

**TOWN OF MORAGA
TOWN COUNCIL REGULAR MEETING**

**June 12, 2013
MINUTES**

7:00 P.M. Regular Meeting

Joaquin Moraga Intermediate School Auditorium
1010 Camino Pablo, Moraga, California 94556

I. CALL TO ORDER

The regular meeting was called to order at 7:03 P.M. by **Vice Mayor Ken Chew**.

ROLL CALL

Councilmembers present: Vice Mayor Ken Chew, and Councilmembers Phil Arth, Michael Metcalf, and Roger Wykle

Councilmembers absent: Mayor Dave Trotter

II. PLEDGE OF ALLEGIANCE

Councilmember Arth led the Pledge of Allegiance.

III. SPECIAL ANNOUNCEMENTS

Vice Mayor Chew announced that the Town Council had held a special meeting just prior to the regular meeting to conduct interviews for the Contra Costa County Advisory Council on Aging during which the Town Council had appointed Keith Katzman to be the Town's representative.

IV. PROCLAMATIONS AND PRESENTATIONS

A. Swearing in of New Town of Moraga Police Officer Mandy Smith

Moraga Chief of Police Robert Priebe described the background and education of the new Town of Moraga Police Officer Mandy Smith, and introduced her to the Town Council.

Town Clerk Marty McInturf presented the Oath of Office to Moraga Police Officer Mandy Smith.

Officer Mandy Smith expressed her appreciation to the Town Council and the Police Chief, and stated she looked forward to serving the Town of Moraga and the community.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

B. Proclamation Honoring Campolindo High School Boys Varsity Swim Team

Vice Mayor Chew presented the proclamation honoring the Campolindo High School Boys Varsity Swim Team and declared June 12, 2013 as "Campolindo Boys Varsity Swim Team Day" in honor of the team's win of the 2013 North Coast Section Championship.

PUBLIC COMMENTS OPENED

Ron Heidary, Coach for the Campolindo High School Boys Varsity Swim Team, thanked the Town Council for the recognition, commented on the number of seniors on the team, commended his student athletes as leaders and role models, emphasized his pride for the entire swim program, and thanked the parents and Campolindo High School for all of their support.

John Walker, Principal, Campolindo High School, congratulated the Boys Varsity Swim Team, highlighted the work of Coach Heidary as a role model and mentor, and expressed his appreciation to all of the parents.

Councilmember Metcalf was pleased to have been the Campolindo High School starter for the swim teams and congratulated the Boys Varsity Swim Team on its accomplishments.

PUBLIC COMMENTS CLOSED

V. PUBLIC COMMENTS AND SUGGESTIONS

There were no public comments or suggestions.

VI. ADOPTION OF THE CONSENT AGENDA

A. Approval of the Consent Items

Consent Agenda Items 4 and 5 were removed from the agenda.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Wykle/Metcalf) to approve Consent Agenda Items 1, 2, 3, 6, 7, 8, 9, 10 and 11. Vote: 4-0-1. Absent: Trotter.

- | | | |
|----|---|----------------|
| 1) | Accounts Payable Claims for 5/17/13 (\$178,334.21);
5/31/13 (\$381,785.61) | Approved |
| 2) | Approve Minutes for Town Council Regular Meeting on
April 24, 2013 | Approved |
| 3) | Approve Minutes for Town Council Special Meeting on
May 7, 2013 | Approved |
| 4) | <i>Approve Minutes for Town Council Regular Meeting on
May 8, 2013</i> | <i>Removed</i> |
| 5) | <i>Approve by Motion Signs for Café Hacienda by home/made
kitchen</i> | <i>Removed</i> |

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|-----|--|----------|
| 6) | Adopt Resolution 40-2013 Authorizing the Town Manager to Award a Professional Service Contract to Alta Planning and Design in an Amount Not to Exceed \$300,000 for Completion of the Livable Moraga Road Planning and Design Project | Approved |
| 7) | Adopt Resolution 41-2013 Approving Changes to Employer Paid Member Contributions under the California Public Employees' Retirement System (CalPERS) for Town of Moraga Miscellaneous Employees; and

Adopt Resolution 42-2013 Approving Changes to Employer Paid Member Contributions under the California Public Employees' Retirement System (CalPERS) for Town of Moraga Safety Employees | Approved |
| 8) | Adopt Resolution 43-2013 Amending the Compensation Package for Mid-Management/Professional Employees Effective July 1, 2013 to June 30, 2015 and Rescinding Resolution No. 34-2013 | Approved |
| 9) | Adopt Resolution 44-2013 Amending the Salary Schedule for Town of Moraga Classifications to Provide for a Two Percent (2%) Increase Effective July 1, 2013 and a One Percent (1%) Increase Effective July 1, 2014 | Approved |
| 10) | Adopt Resolution 45-2013 Authorizing the Town Manager to Award a Consultant Services Contract to BKF Engineers (Walnut Creek) in an Amount Not to Exceed \$58,500 for Construction Management and Inspection Services for the Laguna Creek Wall Repair and Bank Stabilization Project (CIP 08-203) | Approved |
| 11) | Adopt Resolution 46-2013 Approving a Budget Amendment Using Anticipated Fiscal Year 2012/13 Budget Savings in the Amount of \$55,000 and Appropriating it to the General Plan Update and Zoning Consistency Project | Approved |

B. Consideration of Consent Items Removed for Discussion

1. Approve Minutes for Town Council Regular Meeting on May 8, 2013

Councilmember Metcalf asked staff to review the meeting recording and clarify the bullet points shown on Page 7 of the May 8, 2013 meeting regarding the compensation from the operator of Café Hacienda by home/made kitchen to the Town to reflect the discussion of the service fee of 7 percent of net sales. He also asked that the last sentence of the last paragraph starting on Page 13 and ending on Page 14 be revised to strike the use of the term "negotiating," to be replaced with a more appropriate term.

Vice Mayor Chew advised the minutes of the May 8, 2013 meeting would be brought back after staff review of the meeting tapes; with corrections to be identified in the redline strike out format.

2. Adopt by Motion Signs for Café Hacienda by home/made kitchen

Councilmember Metcalf referenced an e-mail received by the Town Council that day from local commercial realtor Dave Schnayer, who had expressed concern with the perception of the Town granting favorable treatment to the Café Hacienda by home/made kitchen operator by waiving the Sign Ordinance. He asked staff to respond to the concern.

Parks and Recreation Director Jay Ingram referenced the staff report which had cited the applicable section of the Moraga Municipal Code (MMC), Sign Ordinance Article 3, "Exempt and Special Use Signs." He noted that staff had determined the proposed signs fell within that section of the MMC, and he did not believe there was any favoritism. He pointed out there were other restaurants in the Town with signs in front of the businesses in both the Rheem and Moraga Shopping Centers.

Town Manager Jill Keimach clarified pursuant to the MMC, Sign Ordinance, Article 3, the signs were intended to direct the public that Café Hacienda by home/made kitchen was located inside the Hacienda. The signs were considered to be informational signs for the public and were not allowed to be more than 4 square feet in size. She acknowledged the Town's temporary sign ordinance, which allowed signs to be posted for no more than 15 days, although in this case the proposed signs were for a business with a three-month agreement. She described the business as unique, stated it had not gone through the normal Design Review Board (DRB) process, and a three-month investment was not normally done on a trial basis.

PUBLIC COMMENTS OPENED

George Fisher, Moraga, commented on the positive effect of the Café Hacienda, particularly given the efforts to increase the Hacienda's use; the café was not clearly visible; and the business was only known at this time by word of mouth. He urged support for the signage.

Gayle Somers, one of the operators of Café Hacienda by home/made kitchen, emphasized the time and effort involved in the business and described the signs as small directional signs intended to direct the public to the location of the café in the Hacienda. She suggested many in the community were unaware of the existence of the Hacienda; pointed out the signs would be temporary, noting the Town would determine whether or not to continue with the café beyond the initial three-month period.

Assistant Town Attorney Karen Murphy affirmed that when the Town Council had discussed the Café Hacienda proposal, staff had been directed to review the sign request. Staff had reviewed the MMC and found the exemption in the Sign Ordinance as reflected in the staff report.

PUBLIC COMMENTS CLOSED

Councilmember Wykle suggested two signs would place the business on parity with other businesses in the Town. He suggested the A-frame sign was a reach since other businesses were not permitted the same signage. He supported the two signs but not the A-frame sign.

Councilmember Arth supported the signage; recognized the Hacienda was difficult to find, and saw no reason to object to a directional sign located on the road.

Councilmember Metcalf referencing the concern with favoritism, stated he was satisfied with the staff explanation and determination that a privilege was not being granted in this case; suggested that the signs were legal and the Town Council was being fair by allowing the signs; and emphasized there was no visible signage for the café until one walked into the Hacienda and saw the menu board whereas any other restaurant in the Town had signage visible from the street. He stated there were other existing signs in the community, and while not A-frames,

many were signs posted in landscaping or the grass area, and expressed concern with the inequality of allowing those signs and denying this applicant's request for signage. He urged approval of all three signs.

Responding to the Council, Ms. Brekke-Read advised that the sign exemption had also been applied to other sign requests, such as directional signs for Saint Mary's College (SMC) basketball games, and the Community Faire. She acknowledged the community had requested consideration to allow temporary A-frame signs, which request was on the staff work program. She added that temporary banners had also been allowed on a case-by-case basis for a limited period, and that code enforcement was pursued on a complaint-driven basis when staff contacted a business if a sign must be removed.

Mr. Ingram clarified the A-frame sign would be located on the Hacienda property.

Vice Mayor Chew was uncertain how anyone would have an issue with the A-frame sign which would be located on the Hacienda property. He was reassured the signs would only be in place for a three-month period and the issue could be revisited. He also affirmed the Town Council had the authority to approve or deny the signs, and clarified with the Town Manager the agreement for the café was for a three-month period subject to extensions between the Parks and Recreation Director and the café operator. If the business decided not to continue beyond the three-month period, the signs would have to be removed.

Ms. Somers stated for the record that the same individual who had issued the complaint about the Hacienda signage had also complained about the signage she had in place at the former Mondello's Restaurant location. She asked why the entire Moraga Road corridor was allowed to be lined with what she described as large blue unattractive signs for that individual and other commercial Real Estate brokers along the same route, and questioned the fairness of asking one business operator to remove signs while others were allowed to remain.

ACTION: It was M/S (Metcalf/Arth) to adopt by motion signs for Café Hacienda by home/made kitchen. Vote: 3-1-1. Noes: Wykle. Absent: Trotter.

VII. ADOPTION OF MEETING AGENDA

ACTION: It was M/S (Wykle/Metcalf) to adopt the Meeting Agenda, as shown. Vote: 4-0-1. Absent: Trotter.

VIII. REPORTS

A. Mayor's and Councilmembers' Reports

Mayor Trotter – Not present.

Vice Mayor Chew - Reported that he had attended the Mayors' Conference in the City of Antioch on June 6.

Councilmember Arth - No report.

Councilmember Metcalf - Reported that he had attended a meeting of the Moraga-Orinda Fire District (MOFD) with a discussion on the potential de-annexation by the City of Lafayette from ConFire and possible annexation to the MOFD, and received a report on a December 2012 incident which had involved MOFD personnel; with a suggestion for new signage at the Fourth Bore of the Caldecott Tunnel.

Councilmember Wykle - Reported that he had attended the Los Perales Elementary School Spring Concert on May 16; the Joaquin Moraga Spring Fling on May 30; and the End of the Year Party at Los Perales on May 31.

- B.** Town Manager Update – Ms. Keimach reported that Parks and Recreation Department staff were receiving donations for the 4th of July Buy-a-Rocket fundraising event with opportunities for donations at local businesses. She also reported on numerous Grand Jury investigations; the Town was required to respond so as to be transparent; and the latest reports/investigations related to contracting out for services. She anticipated reporting back to the Council on the matter in the next month or two and clarified that staff had not kept track of the actual staff time to respond to the investigations. She acknowledged that concerns with Grand Jury reports had been raised by the County Public Manager's Association given the frustration with the number and extent of questions from the Grand Jury and the staff time required to respond.

IX. DISCUSSION ITEMS

There were no discussion items.

X. PUBLIC HEARINGS

- A.** Adopt Resolution 47-2013 Confirming the Engineer's Report for the Town of Moraga Street Lighting Assessment District 1979-1, Approving Assessments and Assessment Diagram, and Levying Assessments for the Fiscal Year 2013/14

Administrative Services Director Stephanie Hom presented a request for the Town Council to conduct a public hearing on levying assessments for Fiscal Year 2013/14 for the Town of Moraga Street Lighting Assessment District 1979-1, and upon closure of the public hearing, adopt a resolution which would continue the current levy of \$58 per residence within the Street Lighting Assessment District to fund operations and repairs of the Town street lights.

Randy Leptien, Leptien, Cronin, Cooper, Morris & Poore, Inc., Engineer for the Town's Street Lighting Assessment District, offered an overview of Street Lighting Assessment District 1979-1, with the assessment to be \$58 with no increase proposed. Staff had determined there were sufficient funds in the Assessment District where an increase was not necessary given that costs had maintained constant for a number of years and had actually gone down as a result of conversion to LED.

Mr. Leptien described the assessment process, as required each year, with the assessment to be levied; the Engineer's Report to be noticed; a public hearing to be held; and adoption of the resolution as shown. He noted that staff would be looking into the purchase of the street lights to reduce costs, some of which were already owned by the Town, while others were owned by PG&E. He also clarified that all arterial street lights in Moraga had been converted to LED, and he clarified the General Benefit contributions.

Public Works Director/Town Engineer Edric Kwan explained that one of the Capital Improvement Projects (CIP) to be presented during the next Council meeting included a Street Lighting Master Plan to evaluate the purchase of the street lights and conversion to LED.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Metcalf/Arth) to adopt Resolution 47-2013 Confirming the Engineer's Report for the Town of Moraga Street Lighting Assessment District 1979-1, Approving Assessments and Assessment Diagram, and Levying Assessments for the Fiscal Year 2013/14. Vote 4-0-1. Absent: Trotter.

XI. ORDINANCES, RESOLUTIONS, AND REQUESTS FOR ACTION

- A. Adopt Resolution 48-2013 Requesting Assistance of the ABAG Finance Authority for Nonprofit Corporations with Respect to the Town's Proposed Execution and the Delivery of Lease Revenue Bonds or Certificates of Participation and Directing the Town Manager to Return to the Town Council with Lease Revenue Bonds or Certificates of Participation, Whichever is More Favorable, Using Revenue From the Town of Moraga's One Cent Local Sales Tax for Not Less Than \$2.5 Million in Order to Immediately Proceed with the 2013 Pavement Management Program

Ms. Hom reported that the adoption of the draft resolution would allow staff to request the assistance of the Association of Bay Area Governments (ABAG) Finance Authority for Nonprofit Corporations with respect to the Town's proposed execution and the delivery of Lease Revenue Bonds or Certificates of Participation, and would direct the Town Manager to return to the Town Council with Lease Revenue Bonds or Certificates of Participation, whichever was more favorable, using revenue from the Town of Moraga's One Cent Local Sales Tax for not less than \$2.5 million in order to immediately proceed with the 2013 Pavement Management Program. Staff had met with the underwriters as well as bond counsel to discuss the process and the steps to be taken. The process would allow the Town to lease back some of its assets in order to obtain up-front funding for the 2013 Pavement Management Program. Staff asked that the Town Council adopt the resolution, which would allow staff to return with all of the legal documents needed to allow the leveraging.

Responding to the Council, Ms. Hom stated that she was in communication with some members of the Revenue Enhancement Community Outreach to Neighborhoods (RECON) Committee with bond counsel having been hired through previous action taken by the Town Council. Ms. Hom commented that she had spoken with the former Town Treasurer and the Audit and Finance Committee (AFC) was aware of the process. She added that it had been confirmed that the Town's first deposit for the One Cent Local Sales Tax would be on June 26, 2013.

Ms. Hom explained that the Town had a third party consultant, Municipal Services, specifically for sales tax analysis, which would meet with staff quarterly, and which would audit receipts to ensure the accurate accounting of applicable sales taxes.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Metcalf/Wykle) to adopt Resolution 48-2013 Requesting Assistance of the ABAG Finance Authority for Nonprofit Corporations with Respect to the Town's Proposed Execution and the Delivery of Lease Revenue Bonds or Certificates of Participation and Directing the Town Manager to Return to the Town Council with Lease Revenue Bonds or Certificates of Participation, Whichever is More Favorable, Using Revenue From the Town of Moraga's One Cent Local Sales Tax for Not Less Than \$2.5 Million in Order to Immediately Proceed with the 2013 Pavement Management Program. Vote 4-0-1. Absent: Trotter.

- B. Adopt Resolution 49-2013 Authorizing the Town Manager to Award a Construction Contract to VSS International, Inc. (West Sacramento) in the amount of \$2,152,074 for the Construction of the 2013 Pavement Repair Project (CIP 08-106) and to Execute Contract Change Orders up to 15% of the Contract Amount

Mr. Kwan identified the milestones the Town had gone through to-date including the Pavement Management Report last issued in June 2011. He updated the Council on the efforts leading to the passage of the One Cent Sales Tax measure, the hiring of Nichols Consulting for design services in January 2013, award of construction management contract to Harris & Associates in April 2013, the 2013 Pavement Repair project placed out to bid in May 2013, the mandatory pre-bid meeting on May 10, 2013, and the construction bid opening on May 28, 2013. The construction contract was now before the Town Council for approval. It was hoped construction would commence in mid-July, 2013 and end at the end of September, 2013. He emphasized the efforts leading to the formation of the construction contract, including coordination efforts with outside utility companies, collection of field data, testing and coring of existing pavement, and determining different types of pavement treatments using innovative technology.

Mr. Kwan outlined the details to fine-tune the design, the streets planned for the rubberized cape or micro-seal treatments, the extensive public outreach planned as part of the project, the efforts of RECON to realize the success of the Local One Cent Sales Tax measure with its Oversight Committee having been invited to attend a volunteer orientation for a door-to-door education campaign to describe the upcoming street repairs. A project website would also be developed to provide up-to-date project status information on each street with a Facebook page utilized to educate those members of the public who took advantage of social media. All residents would be noticed in advance of the work to be provided, with the public noticed that Measure K funds would be used for street repairs. Neighborhood entrance signs and lawn signs would state "Shop Moraga First."

Mr. Kwan emphasized all efforts would be made to coordinate construction work with the utility companies; in this case the East Bay Municipal Utility District (EBMUD) had planned sewer lateral work which changed some streets that were planned for 2013 in order to avoid cutting into the newly paved streets. He acknowledged a recommendation to also utilize local media to educate the public on the project with public notices on the Town's website and in Lamorinda Weekly.

Mr. Kwan detailed the bid responses as outlined in the staff report; identified the non-responsive bidders; and identified VSS International Inc. as the lowest responsive bidder. He reported that staff had received a bid protest the morning of June 12, 2013 from Central Valley Engineering and Asphalt (identified in the staff report as a non-responsive bidder).

Ms. Murphy reported that the bid protest had been received that morning from Central Valley Engineering and Asphalt, stating that its bid should not be deemed non-responsive due to the fact there were some discrepancies in the bid documents. In addition, the firm noted the Town

had the authority to waive bid irregularities, and had requested the waiver be considered citing specific case law.

Mr. Kwan added that during the mandatory pre-bid meeting, bidders had the opportunity to ask any questions and identify any discrepancies. In this case, no questions had been raised regarding the Waste Assessment Form and the remaining four contractors had submitted a signed Waste Assessment Form although Central Valley Engineering and Asphalt had not.

Mr. Kwan explained that the recommendation from staff must be based on the lowest responsive bidder. At the time of the distribution of the staff report, staff had determined Central Valley Engineering and Asphalt as non-responsive since it had not submitted a signed Waste Assessment Form nor had it listed experience with any micro-seal or rubberized cape seal projects. He noted that Central Valley Engineering and Asphalt's bid had met the minimum requirements.

Ms. Murphy identified the two components to reject a bid: (1) responsiveness and compliance with the bid requirements, and (2) responsibility and whether there were concerns with the contractor's past performance or responsible behavior in contracting. In this case, there was no recommendation to deny based on responsibility. Rejection based on responsibility also required a special hearing to make that determination.

Mr. Kwan clarified during the discussion that none of the contractors under discussion had been the contractor that had conducted the previous Moraga Road repairs.

Ms. Murphy further commented in response to the June 11, 2013 letter from Central Valley Engineering and Asphalt, that there was an ambiguity based on the fact the Waste Assessment Form was required to be signed, and had been identified on the bidder's checklist, but the form also had to be filled in at a future date. She noted that City/Town Councils may waive minor bid irregularities as long as it did not affect the bid price.

Mr. Kwan explained that absent the submittal of the Waste Assessment Form, which was required to be submitted and signed as part of the bid package, staff was unable to determine Central Valley Engineering and Asphalt's understanding that 50 percent of the waste must be diverted, which could affect the cost of the bid.

PUBLIC COMMENTS OPENED

Jordan Reed, VSS International, Inc., West Sacramento, responded to the bid protest from Central Valley Engineering and Asphalt by referencing the checklist in the bid documents which listed all forms, including the Waste Assessment Form, required to be properly signed and submitted. He questioned whether Central Valley Engineering and Asphalt had conducted due diligence in contacting the Town with any questions or concerns with the bid documents, particularly since the other four contractors had filled out, signed, and returned the Waste Assessment Form.

Mr. Kwan explained that he had contacted the subcontractor for Central Valley Engineering and Asphalt, advised of the absence of the signed Waste Assessment Form as required and as clearly stated in the bid documents, and clarified that all of the bidders had either filled out and/or signed the Waste Assessment Form.

Ms. Murphy stated that failure to provide a signed Waste Assessment Form could be considered a bid irregularity.

Mr. Kwan clarified that there were actually two forms; a Waste Assessment Form and a Waste Assessment Summary Form. One of the forms predicted what a contractor planned to do and the other captured what the contractor had actually done. He emphasized that the checklist was clear regarding the need to submit all forms and that the subcontractor for Central Valley Engineering and Asphalt appeared to be aware of the absent Waste Assessment Form only after he had informed the subcontractor of such.

On further discussion, Ms. Murphy commented that while the Town had the right to waive irregularities, those irregularities must be non-material and not impact the cost of the bid.

Councilmember Metcalf commented that Central Valley Engineering and Asphalt may have made a mistake which impacted the costs of its bid. For that reason, he expressed concern with its bid and therefore supported the staff recommendation.

Vice Mayor Chew found it difficult to believe Central Valley Engineering and Asphalt had intentionally not complied with the bid specifications.

Councilmember Arth commented that he would have hesitated to sign the Waste Assessment Form since it required information that was unknown. He also clarified with staff that it was a common bid document and one also used by Contra Costa County.

Ms. Keimach spoke to her experience with bid protests in other jurisdictions, noted it was not uncommon for a Council to reject a bid protest, and emphasized the Council had the discretion to choose whether or not to waive any irregularities.

Mr. Kwan stated he had no prior experience with Central Valley Engineering and Asphalt. References had been provided for all of the bid contractors with no negative responses.

Councilmember Wykle emphasized the Council had a fiduciary responsibility and the difference in the bids was significant.

Mr. Reed added that all of the other bid documents were boilerplate. He emphasized a contractor submitting a bid acknowledged clauses the Town found important and emphasized the financial impacts in meeting the requirements for 50 percent waste diversion.

PUBLIC COMMENTS CLOSED

Councilmember Metcalf offered a motion to adopt Resolution 49-2013 Consenting to Relieve American Asphalt and Concrete of its Bid Due to Mistake, Deeming the Bid Submitted by Central Valley Engineering and Asphalt as Non-responsive and Authorizing the Town Manager to Award a Construction Contract to VSS International, Inc. (West Sacramento) in the amount of \$2,152,074 for the Construction of the 2013 Pavement Repair Project (CIP 08-106) and to Execute Contract Change Orders up to 15% of the Contract Amount.

The motion failed due to the lack of a second.

Ms. Murphy advised if the Council wished to waive the bid irregularity and award the contract to Central Valley Engineering and Asphalt, she could provide language to be included in a modified resolution.

Councilmember Wykle suggested that the omission of that form would not materially affect the contract. He offered a motion to authorize the Town Manager to award a construction contract to Central Valley Engineering and Asphalt (Roseville) in the amount of \$1,903,060.62 for the

Construction of the 2013 Pavement Repair Project (CIP 08-106) and to Execute Contract Change Orders up to 15% of the Contract Amount.

Vice Mayor Chew seconded the motion. He re-opened the public comment at this time.

Mr. Reed asked the Town Council to consider another option, to reject all bids and place the project out for a re-bid, which would be fair to everyone.

PUBLIC COMMENTS CLOSED

Ms. Murphy affirmed the Town Council may reject all bids and place the project out for a re-bid if that was the Council's desire. On the motion, she offered revised language for the body of the resolution, to read:

Adopt Resolution 49-2013, Consenting to Relieve American Asphalt and Concrete of its Bid Due to Mistake and Authorize the Town Manager to award a construction contract to Central Valley Engineering and Asphalt (Roseville) in the amount of \$1,903,060.62 for the Construction of the 2013 Pavement Repair Project (CIP 08-106) and to Execute Contract Change Orders up to 15% of the Contract Amount.

And revise language to Resolution 49-2013, as follows:

- Revise the fourth WHEREAS clause on Page 1, to read:

WHEREAS, on May 10, 2013, a mandatory pre-bid meeting was held with ten (10) prospective contractors in attendance;

- Revise the fifth WHEREAS clause on Page 1, to read:

WHEREAS, on May 28, 2013, the bid opening was held with five (5) bid packages received; and

- Revise the second to last WHEREAS clause on Page 2, to read:

WHEREAS, the second lowest bidder, Central Valley Engineering and Asphalt did not sign the Waste Assessment Form as part of the bid package.

- Revise the last WHEREAS clause on Page 2, to read:

WHEREAS, the third lowest bidder, VSS International, Inc. was originally recommended for award of the contract and

- Add a new WHEREAS clause to read:

WHEREAS, Central Valley Engineering and Asphalt submitted a bid protest noting that the bid specifications require that the Waste Assessment Form be submitted before commencing demolition and create a conflict in wording and that the omission of their signature on the form does not change the outcome of the bid or its value.

- Revise the second paragraph under the NOW, THEREFORE BE IT RESOLVED, clause on Page 2, to read:

2. Deems that the lack of signature by Central Valley Engineering and Asphalt on the Waste Assessment Form was at most a minor bid irregularity that does not affect the price of the contract and waives the irregularity.
- And revise the third paragraph under the NOW, THEREFORE BE IT RESOLVED, clause on Page 2, to read:
3. Hereby, authorizes the Town Manager to award a construction contract to Central Valley Engineering and Asphalt in the amount of \$1,903,060.62 for the construction of the 2013 Pavement Management Repair Project (CIP 08-106) and to execute contract change orders up to 15% of the contract amount.

As the motion maker, **Councilmember Wykle** accepted the Town Attorney's revisions to the resolution. As the second, **Vice Mayor Chew** concurred.

ACTION: It was M/S (Wykle/Chew) to adopt Resolution 49-2013, Consenting to Relieve American Asphalt and Concrete of its Bid Due to Mistake and Authorize the Town Manager to Award a Construction Contract to Central Valley Engineering and Asphalt (Roseville) in the Amount of \$1,903,060.62 for the Construction of the 2013 Pavement Repair Project (CIP 08-106) and to Execute Contract Change Orders up to 15% of the Contract Amount, as revised. Vote 3-1-1. Noes: Metcalf. Absent: Trotter.

- C. Acceptance of the Restroom Renovation and Americans with Disabilities Act (ADA) Access to the Pavilion Building Project (CIP 12-302) Installed by GECO Incorporated (Novato):
 1. Adopt Resolution 50-2013 Authorizing a Budget Transfer of \$2,190 from Hacienda Building/Grounds Maintenance Operating Budget to Restroom Renovations and ADA Access to the Pavilion Building Capital Improvement Project (CIP 12-302) and Approving an Increase of \$2,190 to the Contract with GECO Incorporated (Novato) for a Total Contract Not-to-Exceed Amount of \$71,890; and
 2. Accept the Restroom Renovations and ADA Access to the Pavilion Building project (CIP 12-302) Installed by GECO Incorporated (Novato); and
 3. Authorize the Town Manager to File the Certificate of Completion with the County

Mr. Kwan introduced Laurie Sugang, Senior Civil Engineer and Project Manager for CIP 12-302; thanked the Hacienda Foundation for its contributions, materials and volunteerism for the project; asked that the Town Council accept the Restroom Renovations and Americans with Disabilities Act (ADA) Access to the Pavilion Building; and authorize the Town Manager to File the Certificate of Completion with the County. After review of the amended contract and change orders, staff had found the contract to be short by \$2,190 given that some items cost more than anticipated, particularly the installation of the tile work. As such, he asked that the Town Council also authorize a budget transfer in the amount of \$2,190 from the Hacienda Building/Grounds Maintenance Operating Budget to the Restroom Renovations and ADA Access to the Pavilion Capital Improvement Project CIP 12-302, and approve an increase of \$2,190 to the contract with GECO Incorporated (Novato) for a total contract not-to-exceed amount of \$71,890, to allow for the completion of the contract.

PUBLIC COMMENTS OPENED

Judy Dinkle, representing the Hacienda Foundation Board of Directors, identified herself as the Project Manager who had worked with the contractor to oversee the installation and compliance with regulations. She cited the project as a perfect example of a partnership between the Town and the Hacienda Foundation. She understood that the cost overruns were a result of many issues that came to light once the demolition had been done; suggested the project would add significant value to the building allowing the facility to be rented out for weddings and public events; and was confident the cost of the project would be recouped through the increase in rentals of the facility. She suggested the contractor had not met the level and quality of standards she would have expected but recognized the contractor had been the lowest bidder. She emphasized the project required an extraordinary amount of oversight to achieve the quality of workmanship desired.

Councilmember Metcalf commented that based on the quality of the painting work that had been done, he found the contractor not to be a good one. He recognized the Council was obligated to select the lowest bidder, but he remained concerned with the quality of work received from a low bid contractor.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Wykle/Arth) to adopt Resolution 50-2013 Authorizing a Budget Transfer of \$2,190 from Hacienda Building/Grounds Maintenance Operating Budget to Restroom Renovations and ADA Access to the Pavilion Building Capital Improvement Project (CIP 12-302) and Approving an Increase of \$2,190 to the Contract with GECO Incorporated (Novato) for a Total Contract Not-to-Exceed Amount of \$71,890; and Accept Restroom Renovations and ADA Access to the Pavilion Building project (CIP 12-302) Installed by GECO Incorporated (Novato); and Authorize the Town Manager to File the Certificate of Completion with the County. Vote 4-0-1. Absent: Trotter.

D. Consider Council Direction Regarding Zoning Code Regulations for Measuring and Establishing Setbacks

Ms. Brekke-Read explained that the item had come before the Town Council as a comment from the public during a previous Council meeting. She cited the history of measuring and establishing setbacks as reflected in the staff report, with the Town Council having considered an interpretation of MMC Section 8.68.070 on November 14, 2001, directing staff as to how to measure front, side, or rear yard setbacks from the property line to the eave. Staff had found that Council direction to be inconsistently enforced since 2001, and the policy difficult to administer since the Building Code stipulated measurement from the building line to the foundation line. She explained that the current process with applicants was that any application involving the projection of an eave into a setback was considered by the Design Review Board (DRB). Conferring with the Town Attorney, it had been determined that projection of an eave into the setback would not require a variance.

Ms. Brekke-Read asked the Town Council to clarify that the Zoning Ordinance stated that setbacks were to be measured from the building/foundation; that it allowed for projections including eaves; and recognized occasions whether topography or the location of the building where setbacks were not measured from the foundation but the body of a building. The action from the Town Council required a motion and not approval of a resolution. She also acknowledged correspondence and e-mails that had been received after the distribution of the Council packet which had been provided to the Council as a separate attachment.

Ms. Murphy confirmed the action being requested of the Town Council would be a motion affirming staff's interpretation of the MMC.

Ms. Brekke-Read suggested the setback be measured from the foundation or building line and allow for projections, including eaves. She recommended the Town Council provide direction that setbacks were measured from the foundation or building line in the case of a cantilevered wall, and that projections including eaves were allowed in setbacks pursuant to the MMC. She noted that the MMC already stated such direction and staff was asking the Council to confirm that statement. The issue could also be considered as a clean-up item at such time as comprehensive updates were made to the MMC.

PUBLIC COMMENTS OPENED

Steven Forster, Pleasant Hill, Architect, stated that he had designed many projects in Moraga, cited an addition project that had been submitted to the Town in 2012 with comments from staff that there were errors in the setback. However, after review of the MMC the setbacks were found to be correct. He cited the November 2001 Town Council minutes when the measurement of setbacks had been discussed but were never integrated into the MMC. He emphasized the intent to provide consistency in design for all projects, respecting the character of homes and neighborhoods, and maintaining existing eave overhangs and other architectural features that created the context of neighborhoods. He added that the setback issue had created confusion and distress among professionals and homeowners; asked the Town Council to determine that setbacks be measured from foundation or wall as described in MMC Section 8.68.070; and stated that the referenced MMC Section was clear and did not require modification as it was currently written.

Shannon Zwakman, Moraga, stated she had also struggled with the setback measurement and asked the Town Council to consider the measurement of setbacks from the foundation as opposed to the eave, which was valuable square footage a homeowner counted on.

Judy Dinkle, Moraga, speaking as a building designer/professional, asked the Town Council to consider measurement of setbacks on the cantilevered portions of buildings on a case-by-case basis through DRB review rather than a modification to the MMC, which was clear and straightforward as written. She expressed concern that new language may have unintended consequences and could count against the square footage, and may make an addition incompatible with a neighborhood.

Ms. Brekke-Read suggested there was no need to change the MMC; there was a need to clarify the MMC with measurement from the line of the building [the foundation]. In the case of a cantilevered wall, she recommended use of the language "the foundation or wall."

Ms. Murphy noted that the intent of the item was only to provide direction to staff to confirm that setbacks were measured from the foundation which was how the MMC currently read. At a future time when staff brought back other revisions to the MMC, changes could be made in accordance with some of the comments offered.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Arth/Wykle) the Town Council confirmed its recognition of Moraga Municipal Code Section 8.68.070 with setbacks measured from the property line to the foundation or wall. Vote 4-0-1. Absent: Trotter.

- E. Introduce and Waive the First Reading of an Ordinance Adding Chapter 12.06 "Street Excavation and Pavement Restoration Regulations" to the Moraga Municipal Code to Establish a Pavement Cut Moratorium to Preserve Newly Paved Streets

Mr. Kwan introduced Margo Yapp of Nichols Consulting, who was a pavement subject matter expert, including conducting numerous studies on the impact of trenches on pavement, and assisted in evaluating some of the recommendations and concepts from the outside utility companies, and reviewed the final draft recommendation on the ordinance. The ordinance had been previously introduced to the Town Council and was intended to preserve newly paved streets with a five-year moratorium for excavating in a new- or newly-resurfaced street and a three-year moratorium for excavating into a preventative maintenance treated street, with emergency exceptions that would allow a permittee to apply for a waiver and allow conditions to be imposed to minimize the impact of a street cut. There would be a required deposit amount primarily dealing with private property owners or permittees who were doing lateral work to ensure that the trench being installed would hold up for an entire year, based on a calculation to be placed in the Master Fee Schedule, with some exceptions for low-income households. He clarified the recommendation from the Town Council that if there were three or more street cuts in one block within a "three-year" period, the permittee shall grind and overlay the street for the entire length of the block. This change had been modified from five years, with the three-year time period to be corrected in the staff report but had been shown correctly in the tables, redline version, and the cleaned-up ordinance. Utility companies had been provided with a memorandum staff had presented to the Town Council on May 8, 2013, and staff had offered a meeting with the utility companies, which had been facilitated by himself and Ms. Yapp to answer any questions or concerns.

Responding to the Council, Mr. Kwan suggested the absence of representation from the utility companies likely was because they were satisfied with the modifications made by staff with latitude on certain decisions at the Public Works Director/Town Engineer level, and with some decisions made on a case-by-case basis.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

Margo Yapp, Nichols Engineering, described the details and differences between saw cutting and the cold mill grinding technologies.

ACTION: It was M/S (Metcalf/Arth) to Introduce and Waive the First Reading of an Ordinance Adding Chapter 12.06 "Street Excavation and Pavement Restoration Regulations" to the Moraga Municipal Code to Establish a Pavement Cut Moratorium to Preserve Newly Paved Streets. Vote 4-0-1. Absent: Trotter.

- F. Designate Town of Moraga's Voting Delegate and Any Alternates at the League of California Cities Annual Meeting on September 18 to 20, 2013 in Sacramento, California, for the Purpose of Voting on League Resolutions Regarding Issues of Statewide Concern

Ms. Keimach requested the Council select a delegate and at least one alternate to attend the League of California Cities Annual Meeting on September 18 to 20, 2013.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Wykle/Arth) to appoint Mayor Trotter as the Voting Delegate, Vice Mayor Chew as Alternate #1, and Councilmember Wykle as Alternate #2 to the League of California Cities Annual Meeting on September 18 to 20, 2013 in Sacramento, California, for the Purpose of Voting on League Resolutions Regarding Issues of Statewide Concern. Vote 4-0-1. Absent: Trotter.

XII. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

Ms Keimach reported that the Town Council would not hold a special meeting on June 19. The next Town Council meeting was scheduled for June 26, 2013, and would be focused on the Operating and Capital Improvement Program (CIP) budgets.

XIII. COMMUNICATIONS

There were no communications.

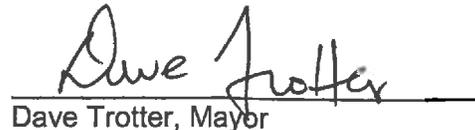
XIV. ADJOURNMENT

ACTION: It was M/S (Wykle/Arth) to adjourn the meeting at 10:20 P.M. Vote: 4-0-1. Absent: Trotter.

Respectfully submitted by:


Marty C. McInturf, Town Clerk

Approved by the Town Council:


Dave Trotter, Mayor