



**CITY OF EL PASO DE ROBLES**  
*"The Pass of the Oaks"*

**CITY COUNCIL MINUTES**

**Tuesday, April 21, 2009 7:30 PM**

**MEETING LOCATION: PASO ROBLES LIBRARY/CITY HALL  
CONFERENCE CENTER, 1000 SPRING STREET**

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**PLEASE SUBMIT ALL CORRESPONDENCE FOR CITY COUNCIL PRIOR  
TO THE MEETING WITH A COPY TO THE CITY CLERK**

**7:30 PM – CONVENE REGULAR MEETING**

**CALL TO ORDER** – Downstairs Conference Center

**PLEDGE OF ALLEGIANCE**

**INVOCATION**

**ROLL CALL** Councilmembers John Hamon Nick Gilman, Fred Strong, and  
Mayor Duane Picanco

**ABSENT** Councilmember Ed Steinbeck

**PUBLIC COMMENTS**

- Martin Caskey update on Paso Robles Airport Association
- Cindy Blake with SLO Regional Ride to announce May Bike Month and associated activities
- Amy Engdahl the absence of recycle bins in public areas
- Simone Michael the need for pet waste station in the downtown area
- Annie Robb Director of Library and Recreation introduced Alex Bonnifield of Youth Commission and gave an update on the Festival of the Arts

**AGENDA ITEMS TO BE DEFERRED - None**

## PRESENTATIONS

### 1. Recognition of the Paso Robles Explorers Post Outstanding Performance at the Central Valley Explorer Competition in Tulare

L. Solomon, Chief of Police

Chief of Police Lisa Solomon recognized the Paso Robles Explorers Post on their outstanding performance at the Central Valley Competition in Tulare led by Officer Kelley LaChance. Explorers recognized Explorer Lieutenant Bonnifield, Explorer Sergeant Briseno, Explorer Corporal Salas, Explorer Corporal Lopez, Explorer Martinez, Explorer Garcia, Explorer Finley, and Explorer Cabrera.

Proclamation designating April 19 – April 25, 2009 as National Volunteer Week was presented to Volunteer Coordinator Suzanne Robitaille.

D. Picanco, Mayor

Proclamation designating May 2009 as Bike Month and May 18 to May 22, 2009 as Bike to Work and School Week was presented to Cindy Blake of SLO Regional Ride Share.

D. Picanco, Mayor

Proclamation designating May 2009 as Community Action Month was presented to EOC Executive Director Biz Steinberg and recognizing the EOC is now Community Action Partners.

D. Picanco, Mayor

## PUBLIC HEARINGS

### 2. Edward Byrne Memorial Justice Assistance Grant Program (Number 16.804)

L. Solomon, Chief of Police

For the City Council to consider accepting approximately \$48,300 in FY 2010 from the Edward Byrne Memorial Justice Assistance Grant Program. The Police Department intends to use the majority of the grant funds to purchase Taser and radar units for unequipped patrol vehicles, and electronic ticketing technology. The staff report was presented by Chief of Police Lisa Solomon.

Mayor Picanco opened the public hearing. There were no further comments from the public, either written or oral, and the public discussion was closed.

Councilmember Strong, seconded by Councilmember Gilman, moved to adopt Resolution 09-050 accepting the Edward Bryne Memorial Justice Assistance Grant Program Funds (Number 16.804) and approving the outlined expenditure fund.

Motion passed by the following unanimous roll call vote:

AYES: Gilman, Hamon, Strong and Picanco  
NOES:  
ABSTAIN:  
ABSENT: Steinbeck

## CONSENT CALENDAR

3. Approve City Council Minutes of April 7, 2009  
D. Fansler, City Clerk
4. Approve Warrant Register: Nos. 83534-83661 (04/03/09) and 83662—83768 (04/10/09)  
J. Throop, Administrative Services Director
5. Receive and file Advisory Body Committee Minutes as follows:  
Senior Citizens Advisory Board Meeting of March 9, 2009  
Library Board of Trustees Meeting of March 12, 2009
6. Proclamation designating May 2009 as Wine Month.  
D. Picanco, Mayor
7. Proclamation designating May 2009 as Community Action Month.  
D. Picanco, Mayor
8. Proclamation designating May 2009 as Bike Month and May 18 to May 22, 2009 as Bike to Work and School Week  
D. Picanco, Mayor
9. Proclamation designating April 19 – April 25, 2009 as National Volunteer Week  
D. Picanco, Mayor
11. Adopt Resolution 09-052 authorizing the City Manager to enter into a professional service contract with Mental Marketing on behalf of the Tourism and Promotions BID Committee.  
M. Williamson, Assistant City Manager
- 11A. Adopt Resolution No. 09-053 to approve expenditure from Fund 320 – Art in Public Places in the amount of \$4,000 for purchase of visual display panes for public art displays.  
Ann Robb, Director of Library & Recreation Services

Mayor Picanco called for public comments on Consent Calendar items. There were no comments from the public, either written or oral, and the public discussion was closed.

Councilmember Gilman requested that Item 10 be pulled from the Consent Calendar. Consent Calendar Items Nos. 3 – 9, 11, 11A were approved on a single motion by Councilmember Hamon, seconded by Councilmember Strong.

Motion passed by the following unanimous roll call vote:

AYES: Gilman, Hamon, Strong and Picanco  
NOES:  
ABSTAIN:  
ABSENT: Steinbeck

## DISCUSSION

### **12. Parking Ticket Increase Due to Additional State Surcharge and Possible County Surcharge)**

J. Throop, Administrative Services Director

For the City Council to consider an increase of \$10.00 (ten dollars) in parking fines within the City of Paso Robles due to the mandated increase in State surcharges, and the possible imposition of surcharges by the County.

Mayor Picanco opened the public hearing. There were no further comments from the public, either written or oral, and the public discussion was closed.

Councilmember Strong, seconded by Councilmember Hamon, moved to Adopt Resolution No. 09-054 authorizing the Chief of Police to implement, collect, and distribute to the proper agencies surcharge of \$5.00 (ten dollars) per parking ticket and an additional \$5.00 per parking ticket when county adopts surcharge. This increase would take effect immediately (please note that Option A in Staff Report and Agenda was incorrect but the Resolution is correct).

Motion passed by the following unanimous roll call vote:

AYES: Gilman, Hamon, Strong and Picanco  
NOES:  
ABSTAIN:  
ABSENT: Steinbeck

### **13. Wastewater Rate and Facility Charge Study**

D. Monn, Public Works Director

For the City Council to consider engaging Christine Halley (T.J. Cross Engineers) and Kennedy/Jenks Consultants to perform a wastewater needs assessment, rate and facility charge study.

Mayor Picanco opened the public hearing. Speaking from the public was Dale Gustin, Karl Hanson, John Borst and Matt Masia. There were no further comments from the public, either written or oral, and the public discussion was closed.

Councilmember Hamon, seconded by Councilmember Strong, moved to Adopt Resolution No. 09-XXX appropriating \$205,000 from Waste Water Treatment Operating Fund to perform a wastewater rate and fee study and authorizing the City Manager to enter into contractual arrangements with Kennedy/Jenks Consultants and Christine Halley (T.J. Cross Engineers) in that amount.

Motion failed to pass by the following roll call vote:

AYES: Hamon and Strong  
NOES: Gilman and Picanco  
ABSTAIN:  
ABSENT: Steinbeck

**10. Contract with MGE Underground to Rehabilitate Sewer Pipeline and Cannon Associates for Construction Management & Inspection**

D. Monn, Public Works Director

For Council to authorize City Manager to enter into contract with MGE Underground, in the amount of \$276,624.20, to rehabilitate the City's sewer pipeline at various locations; and to Cannon Associates, in a not-to-exceed fee in the amount of \$49,690, for construction management and inspection fees.

Mayor Picanco opened the public hearing. There were no further comments from the public, either written or oral, and the public discussion was closed.

Councilmember Hamon, seconded by Councilmember Strong, moved to Adopt Resolution No. 09-051 authorizing the City Manager to enter into contract with MGE Underground, in the amount of \$276,624.20, to rehabilitate the City's sewer pipeline at various locations; and to Cannon Associates, in a not-to-exceed fee in the amount of \$49,690, for construction management and inspection fees.

Motion passed by the following unanimous roll call vote:

AYES: Gilman, Hamon, Strong and Picanco

NOES:

ABSTAIN:

ABSENT: Steinbeck

**COUNCIL COMMENTS**

- Councilmember Strong spoke on State Level Water Issues and Legislation
- Councilmember Gilman inquires as to the 4<sup>th</sup> of July fundraising efforts and requests a report be brought back that outlines the City's costs for the event.
- Councilmember Picanco inquired about sports fees.

**PUBLIC COMMENT ON CLOSED SESSION - None**

City Attorney Yang announced Council's authority to go into closed session to discuss the items listed on the agenda.

It was the consensus of Council to adjourn from regular session at 9:14 PM.

The City Council thereupon adjourned to Closed Session in the 2<sup>nd</sup> floor Large Conference Room.

**CLOSED SESSION**

**CALL TO ORDER** – Large Conference Room, 2<sup>nd</sup> Floor

**a. Conference with Legal Counsel – Existing Litigation**

Government Code Section 54956.9 (a)

Number of cases: One

**1) Case No. CV 09-8117 Filed March 27, 2009**

JOHN E. BORST, BROOKE G. MAYO, WILLIAM TAYLOR, TERESA ST. CLAIR AND THE CLASS OF SIMILARLY SITUATED INDIVIDUALS AND BUSINESSES – PLAINTIFFS, vs. THE CITY OF PASO ROBLES, AND DOES 1-1000 INCLUSIVE, DEFENDANTS

**b. Conference with Legal Counsel – Anticipated Litigation**

Government Code Section 54956.9 (b)

Significant exposure to litigation

Number of cases: One

The City Council returned to Regular Session at 11:00 PM.

**RETURN TO OPEN SESSION**

By unanimous voice vote, Council moved to adjourn from regular session at 11:00 PM.

**ADJOURMENT:**

- THE SPECIFIC PLAN WORKSHOP ON THURSDAY, APRIL 23, 2009 AT 7:00 P.M. THE LIBRARY/CITY HALL CONFERENCE CENTER, 1000 SPRING STREET
- GALAXY 2009 ART RECEPTION FRIDAY, MAY 1, 2009 AT 5:30 P.M. AT THE LIBRARY/CITY HALL CONFERENCE CENTER, 1000 SPRING STREET
- THE REGULAR MEETING AT 7:30 PM ON TUESDAY, MAY 5, 2009, AT THE LIBRARY/CITY HALL CONFERENCE CENTER, 1000 SPRING STREET

Submitted:

\_\_\_\_\_  
Cathy M. David, Deputy City Clerk  
Approved:

**THESE MINUTES ARE NOT OFFICIAL OR A PERMANENT PART OF THE RECORDS UNTIL APPROVED BY THE CITY COUNCIL AT A FUTURE REGULAR MEETING.**

Mullen & Henzell L.L.P.  
ATTORNEYS AT LAW

e-mail: glyons@mullenlaw.com



March 12, 2009

J. ROBERT ANDREWS  
JAY L. BECKERMAN  
JOSEPH F. GREEN  
MACK S. STATON  
GREGORY F. FAULKNER  
EDWARD C. THOITS  
WILLIAM E. DEGEN  
MICHAEL E. CAGE  
LORI A. LEWIS  
PAUL K. WILCOX  
JARED M. KATZ  
DEBORAH K. BOSWELL  
RAMÓN R. GUPTA  
RAFAEL GONZALEZ  
JANA S. JOHNSTON  
REBECCA D. EGGEMAN  
LINDSAY G. SHINN  
ROBERT D. DOMINGUEZ  
JENNIFER S. ADKINS

William V. O'Connor  
Morrison Foerster  
12531 High Bluff Drive, Suite 100  
San Diego, CA 92130-2040

**Re: Lilly/ Paso Robles Airport Matter**

Dear Mr. O'Connor:

Pursuant to the City Council's direction at last night's meeting, we would like to open the lines of communication for resolution of this matter. Please call me at your earliest convenience to discuss a timeline and framework for our negotiations. The Council would like to see this matter resolved between the parties within ninety days. We believe this is possible.

The Council also mentioned the use of a third party mediator, if the parties cannot reach a resolution on their own. We are open to using mediation, but would prefer to first try and resolve this matter between the parties. If this does not work, we discuss the use of a mediator.

We look forward to working with you and your client.

Very truly yours,

Graham M. Lyons of  
Mullen & Henzell L.L.P.

GML:mp  
cc: Paso Robles Hangar Group  
Iris Yang, Esq.  
Paso Robles City Council

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112 East Victoria Street Post Office Drawer 789  
Santa Barbara, California 93102-0789  
(805) 966-1501  
FAX (805) 966-9204

Agenda Item #04 Page 7 of 25

**Lyons, Graham M.**

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**From:** O'Connor, William V. [WOConnor@mofocom]  
**Sent:** Friday, March 13, 2009 11:11 AM  
**To:** Lyons, Graham M.  
**Cc:** Iris Yang  
**Subject:** RE: Paso Robles Airport

Graham,

I'll be back in touch shortly regarding timeline and framework.

Regards,

**Bill O'Connor | Morrison & Foerster LLP**  
12531 High Bluff Drive Suite 100 | San Diego, CA 92130  
P. 858.720.7932 | woconnor@mofocom

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**From:** Lyons, Graham M. [mailto:gml@MullenLaw.com]  
**Sent:** Thursday, March 12, 2009 10:23 AM  
**To:** O'Connor, William V.  
**Cc:** 'Iris Yang'  
**Subject:** Paso Robles Airport

Mr. O'Connor:  
Please find attached letter.

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**Mullen & Henzell L.L.P.**  
ATTORNEYS AT LAW

e-mail: glyons@mullenlaw.com



March 20, 2009

J. ROBERT ANDREWS  
JAY L. BECKERMAN  
JOSEPH F. GREEN  
MACK S. STATON  
GREGORY F. FAULKNER  
EDWARD C. THOITS  
WILLIAM E. DEGEN  
MICHAEL E. CAGE  
LORI A. LEWIS  
PAUL K. WILSON  
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DEBORAH K. BOSWELL  
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JANA S. JOHNSTON  
REBECCA D. EGGEMAN  
LINDSAY G. SHINN  
ROBERT D. DOMINGUEZ  
JENNIFER S. ADKINS

William V. O'Connor  
Morrison Foerster  
12531 High Bluff Drive, Suite 100  
San Diego, CA 92130-2040

**Re: Lilly/ Paso Robles Airport Matter and Direction from the City Council**

Dear Mr. O'Connor:

It has been over a week since I contacted you regarding the above-referenced matter. We are anxious to begin discussions with you and your client, as directed by the Paso Robles City Council. Please contact me at your earliest convenience.

Thank you in advance for your attention to this matter.

Very truly yours,

Graham M. Lyons of  
Mullen & Henzell L.L.P.

DENNIS W. REILLY  
CHARLES S. BARCIEL  
KIRK R. WILSON  
CHRISTINE P. ROBERTS  
GRAHAM M. LYONS  
OF COUNSEL

GML:mp  
cc: Paso Robles Hangar Group  
Iris Yang, Esq.  
Paso Robles City Council

THOMAS M. MULLEN  
1915-1991

ARTHUR A. HENZELL  
RETIRED

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March 24, 2009

Writer's Direct Contact  
858.720.7932  
WOConnor@mofocom

**Via Overnight Mail**

Mayor Duane Picanco  
Paso Robles City Council  
c/o City Clerk  
1000 Spring Street  
Paso Robles, CA 93446

Re: *March 11, 2009 City Council Special Meeting*

Dear Mayor Picanco:

Thank you for your consideration of the subleasing issues relating to Kim Lilly's Master Lease at Paso Robles Airport. We have been in contact with Graham Lyons, the attorney for some of Mr. Lilly's subtenants, regarding a framework and proposed timeline for the completion of negotiations as directed by the City Council. While our preference would have been for the City Council to adopt the resolution, and confirm the findings contained in the Staff Report, we understand the City Council's desire to encourage the parties to participate in direct negotiations. We too share the view that it is not the City Council's place to arbitrate these issues.

That said, the reality of the situation is that the City's auspices have been a place of refuge and a forum for the expression of discontent by some of Mr. Lilly's subtenants. Therefore, in the interest of managing expectations and equal time, we would like to highlight a few key points so the City Council fully understands Mr. Lilly's approach to setting rental rates. It is not my intention to start a letter-writing campaign, but to frame the issues from our perspective so all of the complexities involved are taken into account as we move forward.

We spent much of the special meeting discussing the rental rate in terms of square footage. I thought it might be helpful for the City Council to see what this means in terms of monthly payments. Enclosed with this letter is a summary of monthly rental payments at the current hold-over rate of 10 cents, and our proposal going forward at 14 cents, 16.54 cents, and 17.54 cents. The new proposed rates range from \$113.40 per month for a short-term lease on a small 810 square foot Executive Hangar to \$438.50 per month for a long-term lease on a

sd-465166

Paso Robles City Council  
March 24, 2009  
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large 2,500 square foot Box Hangar.<sup>1</sup> As you will see, Mr. Lilly's proposal offers a wide range of options and flexibility for his tenants.

I would also like to address the assertion that Mr. Lilly's subtenants were somehow coerced into accepting the increased rental rates when the subleases expired in 2007. I think the word "gunpoint" is the term of art used by Mr. Dykehouse. Putting emotion aside, I would simply point out the following. All of the tenants, who either purchased their hangars from previous tenants or have been Mr. Lilly's tenants since the mid-1980s, were fully aware that the ground leases attached to those hangars were set to expire in 2007. There was never a guarantee that a new sublease would be offered. In fact, this would have been impossible until Mr. Lilly negotiated an extension to the Master Lease with the City through 2033 in 1992.

The value of the hangars therefore has always been inextricably intertwined with the length of the lease term offered by Mr. Lilly, and that reality is reflected in some of the purchase prices for the hangars you heard last week. The tenants seek to disproportionately increase the value of their hangars as a matter of right, but the current leasing agreements do not confer this right. What is proposed by Mr. Lilly is an opportunity for the tenants to maintain the market value of their hangars, if they agree to pay market rates. For example, with the certainty of a new sublease, which includes a fixed and assignable length of term, the hangar can be sold on the open market for, in some cases, well over \$100,000. The tenant stands to profit from this arrangement, and Mr. Lilly's contribution to that value by providing the ground space for the hangar must be taken into account.

We have always maintained that the use of comparable rental rates, while informative in some respects, can lead to an unending debate regarding whether the rate is truly comparable. The special City Council meeting demonstrated the fundamental problem here. Moreover, the data is inherently unreliable because it involves the proprietary information of Mr. Lilly's competitors. And the lease agreements and applicable FAA policy do not require the use of comparables at all, much less the use of comparables within a specified geographic region.

The difficulty in applying comparable rates is particularly true in Mr. Lilly's case because his business model and the opportunity for private ownership of aircraft hangars are truly unique. This arrangement provides mutual benefit for Mr. Lilly and his tenants that does not exist at most other airports throughout the United States. Thus, it is critical to cast a wide net to identify only those rates which are truly comparable. The "true" comparables we provided, where the business model is exactly the same as Mr. Lilly's, average 17.4 cents per

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<sup>1</sup> A typical Box Hangar can accommodate a very large general aviation aircraft.

Paso Robles City Council  
March 24, 2009  
Page Three

square foot.<sup>2</sup> There are no similar services offered at airports within 60 miles of Paso Robles Airport to compare.

I also feel compelled to respond to the assertions regarding our view on mediation. An offer of mediation was made in February 2008, but the tenants represented by Mr. Lyons flatly rejected that option, choosing instead to seize upon a misguided letter sent by the City *implying* that Mr. Lilly was in default of the Master Lease. The default claim was subsequently withdrawn by the City. The position of the objecting tenants advanced last week regarding mediation is markedly different from the previous tack of using the City to do its bidding. It is understandable that the tenor has changed, however, because the City's Staff Report finds that the rates offered by Mr. Lilly are within the range of rates offered at other comparable airports.

Thus, we are right back where we started over a year ago with an offer to mediate. Mr. Lilly's position in further negotiations, however, has not softened for three reasons. First, the results of the information gathering process imposed on us by the City supports the conclusion that the rental rate first offered in 2007 is fair and reasonable. Second, Mr. Lilly has incurred considerable expense in attorneys and consultant fees during these intervening months, not to mention the drain on his own time during a difficult period. Third, there are lost opportunity costs associated with his inability to charge fair and reasonable rates from the time the subleases expired in 2007. I mention this in the interest of full disclosure as we try to strike a deal with the tenants when the offer of mediation has been on the table for over a year. These are real and calculable damages that can be directly attributed to a process that we believe was flawed from the outset.

Sincerely,



William V. O'Connor

Enclosure

cc: B. Kim Lilly  
Frederick K. Glick, Esq.  
Iris Yang, Esq.  
Graham Lyons, Esq.

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<sup>2</sup> This figure represents the average rates charged at the following airports: Apple Valley Airport, Meadows Field (Bakersfield), Buchanan Field (Concord), Gillespie Field (El Cajon), Hayward Air Terminal, Fox Field (Lancaster), Van Nuys Airport, Hawthorn Airport (Los Angeles), Mammoth Lakes Airport, Riverside Municipal Airport, McClellan-Palomar Airport, Brown Field (San Diego), Thermal Airport (Riverside).

sd-465166

## **Paso Robles Lease Rate Per Hangar Size**

### **Port-A-Port Executive Hangar - 810 square feet**

X 10 cents =	\$ 81.00
X 14 cents =	\$113.40
X 16.54 cents =	\$138.60
X 17.54 cents =	\$142.07

### **Port-A-Port Executive I Hangar - 1,100 square feet**

X 10 cents =	\$110.00
X 14 cents =	\$154.00
X 16.54 cents =	\$181.50
X 17.54 cents =	\$192.94

### **Port-A-Port Executive II Hangar - 1,410 square feet**

X 10 cents =	\$140.00
X 14 cents =	\$196.00
X 16.54 cents =	\$231.56
X 17.54 cents =	\$245.56

### **Port-A-Port Executive III Hangar - 2,080 square feet**

X 10 cents =	\$202.80
X 14 cents =	\$283.92
X 16.54 cents =	\$335.43
X 17.54 cents =	\$355.71

### **Port-A-Port Strong Box Hangar - 50' x 50' = 2,500 square feet**

X 10 cents =	\$250.00
X 14 cents =	\$350.00
X 16.54 cents =	\$413.50
X 17.54 cents =	\$438.50

Mullen & Henzell L.L.P.  
ATTORNEYS AT LAW

e-mail: glyons@mullenlaw.com



March 26, 2009

J. ROBERT ANDREWS  
JAY L. BECKERMAN  
JOSEPH F. GREEN  
MACK S. STATON  
GREGORY F. FAULKNER  
EDWARD C. THOITS  
WILLIAM E. DEGEN  
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LORI A. LEWIS  
PAUL K. WILCOX  
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CHRISTINE P. ROBERTS  
GRAHAM M. LYONS  
OF COUNSEL

THOMAS M. MULLEN  
1915-1991  
ARTHUR A. HENZELL  
RETIRED

Mr. William O'Connor, Esq.  
Morrison Foerster  
12531 High Bluff Drive  
Suite 100  
San Diego, CA 92130

**Re: Paso Robles Airport Matter**

Dear Mr. O'Connor:

I received a copy of your letter to the Paso Robles City Council members, dated March 24, 2009. I must take issue with your representation to the City Council that you "have been in contact with Graham Lyons, the attorney for some of Mr. Lilly's subtenants, regarding a framework and proposed timeline for the completion of negotiations as directed by the City Council." This is simply untrue. I have sent you two letters, which are attached, requesting that you contact me regarding the negotiations directed by the City Council at its March 11, 2009 meeting. Your only response to my letters came in the form of an email, which I have also attached to this letter, stating: "I'll be in touch shortly regarding timeline and framework." That was nearly two weeks ago and I have received no other response from you. This leads me to believe you and your client are not interested in negotiations with the subtenants.

Your decision to direct your communication and your client's position to the City Council rather than to the subtenants further suggests you are not interested in exploring a negotiated solution, but prefer to have the City involved. This is inconsistent with your repeated assertions that the City should not be involved in the details of this matter. Frankly, we're confused by your position. If you want to discuss the proposed sublease in good faith with my clients in an effort to reach a mutually acceptable resolution, please contact me and we can move forward. If you do not want to do so, please let me know and we can bring the matter back to the Council.

112 East Victoria Street Post Office Drawer 789  
Santa Barbara, California 93102-0789  
(805) 966-1501  
FAX (805) 966-9204

Mr. William O'Connor, Esq.  
March 26, 2009  
Page 2



Very truly yours,

A handwritten signature in black ink, appearing to read 'Graham Lyons', with a long, sweeping horizontal stroke extending to the right.

Graham M. Lyons of  
**Mullen & Henzell L.L.P.**

GML:mp  
cc: Clients  
Iris Yang  
Paso Robles City Council Members  
G:\19468\0001\DOCS\D80085.DOC

Attachments: March 12, 2009 letter to Mr. O'Connor  
March 20, 2009 letter to Mr. O'Connor  
March 13, 2009 email from Mr. O'Connor

Lyons, Graham M. to William

[show details](#) Apr 2 [Reply](#) |

I've spoken with my clients and discussed your proposed framework. They will have a meeting with all the members in the next few days to discuss your proposal, after which time I can respond fully to your proposal. However, I can address Phase I. We believe your client already has the basic information requested through the proposed questionnaire. I assume he knows who his subtenants are and what type of hangar fits on the ground leased to each subtenant. I can certainly provide a list of subtenants represented by our office. I don't believe any other information is necessary in order for us to move to Phase II.



**From:** O'Connor, William V. [mailto:WOCConnor@mofa.com]  
**Sent:** Monday, April 20, 2009 4:02 PM  
**To:** Lyons, Graham M.  
**Subject:** RE: Paso Robles Airport Matter

Graham,

Your proposal is generally acceptable.

With regard to Phase I, we need to have the N-registration for each aircraft that will be stored in the hangars. This is a fundamental issue because aeronautical use of the hangars is the touchstone for FAA policy relating to airport rates and charges. If aircraft storage is not the primary use of the hangar(s), then we are operating under a false premise. Thus, I trust you understand the relevance of this request. Please confirm that each subtenant will provide information regarding the aircraft that is stored in the hangar.

Your proposal for Phase II and III is fine. We don't think either side needs to present a formal written proposal before or at the meeting. An agreement to negotiate in good faith is sufficient.

Please let us know who will be attending the meeting with Mr. Lilly in May. I think it makes sense for you to propose the dates because I imagine more coordination will be required on your end.

I am also not convinced that a public hearing is required if we are unable to resolve the dispute. I think we can simply inform the Council by letter that mediation efforts were unsuccessful. But, that question is for another day.

Regards,

Bill O'Connor

To: Paso Robles City Council  
From: John Borst

April 21, 2009

In May 2006 the City of Modesto hired Brown and Caldwell (Resolution 2006-303) to conduct a Wastewater (Sewer) Rate Study for \$108,000 and a Wastewater (Sewer) Connection Fee Study in the amount of \$35,000.

On Dec. 12, 2006 the Berkeley City Manager recommended to the City Council that Harris & Associates be contracted with for an amount not to exceed \$103,000 to provide a Sewer Service Charge Rate Analysis and conduct resulting rate setting hearings for proposed service charge modifications for the period December 12, 2006 through October 30, 2007. (See attachment)

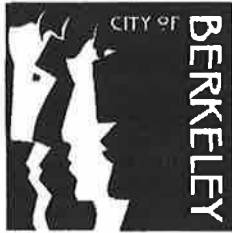
In light of the above, entering into a contract with Kennedy/Jenks Consultants and TJ Cross Engineers for \$205,000 seems excessive, ill advised and a reckless spending of tax payer money. Other vendors should be contacted for their bid.

Also, this is a job/service that appears, under the purchasing code of the City, required to be put out to bid (or rebid). According to the Purchasing and Payment Procedures Manual, Section 6:

"For the acquisition of professional services in excess of \$10,000, the executive manager shall solicit written request for qualifications (RFQ) from at least three potential professional service providers. The executive manager shall forward a written recommendation to the full City Council for contract approval. Upon City Council approval, the executive manager shall forward a purchase order to the City's purchasing authority for approval. Professional services in this section refers to professions that are licensed, certified, degreed or have some other special distinction that sets them apart from other service providers; e.g. engineers, architects, doctors or financial consultants."

I would like to hear from Mr. Monn about the other two vendors he contacted, if any. And if none, why he believes his proposal is exempt from Section 6 of the Purchasing Code as evidenced in his April 21, 2009 memo to the City Manager. That is, no mention is made in his memo of other vendors contacted, or a reason given for why 2 others vendors/consultants weren't contacted to bid on the sewer project.

Finally, the Court in San Marcus Water District v. San Marcus Unified School District (1986) recognized "revenues collected as a result of the 'sewage facilities charge' are used by the city to provide capital for sewer construction, i.e. to finance local improvements. Such a charge for capital funding is little more than a disguised special assessment." Also, special assessments may in reality be special taxes if the property assessed receives no special benefit beyond that received by the general public. (Knox v. City of Orland, supra, 4 Cal.4th at pp. 142-143; Silicon Valley Taxpayers Association v. Santa Clara County Open Space Authority, 2008). **Special assessments under Proposition 218 require an "engineers report". Section 4(b) states: "All assessments shall be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California."** The study proposed by Mr. Monn appears to call for such a report.



Office of the City Manager

CONSENT CALENDAR  
December 12, 2006

To: Honorable Mayor and  
Members of the City Council  
From: *PK* Phil Kamlarz, City Manager  
Subject: Contract: Sewer Service Rate Analysis

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to enter into an agreement and any amendments with Harris & Associates in an amount not to exceed \$103,000 to provide a Sewer Service Charge Rate Analysis and conduct resulting rate setting hearings for proposed service charge modifications for the period December 12, 2006 through October 30, 2007.

FISCAL IMPACTS OF RECOMMENDATION

The cost of the contract will be funded through available Sanitary Sewer Fund fund balance (Fund 830).

CURRENT SITUATION AND ITS EFFECTS

The study seeks to ensure that the City's rate structure is reasonable and meets the evolving standards of applicable law. Once the study is completed, the recommended rates will come back to the City Council for adoption after notice to property owners.

BACKGROUND

The City sewer service charge produces revenue to provide operations and maintenance and capital improvements and replacement of the sewer system's infrastructure. The City provides the wastewater delivery system through its pipes to a wastewater treatment facility operated by EBMUD. The rates charged to ratepayers are based on water consumption, which is metered by EBMUD. Wastewater is not metered separately. To address not having meter readings for wastewater, the City has used a validated methodology to determine the percentage of metered water discharged into the sewer system, based on type of building use and time of year (i.e. in summer residential water use considers that water is also used for outdoor irrigation). The rate methodology used by the City was developed by Brown and Caldwell in 1997 and was updated by the firm in 2005 based on guidelines promulgated by the State Water Resources Control Board.

Harris & Associates is an engineering and construction firm with expertise in developing utility user fees and conducting noticing and tabulation for fee proceedings. Recent work includes sewer rate analysis and proceedings for the Cities of Palos Verdes Estates, South San Francisco and Modesto. The City solicited a proposal from the firm in October in order to move forward on bringing forward rates for consideration by the Council by the end of the fiscal year.

## Do It Yourself Water Research!

By Mayor Pro Tem, Fred Strong, City of El Paso de Robles

In the current political world many people don't trust any elected officials, especially those in Congress and the State Legislature. However, it appears to include local government when there are activists seeking their own special agenda who are claiming bad decisions or wrong doing by locally elected representatives of the people.

Therefore, I believe it is important that everyone has the opportunity to research the information, laws and regulations that drive important decisions.

Below are direct links (in blue) to documents, reports, regulations, legislation and memos regarding the State's and Paso Robles' water decisions regarding provision, conservation and charges. I also recommend the book "Cadillac Desert" which provides an informative history of water in California from the beginning of the State into the 1960s.

**California has had water problems during its entire existence. Our water laws and regulations are broken into many areas and it can get complicated.**

Water Rights 101 for Water Resources Control Board members:

[http://www.waterboards.ca.gov/docs/reference/pres\\_wr\\_laws.pdf](http://www.waterboards.ca.gov/docs/reference/pres_wr_laws.pdf)

"California's Water, an LAO Primer" by the Legislative Analyst's Office of the State of California: [http://www.lao.ca.gov/2008/rsrc/water\\_primer/water\\_primer\\_102208.pdf](http://www.lao.ca.gov/2008/rsrc/water_primer/water_primer_102208.pdf)

**In Order to implement its role in water the State prepares various plans and policies:**

**Final! Strategic Plan Update: 2008-2012 - adopted September 2, 2008** by the Water Resources Control Board: (you must double click on each document to see it)

[http://www.waterboards.ca.gov/water\\_issues/hot\\_topics/strategic\\_plan/2007update.shtml](http://www.waterboards.ca.gov/water_issues/hot_topics/strategic_plan/2007update.shtml)

Web site to review, download or print out all current documents regarding the "California Water Plan: Update 2009" which will become law next year following a review period which ends June 5, 2009:

<http://www.waterplan.water.ca.gov/cwpu2009/index.cfm>

**The State provides basic statewide data and also delegates certain reporting duties to local government. Local jurisdictions, alone or in combination with neighboring jurisdictions, prepare and adopt various studies and reports as required by the State. Local decisions are made as to how to deal with water in a legal and necessary way to meet resource needs as well as health and safety requirements. This includes supply acquisition, transport, treatment as required, storage and delivery.**

California Department of Water Resources Bulletin 120: "Summary of Water Conditions as of April 1, 2009: <http://cdec.water.ca.gov/snow/bulletin120/b120apr09.pdf>

Complete copy of San Luis Obispo County's current Integrated Water Plan:  
<http://www.slocountywater.org/site/Frequent%20Downloads/Integrated%20Regional%20Water%20Management%20Plan/July%202007%20Plan%20Update/pdf/Complete%20Report.pdf>

Paso Robles Groundwater Basin Study  
2002:<http://www.slocountywater.org/site/Water%20Resources/Reports/Paso%20Phase%20202/index.htm>

Update of Paso Robles Groundwater Basin Study  
2007:<http://www.prcity.com/government/departments/publicworks/pdf/groundwater-basin-updateDec'07.pdf>

City of Paso Robles "Urban Water Management Plan" adopted June  
2008:<http://www.prcity.com/government/departments/publicworks/water/pdf/CompletePaso2005UWMP.pdf>

City of Paso Robles "Water Resources Plan Integration and Capital Improvement Program" adopted February 2007:  
<http://www.prcity.com/government/departments/publicworks/pdf/WtrResPlanInteg-CIPFeb07.pdf>

Official Site for Nacimiento Water Project information:  
<http://www.slocounty.ca.gov/PW/NacWP.htm>

**Sometimes water becomes very scarce and conservation measures must be implemented. The State currently thinks that we are in that situation on a long term, if not permanent, basis.**

Letter from State Water Resources Control Board to water agencies regarding the taking away of water rights due to 2009 drought:

[http://www.waterboards.ca.gov/waterrights/water\\_issues/hot\\_topics/drought/letter\\_2009feb26.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/hot_topics/drought/letter_2009feb26.pdf)

State of California "Model Landscape Ordinance" to take effect January 1, 2010:

[http://www.owue.water.ca.gov/docs/final\\_regulation.pdf](http://www.owue.water.ca.gov/docs/final_regulation.pdf)

"Water Budget" by Green Builder a way to assess water use and conservation measures:

<http://www.greenbuilder.com/sourcebook/WaterBudget.html>

Paso Robles Water Conservation information:

<http://www.prcity.com/government/departments/publicworks/water/conservation.asp>

**Unfortunately, somehow, all of this has to be paid for throughout the state.**

"Paying for Infrastructure" by California's Choices by the Public Policy Institute of California: [http://www.ppic.org/content/pubs/atissue/AI\\_109EHAI.pdf](http://www.ppic.org/content/pubs/atissue/AI_109EHAI.pdf)

**It also has to be paid for by current users.**

City of Paso Robles Water Rate Ordinance already in force:

[http://www.prcity.com/government/departments/adminservices/pdf/WaterFeesPenalties\\_notice.pdf](http://www.prcity.com/government/departments/adminservices/pdf/WaterFeesPenalties_notice.pdf)

Agenda item establishing new water rate which was adopted, approved by approved election procedure and later contested by Referendum Petition:

<http://www.prcity.com/government/citycouncil/agendas/2006-2010/2009%20CC%20AGD%2001-20%20A.pdf>

**Future users also have to pay their own way.**

[http://www.prcity.com/government/citycouncil/agenda-items/2009/03\\_March/2009\\_3-17\\_CC\\_ITM\\_10.pdf](http://www.prcity.com/government/citycouncil/agenda-items/2009/03_March/2009_3-17_CC_ITM_10.pdf)

**The problem with research is staying objective and getting ALL of the information to make valid decisions. I believe this is enough to deal with current problems. However, this is only 1/10 of my personal water library. Those who want copies of**



**EIRs, Monterey County data and plans, Margarita Lake data and plans, sulfur water data and use, stream flows throughout the state for past decades, regulations for dams, rivers, ground water, water basins, various policy guidelines and statements during recent times or the six volume legal series on water rights and proposed changes by the State of California in the 1970s, I have those available and would be willing to share the information on a mutually acceptable basis.**



# CITY OF EL PASO DE ROBLES

*"The Pass of the Oaks"*

## CITY COUNCIL MINUTES ADJOURNED REGULAR MEETING AND PUBLIC WORKSHOP

Tuesday, April 23, 2009 7:00 PM

MEETING LOCATION: PASO ROBLES LIBRARY/CITY HALL  
CONFERENCE CENTER, 1000 SPRING STREET

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PLEASE SUBMIT ALL CORRESPONDENCE FOR CITY COUNCIL PRIOR  
TO THE MEETING WITH A COPY TO THE CITY CLERK

7:00 PM – CONVENE REGULAR MEETING

CALL TO ORDER – Downstairs Conference Center

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL Councilmembers John Hamon Nick Gilman, Ed Steinbeck, Fred Strong, and  
Mayor Duane Picanco,

DISCUSSION

**1. Residential Specific Plan Prioritization Study Session**

R. Whisenand, Community Development Director

For City Council to consider setting processing priorities for the Chandler Ranch, Olsen/Beechwood, and River Oaks II Specific Plans.

Mayor Picanco opened the public hearing. Speaking from the public was John Wallace, Dick Willhoit, Mike Harrod, Jeff Wagner, Jay Huebner, Ty Green, Kathy Barnett, and Neil Olsen. There were no further comments from the public, either written or oral, and the public discussion was closed.



Following public comment and discussion Council provided the following specific plan recommendations and processing steps to City Staff:

1. Uphold the General Plan's buildout population planning threshold of 44,000 until such time that a comprehensive update of the City's Land Use Element is funded; and
2. Limit specific plan processing to those presently contained in the General Plan and Economic Strategy including Uptown/Town Centre, Chandler Ranch, and Olsen Ranch/Beechwood and at densities called for by the General Plan; and
3. Completion of the Circulation Element is the City's top Community Development priority. Processing of specific plans shall be in the following order – Uptown/Town Centre, Chandler Ranch, then Olsen Ranch/Beechwood. Staff shall provide Council with quarterly status updates. Council reserves the right to re-assign priorities should property owners fail to perform in a reasonable period of time; and
4. Applicant driven specific plans shall include early community involvement and input from the Planning Commission and City Council prior to draft specific plans going through the EIR preparation process.”
5. Applicants will pay all costs, in advance, of processing plans.

**ROLL CALL VOTE**

Motion passed by unanimous consent.

**ADJOURNMENT:** 10:30 p.m.

- GALAXY 2009 ART RECEPTION FRIDAY, MAY 1, 2009 AT 5:30 P.M. AT THE LIBRARY/CITY HALL CONFERENCE CENTER, 1000 SPRING STREET
- THE REGULAR MEETING AT 7:30 PM ON TUESDAY, MAY 5, 2009, AT THE LIBRARY/CITY HALL CONFERENCE CENTER, 1000 SPRING STREET

Submitted:

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Cathy M. David, Deputy City Clerk  
Approved:

**THESE MINUTES ARE NOT OFFICIAL OR A PERMANENT PART OF THE RECORDS UNTIL APPROVED BY THE CITY COUNCIL AT A FUTURE REGULAR MEETING.**