rittenhouse" and "Fuck Black Lives Matter" on his personal social media account.

105. There was no evidence whatsoever that the Posts ever caused any disruption of police functions or services.

106. The Posts, indeed, could not themselves have caused any disruption of police functions or services, because nothing in them referred to Mr. Gonzalez's name, his profession, his employer, or his state of residence.

107. Rather, the February 2021 evidentiary hearing revealed instead that the Department's only claims of "disruption" were based on Council Member

McAdams and her associates publicizing the Posts, and encouraging a small number of citizens (approximately four or five, including Mr. Fairgarden), who explicitly wanted MR. GONZALEZ fired because of his personal political views, and who had wanted him fired back in May, for his Trump stickers.

108. CHIEF MADALONE speculated that because the public was now aware (thanks to Council Member McAdams' and her associates' efforts to publicize the Posts) that MR. GONZALEZ had posted "Fuck 'Black Lives Matter'" on his personal social media account, in future interactions he might have with "a person of color, there's a likelihood that the CITY will get a claim; and interactions that he has with the public, whether people of color or not, once they realize that, oh, that's the guy that posted 'Fuck Black Lives Matter,' yep, I'm going to make a complaint about this guy."

109. As a matter of clearly established law, speculation about people's potential reactions to a public employee's personal, off-duty speech on matters of public concern cannot be a basis for adverse employment action.

110. As a matter of clearly established law, it is illegal under the First Amendment and Section 1983 for state officials to fire a public employee because some members of the public do not like the employee's off-duty expression of his personal political views.

111. There was no actual disruption of any police operations, services, or functions as a result of the Posts.

112. The CITY's predictions of "future disruptions" were sheer speculation: speculation, as quoted above, that "the CITY will get a claim" whenever MR. GONZALEZ had an interaction with "a person of color."

113. The CITY presented no evidence whatsoever in support of that speculation.

114. Four or five individuals being upset at the off-duty political speech of an officer is not a "substantial interference with department operations."

115. Speculation that members of the public might make complaints about their interactions with MR. GONZALEZ if they "realized that he's the guy that posted 'Fuck Black Lives Matter," is not a "substantial interference with department operations."

116. It is undisputed—and the Department explicitly stated—that it terminated MR. GONZALEZ because of his off-duty political speech as a citizen on a matter of public concern.

117. The complaints articulated by Council Member McAdams and unnamed members of the public were specifically directed to the political content and viewpoint of MR. GONZALEZ's personal, off-duty statements. Those statements concerned matters of widespread public discussion—the Presidential election, and the direction of future policy regarding policing—which continue to be widely discussed in public discourse. The Constitution guarantees MR. GONZALEZ the right to speak about that issue as a private citizen, free of restraint, discipline, or retaliation by his public employer. It has long been clearly established law that the expression of political viewpoints on matters of public concern enjoys the highest level of protection of any speech under our Constitution, and that viewpoint discrimination by public entities is virtually never justifiable.

118. Council Member McAdams and Mr. Fairgarden sought to purge the employee rolls of Pacific Grove of all employees who hold personal political views they disapprove of. But that is not permitted by our Constitution.

119. CHIEF MADALONE, knowing that the explicit and sole basis for the complaint against MR. GONZALEZ was his personal, off-duty speech as a citizen on matters of public concern, fired him anyway. She violated clearly established law, of which she was on actual and constructive notice.

120. Despite knowing that clearly established law prohibited firing a public employee based on the content of his off-duty personal speech as a citizen on

matters of public concern, DEFENDANTS decided, intended to, and did, punish, discipline, terminate and otherwise impose adverse employment actions on MR. GONZALEZ because of his off-duty speech as a private citizen on his personal social media account. DEFENDANTS knew that the Constitution provides everyone, even public employees, the right to freedom of speech and thought in their personal off-duty social media speech as a citizen on matters of public concern. But DEFENDANTS did not like the political viewpoint of MR. GONZALEZ's speech, and decided to punish him for it using their official positions, authority, and color of state law.

121. MR. GONZALEZ defended himself, asserting his constitutional right to speak while off-duty as a private citizen on matters of public concern on his private social media account.

122. The investigation found, and the CITY expressly agreed, that MR. GONZALEZ made the Posts while off-duty, on his own personal time, and never identified himself as, or claimed to speak on behalf of, any police department or government agency.

123. The investigation found, and the CITY expressly agreed, that MR. GONZALEZ was terminated based on the content of the Posts.

124. It is undisputed that the Posts address a matter of public concern—indeed, the issue was arguably the nation's most significant matter of public concern during the middle of 2020.

125. MR. GONZALEZ was harmed, continues to be harmed, and will be harmed in the future by the DEFENDANTS' wrongful actions.

126. MR. GONZALEZ was harmed economically, psychologically, reputationally, and emotionally by being targeted by DEFENDANTS and terminated from his employment for expressing his views on matters of public concern in his speech as a private citizen on his personal social media accounts.

127. MR. GONZALEZ could and would have continued to work as a Pacific Grove police officer for the next 25 years, but for DEFENDANTS' wrongful actions as set forth herein. Now, he likely will never be able to work as a police officer again, despite the accolades he earned for the performance of his duties, and the complete absence of any suggestion of any improper conduct on the job. His economic damages include, inter alia, the lost value of the salary he would have earned during that time, plus the pension he would have earned for the rest of his life upon retirement, as compared to the much lower earnings he will be able to obtain in the private sector.

128. Every PACIFIC GROVE employee continues to experience the chilling effect of being fired for his or her personal off-duty political speech. DEFENDANTS' actions were a slap in the face of the Constitution and every public employee in the City, of all political persuasions, but it is MR. GONZALEZ who felt that slap most acutely.

129. DEFENDANTS' wrongful actions destroyed MR. GONZALEZ's career. DEFENDANTS' wrongful actions harmed him economically in an amount subject to proof at trial, including at least the following: loss of his salary and benefits for the approximately 25 years he would otherwise have continued to work as a police officer; loss of the pension he would have received for the rest of his life after retiring; loss of the potential private-sector opportunities in, e.g., consulting or security that are available to retired officers. The amount of this economic harm is subject to proof at trial.

130. All CITY personnel—from teachers to firefighters to clerks to social workers—continue to be harmed by the CITY's blatant and overt policy of targeting, punishing, and firing employees based on their personal off-duty political speech. Every employee of Pacific Grove needs to wonder whether he or she might be next, if something he or she says off-duty in his or her capacity as a private citizen participating in debate about matters of public concern happens to

provoke the ire of Council Member McAdams, Randy Fairgarden, or other "social justice champions" who believe that public employees whose political views they dislike should be fired.

131. The knowledge that the CITY will openly engage in the unconstitutional practice of firing employees based on their off-duty speech on matters of public concern chills the exercise of the constitutional rights of speech and political participation of all CITY personnel. That chilling effect is a past, present, and future ongoing harm to everyone who works for the CITY. The right to participate freely in public discussion of matters of public concern is of immense importance in a democracy, but the CITY has sent the message loudly and clearly to all its employees that it does not respect that right.

132. DEFENDANTS and each of them participated in and ratified the termination proceedings against MR. GONZALEZ.

133. The personal participation by DEFENDANTS in the CITY's conduct as set forth herein—deliberately targeting officers for discipline, punishment and termination based on the political viewpoint of their off-duty speech on matters of public concern—is oppressive conduct, because it was done in a manner which injures or damages or otherwise violates the rights of another person with unnecessary harshness or severity and by misuse or abuse of authority. It is therefore sufficient to support an award of punitive damages in this action. *Dang v. Cross*, 422 F.3d 800, 809 (9th Cir. 2005).

134. The CITY is sending a loud and clear signal to its employees. It may as well post signs that read: "You'd better not engage in social media debates on anything, even important matters of public policy and national concern, because if Councilmember McAdams or her allies don't like what you say, we'll fire you." Such a policy on public-employee speech is not permissible in the United States.

135. A municipal employer may not covertly surveil the personal, anonymous, off-duty political speech of its employees, then publicize the speech,

"out" its employee as the speaker, manufacture "public outrage," and then fire the employee based on the purported "public outrage"—all without ever once so much as suggesting that the employee had ever done anything remotely improper in the performance of his job.

136. The Constitutional principle that public employees may not be fired for the content of their off-duty speech as citizens on matters of public concern is a principle that protects *all* Americans, and *every* public employee, regardless of their political ideology. This case is about that principle. All Americans and all municipalities should respect it.

CLAIM FOR RELIEF

First Claim For Relief

Retaliation Based on Exercise of Right to Free Speech in Violation of 42 U.S.C. § 1983

(MR. GONZALEZ Against All DEFENDANTS)

137. MR. GONZALEZ re-alleges and incorporates by reference as if fully set forth herein all preceding paragraphs of this Complaint.

138. MR. GONZALEZ engaged in constitutionally protected activity when he spoke as a private citizen on matters of public concern, on his personal social media account, in making the Post.

139. As a result of his constitutionally protected activity, MR. GONZALEZ was subjected to adverse action by DEFENDANTS under color of state law that would chill a person of ordinary firmness from continuing to engage in that protected activity, when DEFENDANTS charged him with misconduct and fired him.

140. There was a substantial causal relationship between the constitutionally protected activity and the adverse action taken against MR. GONZALEZ by DEFENDANTS, because DEFENDANTS directly and expressly punished him for his constitutionally protected activity by firing him.

141. DEFENDANTS developed and maintained policies and customs that violated MR. GONZALEZ's constitutional rights. DEFENDANTS ratified, endorsed, and abetted the retaliatory decisions and actions, and the basis for them. DEFENDANTS knew of, ratified, and failed to stop, the imposition of discipline against MR. GONZALEZ for exercising his First Amendment rights.

142. As a direct result of MR. GONZALEZ's exercising his constitutional right to speak publicly—on his own time, off-duty, as a citizen—publicly on matters of public concern, DEFENDANTS retaliated against him, including, inter alia, taking adverse employment actions against him, by disciplining him for the content and/or viewpoint of his speech. Absent MR. GONZALEZ's exercising his constitutionally protected rights to speak, DEFENDANTS would not have taken the adverse employment actions against him set forth herein.

143. At all times mentioned herein, MR. GONZALEZ's constitutionally protected activities were related to matters of public concern, and were not undertaken pursuant to job duties. MR. GONZALEZ's speech was on matters of widely-debated public concern.

144. By taking adverse employment actions against MR. GONZALEZ that were substantially motivated by his constitutionally protected speech, DEFENDANTS violated MR. GONZALEZ's rights under the First Amendment to the United State Constitution.

145. DEFENDANTS' official custom, pattern and practice of retaliating against police officers for the content and viewpoint of their off-duty, private-citizen speech on matters of public concern, has a continued chilling effect upon MR. GONZALEZ's speech activities and those of many of his fellow officers. DEFENDANTS' adverse employment actions were intended to, did, and would reasonably chill and deter MR. GONZALEZ, other officers, and other CITY employees from speaking publicly, on their own time, on matters of public

concern, out of fear that if they expressed certain political views or opinions as citizens, they may be punished as CITY employees.

146. As a direct result of DEFENDANTS' acts and omissions, MR. GONZALEZ has suffered significant damages in an amount subject to proof at trial, including psychological and emotional harms; reputational harms; lost promotional opportunities and associated lost wages and pension income; and lost future income from post-retirement private-sector employment opportunities that will be unavailable to him because he now has an adverse disciplinary record with the Department.

147. As a direct, foreseeable, and proximate result of DEFENDANTS' wrongful acts and omissions, MR. GONZALEZ suffered and continues to suffer mental and emotional distress, humiliation, anxiety, embarrassment, and discomfort, to his detriment, in an amount according to proof at the time of trial, and expenses incurred for treatment of same.

148. In performing the acts herein alleged, DEFENDANTS acted intentionally to injure MR. GONZALEZ, namely, to terminate his employment, because of the content and viewpoint of his constitutionally protected speech on matters of public concern, which he engaged in while off duty, as a citizen.

149. DEFENDANTS' actions were unconstitutional and DEFENDANTS knew it and should have known it.

150. DEFENDANTS' conduct was oppressive, despicable and performed with a willful, conscious, and reckless disregard of MR. GONZALEZ's civil rights such that punitive or exemplary damages are warranted.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS pray for Judgment against DEFENDANTS for:

1. Compensatory damages, economic and non-economic damages in excess of $1,000,000, in an amount according to proof;

2. General damages to compensate MR. GONZALEZ for mental and emotional injuries, distress, anxiety, and humiliation;

3. Attorneys' fees pursuant to 42 U.S.C. § 1988;

4. Exemplary or punitive damages as to individual DEFENDANTS in an amount according to proof that is sufficient to punish and prevent future violations of constitutional rights (namely, the deliberate retaliation against, punishment of, or constructive termination of, a public employee based on the employee's protected First Amendment speech as a private citizen on matters of public concern);

6. Costs of suit;

7. Post-judgment interest;

8. Such additional relief as the Court may deem proper.

DATED: Feb. 22, 2022

Respectfully submitted,

CALEB E. MASON
Werksman, Jackson & Quinn, LLP
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

MR. GONZALEZ demands a jury trial.

DATED: Feb. 22, 2022

Respectfully submitted,

CALEB E. MASON
Werksman, Jackson & Quinn, LLP
Attorney for Plaintiffs