

Morgan Hill

ECONOMIC BLUEPRINT



SUSTAINABLE MORGAN HILL



- ❖ Thriving Economy
- ❖ Highly Inclusive Community
- ❖ Healthy Environment



ECONOMIC BLUEPRINT

Increase economic prosperity and vitality

General Plan 2035 Priorities (Pillars)

Maintain
Quality of Life



Fiscal
Sustainability



Job
Growth



Tourism



PROGRESSIVE MORGAN HILL

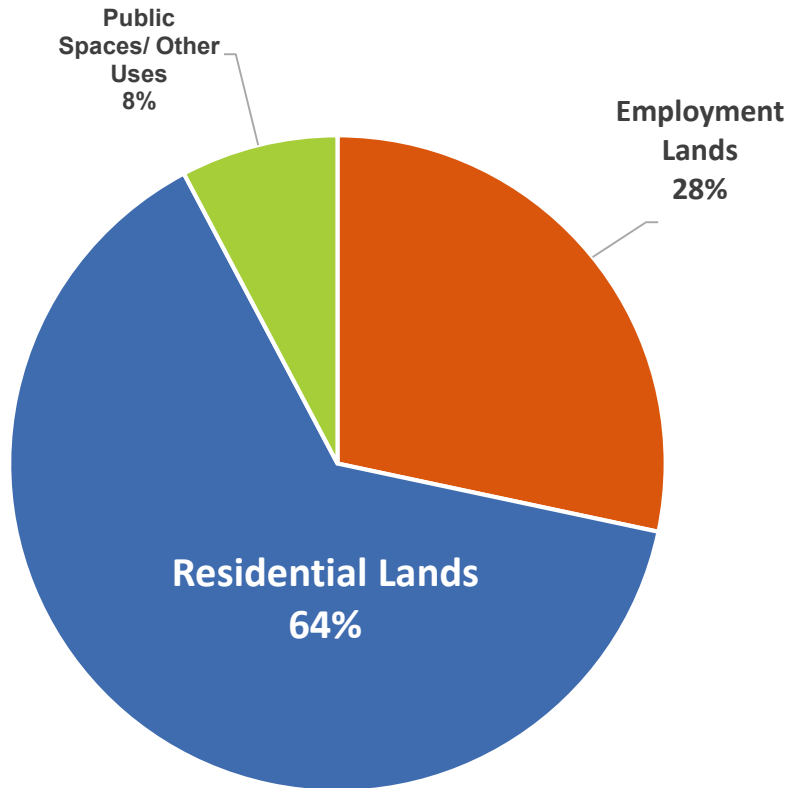


- Open Space
- Growth Control
- Sports Recreation
- Affordable Housing
- Vision for Downtown
- Agricultural Preservation
- Water Conservation
- **Economic Blueprint?**

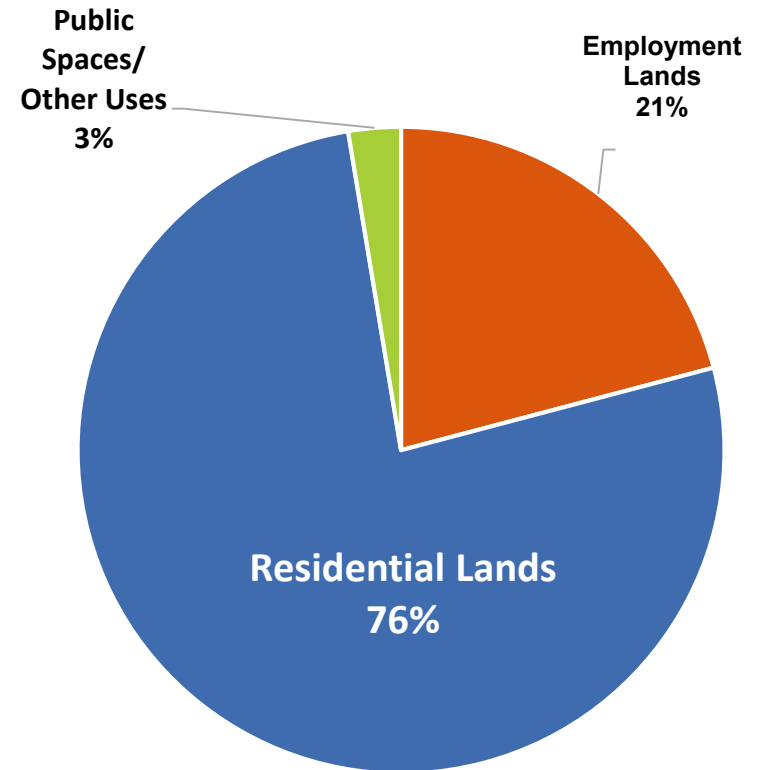


GENERAL FUND TIED TO LAND USE

Revenues



Expenditures





**CITY OF MORGAN HILL
VACANT
COMMERCIAL
AND
INDUSTRIAL LAND**

Land Use Types

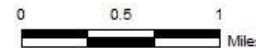
-  Commercial
-  Industrial

Boundaries

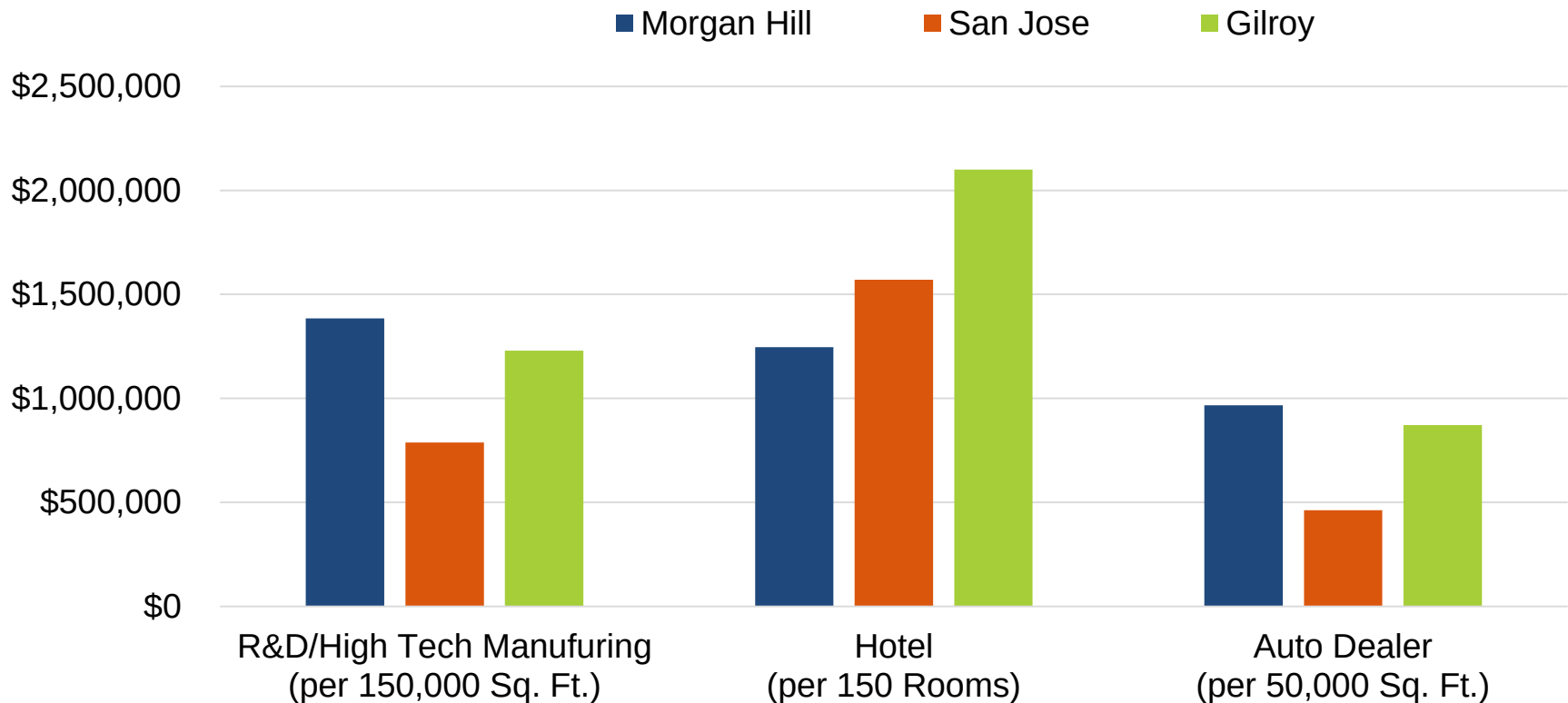
-  Parcels
-  Urban Service Area
-  City Boundary

MARCH 2017

This map was produced by the City of Morgan Hill Community Development Department. The data was collected from a variety of sources. However, the City of Morgan Hill makes no representation as to its accuracy and disclaims any liability to persons who may rely upon it.

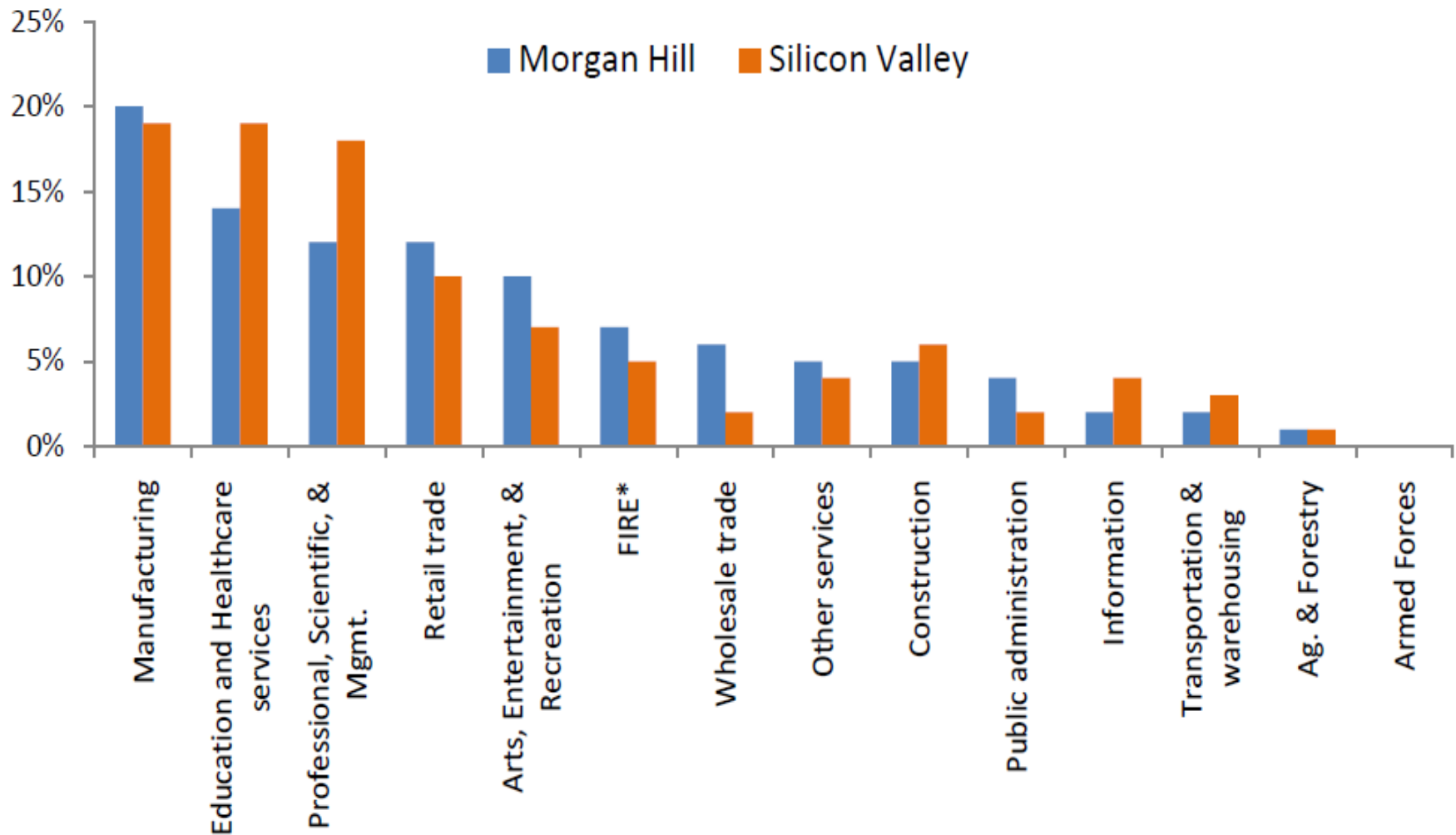


IMPACT FEES ARE GENERALLY HIGHER IN MORGAN HILL



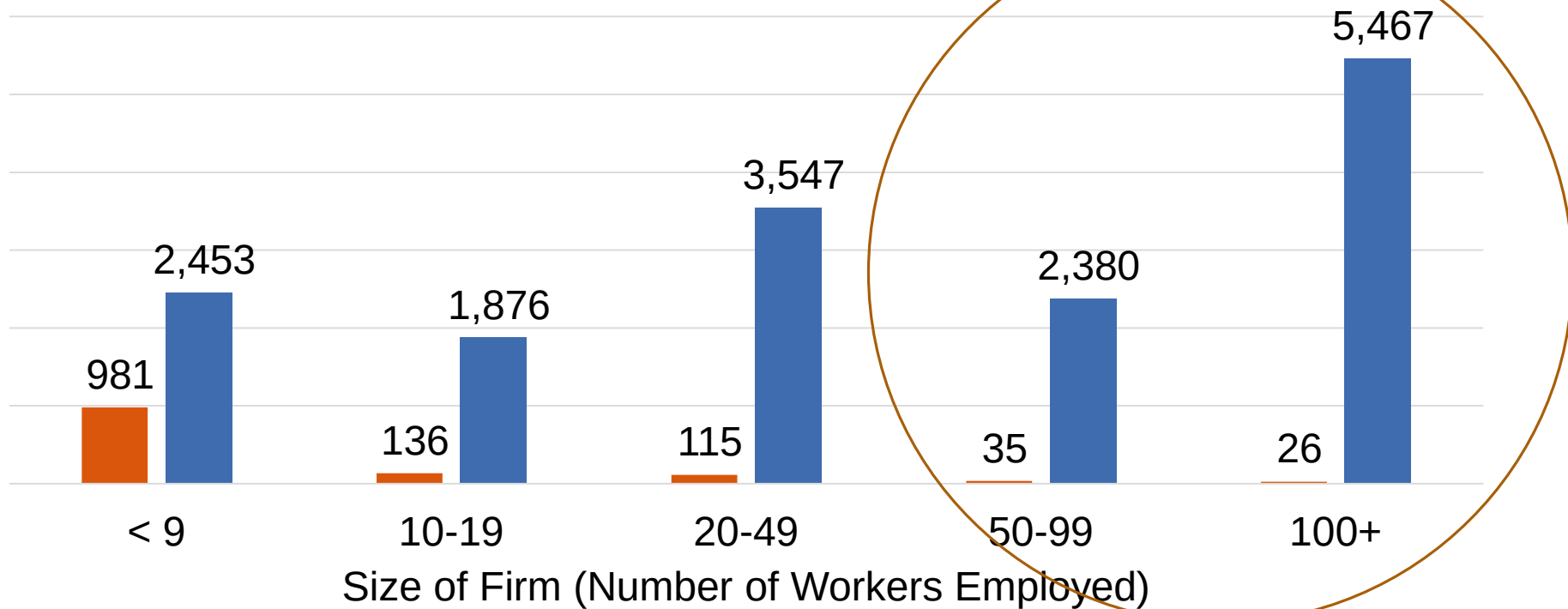
Sources: Cities of Morgan Hill and San Jose, 2015; Strategic Economics, 2017.

MORGAN HILL'S JOB MAKE UP SIMILAR TO SILICON VALLEY



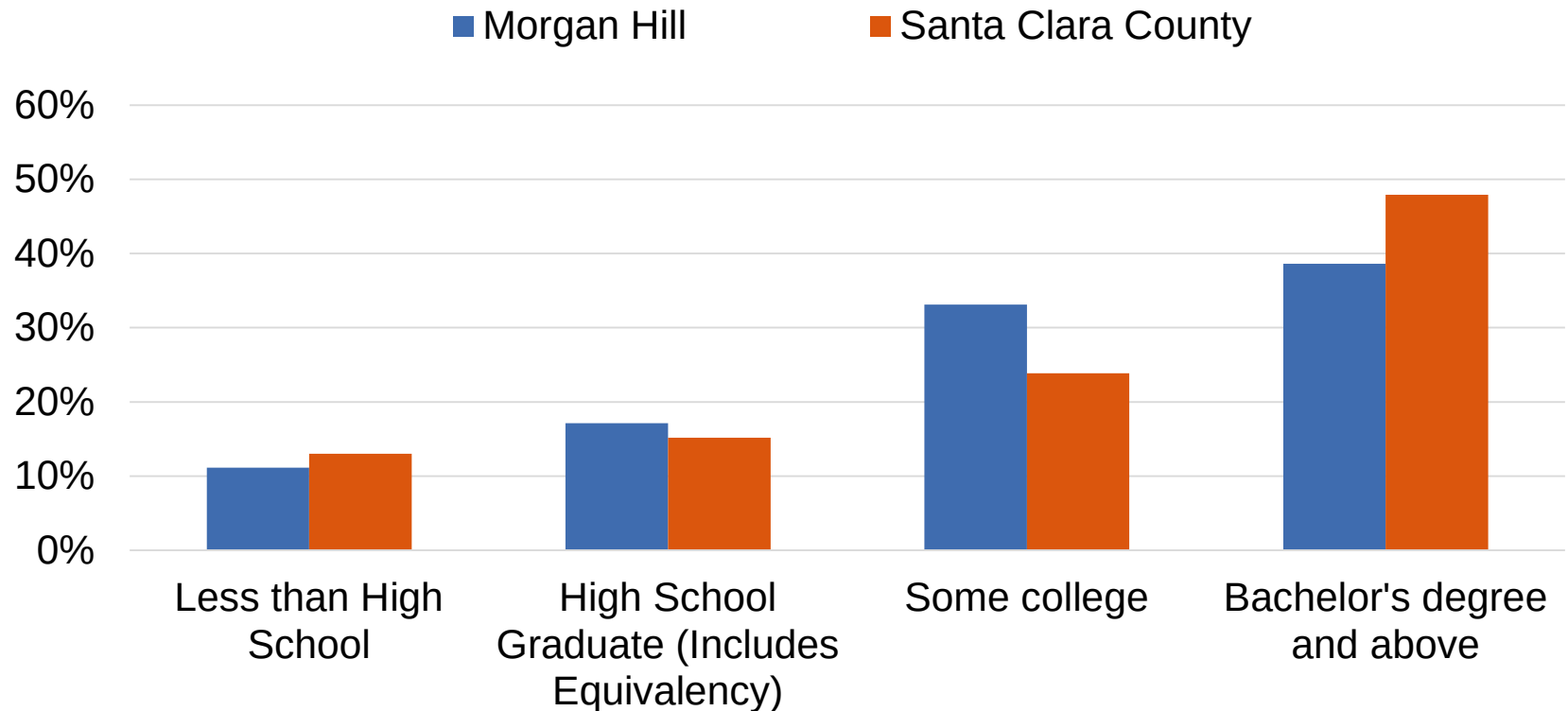
MOST OF MORGAN HILL'S BUSINESSES ARE SMALL

■ Number of Firms ■ Number of Employees



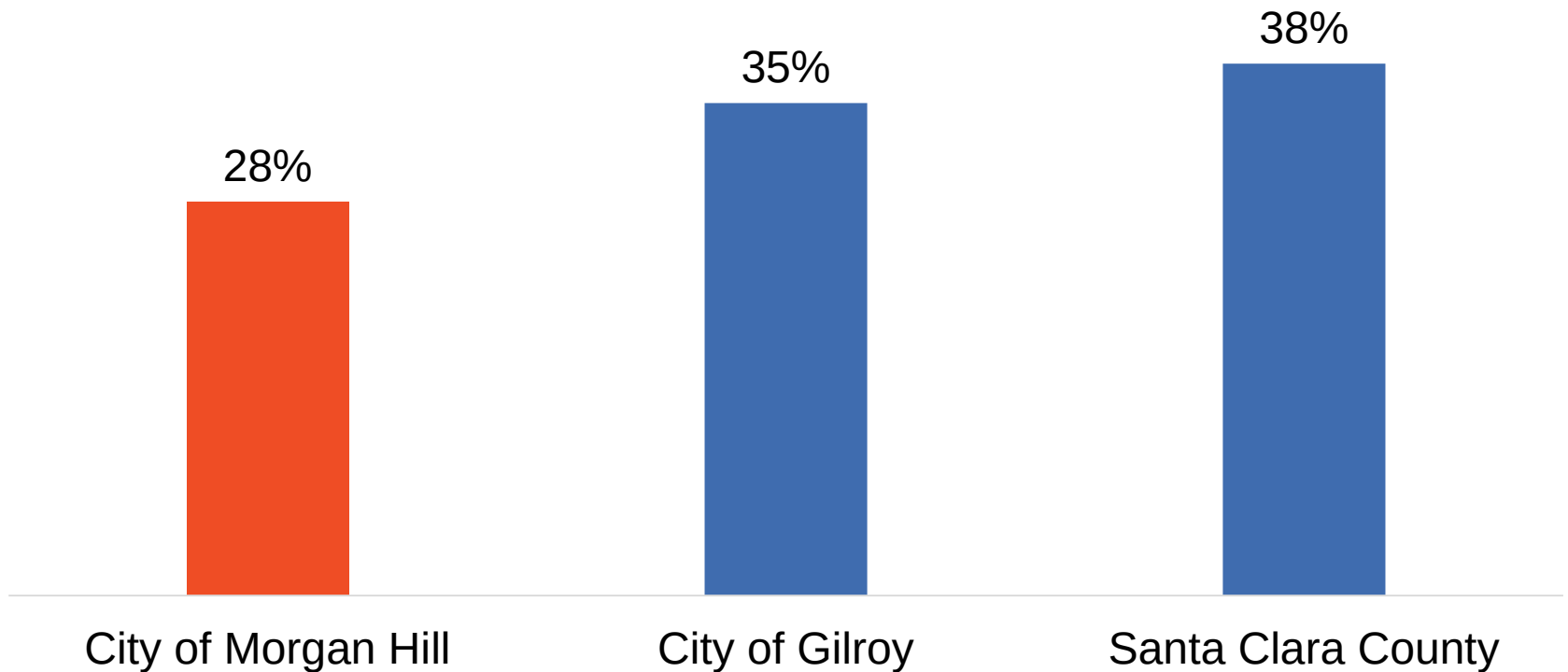
Sources: CA EDD, Quarterly Census of Employment Wages; City of Morgan Hill, 2015.

MORGAN HILL IS HOME TO MANY MID-SKILLED EMPLOYEES



Source: American Community Survey 5-Year Estimates, 2011-2015.

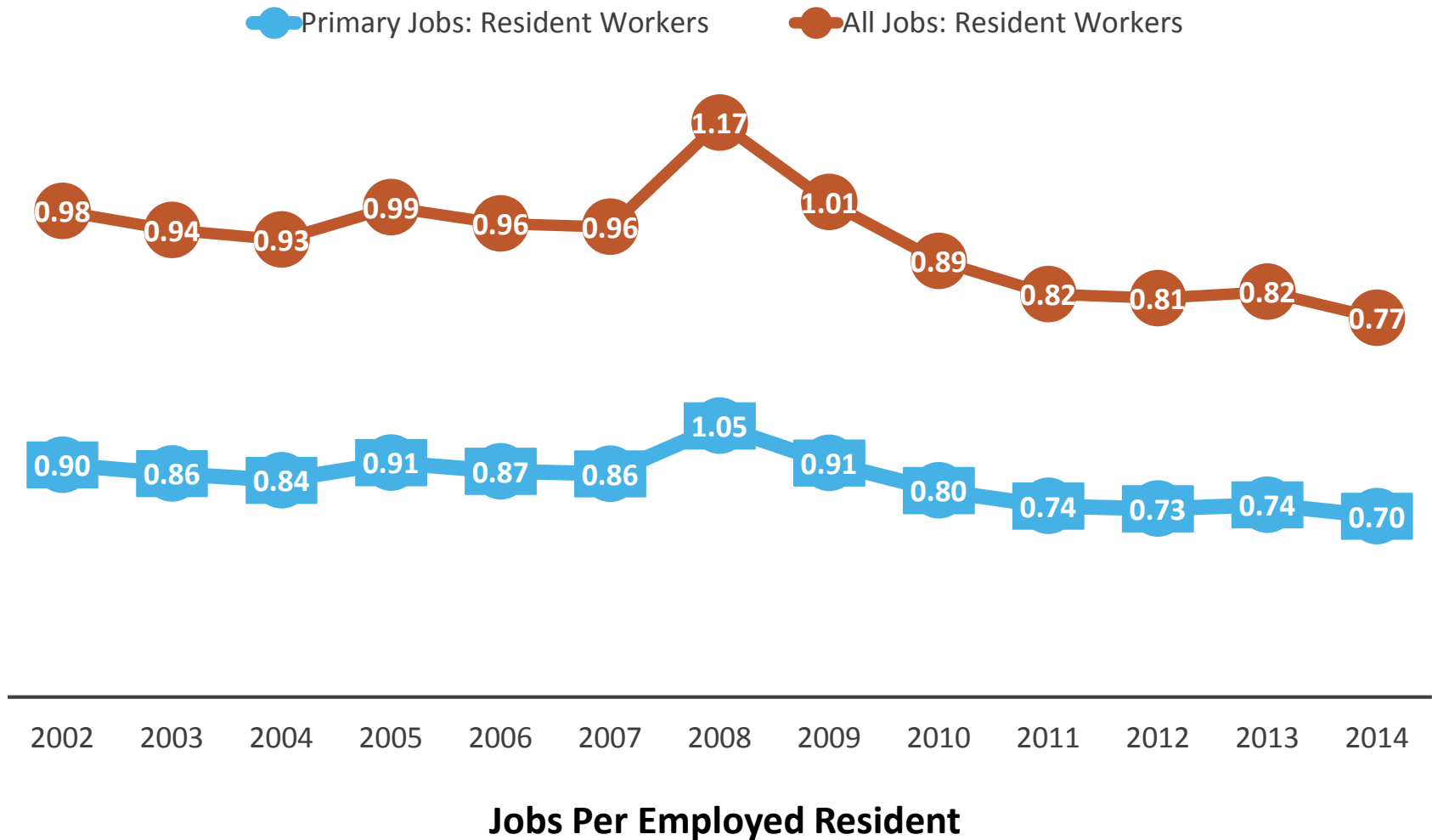
A LITTLE OVER A QUARTER OF RESIDENTS WORK IN MORGAN HILL



*Or Census Designated Place.

Sources: American Community Survey 5-Year Estimates, 2011-2015.

GROWING RESIDENT WORKER BASE EXCEEDS LOCAL JOB BASE





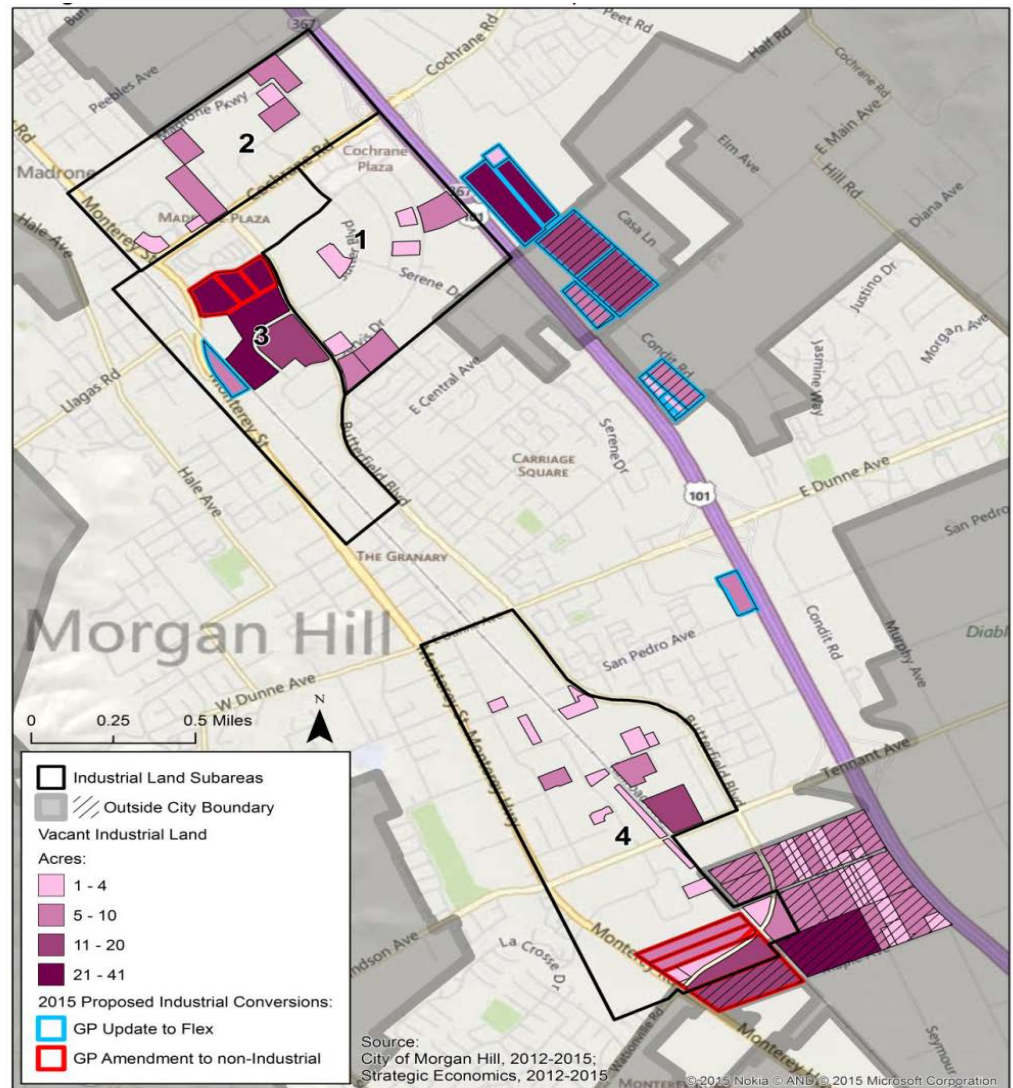
HEALTHCARE



- Loss of St. Louise Hospital
- Need for Medical Facilities/Services
- Limited hours of operations
- Small Population Base

JOBS

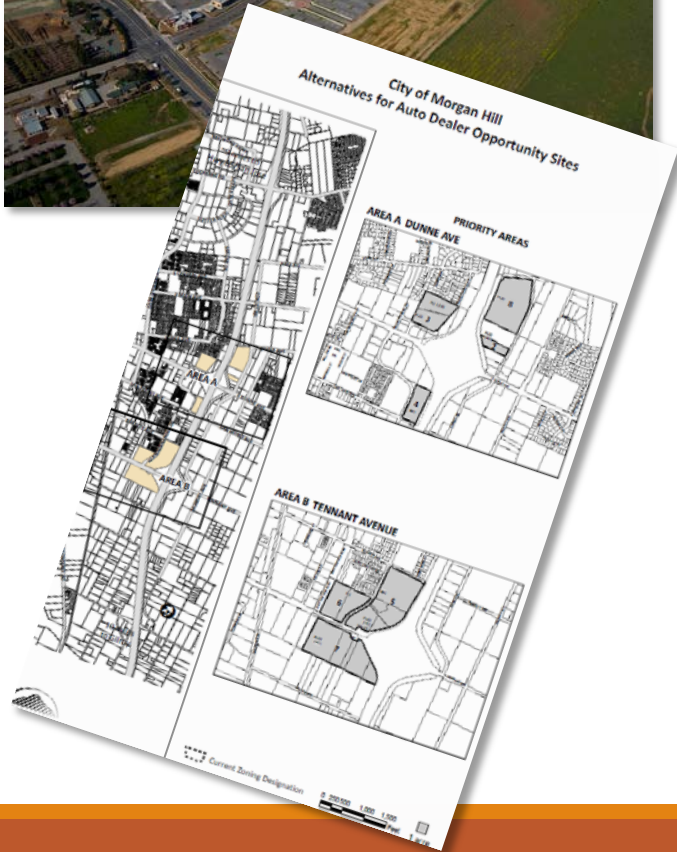
- 6.2M SF of Industrial Space
- 16,000 Employed Residents
- Low Vacancy Rate
- 19 to 48 Years of Supply of Industrial Land*



Based on actual rate of development.



RETAIL



- Existing Inventory: 1.3 MSF
- Future/ Approved: 425 KSF
- Share Trade Area with San Jose and Gilroy
- Handful of Freeway-fronting Commercial
- Great Auto Incentive Policy

TOURISM



- New Branding
- Nearly 100 Nearby Recreational Attractions
- High Attendance at Regional Sports Facilities
- No Tourism Based Improvement District
- County Restrictions
- Volunteer-based Organizations

Approach to Community Engagement



City Council
Morgan Hill Planning Commission
Morgan Hill Chamber of Commerce
Morgan Hill Downtown Association
Rotary Club

Kiwanis Club
Economic Development Team
City Teammates
Tourism Alliance
Citywide Resident Focus Group

South County Realtors Alliance
Silicon Valley Economic Development Alliance
Online Surveys
Individual Companies

Four Industry Areas

Innovation and Advanced Manufacturing

Grow existing companies, attract new industry and grow professional jobs.

Retail

Grow retail offerings and strengthen commercial nodes.

Tourism

Grow leisure, agriculture, wine country and recreational tourism.

Healthcare

Grow and foster the medical service and diagnostics industry by attracting services and facilities.



INDUSTRY	STRATEGY AND CITY ACTIONS	TIMEFRAME				CITY LEAD	
		Current/In Process	Near Term 2017-2018	Mid-Term 2018-2019	Long Term 2019-2021		
 INNOVATION & ADVANCED MANUFACTURING	PRESERVE INDUSTRIAL LANDS						
	1	Adopt an Employment (Industrial) Land Preservation Policy					ED/Planning
	2	Strengthen General Plan Language to Prevent Conversion of Industrial Lands					ED/Planning
	IMPROVE AND FACILITATE DEVELOPMENT OF CRITICAL INFRASTRUCTURE						
	3	Create a Telecommunications Master Plan to Improve Access to Fiber					ED/Engineering/Planning/IT
	ATTRACT DEVELOPMENT						
	4	Update Zoning Code and Parking Requirements to Modernize Zoning Code and Allow for New Hybrid of Developments that are Considered "Class A Industrial" or "Flex Space"					ED/Planning
	5	Explore Incentive Programs to Attract Industry-Specific Development					ED/Finance
	6	Allow Greater Intensification (FAR) and Taller Buildings to Increase Value of Employment Lands					ED/Planning
	7	Complete the Monterey Corridor Flex-Zoning Update and Optimize Development Opportunity					ED/Planning
	8	Streamline Permitting Process by allowing Administrative Approvals as Part of Zoning Code Update					ED/Planning
	FOSTER AN ENVIRONMENT THAT SUPPORTS BUSINESS GROWTH						
	9	Deploy Open-Counter Online Business Ombudsman Platform					ED/IT/Planning
	10	Market Economic Blueprint Vision, Process & Incentives to Attract business Investment					ED
	11	Formalize City's Expedited Process and Market it					ED
	SUPPORT EDUCATIONAL FACILITIES & A LIFE LONG LEARNING ECOSYSTEM						
	12	Connect Education Assets to Industry					ED



RETAIL

INDUSTRY	STRATEGY AND CITY ACTIONS		TIMEFRAME				CITY LEAD
			Current/In Process	Near Term 2017-2018	Mid-Term 2018-2019	Long Term 2019-2021	
 RETAIL	RETAIL FLEXIBILITY						
	13	Develop a Retail Concentration Strategy					ED/Planning
	14	Continually Revisit Retail Industry Trends & Requirements					ED
	15	Pursue Sports Recreation Uses as Anchor Tenants; increase Permitted Use allowance up to 15K sq. ft.					ED/Planning
	16	Re-Evaluate and Propose Changes to Shopping Center -Site Specific Zoning Requirements					ED/Planning
	17	Change Zoning to Allow incidental Wine, Beer and Alcohol Tasting Rooms and Distilleries in Downtown and Throughout the City in Commercial and Industrial Zoned Areas					ED/ Planning
	18	Promote Co-Working facilities in Commercial Nodes					ED/Planning
	SUPPORT DOWNTOWN DEVELOPMENT						
	19	Identify Parking Management Strategies					ED/Planning/PD
	20	Encourage Housing Development & Office Development					ED/Planning
	21	Create Business Improvement District (BID) to Support Downtown Improvements and Programming					ED/Finance
	22	Terminate Administrative Permit Process for Morgan Hill Plaza Shopping Center					ED/Planning



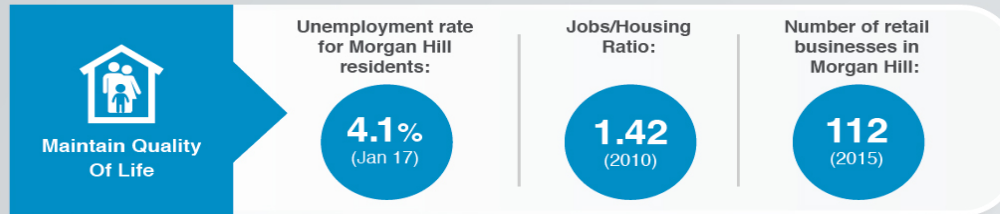
TOURISM

INDUSTRY	STRATEGY AND CITY ACTIONS		TIMEFRAME				CITY LEAD
			Current/In Process	Near Term 2017-2018	Mid-Term 2018-2019	Long Term 2019-2021	
 TOURISM	ENHANCE FACILITY UTILIZATION AND GROW SPORTS/RECREATION FACILITIES						
	23	Upgrade the Outdoor Sports Center & Aquatics Center (Infrastructure & Amenities)					ED/CS
	24	Develop a Financing Plan to Construct and Operate New Sports/Recreation Facilities					ED/CS
	SUPPORT LODGING						
	25	Ensure General Plan and Zoning Code Address Bed & Breakfasts, Air B&B and Hotel Development					ED/Planning
	26	Develop Plan to Help Upgrade or Transition Aging Hotel Facilities					ED/Planning/Housing/Finance
	27	Identify Pre-zoned Lodging Sites					ED/Planning
	LEVERAGE RESOURCES THROUGH PROFESSIONAL LINKAGES AND PARTNERSHIPS						
	28	Work with Hotels to Develop a Tourism Based Improvement District (TBID) to help Finance Capital Improvements to Sports Recreation Facilities and to Promote and Market the Region					ED/Finance/CS
	29	Collaborate with Regional Partners to Enhance Branding, Marketing and Promotions or Regional Assets					ED/CS
	SUPPORT A TOURISM ENVIRONMENT						
	30	Target Retail Attraction Towards Sport Recreation, Entertainment, Boutique and Food Retailers					ED/Planning
	31	Continue to Create A Lively Downtown with Entertainment Offerings					ED/Planning/CS/PD

INDUSTRY	STRATEGY AND CITY ACTIONS		TIMEFRAME				CITY LEAD
			Current/In Process	Near Term 2017-2018	Mid-Term 2018-2019	Long Term 2019-2021	
 MEDICAL	EXPAND LOCATIONS OF WHERE MEDICAL USES ARE ALLOWED						
	32	Ensure General Plan & Zoning Code Allow for a Range of Medical Uses					ED/ Planning
	ACTIVELY PROMOTE LOCATIONS FOR MEDICAL USES						
	33	Identify & Market Pre-Zoned Medical Sites					ED/ Planning
	34	Increase Outreach and Medical Service Providers					ED
	35	Create & Implement a Targeted Marketing Campaign					ED

Economic Indicators

The City will evaluate the success of the Economic Blueprint through different measures of success that are based upon the four economic pillars.



Source: State of California Employment Development Department, California Department of Education, Census Bureau



Sources: Santa Clara County Assessor's Office, State of California Board of Equalization, Colliers International



Sources: State of California Employment Development Department, U.S. Census



Source: Individual Hoteliers

Four Industry Areas

Innovation and Advanced Manufacturing

Grow existing companies, attract new industry and grow professional jobs.

Retail

Grow retail offerings and strengthen commercial nodes.

Tourism

Grow leisure, agriculture, wine country and recreational tourism.

Healthcare

Grow and foster the medical service and diagnostics industry by attracting services and facilities.



17485 Monterey Road, Suite 105
Morgan Hill, CA 95037
(408)779-9444

Item # 02

AGENDA DATE: 04/19/17
SUPPLEMENTAL # 1

April 17, 2017

Dear Mayor Tate and Council Members Carr, Constantine, Spring and Robinett-Jachimowicz;

We urge you to adopt the Morgan Hill Economic Development Blueprint that will be presented at the upcoming council meeting. City staff have done an excellent job spearheading this report and getting us this far. The work which has gone into creating the Economic Development Blueprint has been comprehensive and inclusive. Putting the results of this analytical and planning into action requires policy and behavior changes both from our elected leaders and the broader community.

The Morgan Hill Chamber of Commerce has been very concerned about our city's decade plus long history of adding working residents at more than ten times the rate of local job creation. Becoming ever more of a bedroom community is unhealthy and unsustainable from economic, environmental and quality of life view-points. Contrary to the arguments some have made in the past, adding more places for people to live has not resulted in more local jobs. You have been hearing this message from us loud and clear for the past few years, particularly when issues of large conversions from industrial to residential land use have been in front of the council. As the Blueprint shows, Morgan Hill has given up more than half of its undeveloped industrial land during the lifetime of the previous General Plan. Each one of the those decisions was made for seemingly good reasons at the time, but the cumulative long-term effects of those decisions are adding up.

Morgan Hill is exceptionally effective when we put significant effort and resources into things that matter. The tens of millions of taxpayer dollars invested in our downtown are yielding visible results. The auto dealer incentive policy has worked to address our otherwise uncompetitive costs for building new state of the art auto dealerships. The RDCS process effectively manages the overall rate of housing development. However, at this time we do not have comparable programs and systems in place to drive jobs supporting development. In fact, our fee structures for new industrial and office development are higher than those in neighboring San Jose and Gilroy. We also lack the scale of resources dedicated to supporting jobs development compared to our neighbors. It is unsurprising then that both South San Jose and Gilroy have been building new jobs supporting facilities at a time when Morgan Hill has not. The city's Economic Development staff has done an outstanding job helping companies back-fill into vacated facilities from the exits of companies like Abbott, Custom Chrome, Fox Racing, Comcast, Alien and Smart Products. However, very little newly constructed space has been built in a very long time, and thus the supply of buildings to fill up has largely run dry. The City doesn't build projects, but it does set the rules and fee structures for them and chooses where to invest financial and staff resources.

"Pivoting" is an understood necessity in today's business world. It means turning an organization's capabilities and resources in a new direction in order to meet new challenges and/or capitalize on new opportunities. We hope that the Economic Development Blueprint makes it clear that some pivoting is necessary for you to ensure the long-term health of Morgan Hill.

Sincerely,

John T. Horner, President & CEO, Morgan Hill Chamber of Commerce



Item # 02

**AGENDA DATE: 04/19/17
SUPPLEMENTAL # 2**

**BOARD OF SUPERVISORS
COUNTY OF SANTA CLARA**
COUNTY GOVERNMENT CENTER, EAST WING
70 WEST HEDDING STREET, SAN JOSE, CALIFORNIA 95110 / (408) 299-5010
FAX LINE (408) 298-6993

MIKE WASSERMAN
SUPERVISOR, FIRST DISTRICT

April 18, 2017

Honorable Steve Tate
17575 Peak Ave
Morgan Hill, CA 95037

Dear Mayor Tate and Members of the City Council,

I am writing to commend the City of Morgan Hill for the development of an Economic Blueprint that promotes a sustainable city. It is admirable that Morgan Hill is developing a framework to inform policy and investment decisions to guide Economic Development efforts for the next five to ten years, with the main goals of attracting jobs and investment. I understand that over 400 residents, employers, employees, non-profits, community groups, brokers, retail and industrial property owners, developers, and investors were consulted in the development of this plan.

Of particular interest is the stated goal to "Leverage resources through professional linkages and partnerships." I hope to find economic development opportunities of mutual interest between our respective jurisdictions. After all, just three years ago, Morgan Hill, Gilroy and the County of Santa Clara successfully collaborated on the creation of the Santa Clara Valley Wine Trail which now helps to promote the local wine industry and contributes to the South County economy as a whole.

I look forward to finding opportunities for further collaboration to promote our regional assets and to support a thriving local economy.

Thank you for your attention.

Sincerely,

Mike Wasserman, Supervisor
County of Santa Clara

Cc: Edith Ramirez, Economic Development Director
John Lang, Economic Development Coordinator

April 19, 2017

Mayor Steve Tate and Councilmembers
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

Re: 2017 Economic Blueprint

Mayor Tate and Councilmembers,

The coalition of local businesses and business organizations that make up the Morgan Hill Tourism Alliance are in support of the 2017 Economic Blueprint.

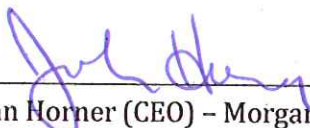
The efforts outlined in the Tourism Work Program will work towards fulfilling the Tourism Alliance' goal of promoting Morgan Hill to the outside world in a way deserving of our offerings and the community itself.

Working to enhance and promote the offerings within Morgan Hill and leveraging the growing offerings of our partners outside of Morgan Hill will help us shine a spotlight on not only our community but the entire region.

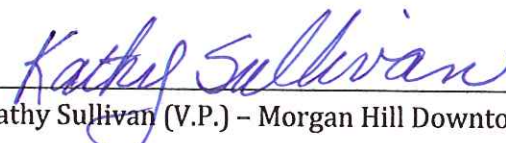
We support the adoption of the 2017 Economic Blueprint which will signal to potential visitors that the fun begins here after the work ends.

Thank you for your consideration of our support.

Tourism Alliance Members:



John Norner (CEO) - Morgan Hill Chamber of Commerce



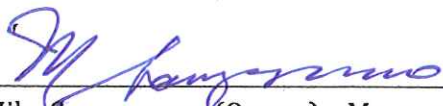
Kathy Sullivan (V.P.) - Morgan Hill Downtown Association

Verbal endorsement - on vacation

Jeff Dixon (President) - Morgan Hill Youth Sports Alliance



Gene Guglielmo (Owner/GM) – Guglielmo Winery



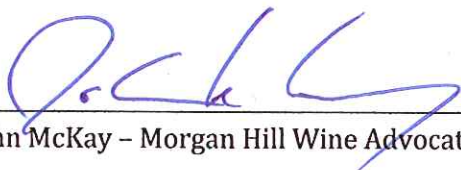
Mike Sampognaro (Owner) – Morgan Hill Cellars



Martin Cheek (Publisher) – Morgan Hill Life



David Dworkin – Tourism Alliance Founding Member



John McKay – Morgan Hill Wine Advocates



Item # 02
AGENDA DATE: 04/19/17
SUPPLEMENTAL # 4

April 18, 2017

Mayor Steve Tate
Morgan Hill City Council
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

Re: April 19, 2017 City Council meeting Agenda item 17
2017 Economic Blueprint

Mayor Tate,

The Board of Directors of the Morgan Hill Downtown Association have reviewed the 2017 Economic Blueprint as it applies to the downtown district.

We are in unanimous support of the Strategy and Actions outlined for Retail and Tourism in the Economic Blueprint Goals.

Helping to allow flexibility in zoning and streamlining administrative requirements, understanding retail trends, addressing parking concerns, encouraging housing and business development, and exploring a Business Improvement District (BID) identified in the Retail Work Plan reinforce our common goals.

We hope the recreation of a Property Based Improvement District is also one of our shared goals and open for consideration.

We support the activities presented in the Tourism Work Plan to bring more potential customers to the downtown business district as well as the entire community.

We fully appreciate and applaud the effort it takes to create a guiding document with so much community input. The resulting document is innovative in itself and the knowledge that the community is behind the effort can only serve to encourage potential new businesses that Morgan Hill will make things happen.

In general the Economic Blueprint states to the outside world that Morgan Hill is open for business.

Thank you for your time and attention.

Sincerely,

Board of Directors
Morgan Hill Downtown Association

April 19, 2017

Morgan Hill City Council
Re: City Council Meeting 04-19-17
- City of Morgan Hill Economic Blueprint

Via Email

Dear Morgan Hill City Council Members,

I am the Director of Development for Browman Development Company, operating partner of the Cochrane Commons shopping center on the North side of Morgan Hill. We are writing you to lend our support to the Economic Blueprint being presented to Council by City staff this evening, specifically related to the City's goals of growing local retail offerings and strengthening existing commercial corridors. The plan represents a proactive and commendable approach in continuing the economic growth of the City, and provides specific strategies related to the local retail industry that could help centers like ours remain competitive in a challenging retail landscape.

As mentioned in the presentation, Cochrane Commons is currently approved for over 300,000 SF of additional commercial space. Phase I of Cochrane Commons delivered in 2007-08, just before entering into the great recession and seeing the bankruptcy and closure of one of our anchors, Circuit City. After 6 years of the Circuit City box sitting vacant, we were able to backfill a portion of the space with Party City, a quality retailer offering a competitive product mix.

Even more recently and through extensive efforts on both our company's and City staff's part, we were able to secure Dick's Sporting Goods to take the remainder of the Circuit City box as well as the adjacent land, leaving just one vacant pad in Phase I of the project. We are excited to share that we are actively engaged with a high quality national retailer to take a portion of that final pad for a new store, and are searching for an additional junior anchor to take the balance of the proposed space.

Despite these recent successes, attracting new anchor tenants to Morgan Hill is still a challenge. Staff's report listed the following reasons for these challenges:

1. The city's size
2. Growth restrictions
3. Geographically confined trade area
4. Competition with neighboring markets and existing retailers
5. The City's land use regulations.

While the City does not have control over some of these factors, there are regulatory changes that can be incorporated into the Economic Blueprint that would aid in our Phase II leasing efforts.

A major enticement in attracting quality retail operators is the ability to offer their stores and brands high visibility to large numbers of potential customers. One of our shopping center's greatest strengths is the positioning along Highway 101 and the 110,000 daily travelers that pass the West edge and existing pylon signs of the center each day. Unfortunately our current signs are fully utilized and without the ability to add an additional pylon sign to the shopping center along Highway 101, this competitive advantage cannot be offered to retailers considering Phase II on the East side of the center.



BROWMAN DEVELOPMENT COMPANY, INC.
Development • Leasing • Management

Your support in allowing a third pylon sign that can be used to provide such visibility for Phase II tenants would be instrumental in assisting our efforts in attracting new and exciting tenants to the project, a concept planning commission was also in support of at their recent meeting reviewing the Economic Blueprint.

Another recent development related to our project was the approval of a General Plan Amendment incorporated into the City's 2025 General Plan Update which changed the GP designation for the Northeast quadrant of the site from commercial to mixed use. This designation allows us to maintain the flexibility of still bringing in a large big box retailer should demand exist, but more importantly, gives us the ability to incorporate a residential mixed use component to the project. Adding a residential component to existing or new shopping centers is a strategy increasingly being used in top tier trade areas to further activate shopping centers and create more vibrant and environmentally sustainable projects. Other uses that could also add to the long term viability of the project include hospitality and senior living facilities.

We plan to curate a thoughtful mix of uses into Phase II as well as create useable community spaces and public amenities that deliver a true sense of place and add to the quality of experience offered to customers and potential residents in the Cochrane Commons development. We are hopeful Council will consider additional strategies within the Economic Blueprint to help make this walkable retail-residential village a reality as we begin to move that portion of the project forward in the coming months.

The Economic Blueprint also outlines strategies that focus on loosening of zoning regulations that restrict or place additional discretionary approvals upon the types of tenants that can occupy space, specifically Action Items 15 related to fitness uses and 17 related to wine, beer and alcohol tasting rooms. We support both proposed Action Items as they allow shopping center owners a broader array of tenant options to lease new or existing and challenging spaces with the least amount of cumbersome approvals that often prevent deals from coming to fruition. We encourage staff and Council to consider further Action Items related to additional approval requirements for specific types of tenant uses.

Thank you for your time and attention on these matters. We are excited about the efforts being taken by Morgan Hill City staff, and look forward to working with staff, Council and the community to realize the best version of Cochrane Commons Phase II.

Sincerest regards,

A handwritten signature in blue ink, appearing to read 'Scott Bohrer', is written over a light blue circular background.

Scott Bohrer
Director of Development
Browman Development Company

From: [John K. McKay](#)
To: [Caitlin Jachimowicz](#); [Larry Carr](#); [Rene Spring](#); [Rich Constantine](#); [Steve Tate](#)
Cc: [Angie Gonzalez](#)
Subject: City Council Economic Blueprint Workshop and Agenda 17 - Economic Blueprint comments
Date: Wednesday, April 19, 2017 4:58:04 PM

Hello Mayor and Councilmembers,

I had hoped to be in attendance to deliver this message myself but am not able to attend the workshop or public hearing regarding the Economic Blueprint.

I want to express my personal support for the Economic Blueprint. The statistics are there, the projections are there, and plan is there - all stuff you'd expect from an economic development plan. But in this case we have added an element that indicates that the entire community has been involved, is invested and wants to make things happen. We, in Morgan Hill, are ready to take a fresh look at things and make things happen where it benefits our community and the businesses that want to be here.

The additional effort undertaken by the Economic Development Staff to create this guiding document is apparent to me and should be apparent to any business who might be considering Morgan Hill as their new home, and hopefully retain those possibly considering a move from our town. There are people on the Economic Development Staff, other City Departments, and partners in the community that will work together to help allow desirable businesses become a part of Morgan Hill.

I believe that the Economic Blueprint will show well to any business but in an age where so many businesses want to include a sense of community and place this document will speak clearly to them that this community has a lot of personality and it is ready to support their efforts.

Thank you.

Best Regards,

John K McKay



17485 Monterey Road, Suite 105
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(408)779-9444

Item # 02

AGENDA DATE: 04/19/17
SUPPLEMENTAL # 1

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Item # 02

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SUPPLEMENTAL # 2**

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Dear Mayor Tate and Members of the City Council,

I am writing to commend the City of Morgan Hill for the development of an Economic Blueprint that promotes a sustainable city. It is admirable that Morgan Hill is developing a framework to inform policy and investment decisions to guide Economic Development efforts for the next five to ten years, with the main goals of attracting jobs and investment. I understand that over 400 residents, employers, employees, non-profits, community groups, brokers, retail and industrial property owners, developers, and investors were consulted in the development of this plan.

Of particular interest is the stated goal to "Leverage resources through professional linkages and partnerships." I hope to find economic development opportunities of mutual interest between our respective jurisdictions. After all, just three years ago, Morgan Hill, Gilroy and the County of Santa Clara successfully collaborated on the creation of the Santa Clara Valley Wine Trail which now helps to promote the local wine industry and contributes to the South County economy as a whole.

I look forward to finding opportunities for further collaboration to promote our regional assets and to support a thriving local economy.

Thank you for your attention.

Sincerely,

Mike Wasserman, Supervisor
County of Santa Clara

Cc: Edith Ramirez, Economic Development Director
John Lang, Economic Development Coordinator

April 19, 2017

Mayor Steve Tate and Councilmembers
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

Re: 2017 Economic Blueprint

Mayor Tate and Councilmembers,

The coalition of local businesses and business organizations that make up the Morgan Hill Tourism Alliance are in support of the 2017 Economic Blueprint.

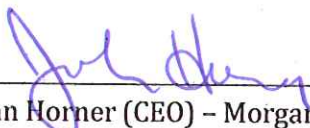
The efforts outlined in the Tourism Work Program will work towards fulfilling the Tourism Alliance' goal of promoting Morgan Hill to the outside world in a way deserving of our offerings and the community itself.

Working to enhance and promote the offerings within Morgan Hill and leveraging the growing offerings of our partners outside of Morgan Hill will help us shine a spotlight on not only our community but the entire region.

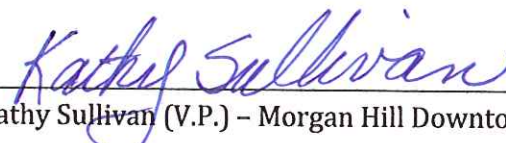
We support the adoption of the 2017 Economic Blueprint which will signal to potential visitors that the fun begins here after the work ends.

Thank you for your consideration of our support.

Tourism Alliance Members:



John Norner (CEO) - Morgan Hill Chamber of Commerce



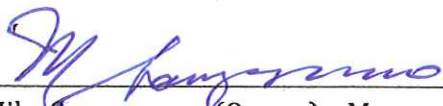
Kathy Sullivan (V.P.) - Morgan Hill Downtown Association

Verbal endorsement - on vacation

Jeff Dixon (President) - Morgan Hill Youth Sports Alliance



Gene Guglielmo (Owner/GM) – Guglielmo Winery



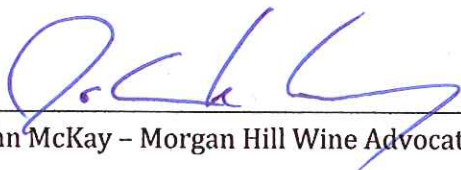
Mike Sampognaro (Owner) – Morgan Hill Cellars



Martin Cheek (Publisher) – Morgan Hill Life



David Dworkin – Tourism Alliance Founding Member



John McKay – Morgan Hill Wine Advocates



Item # 02
AGENDA DATE: 04/19/17
SUPPLEMENTAL # 4

April 18, 2017

Mayor Steve Tate
Morgan Hill City Council
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

Re: April 19, 2017 City Council meeting Agenda item 17
2017 Economic Blueprint

Mayor Tate,

The Board of Directors of the Morgan Hill Downtown Association have reviewed the 2017 Economic Blueprint as it applies to the downtown district.

We are in unanimous support of the Strategy and Actions outlined for Retail and Tourism in the Economic Blueprint Goals.

Helping to allow flexibility in zoning and streamlining administrative requirements, understanding retail trends, addressing parking concerns, encouraging housing and business development, and exploring a Business Improvement District (BID) identified in the Retail Work Plan reinforce our common goals.

We hope the recreation of a Property Based Improvement District is also one of our shared goals and open for consideration.

We support the activities presented in the Tourism Work Plan to bring more potential customers to the downtown business district as well as the entire community.

We fully appreciate and applaud the effort it takes to create a guiding document with so much community input. The resulting document is innovative in itself and the knowledge that the community is behind the effort can only serve to encourage potential new businesses that Morgan Hill will make things happen.

In general the Economic Blueprint states to the outside world that Morgan Hill is open for business.

Thank you for your time and attention.

Sincerely,

Board of Directors
Morgan Hill Downtown Association

April 19, 2017

Morgan Hill City Council
Re: City Council Meeting 04-19-17
- City of Morgan Hill Economic Blueprint

Via Email

Dear Morgan Hill City Council Members,

I am the Director of Development for Browman Development Company, operating partner of the Cochrane Commons shopping center on the North side of Morgan Hill. We are writing you to lend our support to the Economic Blueprint being presented to Council by City staff this evening, specifically related to the City's goals of growing local retail offerings and strengthening existing commercial corridors. The plan represents a proactive and commendable approach in continuing the economic growth of the City, and provides specific strategies related to the local retail industry that could help centers like ours remain competitive in a challenging retail landscape.

As mentioned in the presentation, Cochrane Commons is currently approved for over 300,000 SF of additional commercial space. Phase I of Cochrane Commons delivered in 2007-08, just before entering into the great recession and seeing the bankruptcy and closure of one of our anchors, Circuit City. After 6 years of the Circuit City box sitting vacant, we were able to backfill a portion of the space with Party City, a quality retailer offering a competitive product mix.

Even more recently and through extensive efforts on both our company's and City staff's part, we were able to secure Dick's Sporting Goods to take the remainder of the Circuit City box as well as the adjacent land, leaving just one vacant pad in Phase I of the project. We are excited to share that we are actively engaged with a high quality national retailer to take a portion of that final pad for a new store, and are searching for an additional junior anchor to take the balance of the proposed space.

Despite these recent successes, attracting new anchor tenants to Morgan Hill is still a challenge. Staff's report listed the following reasons for these challenges:

1. The city's size
2. Growth restrictions
3. Geographically confined trade area
4. Competition with neighboring markets and existing retailers
5. The City's land use regulations.

While the City does not have control over some of these factors, there are regulatory changes that can be incorporated into the Economic Blueprint that would aid in our Phase II leasing efforts.

A major enticement in attracting quality retail operators is the ability to offer their stores and brands high visibility to large numbers of potential customers. One of our shopping center's greatest strengths is the positioning along Highway 101 and the 110,000 daily travelers that pass the West edge and existing pylon signs of the center each day. Unfortunately our current signs are fully utilized and without the ability to add an additional pylon sign to the shopping center along Highway 101, this competitive advantage cannot be offered to retailers considering Phase II on the East side of the center.



BROWMAN DEVELOPMENT COMPANY, INC.
Development • Leasing • Management

Your support in allowing a third pylon sign that can be used to provide such visibility for Phase II tenants would be instrumental in assisting our efforts in attracting new and exciting tenants to the project, a concept planning commission was also in support of at their recent meeting reviewing the Economic Blueprint.

Another recent development related to our project was the approval of a General Plan Amendment incorporated into the City's 2025 General Plan Update which changed the GP designation for the Northeast quadrant of the site from commercial to mixed use. This designation allows us to maintain the flexibility of still bringing in a large big box retailer should demand exist, but more importantly, gives us the ability to incorporate a residential mixed use component to the project. Adding a residential component to existing or new shopping centers is a strategy increasingly being used in top tier trade areas to further activate shopping centers and create more vibrant and environmentally sustainable projects. Other uses that could also add to the long term viability of the project include hospitality and senior living facilities.

We plan to curate a thoughtful mix of uses into Phase II as well as create useable community spaces and public amenities that deliver a true sense of place and add to the quality of experience offered to customers and potential residents in the Cochrane Commons development. We are hopeful Council will consider additional strategies within the Economic Blueprint to help make this walkable retail-residential village a reality as we begin to move that portion of the project forward in the coming months.

The Economic Blueprint also outlines strategies that focus on loosening of zoning regulations that restrict or place additional discretionary approvals upon the types of tenants that can occupy space, specifically Action Items 15 related to fitness uses and 17 related to wine, beer and alcohol tasting rooms. We support both proposed Action Items as they allow shopping center owners a broader array of tenant options to lease new or existing and challenging spaces with the least amount of cumbersome approvals that often prevent deals from coming to fruition. We encourage staff and Council to consider further Action Items related to additional approval requirements for specific types of tenant uses.

Thank you for your time and attention on these matters. We are excited about the efforts being taken by Morgan Hill City staff, and look forward to working with staff, Council and the community to realize the best version of Cochrane Commons Phase II.

Sincerest regards,

A handwritten signature in blue ink, appearing to read 'Scott Bohrer', is written over a light blue circular background.

Scott Bohrer
Director of Development
Browman Development Company

From: [John K. McKay](#)
To: [Caitlin Jachimowicz](#); [Larry Carr](#); [Rene Spring](#); [Rich Constantine](#); [Steve Tate](#)
Cc: [Angie Gonzalez](#)
Subject: City Council Economic Blueprint Workshop and Agenda 17 - Economic Blueprint comments
Date: Wednesday, April 19, 2017 4:58:04 PM

Hello Mayor and Councilmembers,

I had hoped to be in attendance to deliver this message myself but am not able to attend the workshop or public hearing regarding the Economic Blueprint.

I want to express my personal support for the Economic Blueprint. The statistics are there, the projections are there, and plan is there - all stuff you'd expect from an economic development plan. But in this case we have added an element that indicates that the entire community has been involved, is invested and wants to make things happen. We, in Morgan Hill, are ready to take a fresh look at things and make things happen where it benefits our community and the businesses that want to be here.

The additional effort undertaken by the Economic Development Staff to create this guiding document is apparent to me and should be apparent to any business who might be considering Morgan Hill as their new home, and hopefully retain those possibly considering a move from our town. There are people on the Economic Development Staff, other City Departments, and partners in the community that will work together to help allow desirable businesses become a part of Morgan Hill.

I believe that the Economic Blueprint will show well to any business but in an age where so many businesses want to include a sense of community and place this document will speak clearly to them that this community has a lot of personality and it is ready to support their efforts.

Thank you.

Best Regards,

John K McKay

Morgan Hill

ECONOMIC BLUEPRINT



SUSTAINABLE MORGAN HILL



- ❖ Thriving Economy
- ❖ Highly Inclusive Community
- ❖ Healthy Environment



ECONOMIC BLUEPRINT

Increase economic prosperity and vitality

General Plan 2035 Priorities (Pillars)

Maintain
Quality of Life



Fiscal
Sustainability



Job
Growth



Tourism



PROGRESSIVE MORGAN HILL

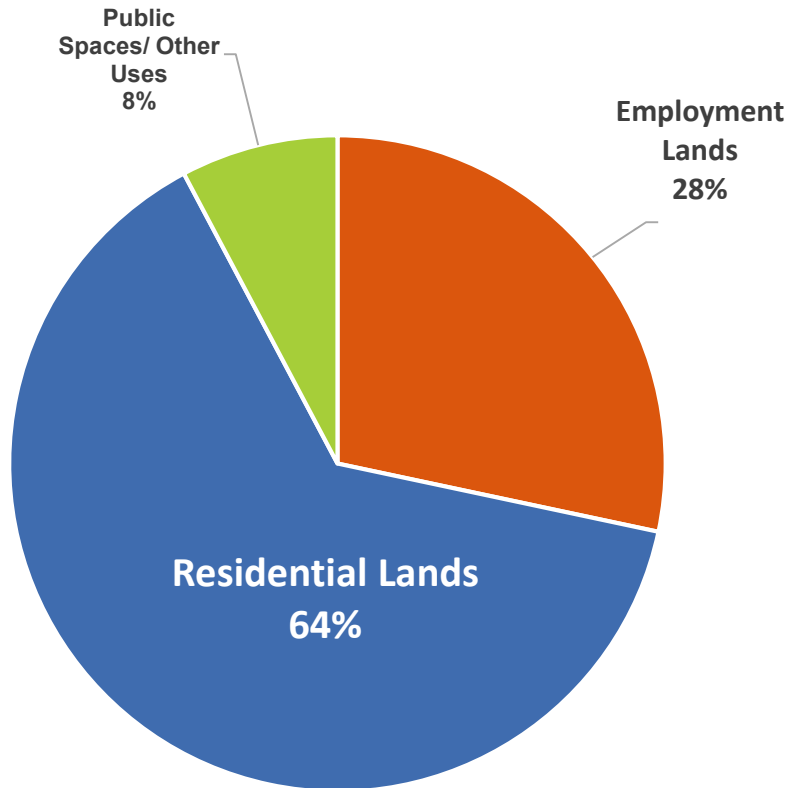


- Open Space
- Growth Control
- Sports Recreation
- Affordable Housing
- Vision for Downtown
- Agricultural Preservation
- Water Conservation
- **Economic Blueprint?**

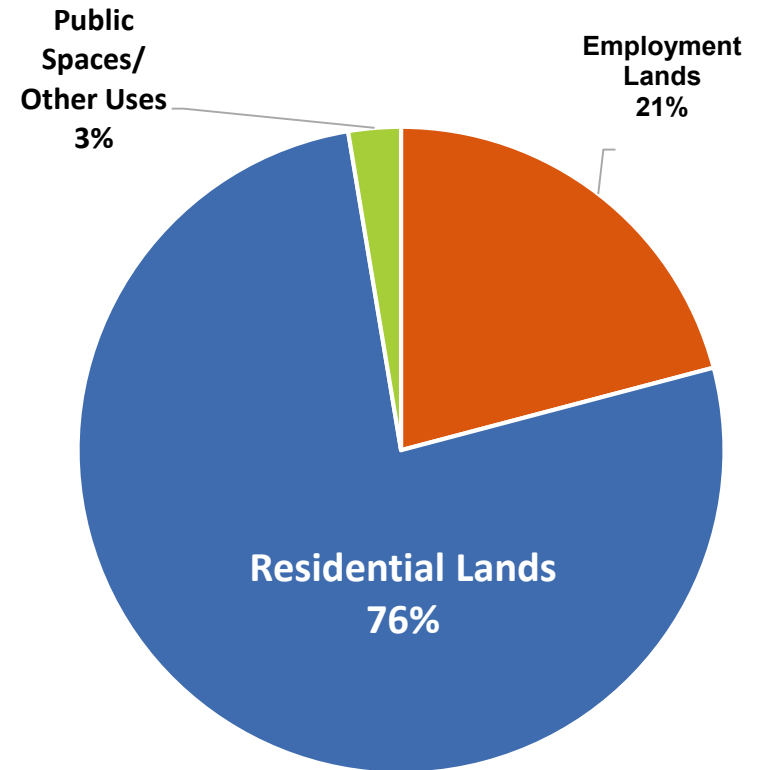


GENERAL FUND TIED TO LAND USE

Revenues



Expenditures





**CITY OF MORGAN HILL
VACANT
COMMERCIAL
AND
INDUSTRIAL LAND**

Land Use Types

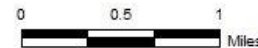
-  Commercial
-  Industrial

Boundaries

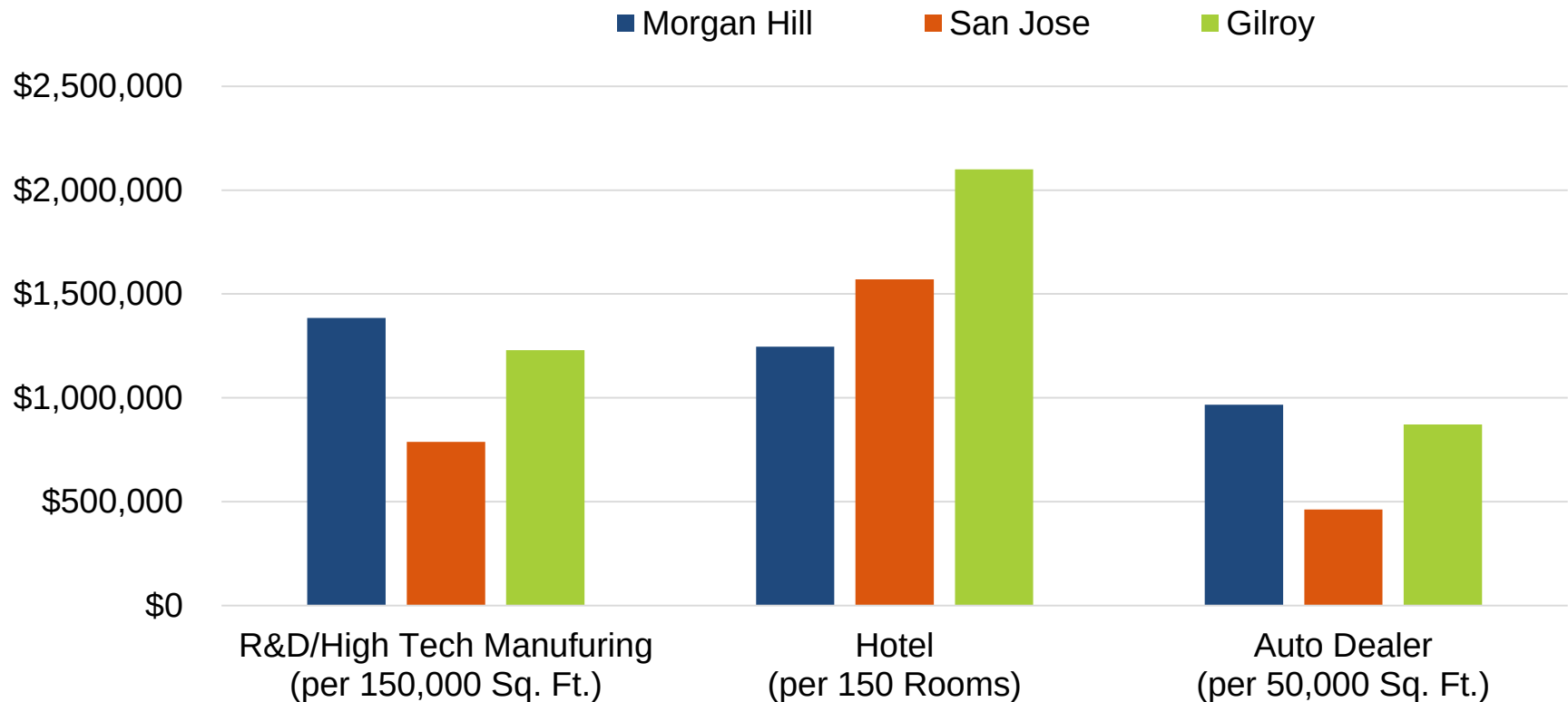
-  Parcels
-  Urban Service Area
-  City Boundary

MARCH 2017

This map was produced by the City of Morgan Hill Community Development Department. The data was collected from a variety of sources. However, the City of Morgan Hill makes no representation as to its accuracy and disclaims any liability to persons who may rely upon it.

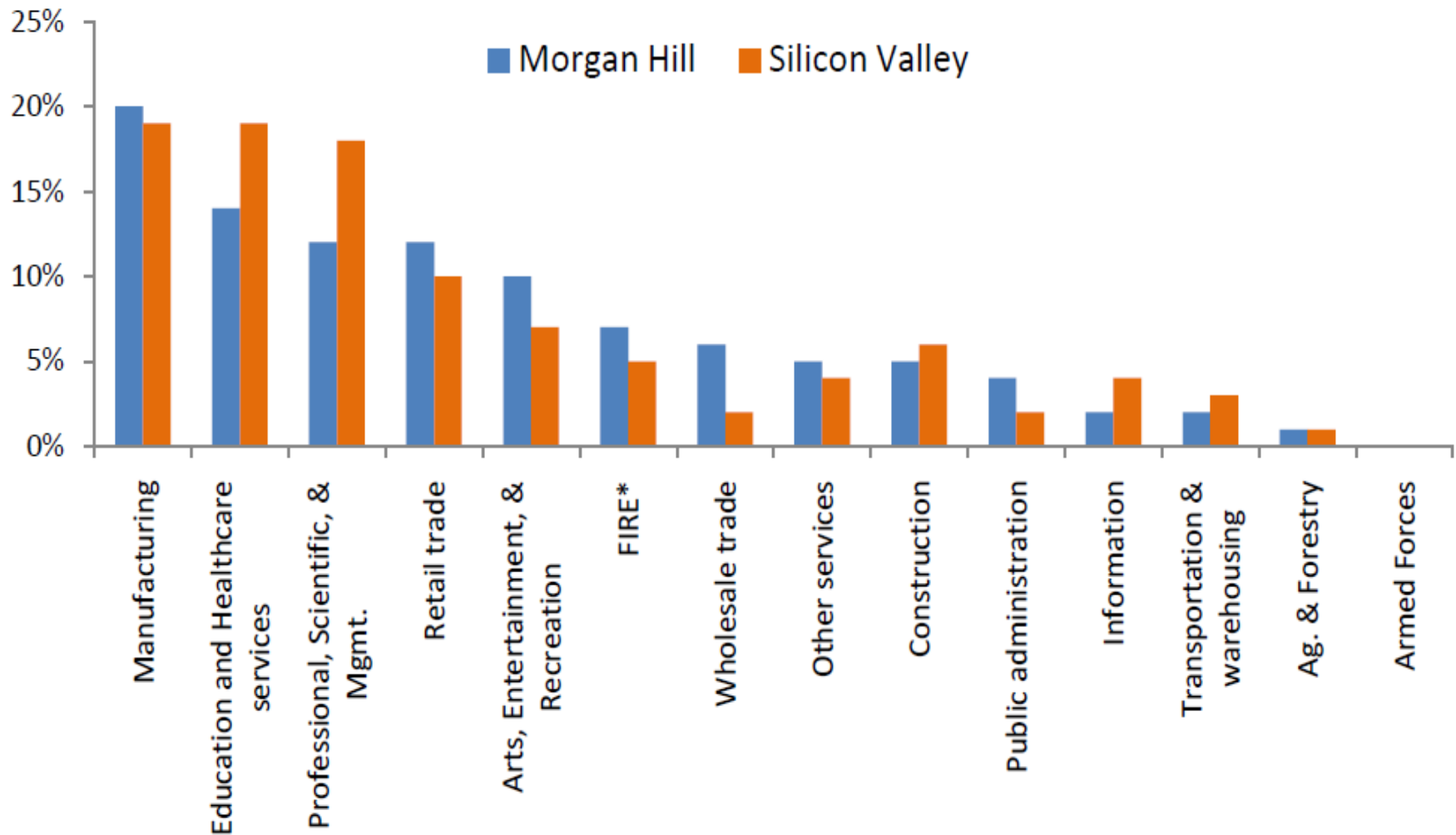


IMPACT FEES ARE GENERALLY HIGHER IN MORGAN HILL



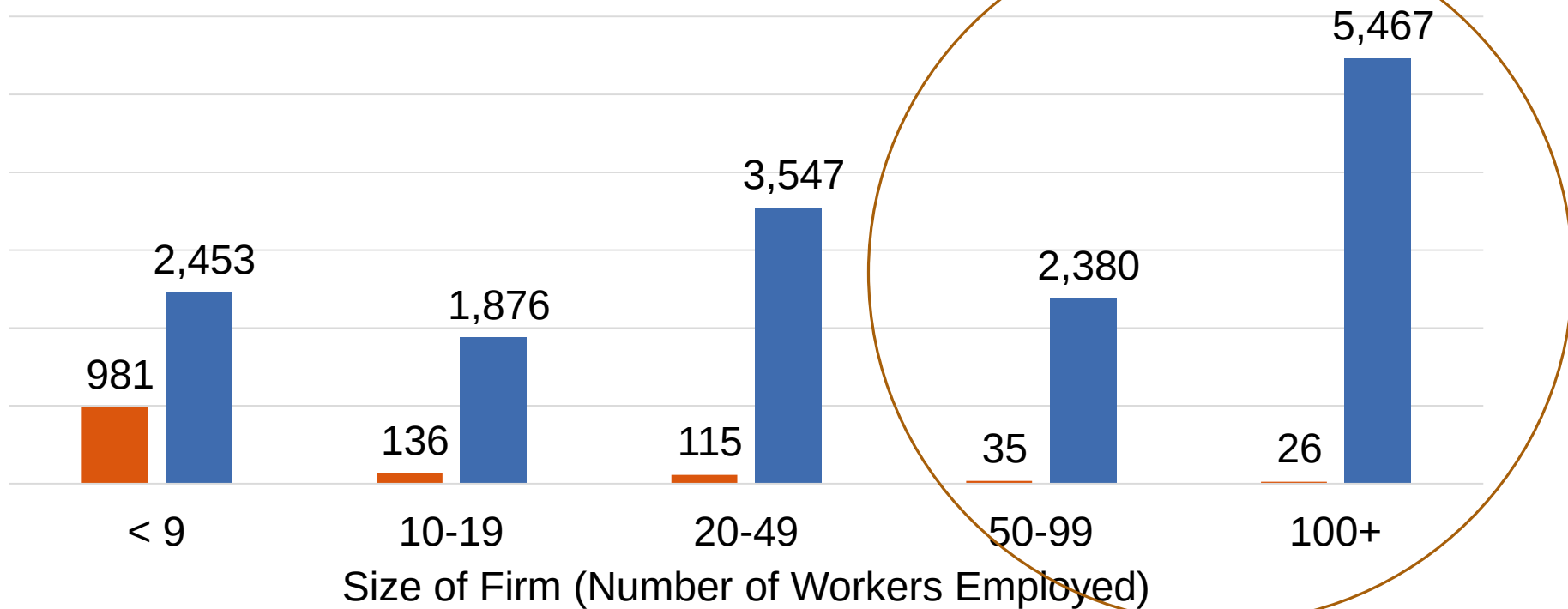
Sources: Cities of Morgan Hill and San Jose, 2015; Strategic Economics, 2017.

MORGAN HILL'S JOB MAKE UP SIMILAR TO SILICON VALLEY



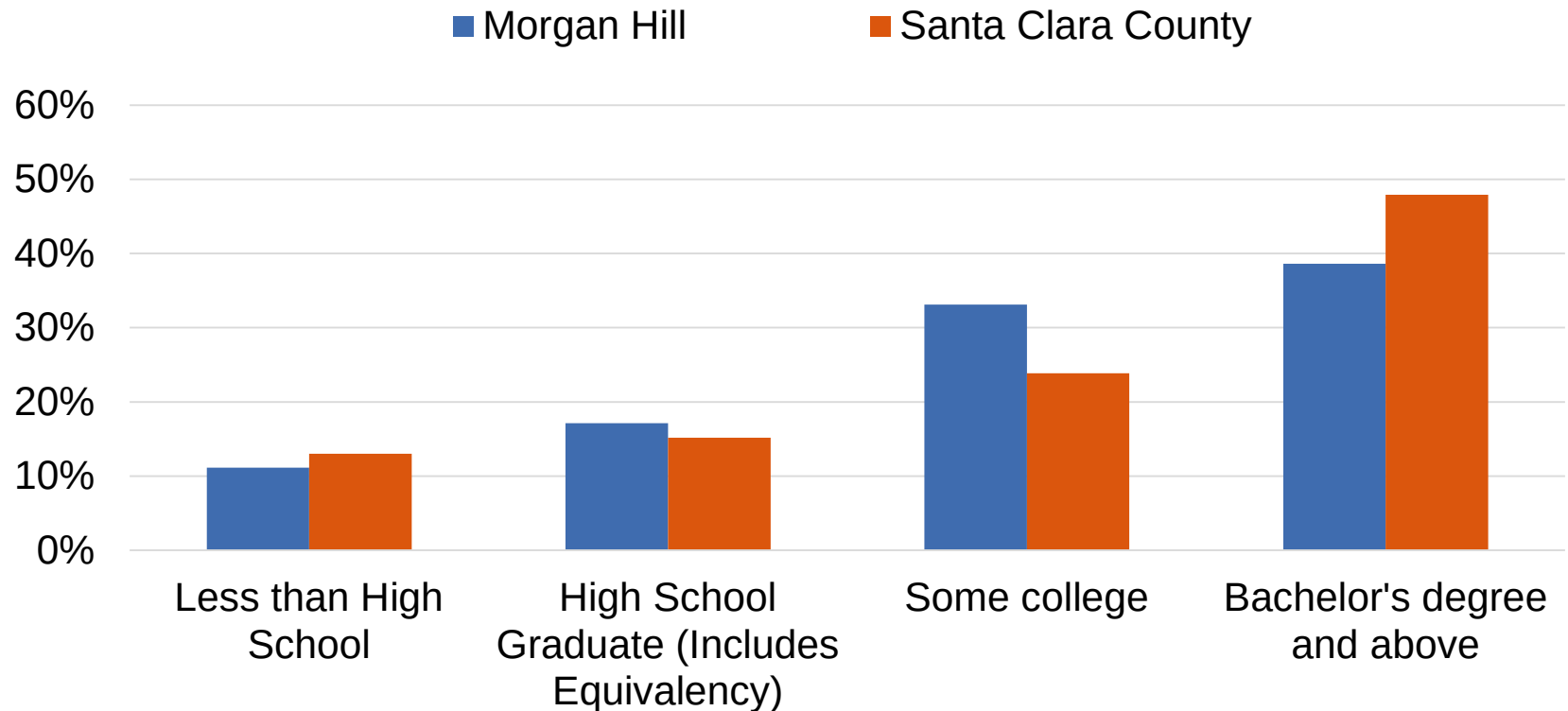
MOST OF MORGAN HILL'S BUSINESSES ARE SMALL

■ Number of Firms ■ Number of Employees



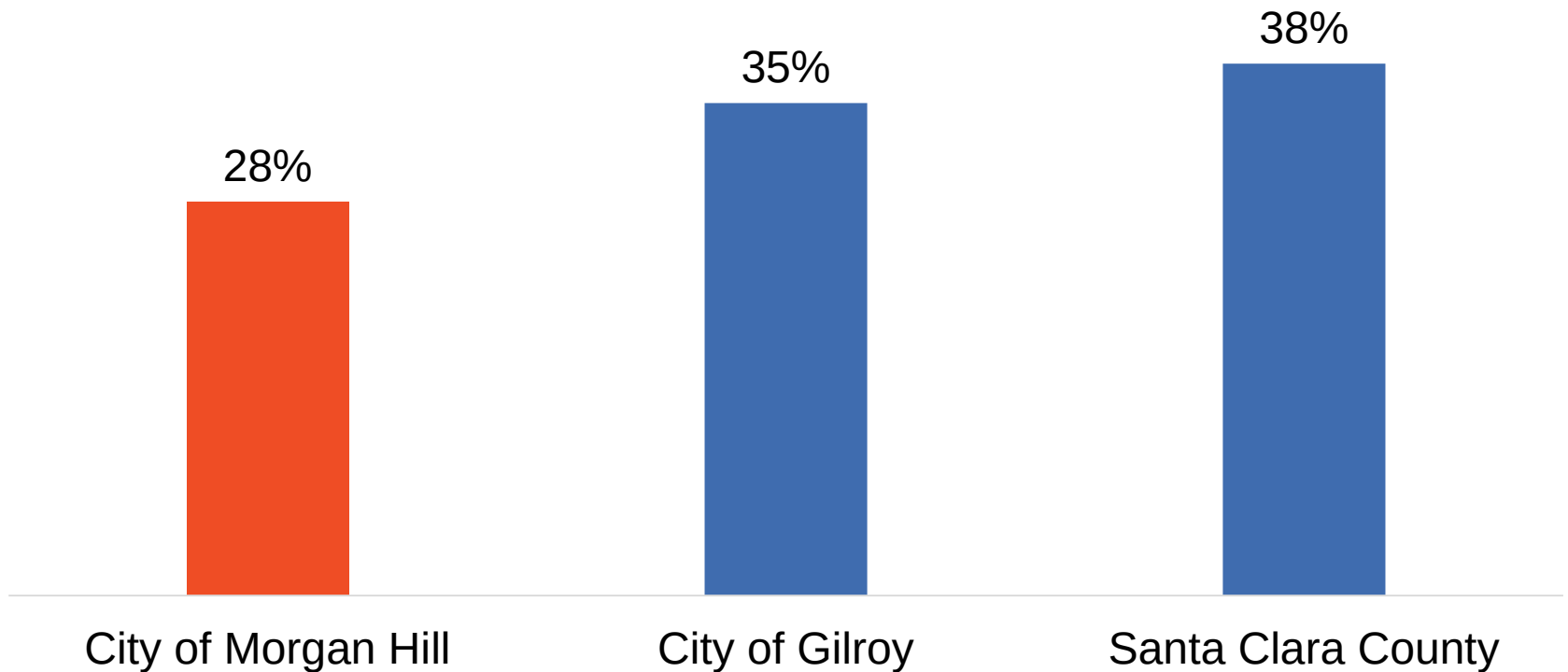
Sources: CA EDD, Quarterly Census of Employment Wages; City of Morgan Hill, 2015.

MORGAN HILL IS HOME TO MANY MID-SKILLED EMPLOYEES



Source: American Community Survey 5-Year Estimates, 2011-2015.

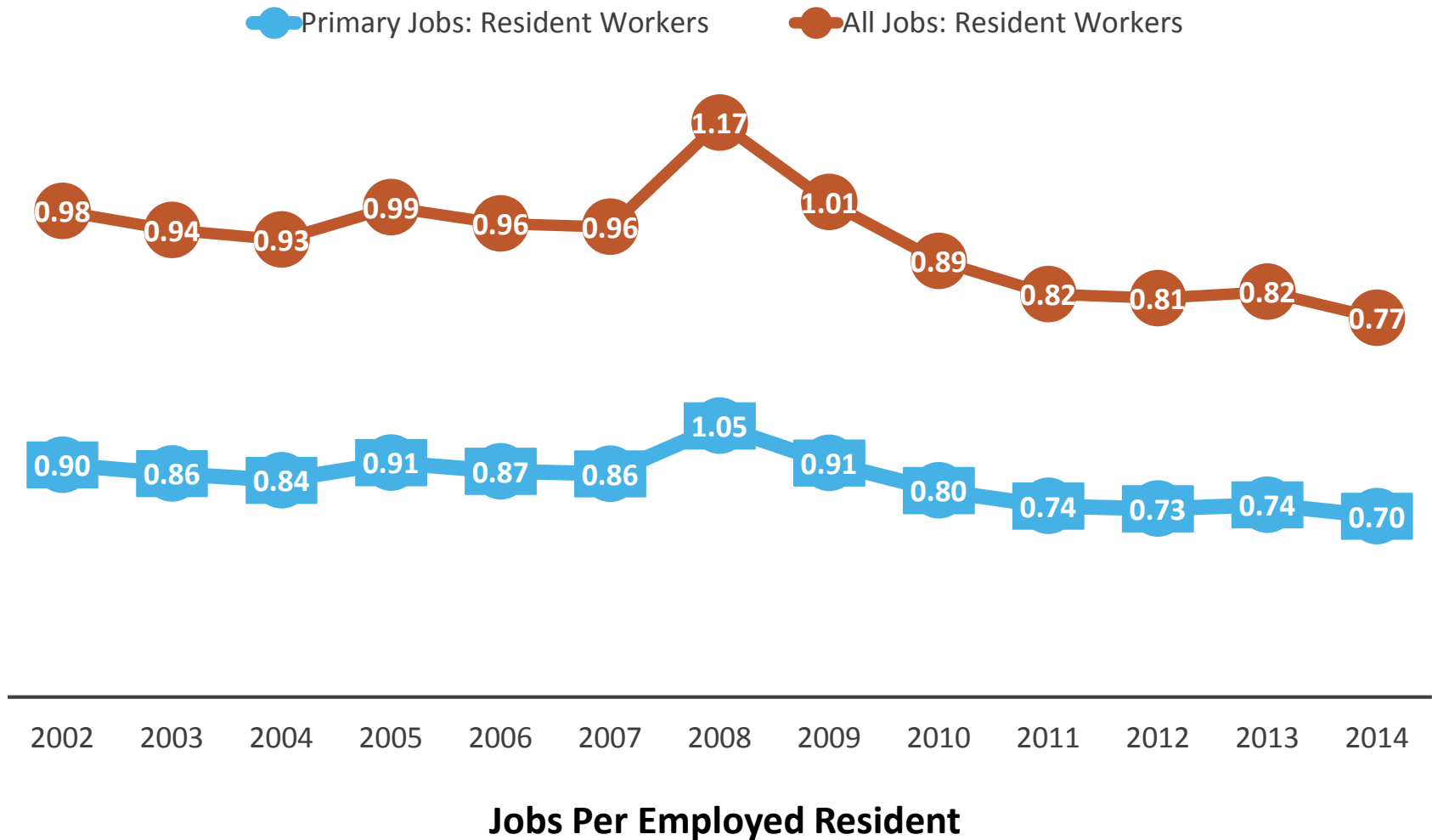
A LITTLE OVER A QUARTER OF RESIDENTS WORK IN MORGAN HILL



*Or Census Designated Place.

Sources: American Community Survey 5-Year Estimates, 2011-2015.

GROWING RESIDENT WORKER BASE EXCEEDS LOCAL JOB BASE





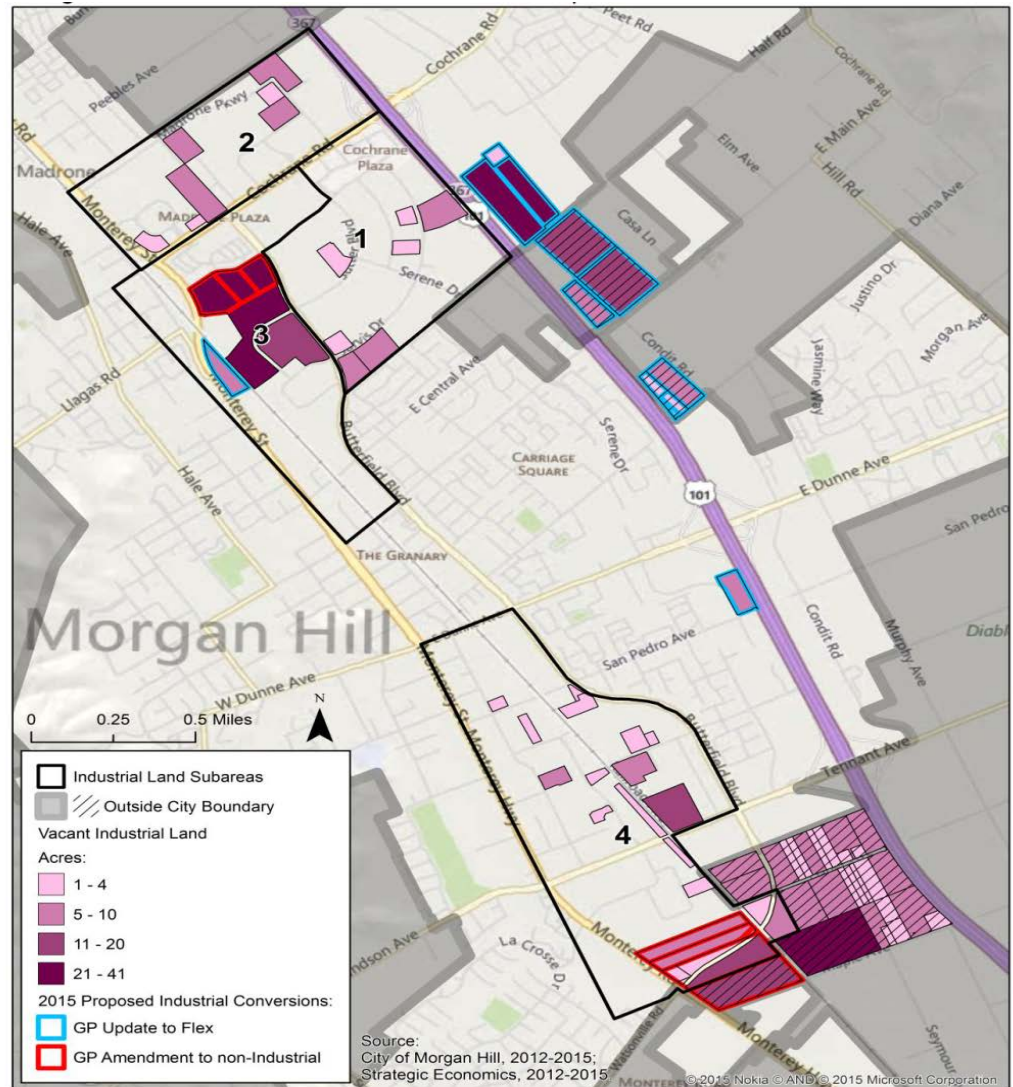
HEALTHCARE



- Loss of St. Louise Hospital
- Need for Medical Facilities/Services
- Limited hours of operations
- Small Population Base

JOBS

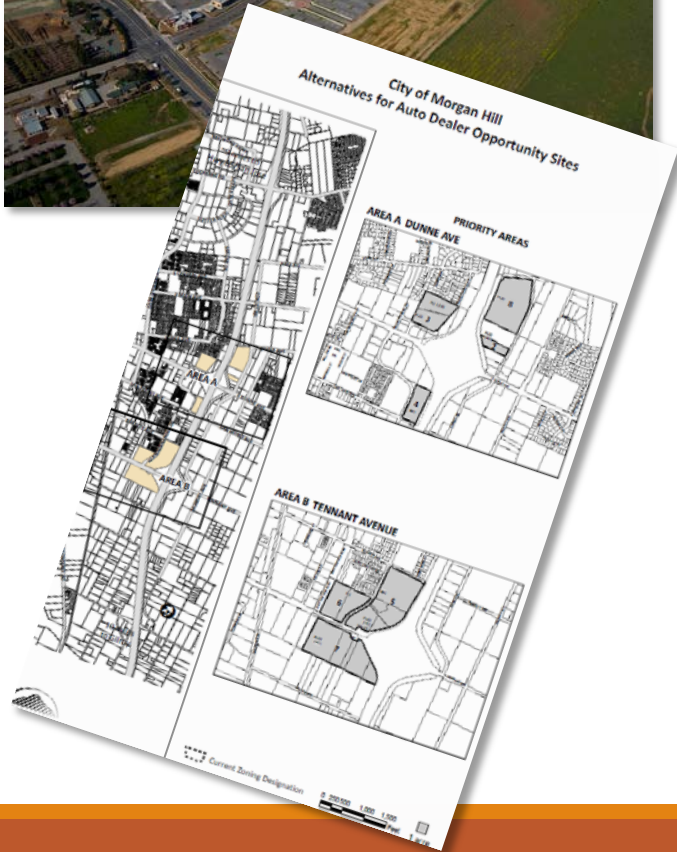
- 6.2M SF of Industrial Space
- 16,000 Employed Residents
- Low Vacancy Rate
- 19 to 48 Years of Supply of Industrial Land*



Based on actual rate of development.



RETAIL



- Existing Inventory: 1.3 MSF
- Future/ Approved: 425 KSF
- Share Trade Area with San Jose and Gilroy
- Handful of Freeway-fronting Commercial
- Great Auto Incentive Policy

TOURISM



- New Branding
- Nearly 100 Nearby Recreational Attractions
- High Attendance at Regional Sports Facilities
- No Tourism Based Improvement District
- County Restrictions
- Volunteer-based Organizations

Approach to Community Engagement



City Council
Morgan Hill Planning Commission
Morgan Hill Chamber of Commerce
Morgan Hill Downtown Association
Rotary Club

Kiwanis Club
Economic Development Team
City Teammates
Tourism Alliance
Citywide Resident Focus Group

South County Realtors Alliance
Silicon Valley Economic Development Alliance
Online Surveys
Individual Companies

Four Industry Areas

Innovation and Advanced Manufacturing

Grow existing companies, attract new industry and grow professional jobs.

Healthcare

Grow and foster the medical service and diagnostics industry by attracting services and facilities.

Retail

Grow retail offerings and strengthen commercial nodes.

Tourism

Grow leisure, agriculture, wine country and recreational tourism.



INDUSTRY	STRATEGY AND CITY ACTIONS	TIMEFRAME				CITY LEAD	
		Current/In Process	Near Term 2017-2018	Mid-Term 2018-2019	Long Term 2019-2021		
 INNOVATION & ADVANCED MANUFACTURING	PRESERVE INDUSTRIAL LANDS						
	1	Adopt an Employment (Industrial) Land Preservation Policy					ED/Planning
	2	Strengthen General Plan Language to Prevent Conversion of Industrial Lands					ED/Planning
	IMPROVE AND FACILITATE DEVELOPMENT OF CRITICAL INFRASTRUCTURE						
	3	Create a Telecommunications Master Plan to Improve Access to Fiber					ED/Engineering/Planning/IT
	ATTRACT DEVELOPMENT						
	4	Update Zoning Code and Parking Requirements to Modernize Zoning Code and Allow for New Hybrid of Developments that are Considered "Class A Industrial" or "Flex Space"					ED/Planning
	5	Explore Incentive Programs to Attract Industry-Specific Development					ED/Finance
	6	Allow Greater Intensification (FAR) and Taller Buildings to Increase Value of Employment Lands					ED/Planning
	7	Complete the Monterey Corridor Flex-Zoning Update and Optimize Development Opportunity					ED/Planning
	8	Streamline Permitting Process by allowing Administrative Approvals as Part of Zoning Code Update					ED/Planning
	FOSTER AN ENVIRONMENT THAT SUPPORTS BUSINESS GROWTH						
	9	Deploy Open-Counter Online Business Ombudsman Platform					ED/IT/Planning
	10	Market Economic Blueprint Vision, Process & Incentives to Attract business Investment					ED
	11	Formalize City's Expedited Process and Market it					ED
	SUPPORT EDUCATIONAL FACILITIES & A LIFE LONG LEARNING ECOSYSTEM						
	12	Connect Education Assets to Industry					ED



RETAIL

INDUSTRY	STRATEGY AND CITY ACTIONS		TIMEFRAME				CITY LEAD
			Current/In Process	Near Term 2017-2018	Mid-Term 2018-2019	Long Term 2019-2021	
 RETAIL	RETAIL FLEXIBILITY						
	13	Develop a Retail Concentration Strategy					ED/Planning
	14	Continually Revisit Retail Industry Trends & Requirements					ED
	15	Pursue Sports Recreation Uses as Anchor Tenants; increase Permitted Use allowance up to 15K sq. ft.					ED/Planning
	16	Re-Evaluate and Propose Changes to Shopping Center -Site Specific Zoning Requirements					ED/Planning
	17	Change Zoning to Allow incidental Wine, Beer and Alcohol Tasting Rooms and Distilleries in Downtown and Throughout the City in Commercial and Industrial Zoned Areas					ED/ Planning
	18	Promote Co-Working facilities in Commercial Nodes					ED/Planning
	SUPPORT DOWNTOWN DEVELOPMENT						
	19	Identify Parking Management Strategies					ED/Planning/PD
	20	Encourage Housing Development & Office Development					ED/Planning
	21	Create Business Improvement District (BID) to Support Downtown Improvements and Programming					ED/Finance
	22	Terminate Administrative Permit Process for Morgan Hill Plaza Shopping Center					ED/Planning



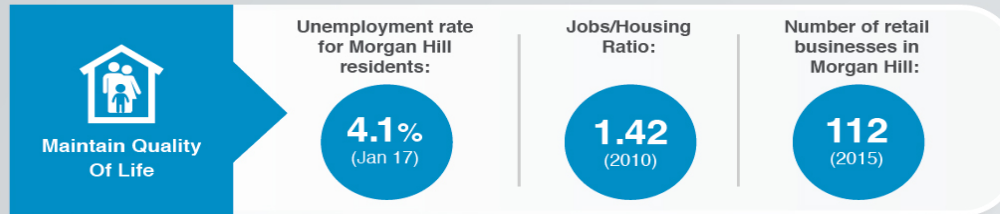
TOURISM

INDUSTRY	STRATEGY AND CITY ACTIONS		TIMEFRAME				CITY LEAD
			Current/In Process	Near Term 2017-2018	Mid-Term 2018-2019	Long Term 2019-2021	
 TOURISM	ENHANCE FACILITY UTILIZATION AND GROW SPORTS/RECREATION FACILITIES						
	23	Upgrade the Outdoor Sports Center & Aquatics Center (Infrastructure & Amenities)					ED/CS
	24	Develop a Financing Plan to Construct and Operate New Sports/Recreation Facilities					ED/CS
	SUPPORT LODGING						
	25	Ensure General Plan and Zoning Code Address Bed & Breakfasts, Air B&B and Hotel Development					ED/Planning
	26	Develop Plan to Help Upgrade or Transition Aging Hotel Facilities					ED/Planning/Housing/Finance
	27	Identify Pre-zoned Lodging Sites					ED/Planning
	LEVERAGE RESOURCES THROUGH PROFESSIONAL LINKAGES AND PARTNERSHIPS						
	28	Work with Hotels to Develop a Tourism Based Improvement District (TBID) to help Finance Capital Improvements to Sports Recreation Facilities and to Promote and Market the Region					ED/Finance/CS
	29	Collaborate with Regional Partners to Enhance Branding, Marketing and Promotions or Regional Assets					ED/CS
	SUPPORT A TOURISM ENVIRONMENT						
	30	Target Retail Attraction Towards Sport Recreation, Entertainment, Boutique and Food Retailers					ED/Planning
	31	Continue to Create A Lively Downtown with Entertainment Offerings					ED/Planning/CS/PD

INDUSTRY	STRATEGY AND CITY ACTIONS		TIMEFRAME				CITY LEAD
			Current/In Process	Near Term 2017-2018	Mid-Term 2018-2019	Long Term 2019-2021	
 MEDICAL	EXPAND LOCATIONS OF WHERE MEDICAL USES ARE ALLOWED						
	32	Ensure General Plan & Zoning Code Allow for a Range of Medical Uses					ED/ Planning
	ACTIVELY PROMOTE LOCATIONS FOR MEDICAL USES						
	33	Identify & Market Pre-Zoned Medical Sites					ED/ Planning
	34	Increase Outreach and Medical Service Providers					ED
	35	Create & Implement a Targeted Marketing Campaign					ED

Economic Indicators

The City will evaluate the success of the Economic Blueprint through different measures of success that are based upon the four economic pillars.



Source: State of California Employment Development Department, California Department of Education, Census Bureau



Sources: Santa Clara County Assessor's Office, State of California Board of Equalization, Colliers International



Sources: State of California Employment Development Department, U.S. Census



Source: Individual Hoteliers

Four Industry Areas



Innovation and Advanced Manufacturing

Grow existing companies, attract new industry and grow professional jobs.

Healthcare

Grow and foster the medical service and diagnostics industry by attracting services and facilities.

Retail

Grow retail offerings and strengthen commercial nodes.

Tourism

Grow leisure, agriculture, wine country and recreational tourism.

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL DECLARING COMMEMORATION
OF THE VICTIMS OF THE HOLOCAUST DURING THE
DAYS OF REMEMBRANCE APRIL 23, 2017 TO APRIL 30,
2017**

WHEREAS, Pursuant to an Act of Congress, the United States Holocaust Council designates the Days of Remembrance of the Victims of the Holocaust to be Sunday, April 23, 2017 through Sunday, April 30, 2017; and

WHEREAS, The history of the Holocaust provides the opportunity to reflect on the moral responsibilities of individuals, societies, and governments and their efforts to overcome prejudice through education and reflection; and

WHEREAS, We remember with sadness the Six Million Jews, including one and a half million children, who were of victims of Hitler's "Final Solution;" and

WHEREAS, We also remember with sadness the five million other people who were murdered under Hitler's regime, including, but not limited to, homosexuals, Romani gypsies, people with mental illnesses, members of Christian clergies, Soviet prisoners of war, Serbs, Jehovah's Witnesses, and ethnic Polish people; and

WHEREAS, We should always remember the terrible events of the Holocaust and remain vigilant against hatred, persecution, and tyranny; and

WHEREAS, We have an obligation to ensure that the memory and legacy of lives lost or forever changed in this horrific event are never forgotten; and

WHEREAS, the City of Morgan Hill prides itself on being an inclusive city with an eye to social justice; and

WHEREAS, the City of Morgan Hill condemns any manifestation of religious intolerance, incitement, harassment or violence against persons based on ethnic origin or religious belief; and

WHEREAS, the City Council hereby pledge to firmly commit ourselves to say NEVER AGAIN, and to work to promote human dignity by confronting intolerance and hate whenever and wherever it occurs.

NOW, THEREFORE, BE IT RESOLVED that the City Council recognize the Days of Remembrance of the Victims of the Holocaust as a reminder of our past and a re-commitment to preventing crimes against humanity in the future.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 19th day of April, 2017 by the following vote:

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

STEVE TATE, Mayor

DATE: _____

ATTEST:

IRMA TORREZ, City Clerk

DATE: _____

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No.XX-XXX, adopted by the City Council at the meeting held on April 19, 2017.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

From: [Donald Larkin](#)
To: [CityCouncil](#)
Cc: [Angie Gonzalez](#); [Scott Murray](#); [Steve Rymer](#); [Leslie Little](#); [Jennifer Carman](#); [Richard Smeaton](#); [Charlie Ha](#)
Subject: Item 6--Dunne/Murphy Final Map Approval
Date: Wednesday, April 19, 2017 11:49:45 AM

Dear Mayor and Council Members,

We are requesting that Item 6 on the Consent Calendar be pulled and continued to a date uncertain. We were hopeful that the applicant would have met the conditions of approval for the Tentative Map before the meeting tonight, but the map conditions require the project to retain the ordinance sized trees and replace any other trees that will be removed. The site plans submitted by the applicant show the removal of nearly all of the trees on the site, and don't show adequate replacements. Because the site plans do not comply with the conditions of approval for the Tentative Map, the City cannot grant site approval, and the Council should not approve the Final Map at tonight's meeting.

Council previously set a hard deadline of April 30 for the applicant to record a Final Map for this project. The applicant is seeking an extension of time to obtain project approvals and commence construction. A hearing on the applicant's request will be heard at the April 25 Planning Commission meeting. If the Planning Commission approves the extension, and the applicant is able to meet the conditions of approval, this item will be brought back for further Council consideration.

Jennifer Carman and I will be available to answer any questions from the Council at the meeting tonight.

Donald A. Larkin

City Attorney
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

Tel: (408) 778-3490

Email: donald.larkin@morganhill.ca.gov

Item # 06

AGENDA DATE: 04/19/17
SUPPLEMENTAL # 2

From: [Scott Murray](#)
To: [Donald Larkin](#); [CityCouncil](#); [Vincent Burgos](#); [John Telfer](#); [Samuel Chuck](#); [Eric Gravink](#)
Cc: [Angie Gonzalez](#); [Steve Rymer](#); [Leslie Little](#); [Jennifer Carman](#); [Richard Smeaton](#); [Charlie Ha](#)
Subject: Re: Item 6--Dunne/Murphy Final Map Approval
Date: Wednesday, April 19, 2017 12:34:37 PM
Attachments: [Busk City of Morgan Hill Receipt for Final Map and Bond 04.14.17.pdf](#)
[Busk SIA Copy Filed 04.14.17.pdf](#)
[Busk Tax Letter 4.14.17.pdf](#)

Hi Don,

I just left you a voicemail. I have been working with Richard Smeaton since last week on the trees for our Busk project and confirmed this morning from our civil engineer that we will be able to save the trees Richard brought to our attention last week. We do not need an extension at this time but we submitted the application on 3/24/2017 just in case we had delays.

I submitted to the city last Friday 04/14/2017 the notarized SIA, Cashier check for the bond in the amount of \$936,419.00 and a cashier check for the Final Map in the amount of \$223,074.00.(see attached).

We request item 6 on the content calendar be heard tonight so we are able to record our Final Map by 04/30/2017 per our extension and have no more further delays with this project.

Thanks for your time. Scott Murray

Scott M. Murray

175 East Main Ave. Suite 130
Morgan Hill CA 95037
408-406-6000
Fax 408-516-9946

From: Donald Larkin <Donald.Larkin@morganhill.ca.gov>
Sent: Wednesday, April 19, 2017 11:49 AM
To: CityCouncil
Cc: Angie Gonzalez; Scott Murray; Steve Rymer; Leslie Little; Jennifer Carman; Richard Smeaton; Charlie Ha
Subject: Item 6--Dunne/Murphy Final Map Approval

Dear Mayor and Council Members,

We are requesting that Item 6 on the Consent Calendar be pulled and continued to a date uncertain. We were hopeful that the applicant would have met the conditions of approval for the Tentative Map before the meeting tonight, but the map conditions require the project to retain the ordinance sized trees and replace any other trees that will be removed. The site plans submitted by the applicant show the removal of nearly all of the trees on the site, and don't show adequate replacements. Because the site plans do not comply with the conditions of approval for the Tentative Map, the City cannot grant site approval, and the Council should not approve the Final Map at tonight's meeting.

Council previously set a hard deadline of April 30 for the applicant to record a Final Map for this project. The applicant is seeking an extension of time to obtain project approvals and commence construction. A hearing on the applicant's request will be heard at the April 25 Planning Commission meeting. If the Planning Commission approves the extension, and the applicant is able to meet the conditions of approval, this item will be brought back for further Council consideration.

Jennifer Carman and I will be available to answer any questions from the Council at the meeting tonight.

Donald A. Larkin

City Attorney
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

Tel: (408) 778-3490

Email: donald.larkin@morganhill.ca.gov

“Reminder: email is not secure or confidential. Interio Real Estate Services will never request that you send funds or nonpublic personal information, such as credit card or debit card numbers or bank account and/or routing numbers, by email. If you receive an email message concerning any transaction involving Interio Real Estate Services and the email requests that you send funds or provide nonpublic personal information, do not respond to the email and immediately contact Interio Real Estate Services. To notify Interio Real Estate Services of suspected email fraud, contact: Interio Client Services at 866 334 7356 and/or clientservices@interiorealestate.com.”

RECEIPT DATE 4-14-17 No. **706144**

RECEIVED FROM LIVE OAK / COMERICA \$ 936,419

\$936,419 — 00/100 DOLLARS

FOR RENT CASH check # 10387

FOR CASH check # 000412520

ACCOUNT		CHECK	FROM	TO
PAYMENT		MONEY ORDER		
BAL. DUE		CREDIT CARD	BY <u>Charlie H</u>	

RECEIPT DATE 4-14-17 No. **706066**

RECEIVED FROM LIVE OAK / COMERICA \$ 223,074

\$223,074 — 00/100 DOLLARS

FOR RENT CASH check # 10387

FOR CASH check # 000412521

ACCOUNT		CHECK	FROM	TO
PAYMENT		MONEY ORDER		
BAL. DUE		CREDIT CARD	BY <u>Charlie H</u>	

RECORDING REQUESTED BY
WHEN RECORDED RETURN TO

CITY OF MORGAN HILL
City Clerk's Office
17575 PEAK AVENUE
MORGAN HILL, CA 95037

(RECORD AT NO FEE PURSUANT TO
GOVERNMENT CODE SECTION 27383)

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

SUBDIVISION IMPROVEMENTS AGREEMENT

LIVE OAK INVESTMENTS LLC DUNNE MURPHY – TRACT NO. 10387

This Subdivision Improvements Agreement ("Agreement") between the City of Morgan Hill, a municipal corporation ("City"), and **Live Oak Investments LLC**, a limited liability company ("Subdivider"), is entered into this ____ day of _____, 2017. City and Subdivider hereby acknowledge the following:

1. Subdivider has filed a Tentative Subdivision Map and supporting documents for **Tract No. 10387**, the subdivision known as **Dunne Murphy** ("Map").
2. City desires, as part of the conditions of approval ("Conditions") of the Final Tract Map or Parcel Map ("Final Map"), that certain improvements be installed by Subdivider ("Improvements") as shown on the City Engineer approved and signed Subdivision Improvement Plans entitled "**Improvement Plans for Dunne Murphy, Tract No. 10387**" ("Plans").
3. Subdivider has been unable to complete, prior to filing of the Final Map, all of the improvements required by City to the satisfaction of the City Engineer.
4. Subdivider is required by the terms of the Morgan Hill Municipal Code ("Municipal Code"), to improve all streets, highways, or public areas which are part of the development, including but not limited to necessary paving, curbs, sidewalks, catch basins, water mains, culverts, storm drains, and sanitary sewers, in accordance with the plans and specifications on file with the City Engineer and to post certain securities to secure the completion of the Improvements.
5. To assure City that Subdivider will construct, install and complete all Improvements required for the Subdivision, the parties have entered into this Agreement.

6. This Agreement is executed pursuant to California Government Code 66410, et seq., and Chapter 17.32 of the Municipal Code in order to provide for the manner in which Improvements shall be constructed and completed.

NOW, THEREFORE, and in consideration of the approval of the Map, and in order to ensure satisfactory performance by Subdivider of Subdivider's obligations under the Conditions, the Subdivision Map Act, and applicable ordinances of City, the parties hereto, for themselves, their successors, and assigns, hereby agree as follows:

Section 1. Incorporation by Reference

The Development Agreement between Subdivider and City, if applicable, Subdivider's Map application, the Conditions, the Map, all Plans as referenced in Section 2 below and all items submitted to the Planning Department, Planning Commission and City Council, all are incorporated herein by reference. In the event of any inconsistency between their representations in any incorporated documents and this Agreement, this Agreement shall govern.

Section 2. Construction of Improvements

(a) Subdivider shall construct to the approval of City, and as provided for in the Conditions, the Improvements as shown fully executed in the Plans entitled "**Improvement Plans for Dunne Murphy, Tract No. 10387**".

(b) Acquire and dedicate, or pay the cost of acquisition by City, of all rights-of-way, easements, and other interests in real property for the construction or installation of the Improvements, free and clear of all liens and encumbrances.

(c) Survey Monumentation:

(1) Subdivider shall place survey monumentation as described on the Map.

(2) Subdivider shall replace or repair all survey monumentation that is destroyed or damaged as a result of Subdivider's activities. Any such repair or replacement shall be to the satisfaction and subject to the approval of City.

Section 3. Modification of Plans

Subdivider agrees that, if during the construction of the Improvements, it is determined by City that revisions to the Plans are necessary in the interest of the public, Subdivider will undertake such design and construction changes required by City. Said changes, if any, shall be confined to the premises owned by Subdivider.

Section 4. Security

(a) Pursuant to California Government Code 66499.3(a), and the Municipal Code, Subdivider shall, concurrently with the execution hereof, furnish a surety bond in an amount equal to at

least one hundred percent (100%) of the estimated construction cost of the Improvements as security guaranteeing the faithful performance of the Improvements and this Agreement ("Performance Bond").

Improvements and the City Engineer's Estimated Costs of Improvements as of **March 2017** are attached hereto as Exhibit "A".

The Performance Bond shall be in a form substantially the same as Exhibit "B".

(b) Pursuant to California Government Code 66499.3(b), Subdivider shall, concurrently with the execution hereof, furnish a surety bond in an amount equal to one hundred percent (100%) of the estimated construction cost of the Improvements (as listed in Section 4(a) above) as security guaranteeing the payment to the contractors, subcontractors and persons furnishing labor, materials, or equipment in connection with this Agreement ("Labor and Materials Bond"). The Labor and Materials Bond shall be in a form substantially the same as Exhibit "C".

(c) Subdivider shall, upon acceptance of the Improvements by the City Council, furnish a surety bond in an amount equal to fifty percent (50%) of the estimated construction cost of the Improvements (as listed in Section 4(a) above) to secure the guarantee and warranty of the work for a period of one year following the completion and acceptance thereof against any defective work or labor performed, or defective materials furnished by Subdivider.

(d) Pursuant to Government Code 66499.9, any liability upon the security given for faithful performance of any act or agreement shall be limited to:

(1) The performance of the work covered by the Agreement or the performance of the required act.

(2) The performance of any changes or alterations in such work provided that all changes or alterations do not exceed ten percent of the original estimated cost of the Improvements.

(3) The guarantee and warranty of the work for a period of one year following completion and acceptance thereof against any defective work or labor done or defective materials furnished in the performance of the Agreement or the performance of the act.

(4) Costs and reasonable expenses and fees, including reasonable attorneys' fees.

(e) The surety on each bond and the form thereof shall be satisfactory to City. The surety shall be furnished by a surety company authorized to write the same in the State of California and that is approved and accepted by City's risk manager.

(f) Subdivider agrees to furnish any bonds required by the State or County for Improvements outside City's jurisdiction.

(g) The release of any securities shall be governed by the provisions of Government Code Section 66499.7.

(h) In lieu of providing the Performance Bond and the Labor and Material Bond required under subsection 4(a) and 4(b) hereinabove, Subdivider may provide City, at City's sole option, with a cash deposit in an amount required pursuant to Morgan Hill Municipal Code section 17.32.190.B which cash deposit obligation of Subdivider shall be made, memorialized and agreed to by Subdivider through execution of a Cash Deposit Agreement Guaranteeing Improvements in substantially the form attached hereto as Exhibit "D".

Section 5. Inspections

At least fifteen (15) calendar days prior to the commencement of any work hereunder, Subdivider shall notify City in writing of the fixed start date of construction so that City shall be able to provide inspection services. Subdivider shall at all times maintain proper facilities and provide safe access to all parts of the work site(s) for City inspections, including any workshops or plants where work related to the Improvements is being conducted.

Subdivider shall pay and reimburse City for all expenses incurred by City for inspecting and checking all work to be performed under the provisions of the Municipal Code or this Agreement. City Engineering plan checking and field improvement inspection costs are included in the Department of Public Works Fee Schedule which may be revised from time to time.

Section 6. Timing of Performance

Subdivider agrees to perform and complete all Improvements within eighteen (18) months from the date of the recording of the Final Map; provided however, the City Manager may extend the deadline for completion by not more than six (6) months at his reasonable discretion and determination that granting the extension will not be detrimental to the public welfare. No extension of this deadline for completion shall be made except upon the basis of a written application made by Subdivider stating fully the ground for the application and the facts relied upon for an extension.

It is further agreed by and between Subdivider and City that any extension granted shall in no way affect the validity of this Agreement or release the surety(ies) on any bond attached hereto or the financial institution guaranteeing the same. Subdivider further agrees to maintain the securities described in Section 4 above in full force and effect during the terms of this Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by City

Section 7. Work Performance and Warranty

(a) Subdivider shall construct, at Subdivider's own expense, all of the Improvements in a good and workmanlike manner, and furnish all required materials incident thereto, in accordance with the Plans and to the satisfaction of City, including any changes required by City which, in City's opinion, are necessary to complete the Improvements.

(b) All work shall be conducted and completed in accordance with the Plans and federal, state, Municipal Code, laws, ordinances, and regulations. For any Improvements partially completed prior to this Agreement, Subdivider agrees to complete the Improvements in accordance with this Agreement.

(c) Neither Subdivider, nor any of Subdivider's agents or contractors in connection with Subdivider's obligations under this Agreement are, or shall be considered to be, employees or agents of City.

(d) The work performance for the Improvements shall not be deemed complete until such time as such Improvements have been accepted for maintenance by City.

(e) Subdivider warrants that: (1) it has investigated the work to be performed under this agreement, (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should Subdivider discover any conditions materially differing from those inherent in the Improvements or work or as represented by City, it shall immediately inform City and shall not proceed, except at Subdivider's risk, until written instructions are received from City.

(f) Subdivider guarantees and warrants the work required by this Agreement and agrees to remedy any defects in the Improvements or work arising from faulty or defective materials or construction occurring within twelve (12) months after its acceptance. Following notice, Subdivider shall, without delay or cost to City, repair, replace, or construct any defective or unsatisfactory portion of the Improvements. City may, at its sole option, perform the repair or replacement itself if Subdivider or its surety has failed to commence repair within twenty (20) days after City has mailed written notice to Subdivider. In such event, Subdivider or its surety agrees to pay the cost of repair and replacement to City, plus fifteen percent (15%); and City may recover such costs as a lien against the Subdivision. City may proceed immediately to make repairs should an emergency arises.

Section 8. Acquisition and Dedication of Easements or Rights-of-Way

(a) No construction or installation of the Improvements shall be commenced before:

(1) The offer of dedication to City of appropriate rights-of-way, easements, or other interests in real property for the Improvements, which offer of dedication shall be irrevocable and remain open pursuant to California Government Code Section 66477.2, and authorization from the property owner to allow construction or installation of Improvements, or

(2) The dedication to, and acceptance by, City of appropriate rights-of-way, easements, or other interests in real property, as determined by the City Engineer, or

(3) The issuance by a court of competent jurisdiction pursuant to state Eminent Domain Law of an order of possession.

(b) Except as otherwise provided by this Agreement, City rejects all lands, rights-of-way, and easements offered for dedication on the Final Map of the Subdivision. All such offers shall, however, remain open, and shall constitute irrevocable offers of dedication in accordance with Government Code Section 66477.2. All such offers may be accepted by City in its sole discretion at any later date without further notice to Subdivider as provided by law. By way of explanation only, it is the current intention of City to accept all or part of the irrevocable offers to dedicate upon acceptance of the Improvements called for in this Agreement.

(c) Nothing in this Section 8 shall be construed as authorizing or granting an extension of time to Subdivider.

Section 9. Indemnity

Subdivider hereby agrees to save harmless and indemnify, including, without limitation, City's defense costs (including reasonable attorney's fees), from and against any and all suits, actions, or claims, of any character whatever, brought for, or on account of any injuries or damages sustained by any person or property resulting or arising, or alleged to have resulted or arisen, from Subdivider or Subdivider's contractors, subcontractors, agents, or employees activities, omissions or operations pursuant to this Agreement. Should City be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of this Agreement, or its performance, Subdivider will defend City, (at City's request and with counsel satisfactory to City) and will indemnify City for any judgment rendered against it or any sums paid out in settlement or otherwise.

Subdivider shall defend, indemnify, and hold harmless City and its elective and appointive boards, officials, officers, agents, employees and volunteers from any claim, action, or proceeding to review, set aside, void, or annul an approval of City concerning the Map and acts made in respect thereof, provided any such action is brought within the time period provided for in California Government Code 66499.37.

City shall promptly notify Subdivider of any claim, action, or proceeding, and cooperate fully in the defense of any claim, action, or proceeding.

It is expressly understood and agreed that this Subsection (a) will survive termination of this Agreement.

Section 10. Insurance

No later than ten days following issuance of the notice of award, Subdivider is required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of Subdivider and its Subcontractors relating to or arising from the performance of work associated with the Improvements, and must remain in full force and effect at all times during the period covered by the Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by City. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. If Subdivider fails to provide any of the required coverage in full compliance with the requirements outlined in this Agreement, City may, at its sole discretion, purchase such coverage at Subdivider's expense and deduct the cost from payments due to Subdivider, or terminate the Agreement for default. Subdivider further understands that City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to Subdivider, at any time as deemed necessary to protect the interests of City.

(a) Policies and Limits. The following insurance policies and limits are required for this Agreement:

- (1) Commercial General Liability Insurance ("CGL"): Subdivider shall maintain CGL and shall include coverage for liability arising from Subdivider's or its

Subcontractor's acts or omissions in the performance of work associated with the Improvements against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) five million dollars (\$5,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least five million dollars (\$5,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to Subdivider under Subdivider's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

a. CGL policy may not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.

b. CGL policy must include contractor's protected coverage, blanket contractual, and completed operations.

(2) Workers' Compensation Insurance and Employer's Liability: Subdivider shall maintain Workers Compensation coverage, as required by law. The policy must comply with the requirements of the California Workers' Compensation Insurance and Safety Act and provide protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Subdivider under Subdivider's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If Subdivider is self-insured, Subdivider must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

(3) Automobile Liability: Subdivider shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if Subdivider does not own automobiles, then Subdivider shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to Subdivider under Subdivider's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(4) Pollution (Environmental) Liability: The performance of Subdivider's work or service under this Agreement involves handling of hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials. Subdivider shall procure and maintain Pollution Liability covering Subdivider's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Subdivider under Subdivider's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(b) Required Endorsements. Subdivider shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

(1) ALL Policies:

“Waiver of Subrogation” - Each required policy must include an endorsement providing that the carrier agrees to waive any right of subrogation it may have against City and City’s elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

(2) General Liability:

a. “Additionally Insured” - City, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;

b. “Primary and Non-Contributing” - Insurance shall be primary non-contributing;

c. “Separation of Insureds” - The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(c) Subcontractors. Subdivider must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 10, with respect to its performance of work associated with the Improvements, including those requirements related to the additional insureds and waiver of subrogation.

(d) Qualification of Insurers. All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of “A” or better and a financial size rating of “VII” or better.

(e) Certificates. Subdivider shall furnish City with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to Subdivider’s agreement with City shall be reduced, canceled, allowed to expire, or materially changed except after thirty (30) days’ notice by the insurer to City, unless due to non-payment of premiums, in which case ten days written notice must be made to City. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

City of Morgan Hill
Attn: Risk Management
17575 Peak Avenue
Morgan Hill, CA 95037

Section 11. Permits and Requisite Fees

(a) Subdivider shall pay all current fee obligations in the total amount of **\$485,010** due under City Resolution No. 5592, as amended, in accordance with the Department of Public Work fee schedule, as follows:

(1) **\$223,074** payable at the time of recording of the Final Map, and

(2) **\$261,936** payable on a pro-rata basis for each individual lot in the Subdivision prior to final inspection of each and every residence.

(3) All fees payable pursuant to this Subsection (a) constitutes valid and due consideration for City's approval of the final Map, and amounts set forth are estimates that are subject to change prior to the issuance of building permit(s), subject to resolution or ordinance of the City Council.

(b) Subdivider shall, at its expense, obtain all necessary permits and licenses for the construction of the Improvements, give all necessary notices, and pay all fees and taxes required by law.

(c) Subdivider shall obtain a City Business License.

(d) Subdivider agrees to procure, at its expense, any necessary permits for Improvements outside City's jurisdiction.

Section 12. On-Site Supervision

Subdivider shall designate an on-site supervisor, satisfactory to City, who shall be on the work site(s) at all times during the construction of the Improvements, and who has the authority to act on behalf of Subdivider when communicating with City personnel.

Section 13. Waiver

Waiver by City or Subdivider of any breach of any of the provisions of the Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of the same or any other provision of this Agreement. Acceptance by City of any work by Subdivider shall not be a waiver of any of the provisions of this Agreement.

Section 14. Notices. All notices shall be personally delivered or mailed, via first class mail to the below listed addresses. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

- a. Address of Subdivider is as follows:
LIVE OAK INVESTMENTS LLC
175 E. Main Ave. Ste. # 130

Morgan Hill, CA 95037

b.	Address of City is as follows:	With a copy to:
	Public Works Director City of Morgan Hill 17575 Peak Avenue Morgan Hill, CA 95037	City Clerk City of Morgan Hill 17575 Peak Avenue Morgan Hill, CA 95037

Section 15. Noncompliance

If City determines that Subdivider is in violation of any federal, state, County or City laws, ordinances, rules, regulations, and requirements, and/or the terms and provisions of this Agreement, it may issue a cease and desist order, stop work order, or other action City deems necessary.

Section 16. Notice of Breach and/or Default

City may serve written notice upon Subdivider and surety of breach of this Agreement or of any portion thereof, and default of Subdivider for any of the following circumstances:

- (a) Subdivider refuses or fails to complete the Improvements as required in Section 6 above.
- (b) Subdivider refuses or fails to perform or cure any defects in the Improvements as required in Section 7.
- (c) Subdivider is insolvent, is subject to a receivership, or files any petition in bankruptcy, either voluntary or involuntary which Subdivider fails to discharge within thirty (30) days.
- (d) The commencement of a foreclosure action against the Subdivision or any portion thereof, or any conveyance in lieu of or in avoidance of foreclosure.
- (e) Subdivider or any of Subdivider's contractors, subcontractors, agent, or employees materially violates any of the provisions of this Agreement and not cure the violation within a reasonable time.

Section 17. Performance by Surety or City

- (a) In the event of a material breach and/or default by Subdivider, Subdivider's surety shall have the duty to take over and complete the Improvements.
- (b) If the surety, within a reasonable time after receiving notice of Subdivider's default does not provide City written notice to take over the performance of this Agreement or if the surety does not commence performance thereof within the time specified in such notice to City, City may take over the construction of the Improvements and prosecute the same to completion, by contract or by any method City may deem advisable, on behalf and at the expense of Subdivider, and Subdivider's surety shall be

liable to City for any excess cost or damages incurred by City thereby. In such event, City, without liability for so doing, may take possession of and utilize to complete the Improvements such materials, appliances, and other property belonging to Subdivider as may be on the work site(s) and necessary therefore.

(c) City shall have the right to draw upon or utilize the appropriate security provided for in Section 4 to recover costs and damages to City damages. The right of City to draw upon or utilize the security is additional and not in lieu of any other remedy available to City at law or in equity. The parties agree that the estimated costs and security amounts may not reflect the actual cost of construction or installation of Improvements, and therefore, City damages for Subdivider's default shall be measured by the cost of completing the required Improvements.

(d) Failure of Subdivider to comply with terms of this Agreement shall constitute consent to filing by City of a notice of violation against all lots in the Subdivision, or to rescind the approval or otherwise revert the Subdivision to acreage. The remedies provided in this Subsection (d) is in addition to and not in lieu of other remedies available to City.

(e) In the event that Subdivider fails to perform any obligation under this Agreement, Subdivider agrees to pay all costs and expenses incurred by City in securing performance of such obligation, including the costs of suit and reasonable attorney's fees.

(f) The failure by City to take an enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or subsequent default or breach.

Section 18. Successors in Interest

This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties. It shall be recorded in the Office of the Recorder of Santa Clara County concurrently with the final map of the Subdivision and shall constitute a covenant running with the land and an equitable servitude upon the real property within the Subdivision. It shall be the responsibility of City to cause the executed Agreement to be recorded.

Section 19. Effective Date

This Agreement shall be effective as of the date and year first above written.

Section 20. Amendment of Agreement

This Agreement may only be amended by mutual consent of the original parties or their successors in interest, provided that any such amendment is executed in writing by the parties to be bound thereby. Copies of any such amendments shall be sent to surety(ies).

Section 21. Execution

By signing this Agreement, the person signing states that he or she is authorized to enter into contracts on behalf of Subdivider. The undersigned, on behalf of Subdivider, binds Subdivider, its partners, successors, executors, administrators, and assigns with respect to the terms and conditions of this Agreement.

Section 22. Non-Liability of Officials and Employees of City.

No official or employee of City shall be personally liable for any default or liability under this Agreement.

Section 23. Law to Govern: Venue

The law of the State of California shall govern this Agreement. In the event of litigation between the parties, the action must be filed in the Santa Clara County Superior Court.

Section 24. Limitations Upon Subcontracting and Assignment.

Neither this Agreement or any portion shall be assigned by Subdivider without prior written consent of City.

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Section 25. Miscellaneous

(a) Compliance with Law: Subdivider shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

(b) Non-Discrimination. Subdivider covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, ancestry, or sexual orientation in any activity pursuant to this Agreement.

(c) Conflict of Interest and Reporting. Subdivider shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

(d) Time of Essence. Time is of the essence in the performance of this Agreement.

(e) Interpretation. This Agreement shall be interpreted as though prepared by both parties.

(f) Preservation of Agreement. Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

IN WITNESS THEREOF, these parties have executed this Agreement on the day and year shown below.

[TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS: (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND** (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.]

CITY OF MORGAN HILL

By: _____

Steve Rymer, City Manager

Date: _____

ATTEST:

By: _____

Michelle Wilson, Deputy City Clerk

Date: _____

APPROVED AS TO FORM:

By: _____

Donald A. Larkin, City Attorney

Date: _____

"Subdivider"

LIVE OAK INVESTMENTS LLC

By: _____

Print Name Gabriel Convors

(If Corporation, must be Chairperson of the Board, President, or Vice President)

Date: 4/13/17

By: _____

Print Name _____

(If Corporation, must be Secretary, Assistant Secretary, CFO, or Assistant Treasurer)

Date: _____

EXHIBIT "A"
IMPROVEMENTS AND
ESTIMATED COSTS OF IMPROVEMENTS
AS OF MARCH 2017

	Description	Quantity	Unit	Unit Price	Total
Schedule I - Public Tract Streets					
4	Street finish grading	14400	LS	\$0.50	\$7,200.00
7	AC pavement (4"AC/13AB)	14400	LS	\$5.50	\$79,200.00
8	City std. curb and gutter	700	LF	\$25.00	\$17,500.00
14	City std. electroliers	5	EA	\$3,000.00	\$15,000.00
Scheudle II - Water Improvements					
1	8" DIP water main	993	LF	\$50.00	\$49,650.00
2	City std. fire hydrant	3	EA	\$4,000.00	\$12,000.00
3	1" water services	14	EA	\$1,500.00	\$21,000.00
4	1-1/2" irrigation w/RPBP	1	EA	\$2,000.00	\$2,000.00
5	Existing fire hydrant relocation	1	EA	\$1,000.00	\$1,000.00
Scheudle III - Sanitary Sewer					
1	8" PVC sanitary main (SDR26)	350	EA	\$4.00	\$1,400.00
2	City std. manholes	3	EA	\$3,500.00	\$10,500.00
Scheudle IV - Storm Drainage					
1	24" RCP SD	77	LF	\$68.00	\$5,236.00
2	15" RCP SD	100	LF	\$55.00	\$5,500.00
4	City std. curb inlets	3	EA	\$3,000.00	\$9,000.00
Schedule V - Dunne & Murphy					
1	Street Grading	19528	SF	\$1.00	\$19,528.00
2	AC pavement (5"AC/14.5AB)	11478	LS	\$6.00	\$68,868.00
3	City std. curb and gutter	755	LF	\$25.00	\$18,875.00
4	City std. sidewalk	3977	SF	\$6.00	\$23,862.00
5	Min. 2" AC grind and overlay	19570	LS	\$2.00	\$39,140.00
6	Signing & striping	1	LS	\$10,000.00	\$10,000.00
7	City std. fire hydrant	1	EA	\$4,000.00	\$4,000.00
8	8" sewer PVC (SDR 26)	294	LF	\$60.00	\$17,640.00
9	Sanitary sewer manholes	1	EA	\$3,500.00	\$3,500.00
11	City std. electroliers	5	EA	\$3,500.00	\$17,500.00
11	24" RCP storm drain	424	LF	\$90.00	\$38,160.00
12	City std. manholes	1	EA	\$3,500.00	\$3,500.00
Sub Total					\$500,759.00
10% Contingency					\$50,075.90
Total					\$550,834.90

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Santa Clara

On 4-13-17 before me, D. DiBenedetto, Notary Public
(insert name and title of the officer)

personally appeared Gabriel Connors
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature D. DiBenedetto (Seal)

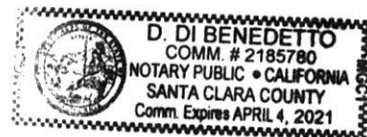


EXHIBIT "D"
CASH DEPOSIT AGREEMENT GUARANTEEING IMPROVEMENTS
LIVE OAK INVESTMENTS LLC
DUNNE MURPHY – TRACT NO. 10387

THIS AGREEMENT is made this ____ day of _____, 2017, by the City of Morgan Hill, a municipal corporation, ("City"), and **LIVE OAK INVESTMENTS LLC**, a limited liability ("Subdivider").

RECITALS

The following Recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Sections 17.32.180 and 17.32.190 of the City of Morgan Hill's Municipal Code.
2. City has entered into a Subdivision Improvement Agreement, with Subdivider pertaining to the development on **Tract 10378** and commonly known as **Dunne Murphy**, and the Subdivision Improvement Agreement shall be referenced for further particulars of the subdivision. This Cash Deposit Agreement "Agreement" is intended to fulfill the requirements for Performance/Labor & Material Bonds as set forth in the Subdivision Improvement Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Deposit.** That Subdivider has deposited the cash sum (cash, certified check, or cashier's check) of **nine hundred thirty six thousand four hundred nineteen dollars (\$936,419)** in lawful money of the United States of America herein called "Deposit Sum", with City, which funds shall be used for installing and guaranteeing the public improvements required by the Subdivision Improvement Agreement between City and Subdivider. The Subdivision Improvement Agreement is attached hereto and incorporated herein as Exhibit "A", and Subdivider certifies and warrants that they have reviewed the Subdivision Improvement Agreement and agree to be bound by relevant provisions of such Agreement.
2. **Additional Deposits.** In the event the Deposit Sum is insufficient to complete and/or repair the public improvements, Subdivider will deposit with City such additional sum in lawful money of the United States of America as an additional deposit in such amount that will be

required to complete the public improvements; said additional deposit to be subject to the terms of this Agreement.

3. **Disbursement.** The parties agree that City shall disburse, via two party checks, to the Subdivider, the contractor or the subcontractor in order to pay contractors, subcontractors, laborers and material suppliers performing work pursuant to the Subdivision Improvement Agreement, upon certification by the City Engineer of Morgan Hill that sufficient work has been completed to justify the progress payment request of Subdivider. It is further agreed that City will not disburse aggregated payments in excess of **three hundred eighty five thousand five hundred eighty four dollars (\$385,584)** or until City has accepted the subdivision improvements in their entirety. Upon both City acceptance of the subdivision improvements and Subdivider submittal of Warranty Bond, City can disburse up to **nine hundred thirty six thousand four hundred nineteen dollars (\$936,419)** in the aggregate of the funds. One (1) year after City acceptance of the subdivision improvements, upon written approval of City's Engineer, remaining funds can be disbursed by City.

4. **City Substitution for Subdivider.** In the event Subdivider fails to properly perform under the Subdivision Improvement Agreement, and City exercises its right to perform the contract itself or to subcontract work to a third party pursuant to the Subdivision Improvement Agreement, then Subdivider agrees that all funds then remaining shall remain deposited with City for disbursement to parties actually performing the work.

5. **Non-Liability of Officials and Employees of City.** No official or employee of City shall be personally liable for any default or liability under this Agreement.

6. **Independent Contractor.** It is agreed to that Subdivider and Subdivider's contractors, subcontractors, agents, or employees shall act and be independent contractors and not agents or employees of City.

7. **Subdivision Agreement.** This Agreement shall include the Subdivision Agreement which is incorporated herein. In the event of any inconsistency between the terms of the Subdivision Agreement and this Agreement, the Subdivision Agreement shall govern.

8. **Indemnity.** All indemnity provisions of the Subdivision Improvement Agreement shall apply with full force to this Agreement. City shall not be liable to Subdivider, Subdivider's contractors, subcontractors, agents, or employees for any payment under this agreement; liability for full repayment under the Subdivision Improvement Agreement shall be the sole responsibility of Subdivider.

9. **Limitations Upon Subcontracting and Assignment.** Neither this Agreement nor any portion shall be assigned by Subdivider without prior written consent of City.

10. **Authority to Execute.** The persons executing this Agreement on behalf of entities represent and warrant that they are duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

11. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified on provisions waived only by subsequent mutual written agreement executed by City and Subdivider.

12. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.

13. **Interpretation.** This Agreement is a negotiated document and shall be deemed to have been drafted jointly by both parties, and no rule of construction or interpretation shall apply against any particular Party bases on a contention that the Agreement was drafted by one of Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.

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14. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

IN WITNESS THEREOF, these parties have executed this Agreement on the day and year shown below.

[TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS: (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND** (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.]

ATTEST:

CITY OF MORGAN HILL

By: _____
Michelle Wilson, Deputy City Clerk
Date: _____

By: _____
Steve Rymer, City Manager
Date: _____

APPROVED:

"SUBDIVIDER"
LIVE OAK INVESTMENTS LLC

By: _____
Karl Bjarke, Public Works Director
Date: _____

By: 
Gabriel Connors
Title: owner

Date: 4/13/17

APPROVED AS TO FORM:

"SUBDIVIDER"
LIVE OAK INVESTMENTS LLC

By: _____
Donald A. Larkin, City Attorney
Date: _____

By: 
Gabriel Connors
Title: owner

Date: 4/13/17

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Santa Clara

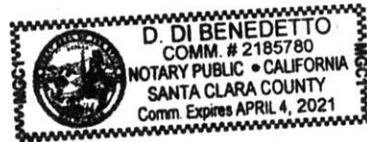
On 4-13-17 before me, D. DiBenedetto, Notary Public
(insert name and title of the officer)

personally appeared Gabriel Connors
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is are
subscribed to the within instrument and acknowledged to me that he she/they executed the same in
his her/their authorized capacity(ies), and that by his her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature D. DiBenedetto (Seal)



County of Santa Clara

Finance Agency
Controller-Treasurer Department
County Government Center
70 West Hedding Street, East Wing 2nd floor
San Jose, California 95110-1705
(408) 299-5205 FAX 287-7629



SUBDIVISION – TAX CLEARANCE LETTER

Prior to Map Recordation

Date: April 12, 2017

To: Chicago Title
Attn: Wendy Clare

According to Santa Clara County Tax Collector's records, there are no outstanding property taxes and special assessments collectible by this County for parcel **817-19-044** as of **04/12/2017**.

Please note that this letter is only applicable to the information listed on the Santa Clara County Tax Collectors records as of **04/12/2017** and the amount due specified above will remain in effect through **October 31, 2017**. Our record does not include any assessments for any assessment district; liens or otherwise, not shown by the assessment rolls or other official records of the Tax Collector Office.

In the event that additional property taxes are to be levied on this property after this date due to change in assessed values, the property owner is responsible for payment of property taxes due.

Alan Minato, Controller-Treasurer

By: 
Name: David Aldama
Date: 4/12/17

To Be Completed By Clerk of the Board

Deposit Received By _____

VERIFY THE AUTHENTICITY OF THIS MULTI-TONE SECURITY DOCUMENT.

CHECK BACKGROUND CHANGES COLOR GRADUALLY FROM TOP TO BOTTOM.

Comerica Bank

CASHIER'S CHECK

NOTICE TO CUSTOMERS: The purchase of an indemnity bond will be required before any cashier's check issued by this bank will be replaced or refunded in the event it is lost, stolen, or destroyed.

DATE

4/14/17

000412520

90.3752
1211

*****936,419 DOLLARS AND 00 CENTS

Dollars

\$ *****936,419.00

PAY TO THE ORDER OF
CITY OF MORGAN HILL
TRACK # 10387

00037/57802 000412520

REMITTER
RANDALL A WOLF

Authorized
Signature

Drawer: Comerica Bank

MP

⑈000412520⑈ ⑆121137522⑆ 1894147642⑈

VERIFY THE AUTHENTICITY OF THIS MULTI-TONE SECURITY DOCUMENT.

CHECK BACKGROUND CHANGES COLOR GRADUALLY FROM TOP TO BOTTOM.

Comerica Bank

CASHIER'S CHECK

NOTICE TO CUSTOMERS: The purchase of an indemnity bond will be required before any cashier's check issued by this bank will be replaced or refunded in the event it is lost, stolen, or destroyed.

DATE

4/14/17

000412521

90.3752
1211

*****223,074 DOLLARS AND 00 CENTS

Dollars

\$ *****223,074.00

PAY TO THE ORDER OF
CITY OF MORGAN HILL
TRACK # 10387

00038/57802 000412521

REMITTER
RANDALL A WOLF

Authorized
Signature

Drawer: Comerica Bank

MP

⑈000412521⑈ ⑆121137522⑆ 1894147642⑈



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/14/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Leavitt Pacific Insurance Brokers, Inc. License #0D79674 1330 S Bascom Ave San Jose CA 95128	CONTACT NAME: Carlyn Eaton PHONE (A/C, No, Ext): (408)288-6262 E-MAIL ADDRESS: carlyn-eaton@leavitt.com FAX (A/C, No): (408)298-7635																					
INSURED Sunshine Dr. LLC Mason Hammer Builders Inc. 18640 Sutter Blvd. #100 Morgan Hill CA 95037	<table border="1"><tr><th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A:</td><td>Rockhill Insurance Company</td><td>28053</td></tr><tr><td>INSURER B:</td><td>Ohio Security Insurance Company</td><td>24082</td></tr><tr><td>INSURER C:</td><td></td><td></td></tr><tr><td>INSURER D:</td><td></td><td></td></tr><tr><td>INSURER E:</td><td></td><td></td></tr><tr><td>INSURER F:</td><td></td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	Rockhill Insurance Company	28053	INSURER B:	Ohio Security Insurance Company	24082	INSURER C:			INSURER D:			INSURER E:			INSURER F:		
INSURER(S) AFFORDING COVERAGE		NAIC #																				
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INSURER B:	Ohio Security Insurance Company	24082																				
INSURER C:																						
INSURER D:																						
INSURER E:																						
INSURER F:																						

COVERAGES**CERTIFICATE NUMBER:**16-17 Master**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY					
	☐ CLAIMS-MADE ☒ OCCUR					
		☒	RCGLPG0248501	6/22/2016	6/22/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 primary/wvr subro \$
	GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:					
	AUTOMOBILE LIABILITY					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS	☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS				
	UMBRELLA LIAB	☐ OCCUR				EACH OCCURRENCE \$
	EXCESS LIAB	☐ CLAIMS-MADE				AGGREGATE \$ \$
	DED ☐ RETENTION \$					
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	☐ Y/N N/A				PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
B	Rented/Leased/Hired Equipt.		BKS56757095	6/22/2016	6/22/2017	Limit \$500,000 Deductible \$1,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Project - Dunne Murphy - Tract No.10387.

City of Morgan Hill is named as additional insured per attached endorsement forms CG2010, CG2033.

CERTIFICATE HOLDER**CANCELLATION**

City of Morgan Hill
Attn: Risk Management
17575 Peak Avenue
Morgan Hill, CA 95037

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Fred Stafford/BRMUNO

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – (FORM B)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

Name of Person or Organization:

Any person or organization to which you are obligated by virtue of a written contract to provide insurance such as is afforded by this policy, but only with respect to (1) occurrences taking place after such written contract has been executed and (2) occurrences resulting from work performed by you during the policy period, or occurrences resulting from the conduct of your business during the policy period.

A person or organization that qualifies as an "insured" under the above paragraph of this Endorsement shall be an additional insured solely with respect to such additional insured's liability for "bodily injury," property damage" or "personal and advertising injury" caused in whole or in part by your acts or omissions in the performance of "your work" for the additional insured on or at "commercial construction projects."

For the purposes of this Endorsement, "commercial construction projects" are defined as buildings or structures constructed for commercial use and also include apartments, hotels, homes for the aged, dormitories or barracks. However, "commercial construction projects" shall not include any building or structure which, in whole or in part, contains individual owner occupied units or dwellings.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

Coverage provided by this policy to the Additional Insured(s) shown in the Schedule shall be primary insurance and any other insurance maintained by the Additional Insured(s) shall be excess and non-contributory, but only if required of the Named Insured and by written contract.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – AUTOMATIC STATUS WHEN
REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. Section II – Who Is An Insured** is amended to include as an insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability arising out of your ongoing operations performed for that insured. A person's or organization's status as an insured under this endorsement ends when your operations for that insured are completed.
- B.** With respect to the insurance afforded these additional insureds, the following additional exclusion applies:
- This insurance does not apply to:
- "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
 2. Supervisory, inspection, architectural or engineering activities.

Coverage provided by this policy to the Additional Insured(s) shall be primary insurance and any other insurance maintained by the Additional Insured(s) shall be excess and non-contributory, but only if required of the Named Insured and by written contract.

County of Santa Clara

Finance Agency
Controller-Treasurer Department
County Government Center
70 West Hedding Street, East Wing 2nd floor
San Jose, California 95110-1705
(408) 299-5205 FAX 287-7629



SUBDIVISION – TAX CLEARANCE LETTER

Prior to Map Recordation

Date: April 12, 2017

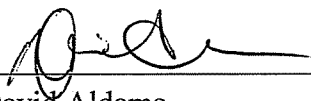
To: Chicago Title
Attn: Wendy Clare

According to Santa Clara County Tax Collector's records, there are no outstanding property taxes and special assessments collectible by this County for parcel **817-19-044** as of **04/12/2017**.

Please note that this letter is only applicable to the information listed on the Santa Clara County Tax Collectors records as of **04/12/2017** and the amount due specified above will remain in effect through **October 31, 2017**. Our record does not include any assessments for any assessment district; liens or otherwise, not shown by the assessment rolls or other official records of the Tax Collector Office.

In the event that additional property taxes are to be levied on this property after this date due to change in assessed values, the property owner is responsible for payment of property taxes due.

Alan Minato, Controller-Treasurer

By: 
Name: David Aldama
Date: 4/12/17

<u>To Be Completed By Clerk of the Board</u> Deposit Received By _____
--

From: [D. Muirhead](#)
To: [Angie Gonzalez](#); [Michelle Wilson](#)
Subject: Morgan Hill City Council Meeting April 19, 2017 Item #s 7, 8, 15, 17
Date: Tuesday, April 18, 2017 3:02:58 PM

Dear Morgan Hill City Council,

Comments for the Public Record submitted by
Doug Muirhead, a resident of Morgan Hill, for:
Morgan Hill City Council
Meeting April 19, 2017
Item # 7: Aquatics Center Concessionaire License
Item # 8: Police Vehicle Service Agreement
Item #15: Intersection Capacity Analysis study
Item #17: Adopt Economic Blueprint

Thank you for your consideration,
Doug Muirhead, Morgan Hill

Item #7: Aquatics Center Concessionaire License

Content comment: I strongly support the ability of customers to bring their own food and beverages, whether a matter of cost or just personal preference. The city should *not* change or adjust this policy "at its sole discretion" without public input and notice.

The staff report language is:

Key terms of the agreement include:

3. Allow outside food and beverage ... In response to high customer demand.

The Concessionaire License Agreement is:

4. Permission Granted. Concession Summary Matrix:

Outside food and beverage: Customer Allowed*

*Aquatics Center customers shall be allowed to bring outside food and beverage (excluding alcohol) into the facility for consumption at the facility. The City may change or adjust this policy at its sole discretion.

Process comment: The RFP is not included in the packet and is not provided as a link. Neither the quantitative scoring nor the qualitative scoring criteria are identified. The actual scoring for the responders is not provided, which means our residents can not independently evaluate your selection.

Process comment: It has been a while since staff presented a proposal and told City Council that, due to time constraints, Council had no choice but to accept staff's recommendation. Under Alternative Actions, staff states

"Any further negotiations would need to happen quickly to guarantee a concessionaire is in place before the Aquatics Center Summer Season."

Aspirational Goal: Staff states that "It is expected that SCC's food service experience and focus on high quality customer satisfaction will continue to improve the AC's guest experience.". Under Community

Engagement, staff states that they will gather feedback from AC customers regarding concession services.

Item #8: Police Vehicle Service Agreement

Content Comment: It is unclear from the language in the

Report Narrative: The Police Department received one proposal from Frank's Auto Service which met the requirements of the RFP. whether there was only one proposal received and it met the requirements or whether there were multiple (unidentified) proposals but they did not meet the requirements. Only Frank's Auto Proposal Form is included.

Content Comment: It is unjust to deny employment to a person who may have been arrested but not charged or not convicted. And this appears to cover the person since birth.

Exhibit A Scope of Services

I. Employees

Service Provider's employees who work on Police Department vehicles shall undergo a criminal background check and have no arrest record.

Content Comment: The Report Narrative notes that the City Council approved an agreement in November 2015 between the City and Frank's Auto Service. It does not mention that that was a sole-source award which claimed (without supporting data) that MHPD had experienced problems with other repair shops to justify the sole-source selection.

Process Comment: The Report Narrative states that this selection and award complies with the City purchasing policies through the RFP process. The RFP is not included in the packet and is not provided as a link. Neither the quantitative scoring nor the qualitative scoring criteria are identified. The RFP states that qualified service providers will be located within the general area of Morgan Hill, within a 3 mile radius of the Police Department are preferred. It further states that the selection will be based on overall price, performance, reliability and proximity of service provider. The actual scoring for the responder(s) is/are not provided, which means our residents can not independently evaluate your selection.

Item #15: Intersection Capacity Analysis study

Content Comment: I don't see the Intersection Capacity Analysis study (CIP Project No. 575015) in my copy of the 2017-2022 CIP. The 2017-2022 CIP has a project called New Signal Construction (CIP Project No. 502000).

As you know, I have a soapbox speech where I say if we want to be friendlier to non-vehicle modes of transportation, we need to use every opportunity to promote those alternatives. This item does mention traffic signal timing and vehicle and bicycle movement and volumes. Neither this item, the CIP project, nor the new Parks Master plan identify specific multi-modal improvements.

To identify locations where we benefit most from improvements, we need a network of multi-mode counters. We need adaptive timers for pedestrians and bicycles.

Video analytics (used by cameras in Los Altos) can detect and direct vehicle and bicycle movement at the local intersection and can at least count pedestrians. The County uses different techniques.

Precess Comment: I am not sure where CIP Project No. 575015 is to be found. It does not show in search results of the City web site. The page for the 5 Year Capital Improvement Program <http://www.morgan-hill.ca.gov/485/Engineering-CIP> is out of date. It contains
Draft FY2015-16 through FY 2019-20 Capital Improvement Program Streets and Roads (PDF) [2013]

Background from the Report Narrative:

The intersections that are recommended for study include:

- Ø Condit Road and E. Dunne Avenue
- Ø Butterfield Blvd. and Tennant Avenue
- Ø Monterey Road. and Main Avenue
- Ø Butterfield Blvd. and E. Dunne Avenue
- Ø Monterey Road and Tennant Avenue

Item #17: Adopt Economic Blueprint

Content Comment: The list of Planning Commission Comments on Economic Blueprint Presentation of April 11, 2017 do not mention several comments about LAFCO constraints. Where will Morgan Hill get land to use for commercial and industrial purposes if LAFCO will not allow us to grow past our current City limits?

While I consider those statements to be false in an absolute sense, developing a plan that allows for expansion that is also sensitive to the agricultural preservation and sprawl mandates of LAFCO would be wise. Perhaps carry this conversation forward to the next Agenda Item #18: LAFCO and City Annexation.

CONSULTANT AGREEMENT**Koff & Associates**

THIS AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Kaneko & Krammer Corporation DBA Koff & Associates a California corporation ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until January 31, 2018 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be for a classification and compensation study as further described in **Exhibit A.**
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$72,125.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed \$72,125.00 dollars and shall be billed based on the rate and basis set forth in **Exhibit B.** If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with a monthly invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and

CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to CONSULTANT. The CITY Manager of CITY is authorized to terminate this AGREEMENT on behalf of CITY.

6. **Performance of Work.** CONSULTANT represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by CONSULTANT in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of the CONSULTANT'S profession. By delivery of completed work, CONSULTANT certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. CONSULTANT shall perform all work and services under this Agreement in conformance with the time schedule set forth on Exhibit C, "Schedule of Performance," attached hereto and incorporated herein by this reference. CITY's City Manager is authorized on behalf of CITY to modify the timeframes set forth on the Schedule of Performance within the term of this Agreement. If CONSULTANT desires to leave or store any of CONSULTANT's equipment at a CITY site while CONSULTANT is performing work or service pursuant to this Agreement, CONSULTANT will first obtain the consent of CITY's City Manager, or his delegate, to do so, and any such storage shall occur only in the manner and location allowed by such CITY official and entirely at CONSULTANT's sole risk.

7. **Insurance Requirements.** CONSULTANT shall procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of CONSULTANT, including its subcontractors, employees and agents, relating to or arising from the performance of any work or service under this Agreement, and must remain in full force and effect at all times during the period covered by this Agreement. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. CONSULTANT further understands that the CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to CONSULTANT, at any time as deemed necessary to protect the interests of the CITY.

7.1. **Insurance Types and Amounts.**

7.1.1. **Commercial General Liability (CGL).** CONSULTANT shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

7.1.2. **Automobile Liability.** CONSULTANT shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if CONSULTANT does not own automobiles, then CONSULTANT shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

7.1.3. **Workers' Compensation Insurance and Employer's Liability.** CONSULTANT shall maintain Workers Compensation coverage, as required by law, in the

minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If CONSULTANT is self-insured, CONSULTANT shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

7.1.4. Pollution (Environmental) Liability. If the performance of CONSULTANT'S work or service under this Agreement involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, CONSULTANT shall procure and maintain Pollution Liability covering the contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

7.1.5. Professional Liability.

7.1.5.1. If the performance of CONSULTANT's work or service under this Agreement involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, and appraisers), CONSULTANT shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if CONSULTANT maintains a claims-made policy, CONSULTANT shall provide written evidence of such insurance to the CITY for at least five (5) years after the completion of work performed under this Agreement.

7.1.5.2. If the performance of CONSULTANT's work or service under this Agreement relates to Information Technology or related services (examples include, but are not limited to computer programmers, software designers, hardware engineers, or other systems consultants), CONSULTANT shall procure and maintain a claims made Errors and Omission liability insurance, including Cyber Liability and Data Breach, in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

7.1.5.3. If the performance of CONSULTANT's work or service under this Agreement involves contact with minors, CONSULTANT shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- 7.2. **Endorsements.** CONSULTANT shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

7.2.1. **General Liability.**

7.2.1.1. The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;

7.2.1.2. the insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and,

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. **Workers Compensation.**

The insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

- 7.3. **Qualification of Insurers.** All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and an financial size rating of "VII" or better.

- 7.4. **Certificates.** CONSULTANT shall furnish CITY of Morgan Hill with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the CONSULTANT's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

City of Morgan Hill
Attn: Risk Management
17575 Peak Avenue
Morgan Hill, CA 95037

8. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.

9. **Compliance with Law.** CONSULTANT and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. CONSULTANT and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

10. **Independent Contractor.** CONSULTANT is an independent contractor and not an agent or employee of CITY.

11. **Confidentiality.** All data, documents, or other information received by CONSULTANT from CITY or prepared in connection with CONSULTANT'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by CONSULTANT without prior written consent by CITY.

12. **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

13. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of CONSULTANT is as follows:

Koff & Associates
2835 Seventh Street
Berkely, CA 94710

Address of CITY is as follows:

Human Resources Director	with a copy to:
City of Morgan Hill	City Clerk
17575 Peak Avenue	City of Morgan Hill
Morgan Hill, CA 95037	17575 Peak Avenue
	Morgan Hill, CA 95037

14. **Licenses, Permits and Fees.** CONSULTANT shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.

15. **Maintenance of Records.**

15.1. **Maintenance.** CONSULTANT shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. CONSULTANT shall maintain records for a period of at least 3 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 3 year period, then CONSULTANT shall retain said records until such action is resolved.

15.2. **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 CONSULTANT and its subcontractors related to services 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.

15.3. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT for work performed under this Agreement shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

16. **Familiarity with Work.** By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.

17. **Time of Essence.** Time is of the essence in the performance of this Agreement.

18. **No Assignment.** Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.

19. **Attorney Fees.** In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.

20. **Defense and Indemnification.**

20.1. **Defense and Indemnification.** CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").

20.2. **Exceptions.** CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the CITY.

20.3. **Not limited by insurance.** The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMS alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.

20.4. **Right to Offset.** CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (20) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

20.5. **Interpretation.** This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall be as broad

and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

21. **Entire Agreement; Modification; Conflicting Provisions.** This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by a subsequent mutual written agreement executed by CITY and CONSULTANT. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.

22. **Governing Law and Venue.** This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.

23. **Interpretation.** This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.

24. **Preservation of Agreement.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.

25. **Binding Agreement.** Notwithstanding the provisions of Section 18 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of CONSULTANT in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

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26. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

IN WITNESS THEREOF, these Parties have executed this Agreement on the day and year shown below.

AS SET FORTH IN CA. CORP. CODE § 313, TWO SIGNATURES ARE REQUIRED FOR CALIFORNIA CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND**
(2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

Michelle Wilson
Print Name

Date: _____

APPROVED AS TO FORM:

City Attorney

Donald A. Larkin
Print Name

Date: _____

City Manager

Steve Rymer
Print Name

Date: _____

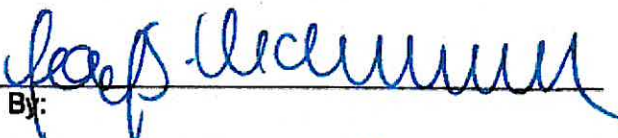
Kaneko & Krammer Corporation
DBA Koff & Associates

By: 

Title: CATHERINE KANEKO, TREASURER
Print Name and Title of Signer.

If Corporate: Chairman, President or
Vice President

Date: April 17, 2017

By: 

Title: SECRETARY
Print Name and Title of Signer.

If Corporate: Secretary, Assistant
Secretary, Chief Financial Officer or
Assistant Treasurer

Date: April 17, 2017

**EXHIBIT A
SCOPE OF SERVICES**

**PHASE I:
CLASSIFICATION STUDY**

- 1. Meetings with Study Project Team and Management Team for Initial Documentation Review**
- 2. Orientation Meetings with Employees and Distribution of Position Description Questionnaire**
- 3. Collection and Review of Position Description Questionnaires**
- 4. Interviews with Employees, Supervisors, and Management**
- 5. Classification Concept and Preliminary Allocation**
- 6. Draft Class Description Development**
- 7. Facilitation of Draft Class Description Review and Informal Appeals Support**
- 8. Classification Plan and Draft of Interim Report and Final Report**

**PHASE II:
TOTAL COMPENSATION STUDY**

- 1. List of Comparator Agencies, Benchmark Classifications, and Benefits to be Collected**
- 2. Data from Comparator Agencies, Benchmark Classifications, and Benefits to be Collected.**
- 3. Analysis and Preliminary Review of Data**
- 4. Draft Compensation Findings/Additional Analysis/Study Project Team**
- 5. Analysis of Internal Relationships and Alignment**
- 6. Compensation Structure and Implementation Plan**
- 7. Final Report and Guidelines for Implementation**
- 8. Formal Appeals Support**
- 9. Final Presentation**

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

The total amount of the contract for the combined classification and compensation study, including professional fees and reimbursable expenses, is not to exceed \$72,125.

Combined professional and clerical composite rate: \$125/hour.

Expences included in the combined compostite rate include but are not limited to duplicating documents, binding reports, phone, supplies, postage, travel expenss, per diem, etc.

Koff & Associates will bill in the month following the work in which the services were performed and will email invoices to Erica Corona, Human Resources Technician, at Erica.Corona@morganhill.ca.gov.

City Council Agenda Item #20

Residential Development Control System (RDCS)

Available Allotments for 2017 Competition Year

April 19, 2017



Recommendations

- ❑ Adopt a resolution establishing Fiscal Year 2019/20 allotments for the 2017 RDCS competition.
- ❑ Direct staff to schedule a workshop to comprehensively review processing and procedural questions.

Background

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- ❑ RDCS (Measure S) was approved by voters in November 2016.
- ❑ Effective March 1, 2017.
- ❑ Repeals and replaces Measures C, A and F.
- ❑ Required Competition Manual to be developed.

Background

4

Measure S Competition

- ❑ No more than 215 allotments may be awarded in any given year.
- ❑ Planning Commission may recommend and City Council may reduce the number of available allotments no later than six months prior to RDCS application submittal deadline.

Planning Commission Recommendation

- Planning Commission recommended setting the number of available Fiscal Year 2019/20 allotments for the 2017 RDCS competition at 200

Policy Consideration

6

- ❑ Should RDCS building allotments scheduled for construction in Fiscal Year 2019/20, be reduced to 200?
- ❑ Should it remain at 215?
- ❑ Should it be reduced to another number?

Findings for Consideration

Summary of Findings for reduction

- ❑ Necessary to prevent sudden spike in construction.
- ❑ Public infrastructure/services will be inadequate for new development.
- ❑ Other conditions necessitate a reduction.
- ❑ Downtown/Ag. Preserve set-aside allotments have been issued.

RDCS Schedule

8

- ❑ If the City Council establishes the number of available allotments today, the deadline for the 2017 RDCS applications could be as early as October 19, 2017.

Next Steps

- ❑ Recommend a City Council study session on May 17, 2017 to comprehensively discuss outstanding Measure S RDCS processing and procedural questions such as:
 - ❑ authority to grant extensions,
 - ❑ streamlining the extension process with administratively approved RDCS development agreements,
 - ❑ status of the of RDCS development agreements versus statutory development agreements,
 - ❑ multi-year project administration,
 - ❑ adding allotments to agreements administratively,
 - ❑ the practice of swapping allotments,
 - ❑ definition of delay, etc.

Policy Consideration

10

- ❑ Should RDCS building allotments scheduled for construction in Fiscal Year 2019/20, be reduced to 200?
- ❑ Should it remain at 215?
- ❑ Should it be reduced to another number?

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL APPROVING THE AVAILABLE
BUILDING ALLOTMENTS FOR FISCAL YEAR 2019/20
FOR THE 2017 RESIDENTIAL DEVELOPMENT CONTROL
SYSTEM (RDACS) COMPETITION**

WHEREAS, on April 19, 2017, the City Council approved the annual building allotment for Fiscal Year 2019/20; and

WHEREAS, a building allotment under the City's Residential Development Control System would be available in the 2019/20 fiscal year; and

WHEREAS, the Planning Commission recommended 200 building allotments for the 2019/20 fiscal year at its meeting on March 14, 2017;

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WHEREAS, the City Council has reviewed recommendations contained in the April 19, 2017 Staff Report and the recommendations of the Planning Commission, all as submitted to the City Council for consideration in connection with the adoption of this Resolution, together with any and all testimony and other evidence submitted to the City Council through the hearing conducted by the Council on April 19, 2017 for this item, and has determined that the recommended building allotments contained herein is consistent with the General Plan and the City's Municipal Code requirements under Chapter 18.78 of the Morgan Hill Municipal Code; and

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY
OF MORGAN HILL THAT:**

SECTION 1: Pursuant to Sections 18.78.080 and 18.78.110 of the Morgan Hill Municipal Code, the City Council hereby authorizes a Residential Development Control System (RDACS) competition to be conducted in 2017 with a set-aside of 215 residential building allotments.

A. The RDACS competition authorized by this Resolution shall be for Fiscal Year 2019/20.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 19th day of April, 2017 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

DATE: _____

STEVE TATE, Mayor

ATTEST:

IRMA TORREZ, City Clerk

DATE: _____

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No.16-080, adopted by the City Council at the meeting held on May 18, 2016.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

April 19, 2017

Honorable Mayor Steve Tate and Council

We respectfully ask that the following amend Exhibit "A" Depot Sunsweet SR-17-04:

1. Building Design: B. Lighting. That we work with Staff to have a coordinated lighting system for Third Street; together with the Parking Garage lighting, Sunsweet plaza lighting as well as the Sternberg lighting on Third, Depot and Fourth Streets.
2. Building Design: C. Site Elements #2. A 3-4 space bike rack be reviewed and approved by the Community Development Director prior to occupancy permit.
3. Building Design: E Other. Public art may be provided at the west elevation of the leasing office; should this location not be acceptable to the City's Library, Cultural and Arts Commission then another suitable location on site shall be agreed upon.

4. Building Design: E Other #3 Bike rack to be reviewed by the Community Development prior to occupancy permit.
5. Engineering Land Development I. Project Specific #J. New water laterals may be tapped on Third, Fourth, and Depot
6. Engineering Land Development I. Project Specific #Y. Project shall pay impact fees prior to occupancy of the first apartment unit or Building Permit final.

Thank for your considering these proposed changes to our Design Permit resolution.

Very truly,

A handwritten signature in cursive script that reads "Rocke & Glenda Garcia". The signature is written in dark ink and is positioned below the "Very truly," text.

Rocke and Glenda Garcia

Manager

Morgan Hill Sunsweet LLC

Morgan Hill City Council

April 19, 2017

Agenda Item #21

SR-17-0004: Depot-Sunsweet

Request:

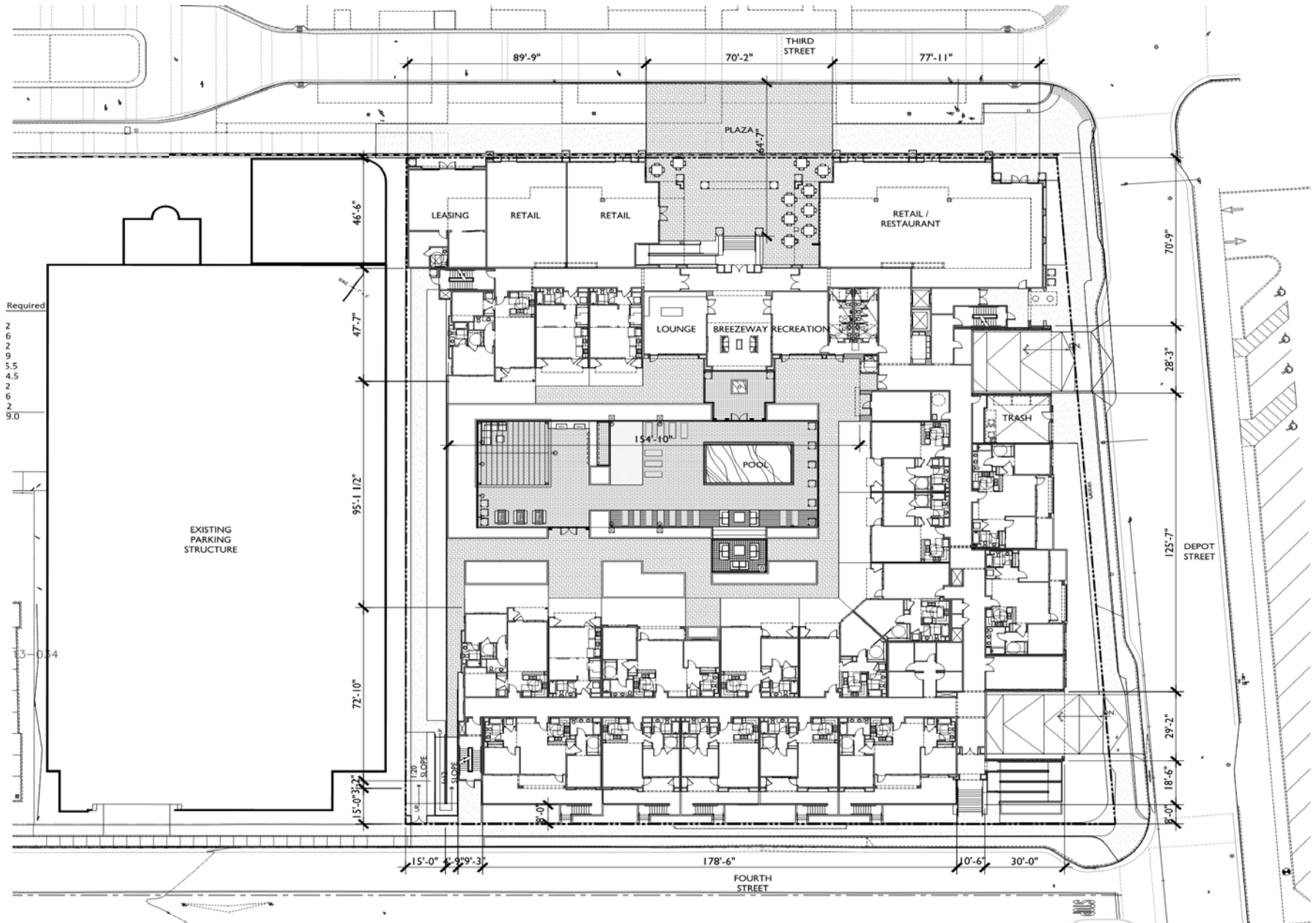
Site, architectural and landscape plan approval for an 83-unit apartment building with 7859 square feet of commercial space

Recommendation:

- City Council approval of Site Review application.



City Council – April 19, 2017 – Agenda Item: 21



City Council – April 19, 2017 – Agenda Item: 21





Third Street



Depot Street

City Council – April 19, 2017 – Agenda Item: 21



ELEVATION
FOURTH STREET



ELEVATION
ALLEY

City Council – April 19, 2017 – Agenda Item: 21





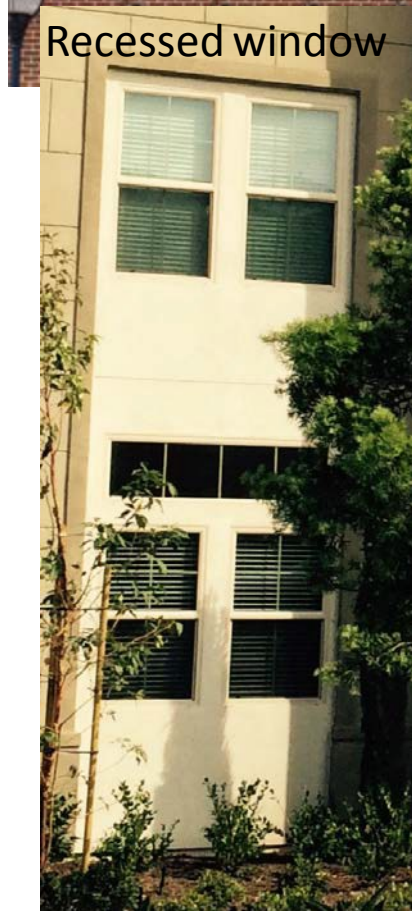
RIGHT

Right side of lease office/west elevation

City Council – April 19, 2017 – Agenda Item: 21



Brick window trim



Recessed window



Cornice



Transition bull nose

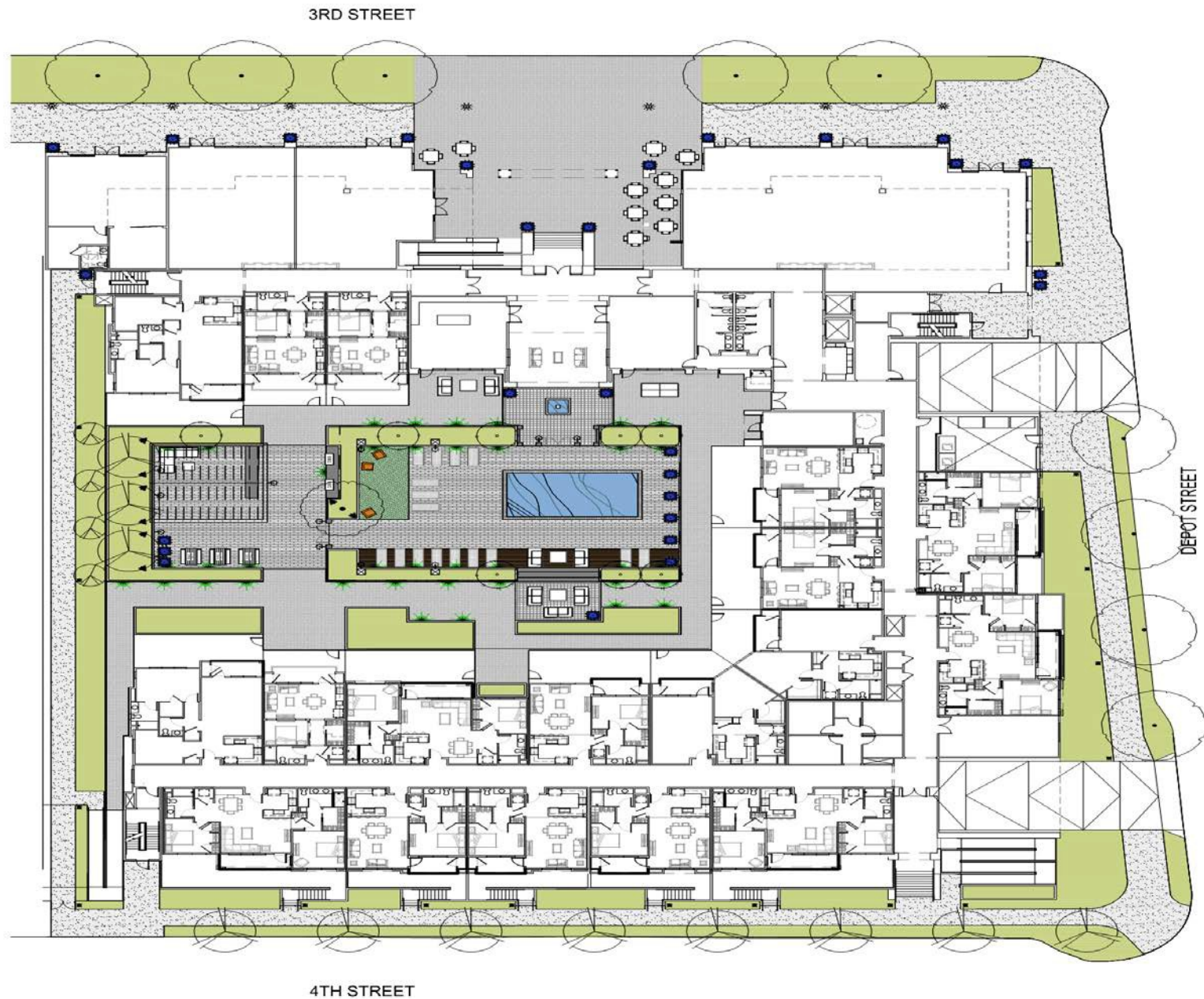


Ornate cornice

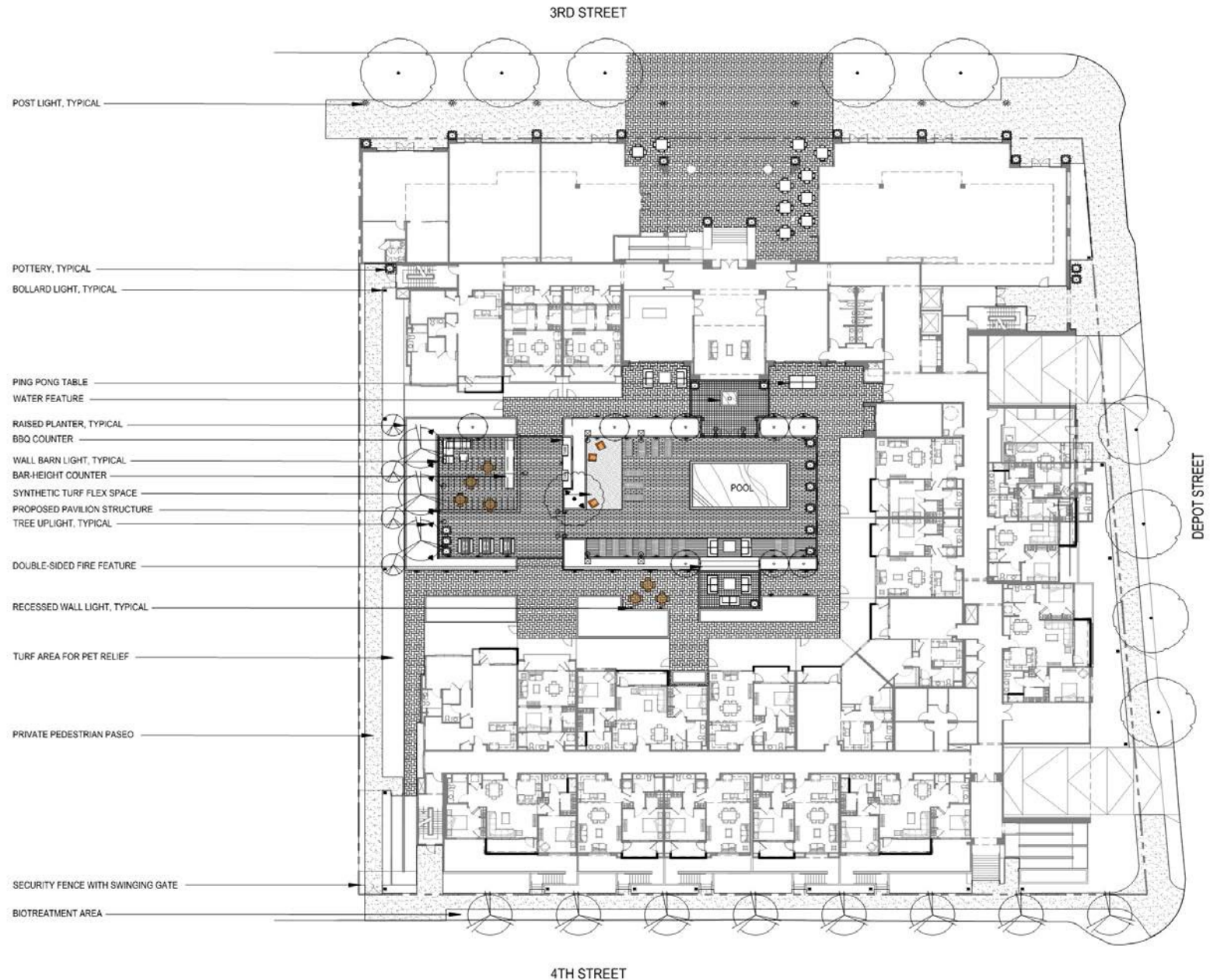


wall sconce

City Council – April 19, 2017 – Agenda Item: 21



City Council – April 19, 2017 – Agenda Item: 21



City Council – April 19, 2017 – Agenda Item: 21



PROPOSED PAVING TYPES



PROPOSED LIGHTING

PROPOSED POTTERY



PROPOSED WALL MATERIALS

PROPOSED FENCING

MATERIALS

Morgan Hill City Council

April 19, 2017

Agenda Item #22

Development Agreement Amendment AAE2017-0010

Request:

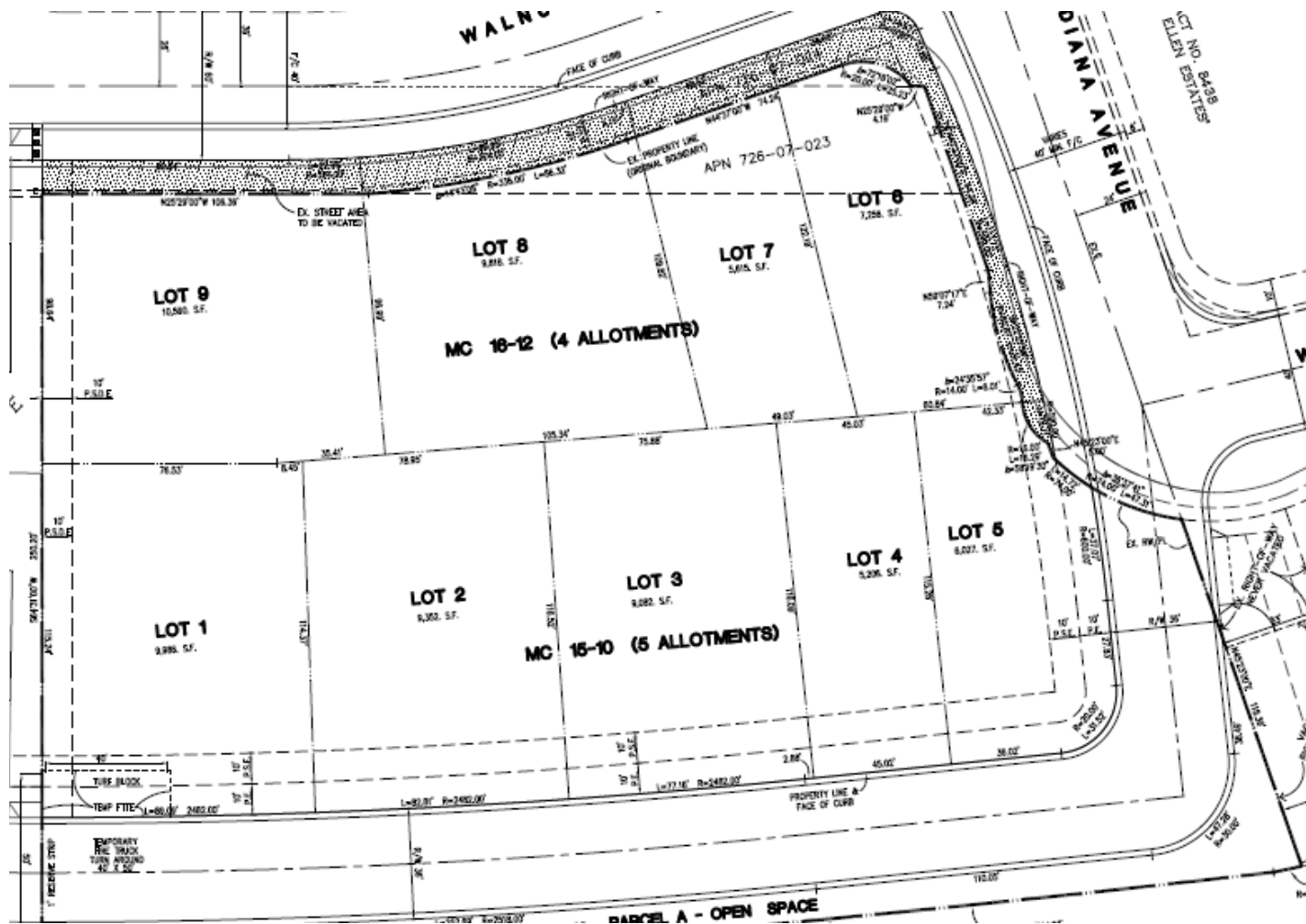
- Development Agreement Amendment
- Nine Single Family Homes
- Five 2015 RDCS Allotments for FY2017/18.
- Amend DA to include 4 2016 RDCS allotments for FY 2018/19

Recommendation:

- Approve Development Agreement Amendment



Development Agreement AAE2017-0010 : Walnut Grove – Newland





CITY OF MORGAN HILL

Special - Regular Meeting Agenda

City Council

Steve Tate - Mayor

Larry Carr - Mayor Pro Tem

Rich Constantine - Council Member

Caitlin Jachimowicz - Council Member

Rene Spring - Council Member

Wednesday, April 19, 2017 5:00 PM

Council Chamber

17555 Peak Avenue, Morgan Hill, CA 95037

SPECIAL/REGULAR MEETING

(5:00 P.M. Workshop/ 7:00 P.M. Regular Meeting)

SPECIAL MEETING

5:00 P.M.

CALL TO ORDER

Mayor Tate

ROLL CALL ATTENDANCE

Deputy City Clerk Wilson

DECLARATION OF POSTING AGENDA

Deputy City Clerk Wilson

WORKSHOPS

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7:00 P.M.

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Mayor Tate

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Quarterly Teammate Recognitions

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Time Estimate for Consent Calendar: 1 - 10 Minutes

3. ADOPT RESOLUTION COMMEMORATING THE VICTIMS OF THE HOLOCAUST

Recommendation:

Adopt resolution commemorating the victims of the Holocaust during the Days of Remembrance April 23, 2017 to April 30, 2017.

4. ADOPT RESOLUTION ENCOURAGING THE CELEBRATION OF THE MONTH OF JUNE AS LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUEER/QUESTIONING PRIDE MONTH

Recommendation:

1. Adopt resolution encouraging the celebration of the month of June as Lesbian, Gay, Bisexual, Transgender, and Queer/Questioning Pride Month; and
2. Authorize the display of the Pride flag at City Hall during the month of June to commemorate Pride Month.

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Recommendation:

Adopt resolution approving the following actions:

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Recommendation:

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Recommendation:

1. Award Police Vehicle Service Agreement to Frank's Auto; and
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9. RECOMMENDATIONS TO PREVENT FUTURE SEWER SPILLS, ACCELERATE NEW SEWER TRUNK LINE, AND AWARD FIRST AMENDMENT FOR DESIGN SERVICES CONTRACT WITH HYDROSCIENCE ENGINEERS FOR THE NEW SEWER TRUNK LINE PROJECT

Recommendation:

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2. Award First Amendment to professional services agreement with HydroScience Engineers, Inc. to provide sewer trunk line design from Cohansey Avenue to Renz Lane for an additional \$521,900; and
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Recommendation:

1. Approve First Amendment to maintenance service agreement with Peterson Power Systems, Inc. to increase the not-to-exceed fee amount to \$211,095 for the routine and variable-costs maintenance services for the City's fleet of twenty-four standby generators; and
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Recommendation:

Approve the concept for the Leadership Morgan Hill 2017 class project located at the Animal Impound Facility.

12. FEBRUARY 2017 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

13. CLASSIFICATION AND COMPENSATION STUDY

Recommendation:

1. Authorize Koff & Associates to conduct a limited classification and citywide compensation study;
2. Authorize the City Manager to execute and administer a services contract with Koff & Associates for an amount not-to-exceed \$72,125; and
3. Direct staff to include a review of the City's adopted Long-Term Labor Policy, Principles, and Strategies as part of the May 17, 2017 City Council agenda.

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Recommendation:

1. Approve the recommended increase in the salary range for Housing Manager;
2. Approve the reclassification of the Municipal Services Assistant position in the Housing Division to a Housing Coordinator classification; and
3. Approve the reclassification of the Support Services Supervisor position in the Development Services Department to a Management Analyst classification.

15. APPROVE CONSULTING SERVICES AGREEMENT FOR INTERSECTION CAPACITY ANALYSIS STUDY WITH MOTT MACDONALD

Recommendation:

1. Adopt resolution amending the Fiscal Year 2016-17 budget and appropriating an additional \$45,000 from the Traffic Impact Fund (309) for the Intersection Capacity Analysis study (CIP Project No. 575015); and
2. Award Consultant Services Agreement for the Intersection Capacity Analysis Study to Mott MacDonald.

16. ADOPT ORDINANCE 2233, NEW SERIES, AN ORDINANCE OF THE CITY OF MORGAN HILL APPROVING AN AMENDED DEVELOPMENT AGREEMENT FOR THE DUNNE HILL MEADOW SIX LOT RESIDENTIAL DEVELOPMENT LOCATED ON THE NORTHEASTERLY CORNER OF EAST DUNNE AVENUE AND HILL ROAD (ASSESSOR'S PARCEL NUMBER 728-11-026)

Recommendation:

Waive the reading, adopt Ordinance No. 2233, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

OTHER BUSINESS

17. ADOPTION OF ECONOMIC BLUEPRINT

Recommendation:

1. Hold Economic Blueprint workshop;
2. Adopt Economic Blueprint; and
3. Direct staff to develop a budget recommendation to implement the Economic Blueprint for City Council consideration on May 3, 2017.

Estimated Time: 30 Minutes

18. ANNEXATION EIR/LAFCO SETTLEMENT AND URBAN SERVICE AREA (USA) EXPANSION AND ANNEXATION REQUESTS

Recommendation:

1. Accept Report;
2. Provide direction regarding the preparation of an Annexation EIR; and
3. Provide direction regarding the timing and acceptance of Urban Service Area expansion and Annexation requests.
4. If necessary, direct staff to return at a subsequent City Council meeting to discuss the existing policies governing the filing, frequency, and timing of USA expansion and annexation requests.

Estimated Time: 45 Minutes

19. LONG-TERM WATER CONSERVATION POLICY DISCUSSION

Recommendation:

Direct staff to prepare an updated Water Conservation Ordinance that institutes additional long-term water conservation measures and return to the City Council with the updated ordinance at the May 17th Council Meeting.

Estimated Time: 20 Minutes

PUBLIC HEARING

20. RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) AVAILABLE ALLOTMENTS FOR 2017 COMPETITION YEAR

Recommendation:

1. Adopt resolution establishing 215 Fiscal Year 2019/20 allotments for the 2017 RDCS competition; and
2. Direct staff to schedule a study session to comprehensively review RDCS outstanding processing and procedural questions including but not limited to multi-year project administration, adding allotments to agreements administratively, and the practice of swapping allotments.

Estimated Time: 45 Minutes

21. SITE REVIEW, SR2017-0004: DEPOT – SUNSWEET MORGAN HILL LLC: REQUEST FOR A SITE, ARCHITECTURE AND LANDSCAPE PLAN APPROVAL FOR A MIXED-USE PROJECT CONSISTING OF 83 RESIDENTIAL UNITS AND 8,051 SQUARE FEET OF COMMERCIAL SPACE LOCATED ON THE WEST SIDE OF DEPOT STREET BETWEEN EAST THIRD STREET AND EAST FOURTH STREET.

Recommendation:

Recommend City Council approve the Site Review application request pursuant to the attached resolution.

Estimated Time: 30 Minutes

22. DEVELOPMENT AGREEMENT AMENDMENT APPLICATION AAE2016-0010: WALNUT GROVE-NEWLAND: REQUEST FOR A DEVELOPMENT AGREEMENT AMENDMENT TO ADD FOUR FISCAL YEAR 2018-2019 BUILDING ALLOTMENTS FOR A NINE LOT SUBDIVISION. THE PROPERTIES, IDENTIFIED BY ASSESSOR PARCEL NUMBER(S) 726-07-089, 726-07-023 AND 726-07-024 ARE LOCATED ON THE EAST SIDE OF WALNUT GROVE, SOUTH OF DIANA AVENUE

Recommendation:

Recommendations

1. Open and close public hearing;
2. Waive first and second reading of Development Agreement Amendment Ordinance; and
3. Introduce Development Agreement Amendment Ordinance.

Estimated Time: 10 Minutes

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Authority: Government Code 54957(b)(1)

Title: City Manager

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to: Government Code Section 54956.9(d)(2)

Number of Cases:

One (1)

RECONVENE

CLOSED SESSION ANNOUNCEMENT

FUTURE COUNCIL INITIATED AGENDA ITEMS

Note: in accordance with Government Code Section 54954.2(a), there shall be no discussion, debate and/or action taken on any request other than providing direction to staff to place the matter of business on a future agenda.

ADJOURNMENT

NOTICE

Any documents produced by the City and distributed to the majority of the City Council less than 72 hours prior to an open meeting, will be made available for public inspection at the City Clerk's Counter at City Hall located at 17575 Peak Avenue, Morgan Hill, CA, 95037 and at the Morgan Hill Public Library located at 660 West Main Avenue, Morgan Hill, California, 95037 during normal business hours. (Pursuant to Government Code 54957.5)

PUBLIC COMMENT

Members of the Public are entitled to directly address the City Council concerning any item that is described in the notice of this meeting, before or during consideration of that item. If you wish to address the Council on any issue that is on this agenda, please complete a speaker request card located in the foyer of the Council Chambers, and deliver it to the Minutes Clerk prior to discussion of the item. You are not required to give your name on the speaker card in order to speak to the Council, but it is very helpful. When you are called, proceed to the podium and the Mayor will recognize you. If you wish to address the City Council on any other item of interest to the public, you may do so by during the public comment portion of the meeting following the same procedure described above. Please limit your comments to three (3) minutes or less.

Please submit written correspondence to the Minutes Clerk, who will distribute correspondence to the City Council.

Persons interested in proposing an item for the City Council agenda should contact a member of the City Council who may plan an item on the agenda for a future City Council meeting. Should your comments require Council action, your request may be placed on the next appropriate agenda. Council discussion or action may not be taken until your item appears on an agenda. This procedure is in compliance with the California Public Meeting Law (Brown Act) Government Code §54950.

City Council Policies and Procedures (CP 03-01) outlines the procedure for the conduct of public hearings. Notice is given, pursuant to Government Code Section 65009, that any challenge of Public Hearing Agenda items in court, may be limited to raising only those issues raised by you or on your behalf at the Public Hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to the Public Hearing on these matters.

The time within which judicial review must be sought of the action by the City Council, which acted upon any matter appearing on this agenda is governed by the provisions of Section 1094.6 of the California Code of Civil Procedure.

For a copy of City Council Policies and Procedures CP 97-01, please contact the City Clerk's office (408) 779-7259, (408) 779-3117 (fax) or by email michelle.wilson@morganhill.ca.gov.

AMERICANS WITH DISABILITIES ACT (ADA)

In compliance with the Americans with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in this meeting, please contact the City Clerk's Office at (408)779-7259, (408)779-3117 (fax) or by email michelle.wilson@morganhill.ca.gov. Requests must be made as early as possible and at least two-full business days before the start of the meeting



Sustainable Morgan Hill Vision

Morgan Hill is a socially responsible, environmentally conscious, and economically sound community that embraces inclusiveness with participation by all.

CITY COUNCIL ONGOING PRIORITIES

Enhancing Public Safety · Protecting the Environment · Maintaining Fiscal Responsibility ·
Supporting Our Youth, Seniors, and Entire Community · Fostering a Positive Organizational Culture ·
Preserving and Cultivating Public Trust · Preserving Our Cultural Heritage

2017 STRATEGIC PRIORITIES

High Speed Rail

Inclusiveness

Infrastructure

Regional Initiatives

Telecommunications

2017 STRATEGIC PRIORITIES:



High Speed Rail

The City of Morgan Hill will directly advocate for our community's needs through our communications, discussions, and decisions. We will continue to engage the community, the High Speed Rail Authority, our state and federal legislators, and other regional agencies to mitigate negative impacts and convey our position that the High Speed Rail Authority should only use the existing Highway 101 right-of-way to avoid all impacts to residents, schools, and businesses. Should the Authority decide the 101 right-of-way is not feasible, we will strongly advocate for the route with the least impact on Morgan Hill.



Inclusiveness

We will celebrate the diversity, history, and culture of our community. Through City Council workshops, community meetings, and researching successes in other communities, the City will listen to and collaborate with the community to define how inclusiveness will be further woven into our community's fabric and to increase public participation. The City's communications, services, public spaces, and projects will embrace all community members as partners, advancing our vision of being a socially responsible community.



Infrastructure

The City will review its streets, parks, and public facilities infrastructure needs initially by updating its 2014 infrastructure study to quantify the funding gap. We will identify potential funding options as ongoing revenue is insufficient to fund our vital community assets at a sustainable level without significantly impacting existing service levels that our community has come to expect. Morgan Hill will actively work with the Valley Transportation Agency, the County, and the State to secure funding for the Santa Teresa extension and road maintenance. We will continue to work closely with our community to inform them of the needs and engage them to find an affordable and sustainable solution.



Regional Initiatives

City Council and staff will focus on influencing regional decisions that benefit Morgan Hill. This regional involvement will include, but not be limited to, partnering with the League of California Cities, Valley Transportation Authority, Santa Clara Valley Water District, Cities Association of Santa Clara County, the City of Gilroy, Santa Clara County, Morgan Hill Unified School District, the Local Agency Formation Commission, the Open Space Authority, and Silicon Valley Clean Energy to advance projects that further Sustainable Morgan Hill.



Telecommunications

The City will collaborate with the private sector to explore ways to provide fast, reliable access and wireless connectivity for residents and businesses. The 2016 Telecommunications Infrastructure and Economic Development Blueprint reports will be the foundation for continuing discussions with broadband providers, public utilities, and other infrastructure service providers in developing an implementation plan for growing our telecommunications infrastructure. The plan will be used to signal Morgan Hill's support for business expansion.



Special - Regular Meeting Agenda
City Council

Steve Tate - Mayor
Larry Carr - Mayor Pro Tem
Rich Constantine - Council Member
Caitlin Jachimowicz - Council Member
Rene Spring - Council Member

Wednesday, April 19, 2017 5:00 PM

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Recommendation:

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PUBLIC HEARING

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Recommendation:

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Recommendation:

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Recommendation:

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Estimated Time: 10 Minutes

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Authority: Government Code 54957(b)(1)

Title: City Manager

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to: Government Code Section 54956.9(d)(2)

Number of Cases:

One (1)

RECONVENE

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FUTURE COUNCIL INITIATED AGENDA ITEMS

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ADJOURNMENT

NOTICE

Any documents produced by the City and distributed to the majority of the City Council less than 72 hours prior to an open meeting, will be made available for public inspection at the City Clerk's Counter at City Hall located at 17575 Peak Avenue, Morgan Hill, CA, 95037 and at the Morgan Hill Public Library located at 660 West Main Avenue, Morgan Hill, California, 95037 during normal business hours. (Pursuant to Government Code 54957.5)

PUBLIC COMMENT

Members of the Public are entitled to directly address the City Council concerning any item that is described in the notice of this meeting, before or during consideration of that item. If you wish to address the Council on any issue that is on this agenda, please complete a speaker request card located in the foyer of the Council Chambers, and deliver it to the Minutes Clerk prior to discussion of the item. You are not required to give your name on the speaker card in order to speak to the Council, but it is very helpful. When you are called, proceed to the podium and the Mayor will recognize you. If you wish to address the City Council on any other item of interest to the public, you may do so by during the public comment portion of the meeting following the same procedure described above. Please limit your comments to three (3) minutes or less.

Please submit written correspondence to the Minutes Clerk, who will distribute correspondence to the City Council.

Persons interested in proposing an item for the City Council agenda should contact a member of the City Council who may plan an item on the agenda for a future City Council meeting. Should your comments require Council action, your request may be placed on the next appropriate agenda. Council discussion or action may not be taken until your item appears on an agenda. This procedure is in compliance with the California Public Meeting Law (Brown Act) Government Code §54950.

City Council Policies and Procedures (CP 03-01) outlines the procedure for the conduct of public hearings. Notice is given, pursuant to Government Code Section 65009, that any challenge of Public Hearing Agenda items in court, may be limited to raising only those issues raised by you or on your behalf at the Public Hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to the Public Hearing on these matters.

The time within which judicial review must be sought of the action by the City Council, which acted upon any matter appearing on this agenda is governed by the provisions of Section 1094.6 of the California Code of Civil Procedure.

For a copy of City Council Policies and Procedures CP 97-01, please contact the City Clerk's office (408) 779-7259, (408) 779-3117 (fax) or by email michelle.wilson@morganhill.ca.gov.

AMERICANS WITH DISABILITIES ACT (ADA)

In compliance with the Americans with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in this meeting, please contact the City Clerk's Office at (408)779-7259, (408)779-3117 (fax) or by email michelle.wilson@morganhill.ca.gov. Requests must be made as early as possible and at least two-full business days before the start of the meeting



Sustainable Morgan Hill Vision

Morgan Hill is a socially responsible, environmentally conscious, and economically sound community that embraces inclusiveness with participation by all.

CITY COUNCIL ONGOING PRIORITIES

Enhancing Public Safety · Protecting the Environment · Maintaining Fiscal Responsibility ·
Supporting Our Youth, Seniors, and Entire Community · Fostering a Positive Organizational Culture ·
Preserving and Cultivating Public Trust · Preserving Our Cultural Heritage

2017 STRATEGIC PRIORITIES

High Speed Rail

Inclusiveness

Infrastructure

Regional Initiatives

Telecommunications

2017 STRATEGIC PRIORITIES:



High Speed Rail

The City of Morgan Hill will directly advocate for our community's needs through our communications, discussions, and decisions. We will continue to engage the community, the High Speed Rail Authority, our state and federal legislators, and other regional agencies to mitigate negative impacts and convey our position that the High Speed Rail Authority should only use the existing Highway 101 right-of-way to avoid all impacts to residents, schools, and businesses. Should the Authority decide the 101 right-of-way is not feasible, we will strongly advocate for the route with the least impact on Morgan Hill.



Inclusiveness

We will celebrate the diversity, history, and culture of our community. Through City Council workshops, community meetings, and researching successes in other communities, the City will listen to and collaborate with the community to define how inclusiveness will be further woven into our community's fabric and to increase public participation. The City's communications, services, public spaces, and projects will embrace all community members as partners, advancing our vision of being a socially responsible community.



Infrastructure

The City will review its streets, parks, and public facilities infrastructure needs initially by updating its 2014 infrastructure study to quantify the funding gap. We will identify potential funding options as ongoing revenue is insufficient to fund our vital community assets at a sustainable level without significantly impacting existing service levels that our community has come to expect. Morgan Hill will actively work with the Valley Transportation Agency, the County, and the State to secure funding for the Santa Teresa extension and road maintenance. We will continue to work closely with our community to inform them of the needs and engage them to find an affordable and sustainable solution.



Regional Initiatives

City Council and staff will focus on influencing regional decisions that benefit Morgan Hill. This regional involvement will include, but not be limited to, partnering with the League of California Cities, Valley Transportation Authority, Santa Clara Valley Water District, Cities Association of Santa Clara County, the City of Gilroy, Santa Clara County, Morgan Hill Unified School District, the Local Agency Formation Commission, the Open Space Authority, and Silicon Valley Clean Energy to advance projects that further Sustainable Morgan Hill.



Telecommunications

The City will collaborate with the private sector to explore ways to provide fast, reliable access and wireless connectivity for residents and businesses. The 2016 Telecommunications Infrastructure and Economic Development Blueprint reports will be the foundation for continuing discussions with broadband providers, public utilities, and other infrastructure service providers in developing an implementation plan for growing our telecommunications infrastructure. The plan will be used to signal Morgan Hill's support for business expansion.

Workshop Goals

1. Discuss how the City creates Affordable Housing
 2. Explore if the City Council would like to modify the 8% on-site BMR Affordable provision in the RDCS process
-



Below Market Rate Home Ownership Program

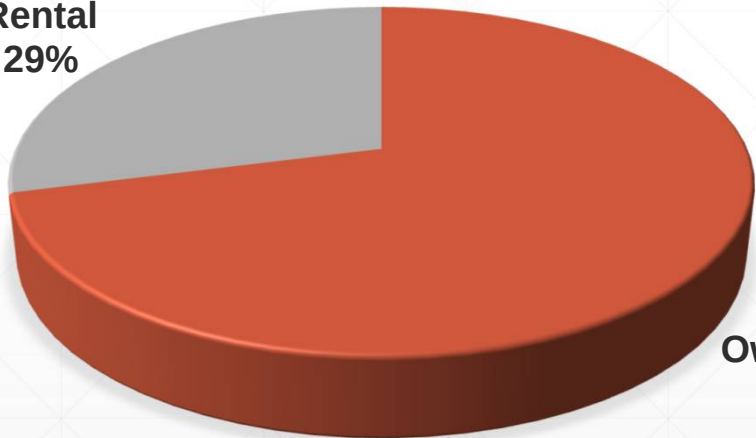


Citywide Housing Inventory (all types)



13,799 TOTAL HOUSING UNITS

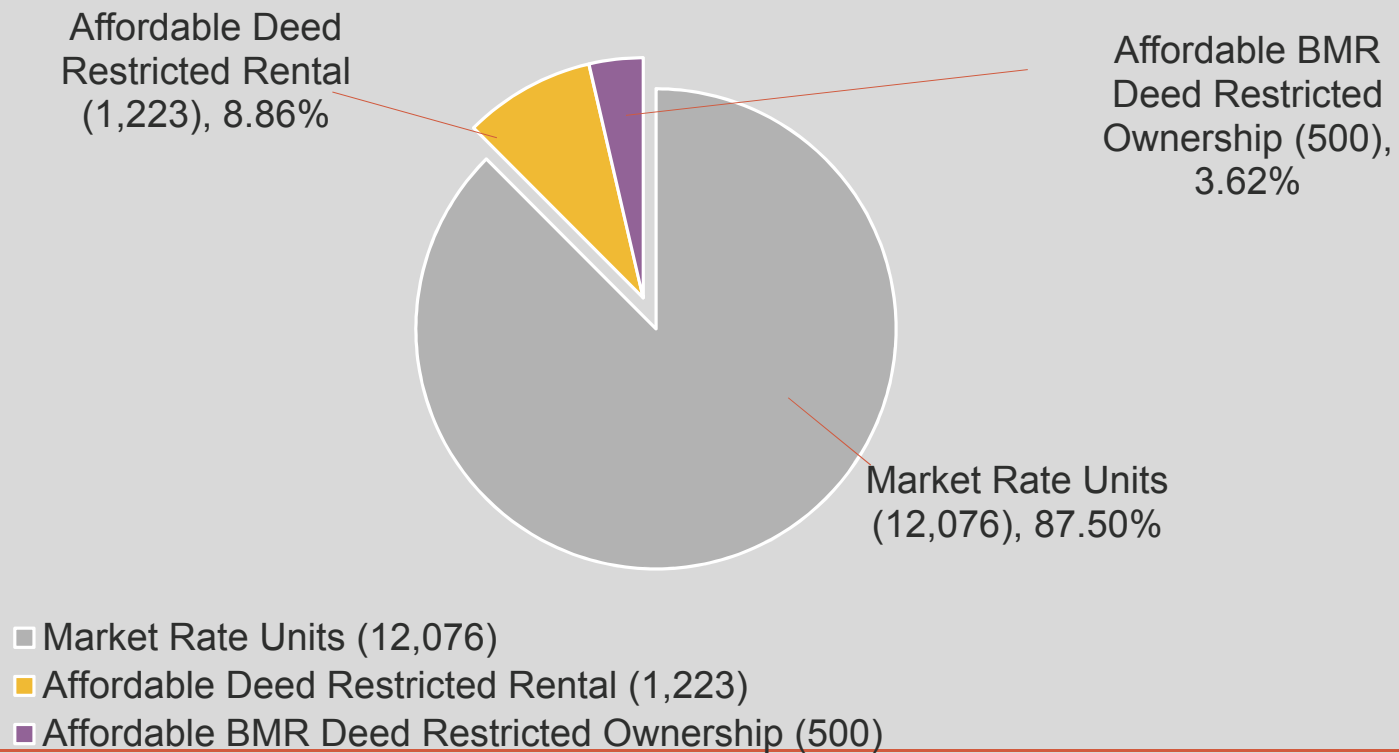
Rental
29%



Ownership
71%



Affordable Housing Opportunities Created 12.5% (1,723) Deed Restricted out of the total 13,799

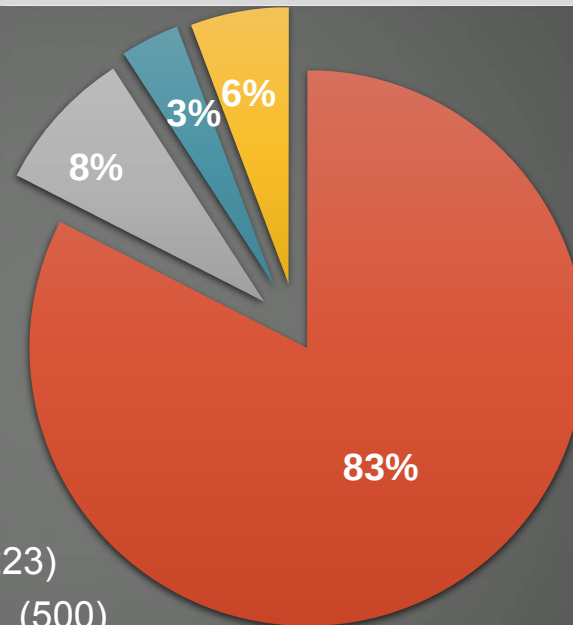


Affordable Housing as part of Total Housing 18.56% with Mobile Homes



Affordable Inventory

- Market Rate Units (12,076)
- AH Deed Restricted Rental (1,223)
- AH Deed Restricted Ownership (500)
- Mobile Homes,protected by Rental Ordinance (839)

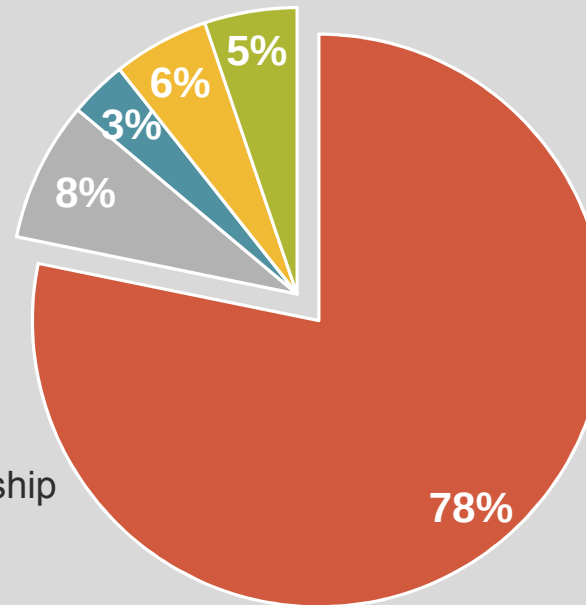




Affordable Opportunities 24.40% of Inventory with RV spaces

Affordable Inventory

- Market Rate Units (12,076)
- AH Deed Restricted Rental (1,223)
- AH Deed Restricted Ownership (500)
- Mobile Homes (839)



Does not include
Motel/Hotels

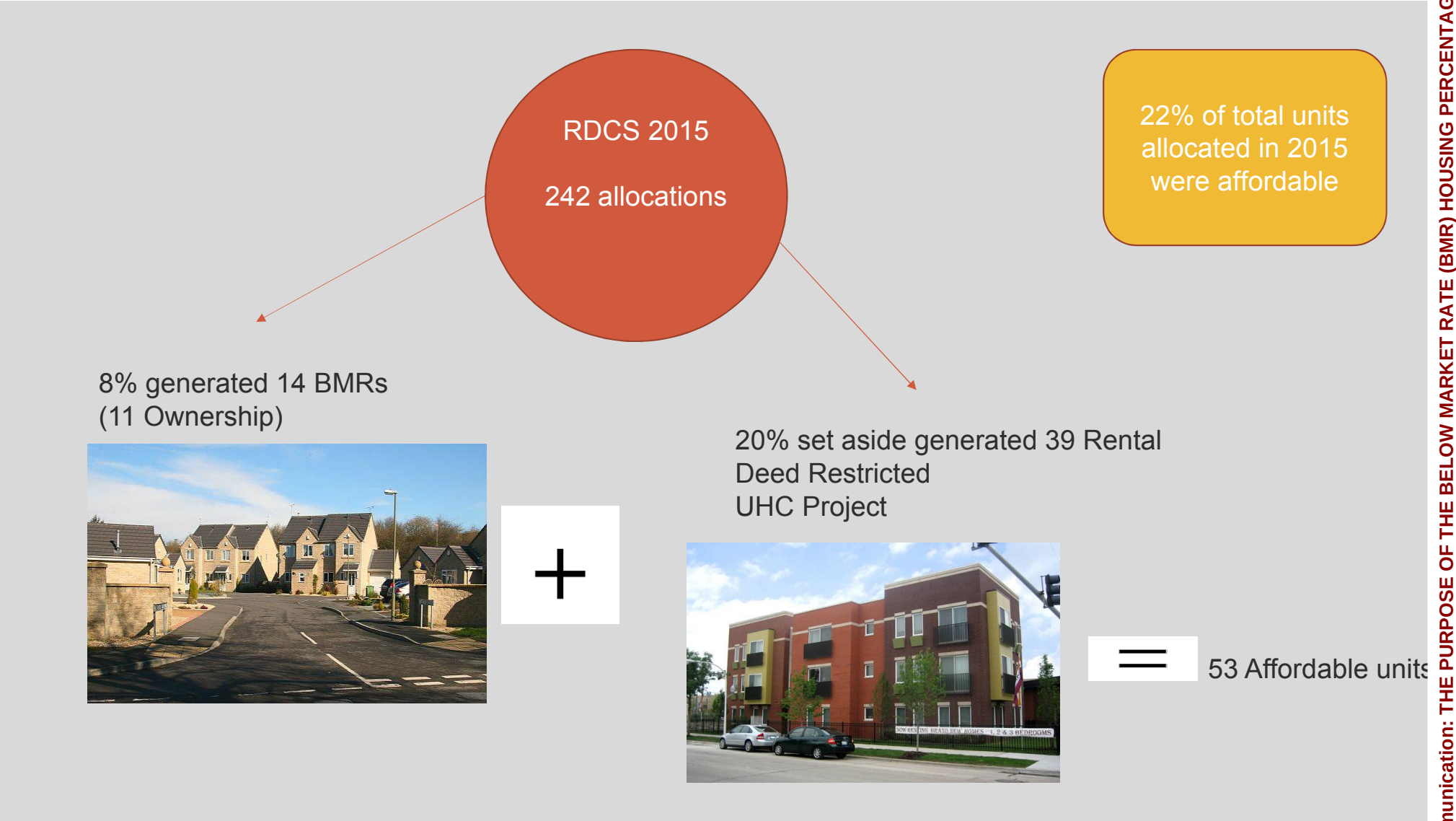


Two practices by which the City secures Affordable Housing; Residential Development Control System (RDCS) competition

- 1) Maximum points are provided to projects that pledge to build 8% of the project's total units as affordable homes, or they select to pay a housing fee receiving less points

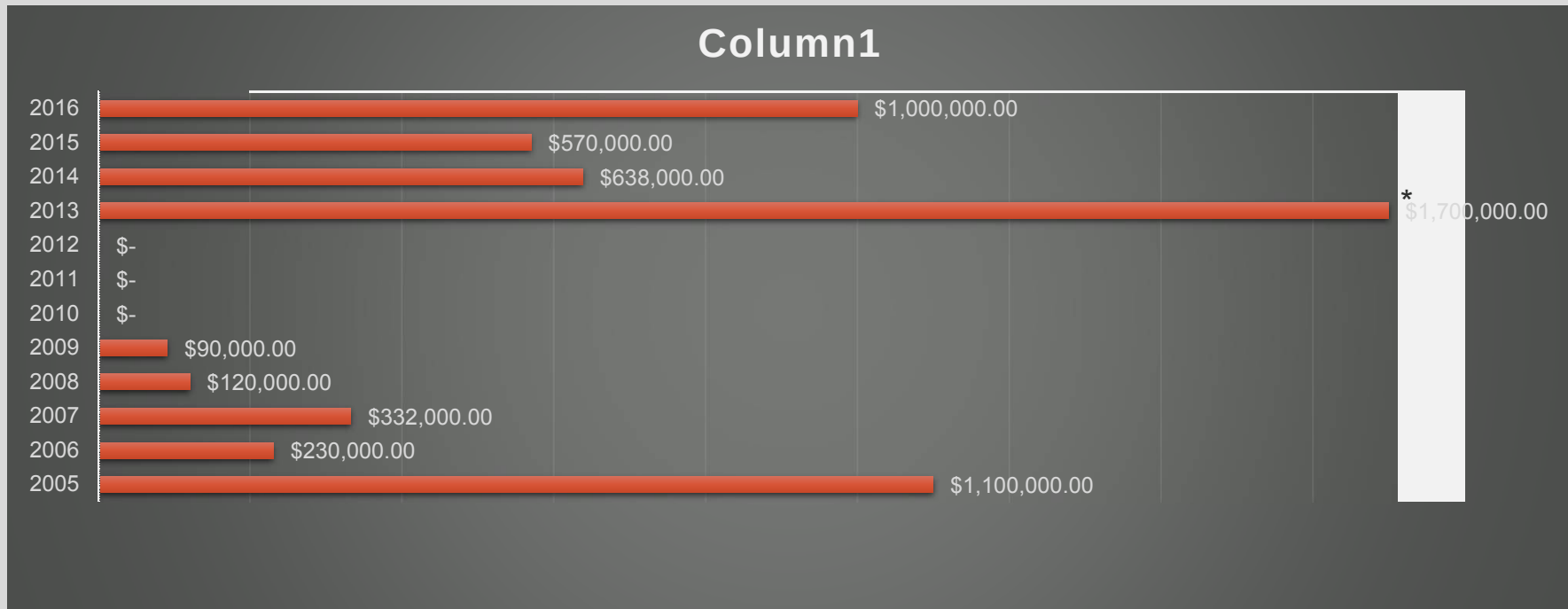
In addition....

- 2) There is a 20% set aside each year (Measure S, 43 units out of 215 possible set aside for 100% affordable project opportunities

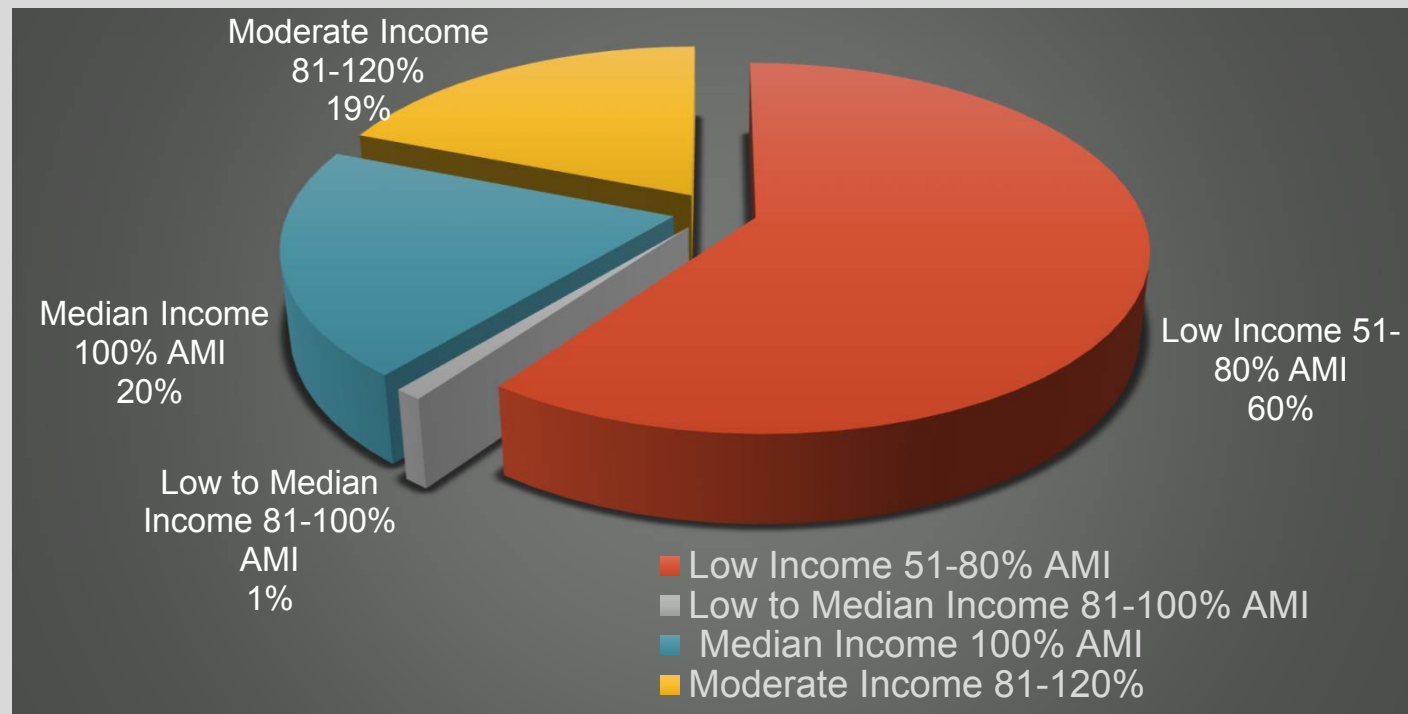


Communication: THE PURPOSE OF THE BELOW MARKET RATE (BMR) HOUSING PERCENTAGES

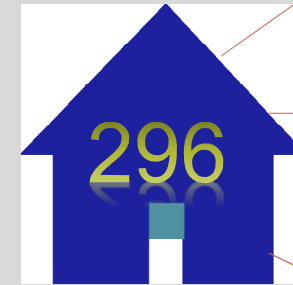
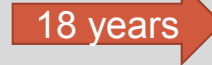
Housing in-lieu fee



BMR Ownership Affordability Distribution



General Plan Horizon 2035 (18 years)



80 units
100%
Affordable
Rental

30 BMR
Rental (within
Market Rate)

186 BMR
Ownership

Portfolio 63
Subdivisions (500 BMR
Ownership homes)

215 BMR Ownership homes
Aging Out

5 years or less – 13
10 Years or less – 66
15 years or less – 136

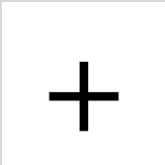
Potentially replace
the units Aging Out
with 110 *Rental +
186** Ownership
BMR = 296
affordable

* 215 Aging out Ownership BMRs could be replaced with a combination of 80 (2-100% affordable projects) + 30 BMR rentals and 186 BMR Ownership units

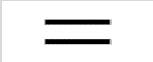
** assumes 385 unit market rate rental project



8% = past average of 12-14
BMR ownership units per
year



43 units, 20% set aside for affordable
housing



53 Affordable units

Communication: THE PURPOSE OF THE BELOW MARKET RATE (BMR) HOUSING PERCENTAGES

Current Regional Housing Element Needs Allocation (RHNA) Housing Element Cycle 2015-2022

Income Level	RHNA unit Goal	Permits Issued To date	% of RHNA Met	# of units to go
Very Low (0-50% AMI) includes 30%	273	40	15%	-233 additional units needed
Low (50-80% AMI)	154	144	93.5%	-10 additional units needed
Moderate (80-120% AMI)	185	10	5.4%	-175 additional units needed
Above Moderate (120% +AMI)	316	534	169%	+218 (exceeded goal)
TOTAL RHNA	928	728	78%	-200 Additional units needed

Communication: THE PURPOSE OF THE BELOW MARKET RATE (BMR) HOUSING PERCENTAGES

Past RHNA Housing Element Cycle 2007-2014

Income Level	RHNA unit Goal	Permits Issued	% of RHNA Met	Units + or -
Very Low (0-50% AMI) includes 30% AMI for reporting purposes	317	82	26%	-235 units needed to meet Very Low Income Goal
Low (50-80% AMI)	249	139	56%	-110 units needed to meet Low Income Goal
Moderate (80-120% AMI)	246	260	106%	+14 units (exceeded goal)
Above Moderate (120% +AMI)	500	1,076	215%	+576 units (exceeded goal)
TOTAL RHNA	1,312	1,557	117%	+245 exceed Total Goal

Options and Discussion...

- 8% On-site BMR Units \$12.92 (KMA Study Recommendation based on an 8% assumption)
 - 9% On site BMR Units \$13.62
 - 10% On-site BMR Units \$14.99
-

Recommendation: consider maintaining 8% plus 20% set aside in 2017

- 2017 Update to Housing in-lieu fee, \$12.92, developers have only had the opportunity to test and provide input on \$12.92 fee
 - Assess current affordable needs for rehabilitation, preservation and services within existing housing stock, rental and ownership
 - 20% affordable set aside to remain intact (43 of 215 units annually)
 - Additionally, on average 12 BMRs are pledged annually through the 8%
-

Morgan Hill ECONOMIC BLUEPRINT



SUSTAINABLE MORGAN HILL



- ✓ Thriving Economy
- ✓ Highly Inclusive Community
- ✓ Healthy environment



ECONOMIC BLUEPRINT

Increase economic prosperity and vitality

General Plan 2035 Priorities (Pillars)

Maintain
Quality of Life



Fiscal
Sustainability



Job
Growth



Tourism



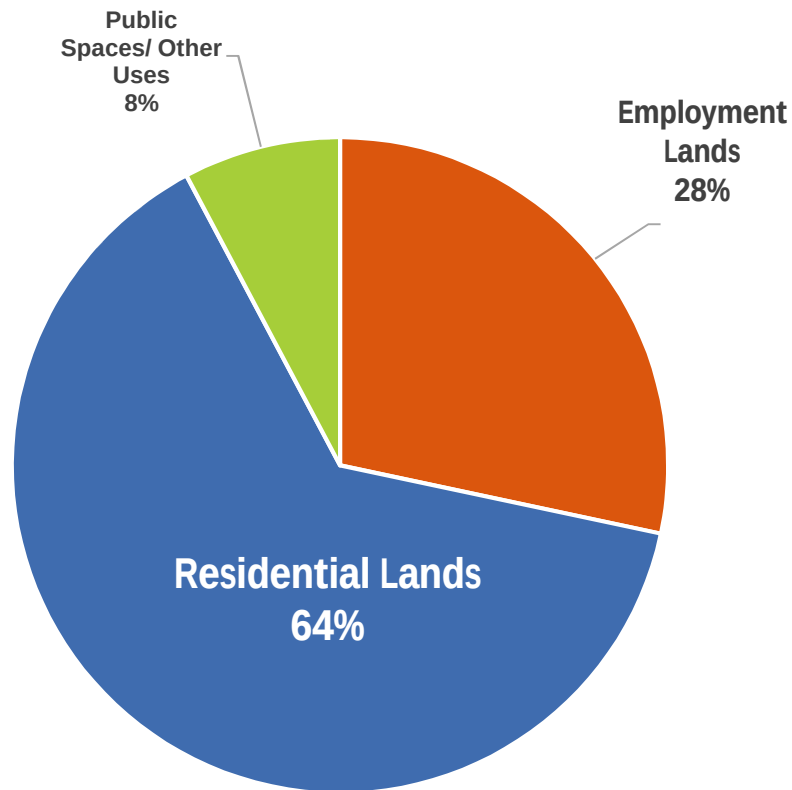
PROGRESSIVE MORGAN HILL



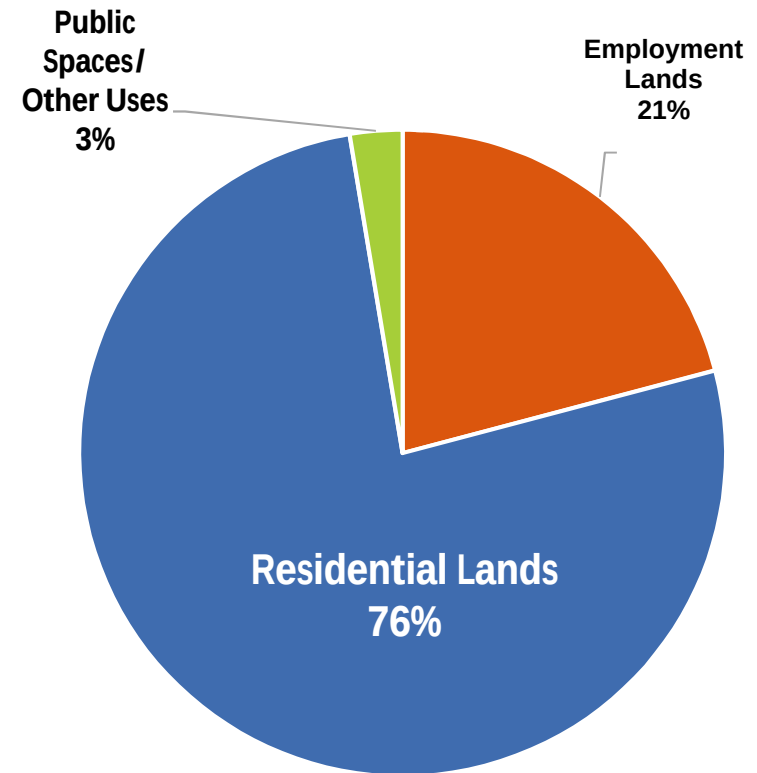
- § Open Space
- § Growth Control
- § Sports Recreation
- § Affordable Housing
- § Vision for Downtown
- § Agricultural Preservation
- § Water Conservation
- § **Economic Blueprint?**

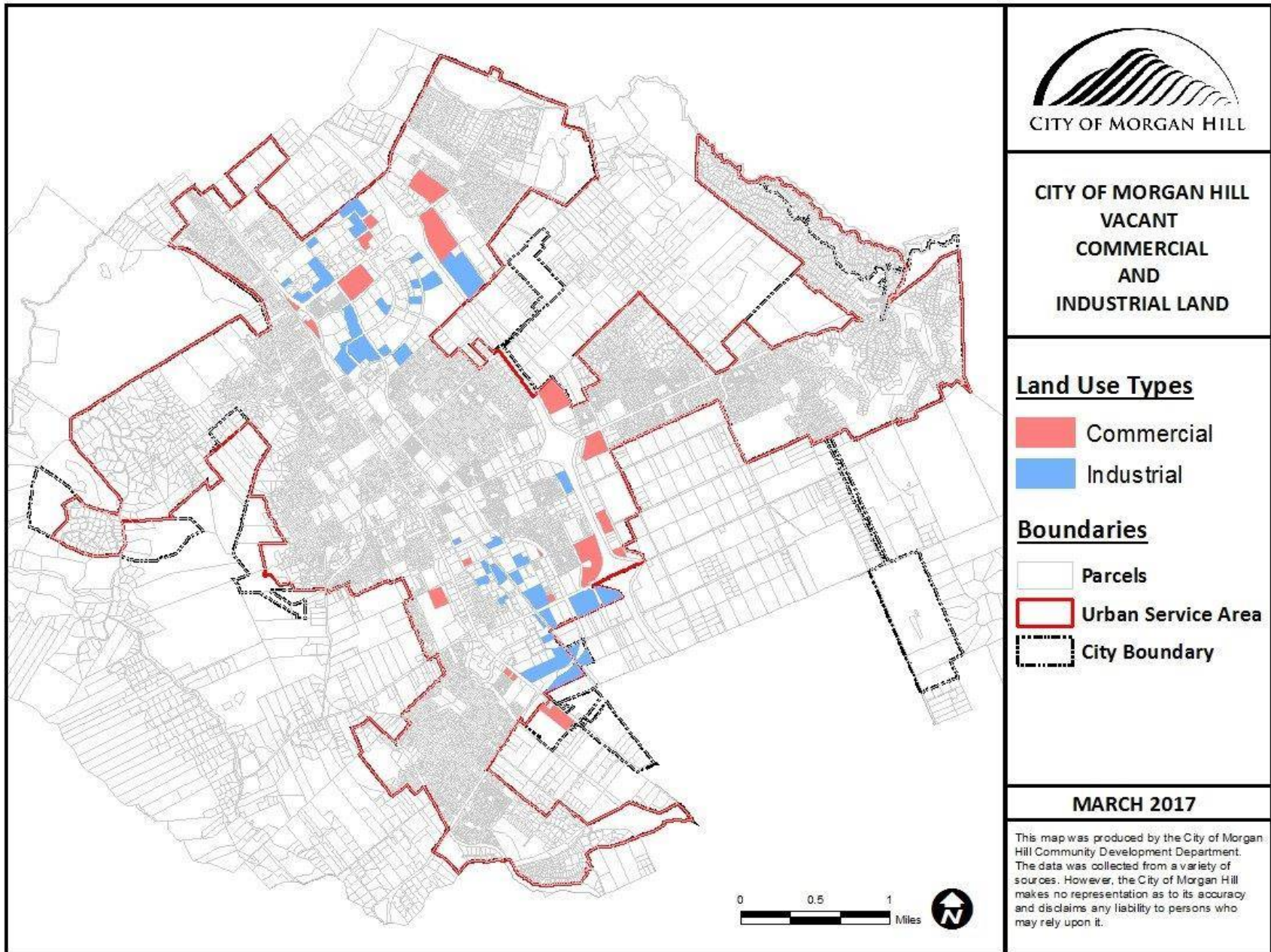
GENERAL FUND TIED TO LAND USE

Revenues

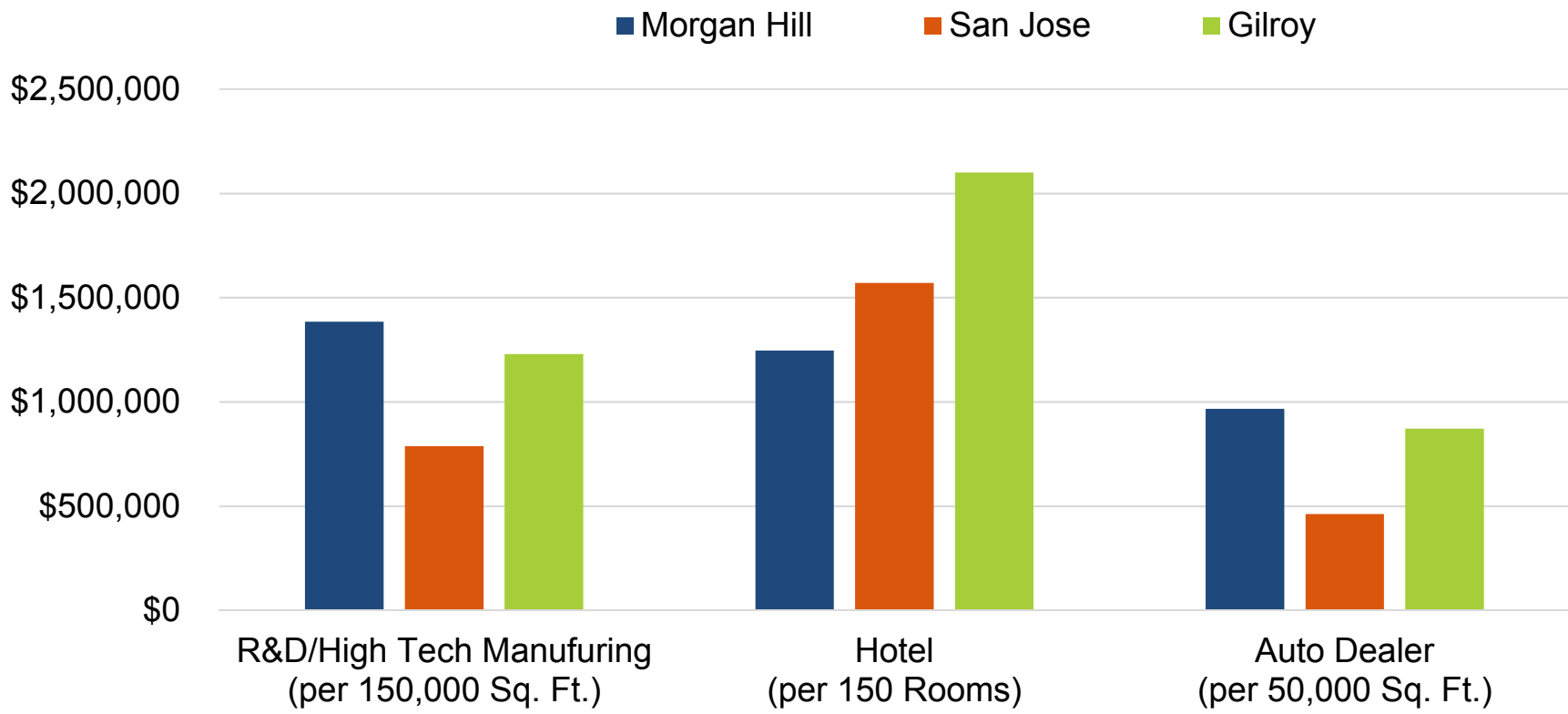


Expenditures





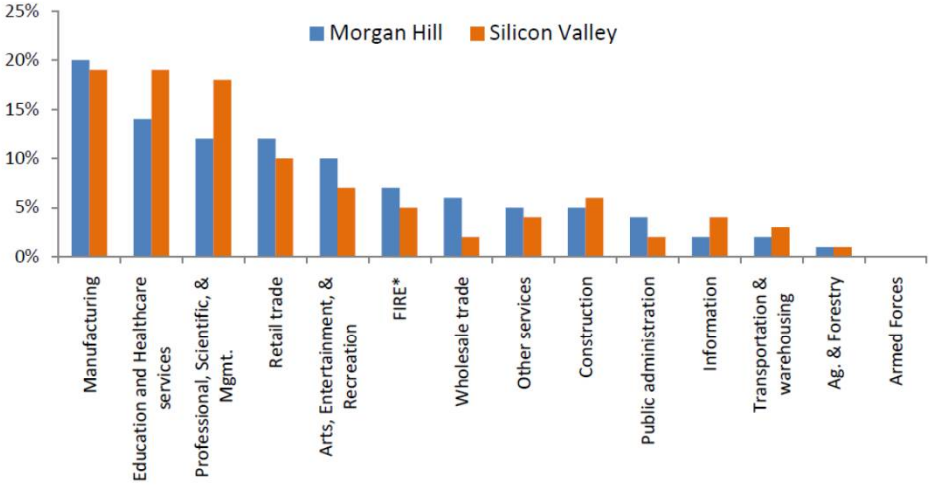
IMPACT FEES ARE GENERALLY HIGHER IN MORGAN HILL



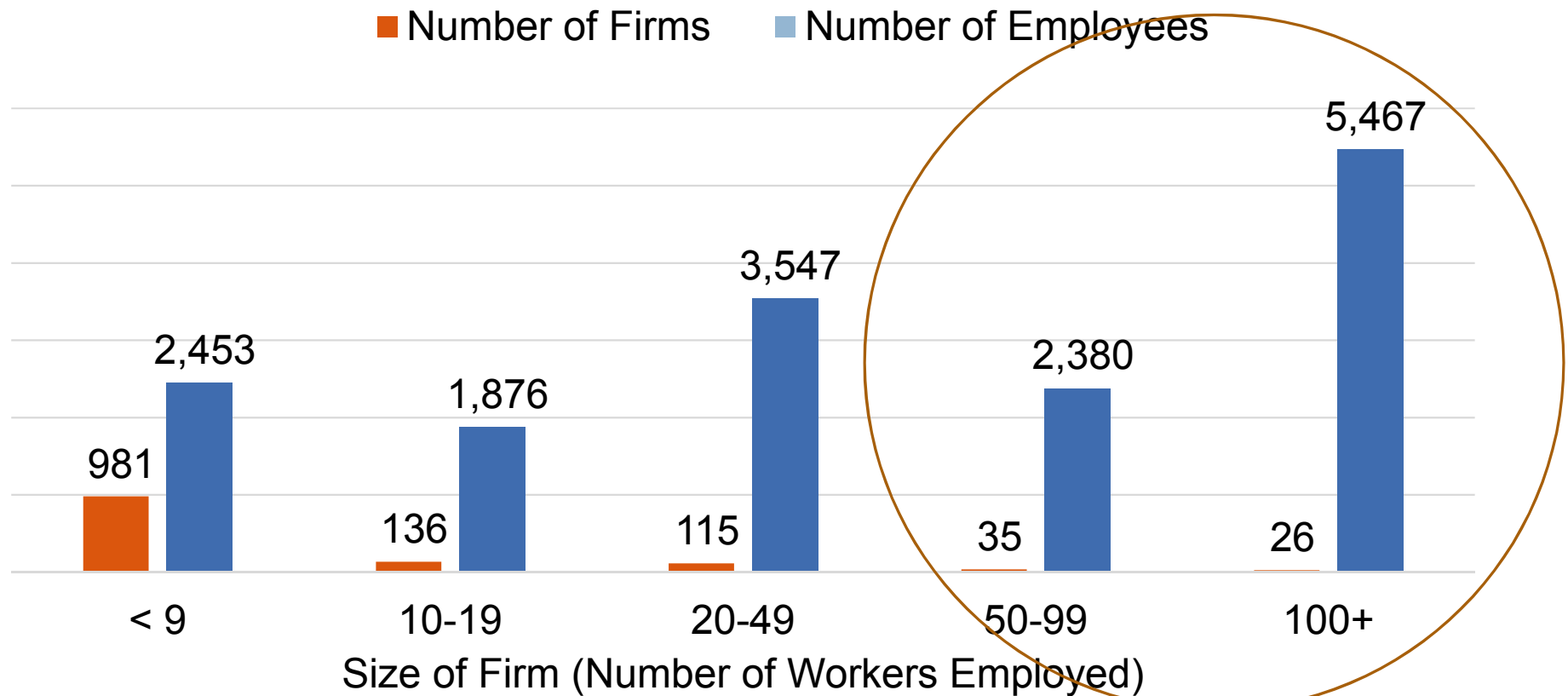
Sources: Cities of Morgan Hill and San Jose, 2015; Strategic Economics, 2017.

Communication: THE PURPOSE OF THE ECONOMIC BLUEPRINT WORKSHOP IS TO REVIEW THE

MORGAN HILL'S JOB MAKE UP SIMILAR TO SILICON VALLEY

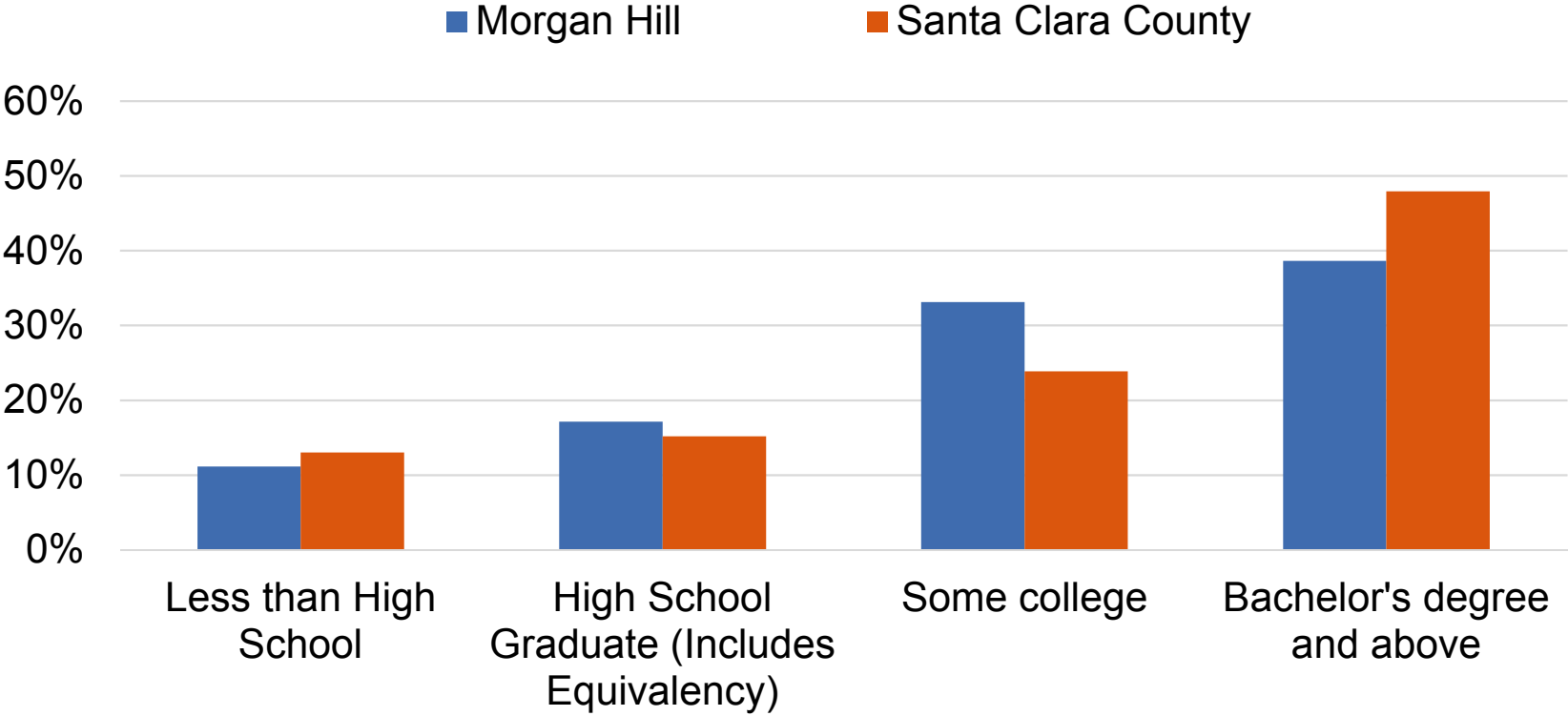


MOST OF MORGAN HILL'S BUSINESSES ARE SMALL



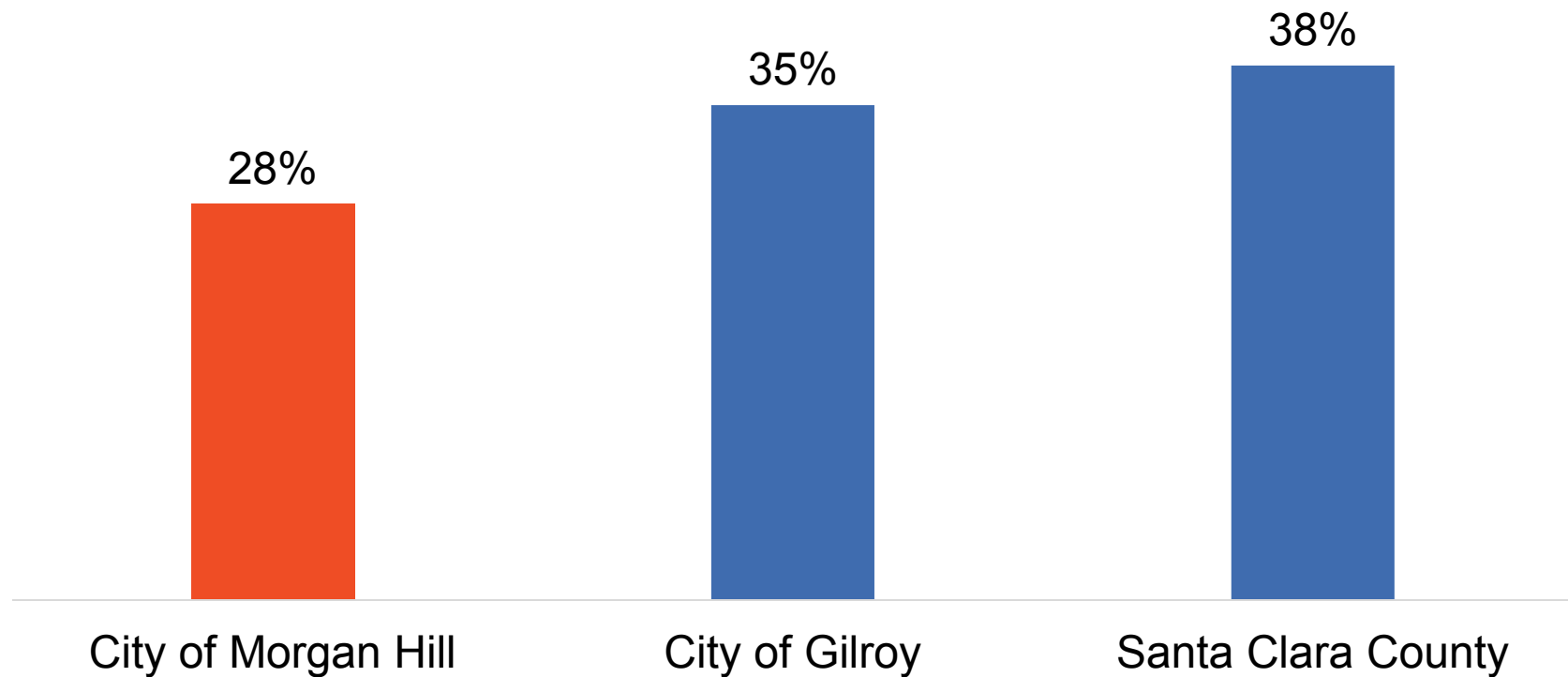
Sources: CA EDD, Quarterly Census of Employment Wages; City of Morgan Hill, 2015.

MORGAN HILL IS HOME TO MANY MID-SKILLED EMPLOYEES



Source: American Community Survey 5-Year Estimates, 2011-2015.

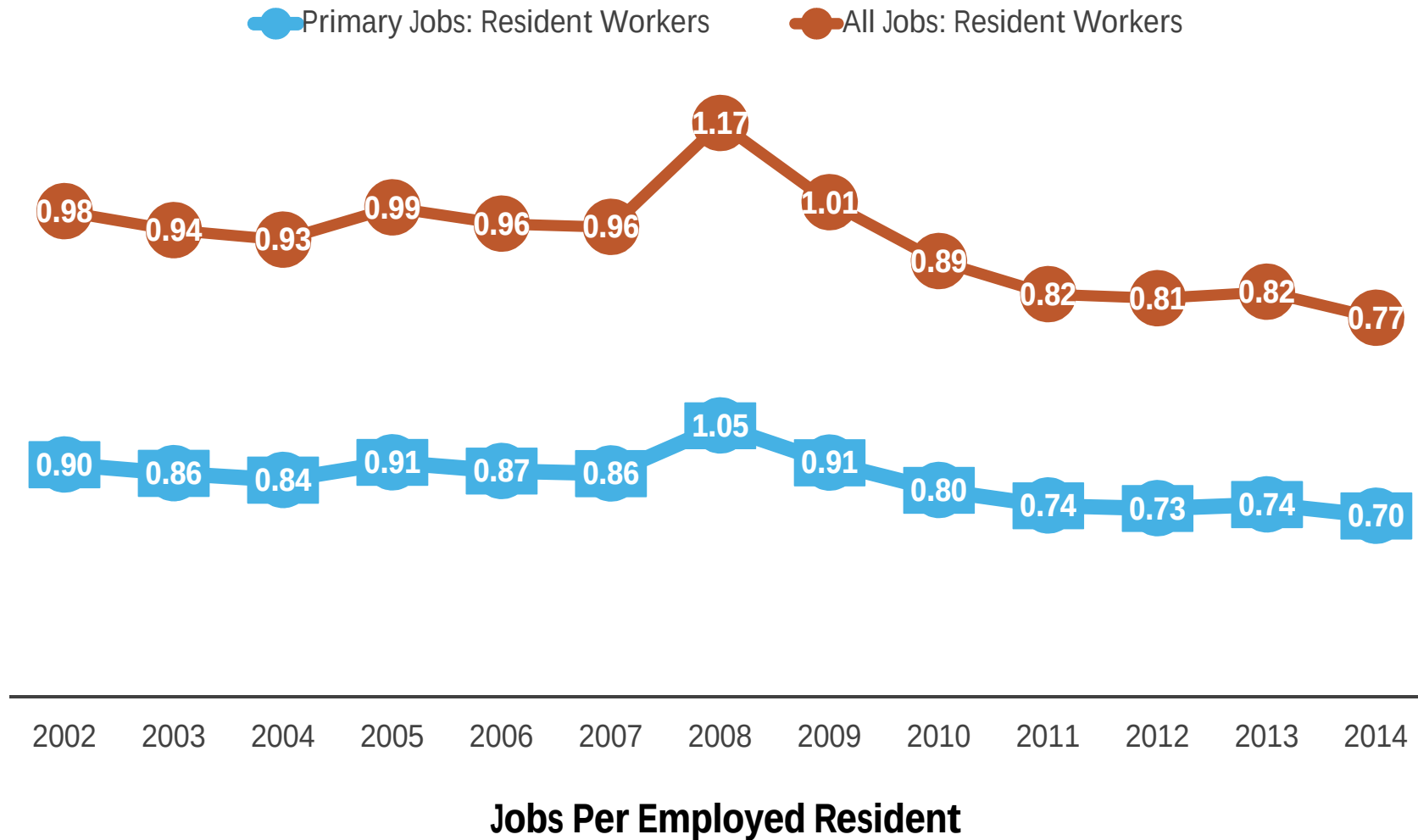
A LITTLE OVER A QUARTER OF RESIDENTS WORK IN MORGAN HILL



*Or Census Designated Place.

Sources: American Community Survey 5-Year Estimates, 2011-2015.

GROWING RESIDENT WORKER BASE EXCEEDS LOCAL JOB BASE





Approach to Community Engagement



City Council
Morgan Hill Planning Commission
Morgan Hill Chamber of Commerce
Morgan Hill Downtown Association
Rotary Club

Kiwanis Club
Economic Development Team
City Teammates
Tourism Alliance
Citywide Resident Focus Group

South County Realtors Alliance
Silicon Valley Economic Development Alliance
Online Surveys
Individual Companies



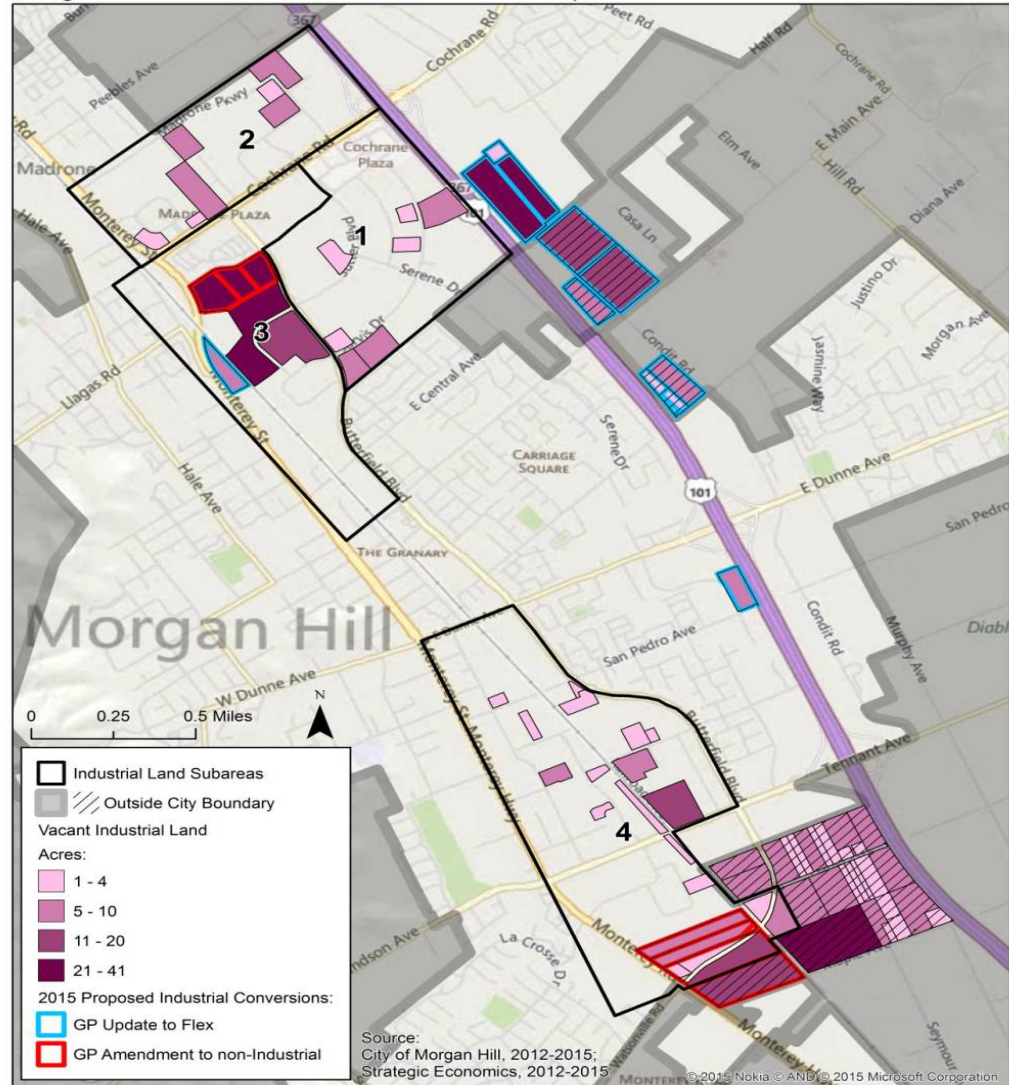
HEALTHCARE



- § Loss of St. Louise Hospital
- § Need for Medical Facilities/Services
- § Limited hours of operations
- § Small Population Base

JOBS

- § 6.2M SF of Industrial Space
- § 16,000 Employed Residents
- § Low Vacancy Rate
- § 19 to 33 Years of Supply of Industrial Land*



Based on actual rate of development.



RETAIL



- § Existing Inventory: 1.3 MSF
- § Future/ Approved: 425 KSF
- § Share Trade Area with San Jose and Gilroy
- § Handful of Freeway-fronting Commercial
- § Great Auto Incentive Policy

TOURISM



MEET MORGAN HILL

It's all right here!

- § New Branding
- § Nearly 100 Nearby Recreational Attractions
- § High Attendance at Regional Sports Facilities
- § No Tourism Based Improvement District
- § County Restrictions
- § Volunteer-based Organizations

INDUSTRY	STRATEGY AND CITY ACTIONS	TIMEFRAME				CITY LEAD
		Current/In Process	Near Term 2017-2018	Mid-Term 2018-2019	Long Term 2019-2021	
 INNOVATION & ADVANCED MANUFACTURING	PRESERVE INDUSTRIAL LANDS					
	1	Adopt an Employment (Industrial) Land Preservation Policy				ED/Planning
	2	Strengthen General Plan Language to Prevent Conversion of Industrial Lands				ED/Planning
	IMPROVE AND FACILITATE DEVELOPMENT OF CRITICAL INFRASTRUCTURE					
	3	Create a Telecommunications Master Plan to Improve Access to Fiber				ED/Engineering/Planning/IT
	ATTRACT DEVELOPMENT					
	4	Update Zoning Code and Parking Requirements to Modernize Zoning Code and Allow for New Hybrid of Developments that are Considered "Class A Industrial" or "Flex Space"				ED/Planning
	5	Explore Incentive Programs to Attract Industry-Specific Development				ED/Finance
	6	Allow Greater Intensification (FAR) and Taller Buildings to Increase Value of Employment Lands				ED/Planning
	7	Complete the Monterey Corridor Flex-Zoning Update and Optimize Development Opportunity				ED/Planning
	8	Streamline Permitting Process by allowing Administrative Approvals as Part of Zoning Code Update				ED/Planning
	FOSTER AN ENVIRONMENT THAT SUPPORTS BUSINESS GROWTH					
	9	Deploy Open-Counter Online Business Ombudsman Platform				ED/IT/Planning
	10	Market Economic Blueprint Vision, Process & Incentives to Attract business Investment				ED
	11	Formalize City's Expedited Process and Market it				ED
	SUPPORT EDUCATIONAL FACILITIES & A LIFE LONG LEARNING ECOSYSTEM					
	12	Connect Education Assets to Industry				ED

Communication: THE PURPOSE OF THE ECONOMIC BLUEPRINT WORKSHOP IS TO REVIEW THE

INDUSTRY	STRATEGY AND CITY ACTIONS		TIMEFRAME				CITY LEAD
			Current/In Process	Near Term 2017-2018	Mid-Term 2018-2019	Long Term 2019-2021	
 RETAIL	RETAIL FLEXIBILITY						
	13	Develop a Retail Concentration Strategy					ED/Planning
	14	Continually Revisit Retail Industry Trends & Requirements					ED
	15	Pursue Sports Recreation Uses as Anchor Tenants; increase Permitted Use allowance up to 15K sq. ft.					ED/Planning
	16	Re-Evaluate and Propose Changes to Shopping Center -Site Specific Zoning Requirements					ED/Planning
	17	Change Zoning to Allow incidental Wine, Beer and Alcohol Tasting Rooms and Distilleries in Downtown and Throughout the City in Commercial and Industrial Zoned Areas					ED/Planning
	18	Promote Co-Working facilities in Commercial Nodes					ED/Planning
	SUPPORT DOWNTOWN DEVELOPMENT						
	19	Identify Parking Management Strategies					ED/Planning/PD
	20	Encourage Housing Development & Office Development					ED/Planning
	21	Create Business Improvement District (BID) to Support Downtown Improvements and Programming					ED/Finance
	22	Terminate Administrative Permit Process for Morgan Hill Plaza Shopping Center					ED/Planning

Communication: THE PURPOSE OF THE ECONOMIC BLUEPRINT WORKSHOP IS TO REVIEW THE

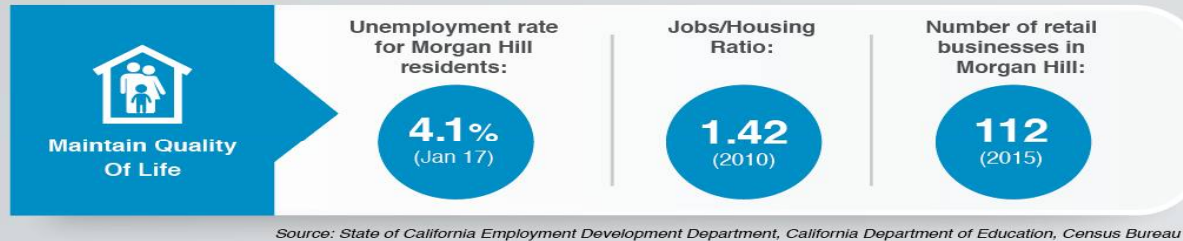
INDUSTRY	STRATEGY AND CITY ACTIONS		TIMEFRAME				CITY LEAD
			Current/In Process	Near Term 2017-2018	Mid-Term 2018-2019	Long Term 2019-2021	
 TOURISM	ENHANCE FACILITY UTILIZATION AND GROW SPORTS/RECREATION FACILITIES						
	23	Upgrade the Outdoor Sports Center & Aquatics Center (Infrastructure & Amenities)					ED/CS
	24	Develop a Financing Plan to Construct and Operate New Sports/Recreation Facilities					ED/CS
	SUPPORT LODGING						
	25	Ensure General Plan and Zoning Code Address Bed & Breakfasts, Air B&B and Hotel Development					ED/Planning
	26	Develop Plan to Help Upgrade or Transition Aging Hotel Facilities					ED/Planning/Housing/Finance
	27	Identify Pre-zoned Lodging Sites					ED/Planning
	LEVERAGE RESOURCES THROUGH PROFESSIONAL LINKAGES AND PARTNERSHIPS						
	28	Work with Hotels to Develop a Tourism Based Improvement District (TBID) to help Finance Capital Improvements to Sports Recreation Facilities and to Promote and Market the Region					ED/Finance/CS
	29	Collaborate with Regional Partners to Enhance Branding, Marketing and Promotions or Regional Assets					ED/CS
	SUPPORT A TOURISM ENVIRONMENT						
	30	Target Retail Attraction Towards Sport Recreation, Entertainment, Boutique and Food Retailers					ED/Planning
	31	Continue to Create A Lively Downtown with Entertainment Offerings					ED/Planning/CS/PD

Communication: THE PURPOSE OF THE ECONOMIC BLUEPRINT WORKSHOP IS TO REVIEW THE

INDUSTRY	STRATEGY AND CITY ACTIONS		TIMEFRAME				CITY LEAD
			Current/In Process	Near Term 2017-2018	Mid-Term 2018-2019	Long Term 2019-2021	
 MEDICAL	EXPAND LOCATIONS OF WHERE MEDICAL USES ARE ALLOWED						
	32	Ensure General Plan & Zoning Code Allow for a Range of Medical Uses					ED/ Planning
	ACTIVELY PROMOTE LOCATIONS FOR MEDICAL USES						
	33	Identify & Market Pre-Zoned Medical Sites					ED/ Planning
	34	Increase Outreach and Medical Service Providers					ED
	35	Create & Implement a Targeted Marketing Campaign					ED

Economic Indicators

The City will evaluate the success of the Economic Blueprint through different measures of success that are based upon the four economic pillars.





April Developmental Asset

Asset #9

Service to Others

Young person serves in the community
one hour or more per week.

YAC LOCAL COMMUNITY SERVICE

- 43% of High Schoolers in the Silicon Valley feel as though they serve in the community one or more hours per week as of 2017.
- YAC expands these limitations by encouraging members to get involved in events such as the Senior Citizens Ball, Zumbathon, Youth Leadership Morgan Hill, and by supporting the ongoing monthly Teen Center activities. As well other community events.
- YAC members contribute at least 6 hours a month of community service but on average, members usually do 10 hours or more due to subcommittee meetings, annual fundraisers, and service to teens and the elderly



SURVEY RESULTS COMPARISON FALL 2010 VS. FALL 2016

- Ø In Fall 2010, Project Cornerstone administered a survey to 38,000 students in more than 200 schools and 26 districts throughout Santa Clara County.
- Ø In Fall 2016, Project Cornerstone administered a survey to over 43,000 students in more than 180 schools and 25 districts throughout Santa Clara County.
- Ø These surveys measure developmental asset levels as well as thriving indicators and risk behaviors.

TARGETED ASSETS

- January – Adult Role Model #14
- February – Youth As Resources #8
- March – Creative Activities #17
- April – Service To Others #9
- May - Youth Programs #18
- June - Asset Programs #10
- July – Community Values Youth #7
- August – Caring Neighborhood #4
- September - Parent Involvement In Schooling # 6
- October – Positive Family Communication #2
- November – Positive Cultural Identity #41
- December – Family Support #1

2010	2016
28%	33%
33%	32%
25%	22%
48%	43%
63%	60%
52%	48%
19%	17%
33%	28%
30%	24%
30%	30%
70%	64%
65%	69%



CITY COUNCIL STAFF REPORT

MEETING DATE: April 19, 2017

PREPARED BY: Hilary Holeman, Management Analyst
APPROVED BY: City Manager

ADOPT RESOLUTION COMMEMORATING THE VICTIMS OF THE HOLOCAUST

RECOMMENDATION(S)

Adopt resolution commemorating the victims of the Holocaust during the Days of Remembrance April 23, 2017 to April 30, 2017.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community
Preserving and Cultivating Public Trust

2017 Strategic Priorities

Inclusiveness

REPORT NARRATIVE:

At the April 5, 2017 City Council meeting, Council Member Jachimowicz requested the City consider adopting a resolution commemorating the victims of the Holocaust during the Days of Remembrance April 23, 2017 to April 30, 2017.

Acknowledging the Holocaust Days of Remembrance supports and values our Sustainable Morgan Hill Vision of social responsibility and inclusiveness. The attached resolution encourages the community to always remember the terrible events of the Holocaust and let it be a reminder the City of Morgan Hill condemns any manifestation of religious intolerance, incitement, harassment or violence against persons based on ethnic origin or religious belief.

COMMUNITY ENGAGEMENT: Inform

ALTERNATIVE ACTIONS:

Council may decide not to approve resolution.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

This future business request was made on April 5, 2017 by Council Member Jachimowicz.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact.

CEQA (California Environmental Quality Act):

Not a Project. Organizational or administrative activities that will not result in direct or indirect physical changes to the environment are not project subject to environmental review under CEQA.

LINKS/ATTACHMENTS:

1. Holocaust Rememberence Resolution

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DECLARING COMMEMORATION OF THE VICTIMS OF THE HOLOCAUST DURING THE DAYS OF REMEMBRANCE APRIL 23, 2017 TO APRIL 30, 2017

WHEREAS, Pursuant to an Act of Congress, the United States Holocaust Council designates the Days of Remembrance of the Victims of the Holocaust to be Sunday, April 23, 2017 through Sunday, April 30, 2017; and

WHEREAS, The history of the Holocaust provides the opportunity to reflect on the moral responsibilities of individuals, societies, and governments and their efforts to overcome prejudice through education and reflection; and

WHEREAS, We remember with sadness the Six Million Jews, including one and a half million children, who were of victims of Hitler's "Final Solution;" and

WHEREAS, We should always remember the terrible events of the Holocaust and remain vigilant against hatred, persecution, and tyranny; and

WHEREAS, We have an obligation to ensure that the memory and legacy of lives lost or forever changed in this horrific event are never forgotten; and

WHEREAS, the City of Morgan Hill prides itself on being an inclusive city with an eye to social justice; and

WHEREAS, the City of Morgan Hill condemns any manifestation of religious intolerance, incitement, harassment or violence against persons based on ethnic origin or religious belief; and

WHEREAS, the City Council hereby pledge to firmly commit ourselves to say NEVER AGAIN, and to work to promote human dignity by confronting intolerance and hate whenever and wherever it occurs.

NOW, THEREFORE, BE IT RESOLVED that the City Council recognize the Days of Remembrance of the Victims of the Holocaust as a reminder of our past and a re-commitment to preventing crimes against humanity in the future.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 19th day of April, 2017 by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

Attachment: Holocaust Remembrance Resolution (1137 : Holocaust Reso)

STEVE TATE, Mayor

DATE: _____

ATTEST:

IRMA TORREZ, City Clerk

DATE: _____

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No.XX-XXX, adopted by the City Council at the meeting held on April 19, 2017.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Holocaust Remembrance Resolution (1137 : Holocaust Reso)



CITY COUNCIL STAFF REPORT

MEETING DATE: April 19, 2017

PREPARED BY: Hilary Holeman, Management Analyst
APPROVED BY: City Manager

ADOPT RESOLUTION ENCOURAGING THE CELEBRATION OF THE MONTH OF JUNE AS LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUEER/QUESTIONING PRIDE MONTH

RECOMMENDATION(S)

1. Adopt resolution encouraging the celebration of the month of June as Lesbian, Gay, Bisexual, Transgender, and Queer/Questioning Pride Month; and
2. Authorize the display of the Pride flag at City Hall during the month of June to commemorate Pride Month.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community
Preserving and Cultivating Public Trust

2017 Strategic Priorities

Inclusiveness

REPORT NARRATIVE:

At the February 22, 2017 City Council meeting, Council Member Spring requested the City consider celebrating the month of June in honor of Lesbian, Gay, Bisexual, Transgender, and Queer/Questioning Pride Month and display the Pride flag.

Acknowledging Pride Month supports our Sustainable Morgan Hill Vision of social responsibility and inclusiveness. The attached resolution encourages the community to celebrate the progress that has been made to expand civil rights and recognize the City of Morgan Hill will continue working to support its entire community.

In order to commemorate Pride Month, the attached resolution authorizes the City to display the pride flag at City Hall during the month of June 2017.

COMMUNITY ENGAGEMENT: Inform

ALTERNATIVE ACTIONS:

Council may decide not to approve the resolution or display the flag.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

This future business request was made on February 22, 2017 by Council Member Spring.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact.

CEQA (California Environmental Quality Act):

Not a Project

LINKS/ATTACHMENTS:

1. Pride Month Resolution

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL ENCOURAGING THE CELEBRATION
OF THE MONTH OF JUNE AS LESBIAN, GAY, BISEXUAL,
TRANSGENDER, AND QUEER/QUESTIONING PRIDE
MONTH**

WHEREAS, The City Council of the City of Morgan Hill supports the rights, freedoms, and equality of those who are lesbian, gay, bisexual, transgender, and queer/questioning (LGBTQ); and

WHEREAS, LGBTQ activists across the country have made tremendous progress to ensure individuals are judged on their character and not by who they love; and

WHEREAS, the City of Morgan Hill prides itself on being an inclusive community and will continue to build a society where every child grows up knowing their community supports them, is proud of them, and has a place for them exactly as they are; and

WHEREAS, the City of Morgan Hill encourages the celebration of LGBTQ Pride Month to recognize all people in the community deserve to be treated respectfully, fairly and equally regardless of sexual orientation or gender identity;

NOW, THEREFORE, BE IT RESOLVED that the City Council commemorate the month of June as LGBTQ Pride Month by displaying the Pride flag at City Hall.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 19th day of April, 2017 by the following vote:

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

STEVE TATE, Mayor

DATE: _____

ATTEST:

IRMA TORREZ, City Clerk

DATE: _____

Attachment: Pride Month Resolution (1138 : Pride Month Reso)

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No.XX-XXX, adopted by the City Council at the meeting held on April 19, 2017.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Pride Month Resolution (1138 : Pride Month Reso)



CITY COUNCIL STAFF REPORT

MEETING DATE: April 19, 2017

PREPARED BY: Cynthia Iwanaga, Management Analyst
APPROVED BY: City Manager

RESOLUTION AUTHORIZING A CALIFORNIA NATURAL RESOURCES AGENCY URBAN GREENING GRANT PROGRAM APPLICATION

RECOMMENDATION(S)

Adopt resolution approving the following actions:

1. Authorizing staff to prepare and submit an Urban Greening Program Grant Application to the California Natural Resources Agency for the development of a biking and walking path along Butterfield Boulevard from San Pedro Avenue to Railroad Avenue, and
2. Authorizing the City Manager to negotiate and execute the Urban Greening Program grant agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Maintaining Fiscal Responsibility

2017 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

In March 2017, the California Natural Resources Agency released a Request for Proposals (RFP) for Urban Greening Grants under its California Climate Investments Program. This RFP makes \$76 million available specifically for green infrastructure projects that reduce Greenhouse Gas emissions. The State has identified specific areas as disadvantaged communities and committed 75% of the \$76 million to funding projects in the disadvantaged communities. Morgan Hill has one area designated as disadvantaged per the attached map.

The Butterfield Connector Path Project is in the Bikeways, Trails, Parks and Recreation Master Plan. While it is not on the priority list, staff recommends moving forward with this project since it will significantly enhance bike mobility along Butterfield Blvd. and is the only project located in the City's designated disadvantaged community. There is currently a linear park on the east side of Butterfield Boulevard from East Central Avenue to San Pedro Avenue. The Butterfield Connector Path Project would extend the linear park south of San Pedro Avenue to Fisher Avenue and go under the Railroad Avenue overpass connecting the linear park to the future site of the Community Garden. This grant will allow for the completion of the Butterfield Boulevard Linear Park thus enhancing mobility for southern residents to reach Downtown and employment

opportunities in the City's business parks and for central residents to reach the future community garden to the south.

In addition to the Butterfield Connector Path, the City's Urban Greening Grant application would include the planting of several hundred trees along the Butterfield Channel. While most of this tree planting has already been included in the City's urban forestry application to CALFIRE, the CALFIRE grant is being submitted concurrently and is not yet secured. By including the tree planting in both grant applications, the City is doubling its chances of obtaining funds for this purpose.

COMMUNITY ENGAGEMENT: Involve

Effective community engagement is required to encourage awareness of the Linear Park and is an essential component of the grant application. The City has scheduled a community meeting to receive feedback regarding the development of the Linear Park along Butterfield Boulevard between San Pedro Avenue and Railroad Avenue. Residents of the Lodge and Barrett Elementary neighborhood will be invited along with Community Garden members and others likely to benefit from the project.

ALTERNATIVE ACTIONS:

An alternative action is to not authorize the submittal of an Urban Greening Grant application to the California Natural Resources Agency, and to delay the completion of the Linear Park along Butterfield Boulevard.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council previously approved development of the Butterfield Linear Park as a Capital Improvement Project (CIP); however, it was removed from the CIP project list after several years due to the lack of available grant funds to develop the project.

FISCAL AND RESOURCE IMPACT:

The total project cost is estimated at 1,840,493. Although there is no match requirement, it is anticipated that applicants that propose matching funds will be more competitive. It is proposed the City contribute \$100,000 from the Park Impact Fund (301) in order to make the application competitive along with a \$48,513 in-kind match. No budget adjustment is requested at this time as the project will return to Council should the grant be received.

CEQA (California Environmental Quality Act):

Categorical Exemption

This is solely an administrative action and does not constitute a project under CEQA guidelines. If the grant application is successful, the City will be the Lead Agency, and the CEQA review will be completed to the State's satisfaction before any construction funds will be disbursed.

LINKS/ATTACHMENTS:

1. Urban Greening Grant Resolution
2. Disadvantaged Community per CalEnviro2.0

RESOLUTION NO: _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING THE APPLICATION FOR GRANT FUNDS FOR CALIFORNIA CLIMATE INVESTMENTS URBAN GREENING PROGRAM AND AUTHORIZING THE CITY MANAGER TO EXECUTE DOCUMENTS REQUIRED TO APPLY AND ACCEPT THE GRANT FOR THE CITY, IF AWARDED, AND DIRECTING CERTAIN ACTIONS IN CONNECTION THEREWITH

WHEREAS, the City of Morgan Hill, is a municipal corporation and general law city duly organized and existing under and pursuant to the Constitution and laws of the State of California (“City”); and

WHEREAS, the City desires to apply for the grant funds through the California Climate Investments Urban Greening Program; and

WHEREAS, the Legislature and Governor of the State of California have provided funds for the California Climate Investments Urban Greening Program; and

WHEREAS, the California Natural Resources Agency has been delegated the responsibility for the administration of this grant program, establishing necessary procedures; and

WHEREAS, said procedures established by the California Natural Resources Agency require a resolution certifying the approval of application(s) by the Applicant’s governing board before submission of said application(s) to the State; and

WHEREAS, the applicant, if selected, will enter into an agreement with the State of California to carry out the Project.

WHEREAS, the City Council determines that adoption of this Resolution is in the public interest.

NOW, THEREFORE, BE IT RESOLVED, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY FIND, DETERMINE, RESOLVE AND ORDER AS FOLLOWS:

Section 1. Recitals. The City Council does hereby find, determine and resolve that all of the foregoing recitals are true and correct.

Section 2. Approval and Authorization. The City Council does further resolve, order and or direct as follows:

- a. Approves the filing of an application for the Butterfield Connector Path Project;
- b. Certifies that applicant understands the assurances and certification in the application, and

- c. Certifies that applicant or title holder will have sufficient funds to operate and maintain the project consistent with the land tenure requirements; or will secure the resources to do so, and
- d. Certifies that it will comply with the provisions of Section 1771.5 of the State Labor Code, and
- e. If applicable, certifies that the project will comply with any laws and regulations including, but not limited to, legal requirements for building codes, health and safety codes, disabled access laws, environmental laws and, that prior to commencement of construction, all applicable permits will have been obtained, and
- f. Certifies that applicant will work towards the Governor's State Planning Priorities intended to promote equity, strengthen the economy, protect the environment, and promote public health and safety as included in Government Code Section 65041.1, and
- g. Appoints the City Manager, or designee, as agent to conduct all negotiations, execute and submit all documents including, but not limited to applications, agreements, payment requests and so on, which may be necessary for the completion of the aforementioned project(s).

Section 3. This resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its regular meeting held on this 19th day of April 2017 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:

DATE: _____

Steve Tate, MAYOR

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No.XXXX , adopted by the City Council at the meeting held on April 19, 2017.

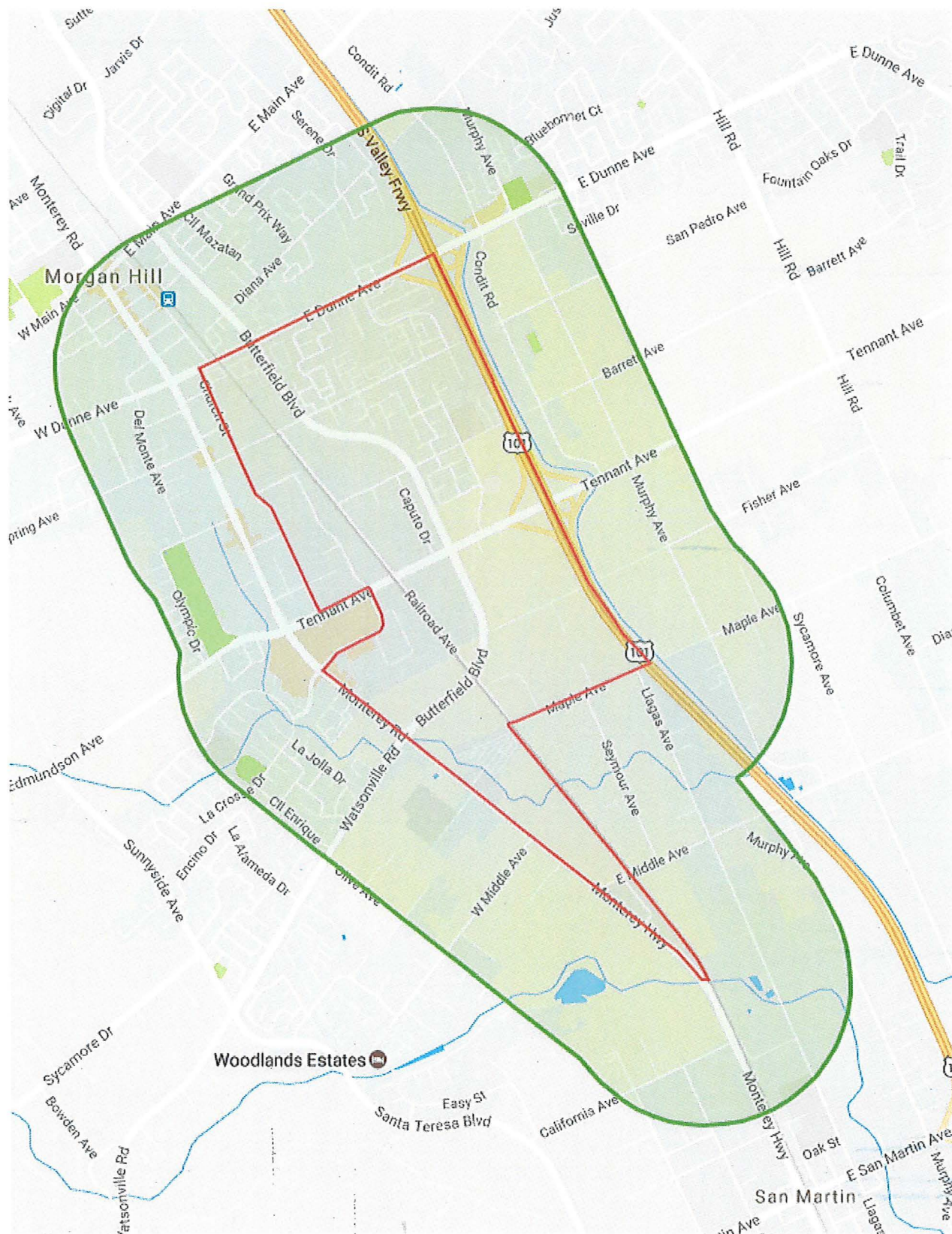
WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

Irma Torrez, CITY CLERK

Attachment: Urban Greening Grant Resolution (1122 : Urban Greening Grant Resolution)

Morgan Hill Disadvantaged Community as defined by CalEnviro 2.0



Attachment: Disadvantaged Community per CalEnviro2.0 (1122 : Urban Greening Grant Resolution)



CITY COUNCIL STAFF REPORT

MEETING DATE: April 19, 2017

PREPARED BY: Charlie Ha, Associate Engineer
APPROVED BY: City Manager

FINAL MAP APPROVAL OF DUNNE MURPHY - TRACT NO. 10387

RECOMMENDATION(S)

Adopt resolution approving the following actions:

1. Approve Final Map;
2. Authorize the City Manager to execute the Subdivision Improvement Agreement with Live Oak Investments LLC;
3. Authorize the City Manager to execute a Stormwater Best-Management-Practices (BMP) Operation and Maintenance Agreement pending review and approval by the City Attorney; and
4. Authorize the recordation of the Final Map and the Subdivision Improvement Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

2017 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

Dunne Murphy – Tract No. 10387 is a 14-lot subdivision located on the southeast corner of East Dunne Avenue and Murphy Avenue (see attached site map). The developer, Live Oak Investments LLC, has completed all the conditions specified by the Planning Commission in the approval of the Tentative Map on February 9, 2016.

The City Council is required to approve the map if it conforms to all the requirements of the Subdivision Map Act, and any conditions of approval for the Tentative Map.

The developer has furnished the City with the necessary documents to complete the processing of the Final Map and has made provisions with a title company to provide the City with the required fees, security, and insurance prior to recordation of the Final Map. The Final Map conforms to the requirements of the Subdivision Map Act, and conditions of approval have been met. Staff recommends that City Council authorize the City Manager to sign a Subdivision Improvement Agreement on behalf of the City and sign a Stormwater BMP Operation and Maintenance Agreement pending review and approval by the City Attorney.

COMMUNITY ENGAGEMENT: Involve

On February 9, 2016, the Planning Commission approved the Tentative Map. Residents within a 300 feet radius were informed of the Planning Commission's intent to approve

the Tentative Map for the project, in which a public hearing was held to allow the public to be involved and voice their concerns over Tentative Map requirements.

ALTERNATIVE ACTIONS:

There is no feasible alternative action as the developer has met the requirements of the Tentative Map conditions approved by the Planning Commission to file for a final map approval.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On December 14, 2016, the City Council approved the Development Agreement.

FISCAL AND RESOURCE IMPACT:

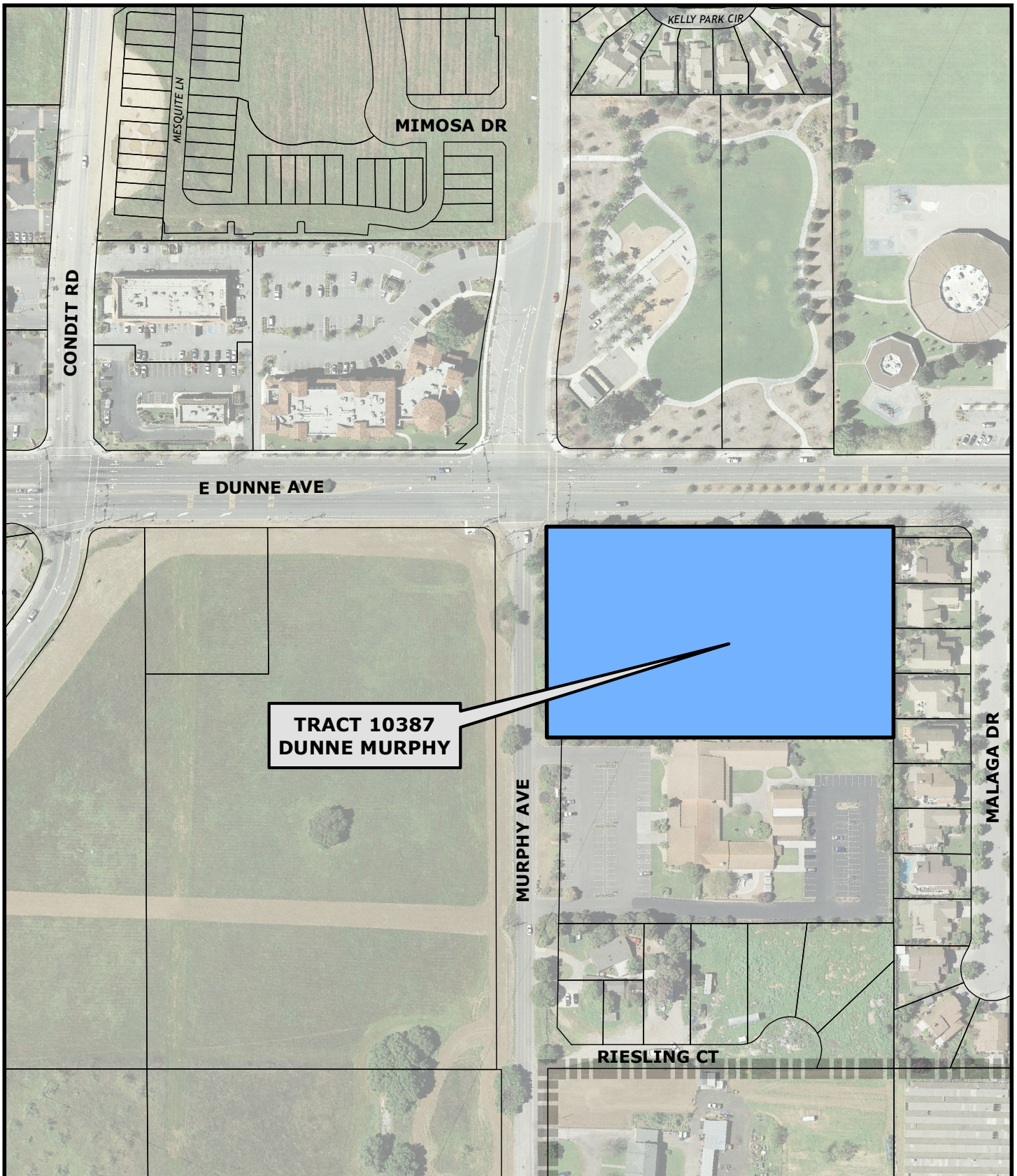
Development review costs for this project are paid for from development processing fees.

CEQA (California Environmental Quality Act):

Mitigated Negative Declaration was adopted on February 9, 2016.

LINKS/ATTACHMENTS:

1. Site Map Tract 10387
2. Resolution Approval Final Map Tract 10387
3. Resolution Exhibit A Map Tract 10387
4. Resolution Exhibit B Subdivision Improvements Agreement Tract 10387 with Cash DP
5. Resolution Exhibit C Stormwater BMP Operation and Maintenance Agreement Form Tract 10387



CITY OF MORGAN HILL
Department of Public Works
Engineering and Utilities Division

G:\R-14\Proj\GIS\John\Charlie_DunneMurphy_FinalMap.mxd

SITE PLAN
TRACT 10387
DUNNE MURPHY

0 75 150 300 450 600
 Feet



RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING THE FINAL MAP OF DUNNE MURPHY – TRACT NO. 10387, AUTHORIZING THE CITY MANAGER TO EXECUTE THE SUBDIVISION IMPROVEMENTS AGREEMENT WITH LIVE OAK INVESTMENTS LLC, AUTHORIZING THE CITY MANAGER TO EXECUTE STORMWATER BEST-MANAGEMENT-PRACTICES (BMP) OPERATION AND MAINTENANCE AGREEMENT PENDING THE REVIEW AND APPROVAL OF THE CITY ATTORNEY, AND AUTHORIZE THE RECORDATION OF THE FINAL MAP AND THE SUBDIVISION IMPROVEMENTS AGREEMENT

WHEREAS, the City of Morgan Hill, a municipal corporation and general law city duly organized and existing under and pursuant to the Constitution and laws of the State of California (“City”), is authorized to enter into contracts and agreements for the benefit of the City; and

WHEREAS, the reasons supporting the approval of the final map entrance of the City into that certain agreement described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled “Final Map Approval of Dunne Murphy – Tract No. 10387” submitted for City Council consideration at its meeting of April 19, 2017, submitted to the City Council by the City Manager (the “Staff Report”), the contents of which Staff Report are incorporated herein by this reference; and

WHEREAS, the consideration by City Council of the adoption of this Resolution has been duly noticed pursuant to applicable laws and has been placed upon the City Council Meeting Agenda on the date set forth in the Staff Report, or to such date that the City Council may have continued or deferred consideration of this Resolution, and on such date the City Council conducted a duly noticed public hearing on the adoption of this Resolution at which hearing the City Council provided members of the public an opportunity to comment and be heard and considered any and all testimony and other evidence provided in connection with the adoption of this Resolution; and

WHEREAS, the City Council determines that adoption of this Resolution is in the public interest.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY FIND, DETERMINE, RESOLVE AND ORDER AS FOLLOWS:

Section 1. Recitals. The City Council does hereby find, determine and resolve that all of the foregoing recitals are true and correct.

Section 2. Approval and Authorizations. The City Council does further resolve, order and/or direct as follows:

- a. That the Final Map of Dunne Murphy – Tract No. 10387 attached hereto as Exhibit A and incorporated herein by this reference (the “Map”) is hereby approved.
- b. That the Subdivision Improvements Agreement with Live Oak Investments LLC for Dunne Murphy – Tract No. 10387 substantially in the form attached hereto as Exhibit B and incorporated herein by this reference (the “Agreement”) is hereby approved.
- c. That the City Manager is hereby delegated authority to and is authorized and directed to execute the Agreement substantially in the form attached hereto as Exhibit B.
- d. That the City Manager is hereby delegated authority to and is authorized and directed to execute a Stormwater BMP Operation and Maintenance Agreement pending review and approval by the City Attorney substantially in the form attached hereto as Exhibit C.
- e. Authorize the recordation of the Map and Agreement.

Section 3. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 19th day of April, 2017 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:

DATE: _____

Steve Tate, MAYOR

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. _____, adopted by the City Council at the meeting held on April 19, 2017.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

Irma Torrez, CITY CLERK

OWNER'S STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF, OR HAVE SOME RIGHT, TITLE, OR INTEREST IN AND TO THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION SHOWN UPON THE HEREIN MAP, THAT WE ARE THE ONLY PERSONS WHOSE CONSENTS ARE NECESSARY TO PASS A CLEAR TITLE TO SAID REAL PROPERTY; THAT WE HEREBY CONSENT TO THE PREPARATION AND FILING OF SAID MAP AND SUBDIVISION AS SHOWN WITHIN THE DISTINCTIVE BOUNDARY LINE.

WE HEREBY DEDICATE TO PUBLIC USE AND OFFER TO DEDICATE TO THE CITY OF MORGAN HILL, AS EASEMENTS ONLY, ALL STREETS AND PORTIONS OF STREETS NOT HERETOFORE EXISTING AND DESIGNATED AS BRIX LANE AS SHOWN UPON THIS MAP. SAID DEDICATIONS AND OFFERS OF DEDICATION ARE FOR ANY AND ALL PUBLIC USES UNDER, UPON, AND OVER SAID STREETS AND PORTIONS THEREOF.

WE HEREBY DEDICATE TO PUBLIC USE AND OFFER TO DEDICATE TO THE CITY OF MORGAN HILL EASEMENTS FOR ANY AND ALL PUBLIC SERVICE FACILITIES INCLUDING, BUT NOT LIMITED TO, SIDEWALKS, POLES, WIRES AND CONDUITS FOR ELECTRICAL, TELEPHONE, TELEVISION, GAS, STORM, SANITARY AND WATER SERVICES, AND ALL APPURTENANCES THERETO UNDER, UPON, OR OVER THE LAND DESIGNATED AS PUBLIC SERVICE EASEMENT (P.S.E.) ON THE WITHIN MAP.

WE HEREBY RESERVE FOR THE BENEFIT OF LOTS 1 THROUGH 14, OPEN SPACES 1, 2, 3 AND 4 (O.S.1, O.S.2, O.S.3 & O.S.4) FOR THE PURPOSE OF LANDSCAPING/RECREATIONAL AMENITIES, STORM DRAIN FACILITIES AND ALL OTHER APPURTENANCES THERETO. NO FURTHER SUBDIVISION AND/OR RESIDENTIAL DEVELOPMENT OF SAID PARCELS SHALL BE ALLOWED. SAID OPEN SPACE PARCELS SHALL BE CONVEYED TO BE MAINTAINED BY THE HOMEOWNER'S ASSOCIATION.

WE HEREBY RESERVE FOR THE HOMEOWNER'S ASSOCIATION, FOR THE BENEFIT OF ALL RESIDENTIAL OWNERS, THOSE PARCELS OF LAND DELINEATED AND DESIGNATED AS VIN COURT, (PRIVATE STREET), AND SHERRY COURT (PRIVATE STREET), FOR THE PURPOSE OF PRIVATE PEDESTRIAN & VEHICULAR TRAVEL/PARKING AND ALL APPURTENANCES THERETO. NO FURTHER SUBDIVISION AND/OR RESIDENTIAL DEVELOPMENT OF SAID PARCELS OF LAND SHALL BE ALLOWED. SAID PARCELS OF LAND SHALL BE CONVEYED TO AND BE MAINTAINED BY THE HOMEOWNER'S ASSOCIATION.

WE HEREBY RESERVE FOR THE EXCLUSIVE USE OF THE OWNERS OF IMMEDIATELY ADJACENT LOTS, PRIVATE STORM DRAINAGE EASEMENTS IN, UNDER, UPON AND ACROSS THOSE STRIPS OF LAND DELINEATED AND DESIGNATED AS PRIVATE STORM DRAINAGE EASEMENT (P.S.D.E.) ON THE WITHIN MAP. SAID P.S.D.E. SHALL BE MAINTAINED BY THE HOMEOWNER'S ASSOCIATION.

WE HEREBY DEDICATE TO PUBLIC USE THOSE STRIPS OF LAND DELINEATED AND DESIGNATED AS EMERGENCY VEHICLE ACCESS EASEMENT (E.V.A.E.), FOR EMERGENCY ACCESS PURPOSES ONLY.

ALL OF THE HEREIN DESCRIBED STREETS AND EASEMENTS SHALL BE KEPT FREE OF BUILDINGS, EXCEPT LAWFUL UNSUPPORTED ROOF OVERHANGS, AND OBSTRUCTIONS THAT DO NOT IMPAIR THE USE OF, OR ARE CONSISTENT WITH THE PURPOSES OF THE STREET OR EASEMENT.

THE HEREIN DESCRIBED OFFERS OF DEDICATION TO THE CITY OF MORGAN HILL ARE TO BE ACCEPTED ONLY WHEN THE CITY COUNCIL OF THE CITY OF MORGAN HILL OR ITS SUCCESSOR AGENCY ADOPTS AND RECORDS IN THE OFFICE OF THE RECORDER OF SANTA CLARA COUNTY A RESOLUTION ACCEPTING SAID STREETS AND EASEMENTS. UNTIL SAID RESOLUTION(S) ARE RECORDED, ALL STREETS AND EASEMENTS ENCOMPASSED WITHIN SUCH OFFERS OF DEDICATION SHALL BE MAINTAINED BY THE DEVELOPER DURING ANY REQUIRED WARRANTY PERIOD AND THEREAFTER BY THE OWNER(S) OF THE LOTS OR PARCELS IN THE SUBDIVISION. THE CITY OF MORGAN HILL SHALL NOT BE RESPONSIBLE FOR MAINTENANCE AND SHALL INCUR NO LIABILITY WITH RESPECT TO SUCH OFFERED STREETS AND EASEMENTS OR ANY IMPROVEMENT THEREON. ALL DEDICATED RIGHTS-OF-WAY AND EASEMENTS NOT ACCEPTED FOR MAINTENANCE BY THE CITY OR OTHER PUBLIC AGENCY SHALL BE MAINTAINED BY THE OWNER(S) OF THE LOTS OR PARCELS IN THE SUBDIVISION.

AS OWNERS:

THE BETTY G. BUSK REVOCABLE
FAMILY TRUST

LIVE OAK INVESTMENT CORPORATION,
A CALIFORNIA CORPORATION

BY:

BETTY G. BUSK, TRUSTEE

BY:

ITS:

AS TRUSTEE:

BDS CAPITAL, INC., A CALIFORNIA CORPORATION

BY:

ITS:

AS BENEFICIARIES:

RANDALL A. WOLF, TRUSTEE, OF THE
RANDALL A. WOLF TRUST

MDMH PARTNERS, LLC, A CALIFORNIA
LIMITED LIABILITY COMPANY

BY:

ITS:

BY:

ITS:

TRACT No. 10387

BEING ALL OF PARCEL ONE, PARCEL TWO, AND ALL OF PARCEL
'A' AS SHOWN ON THAT CERTAIN PARCEL MAP, FILED FOR
RECORD IN BOOK 893 OF MAPS, AT PAGES 03 THROUGH 05,
SANTA CLARA COUNTY RECORDS.

LYING WITHIN THE
CITY OF MORGAN HILL COUNTY OF SANTA CLARA
STATE OF CALIFORNIA

APRIL 2017

NOTES

- 1.) THE DISTINCTIVE BOUNDARY LINE INDICATES THE BOUNDARIES OF THE LAND SUBDIVIDED BY THIS FINAL MAP.
- 2.) THE AREA WITHIN THE DISTINCTIVE BOUNDARY IS 3.300 ACRES.
- 3.) ALL DISTANCES AND DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
- 4.) A GEOTECHNICAL REPORT WAS PREPARED BY EARTH SYSTEMS ON DECEMBER 17, 2015 AND RECORDED BY SAID COMPANY AS FILE NO. SH-12876-SA.
- 5.) THE PROPERTY OWNER IS PROVIDING CONSTRUCTIVE NOTICE HEREON THAT EACH LOT IS SUBJECT TO REQUIREMENTS OF A DEVELOPMENT AGREEMENT, AND THAT COMMITMENTS UNDER THE AGREEMENT, WHICH THE CITY HAS PERMITTED THE PROPERTY OWNER TO DELAY, MUST BE FULFILLED BY THE SUBSEQUENT PROPERTY OWNERS/OWNER.

ABANDONMENT OF PUBLIC EASEMENT:

PER SECTIONS 66434(g) AND 66499.20% OF THE SUBDIVISION MAP ACT, THE FOLLOWING PUBLIC EASEMENT SHALL CONSTITUTE ABANDONMENT; AS CERTIFIED IN THE CITY CLERK'S STATEMENT:

A 20.00 FEET AND 25.00 FEET WIDE P.S.E. PREVIOUSLY DEDICATED PER THAT PARCEL MAP, FILED FOR RECORD IN BOOK 893 OF MAPS AT PAGES 3 THROUGH 5, SANTA CLARA COUNTY RECORDS.

TERMINATION OF TEMPORARY EASEMENT:

THE AUTOMATIC TERMINATION SHALL TAKE PLACE OF A 17.00 FEET WIDE AND 25.00 FEET WIDE TEMPORARY INGRESS AND EGRESS EASEMENT LYING UPON AND OVER THOSE STRIPS OF LAND DESIGNATED AS INGRESS AND EGRESS EASEMENT (I.E.E.), AS SHOWN UPON THAT CERTAIN PARCEL MAP FILED FOR RECORD IN BOOK 893 OF MAPS AT PAGES 3 THROUGH 5, SANTA CLARA COUNTY RECORDS.

PLANNING COMMISSION STATEMENT

I HEREBY STATE THAT THE TENTATIVE MAP FOR THE FINAL MAP SHOWN HEREON WAS CONDITIONALLY APPROVED ON _____, 20____ BY THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL, CALIFORNIA, BY RESOLUTION NUMBER _____, APPLICATION NUMBER SD-____.

ANDREW CRABTREE
SECRETARY OF THE PLANNING COMMISSION
OF THE CITY OF MORGAN HILL, CALIFORNIA

DATE

CITY CLERK'S STATEMENT

I HEREBY STATE THAT THE CITY COUNCIL OF THE CITY OF MORGAN HILL AT ITS REGULAR MEETING HELD ON _____, DULY APPROVED THE FINAL MAP SHOWN HEREON, AUTHORIZED ITS RECORDATION, AND ACCEPTS ON BEHALF OF THE PUBLIC, SUBJECT TO THEIR IMPROVEMENT IN ACCORDANCE WITH CITY STANDARDS, THE EASEMENTS OFFERED FOR DEDICATION FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF THE OFFER OF DEDICATION. ALSO, I CERTIFY THAT SAID CITY COUNCIL AUTHORIZED THE ABANDONMENT OF THAT PUBLIC SERVICE EASEMENT NOTED ON SHEET 1 AND DELINEATED ON SHEET 3 OF THIS MAP.

IRMA TORREZ
CITY CLERK OF THE CITY OF MORGAN HILL

DATE

ENGINEER'S STATEMENT

I HEREBY STATE THAT THIS FINAL MAP AND THE FIELD SURVEY, UPON WHICH THE MAP IS BASED, WERE MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE, AT THE REQUEST OF BETTY G. BUSK, ON MARCH 24, 2016; THAT THE SURVEY IS TRUE AND COMPLETE AS SHOWN; THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED, OR WILL BE SET IN SUCH POSITIONS ON OR BEFORE MAY 30, 2018 AND THAT SUCH MONUMENTS ARE, OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED. I HEREBY STATE THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP.

WILLIAM J. MCCLINTOCK, R.C.E. 24893

DATE

CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS FINAL MAP, THE SUBDIVISION AS SHOWN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP, IF REQUIRED, AND ANY APPROVED ALTERATIONS THEREOF. ALL PROVISIONS OF THE SUBDIVISION MAP ACT, AS AMENDED, AND OF ANY LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP, IF REQUIRED, HAVE BEEN COMPLIED WITH.

KARL D. BJARKE — CITY ENGINEER
CITY OF MORGAN HILL, CALIFORNIA
R.C.E. NO. 39416

DATE

CITY SURVEYOR'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS FINAL MAP AND THAT I AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT.

JOHN K. KING — ACTING CITY SURVEYOR
P.L.S. NO. 8809

DATE

COUNTY RECORDER'S STATEMENT

FILED THIS _____ DAY OF _____, 20____

AT _____ M. IN BOOK _____ OF MAPS, AT PAGES _____ AT THE REQUEST OF
M.H. ENGINEERING CO.

FILE NO. _____

FEE \$ _____

REGINA ALCOMENDRAS, COUNTY RECORDER OF SANTA CLARA COUNTY

BY:

DEPUTY

SHEET 1 OF 4



MH engineering Co.

18075 Vineyard Boulevard
Morgan Hill, CA 95037

24126.2

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State Of California

County Of _____

On _____, _____, before me, _____

personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

Principal County Of Business: _____

Commission Expires: _____

Commission # Of Notary: _____

ACKNOWLEDGMENT

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State Of California

County Of _____

On _____, _____, before me, _____

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Signature _____ (Seal)

Principal County Of Business: _____

Commission Expires: _____

Commission # Of Notary: _____

TRACT No. 10387

BEING ALL OF PARCEL ONE, PARCEL TWO, AND ALL OF PARCEL 'A' AS SHOWN ON THAT CERTAIN PARCEL MAP, FILED FOR RECORD IN BOOK 893 OF MAPS, AT PAGES 03 THROUGH 05, SANTA CLARA COUNTY RECORDS.

LYING WITHIN THE
CITY OF MORGAN HILL COUNTY OF SANTA CLARA
STATE OF CALIFORNIA

APRIL 2017

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State Of California

County Of _____

On _____, _____, before me, _____

personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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State Of California

County Of _____

On _____, _____, before me, _____

personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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WITNESS my hand and official seal.

Signature _____ (Seal)

Principal County Of Business: _____

Commission Expires: _____

Commission # Of Notary: _____

SHEET 2 OF 4



MH engineering Co.

18075 Vineyard Boulevard
Morgan Hill, CA 95037

24126.2

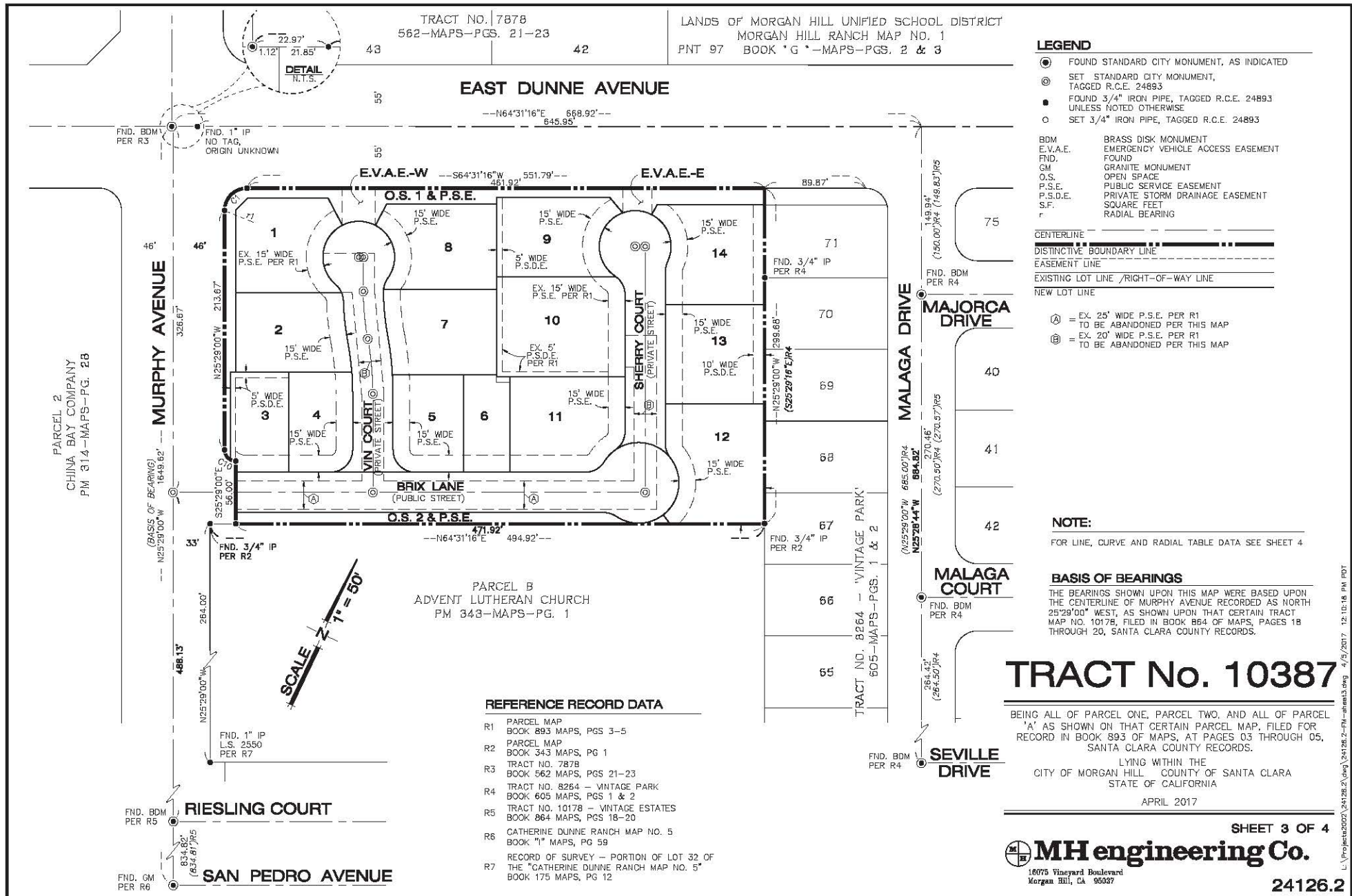




EXHIBIT B

RECORDING REQUESTED BY
WHEN RECORDED RETURN TO

CITY OF MORGAN HILL
City Clerk's Office
17575 PEAK AVENUE
MORGAN HILL, CA 95037

(RECORD AT NO FEE PURSUANT TO
GOVERNMENT CODE SECTION 27383)

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

SUBDIVISION IMPROVEMENTS AGREEMENT

LIVE OAK INVESTMENTS LLC DUNNE MURPHY – TRACT NO. 10387

This Subdivision Improvements Agreement ("Agreement") between the City of Morgan Hill, a municipal corporation ("City"), and **Live Oak Investments LLC**, a limited liability company ("Subdivider"), is entered into this ____ day of _____, 2017. City and Subdivider hereby acknowledge the following:

1. Subdivider has filed a Tentative Subdivision Map and supporting documents for **Tract No. 10387**, the subdivision known as **Dunne Murphy** ("Map").
2. City desires, as part of the conditions of approval ("Conditions") of the Final Tract Map or Parcel Map ("Final Map"), that certain improvements be installed by Subdivider ("Improvements") as shown on the City Engineer approved and signed Subdivision Improvement Plans entitled "**Improvement Plans for Dunne Murphy, Tract No. 10387**" ("Plans").
3. Subdivider has been unable to complete, prior to filing of the Final Map, all of the improvements required by City to the satisfaction of the City Engineer.
4. Subdivider is required by the terms of the Morgan Hill Municipal Code ("Municipal Code"), to improve all streets, highways, or public areas which are part of the development, including but not limited to necessary paving, curbs, sidewalks, catch basins, water mains, culverts, storm drains, and sanitary sewers, in accordance with the plans and specifications on file with the City Engineer and to post certain securities to secure the completion of the Improvements.
5. To assure City that Subdivider will construct, install and complete all Improvements required for the Subdivision, the parties have entered into this Agreement.

6. This Agreement is executed pursuant to California Government Code 66410, et seq., and Chapter 17.32 of the Municipal Code in order to provide for the manner in which Improvements shall be constructed and completed.

NOW, THEREFORE, and in consideration of the approval of the Map, and in order to ensure satisfactory performance by Subdivider of Subdivider's obligations under the Conditions, the Subdivision Map Act, and applicable ordinances of City, the parties hereto, for themselves, their successors, and assigns, hereby agree as follows:

Section 1. Incorporation by Reference

The Development Agreement between Subdivider and City, if applicable, Subdivider's Map application, the Conditions, the Map, all Plans as referenced in Section 2 below and all items submitted to the Planning Department, Planning Commission and City Council, all are incorporated herein by reference. In the event of any inconsistency between their representations in any incorporated documents and this Agreement, this Agreement shall govern.

Section 2. Construction of Improvements

(a) Subdivider shall construct to the approval of City, and as provided for in the Conditions, the Improvements as shown fully executed in the Plans entitled "**Improvement Plans for Dunne Murphy, Tract No. 10387**".

(b) Acquire and dedicate, or pay the cost of acquisition by City, of all rights-of-way, easements, and other interests in real property for the construction or installation of the Improvements, free and clear of all liens and encumbrances.

(c) Survey Monumentation:

(1) Subdivider shall place survey monumentation as described on the Map.

(2) Subdivider shall replace or repair all survey monumentation that is destroyed or damaged as a result of Subdivider's activities. Any such repair or replacement shall be to the satisfaction and subject to the approval of City.

Section 3. Modification of Plans

Subdivider agrees that, if during the construction of the Improvements, it is determined by City that revisions to the Plans are necessary in the interest of the public, Subdivider will undertake such design and construction changes required by City. Said changes, if any, shall be confined to the premises owned by Subdivider.

Section 4. Security

(a) Pursuant to California Government Code 66499.3(a), and the Municipal Code, Subdivider shall, concurrently with the execution hereof, furnish a surety bond in an amount equal to at

least one hundred percent (100%) of the estimated construction cost of the Improvements as security guaranteeing the faithful performance of the Improvements and this Agreement (“Performance Bond”).

Improvements and the City Engineer’s Estimated Costs of Improvements as of **March 2017** are attached hereto as Exhibit “A”.

The Performance Bond shall be in a form substantially the same as Exhibit “B”.

(b) Pursuant to California Government Code 66499.3(b), Subdivider shall, concurrently with the execution hereof, furnish a surety bond in an amount equal to one hundred percent (100%) of the estimated construction cost of the Improvements (as listed in Section 4(a) above) as security guaranteeing the payment to the contractors, subcontractors and persons furnishing labor, materials, or equipment in connection with this Agreement (“Labor and Materials Bond”). The Labor and Materials Bond shall be in a form substantially the same as Exhibit “C”.

(c) Subdivider shall, upon acceptance of the Improvements by the City Council, furnish a surety bond in an amount equal to fifty percent (50%) of the estimated construction cost of the Improvements (as listed in Section 4(a) above) to secure the guarantee and warranty of the work for a period of one year following the completion and acceptance thereof against any defective work or labor performed, or defective materials furnished by Subdivider.

(d) Pursuant to Government Code 66499.9, any liability upon the security given for faithful performance of any act or agreement shall be limited to:

(1) The performance of the work covered by the Agreement or the performance of the required act.

(2) The performance of any changes or alterations in such work provided that all changes or alterations do not exceed ten percent of the original estimated cost of the Improvements.

(3) The guarantee and warranty of the work for a period of one year following completion and acceptance thereof against any defective work or labor done or defective materials furnished in the performance of the Agreement or the performance of the act.

(4) Costs and reasonable expenses and fees, including reasonable attorneys’ fees.

(e) The surety on each bond and the form thereof shall be satisfactory to City. The surety shall be furnished by a surety company authorized to write the same in the State of California and that is approved and accepted by City’s risk manager.

(f) Subdivider agrees to furnish any bonds required by the State or County for Improvements outside City’s jurisdiction.

(g) The release of any securities shall be governed by the provisions of Government Code Section 66499.7.

(h) In lieu of providing the Performance Bond and the Labor and Material Bond required under subsection 4(a) and 4(b) hereinabove, Subdivider may provide City, at City's sole option, with a cash deposit in an amount required pursuant to Morgan Hill Municipal Code section 17.32.190.B which cash deposit obligation of Subdivider shall be made, memorialized and agreed to by Subdivider through execution of a Cash Deposit Agreement Guaranteeing Improvements in substantially the form attached hereto as Exhibit "D".

Section 5. Inspections

At least fifteen (15) calendar days prior to the commencement of any work hereunder, Subdivider shall notify City in writing of the fixed start date of construction so that City shall be able to provide inspection services. Subdivider shall at all times maintain proper facilities and provide safe access to all parts of the work site(s) for City inspections, including any workshops or plants where work related to the Improvements is being conducted.

Subdivider shall pay and reimburse City for all expenses incurred by City for inspecting and checking all work to be performed under the provisions of the Municipal Code or this Agreement. City Engineering plan checking and field improvement inspection costs are included in the Department of Public Works Fee Schedule which may be revised from time to time.

Section 6. Timing of Performance

Subdivider agrees to perform and complete all Improvements within eighteen (18) months from the date of the recording of the Final Map; provided however, the City Manager may extend the deadline for completion by not more than six (6) months at his reasonable discretion and determination that granting the extension will not be detrimental to the public welfare. No extension of this deadline for completion shall be made except upon the basis of a written application made by Subdivider stating fully the ground for the application and the facts relied upon for an extension.

It is further agreed by and between Subdivider and City that any extension granted shall in no way affect the validity of this Agreement or release the surety(ies) on any bond attached hereto or the financial institution guaranteeing the same. Subdivider further agrees to maintain the securities described in Section 4 above in full force and effect during the terms of this Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by City

Section 7. Work Performance and Warranty

(a) Subdivider shall construct, at Subdivider's own expense, all of the Improvements in a good and workmanlike manner, and furnish all required materials incident thereto, in accordance with the Plans and to the satisfaction of City, including any changes required by City which, in City's opinion, are necessary to complete the Improvements.

(b) All work shall be conducted and completed in accordance with the Plans and federal, state, Municipal Code, laws, ordinances, and regulations. For any Improvements partially completed prior to this Agreement, Subdivider agrees to complete the Improvements in accordance with this Agreement.

(c) Neither Subdivider, nor any of Subdivider's agents or contractors in connection with Subdivider's obligations under this Agreement are, or shall be considered to be, employees or agents of City.

(d) The work performance for the Improvements shall not be deemed complete until such time as such Improvements have been accepted for maintenance by City.

(e) Subdivider warrants that: (1) it has investigated the work to be performed under this agreement, (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should Subdivider discover any conditions materially differing from those inherent in the Improvements or work or as represented by City, it shall immediately inform City and shall not proceed, except at Subdivider's risk, until written instructions are received from City.

(f) Subdivider guarantees and warrants the work required by this Agreement and agrees to remedy any defects in the Improvements or work arising from faulty or defective materials or construction occurring within twelve (12) months after its acceptance. Following notice, Subdivider shall, without delay or cost to City, repair, replace, or construct any defective or unsatisfactory portion of the Improvements. City may, at its sole option, perform the repair or replacement itself if Subdivider or its surety has failed to commence repair within twenty (20) days after City has mailed written notice to Subdivider. In such event, Subdivider or its surety agrees to pay the cost of repair and replacement to City, plus fifteen percent (15%); and City may recover such costs as a lien against the Subdivision. City may proceed immediately to make repairs should an emergency arises.

Section 8. Acquisition and Dedication of Easements or Rights-of-Way

(a) No construction or installation of the Improvements shall be commenced before:

(1) The offer of dedication to City of appropriate rights-of-way, easements, or other interests in real property for the Improvements, which offer of dedication shall be irrevocable and remain open pursuant to California Government Code Section 66477.2, and authorization from the property owner to allow construction or installation of Improvements, or

(2) The dedication to, and acceptance by, City of appropriate rights-of-way, easements, or other interests in real property, as determined by the City Engineer, or

(3) The issuance by a court of competent jurisdiction pursuant to state Eminent Domain Law of an order of possession.

(b) Except as otherwise provided by this Agreement, City rejects all lands, rights-of-way, and easements offered for dedication on the Final Map of the Subdivision. All such offers shall, however, remain open, and shall constitute irrevocable offers of dedication in accordance with Government Code Section 66477.2. All such offers may be accepted by City in its sole discretion at any later date without further notice to Subdivider as provided by law. By way of explanation only, it is the current intention of City to accept all or part of the irrevocable offers to dedicate upon acceptance of the Improvements called for in this Agreement.

(c) Nothing in this Section 8 shall be construed as authorizing or granting an extension of time to Subdivider.

Section 9. Indemnity

Subdivider hereby agrees to save harmless and indemnify, including, without limitation, City's defense costs (including reasonable attorney's fees), from and against any and all suits, actions, or claims, of any character whatever, brought for, or on account of any injuries or damages sustained by any person or property resulting or arising, or alleged to have resulted or arisen, from Subdivider or Subdivider's contractors, subcontractors, agents, or employees activities, omissions or operations pursuant to this Agreement. Should City be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of this Agreement, or its performance, Subdivider will defend City, (at City's request and with counsel satisfactory to City) and will indemnify City for any judgment rendered against it or any sums paid out in settlement or otherwise.

Subdivider shall defend, indemnify, and hold harmless City and its elective and appointive boards, officials, officers, agents, employees and volunteers from any claim, action, or proceeding to review, set aside, void, or annul an approval of City concerning the Map and acts made in respect thereof, provided any such action is brought within the time period provided for in California Government Code 66499.37.

City shall promptly notify Subdivider of any claim, action, or proceeding, and cooperate fully in the defense of any claim, action, or proceeding.

It is expressly understood and agreed that this Subsection (a) will survive termination of this Agreement.

Section 10. Insurance

No later than ten days following issuance of the notice of award, Subdivider is required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of Subdivider and its Subcontractors relating to or arising from the performance of work associated with the Improvements, and must remain in full force and effect at all times during the period covered by the Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by City. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. If Subdivider fails to provide any of the required coverage in full compliance with the requirements outlined in this Agreement, City may, at its sole discretion, purchase such coverage at Subdivider's expense and deduct the cost from payments due to Subdivider, or terminate the Agreement for default. Subdivider further understands that City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to Subdivider, at any time as deemed necessary to protect the interests of City.

(a) Policies and Limits. The following insurance policies and limits are required for this Agreement:

- (1) Commercial General Liability Insurance ("CGL"): Subdivider shall maintain CGL and shall include coverage for liability arising from Subdivider's or its

Subcontractor's acts or omissions in the performance of work associated with the Improvements against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) five million dollars (\$5,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least five million dollars (\$5,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to Subdivider under Subdivider's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

a. CGL policy may not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.

b. CGL policy must include contractor's protected coverage, blanket contractual, and completed operations.

(2) Workers' Compensation Insurance and Employer's Liability: Subdivider shall maintain Workers Compensation coverage, as required by law. The policy must comply with the requirements of the California Workers' Compensation Insurance and Safety Act and provide protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Subdivider under Subdivider's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If Subdivider is self-insured, Subdivider must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

(3) Automobile Liability: Subdivider shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if Subdivider does not own automobiles, then Subdivider shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to Subdivider under Subdivider's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(4) Pollution (Environmental) Liability: The performance of Subdivider's work or service under this Agreement involves handling of hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials. Subdivider shall procure and maintain Pollution Liability covering Subdivider's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Subdivider under Subdivider's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(b) Required Endorsements. Subdivider shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

(1) ALL Policies:

“Waiver of Subrogation” - Each required policy must include an endorsement providing that the carrier agrees to waive any right of subrogation it may have against City and City’s elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

(2) General Liability:

- a. “Additionally Insured” - City, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;
- b. “Primary and Non-Contributing” - Insurance shall be primary non-contributing;
- c. “Separation of Insureds” - The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(c) Subcontractors. Subdivider must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 10, with respect to its performance of work associated with the Improvements, including those requirements related to the additional insureds and waiver of subrogation.

(d) Qualification of Insurers. All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of “A” or better and a financial size rating of “VII” or better.

(e) Certificates. Subdivider shall furnish City with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to Subdivider’s agreement with City shall be reduced, canceled, allowed to expire, or materially changed except after thirty (30) days' notice by the insurer to City, unless due to non-payment of premiums, in which case ten days written notice must be made to City. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

City of Morgan Hill
Attn: Risk Management
17575 Peak Avenue
Morgan Hill, CA 95037

Section 11. Permits and Requisite Fees

(a) Subdivider shall pay all current fee obligations in the total amount of **\$485,010** due under City Resolution No. 5592, as amended, in accordance with the Department of Public Work fee schedule, as follows:

(1) **\$223,074** payable at the time of recording of the Final Map, and

(2) **\$261,936** payable on a pro-rata basis for each individual lot in the Subdivision prior to final inspection of each and every residence.

(3) All fees payable pursuant to this Subsection (a) constitutes valid and due consideration for City's approval of the final Map, and amounts set forth are estimates that are subject to change prior to the issuance of building permit(s), subject to resolution or ordinance of the City Council.

(b) Subdivider shall, at its expense, obtain all necessary permits and licenses for the construction of the Improvements, give all necessary notices, and pay all fees and taxes required by law.

(c) Subdivider shall obtain a City Business License.

(d) Subdivider agrees to procure, at its expense, any necessary permits for Improvements outside City's jurisdiction.

Section 12. On-Site Supervision

Subdivider shall designate an on-site supervisor, satisfactory to City, who shall be on the work site(s) at all times during the construction of the Improvements, and who has the authority to act on behalf of Subdivider when communicating with City personnel.

Section 13. Waiver

Waiver by City or Subdivider of any breach of any of the provisions of the Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of the same or any other provision of this Agreement. Acceptance by City of any work by Subdivider shall not be a waiver of any of the provisions of this Agreement.

Section 14. Notices. All notices shall be personally delivered or mailed, via first class mail to the below listed addresses. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

- a. Address of Subdivider is as follows:
LIVE OAK INVESTMENTS LLC
 175 E. Main Ave. Ste. # 130

Morgan Hill, CA 95037

b.	Address of City is as follows:	With a copy to:
	Public Works Director City of Morgan Hill 17575 Peak Avenue Morgan Hill, CA 95037	City Clerk City of Morgan Hill 17575 Peak Avenue Morgan Hill, CA 95037

Section 15. Noncompliance

If City determines that Subdivider is in violation of any federal, state, County or City laws, ordinances, rules, regulations, and requirements, and/or the terms and provisions of this Agreement, it may issue a cease and desist order, stop work order, or other action City deems necessary.

Section 16. Notice of Breach and/or Default

City may serve written notice upon Subdivider and surety of breach of this Agreement or of any portion thereof, and default of Subdivider for any of the following circumstances:

- (a) Subdivider refuses or fails to complete the Improvements as required in Section 6 above.
- (b) Subdivider refuses or fails to perform or cure any defects in the Improvements as required in Section 7.
- (c) Subdivider is insolvent, is subject to a receivership, or files any petition in bankruptcy, either voluntary or involuntary which Subdivider fails to discharge within thirty (30) days.
- (d) The commencement of a foreclosure action against the Subdivision or any portion thereof, or any conveyance in lieu of or in avoidance of foreclosure.
- (e) Subdivider or any of Subdivider's contractors, subcontractors, agent, or employees materially violates any of the provisions of this Agreement and not cure the violation within a reasonable time.

Section 17. Performance by Surety or City

- (a) In the event of a material breach and/or default by Subdivider, Subdivider's surety shall have the duty to take over and complete the Improvements.
- (b) If the surety, within a reasonable time after receiving notice of Subdivider's default does not provide City written notice to take over the performance of this Agreement or if the surety does not commence performance thereof within the time specified in such notice to City, City may take over the construction of the Improvements and prosecute the same to completion, by contract or by any method City may deem advisable, on behalf and at the expense of Subdivider, and Subdivider's surety shall be

liable to City for any excess cost or damages incurred by City thereby. In such event, City, without liability for so doing, may take possession of and utilize to complete the Improvements such materials, appliances, and other property belonging to Subdivider as may be on the work site(s) and necessary therefore.

(c) City shall have the right to draw upon or utilize the appropriate security provided for in Section 4 to recover costs and damages to City damages. The right of City to draw upon or utilize the security is additional and not in lieu of any other remedy available to City at law or in equity. The parties agree that the estimated costs and security amounts may not reflect the actual cost of construction or installation of Improvements, and therefore, City damages for Subdivider's default shall be measured by the cost of completing the required Improvements.

(d) Failure of Subdivider to comply with terms of this Agreement shall constitute consent to filing by City of a notice of violation against all lots in the Subdivision, or to rescind the approval or otherwise revert the Subdivision to acreage. The remedies provided in this Subsection (d) is in addition to and not in lieu of other remedies available to City.

(e) In the event that Subdivider fails to perform any obligation under this Agreement, Subdivider agrees to pay all costs and expenses incurred by City in securing performance of such obligation, including the costs of suit and reasonable attorney's fees.

(f) The failure by City to take an enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or subsequent default or breach.

Section 18. Successors in Interest

This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties. It shall be recorded in the Office of the Recorder of Santa Clara County concurrently with the final map of the Subdivision and shall constitute a covenant running with the land and an equitable servitude upon the real property within the Subdivision. It shall be the responsibility of City to cause the executed Agreement to be recorded.

Section 19. Effective Date

This Agreement shall be effective as of the date and year first above written.

Section 20. Amendment of Agreement

This Agreement may only be amended by mutual consent of the original parties or their successors in interest, provided that any such amendment is executed in writing by the parties to be bound thereby. Copies of any such amendments shall be sent to surety(ies).

Section 21. Execution

By signing this Agreement, the person signing states that he or she is authorized to enter into contracts on behalf of Subdivider. The undersigned, on behalf of Subdivider, binds Subdivider, its partners, successors, executors, administrators, and assigns with respect to the terms and conditions of this Agreement.

Section 22. Non-Liability of Officials and Employees of City.

No official or employee of City shall be personally liable for any default or liability under this Agreement.

Section 23. Law to Govern: Venue

The law of the State of California shall govern this Agreement. In the event of litigation between the parties, the action must be filed in the Santa Clara County Superior Court.

Section 24. Limitations Upon Subcontracting and Assignment.

Neither this Agreement or any portion shall be assigned by Subdivider without prior written consent of City.

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Section 25. Miscellaneous

(a) Compliance with Law: Subdivider shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

(b) Non-Discrimination. Subdivider covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, ancestry, or sexual orientation in any activity pursuant to this Agreement.

(c) Conflict of Interest and Reporting. Subdivider shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

(d) Time of Essence. Time is of the essence in the performance of this Agreement.

(e) Interpretation. This Agreement shall be interpreted as though prepared by both parties.

(f) Preservation of Agreement. Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

IN WITNESS THEREOF, these parties have executed this Agreement on the day and year shown below.

[TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS: (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND** (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.]

CITY OF MORGAN HILL

By:

Steve Rymer, City Manager

Date: _____

ATTEST:

By:

Michelle Wilson, Deputy City Clerk

Date: _____

APPROVED AS TO FORM:

By:

Donald A. Larkin, City Attorney

Date: _____

"Subdivider"

LIVE OAK INVESTMENTS LLC

By:

Print Name

(If Corporation, must be Chairperson of the Board, President, or Vice President)

Date: _____

By:

Print Name

(If Corporation, must be Secretary, Assistant Secretary, CFO, or Assistant Treasurer)

Date: _____

EXHIBIT "A"
IMPROVEMENTS AND
ESTIMATED COSTS OF IMPROVEMENTS
AS OF MARCH 2017

	Description	Quantity	Unit	Unit Price	Total
Schedule I - Public Tract Streets					
4	Street finish grading	14400	LS	\$0.50	\$7,200.00
7	AC pavement (4"AC/13AB)	14400	LS	\$5.50	\$79,200.00
8	City std. curb and gutter	700	LF	\$25.00	\$17,500.00
14	City std. electroliers	5	EA	\$3,000.00	\$15,000.00
Schedule II - Water Improvements					
1	8" DIP water main	993	LF	\$50.00	\$49,650.00
2	City std. fire hydrant	3	EA	\$4,000.00	\$12,000.00
3	1" water services	14	EA	\$1,500.00	\$21,000.00
4	1-1/2" irrigation w/RPBP	1	EA	\$2,000.00	\$2,000.00
5	Existing fire hydrant relocation	1	EA	\$1,000.00	\$1,000.00
Schedule III - Sanitary Sewer					
1	8" PVC sanitary main (SDR26)	350	EA	\$4.00	\$1,400.00
2	City std. manholes	3	EA	\$3,500.00	\$10,500.00
Schedule IV - Storm Drainage					
1	24" RCP SD	77	LF	\$68.00	\$5,236.00
2	15" RCP SD	100	LF	\$55.00	\$5,500.00
4	City std. curb inlets	3	EA	\$3,000.00	\$9,000.00
Schedule V - Dunne & Murphy					
1	Street Grading	19528	SF	\$1.00	\$19,528.00
2	AC pavement (5"AC/14.5AB)	11478	LS	\$6.00	\$68,868.00
3	City std. curb and gutter	755	LF	\$25.00	\$18,875.00
4	City std. sidewalk	3977	SF	\$6.00	\$23,862.00
5	Min. 2" AC grind and overlay	19570	LS	\$2.00	\$39,140.00
6	Signing & striping	1	LS	\$10,000.00	\$10,000.00
7	City std. fire hydrant	1	EA	\$4,000.00	\$4,000.00
8	8" sewer PVC (SDR 26)	294	LF	\$60.00	\$17,640.00
9	Sanitary sewer manholes	1	EA	\$3,500.00	\$3,500.00
11	City std. electroliers	5	EA	\$3,500.00	\$17,500.00
11	24" RCP storm drain	424	LF	\$90.00	\$38,160.00
12	City std. manholes	1	EA	\$3,500.00	\$3,500.00
Sub Total					\$500,759.00
10% Contingency					\$50,075.90
Total					\$550,834.90

EXHIBIT "B"
PERFORMANCE BOND
(100% of Engineer's Estimate)

Bond No.:

Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California, and **LIVE OAK INVESTMENTS LLC** (hereinafter designated as "principal") have entered into a Subdivision Improvement Agreement:

LIVE OAK INVESTMENTS LLC
DUNNE MURPHY – TRACT NO. 10387

whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 2017, and identified as project **Dunne Murphy – Tract No. 10387**, is hereby referred to and made a part hereof; and

Whereas, Said principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement.

Now, therefore, we, the principal and _____, as surety, are held and firmly bound unto the City of Morgan Hill hereinafter called ("City"), in the penal sum of **four hundred eighty nine thousand two hundred forty seven dollars (\$489,247)**, lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The Surety's office is located at _____,

Telephone No. _____; the Surety is licensed to do business in the State of California; and the California Insurance Agent's License No., address, and telephone number are as follows:

License No.:

Address: _____

Telephone No.: _____ .

The non-resident agent for the Surety, if any, is a party to the transaction:

Name of non-resident agent: _____

Performance Bond
Page 1 of 4
Version: October 2016

Non-resident agent's office address: _____

Telephone No.: _____

The condition of this obligation is such that if the above bounded principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

Executed this _____ day of _____ 2017.

 Principal

 Principal

By: _____
 Surety

By: _____

Attorney-in Fact

By:

California Resident Agent

By:

Non-resident Agent - Attorney-in-Fact

APPROVED:

Karl Bjarke, Public Works Director

Date:

APPROVED AS TO FORM:

By:

Donald A. Larkin, City Attorney

Date:

(Acknowledgment on following page.)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of **California**
County of **Santa Clara**

On _____ 20__, before me, _____ a Notary Public in and for said County and State, personally appeared _____ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of **California**
County of **Santa Clara**

On _____ 20__, before me, _____ a Notary Public in and for said County and State, personally appeared _____ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Performance Bond
Page 4 of 4
Version: October 2016

EXHIBIT "C"
LABOR AND MATERIAL BOND
(100% of Engineer's Estimate)

Bond No.:

Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California, **LIVE OAK INVESTMENTS LLC** (hereinafter designated as "the principal") have entered into a Subdivision Improvement Agreement:

LIVE OAK INVESTMENTS LLC
DUNNE MURPHY – TRACT NO. 10387

whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated _____, 2017, and identified as project **Dunne Murphy – Tract No. 10387**, is hereby referred to and made a part hereof; and

Whereas, under the terms of the agreement, the principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the City of Morgan Hill, hereinafter "City," to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California.

Now, therefore, the principal and the undersigned as corporate surety, and their successors and assigns are held firmly bound unto City and all contractors, subcontractors, laborers, materialmen, and other persons employed in the performance of the agreement and referred to in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code in the sum of **four hundred eighty nine thousand two hundred forty seven dollars (\$489,247)**, for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

Labor and Material Bond
Page 1 of 4
Version: October 2016

The Surety's office is located at _____,

Telephone No. _____; the Surety is licensed to do business in the State of California; and the California Insurance Agent's License No., address, and telephone number as follows:

License No.:

Address: _____

Telephone No.: _____.

The following non-resident agent, if any, for the Surety is a party to the transaction:

Name of non-resident agent: _____,

Non-resident agent's office address: _____

Telephone No.: _____.

The surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

Executed this _____ day of _____ 2017.

Principal

Principal

By:

Surety

By:

Labor and Material Bond

Page 2 of 4

Version: October 2016

Attorney-in Fact

By:

California Resident Agent

By:

Non-resident Agent - Attorney-in-Fact

APPROVED:

Karl Bjarke, Public Works Director

Date:

APPROVED AS TO FORM:

By:

Donald A. Larkin, City Attorney

Date:

(Acknowledgment on following page.)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of **California**
County of **Santa Clara**

On _____ 20__, before me, _____ a Notary Public in and for said County and State, personally appeared _____ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of **California**
County of **Santa Clara**

On _____ 20__, before me, _____ a Notary Public in and for said County and State, personally appeared _____ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Labor and Material Bond
Page 4 of 4
Version: October 2016

EXHIBIT "D"
CASH DEPOSIT AGREEMENT GUARANTEEING IMPROVEMENTS
LIVE OAK INVESTMENTS LLC
DUNNE MURPHY – TRACT NO. 10387

THIS AGREEMENT is made this ____ day of _____, 2017, by the City of Morgan Hill, a municipal corporation, ("City"), and **LIVE OAK INVESTMENTS LLC**, a limited liability ("Subdivider").

RECITALS

The following Recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Sections 17.32.180 and 17.32.190 of the City of Morgan Hill's Municipal Code.
2. City has entered into a Subdivision Improvement Agreement, with Subdivider pertaining to the development on **Tract 10378** and commonly known as **Dunne Murphy**, and the Subdivision Improvement Agreement shall be referenced for further particulars of the subdivision. This Cash Deposit Agreement "Agreement" is intended to fulfill the requirements for Performance/Labor & Material Bonds as set forth in the Subdivision Improvement Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Deposit.** That Subdivider has deposited the cash sum (cash, certified check, or cashier's check) of **nine hundred thirty six thousand four hundred nineteen dollars (\$936,419)** in lawful money of the United States of America herein called "Deposit Sum", with City, which funds shall be used for installing and guaranteeing the public improvements required by the Subdivision Improvement Agreement between City and Subdivider. The Subdivision Improvement Agreement is attached hereto and incorporated herein as Exhibit "A", and Subdivider certifies and warrants that they have reviewed the Subdivision Improvement Agreement and agree to be bound by relevant provisions of such Agreement.
2. **Additional Deposits.** In the event the Deposit Sum is insufficient to complete and/or repair the public improvements, Subdivider will deposit with City such additional sum in lawful money of the United States of America as an additional deposit in such amount that will be

CASH DEPOSIT AGREEMENT
 GUARANTEEING IMPROVEMENTS

Page 1 of 4
 Version: October 2016

required to complete the public improvements; said additional deposit to be subject to the terms of this Agreement.

3. **Disbursement.** The parties agree that City shall disburse, via two party checks, to the Subdivider, the contractor or the subcontractor in order to pay contractors, subcontractors, laborers and material suppliers performing work pursuant to the Subdivision Improvement Agreement, upon certification by the City Engineer of Morgan Hill that sufficient work has been completed to justify the progress payment request of Subdivider. It is further agreed that City will not disburse aggregated payments in excess of **three hundred eighty five thousand five hundred eighty four dollars (\$385,584)** or until City has accepted the subdivision improvements in their entirety. Upon both City acceptance of the subdivision improvements and Subdivider submittal of Warranty Bond, City can disburse up to **nine hundred thirty six thousand four hundred nineteen dollars (\$936,419)** in the aggregate of the funds. One (1) year after City acceptance of the subdivision improvements, upon written approval of City's Engineer, remaining funds can be disbursed by City.

4. **City Substitution for Subdivider.** In the event Subdivider fails to properly perform under the Subdivision Improvement Agreement, and City exercises its right to perform the contract itself or to subcontract work to a third party pursuant to the Subdivision Improvement Agreement, then Subdivider agrees that all funds then remaining shall remain deposited with City for disbursement to parties actually performing the work.

5. **Non-Liability of Officials and Employees of City.** No official or employee of City shall be personally liable for any default or liability under this Agreement.

6. **Independent Contractor.** It is agreed that Subdivider and Subdivider's contractors, subcontractors, agents, or employees shall act and be independent contractors and not agents or employees of City.

7. **Subdivision Agreement.** This Agreement shall include the Subdivision Agreement which is incorporated herein. In the event of any inconsistency between the terms of the Subdivision Agreement and this Agreement, the Subdivision Agreement shall govern.

8. **Indemnity.** All indemnity provisions of the Subdivision Improvement Agreement shall apply with full force to this Agreement. City shall not be liable to Subdivider, Subdivider's contractors, subcontractors, agents, or employees for any payment under this agreement; liability for full repayment under the Subdivision Improvement Agreement shall be the sole responsibility of Subdivider.

CASH DEPOSIT AGREEMENT
GUARANTEEING IMPROVEMENTS

Page 2 of 4
Version: October 2016

9. **Limitations Upon Subcontracting and Assignment.** Neither this Agreement nor any portion shall be assigned by Subdivider without prior written consent of City.

10. **Authority to Execute.** The persons executing this Agreement on behalf of entities represent and warrant that they are duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

11. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified on provisions waived only by subsequent mutual written agreement executed by City and Subdivider.

12. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.

13. **Interpretation.** This Agreement is a negotiated document and shall be deemed to have been drafted jointly by both parties, and no rule of construction or interpretation shall apply against any particular Party bases on a contention that the Agreement was drafted by one of Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.

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CASH DEPOSIT AGREEMENT
GUARANTEEING IMPROVEMENTS

Page 3 of 4
Version: October 2016

14. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

IN WITNESS THEREOF, these parties have executed this Agreement on the day and year shown below.

[TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS: (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND** (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.]

ATTEST:

CITY OF MORGAN HILL

By: _____
Michelle Wilson, Deputy City Clerk
Date: _____

By: _____
Steve Rymer, City Manager
Date: _____

APPROVED:

**"SUBDIVIDER"
LIVE OAK INVESTMENTS LLC**

By: _____
Karl Bjarke, Public Works Director
Date: _____

By: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

**"SUBDIVIDER"
LIVE OAK INVESTMENTS LLC**

By: _____
Donald A. Larkin, City Attorney
Date: _____

By: _____
Title: _____
Date: _____

CASH DEPOSIT AGREEMENT
GUARANTEEING IMPROVEMENTS

Page 4 of 4
Version: October 2016

RECORDING REQUESTED BY:

CITY OF MORGAN HILL

WHEN RECORDED MAIL DOCUMENT TO:

CITY CLERK
CITY OF MORGAN HILL
17575 PEAK AVENUE
MORGAN HILL, CA 95037

RECORD AT NO FEE PER GOVERNMENT
CODE SECTIONS 6103 & 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**STORMWATER BEST MANAGEMENT PRACTICES,
OPERATION, AND MAINTENANCE AGREEMENT**

THIS STORMWATER BEST MANAGEMENT PRACTICES OPERATION, AND MAINTENANCE AGREEMENT ("AGREEMENT") is made and entered into this _____ day of _____, **2017**, by **DUNNE MURPHY HOA**, (hereinafter referred to as "COVENANTOR") and the City of Morgan Hill ("CITY"). CITY and COVENANTOR may be referred to individually as a "Party" or collectively as the "Parties" throughout this AGREEMENT.

RECITALS:

This AGREEMENT is made and entered into with reference to the following facts:

- A. CITY is authorized and required to regulate and control the disposition of storm and surface waters as set forth in CITY's National Pollutant Discharge Elimination System permit.
- B. COVENANTOR is the owner of a certain tract or parcel of land more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "PROPERTY").
- C. COVENANTOR desires to construct certain improvements of the kind or nature described in Morgan Hill Municipal Code Chapter 18.71 (the "ORDINANCE") on the PROPERTY that may alter existing stormwater conditions on both the PROPERTY and adjacent lands.
- D. To minimize adverse impacts due to these anticipated changes in existing storm and surface water flow conditions, COVENANTOR is required by CITY to implement Best Management Practices ("BMPs") and to build and maintain, at COVENANTOR's expense, stormwater management facilities ("FACILITIES"), more particularly described and shown in the **STORMWATER RUNOFF MANAGEMENT PLAN FOR TRACT NO. 10387** prepared by **MH ENGINEERING** and dated **MARCH 2017**, which plans and any amendments thereto, are on file with CITY's Public Works Department, and are hereby incorporated by this reference.
- E. CITY has reviewed and approved the Stormwater Runoff Management Plan (the "PLAN") subject to the execution of this AGREEMENT.

NOW, THEREFORE, in consideration of the benefit received and to be received by COVENANTOR, its successors, and assigns, as a result of CITY's approval of the Stormwater Runoff Management Plan, COVENANTOR, hereby covenants and agrees with CITY as follows:

1. Covenants Running With the Land; Property Subject to Agreement: All of the real property described in Exhibit "A" shall be subject to this AGREEMENT. It is intended and determined that the provisions of this AGREEMENT shall run with the land and shall be binding on all parties having or acquiring any right, title, or interest in the real PROPERTY or any portion thereof and shall be for the benefit of each owner of any of said parcels or any portion of said PROPERTY and shall inure to the benefit of and be binding upon each successor in interest of the owners thereof. Each and all of the limitations, easements, obligations, covenants, conditions, and restrictions contained herein shall be deemed to be, and shall be construed as, equitable servitudes, enforceable by any of the owners of any of the PROPERTY subject to this AGREEMENT against any other owner, tenant or occupant of the said PROPERTY, or any portion thereof.

2. Responsibility for Installation, Operation, and Maintenance: At its sole expense, COVENANTOR, its successors, and assigns, shall construct, operate, and perpetually maintain the FACILITIES in strict accordance with the PLAN and any amendments thereto that have been approved by CITY or required by the ORDINANCE.
3. Facility Modifications: At its sole expense, COVENANTOR, its successors, and assigns, shall make such changes or modifications to the FACILITIES as may be determined as reasonably necessary by CITY to ensure that the FACILITIES are properly maintained and continue to operate as originally designed and approved. COVENANTOR agrees that it shall not modify the BMPs and shall not allow BMP maintenance activities to alter the designed function of the FACILITIES from its original design unless approved by CITY prior to the commencement of the proposed modification or maintenance activity.
4. Facility Inspections by CITY: At reasonable times and in a reasonable manner as provided in the ORDINANCE, CITY, its agents, employees, and contractors shall have the right of ingress and egress to the FACILITIES and the right to inspect the FACILITIES in order to ensure that the FACILITIES are being properly maintained, are continuing to perform in an adequate manner, and are in compliance with the ORDINANCE, the PLAN and any amendments thereto approved by CITY.
5. Failure to Perform Required Facility Repairs or Modifications: Should either COVENANTOR or its successors and assigns fail to implement the BMPs, maintain the facilities, or correct any defects in the FACILITIES in accordance with the approved design standards and/or the PLAN, and in accordance with the law and applicable regulations of the ORDINANCE, after thirty (30) days from the date of the written notice from CITY, CITY shall have the right to enter the PROPERTY to perform remedial work, for which CITY will collect reimbursement for such work from COVENANTOR. Additionally, conditions from failure to implement the BMPs or to maintain or correct the FACILITIES shall be deemed a nuisance subject to abatement of such conditions as provided in Chapter 1.18 of the Morgan Hill Municipal Code. In addition, CITY may pursue other such remedies as provided by law, including, but not limited to, such civil and criminal remedies set forth in the ORDINANCE.
6. Indemnity: COVENANTOR, its successors, and assigns, shall defend, indemnify, and hold CITY harmless of and from any and all claims, liabilities, actions, causes of action, and damages for personal injury and property damage, including, without limitation, reasonable attorneys' fees, arbitration fees, or costs and court costs, arising out of or related to COVENANTOR's, its successors', and/or assigns' construction, operation, or maintenance of the FACILITIES except claims, liabilities, actions, causes of action, and damages that arise out of CITY's sole negligence or willful misconduct or the sole negligence or willful misconduct of any of CITY'S employees, agents, representatives, contractors, vendors, or consultants.
7. Obligations and Responsibilities of COVENANTOR: Initially, COVENANTOR is solely responsible for the performance of the obligations required hereunder and, to the extent permitted under applicable law, the payment of any and all fees, fines, and penalties associated with such performance or failure to perform under this AGREEMENT. Notwithstanding any provisions of this AGREEMENT to the contrary, upon the recordation of a deed or other instrument of sale, transfer or other conveyance of fee simple title to the PROPERTY or any portion thereof (a "Transfer") to a third party (the "Transferee"), COVENANTOR shall be released of all of its obligations and responsibilities under this AGREEMENT accruing after the date of such Transfer to the extent such obligations and responsibilities are applicable to that portion of the PROPERTY included in such Transfer, but such release shall be expressly conditioned upon the Transferee assuming such obligations and responsibilities by recorded written agreement for the benefit of CITY. Such written agreement may be included in the Transfer deed or instrument, provided that the Transferee joins in the execution of such deed or instrument. A certified copy of such deed, instrument, or agreement shall be provided to CITY. The provisions of the preceding three sentences shall be applicable to the original COVENANTOR and any successor Transferee who has assumed the obligations and responsibilities of COVENANTOR under this AGREEMENT as provided above.
8. Property Transfer: Nothing herein shall be construed to prohibit a transfer by COVENANTOR to subsequent owners and assigns.

9. Attorneys' Fees: In the event that any Party institutes legal action or arbitration against the other to interpret or enforce this AGREEMENT, or to obtain damages for any alleged breach hereof, the prevailing party in such action or arbitration shall be entitled to reasonable attorneys' or arbitrators' fees in addition to all other recoverable costs, expenses, and damages.
10. Further Documents: The Parties covenant and agree that they shall execute such further documents and instructions as shall be necessary to fully effectuate the terms and provisions of this AGREEMENT.
11. Entire Agreement: This AGREEMENT constitutes the entire agreement of the Parties with respect to the subject matter contained herein and supersedes all prior agreements, whether written or oral. There are no representations, agreements, arrangements, or undertakings, oral or written, that are not fully expressed herein.
12. Severability: In the event any part or provision of this AGREEMENT shall be determined to be invalid or unenforceable under the laws of the State of California, the remaining portions of this AGREEMENT that can be separated from the invalid, unenforceable provisions shall, nevertheless, continue in full force and effect.
13. No Waiver: The waiver of any covenant contained herein shall not be deemed to be a continuing waiver of the same or any other covenant contained herein.
14. Amendment: This AGREEMENT may be amended in whole or in part only by mutual written agreement. Any such amendment shall be recorded in Santa Clara County, California. In the event any conflict arises between the provisions of any such amendment and any of the provisions of any earlier document or documents, the most recently duly executed and recorded amendment shall be controlling.
15. In the event that CITY shall determine, at its sole discretion, at any future time, that the FACILITIES are no longer required, then at the written request of COVENANTOR, its successors, and/or assigns, CITY shall execute a release of this AGREEMENT which COVENANTOR, its successors, and/or assigns, shall record in the Recorder's Office, at its expense.

Executed the day and year first above written.

COVENANTOR:

By: _____

Name: _____

Title: _____

CITY OF MORGAN HILL:

By: _____

Name: **STEVE RYMER**

Title: **CITY MANAGER, CITY OF MORGAN HILL**

APPROVED AS TO FORM:

By: _____

Name: **DONALD A. LARKIN**

Title: **CITY ATTORNEY, CITY OF MORGAN HILL**



CITY COUNCIL STAFF REPORT

MEETING DATE: April 19, 2017

PREPARED BY: Nick Calubaquib, Recreation Manager
APPROVED BY: City Manager

APPROVAL OF AQUATICS CENTER CONCESSIONAIRE LICENSE AGREEMENT

RECOMMENDATION(S)

Authorize the City Manager to execute, administer and further negotiate as necessary a Concessionaire License Agreement with Sycamore Concessions Corporation for the provision of food and beverage concessions at the Morgan Hill Aquatics Center.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community

REPORT NARRATIVE:

In January 2017, the City issued a Request for Proposal (RFP) for the Aquatics Center's (AC) concession operations, with the goal of entering into a contract with an experienced food and beverage operator. Public notice was published in the Morgan Hill Times on January 20 and January 27, 2017 and a pre-bid conference was conducted at the Morgan Hill Aquatics Center on February 9, 2017.

As a result of the RFP, the City received three (3) proposals from the following vendors:

1. Big Kahuna Company
2. Champion Bistro
3. Sycamore Concessions Company

The most recent concessions operator at the Aquatics Center, Burrito Azteca, did not submit a proposal. After reviewing proposals, interviews were scheduled with the three vendors. Big Kahuna Company declined an interview.

After interviewing the two remaining vendors and performing reference checks, staff recommends entering into a concessionaire license agreement with Sycamore Concessions Company (SCC). SCC currently provides concessions services at the Tilden Park Merry Go Round with the East Bay Regional Park District and at Standard Ball Park with the Tuolumne County Recreation Department. It is expected that SCC's food service experience and focus on high quality customer satisfaction will continue to improve the AC's guest experience.

SCC will offer a variety of menu items, including hamburgers and hot dogs. SCC will also expand previous offerings to include more health focused items, in accordance with the City's Healthy Food and Beverage Guidelines, including organic juices, fresh fruit, salads, and sandwiches.

Key terms of the agreement include:

1. City's compensation would be the greater of \$25,000 annually or 22 percent of net income (gross sales less sales tax).
2. Two-year agreement with two (2) one year options to renew.
3. Allow outside food and beverage (excluding alcohol). In response to high customer demand, customers will be allowed to bring outside food and beverages into the facility for consumption.

COMMUNITY ENGAGEMENT: Consult

Community Services teammates will continue to solicit and gather feedback from Aquatics Center customers regarding the provision of concession services. Feedback will be shared with the vendor to assist in making operational changes and adjustments.

ALTERNATIVE ACTIONS:

The Council could direct staff to attempt to negotiate changes to key terms of the agreement with the recommended vendor or an alternative vendor. Any further negotiations would need to happen quickly to guarantee a concessionaire is in place before the Aquatics Center Summer Season.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- April 6, 2011 - The Council authorized the City Manager to execute a Concessionaire License Agreement with Burrito Azteca.
- May 7, 2014 – The Council authorized the City Manager to execute a Concessionaire License Agreement with Burrito Azteca.

FISCAL AND RESOURCE IMPACT:

This agreement would generate a minimum of \$25,000 in revenue annually to support AC operations. This revenue is accounted for in the adopted budget.

CEQA (California Environmental Quality Act):

Not a project.

Since the resulting activity is an administrative program that will not result in a change to the physical environment, this action is not a project under the California Environmental Quality Act.

LINKS/ATTACHMENTS:

1. Sycamore Concession Agreement 2017

**CITY OF MORGAN HILL
AND
SYCAMORE CONCESSIONS CORPORATION
CONCESSIONAIRE LICENSE AGREEMENT**

This CONCESSIONAIRE LICENSE AGREEMENT ("AGREEMENT") is made this ____ day of _____, 2017 ("Effective Date"), by and between the CITY of Morgan Hill, a municipal corporation ("CITY"), and Sycamore Concessions Corporation ("Sycamore"), a California corporation.

RECITALS

- A. CITY currently operates the Morgan Hill Aquatics Center ("AC").
- B. Sycamore is an experienced food and beverage concessionaire with operations in the City of Berkeley, California and Sonoma, California.
- C. Sycamore desires to license from CITY and CITY desires to license to Sycamore the right to use certain portions of the AC for the purpose of providing food and beverage concession services and vending machine services to the public.

NOW THEREFORE, the parties agree as follows.

AGREEMENT

1. Parties.

A. CITY is the CITY of Morgan Hill, with its principal contact for purposes of this AGREEMENT as follows: Community Services Director, 17575 Peak Avenue, Morgan Hill, CA 95037, phone: 408-782-9154.

B. Sycamore is Sycamore Concession Corporation, a California corporation, with its principal contact for purposes of this AGREEMENT as follows: President, 3060 El Cerrito Plaza #274, El Cerrito, CA 94530, phone: 510-715-0217.

2. Term and Renewal.

A. The "Term" of this AGREEMENT shall be for two years from the Effective Date unless terminated earlier as provided in Section 18 of this AGREEMENT or extended by mutual agreement as provided below. Sycamore's obligation to make final payment and the CITY's right to audit that payment shall survive the termination of this Agreement.

B. Six months after the Effective Date, or anniversary thereof upon renewal, both parties will meet to review the AGREEMENT terms and determine if a one year option to renew will be exercised. Any such renewal shall be by mutual written agreement. This AGREEMENT may be renewed for two (2) one year terms; the maximum term of this Agreement is four years from the Effective Date.

3. Compensation.

A. On or before the 15th day of each month following the Effective Date of this Agreement, Sycamore shall pay to CITY without notice or demand, 22 percent (22%) of "Net Income" as defined below collected by Sycamore from its operations at the AC during the preceding month ("Base Payment"). Sycamore guarantees that the CITY shall receive a Base Payment of at least \$25,000

for each one year period starting from the Effective Date of this Agreement. The same guarantee terms shall apply to any renewals of this Agreement. Each payment shall be accompanied by a report reflecting gross sales totals for each day of operation included in payment, sales tax paid/due and the total due to CITY.

For purposes of this AGREEMENT, "Net Income" shall mean amounts received by Sycamore from any source relating to the license described in Section 4 less sales taxes paid on those revenues.

B. Within 10 days after written notice, Sycamore shall provide the CITY with all financial books, records and receipts requested by CITY for the purpose of verifying the amount of Sycamore's revenues and the accuracy of Sycamore's calculation of the amount of compensation due to the CITY under this AGREEMENT. If an underpayment is determined based upon such review, Sycamore shall remit the balance owing within 30 days of notification by the CITY of its findings.

4. Permission Granted.

CITY hereby licenses to Sycamore and Sycamore hereby licenses from CITY for the term, at the price, and upon the terms, covenants and conditions set forth herein, the right to provide food and beverage concession services and vending machine services at the AC according to the following schedule:

Concession Summary Matrix:

	<u>Sycamore</u>	<u>Swim Meet Organizer</u>	<u>Customer</u>
Summer Recreation Swim Season (Defined as Memorial Day weekend to third weekend in September)	Exclusive		
Summer Swim Meets (Defined as Memorial Day weekend to third weekend in September)	Allowed	Allowed	
Summer Parties and Special Events (Defined as Memorial Day weekend to third weekend in September)	Exclusive		
Vending Machines (Year round)	Exclusive		
Outside food and beverage			Allowed*

*Aquatics Center customers shall be allowed to bring outside food and beverage (excluding alcohol) into the facility for consumption at the facility. The City may change or adjust this policy at its sole discretion.

5. Premises.

The parties agree that the rights provided by CITY to Sycamore create a license and do not create any tenancy, leasehold or possessory interest in the AC. CITY agrees that Sycamore, upon payment of the fees and charges specified herein, and upon observing and keeping the required terms, conditions and covenants of this AGREEMENT, shall lawfully use the area designated as the "Premises" as specified in Exhibit "A" during the term of this AGREEMENT for the uses granted.

In carrying out its concession right on the Premises, Sycamore shall not interfere or obstruct the operation of the AC or the public enjoyment and use of the AC. The concession rights herein granted shall be carried on at the AC solely within the limits and confines of the Premises. No temporary stands or other places of operation shall be allowed during any other time without the express written permission of the Community Services Director. In the case of disputes, during the life of this AGREEMENT, over any conditions which may impede upon Sycamore's quiet enjoyment of the concession Premises, the Community Services Director shall have final determination of any solution to such dispute. His or her final determination shall be binding upon all parties in such dispute.

Sycamore shall not use or allow the Premises to be used, in whole or in part, during the term of this AGREEMENT, for any use in violation of any present or future laws, ordinances, rules, and regulations at any time applicable thereto of any public or governmental authority or agencies, departments or officers thereof, including CITY. These ordinances, rules, and regulations include those which relate to sanitation, public health and safety.

CITY reserves the right to further develop or improve the Premises as it sees fit; provided that the CITY will use its best efforts to minimize interference on the operation of the concession. At any time during the term of this AGREEMENT, the CITY may, by appropriate resolution fully setting forth the reason therefore, require Sycamore to surrender any portion of the Premises. Should CITY impose such a requirement on Sycamore to surrender, CITY shall provide comparable space at the AC for the continued operation of the concession.

6. Use. The Premises shall be used and occupied by Sycamore as a concessionaire for the preparation and sale of food and beverages for sale to and consumption by visitors and for no other purposes without the CITY'S prior approval.

7. Equipment, Furnishings and Supplies.

A. CITY shall have responsibility and sole discretion regarding the construction, purchase, and/or installation, of: furniture, fixtures, equipment, and interior furnishings to be utilized by Sycamore on the Premises, including, but not limited to, appliances and equipment, sinks, dishwashers, refrigerators, freezers, counters, tables, garbage disposals, and trash compactors.

B. Sycamore shall be solely responsible for the purchase of all food, beverages, paper products, and supplies, including office supplies to be used in its operations.

8. Common Areas.

A. Definition of Common Areas. The term "Common Areas" as used herein means all areas and facilities outside the Premises and within the exterior boundary line of the AC.

B. Sycamore 's Rights in Common Areas. CITY hereby grants to Sycamore, for the benefit of Sycamore and its employees, suppliers, shippers, customers, and invitees, during the Term of this AGREEMENT, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by CITY under the terms hereof. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas.

C. Changes. CITY shall have the right, in CITY's sole discretion, so long as it will not unreasonably interfere with Sycamore 's use of the Premises and the accessibility of the public to the Premises, to make changes to or temporarily close the Common Areas.

9. Maintenance and Repairs.

A. CITY's Obligations. CITY shall, at its own expense, keep in good condition and repair the building's roof, foundations, windows, doors and interior and exterior walls, structural condition of interior bearing walls of the Premises, and air conditioning, electrical, steam, heating, ventilating, mechanical, plumbing systems and appliances as well as the parking lots, walkways, driveways, landscaping, fences, signs, and utility installations of the Common Areas and all parts thereof (collectively the "CITY Obligations"). CITY shall not be liable for damages or loss of any kind or nature by reason of CITY's failure to furnish any Common Area services when such failure is caused by accident, breakage, repairs, strikes, lockout, or other labor disturbances or disputes of any character, or by any other cause beyond the reasonable control of CITY.

B. Sycamore's Obligations. Sycamore shall at its own expense, keep in good order and condition: its vending machines, the Premises, and every part thereof including, equipment within the Premises, fixtures, interior walls and interior surfaces of exterior walls, and ceilings. Sycamore shall complete all maintenance work expeditiously in a first class and workmanlike manner using high quality new materials. Sycamore shall be responsible for emptying trash bins within the Premises in the appropriate trash dumpster and cleaning and removing trash, including the clean-up of spilled food or beverages, from that portion of the Common Area located within twenty (20) feet of the exterior wall of the Premises and the picnic, party and cabana areas when Sycamore provides food and beverage service to parties in said areas. Sycamore shall closely monitor that portion of the Common Area that it is required to maintain and immediately clean-up spilled food or drinks. Sycamore shall also be responsible for collecting all serving trays, drink pitchers and other Sycamore supplies from throughout the Common Area at the end of each business day.

C. CITY and CITY's agents shall have the right to enter the Premises at reasonable times for the purpose of inspecting the same.

D. If Sycamore fails to perform Sycamore 's maintenance and repair obligations, CITY may enter upon the Premises after ten (10) days' prior written notice to Sycamore (except in the case of emergency, in which case no notice shall be required), perform such obligations on Sycamore's behalf and put the Premises in good order and condition and the cost thereof together with interest thereon at the maximum rate then allowable by law shall be due and payable as additional rent to CITY together with Sycamore 's next monthly compensation payment to the CITY.

E. On the last day of the Term hereof, or on any sooner termination, Sycamore shall surrender the Premises to CITY in the same condition as received, ordinary wear and tear excepted, clean and free of debris. Any damage or deterioration of the Premises shall not be deemed ordinary

wear and tear if the same could have been prevented by good maintenance practices. Sycamore shall repair any damage to the Premises occasioned by the installation or removal of trade fixtures, alterations, furnishings, and equipment made by Sycamore.

F. Notwithstanding any other provision of this Section 9, the parties agree that Sycamore shall repair all Equipment used for purposes of this AGREEMENT with a repair cost of \$500 or less and the CITY shall repair all Equipment used for purposes of this AGREEMENT with a repair cost over \$500. For purposes of this Section 9 F, "Equipment" shall mean the inventory listed on the attached Exhibit "B" which Exhibit may be revised from time to time by mutual written agreement, which in the case of the CITY may be authorized by the Community Services Director; provided however that Sycamore shall be responsible for the cost of repair of any damage or malfunction of the Equipment caused by Sycamore's failure to maintain or by Sycamore's negligence.

10. Alterations and Additions.

A. Sycamore shall not, without CITY's prior written consent, make any alterations, improvements, additions, or Utility Installations in, on, or about the Premises, or the AC during the Term of this AGREEMENT, nor shall Sycamore make any change or alteration to the exterior of the Premises or the exterior of any buildings which are part of the AC. For purposes of this AGREEMENT, "Utility Installation" shall mean carpeting, window coverings, air lines, power panels, electrical distribution systems, lighting fixtures, space heaters, air conditioning, and plumbing. In the event that CITY consents to any alteration, improvement, addition, or Utility Installation, if CITY so elects, CITY may require that Sycamore remove any or all of said alterations, improvements, additions, or Utility Installations at the expiration of the term, and restore the Premises to their prior condition. CITY may require Sycamore to provide CITY, at Sycamore's expense, a lien and completion bond in an amount equal to one and one-half times the estimated cost of such improvements, to insure CITY against any liability for mechanics' and materialmen's liens and to insure completion of the work. Should Sycamore make any alterations, improvements, additions, or Utility Installations without the prior written approval of CITY, CITY may, at any time during the Term of this AGREEMENT, require that Sycamore remove any or all of the same. All work with respect to any alteration or addition must be performed in a good and workmanlike manner.

B. Any alterations, improvements, additions, or Utility Installations in or about the Premises that Sycamore shall desire to make and which require the consent of CITY shall be presented to CITY in written form with proposed detailed plans. If CITY shall give its consent, the consent shall be deemed conditioned upon Sycamore acquiring any necessary permits from appropriate governmental agencies, the furnishing of copies thereof to CITY prior to the commencement of the work, and the compliance by Sycamore with all conditions of said permits in a prompt and expeditious manner.

11. Utilities and Services.

A. CITY shall furnish: (i) heating, air conditioning ventilation, electric current, gas and domestic water service in reasonable amounts as required for the normal use and occupancy of the Premise; and (ii) a grease interceptor, sewer line to the kitchen, and kitchen ventilation to the roof. All other services required for operation shall be furnished at Sycamore's expense.

B. Without the prior written consent of CITY, Sycamore shall not use any apparatus or device in the Premises that will in any way increase the amount of electricity, gas or water to be provided by CITY.

C. CITY shall have no obligation to furnish janitorial services to the Premises which shall be furnished by Sycamore at Sycamore's expense.

D. CITY reserves the right to temporarily stop the service of the air conditioning, plumbing, electrical, or other mechanical systems or facilities in any building when necessary by reason of accident or emergency, or for repairs, alterations, replacements, or improvements, that, in the reasonable judgment of CITY, are desirable or necessary, until such repairs, alterations, replacements, or improvements shall have been completed. CITY supports conservation efforts and, to that end, may cooperate with the efforts of national, state, or local governmental agencies or utilities in reducing energy or other natural resource consumption. In connection therewith, CITY reserves the right to limit, restrict, or ration on a reasonably nondiscriminatory basis the use of water, electricity, or any other form of energy or any other service or utility serving the Premises or any building.

12. Menus.

A. Sycamore shall submit to CITY for approval a proposed menu of all food and beverage items, including vending machine items and special event catering selections, and their prices, prior to the offering of any items for sale at the AC. No food or beverage items shall be offered for sale without CITY's prior approval.

B. Sycamore shall offer a reasonably priced menu that contains popular, healthy, freshly prepared items and pre-packaged snacks, and may expand/vary the menu offerings from time to time with the mutual agreement of the City. The menu shall comply with the City's Healthy Food and Beverage guidelines as they apply to concessionaires.

C. Sycamore shall not sell any non-food or non-beverage items without express written consent of the CITY.

D. Sycamore shall not sell any alcohol or tobacco products without prior written consent of the CITY.

E. Sycamore shall furnish and post professionally printed menus and signs at the food concession store, cabanas and other mutually agreed upon locations.

F. For purposes of this Section 12, the Community Services Director is authorized to provide the CITY's consent.

13. Permits. Sycamore shall, at its own expense, comply with all licenses and/or permit requirements of any governmental agency applicable to Sycamore's operations.

14. Signs. Sycamore shall not place any sign upon the Premises without CITY's prior written consent.

15. Displays. With the exception of food or beverage carts located in areas of the Common Area previously approved in writing by the CITY, Sycamore may not display or sell merchandise outside of the defined exterior walls and permanent doorways of the Premises. Sycamore shall not install any exterior lighting, amplifiers, or similar devices or use in or about the Premises any advertising medium which may be heard or seen outside the Premises, such as flashing lights, searchlights, loudspeakers, phonographs, or radio broadcasts. Sycamore shall not install any window displays without prior approval of the CITY.

16. Hours of Operation. Sycamore shall, during the Term, keep the Premises open for business during the same hours as the AC summer recreation swim hours. Vending machines shall be operable at all times and shall be repaired within 24 hours of oral or written notice from CITY.

17. Minimum Requirements for Sycamore Employees.

- A. Sycamore shall provide its own employees to manage and conduct its concession operations at the AC.
- B. Sycamore shall not permit any Sycamore employee to work at the AC, unless Sycamore has, within 90 days prior to said employee commencing work at the AC, conducted a criminal background check of such employee using Live Scan fingerprint services, and said check discloses no criminal conviction for any felony or misdemeanor involving moral turpitude.
- C. Sycamore shall not permit any Sycamore employee to work at the AC, unless Sycamore has on file with the city or county a certificate showing that within the last two years the person has been examined and has been found to be free of communicable tuberculosis. Sycamore shall comply with the requirements of Public Resources Code § 5163.
- D. Sycamore's employees shall wear uniforms approved by CITY and shall be properly groomed.

18. Termination.

- A. This AGREEMENT may be terminated before the end of the Term as follows:
 - (a) The abandonment of the Premises by Sycamore for three (3) consecutive days.
 - (b) The failure by Sycamore to make any payment when due where such failure continues for a period of three (3) days after written notice thereof from CITY to Sycamore.
 - (c) Except as otherwise provided in this AGREEMENT, the failure by Sycamore to observe or perform any of the covenants, conditions, or provisions of this AGREEMENT to be observed or performed by Sycamore where such failure shall continue for a period of fifteen (15) days. Sycamore shall not be deemed to be in default if Sycamore diligently pursues a cure within said fifteen (15) day period.
 - (d) The making by Sycamore of any general arrangement or general assignment for the benefit of creditors: (i) Sycamore becoming a debtor as defined in Section 101 of Title 11 of the United States Code or any successor statute thereto, or any action taken or suffered by Sycamore under any insolvency, bankruptcy, reorganization, moratorium, or other debtor relief statute, whether now existing or hereinafter amended or enacted; (ii) the appointment of a trustee or receiver to take possession of substantially all of Sycamore's assets located at the Premises or of Sycamore's interest in this AGREEMENT, where possession is not restored to Sycamore within thirty (30) days; or (iii) the attachment, execution, or other judicial seizure of substantially all of Sycamore's assets located at the Premises or of Sycamore's interest in this AGREEMENT, where such seizure is not discharged within thirty (30) days. In the event that any provision of this Section 18(A)(d) is contrary to any applicable law, such provision shall be of no force and effect.
- B. In the event of any such material default by Sycamore, CITY may at any time thereafter, with or without notice or demand and without limiting CITY in the exercise of any right or remedy which CITY may have by reason of such default:

- (a) Terminate Sycamore 's right to use the Premises by any lawful means, in which case this AGREEMENT shall terminate and Sycamore shall discontinue its use of the Premises.
 - (b) Pursue any remedy now or hereafter available to CITY under the laws or judicial decisions of the state wherein the Premises are located. Any unpaid monetary obligations of Sycamore under the terms of this AGREEMENT shall bear interest from the due date at the maximum rate then allowable by law.
- 19. Late Charges. Sycamore hereby acknowledges that late payment by Sycamore to CITY of any sums due hereunder will cause CITY to incur costs not contemplated by this AGREEMENT, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any sum due from Sycamore shall not be received by CITY or CITY's designee within ten (10) days after such amount shall be due, then without any requirement for notice to Sycamore, Sycamore shall pay to CITY a late charge equal to ten percent (10%) of such overdue amount. The parties hereby agree that such late charges represent a fair and reasonable estimate of the costs CITY will incur by reason of late payment by Sycamore.
- 20. Insurance Requirements. Sycamore shall procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of Sycamore, including its subcontractors, employees and agents, relating to or arising from the performance of any work or service under this Agreement, and must remain in full force and effect at all times during the period covered by this Agreement. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. Sycamore further understands that the CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to Sycamore, at any time as deemed necessary to protect the interests of the CITY.
 - A. Insurance Types and Amounts.
 - (a) Commercial General Liability (CGL). Sycamore shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to Sycamore under Sycamore's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
 - (b) Automobile Liability. Sycamore shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if Sycamore does not own automobiles, then Sycamore shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to Sycamore under Sycamore's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- (c) Workers' Compensation Insurance and Employer's Liability. Sycamore shall maintain Workers Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Sycamore under Sycamore's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If Sycamore is self-insured, Sycamore shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

B. Endorsements. Sycamore shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

(a) General Liability.

- i. The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;
- ii. the insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and,
- iii. insurance shall be primary non-contributing.

- (b) Workers Compensation. The insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

C. Qualification of Insurers. All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and an financial size rating of "VII" or better.

D. Certificates. Sycamore shall furnish CITY of Morgan Hill with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the Sycamore's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:
City of Morgan Hill
Attn: Risk Management
17575 Peak Avenue
Morgan Hill, CA 95037

21. Non-Liability of Officials and Employees of the CITY. No official or employee of CITY shall be personally liable for any default or liability under this Agreement.
22. Compliance with Law. Sycamore and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. Sycamore and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon

race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

23. Independent Contractor. Sycamore is an independent contractor and not an agent or employee of CITY.
24. Conflict of Interest and Reporting. Sycamore shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
25. Notices. All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of Sycamore is as follows:	
Address of CITY is as follows:	with a copy to:
City of Morgan Hill	City Clerk
17575 Peak Avenue	City of Morgan Hill
Morgan Hill, CA 95037	17575 Peak Avenue
	Morgan Hill, CA 95037

26. Licenses, Permits and Fees. Sycamore shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.
27. Maintenance of Records.
 - A. Maintenance. Sycamore shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. Sycamore shall maintain records for a period of at least 3 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 3-year period, then Sycamore shall retain said records until such action is resolved.
 - B. 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 Sycamore and its subcontractors related to services 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.
 - C. Ownership of Work Product. All documents or other information developed or received by Sycamore for work performed under this Agreement shall be the property of CITY. Sycamore shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
28. Familiarity with Work. By executing this Agreement, Sycamore represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should Sycamore discover any conditions materially differing from

those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at Sycamore's risk, until written instructions are received from CITY.

29. Time of Essence. Time is of the essence with respect to the obligations to be performed under this AGREEMENT.
30. No Assignment. Neither this Agreement nor any portion shall be assigned by Sycamore, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.
31. Attorney Fees. In any legal action, proceeding, or arbitration arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees, costs and expenses incurred.
32. Defense and Indemnification.
 - A. Defense and Indemnification. Sycamore shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by Sycamore, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
 - B. Exceptions. Sycamore is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the CITY.
 - C. Not limited by insurance. The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMs alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by Sycamore.
 - D. Right to Offset. CITY shall have the right to offset against any compensation due Sycamore under this Agreement any amount due CITY from Sycamore as a result of Sycamore's failure to pay CITY promptly any indemnification arising under this Section (20) and any amount due CITY from Sycamore arising from Sycamore 's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
 - E. Interpretation. This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the Sycamore to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.
33. Entire Agreement; Modification; Conflicting Provisions. This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by a subsequent mutual written agreement executed by CITY and Sycamore. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the

provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.

34. Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.
35. Interpretation. This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.
36. Preservation of Agreement. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.
37. Binding Agreement. Notwithstanding the provisions of Section 18 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of Sycamore in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.
38. Authority to Execute. Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

IN WITNESS THEREOF, these Parties have executed this Agreement on the day and year shown below.

AS SET FORTH IN CA. CORP. CODE § 313, TWO SIGNATURES ARE REQUIRED FOR CALIFORNIA CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
- (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager
Steve Rymer

Michelle Wilson

Print Name

Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

Sycamore Concessions Corporation

City Attorney

By:

Donald A. Larkin

Print Name

Title: _____

Print Name and Title of Signer.
If Corporate: Chairman, President or Vice
President

Date: _____

Date: _____

By: _____

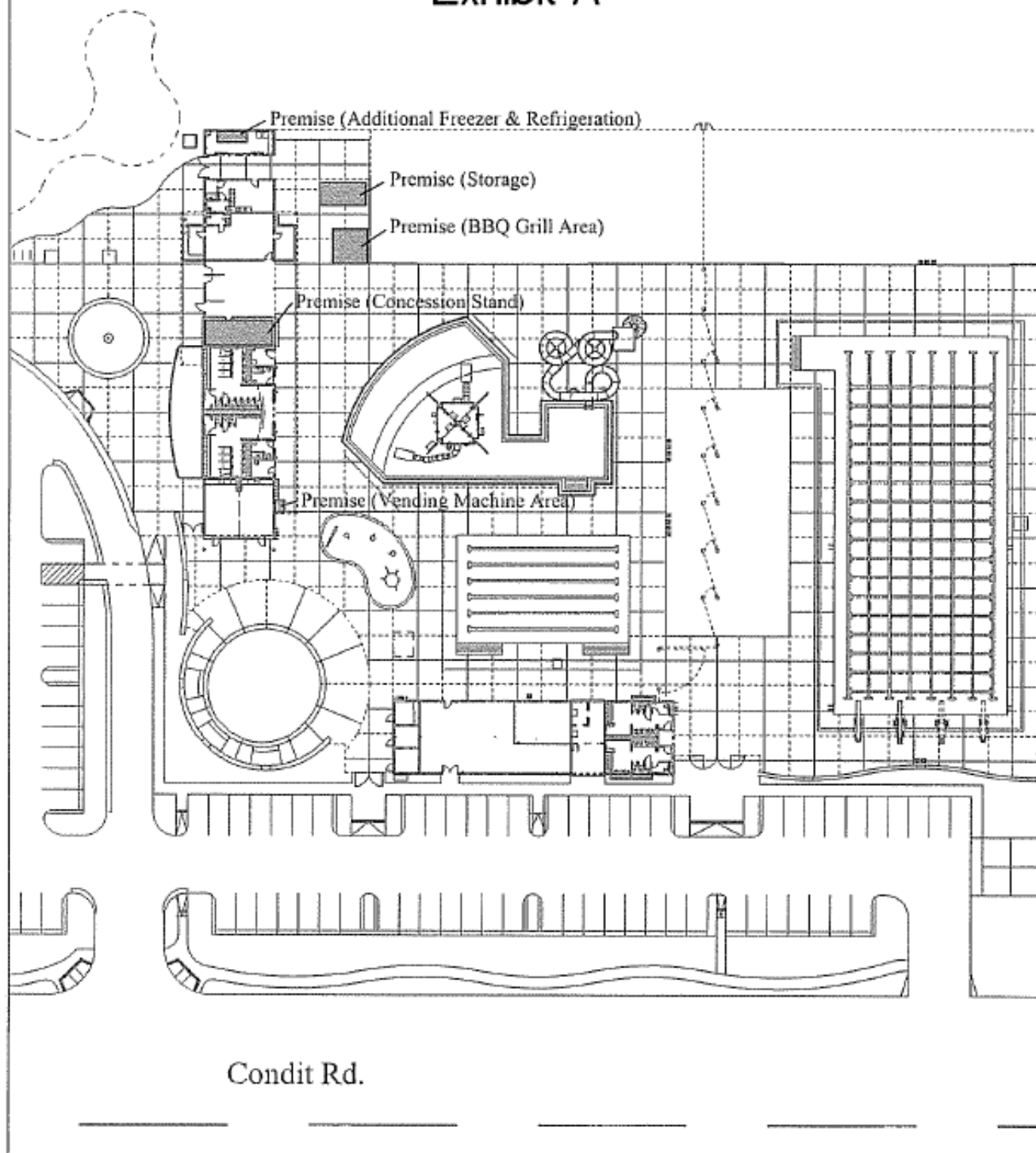
Title: _____

Print Name and Title of Signer.
If Corporate: Secretary, Assistant
Secretary, Chief Financial Officer or
Assistant Treasurer

Date: _____

Attachment: Sycamore Concession Agreement 2017 (1119 : Aquatics Center Concessions)

Premise Exhibit A



Attachment: Sycamore Concession Agreement 2017 (1119 : Aquatics Center Concessions)

EXHIBIT B

17575 Peak Avenue
Morgan Hill, CA 95037
Te: 408-779-7271
www.morgan-hill.ca.gov

**Morgan Hill Aquatics Center
Equipment Inventory List**

Item	Quantity
Double Door True Freezer	2
Double Door True Freezer/Fridge	1
Manitowoc Ice Maker	1
True Sandwich Refrigerator	1
Long sided True Refrigerator	1
Double Door Small True Refrigerator	1
Single Use Fryer by Master	2
6 Burner + Oven by Sunfire	1
Portable Sink Unit	1
Single door sandwich unit by True	1
Commercial Gas BBQ	1
Small Freezer	1
Small Refrigerator	1
Microwave	1



CITY COUNCIL STAFF REPORT

MEETING DATE: April 19, 2017

PREPARED BY: Margarita Balagso, Police Analyst
APPROVED BY: City Manager

POLICE DEPARTMENT VEHICLE FLEET SERVICE AGREEMENT

RECOMMENDATION(S)

1. Award Police Vehicle Service Agreement to Frank's Auto; and
2. Authorize City Manager to execute the agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

The Police Department maintains a fleet of 38 vehicles, which includes patrol vehicles, unmarked detective vehicles, graffiti abatement, animal services and community services trucks, and traffic motorcycles. Proper vehicle maintenance and repair that is performed with consistency and reliability is of the utmost importance for the safety of our officers, non-sworn members of the department, and the community. It is imperative the Police Department vehicles be well maintained so our officers will feel confident to conduct their day-to-day patrol duties to include driving in high-speed emergency conditions. In December 2016, the Police Department issued a Request for Proposal (RFP) for fleet vehicle repair and maintenance. The Police Department received one proposal from Frank's Auto Service which met the requirements of the RFP.

In response to the RFP, the Police Department recommends entering into a new service agreement with Frank's Auto Service for a 36-month term. Frank's Auto Service has provided fleet services to the Department for over four years. The Police Department remains extremely satisfied with the services and workmanship provided. The Police Department is confident Frank's Auto Service will continue to provide a superior level of service under the new Agreement. In November 2015, City Council approved an existing Agreement between the City and Frank's Auto Service for fleet maintenance. The new contract updates the contract language and ensures compliance with the City purchasing policies through the RFP process.

The term of the Agreement will begin upon City Council approval to comply with the City's Purchasing Policies. The Agreement will run through the end of FY19-20 to allow the appropriated funds to align with fiscal year. To maintain operational efficiencies and consistency, at the end of the Agreement term, the City shall have the option to renew

the Agreement. Staff requests the City Council authorize the City Manager to extend the Agreement for an additional two-year period at the end of the three-year term if deemed appropriate.

The costs reflected in the proposal submitted by Frank's Auto Service are as follows:

Year 1: Labor Cost per Hour - \$110.00 | Material Costs 20% Above Wholesale

Year 2: Labor Cost per Hour - \$115.00 | Material Costs 20% Above Wholesale

Year 3: Labor Cost per Hour - \$120.00 | Material Costs 20% Above Wholesale

The vehicle fleet repair and maintenance costs under the Maintenance Agreement shall not exceed \$236,069 based on the annual breakdown reflected below (based on April 2017 contract effective date):

The costs associated with the services and parts to be provided under the Agreement are higher than under the existing agreement (labor cost per hour of \$75.00) and represent current market costs.

COMMUNITY ENGAGEMENT: Inform

The RFP was posted on the City's website and with the mechanics' trade association for publication. This staff report will serve as the instrument to inform the community of the Agreement between the City of Morgan Hill and Frank's Auto Service for the repair and maintenance of police fleet vehicles.

ALTERNATIVE ACTIONS:

The City Council could choose to not approve this Maintenance Agreement and direct staff to issue a new RFP.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council approved a maintenance agreement with Frank's Auto on November 4, 2015.

FISCAL AND RESOURCE IMPACT:

Below is a matrix outlining the costs for each year of the 36-month Agreement.

Frank's Auto Fleet Repair/Maintenance	FY16-17 (April 19-June 30)	FY17-18	FY18-19	FY19-20
Labor Costs	\$ 4,106	\$ 35,006	\$ 35,706	\$ 39,295
Parts Cost	\$ 3,500	\$ 38,780	\$ 39,576	\$ 40,100
Total	\$ 7,606	\$ 73,786	\$ 75,282	\$ 79,395
Grand Total				\$ 236,069

The costs associated with the services and parts to be provided under the Agreement are higher than anticipated during the development of the two-year budget process. The

FY 16-17 budget includes \$65,000 for fleet maintenance with Frank's Auto Service. For the remainder of FY 16-17, the City has sufficient funds to cover the anticipated increased cost of \$7,600 within the Police Department's Fleet Maintenance/Repair and other operating budgets. The FY 17-18 budget has \$66,300 budgeted for fleet maintenance with Frank's Auto Service. If the contract is approved, the Police Department's FY17-18 operating budget will be amended by \$7,486. Costs associated with the remainder of the Agreement will be included in the next two-year budget process.

CEQA (California Environmental Quality Act):

Not a Project - Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, general policy and procedure making.

LINKS/ATTACHMENTS:

1. Franks Auto Fleet Maintenance Agreement 2017-2020_1

**MAINTENANCE SERVICE AGREEMENT
FRANK O. GAMEZ, INC dba FRANK'S AUTO SERVICE**

THIS AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and FRANK O. GAMEZ, INC, dba FRANK'S AUTO SERVICE a California corporation ("SERVICE PROVIDER") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2020 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of two years. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be repair, service and routine maintenance of Police Department vehicle fleet as further described in **Exhibit A**.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$236,069.00. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed Two Hundred and Thirty Six Thousand and Sixty Nine dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to SERVICE PROVIDER during the initial term of this Agreement.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with a monthly invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred

in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER. The City Manager is authorized to terminate this AGREEMENT on behalf of CITY.

6. **Performance of Work.** SERVICE PROVIDER represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by SERVICE PROVIDER in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of SERVICE PROVIDER'S profession. By delivery of completed work, SERVICE PROVIDER certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. If SERVICE PROVIDER desires to leave or store any of SERVICE PROVIDER's equipment at a CITY site while SERVICE PROVIDER is performing work or service pursuant to this Agreement, SERVICE PROVIDER will first obtain the consent of the City Manager, or his delegate, to do so, and any such storage shall occur only in the manner and location allowed by such CITY official and entirely at SERVICE PROVIDER's sole risk.

7. **Hazardous Materials.** Without limiting any other requirement or obligation of SERVICE PROVIDER under this Agreement, if SERVICE PROVIDER needs to use any material or chemical considered to be a hazardous material under any federal, state or local law, regulation or policy, SERVICE PROVIDER agrees to fully and timely abide by and comply with all laws, regulations and policies pertaining to the use, transport, removal, handling, disposal or other activity related to any and all such materials or chemicals. Prior to commencement of work or services under this Agreement, SERVICE PROVIDER shall provide CITY with a complete list of the hazardous materials SERVICE PROVIDER reasonably anticipates it may need to use to provide the services of SERVICE PROVIDER under this Agreement, together with the reasonably anticipated quantities thereof, if requested by CITY.

8. **Insurance Requirements.** SERVICE PROVIDER shall procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of SERVICE PROVIDER, including its subcontractors, employees and agents, relating to or arising from the performance of any work or service under this Agreement, and must remain in full force and effect at all times during the period covered by this Agreement. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. SERVICE PROVIDER further understands that CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to SERVICE PROVIDER, at any time as deemed necessary to protect the interests of CITY.

8.1. Insurance Types and Amounts.

- 8.1.1. Commercial General Liability (CGL). SERVICE PROVIDER shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 8.1.2. Automobile Liability. SERVICE PROVIDER shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if SERVICE PROVIDER does not own automobiles, then SERVICE PROVIDER shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 8.1.3. Garagekeepers. SERVICE PROVIDER shall maintain Garagekeepers insurance covering all owned and non-owned automobiles, including automobile parts and equipment, in SERVICE PROVIDER's care, custody or control against claims and liabilities for damage, theft, or other loss in the minimum amount of: (i) one hundred and fifty thousand dollars (\$150,000.00) or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Such insurance shall be primary over any other insurance.
- 8.1.4. Workers' Compensation Insurance and Employer's Liability. SERVICE PROVIDER shall maintain Workers Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If SERVICE PROVIDER is self-insured, SERVICE PROVIDER shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- 8.1.5. Pollution (Environmental) Liability. If the performance of SERVICE PROVIDER's work or service under this Agreement involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release

of fuel oil, chemicals or other toxic gases or hazardous materials, SERVICE PROVIDER shall procure and maintain Pollution Liability covering the contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

8.1.6. Professional Liability.

8.1.6.1. If the performance of SERVICE PROVIDER's work or service under this Agreement involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, and appraisers), SERVICE PROVIDER shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if SERVICE PROVIDER maintains a claims-made policy, SERVICE PROVIDER shall provide written evidence of such insurance to CITY for at least five (5) years after the completion of work performed under this Agreement.

8.1.6.2. If the performance of SERVICE PROVIDER's work or service under this Agreement relates to Information Technology or related services (examples include, but are not limited to computer programmers, software designers, hardware engineers, or other systems consultants), SERVICE PROVIDER shall procure and maintain a claims made Errors and Omission liability insurance, including Cyber Liability and Data Breach, in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

8.1.6.3. If the performance of SERVICE PROVIDER's work or service under this Agreement involves contact with minors, SERVICE PROVIDER shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- 8.2. **Endorsements**. SERVICE PROVIDER shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

8.2.1. **General Liability**.

8.2.1.1. The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;

8.2.1.2. the insurer waives the right of subrogation against the City of Morgan Hill and CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and,

8.2.1.3. insurance shall be primary non-contributing.

8.2.2. **Workers Compensation**.

The insurer waives the right of subrogation against the City of Morgan Hill and CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

- 8.3. **Qualification of Insurers**. All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and an financial size rating of "VII" or better.

- 8.4. **Certificates**. SERVICE PROVIDER shall furnish CITY with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to SERVICE PROVIDER's agreement with CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

City of Morgan Hill
Attn: Risk Management
17575 Peak Avenue
Morgan Hill, CA 95037

9. **Non-Liability of Officials and Employees of CITY**. No official or employee of CITY shall be personally liable for any default or liability under this Agreement.

10. **Compliance with Law**.

- 10.1. SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and

permitting requirements in carrying out their obligations under this Agreement. SERVICE PROVIDER and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

- 10.2. Without limiting the provisions of Section 10.1 above, each worker performing work under this Agreement shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite. Pursuant to Labor Code Section 1775, SERVICE PROVIDER and any Subcontractor shall forfeit to CITY as a penalty up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. SERVICE PROVIDER shall also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.
- 10.3. DIR Registration. CITY will not accept a Bid Proposal from or enter into a contract with a SERVICE PROVIDER, without first receiving proof to the satisfaction of CITY that SERVICE PROVIDER and its subcontractors are registered with the California Department of Industrial Relations to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions. Under Labor Code section 1771.4, this Agreement is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.
11. **Independent Contractor.** SERVICE PROVIDER is an independent contractor and not an agent or employee of CITY.
12. **Confidentiality.** All data, documents, or other information received by SERVICE PROVIDER from CITY or prepared in connection with SERVICE PROVIDER'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by SERVICE PROVIDER without prior written consent by CITY.
13. **Conflict of Interest and Reporting.** SERVICE PROVIDER shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
14. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of SERVICE PROVIDER is as follows:

Frank O. Gamez, Inc dba Frank's Auto Service
16250 Railroad Avenue
Morgan Hill, CA 95037

Address of CITY is as follows:

Chief of Police
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

with a copy to:
City Clerk
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

15. **Licenses, Permits and Fees.** SERVICE PROVIDER shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.

16. **Maintenance of Records.**

16.1. **Maintenance.** SERVICE PROVIDER shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. SERVICE PROVIDER shall maintain records for a period of at least 3 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 3 year period, then SERVICE PROVIDER shall retain said records until such action is resolved.

16.2. **Access to and Audit of Records.** CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of SERVICE PROVIDER and its subcontractors related to services 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 CITY or as part of any audit of 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.

16.3. **Ownership of Work Product.** All documents or other information developed or received by SERVICE PROVIDER for work performed under this Agreement shall be the property of CITY. SERVICE PROVIDER shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

17. **Familiarity with Work.** By executing this Agreement, SERVICE PROVIDER represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should SERVICE PROVIDER discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at SERVICE PROVIDER'S risk, until written instructions are received from CITY.

18. **Time of Essence.** Time is of the essence in the performance of this Agreement.

19. **No Assignment.** Neither this Agreement nor any portion shall be assigned by SERVICE PROVIDER, without prior written consent of CITY. Any attempted assignment not first approved

by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.

20. **Attorney Fees.** In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.

21. **Defense and Indemnification.**

21.1. **Defense and Indemnification.** SERVICE PROVIDER shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by SERVICE PROVIDER, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").

21.2. **Exceptions.** SERVICE PROVIDER is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence or willful misconduct of CITY.

21.3. **Not limited by insurance.** The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMs alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by SERVICE PROVIDER.

21.4. **Right to Offset.** CITY shall have the right to offset against any compensation due SERVICE PROVIDER under this Agreement any amount due CITY from SERVICE PROVIDER as a result of SERVICE PROVIDER's failure to pay CITY promptly any indemnification arising under this Section (20) and any amount due CITY from SERVICE PROVIDER arising from SERVICE PROVIDER's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

21.5. **Interpretation.** This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of SERVICE PROVIDER to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

22. **Entire Agreement: Modification: Conflicting Provisions.** This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by a subsequent mutual written agreement executed by CITY and SERVICE PROVIDER. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.

23. **Governing Law and Venue.** This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.

24. **Interpretation.** This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.

25. **Preservation of Agreement.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.

26. **Binding Agreement.** Notwithstanding the provisions of Section 18 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of SERVICE PROVIDER in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

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27. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

IN WITNESS THEREOF, these Parties have executed this Agreement on the day and year shown below.

AS SET FORTH IN CA. CORP. CODE § 313, TWO SIGNATURES ARE REQUIRED FOR CALIFORNIA CORPORATIONS:

(1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND

(2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Wilson

Steve Rymer

Print Name

Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

FRANK O. GAMEZ, INC, dba FRANK'S
AUTO SERVICE

City Attorney

By:

Donald A. Larkin

Title:

Print Name

Print Name and Title of Signer.
If Corporate: Chairman,
President or Vice President

Date: _____

Date: _____

By:

Title:

Print Name and Title of Signer.
If Corporate: Secretary,
Assistant Secretary, Chief
Financial Officer or Assistant
Treasurer

Date: _____

Contractor's License Number(s) (if applicable)

Seal:

Expiration Date(s)

EXHIBIT A SCOPE OF SERVICES

GENERAL PROVISIONS

Service Provider will perform general and preventive maintenance and routine repair services on vehicles and equipment including, but not limited to, brakes, tires, suspension, heat/air conditioning systems, electrical systems, engine, etc. as outlined below.

A. Preventive Maintenance

The Police Department fleet vehicles are routinely driven in short distances; frequent start/stop; and long idle periods. The Police Department requests the SERVICE PROVIDER provide a recommended schedule for fleet vehicle maintenance requirements due to the use conditions. The average annual usage is 13,000 miles for Police patrol vehicles.

B. Repairs and Maintenance

Provide service/repairs to all common mechanical and electrical systems as needed.

C. Transport of Vehicles for Service

- Provide pick-up and delivery vehicle to and from Police Department
 - Police Department - 16200 Vineyard Boulevard
- For vehicles not drivable, additional towing charge may be billed upon approval of authorized city staff.
- Contractor shall store vehicles in secured yard for overnight storage
- 24/7 on call phone and shop open to all city vehicles
- Locked and gated facility that includes alarm and security cameras

D. Conditions on Required Services

- When a prior appointment has been made for routine maintenance, the turn-around time should be between 4 to 6 hours.
- Provide adequate inventory on special parts to ensure minimum turn-around on non-routine repairs.
- All Police Department fleet vehicles that have been involved in a pursuit will undergo inspection and repair as required. Vehicles to be inspected after pursuit will be at the discretion of the officer involved and authorized Police Department staff.
- Inspection will be completed immediately after pursuit.

E. Repair Order Content and Procedure

SERVICE PROVIDER shall provide Repair Orders for all services provided containing the following information:

- Repair estimates with anticipated work to be performed, estimated completion time,

and estimated cost signed by the City staff upon pick-up/drop-off. A confirming copy with final cost shall be emailed to City upon completion, and a billing copy shall be sent to the City with invoice.

- Actual work/cost above written estimate requires City approval prior to work start.
- Authorization of work by designated City employee or designee is required for all repair orders.
- Individual vehicle charges shall be submitted on separate repair orders for each service visit.
 - The repair order must include:
 - Date work performed
 - Vehicle Number and/or license number, make/model
 - Vehicle mileage at time of service/repair
 - Date in / date out / time completed
 - Detail type of service, hours, material used, and cost associated with each.
 - Subcontracted repair orders containing same information shall be attached to the repair order.
- SERVICE PROVIDER guarantees and warrants that all material furnished and all services performed will be free from defects in material and workmanship and will be warranted by Service Provider for a minimum of 12 months, 12,000 miles, or the length of time of any warranty given by the manufacturer or rebuilder/remanufacturer, whichever is greater, after acceptance. The Service Provider shall remedy all such defects at his/her own expense within one (1) working day after notification by the City.

F. Warranty repair orders need to be provided by the SERVICE PROVIDER.

G. Fleet Maintenance Software

The City intends to purchase a cloud-based fleet management software. The City will require the successful Service Provider to utilize this software to maintain service and repair records and track inventory of parts purchased. SERVICE PROVIDER will be required to install the software on its business/commercial hardware and identify appropriate staff to be trained in its use and utilize the software as required for Police Department vehicles.

H. Hours of Operation

The Police Department is active on a 24/7 basis and desires the most comprehensive hour coverage possible. Please identify normal business hours and emergency business hours if available. SERVICE PROVIDER shall provide cell phone numbers to Police Department for service on the weekends and evenings for emergency services such as tow-ins.

I. Employees

Service Provider's employees who work on Police Department vehicles shall undergo a criminal background check and have no arrest record.

PART II OPERATING PROCEDURES FOR VEHICLE MAINTENANCE SERVICES

This sets forth the operating policy and procedures for servicing City vehicles and equipment. It discusses maintenance scheduling procedures and invoicing requirements.

Contracted maintenance facilities are expected to provide prompt, courteous and competent service to drivers. Garage staff must be knowledgeable about service procedures, and initiate the service transaction within 30 minutes of their arrival and/or service call is placed. It is important that the service desk is staffed adequately to provide efficient customer service in a timely manner.

To assist the SERVICE PROVIDER with the maintenance program, the City will provide:

1. Listing of covered vehicles (Exhibit D) updated as necessary.
2. Repair orders and billing invoices must refer to the vehicles by their VIN number.
3. City preventive maintenance schedule (Schedule A).
4. Designated City staff contacts.

A. **Safety Check**

SERVICE PROVIDER shall perform a safety check in conjunction with all maintenance requirements listed within this RFP. These safety checks shall be performed every time a vehicle is brought in for service:

- ✓ Tires – Visually check condition/Alignments.
- ✓ Lights – Check directional signaling devices and emergency light systems for proper operation.
- ✓ Seat belt – Check operation of seatbelts.
- ✓ Windshield Wipers and Washers – Check condition of wiper arms and blades.
- ✓ Check aim and flow of washer spray. Fill washer reservoir with washer solvent.
- ✓ Fluid Levels – Check and replenish fluid levels in transmission, differential, steering sector or power steering pump, and master cylinder. Inspect all units for leakage and clogging.
- ✓ Battery – Check condition of heat-shield, hold-down clamps and cable ends, top off electrolyte level, and clean top and terminals as necessary.
- ✓ Heater-Defroster-Air Conditioner System and Wiper Controls – Check switches, valves, and ducting doors for proper operation.
- ✓ Exhaust System – Visually inspect complete exhaust system including catalytic converter

and heat-shielding. Check for broken, damaged, missing, or poorly positioned parts. Inspect for open seams, holes, or any condition which could allow exhaust fumes to enter the vehicle.

- ✓ Steering and Suspension Components – Conduct a “look and “shake” inspection.
- ✓ Frame/Sub-Frame and Cross Member – Visually check for “drive-over” and/or vehicular damage and fatiguing.
- ✓ Drive Shaft U-Joints / CV Joints – Conduct a “look” and “shake” inspection for seal leakage and joint failure.
- ✓ Critical Components – Check condition of all under-hood heat-shields, and the routing of all hoses and wiring to ensure maximum protection from radiated exhaust heat. Inspect all coolant hoses, fuel line hoses, power steering hoses, engine accessory drive belts, and other under-hood plastic or rubber components.
- ✓ Brakes – Inspect all brake line hoses and master cylinder for signs of leaks or damage. Inspect front brake pads, rear brake linings, wheels cylinders, and parking brake cables and linkage. Report estimate of remaining life of pads and shoes.
- ✓ Starter/Charging System – Electronically check starter motor cranking speed and current draw. Check alternator charging rate.
- ✓ Cooling System – Visually inspect entire system for leaks, damage or others signs of needed repair.
- ✓ Tire Repair/Headlamps/Brakes – these shall be repaired and receive priority while officer waits in order to minimize time vehicle is out of service.

B. Scheduling of Maintenance and Service Procedures

1. The Police Department will designate an authorized Fleet Representative (FR); the FR is the SERVICE PROVIDER'S primary contact with the City.
2. SERVICE PROVIDER shall identify a single individual by name to serve as the responsible contact for daily communication with the Police Department regarding vehicle scheduling and vehicle status update(s).
3. The FR will contact the designated SERVICE PROVIDER'S representative between 8:00 a.m. and 5:00 p.m., weekdays to determine the status of vehicles and/or equipment being serviced. The SERVICE PROVIDER'S representative shall provide accurate and timely information to the FR on vehicle status including but not limited to:
 - What vehicle(s)/equipment are ready by vehicle VIN number.
 - What vehicle(s)/equipment are being serviced/require repair.
 - Estimated completion of vehicle(s)/equipment under repair.
 - Description of repairs and costs.

4. After the service is completed, the SERVICE PROVIDER shall:
 - a. Complete Vehicle Service Order ready for FR or designee to sign.
 - b. Place service reminder label on the driver's side windshield stating the next maintenance Mileage and Date for routine preventive maintenance.
 - c. Contact FR or designee to provide time that vehicle is ready for transporting back to the original location. If the FR is not available, leave a voicemail message.
 - d. After the FR or designee has checked the work performed, signed off on the Repair Order, the Service Provider's representative shall provide the vehicle keys to the FR or designee.
5. When repairs cannot be accomplished at the SERVICE PROVIDER'S facility, the Service Provider must contact the FR for instructions. No repairs shall be made by non-authorized facilities without notification of the FR.
6. SERVICE PROVIDER shall report to the FR any vehicle brought in for service or repair and the Service Provider has determined that the service or repair was due to driver misuse.
7. SERVICE PROVIDER will be responsible for loss and damage to all City vehicles under its custody and/or control.
8. All repair parts are to be original equipment manufacturer (OEM) or equivalent. Exceptions will be individually considered by the FR on a case by case basis.

C. Preventive Maintenance

Based on the Maintenance Schedule to be mutually agreed upon by the successful Service Provider and the City, the Police Department will provide a listing of vehicles due for preventive maintenance service at the beginning of each month. Vehicles will be listed by VIN number, the type of preventive maintenance the vehicle is to receive, and the week the vehicle is due for service. The FR or designee will notify the Service Provider for specific dates vehicle will be ready for service.

The preventive maintenance services will be in accordance with the preventive maintenance schedule. Additionally:

1. If projected brake pad/shoe life is less than 1500 miles, replace brake pads/shoes.
2. Tires will be checked and depth of tread will be indicated on Repair Order.
3. Turn-around time of 6 to 8 hours for routine preventive maintenance is expected.
4. When a prior appointment has been made for routing maintenance, the turnaround time should be between 3 and 5 hours.

D. Non-Preventive Maintenance Service and Emergencies

1. Non-routine maintenance, other than emergencies, will be handled by appointment through the FR or designee. If a City employee delivers a vehicle to the SERVICE PROVIDER'S facility Monday through Friday between 8:00 a.m. and 5:00 p.m. requesting service without prior notification to you from the City, call the FR or designee for instructions.
2. After-hours delivery. If a City vehicle has a breakdown or is involved in an accident and must be towed, it will be towed to the SERVICE PROVIDER'S locked facility. In such a situation, the Service Provider shall contact the FR for instructions and be present to accept vehicle.
3. There may be times when the FR calls early in the day with a specific set of instructions, and later in the day changes them; or, another staff member will call to change them if the FR is not available. The last set of instructions will prevail.
4. Turn-around time of 6 to 8 hours for non-preventive maintenance service is required, unless otherwise approved by the FR.

SCHEDULE A – RECOMMENDED VEHICLE MAINTENANCE SCHEDULE		Service A	Service B	Service C	Service D
		At 5,000 Miles	At 5,000 Miles	A At 5,000 Miles	At 5,000 Miles
1	Change Engine Oil	X	X	X	X
2	Change Engine Oil Filter	X	X	X	X
3	Check Air Filter Condition	X	X	X	X
4	Check and Adjust Drive Belts	X	X	X	X
5	Check Battery Electrolyte Level, Add Water As Needed; Clean And Tighten Terminals	X	X	X	X
6	Check Brake Fluid Level	X	X	X	X
7	Check Brake Pads, Shoes, Hoses	X	X	X	X
8	Check Breather Condition	X	X	X	X
9	Check Drive Tran Fluid Levels (Transmission, Transfer case, Differential)	X	X	X	X
10	Check Engine Compartment Fluid Levels, Add As Needed	X	X	X	X
11	Check Engine Cooling System, Hoses And Clamps	X	X	X	X
12	Check Exhaust System	X	X	X	X
13	Check Front And Rear Shocks For Wear and/or Leakage	X	X	X	X
14	Check Exterior & Interior Lights And Other Electrical Items For Correct Operation	X	X	X	X
15	Check Power Steering Fluid Level	X	X	X	X
16	Check Tire Pressure And Condition	X	X	X	X
17	Check Windshield Wiper operation, Blades condition, Washer Solvent level, Fill as needed.	X	X	X	X
18	Lubricate Chassis/CV boots	X	X	X	X
19	Lubricate Steering Linkage	X	X	X	X
20	Check Front Brake Pads, Rotors And Calipers	X	X	X	X
21	Check Rear Brake Shoes, Drums And Wheel Cylinders	X	X	X	X
22	Rotate Tires (4 Way - Front To Rear)	X	X	X	X
23	Air Filter - Replace	As Needed	As Needed	As Needed	As Needed
24	Check Headlight Alignment	X	X	X	X
25	Check Parking Brake Operation	X	X	X	X
26	Lubricate Door Latches, Locks And Hinges	X	X	X	X
27	Fuel Filter - Replace	As Needed	As Needed	As Needed	As Needed
28	Transmission - Change Fluid, Filter, Gasket	X	X	X	X
29	Check Air Condition System, Freon Level And Compressor Operation Where Applicable	X	X	X	X

**SECTION 3
EXHIBIT C PROPOSAL FORMS**

I. MANAGEMENT INFORMATION

Proposers must have prior successful experience performing maintenance and repair services on automobiles, trucks and other vehicles, must be licensed to conduct business in the State of California, and must possess all permits, licenses, certifications, approvals, equipment, materials, and staff necessary to perform and/or carry out the requirements of the contract.

Please supply the information requested below. Attach additional sheets, if necessary, to provide required information.

1. SHOP PROFILE RESPONSIBILITY SHOP NAME: Frank's Auto Service
NAME OF SHOP OWNER(S) Frank O Gamez
SHOP ADDRESS: 16250 Railroad Avenue #C Morgan Hill, CA 95037
PHONE NUMBER: (408) 778-3470
FAX NUMBER: (408) 776-2015
NUMBER OF YEARS IN BUSINESS: 21 years
NUMBER OF YEARS IN BUSINESS AT THIS LOCATION: 4 years
AUTOMOTIVE REPAIR DEALER LICENSE NO.: AE199996
2. PROXIMITY TO MORGAN HILL POLICE DEPART 1.2 MILES.
3. NAME OF SHOP MANAGER(S): Frank Gamez Sr. and Frank Gamez Jr. State the duties and qualifications of shop manager(s)

ASE Certified
70 years combined experience
Oversight of mechanics and technicians
Ordering of parts
Providing Estimates

4. ASSIGNED CONTACT/SERVICE REPRESENTATIVE: Name: Frank Gamez Jr.
5. Title/Duties: Manager/Technician
6. Qualifications: ASE Certified
7. Years with Proposer: 20 years
8. Phone Numbers: Work: (408) 778-3470 Pager
9. Emergency Contact (365 days/year; 24 hours): (408) 722-1883

Operating Hours – The Proposer shall be currently operating out of a commercial facility, which is open and accessible to City personnel, without prior notice during normal business hours. Facilities shall be available for vehicle service between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday (excluding holidays). State hours that the Proposer's facility is open for maintenance service.

Monday 8 am to 5pm
 Tuesday 8 am to 5pm
 Wednesday 8 am to 5pm
 Thursday 8 am to 5pm
 Friday 8 am to 5pm

II. REFERENCES AND QUALIFICATIONS

1. Describe your shop's experience providing vehicle maintenance services including the number of years in business, and type of services provided.

Frank's Auto Service has experience in providing service to the Morgan Hill Police Department for the past 5 years and other City vehicles for 2 years.

We service two other company's fleet to include sedans, trucks and vans.

Ninety percent of our business is providing service to the general public.

Our ASE Certified Technicians are equipped with top of the line equipment to ensure cars, trucks, SUVs, or vans are diagnosed and repaired properly and in a timely manner. We use state-of-the-art diagnostic equipment to diagnose most problems and provide a complete estimate of the work before any repairs

are performed. We proudly offer all of the following auto repair services and more!

Auto Repair	Diagnostics
Brakes	Electrical System
Air Conditioning	Steering System
Muffler & Exhaust	Diesel Engines
Shocks & Struts	Engine Repair
Steering Column	Alternator
Timing Belt	Ignition & Starter
Smog & Emissions	Suspension
Tune Up	Clutch Repair
Oil Change	Radiator Repair
Cooling & AC	Axles & CV Joints
Heating	Wheel Alignment

Oil Change and Filter Service

Is an essential way to maximize engine protection.

Cooling System Service

Flush cooling system, pressure test, check hoses, cap and check connection.

Air Conditioning Service

One of our trained Air Conditioning specialists will inspect your car's air conditioner, all NC lines, evaporator and compressor for leaks and wear.

Driveline Service

Remove old worn out gear oil from the front and rear differential and transfer case.

Fuel/Air Induction Cleanup

Using specialized equipment our technicians will quickly and effectively clean intake manifold, ports, intake valves, and combustion chamber. Install injector cleaning additive in tank. This service will restore lost power and performance and will reduce harmful exhaust emissions.

Power Steering Flush

Our technicians use a powerful cleaner to dissolve gum and varnish in your car's power steering unit. Next, we will flush old, worn-out contaminated fluid and install fresh new fluid fortified with a special antioxidant and anti-wear ingredients to prevent expensive mechanical failure.

Transmission Service

Using the latest in state-of-the-art technology, we will install a safe and effective

cleaner to suspend harmful varnish and sludge from the transmission valve body, torque converter and lines. Install new high-tech fluid with conditioners.

Providing fleet service, fleet maintenance, and fleet repair for all fleet accounts and fleet vehicles including car fleets, truck fleets, van fleets, SUV fleets, and all other light fleet vehicles.

- Quick turnaround
- Net 30 on all services and repairs
- Fleet Tracking
- Scheduled Maintenance
- Progressive Repairs
- Quarterly Inspections
- Repair Cost Analysis

We helping fleets operate safely, run efficiently, remain on the road, and stay out of the shop through the following procedures:

- Major mechanical system inspections
- Regular Fleet Vehicle Safety inspections
- Long term savings on fleet vehicle repairs and fuel
- Stay on the road and shielded from liability
- Reduce employee and vehicle downtime
- Track fleet vehicle repair history
- Identify break down patterns

For a safe, smooth ride, the condition of tires is of utmost importance. From the proper pressure to the correct alignment, our auto repair experts ensure that your tires are road worthy. If the tire tread is low, we sell a wide variety of tires, tire sets, tire brands, and tire sizes so we can ensure a quiet and safe ride.

Wheel Alignment	New Tires
Tire Mounting	Wholesale Tires
Tire Balance	Tire Repair
Tire Rotation	Tire Sets

A problematic steering system can get worse over time, can wear out your tires quickly, and if uncorrected alignment issues can lead to hundreds of dollars in tire replacement and suspension repair. We recommend scheduling an alignment check every 6 months or 6,000 miles. Our ASE certified technicians perform alignments using the latest computerized technology for state-of-the-art accuracy. With every alignment, we perform a complete steering and suspension system inspection, including tire condition and air pressure.

2. Please provide 3 commercial fleet maintenance client references within the last five years, their size of fleet by vehicle type, years of contract relation, type and frequency of the service provided. Please identify the contact person and phone number for each. Use additional sheets if necessary.

1. Company Name
Specialized Bicycles

Company Address
15130 Concord Circle Morgan Hill, CA 95037

Company Phone
408-835-2413

Contact Person
Mike Sinyard

Fleet Size/Type
15 vans, cars, trucks

Years of Contract
7 years

Frequency of Service Monthly

2. Company Name
City of Morgan Hill Inspectors Office

Company Address
17575 Peak Avenue Morgan Hill, CA 95037

Company Phone
408-779-7271

Contact Person
Ken Deluna

Fleet Size/Type
8 Trucks

Years of Contract

2 years

Frequency of Service

Monthly

3. Company Name

Pacific Glazing Contractors

Company Address

15920 Concord Circle Morgan Hill, CA 95037

Company Phone

408-778-9243

Contact Person

Richard Davison

Fleet Size/Type

15 Pick up Trucks

Years of Contract

2 years

Frequency of Service Weekly

3. Approximately what percent of your shop work is currently derived from fleet business?

10 %

4. Has your shop ever been a subject of Better Business Bureau action? Yes /

No Describe:

5. Are you currently or have you ever previously provided repair services to other government entities? Yes **No**

If yes, please list the entity names, contract person and phone number:

NA

6. Briefly describe your interest in servicing the City's fleet (see attached list of vehicles) and what factors make you the best candidate in your opinion.

We have been servicing the Morgan Hill Police Department's fleet for 5 years. Our proximity and prioritization in maintaining the fleet has allowed for a quick turnaround time and we understand the need for patrol vehicles to remain in service. We have a tremendous working relationship with the City. We also find cost effective solutions to repairing police vehicles while maintaining the integrity of a safe operation. We hold safety as our highest regard when repairing or maintaining the fleet.

COST AND CONDITIONS

Please see conditions on page 27 prior to completing the tables on page 25 and 26

Services/Costs	Police							
	4x4 Trucks, Utility Vehicles & Sedans							
	Labor Per Hour	Year 1	Year 2	Year 3	Material Cost	Year 1	Year 2	Year 3
Service A: Vehicle Maintenance Services provided		\$110	\$115	\$120	20%	20%	20%	20%
Service B: Vehicle Maintenance Services provided		\$110	\$115	\$120	20%	20%	20%	20%
Service C: Vehicle Maintenance Services provided		\$110	\$115	\$120	20%	20%	20%	20%
Service D: Vehicle Maintenance Services provided		\$110	\$115	\$120	20%	20%	20%	20%
Cost of Hourly Labor Rate (not included in Service A,B,C,D)		\$110	\$115	\$120	20%	20%	20%	20%
Replacement Dealer Parts (not included in Service A,B,C,D)		\$110	\$115	\$120	20%	20%	20%	20%
Replacement Non-Dealer Parts (not included in Service)		\$110	\$115	\$120	20%	20%	20%	20%

EXHIBIT B SCHEDULE OF COMPENSATION RATES

Total to be paid under this Agreement shall not exceed \$236,069.00.

SERVICE PROVIDER'S hourly rate for labor under this Agreement shall be as follows:
\$110.00 per hour for labor in year one of Agreement for Service A, B, C & D provided on mileage level as reflected in Vehicle Maintenance Schedule
\$115 per hour for labor in year two of Agreement for Service A, B, C & D provided on mileage level as reflected in Vehicle Maintenance Schedule
\$120.00 per hour for labor in year three of Agreement for Service A, B, C & D provided on mileage level as reflected in Vehicle Maintenance Schedule

Cost of Hourly Labor Rate for services/repairs not included in Service A, B, C & D shall be \$110.00 per hour in year one of Agreement; \$115.00 per hour in year two of Agreement; and \$120.00 per hour in year three of Agreement.

Cost of Hourly Labor Rate for Replacement of both dealer and non-dealer parts is \$110.00 per hour in year one of Agreement; \$115.00 per hour in year two of Agreement; and \$120.00 per hour in year three of Agreement.

Costs for parts and materials charged to City shall be 20% above wholesale cost to SERVICE PROVIDER in years one, two and three of Agreement.

Conditions:

- 1. Prices for services listed above must include all labor and material needed to complete the services specified.**
- 2. Prices listed above are fixed for the initial period of the Agreement (three years).**
- 3. All repair parts are to OEM or equivalent. Exceptions will be individually considered on a case by case basis. Price for each service shall include parts, labor and all necessary fluids and free fluid top off between service intervals.**
- 4. Provide breakdown of labor hours for each periodic repair item and indicate any exceptions, if applicable. Labor hours shall be repair time, not factory time.**
- 5. Unless otherwise specified and/or agreed to, all services performed will be free from defects in material and workmanship and will be warranted for a minimum of 120 days or 4,000 miles, or the length of time of any warranty given by the manufacturer or rebuilder/remanufacturer, whichever is greater, after acceptance.**



CITY COUNCIL STAFF REPORT

MEETING DATE: April 19, 2017

PREPARED BY: David Gittleson, Associate Engineer
APPROVED BY: City Manager

RECOMMENDATIONS TO PREVENT FUTURE SEWER SPILLS, ACCELERATE NEW SEWER TRUNK LINE, AND AWARD FIRST AMENDMENT FOR DESIGN SERVICES CONTRACT WITH HYDROSCIENCE ENGINEERS FOR THE NEW SEWER TRUNK LINE PROJECT

RECOMMENDATION(S)

1. Direct staff to implement projects to repair leaking sewer manholes and sewer pipes, and maximize flow in the existing sewer trunk line in Highland Avenue;
2. Award First Amendment to professional services agreement with HydroScience Engineers, Inc. to provide sewer trunk line design from Cohansey Avenue to Renz Lane for an additional \$521,900; and
3. Approve and authorize the City Manager to execute and administer the professional services agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2017 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

Background

On March 15, 2017, City Council received a report on the recent sewer spills and directed staff to return with recommendations including accelerating the completion of the secondary sewer trunk line. The spills were located at the intersection of Harding Avenue and Highland Avenue in unincorporated Santa Clara County.

During periods of heavy rain and saturated ground conditions, large rain events may continue to overwhelm the existing sewer trunk line unless improvements are made to decrease the inflow and infiltration (I & I) into the City's sewer system. The Utilities field crews have been locating and repairing leaks in the sewer system for the past couple of months and have made significant progress. However, the in-house resources alone cannot repair the numerous leaks in the City's sewer system before the next rainy season begins.

The two short term projects would reduce the City's vulnerability to additional sewer spills should significant rain events occur prior to completing the new sewer trunk line. Therefore, staff recommends implementing a publicly bid project to repair sections of

cracked pipes and leaking manholes. Efforts are currently underway to identify a list of repairs citywide by reviewing sewer video logs. In addition to repairing leaks in the existing sewer system, staff also recommends implementing a publicly bid project to maximize flow in the existing 21inch diameter sewer trunk line in Highland Avenue.

Acceleration of Trunk Line – Design Services Contract

Staff recommends the award of an amendment to a consulting services agreement to provide a continuation of design services to complete the design of phase II of the new trunk line project (between Cohansey Avenue and Renz Lane). The Cities of Morgan Hill and Gilroy maintain a Joint Trunk System that conveys sewer flow from both cities to the South County Regional Wastewater Authority (SCRWA) Wastewater Treatment Plant south of the City of Gilroy. Currently, Morgan Hill's wastewater is conveyed by a single trunk line that traverses south Morgan Hill, unincorporated San Martin, and the City of Gilroy. The City's sewer master plan calls for a second trunk line to be built to the treatment plant to provide the necessary capacity for the City's growth over the horizon of the 2035 General Plan. Construction of the secondary trunk line began in 2006, with the most recent phase from California Avenue to Highland Avenue completed in 2016. There are two planned segments remaining to be completed on the secondary trunk line to reach the Treatment Plant in Gilroy. The final two segments total approximately 7 miles in length.

On May 4, 2016, City Council awarded a professional design services agreement with HydroScience Engineers, Inc. for \$651,760 to prepare plans, specifications, and estimates to extend the sewer trunk line (phase I of the final two segments) roughly 4 miles along Monterey Road from Highland Avenue to Cohansey Avenue. The phase I design is currently 35% complete with construction expected to begin late summer 2017. This new sewer trunk segment will not convey any sewer flows until phase II is fully constructed.

The phase II design work is significantly more complex than the previous phases since it will be built through the City of Gilroy and under Highway 101. The draft alignment for both phase I and phase II is attached. The proposed contract amendment will provide for the design of phase II and some minor scope changes on the phase I work initiated by the City. This additional work includes upsizing the 30 inch diameter sewer trunk pipe to a larger 36 inch diameter pipe, researching the option to inter-connect between the new trunk line and the existing trunk line, storm water permitting, and designing a new flow meter for a dual sewer pipe system.

By awarding the final phase design work to HydroScience Engineers, the City would bypass the request for proposal process to save over two months of time on the project schedule, and reduce staff costs for preparation, scoring, and the awarding of a new contract. Having one consulting firm prepare the design documents for both projects allows the City to benefit from design consistency, knowledge of the site conditions, and familiarity with the project stakeholders. By proceeding with the design of phase II, staff can get a head start on long lead items, such as permitting and CEQA studies. Completing the design and permitting early will help to facilitate the completion of the project.

The additional scope of work would include the preparation of plans, specifications, estimates, permits, surveys, geotechnical, and construction support for a cost not to exceed \$521,900. The total not-to-exceed contract amount would then be \$1,173,660 (\$651,760 original + \$521,900 first amendment).

Schedule

HydroScience will continue with the phase I design work with construction estimated to begin summer or late fall 2017. If City Council approves the first amendment, HydroScience will commence with phase II design elements, such as topographic surveying and geotechnical work, immediately.

COMMUNITY ENGAGEMENT: Inform

Staff will coordinate with the City of Gilroy and the County of Santa Clara to provide regular project status updates through email, the City's website, and social media during the course of design for this project. All impacted property owners and businesses will be contacted and consulted prior to construction, which includes residents of San Martin.

ALTERNATIVE ACTIONS:

Council could decide to not implement the two short term projects or to not amend the HydroScience Engineers contract. Council could also direct staff to solicit bids from additional firms.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On May 4, 2016, City Council approved a design agreement with HydroScience Engineers, Inc. for \$651,760 for the preparation of design plans, specifications, and estimates for approximately 21,000 linear feet of 30" sewer trunk line pipe.

On March 15, 2017, City Council received a report on the recent sewer spills, approved a First Amendment to the laboratory services agreement with Alpha Analytical Laboratories, Inc. to amend the scope of services, and directed staff to return to the Council with a plan for accelerating the sewer trunk line to Gilroy improvements.

FISCAL AND RESOURCE IMPACT:

The sewer trunk project's phase I and phase II design and construction costs are sufficiently funded in the FY 16/17 Capital Improvement Program (CIP) budget under CIP Project 308A08, New Trunk Line, utilizing Sewer Impact Fund dollars (Fund 641).

The cost of the original design services agreement to design phase I of the sewer trunk line, between Highland Avenue and Cohansey Avenue was \$651,760. With City Council's approval of the First Amendment, the total not to exceed contract amount would become \$1,173,660 (\$651,760 original + \$521,900 first amendment).

If approved, staff will bring the recommended repair projects to City Council for review of the fiscal and resource impact upon receipt of project bids.

CEQA (California Environmental Quality Act):**Not a Project**

This professional services agreement is not a project, as defined in Section 15378 of the State CEQA Guidelines. However, the Sewer Trunk Line project itself is not exempt from CEQA; thus David J. Powers will prepare an Initial Study to identify and mitigate all environmental impacts from the project.

LINKS/ATTACHMENTS:

1. First Amendment - HydroScience
2. Project Location Map

FIRST AMENDMENT TO AGREEMENT HYDROSCIENCE ENGINEERS, INC.

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, HYDROSCIENCE ENGINEERS, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into based upon City of Morgan Hill City Council approval on April 19, 2017.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" Service Agreement for Design Professionals made as of May 4, 2016, for consultant services for a maximum compensation of (\$651,760) Six Hundred Fifty-One Thousand Seven Hundred Sixty dollars ("CONSULTANT AGREEMENT"). The CONSULTANT AGREEMENT is attached as Exhibit "A" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the CONSULTANT AGREEMENT, as amended, as attached as Exhibit "A," shall remain in full force and effect; except that the following amendments shall be made as set forth below:

A. Paragraph 2 shall be amended and replaced in its entirety by the following:

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from May 4, 2016, until December 31, 2019. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both parties to this Agreement."

B. Paragraph 3 shall be amended by adding the following:

"The services to be performed by CONSULTANT shall consist of the following additional services set forth in Exhibit "B": Design services shall include preparing construction level plans and specifications for extending the Sewer trunk Line Phase II Project, between Cohansey Avenue and Renz Lane.

C. Paragraph 4.1 shall be amended and replaced in its entirety by the following:

"4.1. **Amount.** Compensation under this Agreement shall not exceed the original agreement amount of \$651,760 plus the First Amendment amount of \$521,900, for a total not to exceed contract amount of One Million One Hundred Seventy-Three Thousand Six Hundred Sixty Dollars (\$1,173,660).

2. **Conflicts.** In the event of a conflict between the terms and provisions of this First Amendment to Agreement and the terms and provisions of the CONSULTANT AGREEMENT, the terms of this First Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND**
 (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

CITY OF MORGAN HILL

City Clerk

Date: _____

City Manager

Date: _____

APPROVED AS TO FORM:

HYDROSCIENCE ENGINEERS, INC.

City Attorney

Date: _____

By:

Title:

Cindy Preuss
 CINDY PREUSS, VICE-PRESIDENT

Print Name and Title of Signer.

If Corporate: Chairman, President or
 Vice President

Date:

April 6, 2017

By:

Title:

Hildegard M. Harris
 HILDEGARD M. HARRIS, CFO

Print Name and Title of Signer.

If Corporate: Secretary, Assistant
 Secretary, Chief Financial Officer or
 Assistant Treasurer

Date:

4-6-2017

EXHIBIT A

126-04-16-031

SERVICE AGREEMENT FOR DESIGN PROFESSIONALS HYDROSCIENCE ENGINEERS, INC.

THIS AGREEMENT is entered into and becomes effective on 5/6/16 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and HydroScience Engineers, Inc. a California corporation ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on May, 4, 2016.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until December 31, 2018 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be to design a 30" sewer trunk line from Highland Avenue to Las Animas Avenue as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$651,760.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Six-Hundred-Fifty-One-Thousand-and-Seven-Hundred-Sixty dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with a monthly invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to

Attachment: First Amendment - HydroScience (1136 : Accelerate Sewer Trunk Line and Amendment with Hydroscience)

CONSULTANT. The CITY Manager of CITY is authorized to terminate this AGREEMENT on behalf of CITY.

6. **Performance of Work.** CONSULTANT represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by CONSULTANT in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of the CONSULTANT'S profession. By delivery of completed work, CONSULTANT certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. CONSULTANT shall perform all work and services under this Agreement in conformance with the time schedule set forth on Exhibit C, "Schedule of Performance," attached hereto and incorporated herein by this reference. CITY's City Manager is authorized on behalf of CITY to modify the timeframes set forth on the Schedule of Performance within the term of this Agreement. If CONSULTANT desires to leave or store any of CONSULTANT's equipment at a CITY site while CONSULTANT is performing work or service pursuant to this Agreement, CONSULTANT will first obtain the consent of CITY's City Manager, or his delegate, to do so, and any such storage shall occur only in the manner and location allowed by such CITY official and entirely at CONSULTANT's sole risk.

7. **Insurance Requirements.** CONSULTANT shall procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of CONSULTANT, including its subcontractors, relating to or arising from the performance of any work or service under this Agreement, and must remain in full force and effect at all times during the period covered by this Agreement. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. CONSULTANT further understands that the CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to CONSULTANT, at any time as deemed necessary to protect the interests of the CITY.

7.1. **Insurance Types and Amounts.**

- 7.1.1. **Commercial General Liability (CGL).** CONSULTANT shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 7.1.2. **Automobile Liability.** CONSULTANT shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if CONSULTANT does not own automobiles, then CONSULTANT shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 7.1.3. **Workers' Compensation Insurance and Employer's Liability.** CONSULTANT shall maintain Workers Compensation coverage, as required by law, in the minimum

amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If CONSULTANT is self-insured, CONSULTANT shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

- 7.1.4. Pollution (Environmental) Liability. If the performance of CONSULTANT'S work or service under this Agreement involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, CONSULTANT shall procure and maintain Pollution Liability covering the contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

7.1.5. Professional Liability.

7.1.5.1. If the performance of CONSULTANT's work or service under this Agreement involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, and appraisers), CONSULTANT shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if CONSULTANT maintains a claims-made policy, CONSULTANT shall provide written evidence of such insurance to the CITY for at least five (5) years after the completion of work performed under this Agreement.

7.1.5.2. If the performance of CONSULTANT's work or service under this Agreement relates to Information Technology or related services (examples include, but are not limited to computer programmers, hardware engineers, or other systems consultants), CONSULTANT shall procure and maintain a claims made Errors and Omission liability insurance, including Cyber Liability and Data Breach, in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

7.1.5.3. If the performance of CONSULTANT's work or service under this Agreement involves contact with minors, CONSULTANT shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- 7.2. **Endorsements.** CONSULTANT shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

7.2.1. **General Liability.**

7.2.1.1. The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;

7.2.1.2. the insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and,

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. **Workers Compensation.**

The insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

- 7.3. **Qualification of Insurers.** All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and an financial size rating of "VII" or better.

- 7.4. **Certificates.** CONSULTANT shall furnish CITY of Morgan Hill with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the CONSULTANT's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

City of Morgan Hill
Attn: Risk Management
17575 Peak Avenue
Morgan Hill, CA 95037

8. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.

9. **Compliance with Law.** CONSULTANT and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. CONSULTANT and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

10. **Independent Contractor.** CONSULTANT is an independent contractor and not an agent or employee of CITY.

11. **Confidentiality.** All data, documents, or other information received by CONSULTANT from CITY or prepared in connection with CONSULTANT'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by CONSULTANT without prior written consent by CITY.

12. **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

13. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of CONSULTANT is as follows:

HydroScience Engineers, Inc.
4055 Evergreen Village Square, Suite 250
San Jose, CA 95135

Address of CITY is as follows:

Mr. Karl Bjarke	with a copy to:
City of Morgan Hill	City Clerk
17575 Peak Avenue	City of Morgan Hill
Morgan Hill, CA 95037	17575 Peak Avenue
	Morgan Hill, CA 95037

14. **Licenses, Permits and Fees.** CONSULTANT shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.

15. **Maintenance of Records.**

15.1. **Maintenance.** CONSULTANT shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. CONSULTANT shall maintain records for a period of at least 3 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 3 year period, then CONSULTANT shall retain said records until such action is resolved.

15.2. **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 CONSULTANT and its subcontractors related to services 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.

15.3. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT for work performed under this Agreement shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

16. **Familiarity with Work.** By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.

17. **Time of Essence.** Time is of the essence in the performance of this Agreement.

18. **No Assignment.** Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.

19. **Attorney Fees.** In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.

20. **Defense and Indemnification.**

20.1. **Defense and Indemnification for Design Professional Services.** Consistent with California Civil Code Section 2782.8, for design professional services to be performed under this agreement by a design professional, as that term is defined under said Section 2782.8, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors in performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement ("CLAIM").

20.2. **Defense and Indemnification for Non-Design Professional Services.** For all services performed under this agreement not covered by Section 20.1 above, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").

20.3. **Exceptions.** CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence, active negligence or willful misconduct of the CITY.

- 20.4. Not limited by insurance. The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMs alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.
- 20.5. Right to Offset. CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (20) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 20.6. Interpretation. This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.
21. Entire Agreement; Modification; Conflicting Provisions. This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by a subsequent mutual written agreement executed by CITY and CONSULTANT. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.
22. Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.
23. Interpretation. This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.
24. Preservation of Agreement. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.
25. Binding Agreement. Notwithstanding the provisions of Section 18 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of CONSULTANT in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

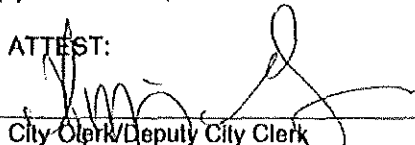
26. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

IN WITNESS THEREOF, these Parties have executed this Agreement on the day and year shown below.

AS SET FORTH IN CA. CORP. CODE § 313, TWO SIGNATURES ARE REQUIRED FOR CALIFORNIA CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
(2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

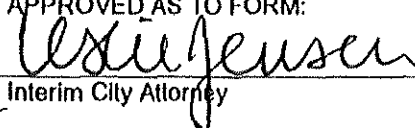
ATTEST:


City Clerk/Deputy City Clerk

 Michelle Wilson
Print Name

Date: 5/6/16

APPROVED AS TO FORM:

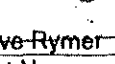

Interim City Attorney

 Gary M. Baum
Print Name

Date: 05/05/16

CITY OF MORGAN HILL


Acting City Manager

 Christina Turner
Print Name

Date: 5/6/16

HYDROSCIENCE ENGINEERS, INC.

By: 

Title: Curtis Lam, President
Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 02/16/16

By: 

Title: HILDEGARD M. HARRIS, CFO
Print Name and Title of Signer.

If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 2/16/2016

EXHIBIT A

Scope of Services – Phase 1

HydroScience proposes the following scope of work. In preparing the level of effort, we have made the following assumptions:

1. As shown in Figure 1, the alignment for City's new 30-inch sewer trunk project is from Highland Avenue and Harding Avenue (constructed as part of the City's Harding Avenue Sewer Trunk Line project) until the connection to the City of Gilroy's new 36-inch sewer trunk near Renz Road. The new 30-inch new sewer trunk pipeline is approximately 37,000 lineal feet (LF) total.
2. This project will be constructed in two phases as described below:
 - a. Phase 1– Design, bid, and construction of approximately 21,000 LF from Harding Ave/Highland Ave to Monterey Hwy/Las Animas Ave.
 - This phase includes predesign of the entire alignment (from Highland Ave and Harding Ave through connection to the City of Gilroy's sewer trunk near Renz Road). The predesign tasks are described in Task 2 below.
 - We anticipate that this pipeline segment will require minimal permit approvals.
 - b. Phase 2– Design, bid, and construction of approximately 16,000 LF from Monterey Hwy/Las Animas Ave to tie-in connection point with the City of Gilroy's 36-inch sewer near Renz Road.
 - Alignment includes sewer pipeline installations within private property.
 - Alignment also includes the following crossings:
 - o Under the UPRR tracks near Las Animas Ave and Monterey Hwy
 - o Under Hwy 101 at Las Animas Ave.
 - o Under Leavesley Rd. near Hwy 101 off-ramp (on fringe of State right-of-way)
 - o Under Miller Slough near E. 6th Street
 - We anticipate that this pipeline segment will require additional permit approvals and coordination.
3. The topographic survey and geotechnical investigation work will proceed following the City's selection of the preferred alignment for each pipe reach (for entire alignment included in Phases 1 and 2).
4. Based on our current project work with the City, we anticipate the City may want aerial topographic mapping for the new sewer trunk. The base fee estimate for topographic survey work does not include cost for aerial mapping. Since aerial mapping topography is highly recommended for Phase 2's pipe segments, we have included this as an optional cost to be performed if directed by the City.
5. Construction work will be within publicly owned sanitary sewer easements and/or right of ways (ROW). For Phase 2 segments, some of these easements are within private property. Although not included in our previous base fee, we highly recommend performing title searches and incorporating title report information into the topographic survey. Therefore, we have added the cost for title reports as an optional cost to be performed if directed by the City.
6. Our fee estimate includes effort to contact known utilities in the project area to obtain their mapping for design purposes. The mapping will be used as reference/supplemental information to the topographic survey's existing utility information developed in Task 2.
7. It is assumed that environmental permitting efforts and community relations support, if needed, will be performed by the City and/or others.

EXHIBIT A

8. Phase 2 will require permits from UPRR and Caltrans to cross under the railroad tracks and at/near Hwy 101, respectively. Phase 2 will also require additional coordination with UPRR, Caltrans, and Santa Clara Valley Water District (SCVWD) during the Phase 2 design. Phase 2 will also require coordination with private property owners (e.g., Gilroy Outlets, Costco, etc.).

Figure 1 – Proposed Phase 1 and 2 - Alignment of 30-inch Relief Trunk from Harding Ave/Highland Ave to Renz Road



EXHIBIT A

TASK 1 – PRELIMINARY DESIGN

HydroScience will begin the Phase 1 project with a kickoff meeting to establish a collaborative approach and will be the first step to ensure good coordination and communication throughout the project. The goals for this meeting include establishing an understanding of the project's objectives, the City's expectations, project schedule, and the various roles and responsibilities for the entire project team. This meeting is also a good opportunity to identify concerns and potential pitfalls. This process is extremely helpful in getting the design team members in tune with the City's real needs and objectives, and in recognizing the critical decisions and hurdles that may have to be addressed during the project. HydroScience will prepare agenda, handouts, and minutes to document this meeting.

Since Akel Engineering is currently updating the proposed sewer trunk's hydraulic parameters, our scope includes one meeting with Akel Engineering and the City to review Akel's latest evaluation results. The goals for this meeting include verifying the sewer trunk's pipe diameter for each segment and pipe reach, preliminary pipe invert elevations and rim elevations, and other recommendations based on the City's latest sewer master plan.

Technical Memorandum and Preliminary Design Workshop

The technical memorandum (TM) will evaluate all pipeline segments to be installed during Phases 1 and 2. HydroScience will make recommendations for a preferred design approach, which will be presented in the Preliminary Design Workshop, and the decisions reached in this workshop will serve as the basis for the subsequent design efforts in Phases 1 and 2. The preferred approach will be based on a set of criteria including cost, construction schedule, and ease of maintenance.

The TM that will summarize our preliminary design findings based on existing utility information and other information provided by the City. For segments in Phase 1, we will evaluate the City's three proposed routes shown in the RPP between the limits of Harding Ave/Highland Ave and Day Road. Out of this assessment, up to two of the three routes will be discussed and included in the TM, as well as a discussion on the proposed route from Day Road to Monterey/Las Animas. For segments in Phase 2, we will evaluate up to two possible alignments only if the proposed routing shown on Figure 1 is prohibitive. For each segment's preferred alignment, we will evaluate up to two construction methods (trenchless versus open-cut) for each segment.

For each segment's preferred alignment, the TM shall include the following:

- Exhibit of the preferred pipeline alignment (no preliminary drawings will be developed)
- Design criteria and high-level project description (for CEQA's initial studies)
- Recommendations for the preferred method of construction: 1) Open-cut or 2) Trenchless (pending confirmation of existing utility locations as part of Task 2).
- Preliminary construction estimate
- Preliminary design and construction schedule
- Identification of easements/ROW that may need construction easements, title reports, and/or Plat and Legal Descriptions for the City to obtain utility easements.
- Identification of permits required and approach to expediting any approvals from UPRR, Caltrans, and SCVWD.

EXHIBIT A

To facilitate design of the preferred alignment, HydroScience proposes a design review workshop with the City to review the TM findings. The pipeline alignment alternatives along with the preferred alignments will be discussed at this workshop. It is anticipated that the alignment and construction method for each segment will be validated by the end of this workshop. Following the workshop, the topographic survey and geotechnical investigation work will proceed on the selected alignment of the sewer pipe to be installed in both Phases 1 and 2.

Deliverables

TM - Four hard copies and electronic PDF file

Preliminary Design Review Workshop meeting agenda, minutes, and decision logs - Electronic PDF

Meetings

Kickoff meeting

Preliminary Design review workshop

TASK 2 – PREPARE PLANS, SPECIFICATIONS AND ESTIMATES

A. Perform Topographic Survey

HydroScience's subconsultant, HMH Engineering, will provide record right-of-way and title reports; record utility research; field topographic survey; and aerial topographic mapping. Our base fee is based on performing topographic survey work associated with the alignment shown in Figure 1. These limits may be adjusted to match the preferred alignment if different from what is shown in Figure 1 following completion of Task 1.

Record Right-of-Way. Using current Assessor's maps, title report information, and recorded maps and documents from the County of Santa Clara, HMH will prepare a record boundary in AutoCAD format.

Field Topographic Survey. HMH will perform field topographic surveying to obtain location, rim, invert, pipe size, and direction of flow of accessible sanitary sewer manholes, storm drain manholes, and storm drain inlets; location of all USA marked utilities and vaults from curb to curb; location, rim, top of nut, and length of extension of water valves; and location of street monuments. HMH will prepare a topographic exhibit at a scale of 1 inch = 40 feet in AutoCAD format. The exhibit will be a composite of the record right-of-way, record utility research, and field topographic survey.

Aerial Topographic Mapping.

HMH will establish thirty field pre-marks and field control for an aerial flight to obtain topographic information within the streets. HMH will also engage a photogrammetric subconsultant to perform air flight services and compile a topographic map showing photo-visible surface features, structures within a 100 feet wide strip, one-foot contours, spot elevations, and breaklines at a scale of 1 inch = 40 feet.

Title Reports

HMH will obtain current preliminary title report for the following areas (private properties):

- Southeast corner of Las Animas Ave and Highway 101
- Gilroy Outlets parking lot (south of Leavesley Road)
- Vacant lot between Arroyo Circle And E. 6th Street (south of Kaiser Permanente Medical Offices)
- Costco parking lot (west side)

EXHIBIT A

- Lowe's parking lot (west side)
- Vacant lot south of Lowe's/Renz Road (west of Chili's parking lot)

Plat and Legal Description - OPTIONAL

HMH may prepare plat and legal description if requested by the City. Depending on the alignment selected during the Task 1 preliminary design evaluations, the City may need to obtain utility easements, which will require plat and legal descriptions. Since the number of plat-and-legal descriptions will not be known until after the alignment is selected, our revised costs includes optional costs for up to 10 plat-and-legal descriptions.

Deliverables

Final topographic exhibit at a scale of 1 inch = 40 feet in AutoCad format; electronic data becomes property of the City.

B. Coordinate with Utility Companies Including PG&E; Perform Potholing

HydroScience will perform utility investigations to identify buried utilities in the project area. We will first contact known utility providers in the project area, prepare any applications to request maps showing the locations of their utilities, and meet with the utility companies if needed. Equipped with the mapping information, Underground Services Alert (USA) markings, visible trenches, vaults, valves and other surface evidence, we will update the topographic survey information as needed.

Potholing. It is expected that some potholing will be required, particularly to confirm the tie-in locations and key utility crossings to more precisely locate critical and/or conflicting utilities within the proposed sewer trunk alignment. We assumed up to 20 potholes (1' x 1') up to five feet in depth may be needed. These locations will be selected based on the potential conflict with existing underground utilities. We will procure services of a subconsultant to perform this work.

During design, if an existing utility relocation is needed along the City's selected sewer trunk alignment, HydroScience shall coordinate with the applicable utility company, prepare the application, and meet with them on site if necessary. Any application fees and costs associated with the utility relocation will be paid by the City. Our fee is based on one anticipated utility relocation.

Deliverables

Any applications for utility relocation.

C. Geotechnical Investigation

Geo-Logic Associates will perform up to 39 exploratory borings using a truck-mounted drilling rig to characterize the native soils in the project areas. The proposed boring locations and depths are shown in the table below.

EXHIBIT A

Geotechnical Investigation's Proposed Number of Borings

Project Segment	Proposed Number and Depth Of Borings (<i>below ground surface</i>)
Highland Avenue	2 borings up to 20 feet each
Monterey Hwy to Las Animas Ave	17 borings up to 20 feet each
UPRR Crossing at Las Animas Ave	2 borings up to 50 feet each
Las Animas Ave	1 borings up to 20 feet each
Las Animas Ave/Highway 101 Crossing	2 borings up to 60 feet each
San Ysidro Ave, Gilroy Outlets parking lot, and Arroyo Circle	9 borings up to 30 feet each
Leavesley Crossing (at San Ysidro Ave)	2 borings up to 50 feet each
Miller Slough Crossing	2 borings up to 60 feet each
Costco and Lowe's parking lots	2 borings up to 30 feet each
Total of 39 Borings	

The deepest borings are near access pit locations for crossing under UPRR, Hwy 101, and Miller Slough. No borings are planned within Caltrans right-of-way. Geo-Logic will field mark and notify USA of proposed test boring locations prior to drilling.

Borings located in County ROW will be backfilled with soil cuttings (preferred by the County based on Geo-Logic's recent experience) and excess soil cuttings will be spread in unpaved shoulder areas. Borings located in the City of Gilroy and SCVWD right-of-way and in private properties will be backfilled with cement grout. In existing pavement areas, the borings will be capped at the top with cold-patch asphalt. Excess soil cuttings from borings in City of Gilroy, SCVWD, and private properties will be placed in 55-gallon drums and the drums moved to a temporary storage area. Samples will be collected from soil cuttings for CM 17 metals, hydrocarbons, VOC (8250B), and pesticides. Our fee also includes cost for disposal of the drums assuming the soil cuttings are non-hazardous. Additional testing may be necessary if excess levels of hazardous materials are indicated in the initial testing. In existing pavement areas, all borings will be capped at the top with cold-patch asphalt.

As an optional task for landfill soil disposal preliminary screening, Geo-Logic may also perform laboratory testing on 10 selected samples from the project's test borings. This preliminary screening will provide basic information for off-site disposal, and the soil properties needed for the design specifications. Tests to be performed include CAM 17 metals, total petroleum hydrocarbons (gasoline, diesel and motor oil), VOCs, semi-VOCs, pesticides, and PCBs. During the Harding Avenue Sewer Trunk construction project, the City encountered challenges with landfill disposal of the excess excavated soils. This optional task will provide soil classification information needed to evaluate potential off-site disposal options during construction. The actual type and number of tests will depend on the materials encountered in our borings.

Geo-Logic will obtain encroachment permit and a boring permit from SCVWD. Geo-Logic will provide complete application information for the City to obtain encroachment permits from Santa Clara County

EXHIBIT A

and City of Gilroy for the geotechnical field work. By having the City submit the applications, the permit fees are usually waived. Any other associated permit fees will be paid by the City.

A geotechnical engineering report in PDF electronic format will be prepared. The report will present the field data, the results of laboratory analyses, and geotechnical recommendations for various construction methods for the new pipeline.

Deliverables

Information on the subsurface exploration program and traffic control plans for encroachment permits needed for geotechnical field work.

Geotechnical Report - Four hard copies and electronic PDF.

D. Phase 1 Final Design

This scope of work is based on preparation of signed and stamped plans and specifications for the Phase 1 new sewer trunk construction contract (from Highland Avenue to Las Animas Avenue).

Progress Review Meetings with City and Stakeholders

The contract documents will refer to standard details and specifications for the Cities of Morgan Hill and Gilroy, Santa Clara County, Caltrans, and SCVWD as applicable. Special provisions will be added to the City of Morgan Hill documents as needed to meet the specific needs of each segment. We propose progress review meetings prior to submittal of the 30% and 60% designs for the City and project stakeholders to attend. HydroScience will present preliminary geotechnical and survey findings and recommendations and an overview of the current design approach for each segment. These meetings provide the City and stakeholders the opportunity to ask questions and make suggestions to the design prior to completing the design submittals.

Quality Assurance

The 30%, 60%, and 100% design submittals will be reviewed for QA/QC by a senior member of HydroScience's staff who is not directly involved with the project design prior to delivering those submittals to the City.

Design Submittals

Contract documents will be delivered to the City at the 30%, 60%, and 100% design completion levels for City review and comment. The 30%-review submittal will include plan and profile drawings and list of technical specifications. The plan and profile drawings will include information needed to verify the selected alignment and make adjustments based on surveying and geotechnical findings. The 60% review submittal will include plan and profile drawings, standard details, and technical specifications. The 100% design and Bid Set submittals will include complete plan set, technical specifications, and City-provided front end documents that have been modified to meet the project needs.

Additionally, the design submittals will include updated design and construction schedules, the engineer's opinion of probable costs, and responses to comments from the 30% and 60% design submittals. Our schedule assumes the City will have two weeks to comment on the 30% and 60% submittal and one week

EXHIBIT A

for the 100% submittal. City comments on the 30% and 60% design submittals will be incorporated into the 60% and 100% design submittal, respectively. The 100% design submittal will also further develop the detailed design to a level suitable for any permit application submittals and bid advertisement, pending City review.

HydroScience will submit final design drawings and specifications, which will reflect any comments and modifications from the 100% review, as appropriate. HydroScience will prepare the bid schedule and delineate the anticipated construction time period. In addition, HydroScience will provide the final Engineer's opinion of probable cost, tabulation of quantities of all work items and materials, and recommendation for allowed construction time period.

Design Submittal Review Meetings

After the 30% and 60% submittals, the project manager and project engineer will meet with City staff to review the City's comments during a design review meeting.

We propose a 100% design review workshop to be held within the City's one week review period to facilitate review of the design and capture edits/comments. HydroScience will document the design review workshop via email. Changes in the design are not anticipated at this point. Review is mainly to capture minor edits or changes in the notes. Significant design changes such as realignment of the pipeline and/or additional design details may result in delays in the schedule and additional fee.

Deliverables

Meeting agendas, minutes, and decision logs

Four (4) half-size hardcopies and PDF of 30%, 60%, and 100% Bid Set design submittals (drawings, specifications, schedule, and estimate). One (1) full-size stamped and signed set of mylars of the 100%.

AutoCAD and Word files for final bidding documents.

Meetings

Two (2) progress meetings with City and stakeholders (up to 4 hours each meeting).

Design review meetings at 30%, 60%, and 100% submittal milestones (up to 4 hours each meeting).

Assumptions

For Phase 1, approximately 26 drawing sheets to be provided, including 18 plan and profile sheets at 1:40 scale plus 4 front-end sheets, and 4 detail sheets.

E. Permitting/Environmental Documentation Assistance

The various permits that may be required are itemized below:

- Phase 1 Construction:
 - Santa Clara County Encroachment Permit

HydroScience will assist the City with preparing encroachment permit applications. We will compile the required information for each permit and submit applications on the City's behalf. Any permit applications will be paid by the City.

EXHIBIT A

Since City staff or its consultant will perform the CEQA required environmental studies and reporting, HydroScience will provide the City and/or its consultant the required project and design descriptions to complete the environmental documentations. Any required mitigated measures will be incorporated into the sewer trunk's design plans and specifications.

TASK 3 - BIDDING SUPPORT

HydroScience will provide assistance to the City during the contract bid period. Services include attendance at the project pre-bid meeting; responding to prospective bidders' questions (20 each); preparation of addenda (including sketches or revisions to plans) as needed to clarify the design (2 each); and a review and evaluation of the submitted bids up to the subtask budget.

Deliverables

*Meeting minutes, question responses, addenda if required, and bid review comments.
Conformed plans and specifications (PDF, Word, and AutoCAD)*

TASK 4 - CONSTRUCTION SUPPORT

The City will provide the construction management, special inspections services, and the daily inspection. HydroScience will provide engineering services during construction. Our fee for construction support services shall include:

- Attendance at the pre-construction meetings (up to 4 hours per meeting)
- Attendance at construction meetings and/or field visits (up to 8 total; up to 4 hours per meeting/field visit)
- Review of contractor submittals and resubmittals and response to request for information (up to 20 total)
- Minor adjustments to the design plans and specifications (5 each) to address unforeseen conditions or City requests.
- Review change orders (up to 5 total)
- Preparation of record drawings based on the contractor's markups.

The HydroScience team will review technical submittals (including product substitution requests) from the contractor in sufficient detail to determine whether or not the submitted item conforms to the intent of the plans and specifications. HydroScience will respond to RFIs and RFCs throughout construction as directed by the City. HydroScience will attend construction meetings and/or site visits to address conflicts or other design issues.

Once the project construction is complete, HydroScience will prepare record drawings to reflect the as-built project condition. Red-line drawings from the contractor and/or City Inspector will be used as the basis for preparing the as-built drawings.

EXHIBIT A

Deliverables

Responses for submittals, RFIs/RFCs, product substitution requests, and change order requests (quantities specified above).

One (1) full-size record drawings (on mylar) plus PDF and AutoCAD format.

ANTICIPATED INVOLVEMENT OF CITY STAFF

The City shall provide record drawings of recent street improvements and of any City owned underground utilities along the project alignments. The City shall provide HydroScience with the most current front end documents, standard provisions, and special provisions for incorporation into the design submittals. The City shall provide the necessary hydraulic modelling information; perform CEQA for this project; obtain any necessary additional easements, provide inspection services; review all design submittals in a timely manner; and make available City personnel to address issues that may arise during the design phase.

EXHIBIT B - Consultant Fee

HydroScience
SUSTAINABLE WATER SOLUTIONS

City of Morgan Hill																
PHASE 1 - Sewer Trunk Line South of Highland Avenue to Las Animas Avenue																
Consultant Fee																
revised April 20, 2016																
Task Item	Description	Labor Classification	Prn	Prn	E-M	E-IX	E-I	E-M	E-VIII	Hours	Fee	Reps. and O&G	Sub. Surveying	Geotech. Investigation	Val. Hiding	Direct Design Support @ 10%
		Hourly Rate	\$225	\$225	\$175	\$210	\$115	\$175	\$200							
1	Preliminary Design		35	64	82	12	154	16	1.5	324.5	\$47,000	\$150	\$0	\$0	\$0	\$20
	Project Initiation and Kick-off Meeting		8	20	18	0	6	0	0	32	\$10,100	\$0	\$0	\$0	\$0	\$100
	Meeting With Akeel Engineering		4	4	4		4			16	\$3,000	\$100				\$10
	Technical Memorandum and Preliminary Design Workshop (Segments 1 and 2)		20	40	60	12	124	16	1.5	273.5	\$43,900	\$50	\$0	\$0	\$0	\$10
2	Final Design		43	207	379	44	785	40	0	1478	\$226,800	\$1,180	\$103,500	\$117,125	\$30,000	\$25,185
A	Topographic Survey (including aerial orthographic images and tide search)		12	20		20		32		58	\$8,500	\$103,500		\$10,350		\$113,850
B	Utility Coordination and Pot-holing (up to 20 Pot-holes)		12	32		75		119		119	\$16,900			\$30,000		\$33,000
C	Geotechnical Investigation (39 borings total)		4	12				16		16	\$3,000			\$117,125		\$11,715
D	Final Design (2 bid packages)		38	159	283	44	648	0		1172	\$177,600	\$1,000	\$0	\$0	\$0	\$500
E	Permitting/Environmental Documentation Assistance		5	20	32		22	40		119	\$20,800	\$180			\$20	\$200
3	Bidding Support		2	13	24	1	25	0	0	45	\$10,750	\$90	\$0	\$0	\$0	\$20
	Pre-bid Meeting/Site Tour		2	6	6	0	0	0	0	34	\$2,850	\$40			\$10	\$140
	Respond to bidder's questions (up to 40 questions total)		4	12		17		33		33	\$5,000			\$8		\$190
	Agendas including contract revisions & sketches (up to 4 total)		3	6	1	8		18		18	\$2,900	\$50			\$10	\$60
4	Construction Support (Segments 1 and 2)		8	90	112	3	135	4	0	352	\$55,500	\$1,040	\$0	\$0	\$0	\$150
	Preconstruction Support and Project Monitoring		2	40	24	0	2	0	0	68	\$13,800	\$60	\$0	\$0	\$0	\$10
	Meetings (up to 16 total, with notes and site visit)		4	12	25		12	2		55	\$9,700				\$0	\$300
	Prepare Submittal List		1	2		4		7		7	\$1,000				\$0	\$0
	Review Contractor Submittals/Substitution Request/RIFs (up to 30 total)		20	22	1	39		82		82	\$13,000				\$0	\$0
	Adjustments to design plans & specs (up to 10 total)		2	10	25	2	50	2		92	\$13,800	\$180			\$20	\$200
	Review Change Order Requests (up to 10 total)		6	7		12		25		25	\$4,000				\$0	\$0
	Prepare Record Drawings		1	6		16		23		23	\$3,100	\$800			\$100	\$900
TOTAL (BASE FEE)			85	374	587	60	1059	60	1.5	2241	\$353,050	\$2,460	\$103,500	\$117,125	\$30,000	\$25,355
Optional Scope Items																
2	A1	OPTIONAL - Plat and Legal Descriptions (new easement/ROW), up to 10 each			2		2			4	\$1,000		\$3,600		\$360	\$4,000
2	B1	OPTIONAL - Additional Pot-holes (20 each)		1	2		2			5	\$1,800			\$8,175	\$818	\$9,000
2	C1	OPTIONAL - Landfill Soil Screening (analytical tests on 10 samples)			1		1			2	\$300			\$3,350	\$335	\$3,700
TOTAL (BASE FEE + OPTIONAL SCOPE)			85	375	602	60	1064	60	1.5	2252	\$355,350	\$2,460	\$107,100	\$120,475	\$38,175	\$26,868

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

EXHIBIT C SCHEDULE OF PERFORMANCE

City of Madison, WI

Phase 1 - Sewer Trunk Line South of Highgate Avenue to US Avenue Avenue

EXHIBIT C - SCHEDULE

Revised April 20, 2016

Task Name	Duration	Start	Finish	Predecessors	2016	2017	2018	2019	2020
1. Task 1 - Preliminary Design	20 days	04/01/16	04/20/16						
2. Task 2 - Preliminary Design	20 days	04/21/16	05/10/16						
3. Task 3 - Preliminary Design	20 days	05/11/16	05/30/16						
4. Task 4 - Preliminary Design	20 days	05/31/16	06/19/16						
5. Task 5 - Preliminary Design	20 days	06/20/16	07/09/16						
6. Task 6 - Preliminary Design	20 days	07/10/16	07/29/16						
7. Task 7 - Preliminary Design	20 days	07/30/16	08/18/16						
8. Task 8 - Preliminary Design	20 days	08/19/16	08/27/16						
9. Task 9 - Preliminary Design	20 days	08/28/16	09/06/16						
10. Task 10 - Preliminary Design	20 days	09/07/16	09/25/16						
11. Task 11 - Preliminary Design	20 days	09/26/16	10/04/16						
12. Task 12 - Preliminary Design	20 days	10/05/16	10/23/16						
13. Task 13 - Preliminary Design	20 days	10/24/16	11/01/16						
14. Task 14 - Preliminary Design	20 days	11/02/16	11/19/16						
15. Task 15 - Preliminary Design	20 days	11/20/16	11/27/16						
16. Task 16 - Preliminary Design	20 days	11/28/16	12/05/16						
17. Task 17 - Preliminary Design	20 days	12/06/16	12/13/16						
18. Task 18 - Preliminary Design	20 days	12/14/16	12/21/16						
19. Task 19 - Preliminary Design	20 days	12/22/16	12/29/16						
20. Task 20 - Preliminary Design	20 days	12/30/16	01/06/17						
21. Task 21 - Preliminary Design	20 days	01/07/17	01/14/17						
22. Task 22 - Preliminary Design	20 days	01/15/17	01/22/17						
23. Task 23 - Preliminary Design	20 days	01/23/17	01/30/17						
24. Task 24 - Preliminary Design	20 days	01/31/17	02/07/17						
25. Task 25 - Preliminary Design	20 days	02/08/17	02/15/17						
26. Task 26 - Preliminary Design	20 days	02/16/17	02/23/17						
27. Task 27 - Preliminary Design	20 days	02/24/17	03/02/17						
28. Task 28 - Preliminary Design	20 days	03/03/17	03/10/17						
29. Task 29 - Preliminary Design	20 days	03/11/17	03/18/17						
30. Task 30 - Preliminary Design	20 days	03/19/17	03/26/17						
31. Task 31 - Preliminary Design	20 days	03/27/17	04/03/17						
32. Task 32 - Preliminary Design	20 days	04/04/17	04/11/17						
33. Task 33 - Preliminary Design	20 days	04/12/17	04/19/17						
34. Task 34 - Preliminary Design	20 days	04/20/17	04/27/17						
35. Task 35 - Preliminary Design	20 days	04/28/17	05/05/17						
36. Task 36 - Preliminary Design	20 days	05/06/17	05/13/17						
37. Task 37 - Preliminary Design	20 days	05/14/17	05/21/17						
38. Task 38 - Preliminary Design	20 days	05/22/17	05/29/17						
39. Task 39 - Preliminary Design	20 days	05/30/17	06/06/17						
40. Task 40 - Preliminary Design	20 days	06/07/17	06/14/17						
41. Task 41 - Preliminary Design	20 days	06/15/17	06/22/17						
42. Task 42 - Preliminary Design	20 days	06/23/17	06/30/17						
43. Task 43 - Preliminary Design	20 days	07/01/17	07/08/17						
44. Task 44 - Preliminary Design	20 days	07/09/17	07/16/17						
45. Task 45 - Preliminary Design	20 days	07/17/17	07/24/17						
46. Task 46 - Preliminary Design	20 days	07/25/17	07/31/17						
47. Task 47 - Preliminary Design	20 days	08/01/17	08/08/17						
48. Task 48 - Preliminary Design	20 days	08/09/17	08/16/17						
49. Task 49 - Preliminary Design	20 days	08/17/17	08/24/17						
50. Task 50 - Preliminary Design	20 days	08/25/17	09/01/17						
51. Task 51 - Preliminary Design	20 days	09/02/17	09/09/17						
52. Task 52 - Preliminary Design	20 days	09/10/17	09/17/17						
53. Task 53 - Preliminary Design	20 days	09/18/17	09/25/17						
54. Task 54 - Preliminary Design	20 days	09/26/17	10/03/17						
55. Task 55 - Preliminary Design	20 days	10/04/17	10/11/17						
56. Task 56 - Preliminary Design	20 days	10/12/17	10/19/17						
57. Task 57 - Preliminary Design	20 days	10/20/17	10/27/17						
58. Task 58 - Preliminary Design	20 days	10/28/17	11/04/17						
59. Task 59 - Preliminary Design	20 days	11/05/17	11/12/17						
60. Task 60 - Preliminary Design	20 days	11/13/17	11/20/17						
61. Task 61 - Preliminary Design	20 days	11/21/17	11/28/17						
62. Task 62 - Preliminary Design	20 days	11/29/17	12/06/17						
63. Task 63 - Preliminary Design	20 days	12/07/17	12/14/17						
64. Task 64 - Preliminary Design	20 days	12/15/17	12/22/17						
65. Task 65 - Preliminary Design	20 days	12/23/17	12/30/17						
66. Task 66 - Preliminary Design	20 days	12/31/17	01/07/18						
67. Task 67 - Preliminary Design	20 days	01/08/18	01/15/18						
68. Task 68 - Preliminary Design	20 days	01/16/18	01/23/18						
69. Task 69 - Preliminary Design	20 days	01/24/18	01/31/18						
70. Task 70 - Preliminary Design	20 days	02/01/18	02/08/18						
71. Task 71 - Preliminary Design	20 days	02/09/18	02/16/18						
72. Task 72 - Preliminary Design	20 days	02/17/18	02/24/18						
73. Task 73 - Preliminary Design	20 days	02/25/18	03/01/18						
74. Task 74 - Preliminary Design	20 days	03/02/18	03/09/18						
75. Task 75 - Preliminary Design	20 days	03/10/18	03/17/18						
76. Task 76 - Preliminary Design	20 days	03/18/18	03/25/18						
77. Task 77 - Preliminary Design	20 days	03/26/18	03/31/18						
78. Task 78 - Preliminary Design	20 days	04/01/18	04/08/18						
79. Task 79 - Preliminary Design	20 days	04/09/18	04/16/18						
80. Task 80 - Preliminary Design	20 days	04/17/18	04/24/18						
81. Task 81 - Preliminary Design	20 days	04/25/18	05/02/18						
82. Task 82 - Preliminary Design	20 days	05/03/18	05/10/18						
83. Task 83 - Preliminary Design	20 days	05/11/18	05/18/18						
84. Task 84 - Preliminary Design	20 days	05/19/18	05/26/18						
85. Task 85 - Preliminary Design	20 days	05/27/18	06/03/18						
86. Task 86 - Preliminary Design	20 days	06/04/18	06/11/18						
87. Task 87 - Preliminary Design	20 days	06/12/18	06/19/18						
88. Task 88 - Preliminary Design	20 days	06/20/18	06/27/18						
89. Task 89 - Preliminary Design	20 days	06/28/18	07/05/18						
90. Task 90 - Preliminary Design	20 days	07/06/18	07/13/18						
91. Task 91 - Preliminary Design	20 days	07/14/18	07/21/18						
92. Task 92 - Preliminary Design	20 days	07/22/18	07/29/18						
93. Task 93 - Preliminary Design	20 days	07/30/18	08/06/18						
94. Task 94 - Preliminary Design	20 days	08/07/18	08/14/18						
95. Task 95 - Preliminary Design	20 days	08/15/18	08/22/18						
96. Task 96 - Preliminary Design	20 days	08/23/18	08/30/18						
97. Task 97 - Preliminary Design	20 days	08/31/18	09/07/18						
98. Task 98 - Preliminary Design	20 days	09/08/18	09/15/18						
99. Task 99 - Preliminary Design	20 days	09/16/18	09/23/18						
100. Task 100 - Preliminary Design	20 days	09/24/18	10/01/18						
101. Task 101 - Preliminary Design	20 days	10/02/18	10/09/18						
102. Task 102 - Preliminary Design	20 days	10/10/18	10/17/18						
103. Task 103 - Preliminary Design	20 days	10/18/18	10/25/18						
104. Task 104 - Preliminary Design	20 days	10/26/18	11/02/18						
105. Task 105 - Preliminary Design	20 days	11/03/18	11/09/18						
106. Task 106 - Preliminary Design	20 days	11/10/18	11/17/18						
107. Task 107 - Preliminary Design	20 days	11/18/18	11/25/18						
108. Task 108 - Preliminary Design	20 days	11/26/18	12/03/18						
109. Task 109 - Preliminary Design	20 days	12/04/18	12/11/18						
110. Task 110 - Preliminary Design	20 days	12/12/18	12/19/18						
111. Task 111 - Preliminary Design	20 days	12/20/18	12/27/18						
112. Task 112 - Preliminary Design	20 days	12/28/18	01/04/19						
113. Task 113 - Preliminary Design	20 days	01/05/19	01/12/19						
114. Task 114 - Preliminary Design	20 days	01/13/19	01/20/19						
115. Task 115 - Preliminary Design	20 days	01/21/19	01/28/19						
116. Task 116 - Preliminary Design	20 days	01/29/19	02/05/19						
117. Task 117 - Preliminary Design	20 days	02/06/19	02/13/19						
118. Task 118 - Preliminary Design	20 days	02/14/19	02/21/19						
119. Task 119 - Preliminary Design	20 days	02/22/19	02/29/19						
120. Task 120 - Preliminary Design	20 days	03/01/19	03/08/19						
121. Task 121 - Preliminary Design	20 days	03/09/19	03/16/19						
122. Task 122 - Preliminary Design	20 days	03/17/19	03/24/19						
123. Task 123 - Preliminary Design	20 days	03/25/19	03/31/19						
124. Task 124 - Preliminary Design	20 days	04/01/19	04/08/19						
125. Task 125 - Preliminary Design	20 days	04/09/19	04/16/19						
126. Task 126 - Preliminary Design	20 days	04/17/19	04/24/19						
127. Task 127 - Preliminary Design	20 days	04/25/19	05/02/19						
128. Task 128 - Preliminary Design	20 days	05/03/19	05/10/19						
129. Task 129 - Preliminary Design	20 days	05/11/19	05/18/19						
130. Task 130 - Preliminary Design	20 days	05/19/19	05/26/19						
131. Task 131 - Preliminary Design	20 days	05/27/19	06/03/19						
132. Task 132 - Preliminary Design	20 days	06/04/19	06/11/1						

EXHIBIT B



Date: April 5, 2017
 Client: City of Morgan Hill
 Contact: David Gittleston, P.E.
 Project: Sewer Trunk Line South of Highland Avenue

HydroScience Engineers, Inc.
 10569 Old Placerville Road
 Sacramento, CA 95827
 T: 916.364.1490
 F: 916.364.1491

CONTRACT AMENDMENT REQUEST FOR ADDITIONAL ENGINEERING SERVICES

Original Professional Services Agreement Date: May 4, 2016

Amendment Request No.: 1

Amendment Subject: Additional engineering services for flow meter design, bidding support, and construction support as part of Phase 1 design services; storm water pollution prevention plan (SWPPP) development services for Phase 1 and Phase 2; Phase 1 engineering services for change in pipe size from 30" to 36" diameter and additional design investigation efforts; additional survey, geotechnical investigation, and engineering services required to complete preliminary design of Phase 2 alignment as part of preliminary design services; engineering services for Phase 2 final design, bidding support and construction support.

Amendment Description: The Sewer Trunk South of Highland Avenue to Renz Ln (Project) was broken into two (2) design and construction phases: Phase 1 (from Highland Ave to Cohansey Ave) and Phase 2 (from Cohansey Ave to Renz Ln). HydroScience's original contract includes the following services:

Phase 1	Preliminary design, final design, bidding & construction support
Phase 2	Preliminary design & alignment alternatives

The City desires to accelerate the entire project at this time by advancing Phase 2 final design, bidding, and construction services.

Stakeholder coordination with the City of Gilroy to determine a Phase 2 alignment through Gilroy has required more effort and iterations of alignment alternatives than allotted in the original scope. Phase 2 has been narrowed down to two alignment alternatives, pending stakeholder approval, that will allow preliminary design to be completed and final design of Phase 2 to commence. This amendment requests scope be added for the additional preliminary design effort expended to date and anticipated effort to complete the task.

The Project's survey, potholing, and geotechnical investigations were split into two phases, increasing the total costs for those services due to dual mobilizations. Additional survey, potholing, and geotechnical effort is required to address a longer and more complex Phase 2 alignment than was assumed in the original Project scope. The currently proposed Phase 2 alignments include additional trenchless crossings and require utility easements within private property.

The proposed trunk sewer was originally assumed to be 30-inches in diameter. Following the 30% design submittal, the pipe diameter was increased to 36-inches to provide additional capacity within the system. Alignment and profile constraints will be reevaluated and refined to accommodate the increased diameter and reflected in Phase 1 and Phase 2 final design.

The South County Regional Wastewater Authority (SCRWA) Inter-City Boundary Agreement Line is located along Highland Avenue. Based on discussions with the City, the existing sewer trunk has a

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Attachment: First Amendment - HydroScience (1136 : Accelerate Sewer Trunk Line and Amendment with HydroScience)

flow meter located near the intersection of Harding Avenue and Highland Avenue. City's new flow meter will measure Morgan Hill's additional sewer flows delivered to the SCRWA treatment facility via the new sewer trunk.

Develop a SWPPP for Phase 1 and Phase 2 to be compliant with current construction storm water discharge regulations. HydroScience will provide engineering support services to assist the City in the preparation and submittal of Permit Registration Documents (PRD) for Phase 1 and Phase 2 construction. A certified Qualified SWPPP Designer (QSD) will prepare documents necessary for the electronic submittals of the PRDs.

Scope of Services: Based on discussions with City personnel, this additional work consists of the following key scope elements:

Task I – Flow Meter

- **Item 1.1 – Flow Meter Preliminary Design.**
 - During the preliminary design phase, verify and coordinate flow meter equipment and operating requirements with SCRWA.
 - Summarize flow meter design requirements in preliminary design's technical memorandum.
 - HydroScience's electrical engineer will conduct one site visit to verify near-by power sources for the new flow meter. Existing aboveground power poles are located along Harding Avenue and also Highland Avenue.
- **Item 2D.1 – Flow Meter Final Design and PG&E Application**
 - During the final design phase, HydroScience will work with PG&E to apply for the proper power service to the new flow meter. The proposed budget is based on power service from a nearby power pole, PG&E providing the required transformer, and the City paying for any PG&E application fees.
 - Design the flow meter within a buried vault based on the City of Morgan Hill and SCRWA operation requirements. Design will include routing of power conduit from PG&E designated power pole source to the flow meter vault.
 - Design includes instrumentation and controls to allow radio control/communication between the flow meter and the SCRWA facility in Gilroy. The proposed budget does not include a radio study. Instead, the budget is based on a clear line-of-site between the flow meter controls and SCRWA facility (i.e., no major mountains, hills, or large trees that may impact radio signals).
 - Design includes providing plans, specifications, and cost estimates for the new flow meter equipment, vault, power, and instrumentation and controls. Proposed budget includes coordination between the civil and electrical designs.
 - Final design budget is based on developing one drawing sheet for electrical site plan and flow meter and vault details. The budget does not include providing profile drawings for the electrical conduit between the power source and flow meter vault.
- **Items 3.1 and 4.1 – Flow Meter Bidding Support and Construction Support**
 - Provide bidding support and construction support services for the flow meter work. Construction support budget is based on submittal reviews of flow meter equipment and instrumentation/controls.

Deliverables:

- Inclusion of flow meter in the design submittals and specification package prepared for Phase 1.

Task II – Storm Water Permit Compliance

- **Items 2.E1 and 2.E2 – Assist the City in the preparation and submittal of Permit Registration Documents for Phase 1 and Phase 2.**
 - HydroScience will assist the City in the preparation and submittal of Permit Registration Documents (PRDs) in compliance with the Construction Activities Storm Water General Permit. Based on the criteria established by the State Water Resources Control Board, Phase 1 and Phase 2 Sanitary Sewer Construction Projects are considered Linear Utility Projects (LUP), and therefore, the Project is required to comply with the General Permit. The PRDs must be electronically submitted by the City (prior to commencement of construction activities) in the Storm Water Multi-Application Report Tracking System (SMARTS) and include the following:
 - Notice of Intent (NOI)
 - Risk Assessment
 - Post-Construction Calculation
 - Site Map
 - Stormwater Pollution Prevention Plan (SWPPP)
 - Signed Certification by the Legally Responsible Person (LRP)
 - First Annual Fee
 - The SWPPP is a document that outlines how a construction project will minimize stormwater pollution. The SWPPP document will be prepared by a HydroScience Qualified SWPPP Developer (QSD) and will describe the measures that will be put in place by the contractor to prevent stormwater pollution. This document will need to be maintained onsite at all times and updated as needed throughout the duration of construction.
 - The SWPPP will include both procedural and engineered control devices as Best Management Practices (BMPs) for minimizing erosion, sediment flow, and prevention of non-stormwater discharges. The SWPPP will also include site inspection, BMP maintenance, and laboratory sampling and analysis.
 - As a first order of work, HydroScience will perform a risk assessment of the construction project to best outline the complexity of the SWPPP and the extent of the inspection, monitoring, and reporting requirements.

Assumptions:

- All permit fees and costs will be the responsibility of the City.
- LUP Type 1 assumed for both Phase 1 and Phase 2 based on risk level.

Deliverables:

- Permit Registration Documents (pdf version) for electronic submission via the SMARTS system, and electronic copies of said documents.

Task III – Phase 1 Additional Design

- **Item 1.1 – Preliminary design investigation for temporary interconnect (February 2017)**
 - At the direction of City staff, investigate feasibility of a temporary interconnect of the proposed relief sewer to the existing trunk sewer in the vicinity of Day Rd, not included in original project scope. Research existing trunk profile and possible connection points. Evaluate available slope for relief trunk interconnect and identify potential alternate locations. Interconnect would alleviate wet weather surcharge conditions at the intersection of Harding Ave and Highland upon construction of Phase 1, prior to construction of Phase 2. Provide email summary of finding to City staff.
- **Item 2D.1 – Evaluation and redesign of relief trunk to accommodate 36" diameter pipe**
 - Following 30% design submittal, City staff decided to upsize the proposed sewer trunk from 30-inches in diameter to 36-inches in diameter. Due to tight horizontal and vertical constraints, verify through additional engineering evaluations that minimum slope, cover, and clearance requirements can be met with the larger pipe diameter. Reexamine all existing utility crossings and assess any impact to the completed 30% design due to the increase in pipe diameter. Modify alignment as required to meet minimum clearance requirements.

Deliverables:

- Email summary of interconnect feasibility evaluation findings.
- Incorporation of alignment redesign to address diameter increase in 60% design submittal drawings.

Task IV – Phase 2 Design

- **Item 1.1 – Preliminary Design for Phase 2 (partially completed)**
 - Following coordination meeting with the City of Gilroy (August 1, 2016), develop and evaluate six (6) alternative alignments in addition to those evaluated in the Draft Preliminary Design Memorandum. Evaluation of each additional alignment includes site visit; solicitation for and review of existing utility mapping and City of Gilroy record drawings not included in the original alternatives evaluation; hydraulic calculations to determine feasibility; evaluation of construction methods and constraints; and development of preliminary construction costs. Conduct two (2) conference calls (August 9 & 11, 2016) with City staff to discuss evaluation of additional alternatives and select preferred alternatives. Prepare figures of revised alignments for City of Morgan Hill to discuss with City of Gilroy.
 - Attend additional coordination meeting with the City of Gilroy (February 2017) to discuss revised preferred alternative alignment. Prepare meeting materials, including agenda, figures, and minutes. Perform site visit following meeting.
 - Following February 2017 coordination meeting with the City of Gilroy, develop and evaluate two (2) additional alternative alignments for 7th Street and Old Gilroy Street. Evaluation of each additional alignment includes solicitation for and review of existing utility mapping and City of Gilroy record drawings, and were not included in the previous two alternative evaluation efforts; hydraulic calculations to confirm feasibility;

evaluation of construction methods and constraints; and development of preliminary construction costs.

- Attend one final stakeholder meeting with City of Gilroy to confirm final alignment.
- Upon selection of a Phase 2 alignment, update Preliminary Design Memorandum with additional alternative alignment analysis performed and selection criteria used to determine the new preferred Phase 2 alignment.

Deliverables:

- Prepare figures of revised alignments for City of Morgan Hill to discuss with the City of Gilroy.
- Meeting materials, agenda, figures, and minutes for February 2017 meeting with the City of Gilroy to discuss preferred alternative alignments.
- Updated Preliminary Design Memorandum.
- **Item 1.2 – Additional Directed Design Work**
 - As needed and as requested by the City, additional design analyses and evaluations performed to satisfy City and/or stakeholder requests.
- **Item 2A.1 – Phase 2 Topographic Survey**
 - HydroScience's subconsultant, HMH Engineering, will provide record right-of-way and title reports; record utility research; field topographic survey; and aerial topographic mapping per the terms of the scope of the original contract dated May 4, 2016 with the following modifications:
 - The base fee is based on performing topographic survey work associated with the alignment shown in Figure 1. These limits may be adjusted to match the preferred alignment if different from what is shown in Figure 1 following completion of Item 1.1 as described above.
 - HMH will obtain current preliminary title report for the following areas (private properties) in lieu of those listed in the original scope:
 - Apartment Building located at 611 East 7th Street
 - PG&E Property at 731 Renz Ln
 - Vacant lot west of Chili's parking lot on Renz Rd
- **Plat and Legal Description - OPTIONAL**
 - HMH may prepare plat and legal description if requested by the City. Depending on the alignment selected during the Item 1.1 preliminary design evaluations, the City may need to obtain utility easements, which will require plat and legal descriptions. Since the number of plat-and-legal descriptions will not be known until after the alignment is selected, our revised costs includes optional costs for up to 10 plat-and-legal descriptions.

Deliverables

- Final topographic exhibit at a scale of 1 inch = 40 feet in AutoCad format; electronic data becomes property of the City.

Assumptions:

- All permit fees and costs will be the responsibility of the City.
- **Item 2B.1 – Phase 2 Geotechnical Investigation**
 - Geo-Logic Associates were required to perform subsurface exploration by means of 20 exploratory borings using a truck-mounted drilling rig. Based upon the alignment provided as Figure 1, a total of 23 borings will now be required, averaging about 1,000 feet between borings plus two borings at each of the five identified trenchless crossing locations. The proposed boring locations and depths are tabulated below.

Project Segment	Proposed Number and Depth of Borings
Monterey Road, S of Cohansey Avenue	1 boring up to 20 feet
Las Animas Avenue/UPRR crossing	2 borings up to 50 feet
Las Animas	1 boring up to 20 feet
Murray Avenue	6 borings up to 20 feet
Murray Avenue/Miller Slough crossing	2 borings up to 60 feet each
Murray Avenue/Leavesley Road crossing	2 borings up to 50 feet each
Chestnut Street	2 borings up to 20 feet each
Chestnut Street/Miller Slough crossing	2 borings up to 50 feet each
7 th Street	1 boring up to 20 feet each
7th Street/Highway 101 crossing	2 borings up to 60 feet each
Renz Lane	2 borings up to 20 feet each
	Total of 23 borings

- In the borings, soil-sampling and penetration testing will be performed at about 5 foot intervals except for the ten borings at the five crossings which will have continuous sampling within a 10-foot deep tunnel zone.
- Borings located in County right-of-way will be backfilled with soil cuttings (preferred by the County based on our recent experience) and excess soil cuttings will be spread in unpaved shoulder areas. Borings located in City of Gilroy and SCVWD right-of-way will be backfilled with cement grout. In existing pavement areas, the borings will be capped at the top with cold-patch asphalt.
- Excess soil cuttings from borings in City of Gilroy and SCVWD right-of-way will be placed in 55-gallon drums and the drums will be moved to a temporary storage area. Samples will be collected from the soil cuttings for testing of CAM 17 metals, total hydrocarbons, VOC (8260B), and pesticides. Additional testing may be necessary if excess levels of hazardous materials are indicated in the initial testing. Fee includes cost for disposal of the drums assuming the soil cuttings are non-hazardous. Additional testing and disposal of the drums other than as non-hazardous materials will require additional fees. Fee includes up to 40 drums.
- Install an open pipe piezometer in one of the borings at each crossing. The piezometers will have 2-inch diameter pipe. Measure the groundwater level in the five piezometers. Four measurements within the 12-month period after completion of the piezometers are assumed. Cost for destruction of the piezometers is not included.

- Geo-Logic will obtain encroachment permit and a boring permit from SCVWD. Geo-Logic will provide complete application information for the City to obtain encroachment permits from Santa Clara County and City of Gilroy for the geotechnical field work. By having the City submit the applications, the permit fees are usually waived. Any other associated permit fees will be paid by the City.
- A geotechnical engineering report in PDF electronic format will be prepared. The report will present the field data, the results of laboratory analyses, and geotechnical recommendations for various construction methods for the new pipeline.

Deliverables

- Information on the subsurface exploration program and traffic control plans for encroachment permits needed for geotechnical field work.
 - Geotechnical Report – Four hard copies and electronic PDF.
- **Item 2B.2 –Geotechnical Trenchless Construction Expert Consultation**
 - Due to the complexity of the trenchless crossings and increase in size of the pipe, HydroScience recommended to the City that the services of a geotechnical trenchless construction expert be added to the geotechnical investigation in order to provide Geo-Logic with site specific guidance with regard to soils investigations for the construction methods proposed. DCM Consulting will provide the following services to support the geotechnical investigation of Geo-Logic and preliminary design of Phase 2.
 - Complete an alignment reconnaissance at the five trenchless crossings identified to assess the site conditions and surface constraints as related to trenchless constructability elements. Provide recommendations to Geo-Logic for execution of borings in the vicinity of the trenchless crossings.
 - Review available historic data and data contained in the Phase 2 geotechnical investigation report pertinent to the trenchless crossings.
 - Provide a geotechnical and trenchless engineering Technical Memorandum for the five identified trenchless crossings summarizing design groundwater elevations; Tunnelman's Ground Classification; the feasibility of microtunneling; possible alternatives to microtunneling; appropriate shaft construction methods; shaft dewatering criteria; tunnel portal ground improvement criteria; anticipated jacking forces as a function of pipe O.D., casing O.D., soil types and installation lengths; anticipated systemic settlement as a function of tunnel overcut, cover depths and soil types; potential for obstructions; and preliminary estimated microtunneling cost.
 - In order to support DCM Consulting efforts, HydroScience will research the existence of reference borings (i.e. existing data), historic aerial photography and available site information in close proximity to the five identified trenchless crossings from sources such as Caltrans, historic societies and public and private developments as made available from the City and/or County public works and building departments. All available information will be collected and made available to DCM Consulting.

Deliverables

- Email containing subsurface investigation recommendations based on site visit.

- Geotechnical and trenchless engineering Technical Memorandum in electronic format (pdf)
- **Item 2C.1 – Phase 2 Utility Coordination and Potholing**
 - 20 Potholes are part of the original scope for the Phase 2 sewer segment. The current proposed Phase 2 alignment traverses residential areas, increasing the number of anticipated existing gravity utilities. Consequently, we recommend ten (10) additional potholes be added to the preliminary investigation associated with Phase 2.
 - Additional cost for two (2) separate mobilizations to accommodate the two design package schedules.

Deliverables

- Pothole results (30 ea) in ledger and/or included on plan & profile drawings

Assumptions

- Caltrans may require additional potholing to locate high priority existing utilities (e.g., gas pipes) located near new work in their ROW. Additional potholes may also be needed if new work is longitudinally in ROW. Additional potholing as a result of Caltrans-directed potholing is not included in this scope of services at this time.
- **Item 2D.1 – Phase 2 Final Design**
 - This scope of work is based on preparation of signed and stamped plans and specifications for the Phase 2 new sewer trunk construction contract (from Cohansey Avenue to Renz Lane).
 - Progress Review Meetings with City and Stakeholders
 - The contract documents will refer to standard details and specifications for the Cities of Morgan Hill and Gilroy, Santa Clara County, Caltrans, the city of Gilroy, and SCVWD as applicable. Special provisions will be added to the City of Morgan Hill documents as needed to meet the specific needs of the Project. We propose progress review meetings prior to submittal of the 30% and 60% designs for the City and project stakeholders to attend. HydroScience will present preliminary geotechnical and survey findings and recommendations and an overview of the current design approach. These meetings provide the City and stakeholders the opportunity to ask questions and make suggestions to the design prior to completing the design submittals.
 - Quality Assurance
 - The 30%, 60%, and 100% design submittals will be reviewed for QA/QC by a senior member of HydroScience's staff who is not directly involved with the project design prior to delivering those submittals to the City.
 - Design Submittals
 - Contract documents will be delivered to the City at the 30%, 60%, and 100% design completion levels for City review and comment. The 30% review submittal will include plan and profile drawings and list of technical specifications. The plan and profile drawings will include information needed to verify the selected alignment and make adjustments based on surveying

and geotechnical findings. The 60% review submittal will include plan and profile drawings, standard details, and technical specifications. The 100% design and Bid Set submittals will include complete plan set, technical specifications, and City-provided front end documents that have been modified to meet the project needs.

- Additionally, the design submittals will include updated design and construction schedules, the engineer's opinion of probable costs, and responses to comments from the 30% and 60% design submittals. Our schedule assumes the City will have two weeks to comment on the 30% and 60% submittal and one week for the 100% submittal. City comments on the 30% and 60% design submittals will be incorporated into the 60% and 100% design submittal, respectively. The 100% design submittal will also further develop the detailed design to a level suitable for any permit application submittals and bid advertisement, pending City review.
 - HydroScience will submit final design drawings and specifications, which will reflect any comments and modifications from the 100% review, as appropriate. HydroScience will prepare the bid schedule and delineate the anticipated construction time period. In addition, HydroScience will provide the final Engineer's opinion of probable cost, tabulation of quantities of all work items and materials, and recommendation for allowed construction time period.
- Design Submittal Review Meetings
 - After the 30% and 60% submittals, the project manager and project engineer will meet with City staff to review the City's comments during a design review meeting.
 - We propose a 100% design review workshop to be held within the City's one week review period to facilitate review of the design and capture edits/comments. HydroScience will document the design review workshop via email. Changes in the design are not anticipated at this point. Review is mainly to capture minor edits or changes in the notes. Significant design changes such as realignment of the pipeline and/or additional design details may result in delays in the schedule and additional fee.

- **OPTIONAL - Geotechnical Trenchless Construction Expert Consultation**

- Due to the complexity of the trenchless crossings, DCM Consulting may provide, as needed by the design team, trenchless design constructability consultations to HydroScience. Services may include one or more of the following:
 - Assistance with required jacking and receiving shaft sizes and topside equipment area requirements.
 - Determination of specific dewatering requirements and/or ground improvement requirements for tunnel portal stabilization at jacking and receiving shafts.
 - Recommendations for geotechnical instrumentation (e.g. surface and subsurface settlement monitoring and vibration monitoring).
 - Assistance with specification review including microtunneling, shaft construction, dewatering, ground improvement, contact grouting, and geotechnical instrumentation specifications.
 - Final trenchless constructability review.

- Assistance with permit acquisition (e.g., responding to Caltrans encroachment permit questions).
- Project design meeting(s) at HydroScience, Concord.

Deliverables

- Meeting agendas, minutes, and decision logs
- Four (4) half-size hardcopies and PDF of 30%, 60%, and 100% Bid Set design submittals (drawings, specifications, schedule, and estimate). One (1) full-size stamped and signed set of mylars of the 100%. AutoCAD and Word files for final bidding documents.

Meetings

- One additional progress meeting held February 2017 with City of Morgan Hill and City of Gilroy staff to discuss Phase 2 alignment alternatives.
- Two (2) conference calls with City staff (August 2016) to discuss Phase 2 alignment alternative evaluations (2 hours each meeting).
- Two (2) progress meetings with City and stakeholders (up to 4 hours each meeting) to facilitate final design.
- Design review meetings at 30%, 60%, and 100% submittal milestones (up to 4 hours each meeting).

Assumptions

- For Phase 2, approximately 30 drawing sheets to be provided, including 17 plan and profile sheets at 1:40 scale plus 4 front-end sheets, and 8 detail sheets.

Fee Adjustment: The increase in cost for these services is \$521,900. A detailed breakdown of costs are provided in Attachment A.

Tasks	Fee
Contract Amendment No. 1 – Flow Meter, SWPPP, Additional Phase 1 Design, Phase 2 Design	\$521,900
Phase 1 Original Contract	\$651,760
Total Adjusted Budget (Original Contract + CA #1)	\$1,173,660

Additional services will be billed on a time-and-materials basis, not to exceed the total fee without prior approval by the City.

Schedule Adjustment: The modified scope will have a slight impact on the Phase 1 project schedule in order to alter the 30% design documents for an increased size trunk sewer (add two weeks to preliminary design plans), although the remaining durations under all tasks yet to be undertaken are unchanged. Phase 2 schedule will be prepared following NTP with selected alignment.

Sincerely,
HydroScience Engineers, Inc.

C. Reuss

By: Cindy Preuss, P.E., Project Manager

Enclosure: Attachment A – Fee Proposal for Amendment No. 1 Services

Amendment Authorization Request:

This will confirm your authorization for HydroScience to undertake the added (or changed) engineering services described above pursuant to our original Contract Agreement.

Please confirm your authorization by signing in the space provided and emailing a copy back to us as soon as practical in order they we may proceed with these additional engineering services.

Approved: _____
(signature) Date _____

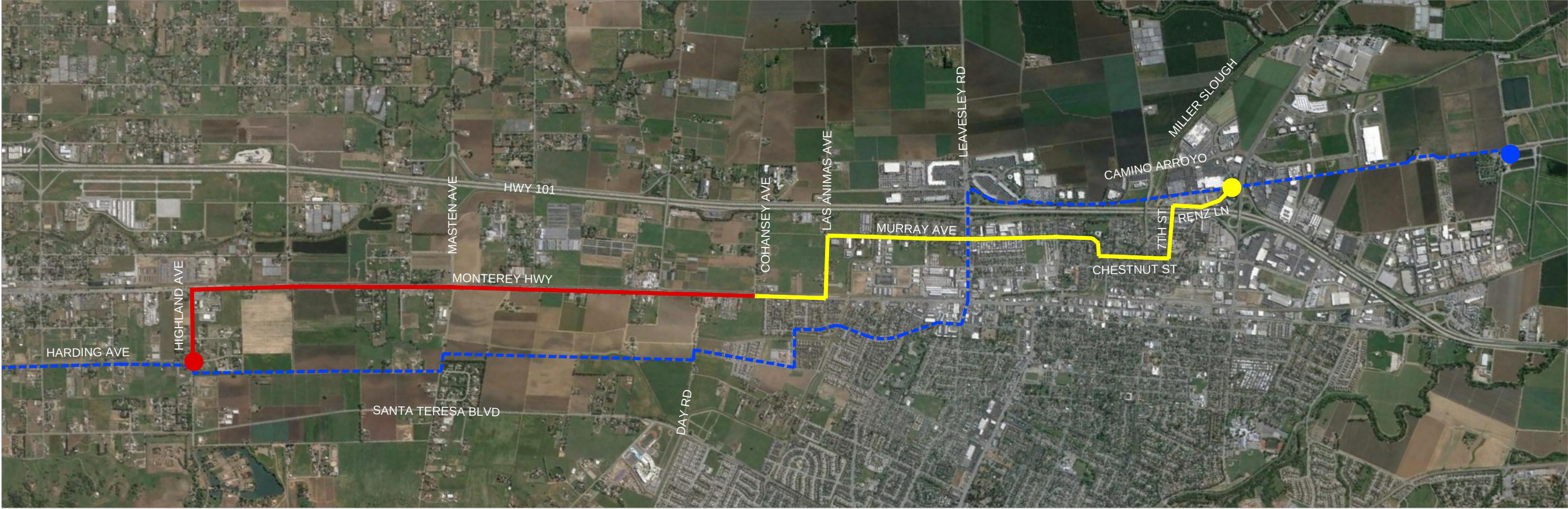
By: _____
City Representative, City of Morgan Hill

EXHIBIT B - Consultant Fee

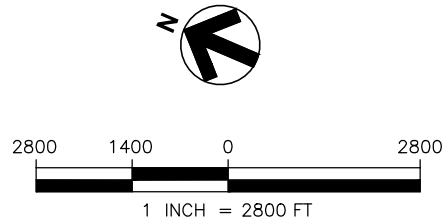
HydroScience
Strategic Water Solutions

City of Morgan Hill																							April 5, 201	
Sewer Trunk Line South of Highland Avenue																								
Contract Amendment No. 1 - Flow Meter, SWPPP, Additional Design																								
Task	Item	Description	Mary Hoang - PIC and Stakeholder Coord	Cindy Preuss - PM	Sandie Dudley - PE	Eric Petrel - QA/QC Reviewer	Hoda Almasab - Design Support	Angela Singer - Permitting	Mike Marandi - Flow Meter/IBC	Nichol Bowersox - QSD/QSP	Courtney Rubin - QSP	Administrative Assistant	Hours	Fee	Repro. and ODCs	MMH - Surveying	Geo-Logit - Geotechnical	Pot-Holing	Direct Charges Markup @ 10%	Travel	Expense Subtotal	Total Fee		
Labor Classification			Prin	Prin	E-VI	E-IX	E-I	E-VI	E-VIII	E-VIII	E-III	ADMIN												
Hourly Rate			\$225	\$225	\$180	\$210	\$125	\$180	\$200	\$200	\$150	\$70												
I		Flowmeter	0	6	0	0	0	0	92	0	0	0	98	\$19,800	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$19,800		
	1.1	Flow Meter Preliminary Design		2					10				12	\$2,500					\$0		\$0	\$2,500		
	2D.1	Flow Meter Final Design and PG&E Application		3					64				67	\$13,500					\$0		\$0	\$13,500		
	3.1	Flow Meter Bidding Support							8				8	\$1,600					\$0		\$0	\$1,600		
	4.1	Flow Meter Construction Support		1					10				11	\$2,200					\$0		\$0	\$2,200		
II		Stormwater Permit Compliance	0	2	0	0	36	0	0	16	44	10	108	\$15,400	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$15,400		
	2E.1	Phase 1 Permit Registration Document Preparation		1			12			9	20	4	46	\$6,800					\$0		\$0	\$6,800		
	2E.2	Phase 2 Permit Registration Documents Preparation		1			24			7	24	6	62	\$8,600					\$0		\$0	\$8,600		
III		Phase 1 - Additional Design	0	4	16	0	16	0	0	0	0	0	36	\$5,700	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$5,700		
	1.1	Preliminary Design Investigation for Interconnect		4	8								12	\$2,300					\$0		\$0	\$2,300		
	2D.2	Evaluation and Redesign for 36" pipe			8		16						24	\$3,400					\$0		\$0	\$3,400		
IV		Phase 2 Design	52	346	565	72	893	6	0	0	0	87	2021	\$325,100	\$2,240	\$10,500	\$65,857	\$37,500	\$11,610	\$1,830	\$129,700	\$454,800		
	1.1	Preliminary Design	2	48	70	6	55	2				25	208	\$34,100	\$50				\$5	\$420	\$500	\$34,600		
	1.2	Additional Directed Design Work	2	34	40		40						116	\$20,300	\$50				\$5	\$210	\$300	\$20,600		
	2A.1	Topographic Survey		4	8		16						28	\$4,300		\$10,500			\$1,050		\$11,600	\$15,900		
	2B.1	Geotechnical Investigation		2	6								8	\$1,500			\$59,857		\$5,986	\$60	\$65,900	\$67,400		
	2B.2	Geotechnical Trenchless Construction Expert Services (for Geotech Investigation)			2		2					32	36	\$2,900			\$6,000		\$600		\$6,600	\$9,500		
	2C.1	Utility Coordination & Potholing (30 potholes)		4	4		8					6	22	\$3,000				\$37,500	\$3,750		\$41,300	\$44,300		
	2D.1	Final Design	38	140	275	44	610						1107	\$175,000	\$1,000				\$100	\$500	\$1,600	\$176,600		
	3.1	Bidding Support	2	14	40	2	22						80	\$14,000	\$100				\$10	\$140	\$300	\$14,300		
	4.1	Construction Support	8	100	120	20	140	4				24	416	\$70,000	\$1,040				\$104	\$500	\$1,600	\$71,600		
TOTAL (BASE FEE)			52	358	581	72	945	6	92	16	44	97	2263	\$366,000	\$2,240	\$10,500	\$65,857	\$37,500	\$11,610	\$1,830	\$129,700	\$495,700		
Optional Scope Items																								
IV	2A.1	OPTIONAL - Plat and Legal Descriptions (new easement/ROW), up to 5 each			2		2						4	\$1,000			\$7,500		\$750		\$8,300	\$9,300		
IV	2B.1	OPTIONAL - Analytical tests of 5 soil samples			1		1						2	\$300			\$3,565		\$357		\$3,900	\$4,200		
IV	2D.1	OPTIONAL - Geotechnical Trenchless Construction Expert Services (for Final Design, up to 45 hours)		4	8								12	\$2,300			\$9,450		\$945		\$10,400	\$12,700		
TOTAL (BASE FEE + OPTIONAL SCOPE)			52	362	592	72	948	6	92	16	44	97	2281	\$369,600	\$2,240	\$10,500	\$86,372	\$37,500	\$13,661	\$1,830	\$152,300	\$521,900		

City of Morgan Hill PHASE 2 - Sewer Trunk Line Cohansey Ave to Renz Ln				EXHIBIT C - SCHEDULE												April 12, 2017			
Task Name	Duration	Start	Finish	2017				2018				2019							
				Jan	Apr	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Jul	Oct				
Ammendment Approval	0 days	Mon 4/17/17	Mon 4/17/17	4/17 ◆ Ammendment Approval															
Task 1 - Preliminary Design	25 days	Mon 5/1/17	Fri 6/2/17	Task 1 - Preliminary Design															
Task 2 - Final Design	275 days	Mon 6/5/17	Fri 6/22/18	Task 2 - Final Design															
Topographic Survey	30 days	Mon 6/5/17	Fri 7/14/17	Topographic Survey															
Topographic Survey - Phase 2	6 wks	Mon 6/5/17	Fri 7/14/17	7/14															
Coordinate with Utility Companies - Phase 2	3 wks	Mon 6/5/17	Fri 6/23/17																
Geotechnical Investigation	90 days	Mon 6/5/17	Fri 10/6/17	Geotechnical Investigation															
Permitting and Field Investigation - Phase 2	8 wks	Mon 6/5/17	Fri 7/28/17																
Lab Testing - Phase 2	2 wks	Mon 7/31/17	Fri 8/11/17																
Draft Geotech Report - Phase 2	4 wks	Mon 8/14/17	Fri 9/8/17	9/8															
HSE/City Review - Phase 2	2 wks	Mon 9/11/17	Fri 9/22/17	HSE/City Review - Phase 2															
Final Geotech Report - Phase 2	2 wks	Mon 9/25/17	Fri 10/6/17	10/6															
Phase 2 - 30% Design	95 days	Mon 7/17/17	Fri 11/24/17	Phase 2 - 30% Design															
30% Drawings, Spec List, Cost Est., & Schedule	9 wks	Mon 7/17/17	Fri 9/15/17																
QA/QC Review	5 days	Mon 9/18/17	Fri 9/22/17																
Submit 30% Submittal	0 days	Fri 9/29/17	Fri 9/29/17	9/29 Submit 30% Submittal															
City Review	10 days	Mon 10/2/17	Fri 10/13/17	City Review															
30% Design Review Meeting	0 days	Tue 11/7/17	Tue 11/7/17	11/7 30% Design Review Meeting															
Stakeholder Approvals - SCC, SCVWD, WSMWW	2 wks	Wed 11/8/17	Tue 11/21/17	Stakeholder Approvals - SCC, SCVWD, WSMWW															
30% Courtesy Submittal to Utilities	0 days	Fri 11/24/17	Fri 11/24/17	30% Courtesy Submittal to Utilities															
Phase 2 - 60% Design	83 days	Wed 11/22/17	Fri 3/16/18	Phase 2 - 60% Design															
60% Drawings, Specs, Cost Est., & Schedule	12 wks	Wed 11/22/17	Tue 2/13/18																
Utility Potholing	8 days	Wed 12/13/17	Fri 12/22/17																
QA/QC Review	6 days	Wed 2/14/18	Wed 2/21/18																
Submit 60% Submittal	0 days	Wed 2/28/18	Wed 2/28/18	2/28 Submit 60% Submittal															
City Review	10 days	Thu 3/1/18	Wed 3/14/18	City Review															
60% Design Review Meeting	0 days	Wed 3/14/18	Wed 3/14/18	3/14 60% Design Review Meeting															
60% Submittal to Stakeholders	0 days	Fri 3/16/18	Fri 3/16/18	60% Submittal to Stakeholders															
60% Submittal to Utilities	0 days	Fri 3/16/18	Fri 3/16/18	60% Submittal to Utilities															
Phase 2 - 100% Drawings	40 days	Mon 3/19/18	Fri 5/11/18	Phase 2 - 100% Drawings															
100% Drawings, Specs, Cost Est., & Schedule	5 wks	Mon 3/19/18	Fri 4/20/18																
QA/QC Review	5 days	Mon 4/23/18	Fri 4/27/18																
Submit 100% Submittal	0 days	Fri 5/4/18	Fri 5/4/18	5/4 Submit 100% Submittal															
City Review	5 days	Mon 5/7/18	Fri 5/11/18	City Review															
100% Review Meeting	0 days	Fri 5/11/18	Fri 5/11/18	5/11 100% Review Meeting															
Phase 2 - Bid Package	10 days	Mon 5/14/18	Fri 5/25/18	Phase 2 - Bid Package															
Address minor edits	10 days	Mon 5/14/18	Fri 5/25/18																
Bid Submittal	0 days	Fri 5/25/18	Fri 5/25/18	5/25 ◆ Bid Submittal															
Permitting/Coordination/Environmental Doc Asst	200 days	Mon 9/18/17	Fri 6/22/18	Permitting/Coordination/Environmental Doc Asst															
SCVWA and Other Permit Coordination	200 days	Mon 9/18/17	Fri 6/22/18	SCVWA and Other Permit Coordination															
Assist with Environmental Documentation	123 days	Wed 11/15/17	Fri 5/4/18	Assist with Environmental Documentation															
Approve CEQA Documentation	0 days	Fri 5/11/18	Fri 5/11/18	5/11 ◆ Approve CEQA Documentation															
Task 3 - Bidding	55 days	Fri 6/15/18	Fri 8/31/18	Task 3 - Bidding															
Task 4 - Construction Phase 2	295 days	Fri 8/31/18	Fri 10/18/19	Task 4 - Construction Phase 2															
Phase 2 Project Complete	0 days	Fri 10/18/19	Fri 10/18/19	Phase 2 Project Complete ◆ 10/18															



Attachment: Project Location Map (1136 : Accelerate Sewer Trunk Line and Amendment with Hydrosience)



- LEGEND:
- EXISTING JOINT SEWER TRUNK
 - SOUTH COUNTY REGIONAL WASTEWATER AUTHORITY WASTEWATER TREATMENT PLANT
 - TRUNK SEWER SOUTH OF HIGHLAND PHASE 1
 - TRUNK SEWER SOUTH OF HIGHLAND PHASE 2
 - TIE-IN TO HARDING AVE RELIEF SEWER TRUNK
 - TIE-IN TO CITY OF GILROY RELIEF SEWER TRUNK

FIGURE 1
CITY OF MORGAN HILL
TRUNK SEWER SOUTH OF HIGHLAND
PROJECT AREA





CITY COUNCIL STAFF REPORT

MEETING DATE: April 19, 2017

PREPARED BY: Sydney Oam, Financial and Policy Analyst
APPROVED BY: City Manager

FIRST AMENDMENT TO MAINTENANCE SERVICE AGREEMENT WITH PETERSON POWER SYSTEMS, INC.

RECOMMENDATION(S)

1. Approve First Amendment to maintenance service agreement with Peterson Power Systems, Inc. to increase the not-to-exceed fee amount to \$211,095 for the routine and variable-costs maintenance services for the City's fleet of twenty-four standby generators; and
2. Authorize City Manager to execute First Amendment.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2017 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

Staff recommends City Council's approval of an amendment to a maintenance service agreement with Peterson Power Systems, Inc. for routine and variable-costs maintenance services for the City's fleet of twenty-four standby generators.

The City's fleet of generators provides electrical power backup for water well sites, booster stations, water storage tanks, lift stations, and other City facilities. Maintaining the constant readiness of these generators requires annual servicing, ongoing repair, parts (as needed), preventive maintenance, rentals for equipment downtime, and a three-year rotational servicing schedule.

On July 16, 2014, the Council approved a three-year agreement with Peterson Power Systems, Inc. for routine and variable-cost maintenance services for the City's fleet of generators. The total not-to-exceed amount for the three years is \$181,905 and the term of the agreement expires on June 30, 2017. Under the scope of the agreement Peterson Power Systems provides both routine and emergency maintenance and repairs to the generators. The vendor is responsible for annual servicing, ongoing repair, parts (as needed), preventive maintenance, three-year rotational servicing schedule, and rentals for equipment downtime. The contractor is responsible for furnishing all labor, machine shop work, field work, shop and field welding, miscellaneous repair, travel time, expenses and equipment necessary to do the work required. The three-year contract term correlates with the City's three-year rotational servicing plan.

The purpose of this First Amendment is to increase the not-to-exceed fee amount by \$30,000 so that there are sufficient funds in the agreement to pay for services rendered through June 30, 2017. The current not-to-exceed fee amount is \$181,905 and those funds will be expended sooner than originally anticipated. Should the amendment be approved, the total amended not-to-exceed amount will be \$211,905. The proposed fee is broken out by fiscal year as below:

FY 2014/15	FY 2015/16	FY 2016/17	FY 2016/17 (Amendment)	Total
\$57,991.26	\$58,673.22	\$65,240.52	\$30,000.00	\$211,905.00

The current maintenance service agreement with Peterson Power Systems, Inc. expires on June 30, 2017. Staff will soon initiate a new Request for Proposal (RFP) process to select a vendor for the routine and variable-costs maintenance services for the City's fleet of generators for the next three-year contract.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the public of the recommendation to amend the service agreement.

ALTERNATIVE ACTIONS:

The Council could direct staff to solicit quotes/bids for the remaining required work in FY 2016-2017.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

July 16, 2014 – Council approved 3-year agreement with Peterson Power Systems for routine and variable-cost maintenance services for the City's fleet of twenty-four generators for the not-to-exceed amount of \$181,905.

FISCAL AND RESOURCE IMPACT:

The current agreement with Peterson Power Systems, Inc. expires on June 30, 2017 and has a total not-to-exceed fee of \$181,905. If the requested appropriation and the First Amendment are approved, the total not-to-exceed fee will be increased to \$211,905, an increase of \$30,000. No additional budget appropriation is required for this fiscal year. The \$30,000 will be funded in the Sewer Operations Fund (640.5900) in the amount of \$15,000 and the Water Operations Fund (650.5710) in the amount of \$15,000. These additional amounts will be funded through savings in operational budget line items in the Sewer and Water Operations Funds.

CEQA (California Environmental Quality Act): Not a Project. Continuing administrative or maintenance activities are not projects subject to environmental review under CEQA.

LINKS/ATTACHMENTS:

1. First Amendment to Agreement_Peterson Power Systems Signed
2. Exhibit A_Original Maintenance Service Agreement_Peterson Power Systems

**FIRST AMENDMENT TO AGREEMENT
PETERSON POWER SYSTEMS, INC.**

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, PETERSON POWER SYSTEMS, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into based upon City of Morgan Hill by City Council approval on April 19, 2017.
2. The CITY and CONSULTANT entered into that "Maintenance Service Agreement" made as of July 16, 2014, for consultant services for a maximum compensation of \$181,905.00 ("MAINTENANCE SERVICE AGREEMENT"). The MAINTENANCE SERVICE AGREEMENT is attached as Exhibit "A" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the MAINTENANCE SERVICE AGREEMENT, as amended, as attached as Exhibit "A," shall remain in full force and effect; except that the following amendments shall be made as set forth below:
 - A. Paragraph 4.1 shall be amended and replaced in its entirety by the following:

"4.1. **Amount.** Compensation under this Agreement shall not exceed the original agreement amount of One-Hundred Eighty-One Thousand Nine Hundred Five Dollars (\$181,905.00), plus the First Amendment amount of Thirty Thousand Dollars (\$30,000.00) for a total amount of Two Hundred Eleven Thousand Nine Hundred Five Dollars (\$211,905.00).
2. **Conflicts.** In the event of a conflict between the terms and provisions of this First Amendment to Agreement and the terms and provisions of the MAINTENANCE SERVICE AGREEMENT, the terms of this First Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND**
 (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

CITY OF MORGAN HILL

City Clerk

Date: _____

City Manager

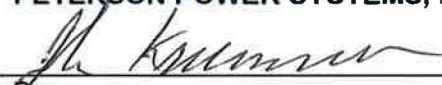
Date: _____

APPROVED AS TO FORM:

PETERSON POWER SYSTEMS, INC.

City Attorney

Date: _____

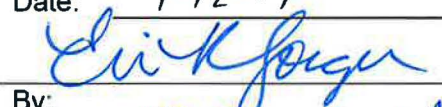
By: 

Title: John Krummer EVP

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 4-12-17

By: 

Title: VP Finance + Assistant Treasurer

Print Name and Title of Signer.

If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 4/12/2017

128-04-14-015

**MAINTENANCE SERVICE AGREEMENT
PETERSON POWER SYSTEMS, INC**

THIS AGREEMENT is entered into and becomes effective on July 24, 2014 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and PETERSON POWER SYSTEMS, INC., a California corporation ("SERVICE PROVIDER") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on July 16, 2014.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2017 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be generators annual servicing, ongoing repair, parts, and preventive maintenance as further described in Exhibit A.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$181,905.00. Total compensation under this Agreement shall not exceed one hundred eighty-one thousand nine hundred and five dollars and shall be billed based on the rate and basis set forth in Exhibit B.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with a monthly invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER.
6. **Performance of Work.** SERVICE PROVIDER represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by SERVICE PROVIDER in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of the SERVICE PROVIDER'S profession. By delivery of completed work, SERVICE PROVIDER certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. SERVICE PROVIDER shall perform all work

and services under this Agreement in conformance with the time schedule set forth on Exhibit C, "Schedule of Performance," attached hereto and incorporated herein by this reference. CITY's City Manager is authorized on behalf of CITY to modify the timeframes set forth on the Schedule of Performance within the term of this Agreement.

7. Insurance Requirements.

7.1. Commencement of Work. SERVICE PROVIDER shall not commence work under this Agreement until it has obtained CITY approved insurance. For general liability insurance policies, SERVICE PROVIDER shall provide CITY, prior to commencement of work, with a separate endorsement which states that the policy contains the following language:

- The CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds; and,
- the insurer waives the right of subrogation against CITY and CITY'S elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and,
- insurance shall be primary non-contributing.

SERVICE PROVIDER shall furnish CITY with copies of all policies or certificates subject to this Agreement, whether new or modified, promptly upon receipt. No policy subject to this Agreement shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY.

7.2. Workers' Compensation Insurance. SERVICE PROVIDER and all subcontractors shall maintain Workers' Compensation Insurance, as required by law.

7.3. Insurance Types and Amounts. SERVICE PROVIDER shall maintain comprehensive general liability insurance; professional errors and omissions liability insurance (required for professional and technical service consultants only); and automobile insurance each with policy limits of at least \$1,000,000 per occurrence for general liability, \$1,000,000 per accident for automobile liability and \$1,000,000 per claim for professional errors or omissions (for professional and technical service consultants only).

7.4. Acceptability of Insurers. All insurance required by this Agreement shall be carried only by responsible insurance companies licensed and admitted, or otherwise legally authorized to carry out insurance business, in California with a current A.M. Best's rating of no less than A:VII.

8. Non-Liability of Officials and Employees of the CITY. No official or employee of CITY shall be personally liable for any default or liability under this Agreement.

9. Compliance with Law.

9.1. SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. SERVICE PROVIDER and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national

origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

- 9.2. Without limiting the provisions of Section 9.1 above, each worker performing work under this Agreement shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite. Pursuant to Labor Code Section 1775, SERVICE PROVIDER and any Subcontractor shall forfeit to CITY as a penalty up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. SERVICE PROVIDER shall also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.

10. **Independent Contractor.** SERVICE PROVIDER is an independent contractor and not an agent or employee of CITY.

11. **Confidentiality.** All data, documents, or other information received by SERVICE PROVIDER from CITY or prepared in connection with SERVICE PROVIDER'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by SERVICE PROVIDER without prior written consent by CITY.

12. **Conflict of Interest and Reporting.** SERVICE PROVIDER shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

13. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of SERVICE PROVIDER is as follows:

Peterson Power Systems, Inc.
13155 Sycamore Ave.
San Martin, CA 95046

Address of CITY is as follows:

Public Works Director
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

with a copy to:
City Clerk
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

14. **Licenses, Permits and Fees.** SERVICE PROVIDER shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.

15. **Maintenance of Records.**

- 15.1. **Maintenance.** SERVICE PROVIDER shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to

services provided under this Agreement. SERVICE PROVIDER shall maintain records for a period of at least 3 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 3 year period, then SERVICE PROVIDER shall retain said records until such action is resolved.

- 15.2. 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 SERVICE PROVIDER and its subcontractors related to services 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.
- 15.3. Ownership of Work Product. All documents or other information developed or received by SERVICE PROVIDER for work performed under this Agreement shall be the property of CITY. SERVICE PROVIDER shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
16. Familiarity with Work. By executing this Agreement, SERVICE PROVIDER represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should SERVICE PROVIDER discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at SERVICE PROVIDER'S risk, until written instructions are received from CITY.
17. Time of Essence. Time is of the essence in the performance of this Agreement.
18. No Assignment. Neither this Agreement nor any portion shall be assigned by SERVICE PROVIDER, without prior written consent of CITY.
19. Attorney Fees. In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.
20. Defense and Indemnification.
 - 20.1. Defense and Indemnification. SERVICE PROVIDER shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by SERVICE PROVIDER, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
 - 20.2. Exceptions. SERVICE PROVIDER is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the CITY.

20.3. Not limited by insurance. The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMS alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by SERVICE PROVIDER.

20.4. Right to Offset. CITY shall have the right to offset against any compensation due SERVICE PROVIDER under this Agreement any amount due CITY from SERVICE PROVIDER as a result of SERVICE PROVIDER's failure to pay CITY promptly any indemnification arising under this Section (20) and any amount due CITY from SERVICE PROVIDER arising from SERVICE PROVIDER's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

20.5. Interpretation. This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the SERVICE PROVIDER to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

21. Entire Agreement; Modification; Conflicting Provisions. This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by a subsequent mutual written agreement executed by CITY and SERVICE PROVIDER. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.

22. Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.

23. Interpretation. This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.

24. Preservation of Agreement. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.

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25. Authority to Execute. Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

IN WITNESS THEREOF, these Parties have executed this Agreement on the day and year shown below.

AS SET FORTH IN CA. CORP. CODE § 313, TWO SIGNATURES ARE REQUIRED FOR CALIFORNIA CORPORATIONS:

(1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND

(2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

Michelle Wilson
City Clerk/Deputy City Clerk

Michelle Wilson
Print Name

Date: 7/28/14

APPROVED AS TO FORM:

for Leslie Jensen
City Attorney

Renee Gurza
Print Name

Date: 07/24/14

CITY OF MORGAN HILL

Steve Rymer
City Manager

Steve Rymer
Print Name

Date: 7/24/14

Peterson Power Systems, Inc.

John Krumm
By: John Krumm

Title: EVP

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 7-8-14

Mark MacGurdon
By: Mark MacGurdon

Title: Chief Financial Officer

Print Name and Title of Signer.

If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 7-8-14

**EXHIBIT A
SCOPE OF SERVICES**

The City of Morgan Hill has 24 generators within the City limits. The scope of this contract is to provide both routine and emergency maintenance and repairs to these generators in the event City staff is not able to. The contractor will be responsible for annual servicing, ongoing repair, parts (as needed), preventive maintenance, a three-year rotational servicing schedule, and rentals for equipment downtime. The contractor will be responsible for furnishing any and all labor, machine shop work, field work, shop and field welding, miscellaneous repair, travel time, expenses, and equipment necessary to do the work required.

The work will be primarily of a non-emergency, scheduled nature between normal business hours of 7:30 AM to 5:00 PM. The work will consist of routine, on-call support to Utilities Division crews in the repair and maintenance of the City's generators. Routine maintenance services shall be performed on normal work days defined as non-holiday Mondays through Fridays, 7:30 AM through 5:00 PM.

The contractor must also be available on an on-call basis for emergency response as required, in order to ensure uninterrupted service to the City's customers.



Date: 06/17/2014
Proposal #: JF140041N

Service Agreement Prepared for CITY OF MORGAN HILL

Contact: CLINT BYRUM
Email: clint.byrum@morgan.ca.gov
Phone: 408-776-7333
Fax:
Billing Address: 100 EDES COURT, MORGAN
HILL CA. 95037

Prepared by: Jim Farrell
Email: jfarrell@petersonpower.com
Phone: (408) 516-6236
Cell Phone: (408) 516-6236
Fax: (510) 346-7614

Peterson Power Systems, Inc. agrees to perform the services listed below for CITY OF MORGAN HILL. The agreement will be for a period of THREE years, commencing on a date to be determined. These services will be performed on the units listed below at the stated price.

The units are located at: ALL LOCTIONS. The services have been designed around the Manufacturer's Recommended Standards, will be performed on a flat fee basis and include labor, travel and service parts as indicated below. Taxes, if applicable, are not reflected. Following is a summary of charges for the agreement.

Unit	Loc	Mk	Model	Serial	Inspection \$ Freq	Annual	Load Test	3 Yr Service	Battery Replace	Megger	Other	Total
1		CU		YEARS 14-15	X							\$0
2	Schol dist/corp yard	OY	NT855- G3	30127109 KW250 EQUIP. # D85001	X	1,488	842					\$2,330
3	EL TORO	AA	1554330 1100	2062789 KW 45 EQUIP. #B01002	X	727	562	1144	378			\$2,808
4	CITY HALL	PK	3408	78X03200 kw 400 equip. # b98004	X	1,490	1,042					\$2,532
5	373490 LLAGAS RD	JD	D125P1	E1848A/001 125 KW EQUIP #W99013	X	1,286	717					\$2,003
6	3272 QUAIL LN	JD	4045TF 250	PE4045T294254 80KW EQUIP #S03006	X	1,060	664	1438	283			\$3,456
7	17558 HOLIDAY DR	JD	3029TF 150	PE3029T266666 40 KW EQUIP. #S03018	X	884	557					\$1,421
8	18180 SAFFRO N DR	PK	4039DF 004	CD4039D417281 30 KW EQUIP. #S04019	X	974	547					\$1,521
9	18815 MONTER EY RD,	JD	AA5125 8	U615818L 40 KW EQUIP. S06020	X	980	557					\$1,537
10	YARD	JD	40390F 00-1	TO4039D36327 40 KW EQUIP. # S92009	X	948	557	1177	297			\$2,978
11	TRUCK	ZZ	40390F 001	TO4039D363809 40 KW EQUIP # S92010	X	1,041	557					\$1,598
12	PORTAB LE	JD	QD-146	305551 10 KW EQUIP #S98003	X	908	527					\$1,436
13	DUNNE WELL	PK	8081TF 001	RG8081T125462 150 KW	X	1,453	742	1883	562			\$4,640

Quote JF140041N

1
Year 1

Packet Pg. 207



Date: 06/17/2014
Proposal #: JF140041N-2

**Service Agreement
Prepared for CITY OF MORGAN HILL**

Contact: CLINT BYRUM
Email: clint.byrum@morgan.ca.gov
Phone: 408-776-7333
Fax:
Billing Address: 100 EDES COURT, MORGAN
HILL CA. 95037

Prepared by: Jim Farrell
Email: jlfarrell@petersonpower.com
Phone: (408) 516-6236
Cell Phone: (408) 516-6236
Fax: (510) 346-7614

Peterson Power Systems, Inc. agrees to perform the services listed below for CITY OF MORGAN HILL. The agreement will be for a period of THREE years, commencing on a date to be determined. These services will be performed on the units listed below at the stated price.

The units are located at: ALL LOCATIONS. The services have been designed around the Manufacturer's Recommended Standards, will be performed on a flat fee basis and include labor, travel and service parts as indicated below. Taxes, if applicable, are not reflected. Following is a summary of charges for the agreement.

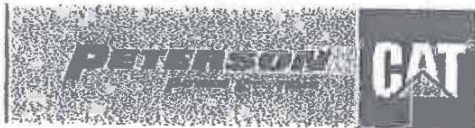
Unit	Loc	Mk	Model	Serial	Inspection \$ Freq	Annual	Load Test	3 Yr Service	Battery Replace	Megger	Other	Total
1		CU		YEARS 15-16	x							\$0
2	Schol dist/corp yard	OY	NT855- G3	30127109 KW250 EQUIP. # D85001	x	1,488	842	2395	874			\$5,599
3	EL TORO	AA	1554330 1100	2082789 KW 45 EQUIP. #B01002	x	727	562					\$1,289
4	CITY HALL	PK	3408	78X03200 kw 400 equip. # b89004	x	1,480	1,042					\$2,532
5	480 LLAGAS RD	JD	D125P1	E1848A/001 125 KW EQUIP #W99013	x	1,286	717					\$2,003
6	3272 QUAIL LN	JD	4045TF 250	PE4045T294254 80KW EQUIP #S03006	x	1,060	664	1438	293			\$3,456
7	17558 HOLIDAY DR	JD	3029TF 150	PE3029T286668 40 KW EQUIP. #S03018	x	864	557					\$1,421
8	19160 SAFFRO N DR	PK	4039DF 004	CD4039D417281 30 KW EQUIP. #S04019	x	974	547					\$1,521
9	18615 MONTER EY RD,	JD	AA5125 9	U615919L 40 KW EQUIP. S08021	x	980	557					\$1,537
10	YARD	JD	40390F 00-1	TO4039D38327 40 KW EQUIP. # S92009	x	948	557					\$1,505
11	TRUCK	ZZ	40390F 001	TO4039D383609 40 KW EQUIP # S92010	x	1,041	557					\$1,598
12	PORTAB LE	JD	QD-145	305551 10 KW EQUIP #S98003	x	909	527					\$1,436
13	DUNNE WELL	PK	5081TF 001	RG6081T125462 150 KW	x	1,453	742					\$2,195

Quote JF140041N-2

1
Year 2

\$59,078

2
Year 2



Date: 06/17/2014
Proposal #: JF140041N-3

**Service Agreement
Prepared for CITY OF MORGAN HILL**

Contact: CLINT BYRUM
Email: clint.byrum@morgan.ca.gov
Phone: 408-776-7333
Fax:
Billing Address: 100 EDES COURT, MORGAN
HILL CA, 95037

Prepared by: Jim Farrell
Email: jlfarrell@petersonpower.com
Phone: (408) 516-6236
Cell Phone: (408) 516-6236
Fax: (510) 346-7614

Peterson Power Systems, Inc. agrees to perform the services listed below for CITY OF MORGAN HILL. The agreement will be for a period of THREE years, commencing on a date to be determined. These services will be performed on the units listed below at the stated price.

The units are located at: ALL LOCTIONS. The services have been designed around the Manufacturer's Recommended Standards, will be performed on a flat fee basis and include labor, travel and service parts as indicated below. Taxes, if applicable, are not reflected. Following is a summary of charges for the agreement.

Unit	Loc	Mk	Model	Serial	Inspection \$ Freq	Annual	Load Test	3 Yr Service	Battery Replace	Meggar	Other	Total
1		cu		YEARS 16-17	x							\$0
2	Schol dist/corp yard	OY	NT855- G3	80127109 KW250 EQUIP. # D85001	x	1,488	842					\$2,330
3	EL TORO	AA	1654330 1100	2082788 KW 45 EQUIP. #B01002	x	727	562					\$1,289
4	CITY HALL	PK	3408	78X03200 kw 400 equip. # b89004	x	1,490	1,042	2889	949			\$6,370
5	490 LLAGAS RD	JD	D126P1	E1848A/001 125 KW EQUIP #W99013	x	1,288	717	1395	530			\$3,928
6	3272 QUAIL LN	JD	4045TF 250	PE4045T284254 80KW EQUIP #S03006	x	1,060	684					\$1,724
7	17558 HOLIDAY DR	JD	3029TF 150	PE3029T286666 40 KW EQUIP. #S03018	x	864	557					\$1,421
8	19160 SAFFRO N DR	PK	4039DF 004	CD4039D417261 80 KW EQUIP. #S04019	x	974	547	1334	373			\$3,228
9	18615 MONTER EY RD,	JD	AA5125 8	U615919L 40 KW EQUIP. S06021	x	980	557	1216	373			\$3,126
10	YARD	JD	4039DF 00-1	TO4039D38327 40 KW EQUIP. # S92008	x	948	557					\$1,505
11	TRUCK	ZZ	4039DF 001	TO4039D383809 40 KW EQUIP # S92010	x	1,041	557	1316	373			\$3,287
12	PORTAB LE	JD	QD-145	805551 10 KW EQUIP #S98003	x	809	527	1693	561			\$3,690
13	DUNNE WELL	PK	B081TF 001	RG8081T125482 150 KW	x	1,453	742					\$2,195

Quote JF140041N-3

1
Year 3

14	DIANA WELL	JD	D150P	EQUIP # W01016 NNS00568 150 KW	x	1,445	742	1894	918			\$5,000
15	JACKSON	JD	8068HF 475	EQUIP #W02017 PE6068H447689 200 KW	x	1,419	792					\$2,211
16	16360 OAK CANYON	JD	8076TP 010	EQUIP # W06022 RG6076T122609 125 KW	x	1,411	717					\$2,128
17	JACKSON WELL	AA	8076AF 010	EQUIP # W89005 RG6076A184994 150 KW	x	1,339	742					\$2,081
18	2375 E. DUNN	JD	8412	EQUIP. #W92007 812T1841 500 KW	x	2,112	1,388					\$3,497
19	PORTABLE	ZZ	8076AF 010	EQUIP. # W92008 RG6076A184994 150 KW	x	1,339	742.00					\$2,081
20	DIANA #1	JD	EK130	EQUIP # W92011 2041381 150 KW	x	1,480	742					\$2,232
21	470 E. MAIN	WA	8081AF 8.1	W98012 RG6081A084783 150 KW	x	1,398	742	1948	530			\$4,819
22	16360 OAK CANYON	JD	VRDS31 0U	W98014 B35466 FIRE PUMP	x	837						\$837
23	480 LLAGAS	ZZ	8068HF 285	PE6068L092390 150 KW	x	1,086	742					\$1,828
24	8100 LAKEVIEW CT		3TNE64 C	W09023 77961 10KW	x	791	627					\$1,318
Total						27,887	15,744	13,688	4,606	0	0	\$61,925

The services listed above include, but are not limited to, the following. For a complete listing of service parameters please see Attachment B.

An inspection includes an individual inspection of each unit. The technician will verify the fluid levels (oil, coolant and fuel), service the batteries, ensure proper operation of battery charging system, perform an operational check of the engine and generator (as applicable), and provide a completed service report detailing the service and any potential problems that should be addressed.

An annual service includes a full inspection (see description above) of each unit and a full service which includes; the replacement of engine oil, oil filters and fuel filters. Air filters are replaced on an as needed basis for an additional charge. Please contact your PSSR if you would like your air filters replaced.

Load testing is recommended annually for any generator that is not run "under load" (maintaining a load of at least 30% of its kilowatt (kW) rating) regularly, to ensure the proper operation of your generator. A load test will include the connection of a portable resistive load bank. The load will be varied in steps for a two hour duration.

Every three years, engine manufacturers recommend replacement of cooling system belts, coolant and hoses. In addition, the three year services (PM-3) include upgrading block heater hoses to high temperature silicon hoses. Block heater isolation ball valves will be installed on any engine not already equipped.

Batteries are recommended for replacement on a three year cycle, and will be replaced with Maintenance Free batteries unless otherwise specified by the customer.

Quote JF140041N-3

2

Year 3

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

The following Exhibit B pages describe the contractor's submitted costs for Year 1, Year 2, and Year 3 of this agreement. The costs include:

Annual Servicing of Generators

Load Test

3-Year Service

Battery Replacement

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

The following page to this Exhibit B describe the contractor's schedule of detail of services to be provided. The scheduled services include:

Inspection Service

Annual Service

Load Test

3-Year Service (PM-3)

Emergency Servicing

**Peterson Power Systems
Detail of Services Offered
Attachment**

Inspection Service

Before Starting Engine:

- Check engine oil and coolant levels
- Check block heater (should maintain a coolant temperature of 90° F in the block)
- Check fuel level in storage tank
- Check battery water level and top as necessary
- Check battery terminals for corrosion and connections for tightness (lead acid)

With Engine Running:

- Check oil pressure
- Check fuel pressure
- Check oil level and add oil as required
- Check RPM (frequency)
- Check generated voltage
- Check for leaks or unusual noises

After Stopping Engine:

- Check/verify all switches are in proper positions for automatic start.
- Check fuel level in tank
- Record battery charger volts, check for proper operation
- Remove, clean and reinstall all battery connections (lead acid)
- Inspect generator for cleanliness

Reporting:

- Provide written service report for each visit
- Advise customer of any/all unusual situations or potential problems which will require further attention
- Advise when main fuel tank is below ¼ full

Annual Service

Includes all Inspection Services and the following:

- Drain crankcase oil and replace with new oil
- Remove and replace oil and fuel filters
- Inspect air filter(s)
- Check generator output
- Take oil sample for analysis

Load Test

Start engine and load with contractor supplied resistive load bank. Run Under load for at least two hours.

- ½ hour at 25% load.
- ½ hour at 50% load
- ½ hour at 75% load
- ½ hour at 100% load

Three Year Service (PM-3)

Replace belts

Replace hoses

- Block heater hoses will be replaced with high temperature silicon hose
- Block heater isolation ball valves will be added when needed

Replace coolant

- Standard antifreeze will be replaced every three years
- Extended life coolants will be upgraded after the first three years and replaced after six years

Emergency Servicing: Provide 24-hour emergency repair coverage

Quote JF140041N



CITY COUNCIL STAFF REPORT

MEETING DATE: April 19, 2017

PREPARED BY: John Lang, Economic Development Coordinator
APPROVED BY: City Manager

LEADERSHIP MORGAN HILL 2017 ANIMAL IMPOUND FACILITY IMPROVEMENT PROJECT

RECOMMENDATION(S)

Approve the concept for the Leadership Morgan Hill 2017 class project located at the Animal Impound Facility.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

2017 Strategic Priorities

Inclusiveness

REPORT NARRATIVE:

During the past 20 years, every Leadership Morgan Hill class has developed and implemented a hands-on community project that takes place over the duration of the 9-month program. For this year's project, the class has chosen to improve the amenities at the six kennel Animal Impound Facility in the City of Morgan Hill to provide additional comfort and resources for impounded canines. The name of the project is "Pups in Need." The Leadership Morgan Hill Board of Directors approved the class project on April 3, 2017.

The Leadership Morgan Hill class will be holding fundraising events and promotional activities with a goal to raise \$7,800 to purchase and install new chew proof beds, self-warming/cooling pads, new food/water bowls, attic fans, garden hoses with nozzles, new dog houses, and an upgrade to the storage area that includes a new desk for Morgan Hill Police department to complete necessary paperwork. The class has been working collaboratively with the Morgan Hill Police Department to identify the needs for the Animal Impound Facility.

It is recommended that the City Council approve the project concept. Once the funds for the project are raised, Leadership Morgan Hill will return to City Council in August 2017 for approval of a donation agreement.

COMMUNITY ENGAGEMENT: Involve

An additional component to improving the Animal Impound Facility is to raise awareness within the pet community of the importance of microchipping. In 2016, 65% of the 208 impounded canines were returned to their owners with the remaining canines transferred to San Martin and San Jose animal shelters for adoption or to be

euthanized. The Leadership Morgan Hill class will be developing and disseminating content and information on the importance of microchipping pets.

ALTERNATIVE ACTIONS:

An alternative would be to not approve the project concept, thus forgoing the future donation to the City.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

No prior action has occurred in relation to this specific Leadership Morgan Hill Project. City Council has previously approved Leadership Morgan Hill projects for other locations throughout the City.

FISCAL AND RESOURCE IMPACT:

It is estimated the proposed amenities and improvements will cost approximately \$7,800 and will be paid through specific fund raising efforts by the Leadership Morgan Hill 2017 class. The amenities and fixtures would then be donated to the City of Morgan Hill upon completion of the project.

CEQA (California Environmental Quality Act):

Categorically Exempt: As a minor alteration of an existing facility, this project is categorically exempt from CEQA. CEQA Guideline §15301.

LINKS/ATTACHMENTS:



CITY COUNCIL STAFF REPORT

MEETING DATE: April 19, 2017

PREPARED BY: Dat Nguyen, Finance Director
APPROVED BY: City Manager

FEBRUARY 2017 FINANCIAL AND INVESTMENT REPORT

RECOMMENDATION(S)

Accept and file report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

REPORT NARRATIVE:

As part of the City Council's expectation to maintain a high level of transparency and to be responsible stewards of public funds, attached are the Financial and Investment Reports for the month ended February 28, 2017. The Year-to Date Revenue and Expense Summary is included on the first page. Overall, General Fund revenues totaled \$22.5 million or 62% of the budget. Expenditures totaled \$25.2 million, and including encumbrances amounted to \$26.7 million or 68% of the budget. The encumbrances represent commitments or contractual obligations that the City entered with vendors or suppliers such as Cal-West Lighting and Signal Maintenance for the maintenance of the City's streetlights and traffic signals, and the partnership agreement with the YMCA of Silicon Valley for the management and operation of the Community Recreation Center. The services from these vendors are expected to be utilized by the City and paid throughout the fiscal year.

COMMUNITY ENGAGEMENT: Inform

Finance staff prepares these monthly reports in an effort to keep City officials, the Council, the community, and various lenders and stakeholders informed on the financial health of the organization, which assists each one of the interested parties in making sound financial and investment decisions.

ALTERNATIVE ACTIONS:

No alternative action is recommended, as this is a monthly financial report on City transactions which have already occurred.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council receives and files the financial and investment report for each month. At the September 16, 2015 meeting, City Council recommended monthly financial and investment reports be agendaized under the Consent Agenda, and quarterly financial

and investment reports be presented to City Council as an “Other Business” item.

FISCAL AND RESOURCE IMPACT:

The preparation of the report is a part of the Finance workplan.

CEQA (California Environmental Quality Act):

Not a Project.

This report is not a project, as defined in Section 15378 of the State CEQA Guidelines.

LINKS/ATTACHMENTS:

1. February 2017 Financial Statement Analysis
2. February 2017 Financial and Investment Report



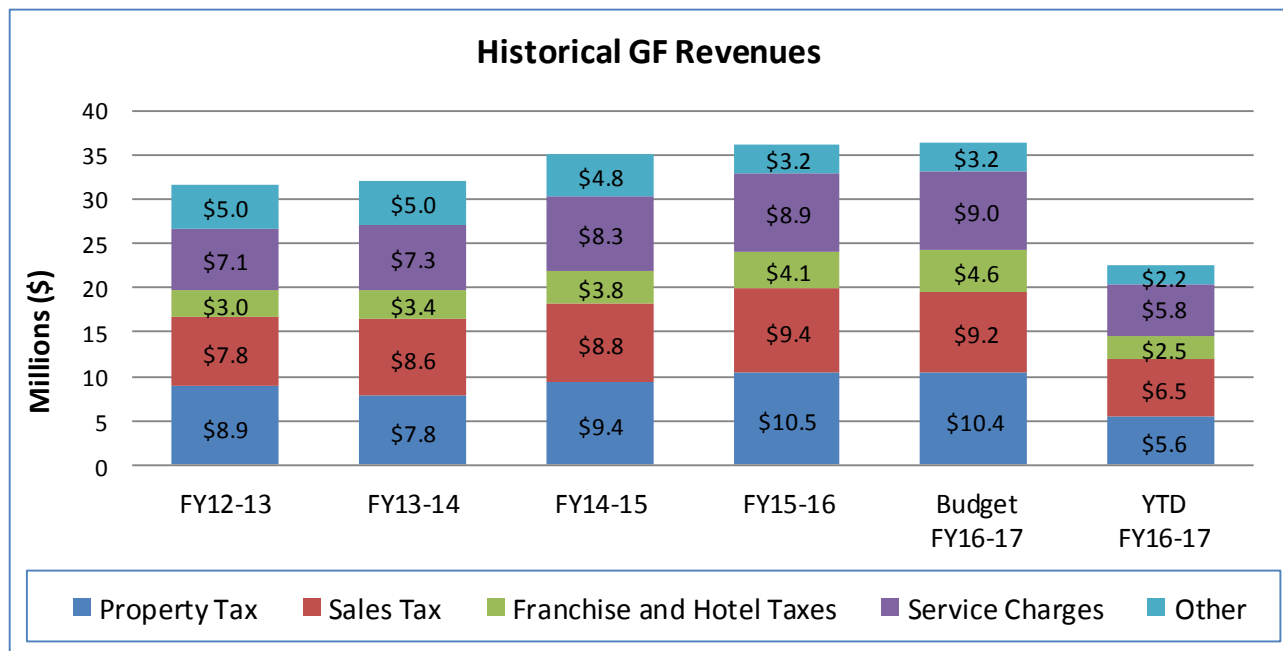
CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2016-17
FOR THE MONTH ENDED FEBRUARY 2017 – 67% OF YEAR COMPLETE

- **General Fund** – Overall, revenues received through February totaled \$22.5 million, or 62% of the budgeted revenues. The amount received is 14% or \$2.8 million higher than a year ago at this time primarily led by sales tax and property tax. The increase in sales tax collection is primarily due to the end of the “triple-flip.”

As for property tax, the final advances for the 12/10/16 secured and unsecured property tax installment have been received and are 9% or approximately \$402,000 higher than a year ago at this time. Property tax revenue, excluding property transfer tax, is forecasted to end the year at \$10.7 million, which is approximately \$700,000 more than the adopted budget. Property tax is the largest source of Morgan Hill's General Fund revenue. However, it accounts for only 27.4% of the approximately \$36.4 million General Fund revenue. Although property tax tends to be a more predictable revenue source, other major revenue categories such as sales tax and transient occupancy tax, which account for a large portion of the City's General Fund revenue, are more volatile and tend to fluctuate more with swings in the economy.

The small category of licenses was already at 87% of the budgeted amount as annual business license renewal payments are usually received in July.

The chart below shows historical General Fund revenues by major revenue category from FY12-13 through FY15-16 Actual, FY16-17 Budget, and YTD as of February 28, 2017.



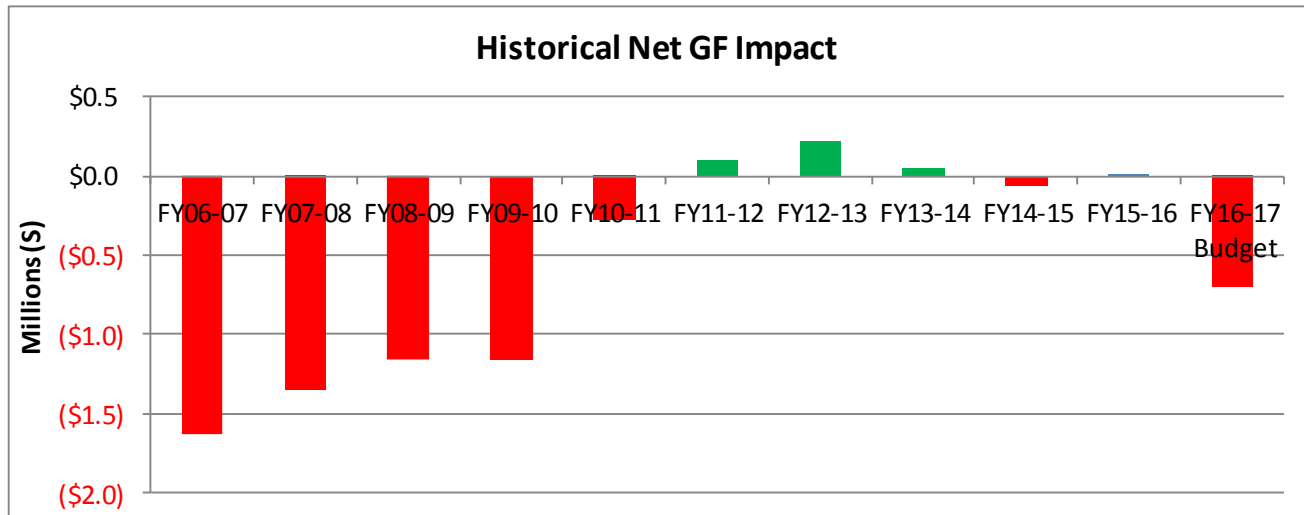
General Fund expenditures and encumbrances as of February 28, 2017 totaled \$26.7 million, of which approximately \$1.5 million is attributable to outstanding encumbrances.

- **Community Services** - The Community Services Department's recreation operations, as reflected in the schedule presented on page 4 of the Monthly Financial and Investments Reports, shows a negative impact to the General Fund of approximately \$1.0 million through February. Without the carry-over



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2016-17
FOR THE MONTH ENDED FEBRUARY 2017 – 67% OF YEAR COMPLETE

encumbrances, operations through February resulted in a smaller net negative impact to the general fund of approximately \$105,000. Any net impact from the recreation operations increases (decreases) reserves in the General Fund. The chart below shows the historical net impact of Recreation Operations to the general fund.



Due to longstanding governmental accounting and budgeting convention, the City's recreation operations are not charged for indirect costs (known in Morgan Hill as "General Fund Administration") from the central services departments of City Attorney, City Manager, and Administrative Services. The City's other governmental funds, such as Community Development, and the proprietary funds, such as Water and Wastewater, and the Information Services Fund, are assessed such charges through the City's indirect cost allocation plan, prepared in compliance with the Federal government's OMB Circular No. A-87, which mandates certain calculation and cost allocation practices that must be followed in order to qualify for Federal grant funding, but which also represent best practice for non-grant funded City operations like utilities and information services.

- **Community Development Fund** – Revenues through February totaled \$3.3 million, or approximately 76% of the budget. Expenditures and encumbrances totaled \$3.4 million, or approximately 63% of the budgeted appropriation. Without the outstanding encumbrances, however, expenditures through February amounted to \$3.0 million. The fund is budgeted to end the fiscal year with an operating deficit of approximately \$1.0 million and a fund balance of approximately \$1.8 million.
- **Debt Service Funds** – Expenditures through February totaled \$501,000. Due to the timing of debt service payments, the debt service funds already reflect 74% of the budget due to debt service payments made. The debt service for the first half of the year includes both interest and principal, while the second half of the year will include interest only. Debt service payments were all scheduled when the bonds were issued, and are budgeted for in the months delineated in the underlying bond documents.
- **Sewer Operations** – Revenues from Sewer Operations through February totaled \$6.5 million. Expenditures and outstanding encumbrances totaled \$6.8 million or 64% of the budget. The table below shows historical Sewer Operations revenues and expenditures from FY12-13 through FY15-16 Actual, FY16-17 Budget, and YTD as of February 28, 2017.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2016-17
FOR THE MONTH ENDED FEBRUARY 2017 – 67% OF YEAR COMPLETE

(amount in millions)	FY12-13	FY13-14	FY14-15	FY15-16	Budget FY16-17	YTD FY16-17
Revenues	9.7	9.4	10.3	10.2	10.4	6.5
Expenditures	9.0	8.6	8.8	12.0	10.6	6.8
Operating Margin	0.7	0.8	1.5	(1.8)	(0.2)	(0.3)
Operating Margin without Encumbrances	0.7	0.8	1.5	(1.8)	(0.2)	(0.2)

- Water Operations** – Water Operations includes Utility Billing, Water Conservation, and Water Operations. Revenues from Water Operations through February totaled \$7.4 million, approximately \$1.7 million more than a year ago at this time primarily due to the rate adjustment and slightly higher water consumption compared to prior year. Revenues for the current fiscal year are budgeted at approximately 16% more than the prior fiscal year primarily due to the Water Revenue Adjustment approved by Council in January 2016. Water Operations expenditures, including outstanding encumbrances, through February 28, 2017 totaled \$7.0 million. Without the encumbrances, however, the expenditures amounted to \$6.6 million. The table below shows Water Operations revenues and expenditures from FY12-13 through FY15-16 Actual, FY16-17 Budget, and YTD as of February 28, 2017.

(amount in millions)	FY12-13	FY13-14	FY14-15	FY15-16	Budget FY16-17	YTD FY16-17
Revenues	10.2	12.2	8.8	8.5	10.0	7.4
Expenditures	9.1	12.1	9.3	9.7	11.2	7.0
Operating Margin	1.1	0.1	(0.5)	(1.2)	(1.2)	0.4
Operating Margin without Encumbrances	1.1	0.1	(0.5)	(1.2)	(0.8)	0.8

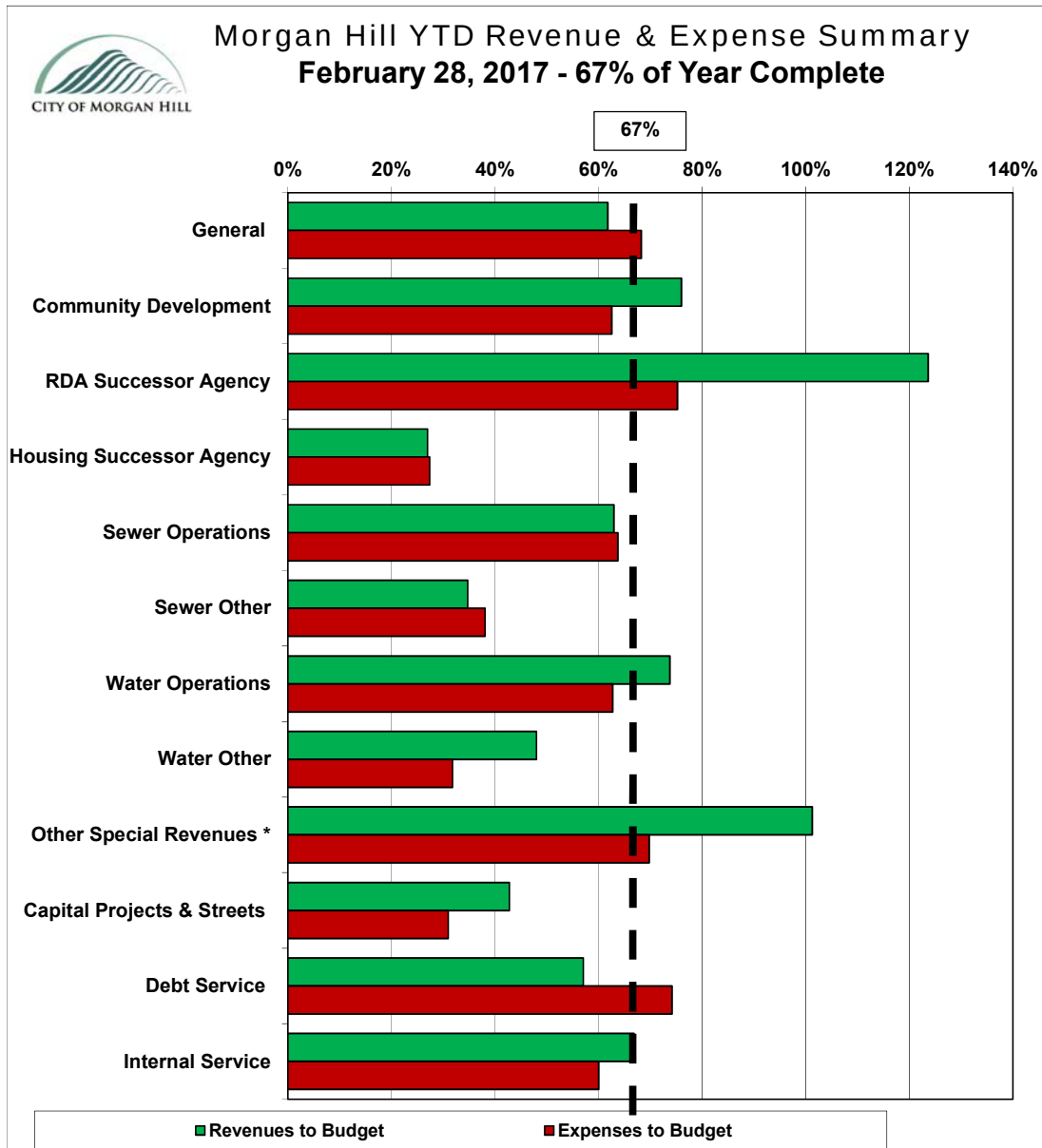
- Investments** - There was one security called during the month of February 2017. Total interest earnings received on investments were \$52,000 during the month.

CITY OF MORGAN HILL
Monthly Financial and Investment Reports
February 28, 2017 - 67% of Year Complete



CITY OF MORGAN HILL

Prepared by:
FINANCE DEPARTMENT



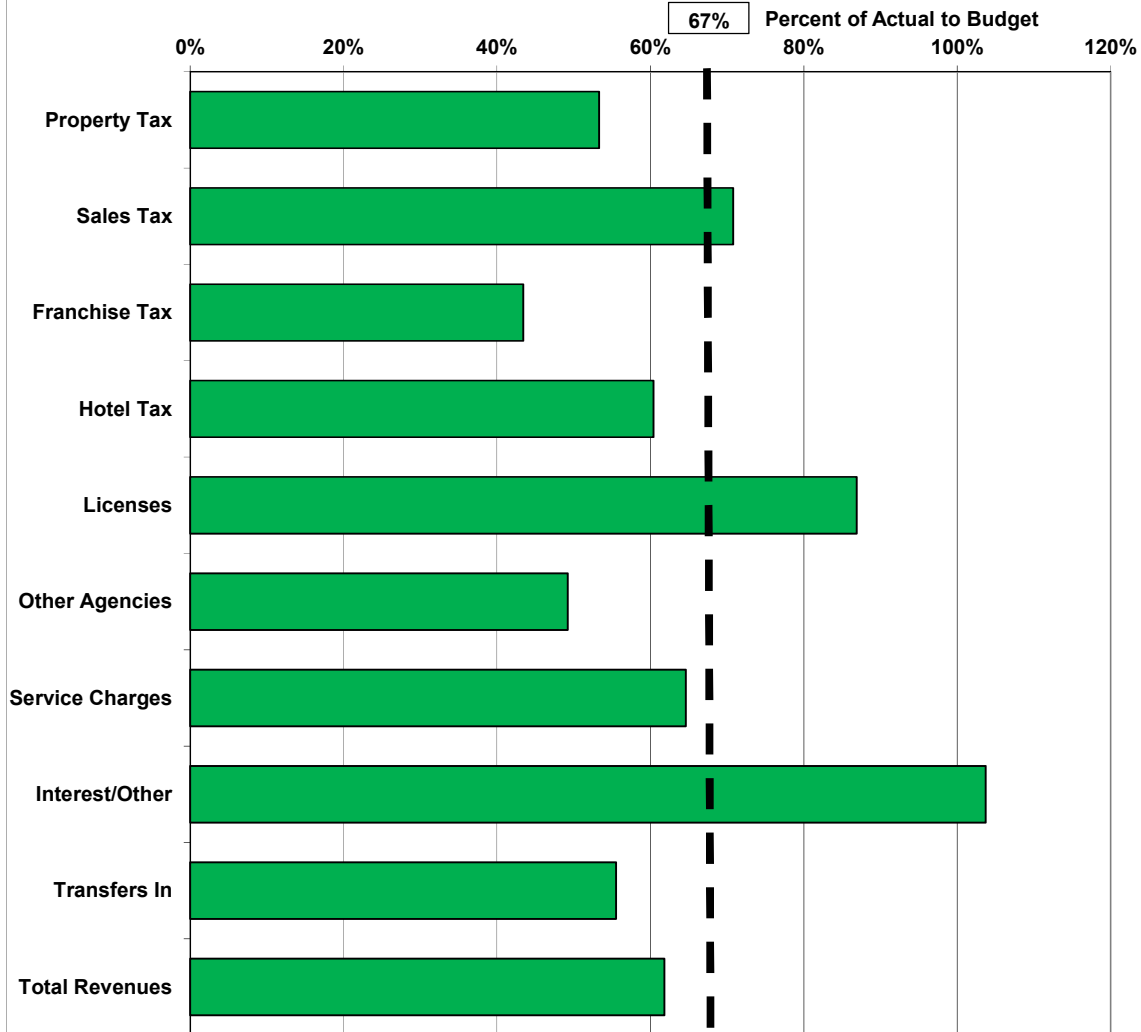
FUND NAME	REVENUES		EXPENSES	
	ACTUAL	% OF BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET
General	\$ 22,461,400	62%	\$ 26,699,345	68%
Community Development	3,328,017	76%	3,381,253	63%
RDA Successor Agency	9,077,947	124%	6,683,834	75%
Housing Successor Agency	337,754	27%	764,252	27%
Sewer Operations	6,545,808	63%	6,780,765	64%
Sewer Other	2,924,753	35%	4,698,824	38%
Water Operations	7,375,759	74%	7,049,276	63%
Water Other	1,327,064	48%	5,440,609	32%
Other Special Revenues *	2,335,754	101%	4,328,410	70%
Capital Projects & Streets	7,748,529	43%	6,463,541	31%
Debt Service	387,801	57%	501,342	74%
Internal Service	7,119,288	67%	7,427,565	60%
TOTAL FOR ALL FUNDS	\$ 70,969,876	63%	\$ 80,219,015	57%

* Includes all Special Revenue Funds except Community Development, Street Funds, and RDA and Housing Successor Agencies.

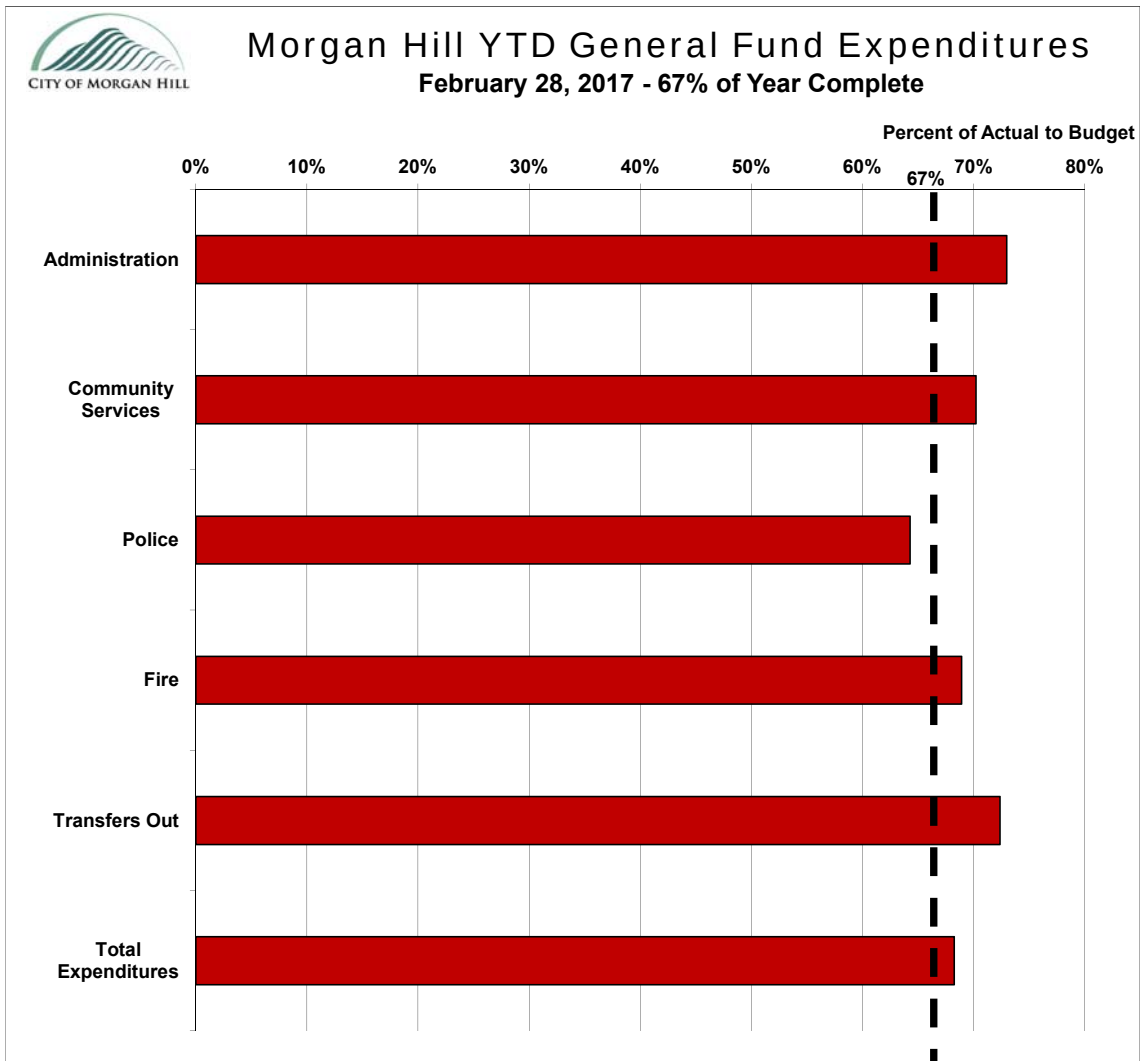


Morgan Hill YTD General Fund Revenues

February 28, 2017 - 67% of Year Complete



REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Property Tax	\$10,430,000	\$ 5,555,425	53%	\$ 5,082,955	9%
Sales Tax	9,170,767	6,488,632	71%	4,800,381	35%
Franchise Tax	1,927,359	836,001	43%	766,482	9%
Hotel Tax	2,684,700	1,621,373	60%	1,341,199	21%
Licenses	206,474	179,428	87%	195,801	-8%
Other Agencies	591,800	291,328	49%	228,547	27%
Service Charges	8,953,220	5,780,922	65%	5,696,956	1%
Interest/Other	775,597	804,581	104%	565,021	42%
Transfers In	1,627,581	903,710	56%	971,655	-7%
TOTAL REVENUES	\$36,367,498	\$22,461,400	62%	\$ 19,648,996	14%



EXPENDITURE CATEGORY	BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Administration	\$ 5,968,432	\$ 4,355,750	73%	\$ 2,846,290	53%
Community Services	10,372,425	7,281,320	70%	6,553,855	11%
Police	15,289,951	9,826,727	64%	8,700,144	13%
Fire	5,428,841	3,741,740	69%	3,600,721	4%
Transfers Out	2,064,119	1,493,807	72%	1,046,630	43%
TOTAL EXPENDITURES	\$ 39,123,768	\$ 26,699,345	68%	\$ 22,747,641	17%

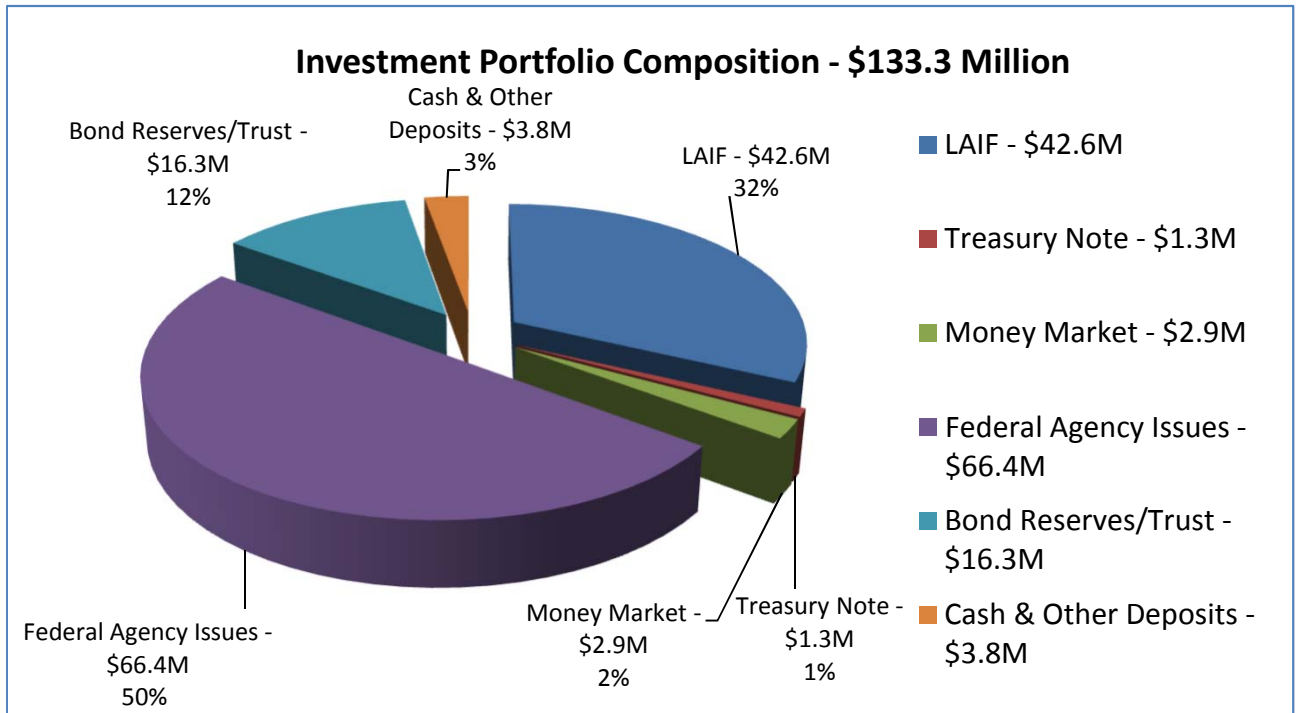


**City of Morgan Hill
Recreation Report - Fiscal Year 2016-17
For the Month and Eight Months Ended February 28, 2017
67% of Year Complete**

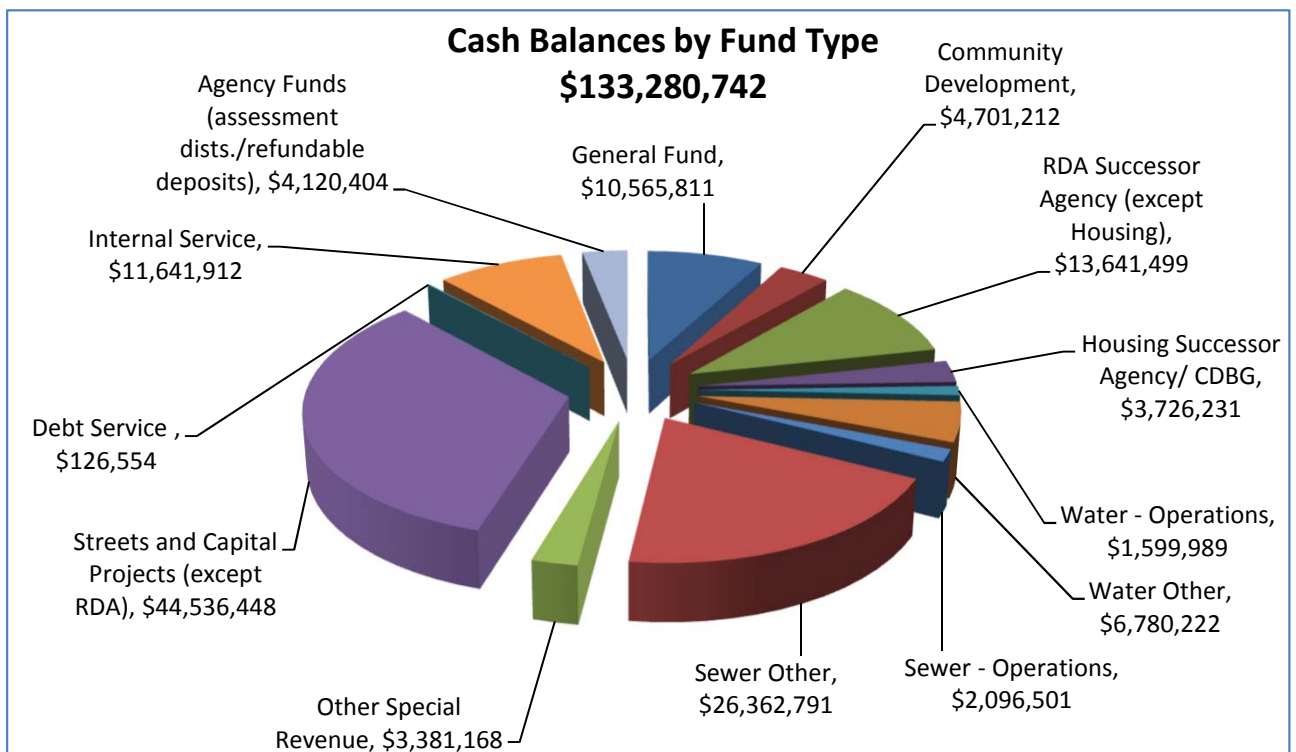
	<u>Budget</u>	<u>February 2017</u>	<u>YTD</u>	<u>% of Budget</u>
Revenues				
Membership Services & Rec Programs	\$ 5,702,573	\$ 391,659	\$ 3,708,485	
Facility Rentals	874,020	95,712	616,451	
Community Services	152,915	6,633	96,650	
Transfers in	75,000	6,250	50,000	
Total Revenues	<u>\$ 6,804,508</u>	<u>\$ 500,254</u>	<u>\$ 4,471,587</u>	66%
Less: Expenditures				
Membership & Program Services	\$ 5,529,949	\$ 308,444	\$ 3,340,061	
Facility Rentals	1,250,322	98,628	822,264	
Community Services	719,212	44,841	414,510	
Total Expenditures	<u>\$ 7,499,484</u>	<u>\$ 451,912</u>	<u>\$ 4,576,834</u>	61%
Net Impact without encumbrances	<u>\$ (694,976)</u>	<u>\$ 48,342</u>	<u>\$ (105,248)</u>	
Encumbrances	-	-	885,882	
Net Impact with encumbrances	<u>\$ (694,976)</u>	<u>\$ 48,342</u>	<u>\$ (991,130)</u>	

City of Morgan Hill
Monthly Investment Report - February 28, 2017

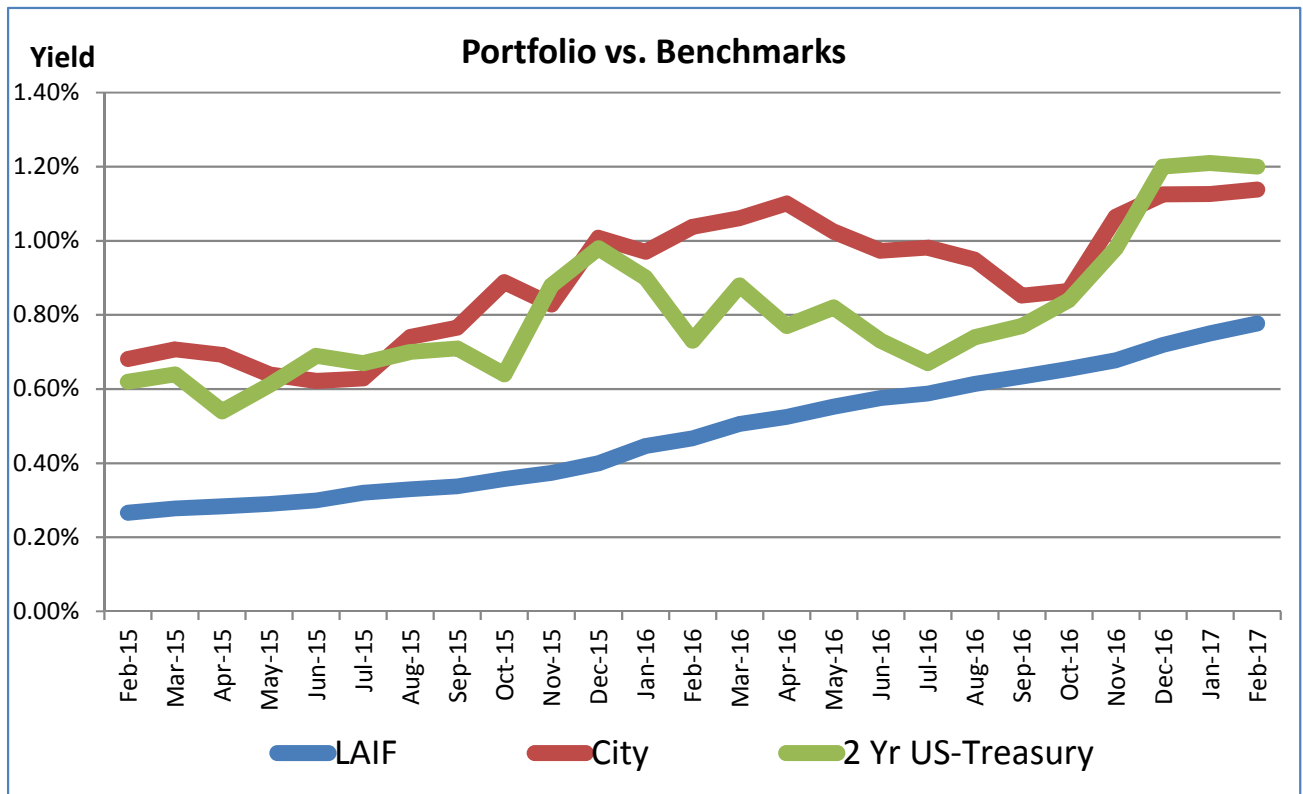
The following are the snapshots of City's investment portfolio as of February 28, 2017. The first chart shows the portfolio composition by investment type:



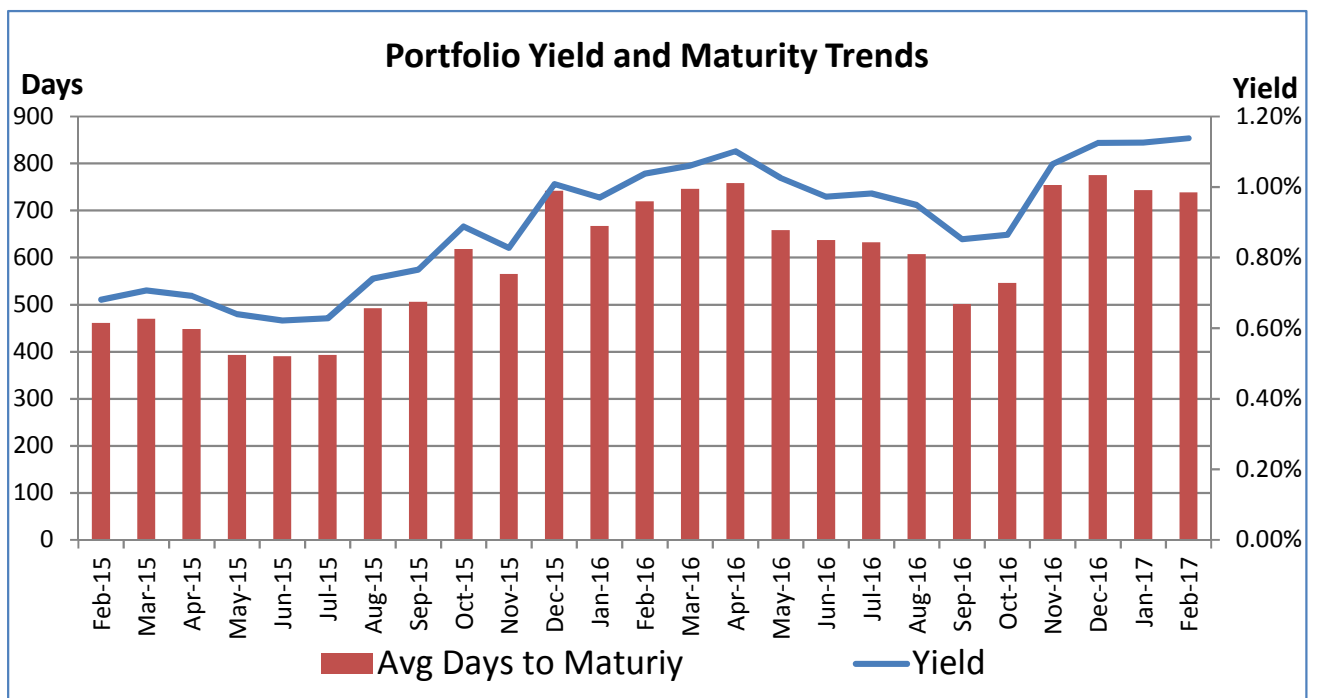
The chart below shows cash balances by fund type reconciled to City's financial system:



The following chart illustrates a yield comparison by month among the City's portfolio, LAIF and 2-Year US Treasury:



The chart below illustrates monthly average days to maturity of the City's portfolio along with the weighted average yield for the past two years:





City of Morgan Hill
Investment Portfolio Detail
As of February 28, 2017

Investment Type	Settlement Date	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
L A I F		\$ 42,597,760	31.96%	\$ 42,573,216	0.78%		
City Managed							
Fed Home Loan Bank	12/3/2012	\$ 2,000,749	1.50%	\$ 2,002,840	0.93%	9/20/2017	9/20/2017
Fed Home Loan Mortgage	1/31/2013	498,879	0.37%	499,390	1.01%	1/12/2018	1/12/2018
Fed Natn'l Mortgage Assn	4/3/2013	1,500,012	1.13%	1,500,120	0.73%	3/14/2017	3/14/2017
Fed Home Loan Mortgage	8/12/2013	996,131	0.75%	1,000,810	1.36%	12/12/2017	12/12/2017
Fed Home Loan Bank	3/21/2014	1,008,673	0.76%	1,009,100	0.86%	5/17/2017	5/17/2017
Treasury Note	12/15/2014	754,262	0.57%	755,483	1.01%	10/31/2017	10/31/2017
Federal Farm Credit Bank	5/28/2015	1,001,136	0.75%	1,001,770	0.99%	2/20/2018	2/20/2018
Treasury Note	6/12/2015	498,367	0.37%	498,790	1.06%	3/31/2018	3/31/2018
Fed Natn'l Mortgage Assn	6/12/2015	500,168	0.38%	500,430	1.10%	2/28/2018	2/28/2018
Fed Home Loan Mortgage	7/2/2015	999,078	0.75%	999,080	0.97%	3/7/2018	3/7/2018
Fed Home Loan Mortgage	8/31/2015	999,827	0.75%	999,390	0.79%	8/25/2017	8/25/2017
Fed Home Loan Bank	9/30/2015	1,000,594	0.75%	999,130	0.95%	4/24/2018	4/24/2018
Fed Home Loan Bank	9/30/2015	512,355	0.38%	512,203	0.80%	10/12/2017	10/12/2017
Fed Home Loan Bank	10/19/2015	4,000,000	3.00%	3,989,600	1.70%	10/19/2017	10/19/2020
Fed Home Loan Bank	6/30/2016	4,000,000	3.00%	3,902,560	1.50%	6/30/2017	6/30/2021
Fed Natn'l Mortgage Assn	8/25/2016	4,000,000	3.00%	3,879,320	1.40%	8/25/2017	8/25/2021
Fed Home Loan Mortgage	9/29/2016	2,000,000	1.50%	1,934,800	1.65%	3/29/2017	9/29/2021
Fed Natn'l Mortgage Assn	9/29/2016	4,000,000	3.00%	3,900,360	1.60%	3/29/2017	9/29/2021
Fed Home Loan Mortgage	10/27/2016	4,000,000	3.00%	3,881,400	1.60%	4/27/2017	10/27/2021
Fed Natn'l Mortgage Assn	10/28/2016	4,000,000	3.00%	3,879,280	1.55%	4/28/2017	10/28/2021
Fed Home Loan Mortgage	10/28/2016	2,000,000	1.50%	1,943,340	1.65%	4/28/2017	10/28/2021
Fed Home Loan Bank	11/15/2016	4,000,000	3.00%	3,914,000	1.55%	5/15/2017	11/15/2021
Fed Home Loan Bank	11/23/2016	3,000,000	2.25%	2,941,800	1.65%	3/23/2017	11/23/2021
Fed Home Loan Bank	11/23/2016	4,000,000	3.00%	3,900,480	1.63%	5/23/2017	11/23/2021
Fed Home Loan Mortgage	11/30/2016	4,000,000	3.00%	3,957,800	1.88%	5/26/2017	11/26/2021
Sub Total/Average		\$ 55,270,230	41.47%	\$ 54,303,276	1.46%		
Money Market		\$ 2,864,570	2.15%	\$ 2,864,570	0.01%		
Total City Managed/Average		\$ 100,732,561	75.58%	\$ 99,741,061	1.03%		
City Managed - HighMark							
Fed Natn'l Mortgage Assn	8/18/2016	\$ 749,130	0.56%	\$ 745,935	1.06%	01/25/19	1/25/2019
Fed Natn'l Mortgage Assn	8/18/2016	749,495	0.56%	745,590	1.18%	01/26/19	7/26/2019
Fed Natn'l Mortgage Assn	8/23/2016	749,938	0.56%	746,220	1.25%	05/23/17	8/23/2019
Fed Home Loan Mortgage	8/31/2016	750,000	0.56%	741,023	1.25%	08/15/19	8/15/2019
Fed Home Loan Mortgage	9/13/2016	750,000	0.56%	748,215	1.10%	03/13/17	9/3/2018
Fed Home Loan Bank	9/15/2016	750,000	0.56%	746,753	1.00%	03/15/17	6/15/2018
Fed Home Loan Bank	9/21/2016	749,765	0.56%	748,635	1.12%	03/21/17	9/21/2018
Fed Home Loan Mortgage	10/7/2016	749,708	0.56%	745,538	1.29%	03/12/17	9/12/2019
Fed Natn'l Mortgage Assn	10/11/2016	749,744	0.56%	745,785	1.22%	05/23/17	5/23/2019
Fed Home Loan Mortgage	10/24/2016	738,852	0.55%	734,324	1.03%	07/30/18	1/30/2019
Fed Natn'l Mortgage Assn	10/24/2016	749,934	0.56%	743,700	1.25%	03/30/17	9/30/2019
Federal Farm Credit Bank	11/1/2016	749,435	0.56%	743,745	1.02%	11/01/17	11/1/2018
Fed Home Loan Mortgage	12/13/2016	1,008,910	0.76%	1,008,540	1.35%	5/30/2019	5/30/2019
Fed Home Loan Bank	12/13/2016	999,620	0.75%	999,840	1.27%	1/16/2019	1/16/2019
Fed Home Loan Mortgage	12/29/2016	746,191	0.56%	747,278	1.37%	4/15/2019	4/15/2019
Fed Natn'l Mortgage Assn	12/29/2016	746,040	0.56%	746,238	1.39%	6/20/2019	6/20/2019
Money Market		37,145	0.03%	37,145	0.01%		
Sub Total/Average		\$ 12,523,907	9.40%	\$ 12,474,503	1.20%		
Bond Reserve Accounts - Held By Trustees		\$ 15,087,065	11.32%	\$ 15,052,941			
Cash/Deposits		\$ 3,749,806	2.81%	\$ 3,749,806			
PARS Trust		\$ 1,187,404	0.89%	\$ 1,253,854 *			
GRAND TOTAL/AVERAGE		\$ 133,280,742	100.00%	\$ 132,272,166			

*Value as of 1/31/17

Attachment: February 2017 Financial and Investment Report (1125 : February 2017 Financial and Investment Report)



CITY OF MORGAN HILL CASH AND INVESTMENT REPORT
FOR THE MONTH OF FEBRUARY 28, 2017
FOR THE FISCAL YEAR OF 2016-17

	Invested in Fund	Yield	Book Value End of Month	% of Total	Market Value
Investments					
State Treasurer LAIF - City	All Funds Pooled	0.78%	\$ 28,664,429	21.51%	\$ 28,647,913
2014 Water Rev Bonds - Water Impact	Water Fund	0.78%	1,836,996	1.38%	1,835,937
2014 Water Rev Bonds - Water CIP	Water Fund	0.78%	4,385,119	3.29%	4,382,592
2015 Wastewater Rev Bonds - CIP	Wastewater Fund	0.78%	7,711,216	5.79%	7,706,773
Federal Issues	All Funds Pooled	1.26%	66,504,363	49.90%	65,486,361
US Treasury Notes	All Funds Pooled	1.04%	1,252,629	0.94%	1,254,273
Dreyfus Treas Cash Management Acct	All Funds Pooled	0.01%	2,901,716	2.18%	2,901,716
	SUBTOTAL		\$ 113,256,467	84.98%	\$ 112,215,565
Bond Reserve Accounts - held by trustees					
BNY - 2002 SCRWA Bonds	Sewer				
BNY - 2015 Wastewater Bonds					
Cash Balance	Wastewater Fund	0.00%	9,214	0.01%	9,214
Zions Bank - Civic Center/Library Facility					
Cash	Debt Service	0.00%	14	0.00%	14
Zions Bank - MH Police Facility Lease Revenue Bonds					
Cash	Debt Service	0.00%	18	0.00%	18
BNY - RDA Bonds					
Dreyfus Cash Mgmt 521	Successor Fund	0.00%	2,055,086	1.54%	2,055,086
US Treasury Notes	Successor Fund	1.52%	11,910,268	8.94%	11,876,145
Zions Bank - MH Ranch 2015					
Blackrock Liq Funds Fed Fund -DI -2015	Agency Fund	0.00%	562,842	0.42%	562,842
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015					
Blackrock Liquidity Temp Fund-2015	Agency Fund	0.00%	549,621	0.41%	549,621
	SUBTOTAL		15,087,065	11.32%	15,052,941
Other Cash/Deposits					
General Checking	All Funds		3,713,306	2.79%	3,713,306
Workers' Comp Administrators	Workers' Comp		30,000	0.02%	30,000
Petty Cash & Emergency Cash	General Fund		6,500	0.00%	6,500
PARS - OPEB Trust			687,404	0.52%	735,709 *
PARS - PENSION Trust			500,000	0.38%	518,145 *
	SUBTOTAL		4,937,210	3.70%	5,003,660
Total Cash and Investments			\$ 133,280,742	100.00%	\$ 132,272,166

CASH ACTIVITY SUMMARY
FY 2016-17

Fund Type	07/01/16 Balance	Change in Cash Balance	2/28/2017 Balance
General Fund	\$ 13,201,659	\$ (2,635,848)	\$ 10,565,811
Community Development	4,543,600	157,612	4,701,212
RDA Successor Agency (except Housing)	12,256,697	1,384,802	13,641,499
Housing Successor Agency/ CDBG	3,985,770	(259,539)	3,726,231
Water - Operations	1,060,105	539,884	1,599,989
Water Other	10,255,589	(3,475,367)	6,780,222
Sewer - Operations	1,945,525	150,977	2,096,501
Sewer Other	27,868,909	(1,506,118)	26,362,791
Other Special Revenue	4,863,862	(1,482,694)	3,381,168
Streets and Capital Projects (except RDA)	42,728,700	1,807,748	44,536,448
Debt Service	264,719	(138,166)	126,554
Internal Service	11,679,121	(37,210)	11,641,912
Agency Funds (assessment dists./refundable deposits)	4,278,419	(158,015)	4,120,404
Total	\$ 138,932,675	\$ (5,651,934)	\$ 133,280,742

Note: See Investment Portfolio Detail for maturities of "Investments." Market values are obtained from the City's investment brokers' monthly reports.

*Value as of 1/31/17

I certify the information on the investment reports on pages has been reconciled to the general ledger and bank statements and that there are sufficient funds to meet the expenditure requirements of the City for the next six months. The portfolio is in compliance with the City of Morgan Hill investment policy and all State laws and regulations.

Prepared by:

Harjot Sangha, Accounting Manager

Approved by:

Reviewed by:

Dat Nguyen, Finance Director

David Clink, Treasurer



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2016-17
For the Eight Months Ended February 28, 2017
67% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
010 GENERAL FUND							
TAXES							
Property Tax - Secured/Unsecured	\$ 8,566,000	\$ 8,566,000	\$ 4,749,262	55%	\$ 4,346,927	\$ 402,335	9%
Property Tax - RPTTF Residual Distribution	1,233,000	1,233,000	412,978	33%	385,599	27,379	7%
Property Tax - Supplemental Roll	162,000	162,000	130,418	81%	71,771	58,648	82%
Sales Tax	8,819,767	8,819,767	6,298,421	71%	4,615,138	1,683,283	36%
Public Safety Sales Tax	351,000	351,000	190,211	54%	185,243	4,968	3%
Transient Occupancy Taxes	2,684,700	2,684,700	1,621,373	60%	1,341,199	280,174	21%
Franchise (Refuse ,Cable ,PG&E)	1,927,359	1,927,359	836,001	43%	766,482	69,519	9%
Property Transfer Tax	469,000	469,000	262,767	56%	278,658	(15,891)	-6%
TOTAL TAXES	24,212,826	24,212,826	14,501,431	60%	11,991,017	2,510,415	21%
LICENSES/PERMITS							
Business License	198,900	198,900	177,383	89%	189,181	(11,798)	-6%
Other Permits	7,574	7,574	2,045	27%	6,620	(4,575)	-69%
TOTAL LICENSES/PERMITS	206,474	206,474	179,428	87%	195,801	(16,373)	-8%
FINES AND PENALTIES							
Parking Enforcement	12,000	12,000	6,388	53%	8,775	(2,388)	-27%
Bails & Fines	64,000	64,000	32,162	50%	25,707	6,455	25%
Administrative Citations	-	-	500	n/a	90	410	454%
TOTAL FINES AND PENALTIES	76,000	76,000	39,049	51%	34,572	4,067	12%
OTHER AGENCIES							
Motor Vehicle in-Lieu	17,194	17,194	19,552	114%	16,857	2,695	16%
Other Revenue - Other Agencies	525,550	591,800	291,328	49%	228,547	62,780	27%
TOTAL OTHER AGENCIES	542,744	608,994	310,880	51%	245,404	65,475	27%
CHARGES CURRENT SERVICES							
Police False Alarm Charge	32,000	32,000	29,967	94%	18,793	11,174	59%
Business License Application Review	35,914	35,914	27,450	76%	30,249	(2,799)	-9%
Membership Services & Rec Programs	5,702,573	5,702,573	3,708,485	65%	3,653,152	55,334	2%
Facility Rentals	874,020	874,020	616,451	71%	629,694	(13,243)	-2%
Community Services	152,915	152,915	96,650	63%	90,227	6,423	7%
General Administration Overhead	1,260,075	1,260,075	838,280	67%	798,359	39,921	5%
Other Charges Current Services	895,723	895,723	463,638	52%	476,481	(12,843)	-3%
TOTAL CURRENT SERVICES	8,953,220	8,953,220	5,780,922	65%	5,696,956	83,967	1%
OTHER REVENUE							
Use of money/property	269,133	269,133	197,035	73%	177,305	19,730	11%
Other Revenues	312,558	413,270	548,945	133%	336,287	212,658	63%
TOTAL OTHER REVENUE	581,691	682,403	745,980	109%	513,592	232,388	45%
TRANSFERS IN							
Public Safety	100,000	100,000	54,501	55%	112,029	(57,527)	-51%
Streets	762,581	762,581	339,209	44%	362,414	(23,205)	-6%
Sewer Operations	345,000	345,000	230,000	67%	166,130	63,870	38%
Water Operations	345,000	345,000	230,000	67%	291,082	(61,082)	-21%
Park Development	75,000	75,000	50,000	67%	40,000	10,000	25%
TOTAL TRANSFERS IN	1,627,581	1,627,581	903,710	56%	971,655	(67,944)	-7%
TOTAL GENERAL FUND	36,200,536	36,367,498	22,461,400	62%	19,648,996	2,812,405	14%
SPECIAL REVENUE FUNDS							
202 STREET MAINTENANCE							
Gas Tax 2105 - 2107.5	761,458	761,458	392,136	51%	399,814	(7,678)	-2%
Interest / Other Revenue/Other Charges	60	60	705	1175%	641	64	10%
202 STREET MAINTENANCE	761,518	761,518	392,841	52%	400,456	(7,615)	-2%



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2016-17
For the Eight Months Ended February 28, 2017
67% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
SPECIAL REVENUE FUNDS							
205 PUBLIC SAFETY TRUST							
Interest Income	265	265	230	87%	292	(62)	-21%
Police Grant/SLEF/JAG	100,000	100,000	70,990	71%	63,786	7,204	11%
205 PUBLIC SAFETY TRUST	100,265	100,265	71,221	71%	64,078	7,143	11%
206 COMMUNITY DEVELOPMENT							
Building Fees	2,507,862	2,507,862	1,621,920	65%	1,521,832	100,088	7%
Planning Fees	1,117,358	1,117,358	554,952	50%	711,697	(156,745)	-22%
Engineering Fees	741,563	741,563	916,831	124%	592,759	324,073	55%
Other Revenue/Current Charges	11,840	11,840	234,315	1979%	21,830	212,484	973%
206 COMMUNITY DEVELOPMENT	4,378,623	4,378,623	3,328,017	76%	2,848,118	479,900	17%
207 GENERAL PLAN UPDATE	658,035	658,035	528,364	80%	591,293	(62,929)	-11%
215 and 216 HCD BLOCK GRANT							
HCD allocation	70,000	70,000	-	0%	-	-	0%
Interest Income/Other Revenue	278	278	7,374	2653%	3,635	3,739	103%
215 and 216 HCD BLOCK GRANT	70,278	70,278	7,374	10%	3,635	3,739	103%
225 ASSET SEIZURE	167	167	66,331	39719%	1,506	64,825	4305%
229 LIGHTING AND LANDSCAPE	185,810	185,810	99,558	54%	117,547	(17,989)	-15%
230 COMMUNITY FACILITIES DISTRICT	41,999	41,999	21,400	51%	1	21,399	1561935%
232 ENVIRONMENTAL PROGRAMS	382,640	382,640	263,543	69%	205,162	58,381	28%
234 MOBILE HOME PARK RENT STAB.	3,831	3,831	3,801	99%	3,722	79	2%
235 SENIOR HOUSING	1,089	1,089	1,181	108%	909	272	30%
236 HOUSING MITIGATION	1,601,328	1,601,328	1,254,490	78%	1,291,327	(36,837)	-3%
240 EMPLOYEE ASSISTANCE	30,298	30,298	17,693	58%	17,867	(174)	-1%
247 ENVIRONMENT REMEDIATION	736	736	798	108%	614	184	30%
250 COMH-SUCCESSOR AGENCY-MHRDA	7,343,954	7,343,954	9,077,947	124%	10,612,117	(1,534,169)	-14%
255 HOUSING SUCCESSOR AGENCY	1,251,430	1,251,430	337,754	27%	1,411,566	(1,073,812)	-76%
TOTAL SPECIAL REVENUE FUNDS	16,812,002	16,812,002	15,472,313	92%	17,569,918	(2,097,604)	-12%
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	1,850,595	3,358,695	831,342	25%	1,798,896	(967,554)	-54%
302 PARK MAINTENANCE	1,038,123	1,038,123	809,348	78%	1,026,340	(216,991)	-21%
303 LOCAL DRAINAGE	1,624,857	1,624,857	1,169,960	72%	1,201,775	(31,816)	-3%
304 LOCAL DRAINAGE/NON AB1600	84,735	84,735	150,994	178%	85,997	64,997	76%
306 AGRICULTURE & OPEN SPACE PRESERVATI	1,943,781	1,943,781	150,397	8%	1,144,710	(994,313)	-87%
308 STREET CIP	2,731,146	2,731,146	1,041,502	38%	1,265,134	(223,632)	-18%
309 TRAFFIC MITIGATION	1,360,910	1,360,910	480,974	35%	888,787	(407,813)	-46%
311 POLICE MITIGATION	272,506	272,506	75,639	28%	275,945	(200,306)	-73%
313 FIRE MITIGATION	139,152	139,152	85,845	62%	72,755	13,090	18%
346 PUBLIC FACILITIES NON-AB1600	786,626	786,626	643,253	82%	992,651	(349,398)	-35%
347 PUBLIC FACILITIES	182,245	182,245	47,920	26%	198,497	(150,578)	-76%
348 LIBRARY	813,403	813,403	148,276	18%	723,349	(575,073)	-80%
350 UNDERGROUNDING	1,104,276	1,104,276	863,196	78%	1,509	861,687	57111%
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	666,766	666,766	736,112	110%	143,350	592,762	414%
360 COMMUNITY/REC IMPACT FUND	1,249,999	1,249,999	120,930	10%	243	120,687	49592%
TOTAL CAPITAL PROJECTS FUNDS	15,849,120	17,357,220	7,355,688	42%	9,819,938	(2,464,250)	-25%
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	301,123	301,123	199,792	66%	272,619	(72,827)	-27%
441 POLICE FACILITY BOND	378,121	378,121	187,949	50%	356,278	(168,329)	-47%
545 COCHRANE BUSINESS PARK	56	56	61	108%	47	14	30%
TOTAL DEBT SERVICE FUNDS	679,300	679,300	387,801	57%	628,944	(241,142)	-38%



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2016-17
For the Eight Months Ended February 28, 2017
67% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
ENTERPRISE FUNDS							
640 SEWER OPERATION							
Sewer Service Fees	10,190,979	10,190,979	6,223,984	61%	6,585,729	(361,745)	-5%
Interest Income/Transfers	32,807	32,807	11,638	35%	19,660	(8,022)	-41%
Other Revenue/Current Charges	179,543	179,543	310,187	173%	120,183	190,003	158%
640 SEWER OPERATION	10,403,329	10,403,329	6,545,808	63%	6,725,572	(179,764)	-3%
641 SEWER EXPANSION							
Interest Income	62,457	62,457	78,104	125%	60,432	17,672	29%
Development Impact Fee	5,670,371	5,670,371	998,522	18%	3,771,746	(2,773,224)	-74%
Transfers/Other	-	-	600	0%	1,425	(825)	-58%
641 SEWER EXPANSION	5,732,828	5,732,828	1,077,226	19%	3,833,602	(2,756,376)	-72%
642 SEWER RATE STABILIZATION	9,237	9,237	49,694	538%	218,580	(168,885)	-77%
643 SEWER-CAPITAL PROJECT	2,670,698	2,670,698	1,797,833	67%	407,207	1,390,626	342%
TOTAL SEWER FUNDS	18,816,092	18,816,092	9,470,561	50%	11,184,961	(1,714,400)	-15%
650 WATER OPERATION							
Water Sales	8,972,175	8,972,175	6,390,418	71%	4,972,013	1,418,405	29%
Meter Install & Service	154,700	154,700	132,422	86%	107,642	24,780	23%
Transfers-In / Interest Income	407,582	407,582	275,907	68%	212,278	63,629	30%
Other Revenue/Current Charges	464,152	464,152	577,013	124%	398,058	178,955	45%
650 WATER OPERATION	9,998,609	9,998,609	7,375,759	74%	5,689,991	1,685,768	30%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	8,340	8,340	19,724	237%	16,428	3,296	20%
Development Impact Fee	1,301,089	1,301,089	326,638	25%	1,262,982	(936,344)	-74%
651 WATER EXPANSION	1,309,429	1,309,429	346,362	26%	1,279,411	(933,048)	-73%
652 Water Rate Stabilization	501,248	501,248	334,230	67%	154	334,076	216286%
653 Water Capital Project	953,461	953,461	646,471	68%	757,204	(110,733)	-15%
TOTAL WATER FUNDS	12,762,747	12,762,747	8,702,823	68%	7,726,761	976,062	13%
TOTAL ENTERPRISE FUNDS	31,578,839	31,578,839	18,173,384	58%	18,911,722	(738,338)	-4%
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	1,592,348	1,592,348	1,075,215	68%	848,778	226,436	27%
740 BUILDING MAINTENANCE	3,014,227	3,014,227	2,061,423	68%	1,792,904	268,519	15%
741 BUILDING REPLACEMENT	450,969	450,969	316,256	70%	294,414	21,842	7%
745 CIP ADMINISTRATION	1,820,194	1,820,194	873,193	48%	1,037,718	(164,524)	-16%
760 UNEMPLOYMENT INSURANCE	831	831	923	111%	786	137	17%
770 WORKERS COMPENSATION	735,723	735,723	492,436	67%	410,390	82,046	20%
790 EQUIPMENT REPLACEMENT	994,315	994,315	707,169	71%	531,681	175,488	33%
791 EMPLOYEE BENEFITS	1,193,659	1,193,659	1,019,605	85%	689,955	329,650	48%
793 CORPORATION YARD COMMISSION	-	-	547	0%	1,095	(548)	-50%
795 GENERAL LIABILITY INSURANCE	854,937	854,937	572,521	67%	751,444	(178,923)	-24%
TOTAL INTERNAL SERVICE FUNDS	10,657,203	10,657,203	7,119,288	67%	6,359,166	760,123	12%
TOTAL FOR ALL FUNDS	\$111,777,000	\$113,452,062	\$ 70,969,876	63%	\$ 72,938,683	\$ 1,008,041	1%



City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2016-17
 For the Month and Eight Months Ended February 28, 2017
 67% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
010 GENERAL FUND								
I. ADMINISTRATION								
	CITY COUNCIL	\$ 15,921	\$ 342,142	\$ 221,673	\$ 66,527	\$ 288,199	84%	\$ 16,000
	CITY ATTORNEY	54,039	724,002	424,914	74,910	499,824	69%	40,000
	CITY ATTORNEY LOAN	-	835,000	835,000	-	835,000	100%	-
	CITY MANAGER	70,854	1,016,115	556,785	148,548	705,332	69%	39,000
	HUMAN RESOURCES	41,403	721,806	438,119	1,035	439,154	61%	37,000
	COUNCIL SVCS & RECORDS MGMT							
	Council Svcs & Records Mgmt	43,352	577,125	363,574	-	363,574	63%	36,000
	Elections	1,812	165,522	129,957	-	129,957	79%	1,000
	COUNCIL SVCS & RECORDS MGMT	45,165	742,647	493,531	-	493,531	66%	38,000
	FINANCE	114,503	1,586,721	1,082,497	12,214	1,094,711	69%	90,000
	TOTAL ADMINISTRATION	341,885	5,968,432	4,052,518	303,233	4,355,750	73%	2,610,000
II. COMMUNITY SERVICES								
	Membership Services & Rec. Programs	308,444	5,529,949	3,340,061	838,478	4,178,539	76%	3,090,000
	Recreation Facility Rentals	98,628	1,250,322	822,264	8,095	830,359	66%	760,000
	Community Services	44,841	719,212	414,510	39,309	453,819	63%	300,000
	Solid Waste Management	12,700	275,796	118,566	(500)	118,066	43%	120,000
	Street Maintenance	83,046	2,095,917	1,214,838	217,626	1,432,463	68%	1,010,000
	Downtown Maintenance	34,313	242,063	91,350	22,180	113,530	47%	100,000
	Cable Television	1,478	48,258	19,616	-	19,616	41%	20,000
	COMMUNITY SERVICES	583,450	10,161,517	6,021,204	1,125,187	7,146,391	70%	5,350,000
	CODE COMPLIANCE	6,986	135,689	77,122	-	77,122	57%	-
	CONGESTION MANAGEMENT	3,943	75,219	57,808	-	57,808	77%	50,000
	TOTAL COMMUNITY SERVICES	594,379	10,372,425	6,156,133	1,125,187	7,281,320	70%	5,400,000
III. PUBLIC SAFETY								
	POLICE							
	PD Administration	116,032	1,157,010	730,311	23,562	753,873	65%	610,000
	Field Operations	575,920	7,546,432	4,877,574	13,006	4,890,580	65%	4,110,000
	Support Services	154,260	2,065,701	1,352,348	18,416	1,370,764	66%	1,290,000
	Emergency Services/Haz Mat	11,621	195,542	106,879	-	106,879	55%	100,000
	Special Operations	251,470	2,685,665	1,703,740	-	1,703,740	63%	1,510,000
	Dispatch Services	114,822	1,639,601	1,000,891	-	1,000,891	61%	930,000
	POLICE	1,224,124	15,289,951	9,771,742	54,985	9,826,727	64%	8,570,000
	FIRE	419,608	5,428,841	3,721,057	20,683	3,741,740	69%	3,560,000
	TOTAL PUBLIC SAFETY	1,643,732	20,718,791	13,492,799	75,667	13,568,466	65%	12,130,000
IV. TRANSFERS								
	Other	145,078	2,064,119	1,493,807	-	1,493,807	72%	1,040,000
	TOTAL TRANSFERS	145,078	2,064,119	1,493,807	-	1,493,807	72%	1,040,000
	TOTAL GENERAL FUND	2,725,074	39,123,768	25,195,258	1,504,087	26,699,345	68%	21,200,000

Attachment: February 2017 Financial and Investment Report (1125 : February 2017 Financial and Investment Report)



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2016-17
For the Month and Eight Months Ended February 28, 2017
67% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
SPECIAL REVENUE FUNDS								
202	STREET MAINTENANCE	161	764,507	340,497	-	340,497	45%	36%
205	PUBLIC SAFETY/SUPP.LAW	-	100,000	54,501	-	54,501	55%	11%
206	COMMUNITY DEVELOPMENT FUND							
	Planning	166,817	2,355,225	1,275,394	143,654	1,419,048	60%	1,48%
	Building	121,687	1,863,218	1,099,364	84,835	1,184,199	64%	1,03%
	Engineering	94,982	1,186,172	661,957	116,048	778,006	66%	59%
206	COMMUNITY DEVELOPMENT FUND	383,486	5,404,615	3,036,716	344,537	3,381,253	63%	3,11%
207	GENERAL PLAN UPDATE	38,126	1,086,553	321,344	367,691	689,035	63%	38%
215/216	CDBG	9,675	70,000	18,726	19,873	38,599	55%	6%
229	LIGHTING AND LANDSCAPE	13,312	205,192	105,056	37,712	142,768	70%	8%
230	COMMUNITY FACILITIES DISTRICT	1,074	50,850	11,412	2,460	13,872	27%	1%
232	ENVIRONMENT PROGRAMS	24,423	331,143	430,905	-	430,905	130%	15%
234	MOBILE HOME PARK	68	840	544	-	544	65%	
236	HOUSING MITIGATION	59,371	3,337,298	2,827,990	106,795	2,934,785	88%	1,46%
240	EMPLOYEE ASSISTANCE	99	41,188	23,401	-	23,401	57%	1%
250	COMH-SUCCESSOR AGENCY-MHRDA	25,767	8,881,727	6,637,216	46,618	6,683,834	75%	22,19%
255	HOUSING SUCCESSOR AGENCY	107,355	2,792,194	626,891	137,361	764,252	27%	50%
TOTAL SPECIAL REVENUE FUNDS		662,917	23,066,107	14,435,199	1,063,047	15,498,246	67%	28,46%
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	200,708	8,724,472	824,488	116,321	940,808	11%	5,50%
302	PARK MAINTENANCE	54,381	950,987	631,382	31,170	662,552	70%	55%
303	LOCAL DRAINAGE	969	22,754	9,109	7,895	17,004	75%	5%
304	LOCAL DRAIN. NON-AB1600	4,663	54,922	12,476	-	12,476	23%	12%
306	AGRICULTURE & OPEN SPACE PRESERVATI	5,502	1,904,843	807,104	107,813	914,918	48%	1%
308	STREET CIP	5,119	2,865,755	98,907	6,806	105,713	4%	1,35%
309	TRAFFIC MITIGATION	39,542	1,202,960	892,451	591,711	1,484,162	123%	20%
311	POLICE MITIGATION	5,989	270,999	147,560	-	147,560	54%	18%
313	FIRE MITIGATION	113	26,316	897	-	897	3%	
346	PUBLIC FAC.NON AB1600	26,114	1,727,369	510,846	15,932	526,778	30%	22%
347	PUBLIC FACILITIES	110	431,177	861	-	861	0%	2%
348	LIBRARY IMPACT	49,442	329,913	282,751	285,919	568,670	172%	16%
350	UNDERGROUNDING	4,663	627,800	696,592	38,320	734,913	117%	2%
355	SCHOOL PEDESTRIAN & TRAFFIC SAFETY	545	939,410	4,888	-	4,888	1%	22%
360	COMM/REC CENTER IMPACT	233	-	844	-	844	0%	
TOTAL CAPITAL PROJECTS FUNDS		398,092	20,079,677	4,921,156	1,201,888	6,123,044	30%	8,64%
DEBT SERVICE FUNDS								
420	CIVIC CENTER DEBT	92	298,643	219,305	-	219,305	73%	26%
441	POLICE FACILITY BOND DEBT	189	377,578	282,037	-	282,037	75%	35%
TOTAL DEBT SERVICE FUNDS		281	676,221	501,342	-	501,342	74%	61%

Attachment: February 2017 Financial and Investment Report (1125 : February 2017 Financial and Investment Report)



City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2016-17
 For the Month and Eight Months Ended February 28, 2017
 67% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
ENTERPRISE FUNDS								
SEWER								
640	SEWER OPERATIONS	1,125,348	10,643,452	6,714,624	66,141	6,780,765	64%	4,921
641	SEWER CAPITAL EXPANSION	84,445	5,234,944	1,099,010	480,500	1,579,510	30%	6,711
642	SEWER RATE STABILIZATION	310	3,714	2,480	-	2,480	67%	1
643	SEWER-CAPITAL PROJECTS	50,444	7,098,173	2,956,675	160,159	3,116,834	44%	501
TOTAL SEWER FUND(S)		1,260,547	22,980,283	10,772,789	706,801	11,479,589	50%	12,141
WATER								
	Water Operations	626,027	10,237,562	6,073,378	358,732	6,432,110	63%	5,651
	Utility Billing	56,364	811,093	459,493	26,785	486,278	60%	391
	Water Conservation	5,855	191,935	79,684	51,204	130,888	68%	101
650	WATER OPERATIONS	688,247	11,240,589	6,612,555	436,721	7,049,276	63%	6,151
651	WATER CAPITAL EXPANSION	105,142	5,267,930	1,308,678	367,740	1,676,418	32%	531
652	WATER RATE STABILIZATION	48	632	384	-	384	61%	1
653	WATER-CAPITAL PROJECTS	264,173	5,684,249	3,127,815	635,992	3,763,807	66%	961
TOTAL WATER FUND(S)		1,057,610	22,193,400	11,049,431	1,440,454	12,489,885	56%	7,651
TOTAL ENTERPRISE FUNDS		2,318,156	45,173,684	21,822,220	2,147,254	23,969,474	53%	19,791
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	94,340	1,747,198	825,538	13,092	838,630	48%	721
740	BUILDING MAINTENANCE	345,713	3,060,391	1,972,729	243,227	2,215,957	72%	1,711
741	BUILDING REPLACEMENT	109,558	1,155,566	564,168	18,507	582,676	50%	111
745	CIP ADMINISTRATION	108,691	1,820,194	873,194	3,795	876,989	48%	1,061
760	UNEMPLOYMENT	-	20,000	7,189	-	7,189	36%	1
770	WORKERS COMPENSATION	56,530	792,948	404,631	-	404,631	51%	431
790	EQUIPMENT REPLACEMENT	988	2,236,123	1,289,124	32,337	1,321,461	59%	511
791	EMPLOYEE BENEFITS FUND	27,157	537,056	424,303	-	424,303	79%	371
793	CORP YARD COMMISSION	102	-	4,958	-	4,958	0%	1
795	GEN. LIABILITY INSURANCE	5,865	1,008,256	750,772	-	750,772	74%	741
TOTAL INTERNAL SERVICE FUNDS		748,943	12,377,731	7,116,606	310,959	7,427,565	60%	5,701
REPORT TOTAL		\$ 6,853,464	\$ 140,497,188	\$ 73,991,780	\$ 6,227,235	\$ 80,219,015	57%	\$ 84,441

City of Morgan Hill Fund Activity Summary - Fiscal Year 2016-17 For the Eight Months Ended February 28, 2017 67% of Year Complete										
Fund No.	Fund	Fund Balance 06-30-16		Revenues		Expenses		Year to-Date Deficit or Carryover	Ending Fund Balance	
		YTD Actual	% of Budget	YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved
010	GENERAL FUND	\$ 17,398,147	62%	\$ 22,461,400	62%	\$ 25,195,258	64%	\$ (2,733,857)	\$ 1,504,087	\$ 13,160,202
TOTAL GENERAL FUND		\$ 17,398,147	62%	\$ 22,461,400	62%	\$ 25,195,258	64%	\$ (2,733,857)	\$ 1,504,087	\$ 13,160,202
202	STREET MAINTENANCE	1,662	52%	392,841	52%	340,497	59%	52,344	-	54,006
205	PUBLIC SAFETY/SUPPL. LAW	25,185	71%	71,221	71%	54,501	56%	16,719	-	41,904
206	COMMUNITY DEVELOPMENT	2,778,585	76%	3,328,017	76%	3,036,716	56%	291,302	344,537	2,725,350
207	GENERAL PLAN UPDATE	1,045,698	80%	528,364	80%	321,344	30%	207,020	367,691	885,027
210	COMMUNITY REC CENTERS START-UP	298	0%	-	0%	-	0%	-	-	298
215 / 216	CDBG	67,727	10%	7,374	10%	18,726	0%	(11,352)	19,873	36,502
225	ASSET SEIZURE	66,884	39719%	66,331	39719%	-	0%	66,331	-	133,215
229	LIGHTING AND LANDSCAPE	160,501	54%	99,558	54%	105,056	51%	(5,498)	37,712	117,290
230	COMMUNITY FACILITIES DISTRICT	36,575	51%	21,400	51%	11,412	0%	9,988	2,460	44,104
232	ENVIRONMENTAL PROGRAMS	323,595	69%	263,543	69%	430,905	130%	(167,361)	-	156,234
234	MOBILE HOME PK RENT STAB.	35,998	99%	3,801	99%	544	65%	3,257	-	39,256
235	SENIOR HOUSING	218,348	108%	1,181	108%	-	0%	1,181	-	219,529
236	HOUSING MITIGATION	2,632,682	78%	1,254,490	78%	2,827,990	85%	(1,573,500)	106,795	952,386
240	EMPLOYEE ASSISTANCE	43,179	58%	17,693	58%	23,401	57%	(5,709)	-	37,470
247	ENVIRONMENT REMEDIATION	147,550	108%	798	108%	-	0%	798	-	148,348
250	COMH-SUCCESSOR AGENCY-MHRDA	3,958,263	124%	9,077,947	124%	6,637,216	75%	2,440,731	14,011,972	(7,612,978)
255	HOUSING SUCCESSOR AGENCY	3,901,936	0.27	337,754	0.27	626,891	0.22	(289,137)	2,650,636	962,162
TOTAL SPECIAL REVENUE FUNDS		\$ 15,444,667	92%	\$ 15,472,313	92%	\$ 14,435,199	63%	\$ 1,037,114	\$ 17,541,676	\$ (1,059,895)
301	PARK DEV. IMPACT FUND	\$ 7,162,036	25%	\$ 831,342	25%	\$ 824,488	9%	\$ 6,854	\$ 116,321	\$ 7,052,569
302	PARK MAINTENANCE	5,404,028	78%	809,348	78%	631,382	66%	177,966	31,170	5,550,824
303	LOCAL DRAINAGE	7,080,630	72%	1,169,960	72%	9,109	40%	1,160,851	7,895	8,233,585
304	LOCAL DRAINAGE/NON-AB1600	1,150,352	178%	150,994	178%	12,476	23%	138,518	-	1,288,870
306	AGRICULTURE AND OPEN SPACE PRESERV	6,612,245	8%	150,397	8%	807,104	0%	(656,708)	107,813	5,847,724
308	STREET CIP	955,386	38%	1,041,502	38%	98,907	3%	942,596	6,806	1,891,176
309	TRAFFIC IMPACT FUND	5,109,589	35%	480,974	35%	892,451	74%	(411,477)	591,711	4,106,400
311	POLICE IMPACT FUND	44,712	28%	75,639	28%	147,560	54%	(71,921)	-	(27,209)
313	FIRE IMPACT FUND	3,681,468	62%	85,845	62%	897	3%	84,948	-	3,766,416
346	PUBLIC FACILITIES NON-AB1600	1,272,644	82%	643,253	82%	510,846	30%	132,407	-	1,405,051
347	PUBLIC FACILITIES IMPACT FUND	268,285	26%	47,920	26%	861	0%	47,058	285,919	29,424
348	LIBRARY IMPACT FUND	2,171,424	18%	148,276	18%	282,751	86%	(134,475)	38,320	1,998,629
350	UNDERGROUNDING	318,891	78%	863,196	78%	696,592	111%	166,604	-	485,494
355	SCHOOL PEDESTRIAN/TRAFFIC SFTY	998,252	110%	736,112	110%	4,888	1%	731,224	-	1,729,476
360	COMM/REC CTR IMPACT FUND	37,257	100%	120,930	100%	844	0%	120,086	-	157,344
TOTAL CAPITAL PROJECT FUNDS		\$ 42,267,197	42%	\$ 7,355,688	42%	\$ 4,921,156	25%	\$ 2,434,532	\$ 1,185,956	\$ 43,515,773
420	CIVIC CENTER DEBT	\$ 159,200	\$0.66	\$ 199,792	\$0.66	\$ 219,305	73%	\$ (19,513)	14	\$ 139,673
441	POLICE FACILITY BOND DEBT	94,402	\$0.50	187,949	\$0.50	282,037	75%	(94,088)	18	295
545	COCHRANE BUSINESS PARK	11,196	61	61	108%	-	0%	61	-	11,257
TOTAL DEBT SERVICE FUNDS		\$ 264,797	57%	\$ 387,801	57%	\$ 501,342	74%	\$ (113,540)	\$ 33	\$ 151,225

 CITY OF MORGAN HILL City of Morgan Hill Fund Activity Summary - Fiscal Year 2016-17 For the Eight Months Ended February 28, 2017 67% of Year Complete									
Fund No.	Fund	Fund Balance 06-30-16	Revenues		Expenses		Year to-Date Deficit or Carryover	Ending Fund Balance	
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved

640	SEWER OPERATIONS	\$ 3,137,175	63%	\$ 6,545,808	63%	\$ 6,714,624	63%	\$ (168,816)	66,141	2,902,218
641	SEWER IMPACT FUND*	14,119,765	19%	1,077,226	19%	1,099,010	21%	(21,784)	8,896,923	5,201,058
642	SEWER RATE STABILIZATION	2,478,572	538%	49,694	538%	2,480	67%	47,214	-	2,525,786
643	SEWER-CAPITAL PROJECTS	9,630,531	67%	1,797,833	67%	2,956,675	42%	(1,158,842)	169,373	8,302,316
650	WATER OPERATIONS	1,593,089	74%	7,375,759	74%	6,612,555	59%	763,204	436,721	1,919,572
651	WATER IMPACT FUND*	4,540,130	26%	346,362	26%	1,308,678	25%	(962,315)	4,024,775	(446,961)
652	WATER RATE STABILIZATION	36,701	67%	334,230	67%	384	61%	333,846	-	370,547
653	WATER -CAPITAL PROJECT	4,050,727	68%	646,471	68%	3,127,815	55%	(2,481,343)	635,992	933,391
TOTAL ENTERPRISE FUNDS		\$ 39,586,690	58%	\$ 18,173,384	58%	\$ 21,822,220	48%	\$ (3,648,836)	\$ 14,229,926	\$ 21,707,928

730	INFORMATION SERVICES	\$ 384,159	68%	\$ 1,075,215	68%	\$ 825,538	47%	\$ 249,677	13,092	\$ 620,744
740	BUILDING MAINTENANCE	209,188	68%	2,061,423	68%	1,972,729	64%	88,694	243,227	54,654
741	BUILDING REPLACEMENT	2,472,241	70%	316,256	70%	564,168	49%	(247,912)	18,507	2,205,821
745	CIP ENGINEERING	34,049	48%	873,193	48%	873,194	48%	(1)	3,795	30,253
760	UNEMPLOYMENT	177,459	111%	923	111%	7,189	36%	(6,266)	-	171,193
770	WORKERS COMPENSATION	1,357,898	67%	492,436	67%	404,631	51%	87,805	30,000	1,415,703
790	EQUIPMENT REPLACEMENT	4,348,478	71%	707,169	71%	1,289,124	58%	(581,954)	32,337	3,734,186
791	EMPLOYEE BENEFITS FUNDS	464,099	85%	1,019,605	85%	424,303	79%	595,302	-	1,059,401
793	CORP YARD COMMISSION	(3,934)	0%	547	0%	4,958	0%	(4,411)	-	(8,345)
795	GEN. LIABILITY INSURANCE	990,072	67%	572,521	67%	750,772	74%	(178,251)	-	811,821
TOTAL INTERNAL SERVICE FUNDS		\$ 10,433,709	67%	\$ 7,119,288	67%	\$ 7,116,606	57%	\$ 2,683	\$ 340,959	\$ 10,095,433

SUMMARY BY FUND TYPE

GENERAL FUND GROUP	\$ 17,398,147	\$ 22,461,400	62%	\$ 25,195,258	64%	\$ (2,733,857)	\$ 1,504,087	\$ 13,160,202
SPECIAL REVENUE GROUP	15,444,667	15,472,313	92%	14,435,199	63%	1,037,114	17,541,676	(1,059,895)
DEBT SERVICE GROUP	264,797	387,801	57%	501,342	74%	(113,540)	33	151,225
CAPITAL PROJECTS GROUP	42,287,197	7,355,688	42%	4,921,156	25%	2,434,532	1,185,956	43,515,773
ENTERPRISE GROUP	39,586,690	18,173,384	58%	21,822,220	48%	(3,648,836)	14,229,926	21,707,928
INTERNAL SERVICE GROUP	10,433,709	7,119,288	67%	7,116,606	57%	2,683	340,959	10,095,433
TOTAL ALL GROUPS	\$ 125,395,207	\$ 70,969,876	63%	\$ 73,991,780	53%	\$ (3,021,904)	\$ 34,802,637	\$ 87,570,666

For Enterprise Funds: Unrestricted fund balance = Fund balance net of fixed assets and long-term liabilities.

*Unreserved fund balance includes bond proceeds reserved for projects listed in bond documents.

¹ Amount restricted for encumbrances, fixed asset replacement, long-term receivables, and bond reserves.

² Amount restricted for debt service payments and AB1600 capital expansion projects as detailed in the City's five year CIP Plan and bond agreements.



CITY COUNCIL STAFF REPORT

MEETING DATE: April 19, 2017

PREPARED BY: Michelle Katsuyoshi, Human Resources Director
APPROVED BY: City Manager

CLASSIFICATION AND COMPENSATION STUDY

RECOMMENDATION(S)

1. Authorize Koff & Associates to conduct a limited classification and citywide compensation study;
2. Authorize the City Manager to execute and administer a services contract with Koff & Associates for an amount not-to-exceed \$72,125; and
3. Direct staff to include a review of the City's adopted Long-Term Labor Policy, Principles, and Strategies as part of the May 17, 2017 City Council agenda.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Fostering a Positive Organizational Culture
Preserving and Cultivating Public Trust

REPORT NARRATIVE:

The City's Long-Term Labor Policy, Principles, and Strategies document (adopted 2011) identifies three core principles that support the need to engage in a classification and compensation study: recruitment and retention, market based compensation, and fiscal sustainability. Staff recommends a limited classification study for up to twelve classifications and a citywide compensation study for approximately 93 classifications. A classification and compensation study is primarily designed to focus on internal and external equity of both the structure by which employees are compensated, as well as how positions relate and compare to one another across the organization. One of the key factors to consider is pay compaction.

Pay compaction is when employees in lower-level jobs are paid almost as much as their colleagues in higher-level jobs, including managerial positions. Salary compaction is currently affecting our organization's internal equity (e.g. how classifications are paid relative to each other within the City's compensation plan) and is evident when employees either promote within a series of classifications or promote from represented positions into management/supervisory positions. Three recent promotions from represented positions (AFSCME) to management positions demonstrated how pay compaction is affecting our organization.

A comprehensive classification and compensation study has not been performed in Morgan Hill in over 10 years. The most recent Management, Professional, and

Confidential employee group compensation study was conducted in 2006. Periodically the City conducts salary surveys for represented positions during labor negotiations. It is important for the City to re-evaluate its overall structure at regular intervals (e.g., 3-5 years depending upon market movements) to ensure that its salary levels are consistent with the market and to make sure that the City's pay scales remain competitive. As the national and local labor markets continue to improve, we want to ensure that our salaries are competitive.

A limited classification study will focus on specific positions to review the tasks and projects assigned to the roles and ensure consistency with the job descriptions and compensation. Recommendations for changes to the existing job descriptions and compensation may result from the study. The selection of the positions to be studied resulted from a citywide review of all positions and identifying those for which assignments have evolved over time.

The City acknowledges that compensation and benefits for many of our employees are subject to the collective bargaining process and all three bargaining groups (AFSCME, CSOA, and POA) are in contracts until December 31, 2018.

The City sent a request for proposals (RFP) for a limited classification and citywide compensation study to six human resources firms/consultants to submit a written proposal for conducting a limited classification and citywide compensation study. As stated in the City's purchasing policy (3.04.250 of the Municipal Code), the contract award shall be based upon the proposal determined to be most advantageous to the city, taking into consideration price and the evaluation factors set forth in the request for proposals.

Three proposals were received and Koff & Associates was selected based on its experience, demonstrated competence, anticipated timeframe, references, and cost effective approach. The studies are anticipated to be completed by November 2017. Below is a sample classification and compensation study timeline and tasks to be completed.

CLASSIFICATION STUDY
JOB ANALYSIS PHASE
Initial document review, meetings with Project Team and HR/Management Team
Orientation Meetings with Employees and Distribution of Position Description Questionnaire (PDQ)
Collect Data – PDQ, incumbent audits, and supervisory interviews
Employee/Supervisor/ Management Interviews (if needed)
Analysis – Review all information in relation to allocation factors
Determine Need for Revised and/or New Classes
Draft Job Descriptions
Finalize Classification Plan/Draft Interim Report

COMPENSATION STUDY
Identify comparable agencies, benchmark classes, and benefits
Compensation data collection
Analysis and preliminary data review
Draft compensation findings/additional analysis/study project team meeting
Internal relationship analysis/internal alignment
Compensation structure and implementation plan development
Development of draft and final report and deliverables
Final presentation to City Council

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the recommendation of proceeding with a limited classification study and a compensation study. The City will post all classifications and salary schedules on the City's website as has been our practice to ensure transparency.

ALTERNATIVE ACTIONS:

The Council could choose to approve one of the studies or neither of the studies.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

At the June 15, 2016 City Council meeting, the City Council requested a future Council item to discuss the cost and time commitment to perform an organizational wide compensation study.

FISCAL AND RESOURCE IMPACT:

The not-to-exceed amount for the limited classification and citywide compensation study is \$72,125 and would be funded through the general fund and other funds with personnel costs. As sufficient funding is available in the adopted budget, no budget amendment is needed.

CEQA (California Environmental Quality Act):

Not a Project - Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:



CITY COUNCIL STAFF REPORT

MEETING DATE: April 19, 2017

PREPARED BY: Michelle Katsuyoshi, Human Resources Director
APPROVED BY: City Manager

RECLASSIFICATION OF MUNICIPAL SERVICES ASSISTANT AND SUPPORT SERVICES SUPERVISOR AND HOUSING MANAGER SALARY INCREASE

RECOMMENDATION(S)

1. Approve the recommended increase in the salary range for Housing Manager;
2. Approve the reclassification of the Municipal Services Assistant position in the Housing Division to a Housing Coordinator classification; and
3. Approve the reclassification of the Support Services Supervisor position in the Development Services Department to a Management Analyst classification.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Fostering a Positive Organizational Culture
Preserving and Cultivating Public Trust

REPORT NARRATIVE:

Periodically, the City conducts a job analysis by reviewing position descriptions when positions become vacant to ensure the current duties and responsibilities meet the needs of the organization. As a result of two retirements in December 2016, two positions in the Development Services Department became vacant: Municipal Services Assistant (MSA) and Support Services Supervisor. These vacancies gave the City the opportunity to conduct a review of department activities and as a result, staff is recommending that the vacant MSA and Support Services Supervisor positions be reclassified. Additionally, staff is recommending the Housing Manager classification be placed in a higher salary range for the reasons described below.

Housing Positions

Over the course of the last few years, the City has been evaluating the long term needs to support and sustain a successful housing program. Currently, the Housing Division consists of two full time teammates, a Housing Manager and a vacant MSA position. The division's activities are augmented with contract services from Housekeys. The Housing Division provides coordination of new unit affordable development, implementation of the Housing Element, achievement of the Regional Housing Needs Allocation housing goal efforts (RHNA), and facilitates the coordination and implementation of various local housing related services and programs, internally, at the local level and in coordination with our regional partners.

The elimination of the statewide Redevelopment Agency (RDA) in 2012 led to a decrease in the level of housing support staff, with the elimination of 8 City housing positions. At that time, it was presumed that the level of service needed for housing activities would subside given the circumstances, albeit temporarily. After the RDA dissolution, the City Housing Program continued to accept the responsibility to serve as the Successor to the former Morgan Hill RDA's housing functions, and administer its legacy housing assets. With the elimination of the RDA, out of necessity, the City restructured its housing division, outsourcing one component of the Housing Division (BMR ownership) to a third-party contractor, Neighborhood Housing Services. In FY 2012-13, the City began to operate all other housing program activities with limited staff resources, including a Housing Manager, and a minor rehab repair grant program administered by contract.

In 2015, the City added one MSA to the Housing Division to assist the Housing Manager. Since then, housing affordability and housing availability has led to California's statewide housing crisis. The demand for affordability and solving homelessness is one of the most challenging and complex problems to solve for as we are faced with little to no housing vacancies.

The existing MSA role is a journey level classification that provides office support and general information to the public. The Housing Program Coordinator is a more advanced level position which requires a higher level of analysis, work product, public engagement, and visibility. In the absence of redevelopment, the City's successful program is challenged with the task to partner and leverage dollars at every opportunity to achieve the City Council's goals. Attached is a visual summary of the Housing Division activities, and a list of the diverse clientele that the Housing Division serves.

Prior to the RDA dissolution, the Housing Program Coordinator position was in AFSMCE. It is recommended that it be added back as an AFSCME position in its previous salary range, while accounting for wage increases since 2011.

Classification	Step A	Step B	Step C	Step D	Step E	Step F
Housing Program Coordinator	\$6,941	\$7,288	\$7,652	\$8,035	\$8,437	\$8,859

After a review of the Housing Division's responsibilities, staff is also recommending that the Housing Manager salary be placed in a higher salary range to ensure the position is compensated appropriately. This position is being recommended ahead of the proposed Compensation Study due to the fact staff has been evaluating the housing program on an ongoing basis. The Housing Manager position falls under the Management, Professional, and Confidential Employee Group. See recommended salary schedule below:

Classification	Bottom of Range	Top of Range	Performance Pay
Housing Manager			

Proposed	\$10,385	\$13,313	\$13,646
Current	\$8,489	\$10,893	\$11,165

Management Analyst Position

Staff is also recommending that the vacant Support Services Supervisor position be reclassified to a Management Analyst position. The Support Services Supervisor classification was created in June 2011 to provide administrative support to the Community Development Agency and now that the position has become vacant there is a need for this position to provide higher level support to the Assistant City Manager for Development Services, Community Development Director, Economic Development Director, and the Director for Engineering and Utilities. These departments/divisions need a more advanced level position that possesses the necessary knowledge, skills, and abilities for budget preparation, contract management, website development/maintenance, assistance with community outreach, managing client contracts, conducting research, and writing press releases and reports.

Next Step

The City's Human Resources Director met with the leadership of AFSCME to consult with them regarding the recommendation to reclassify two AFSCME positions to higher level AFSCME positions and they registered no objections. If the position reclassifications are approved by Council, the next step is for the Human Resources Team to update the salary schedules and initiate the recruitment process.

COMMUNITY ENGAGEMENT: Inform

Staff will post the approved job description and salary schedules on the City's Human Resources website page as is the City's practice for all approved job descriptions and salary schedules.

ALTERNATIVE ACTIONS:

1. The City Council could choose not to increase the salary range for Housing Manager.
2. The City Council could choose not to approve the reclassification of a Municipal Services Assistant (MSA) to Housing Program Coordinator.
3. The City Council could choose not to approve the reclassification of a Support Services Supervisor to Management Analyst.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council approves new classifications, position reclassifications, and salary schedules.

FISCAL AND RESOURCE IMPACT:

The net cost per year to reclassify a Municipal Services Assistant to Housing Program Coordinator is approximately \$18,000 and will be funded 50% out of Fund 236 (Housing Mitigation) and 50% out of Fund 255 (Housing Successor Agency). The adopted FY 17-18 budget can support the reclassification of a Support Services Supervisor to Management Analyst. The immediate net cost per year to increase the Housing

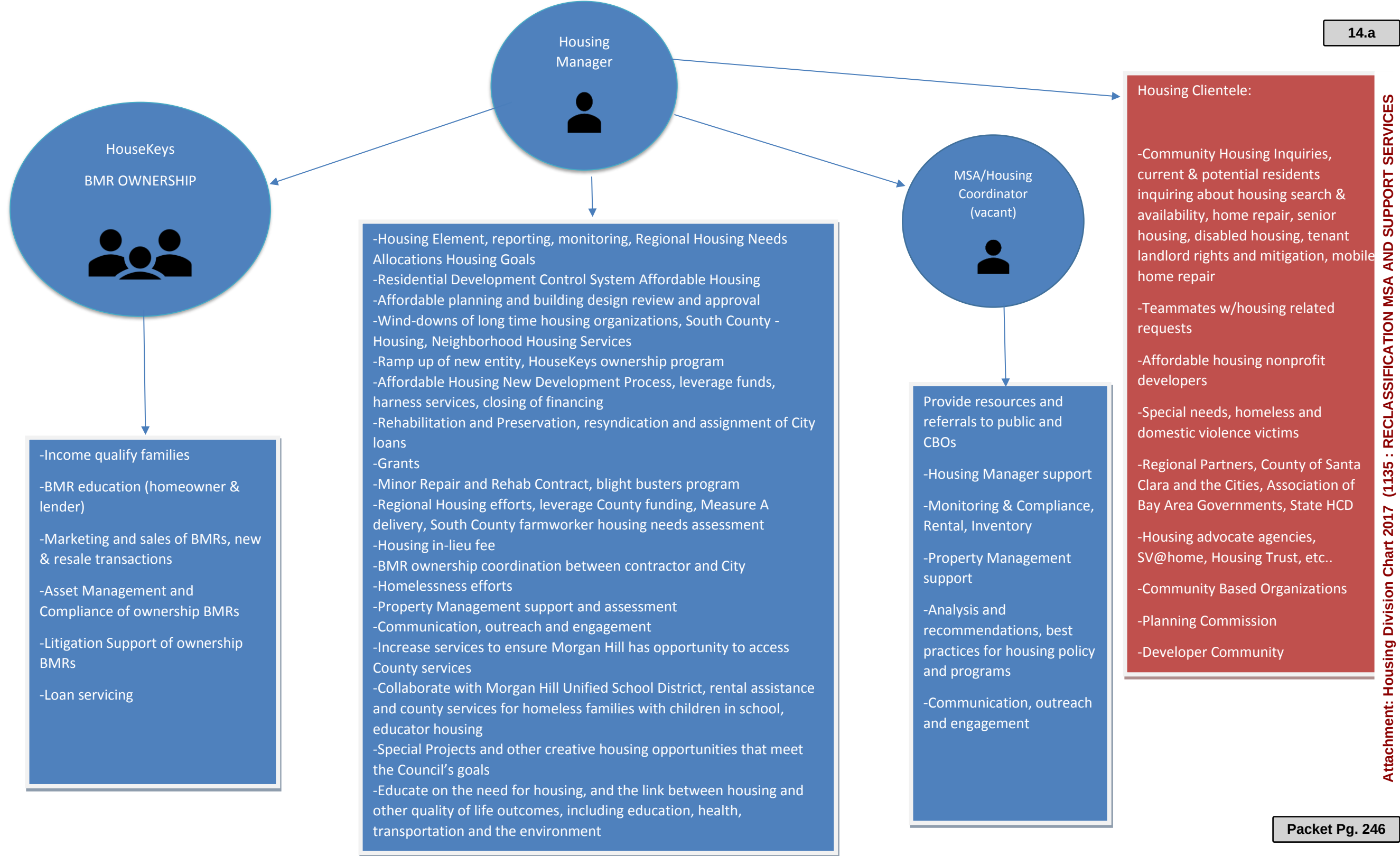
Manager salary range is approximately \$12,000 and will be funded 50% out of Fund 236 (Housing Mitigation) and 50% out of Fund 255 (Housing Successor Agency). If approved, the FY 17-18 budgets will be amended accordingly.

CEQA (California Environmental Quality Act):

Not a Project - Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. Housing Division Chart 2017





CITY COUNCIL STAFF REPORT

MEETING DATE: April 19, 2017

PREPARED BY: Karl Bjarke, Public Works Director
APPROVED BY: City Manager

APPROVE CONSULTING SERVICES AGREEMENT FOR INTERSECTION CAPACITY ANALYSIS STUDY WITH MOTT MACDONALD

RECOMMENDATION(S)

1. Adopt resolution amending the Fiscal Year 2016-17 budget and appropriating an additional \$45,000 from the Traffic Impact Fund (309) for the Intersection Capacity Analysis study (CIP Project No. 575015); and
2. Award Consultant Services Agreement for the Intersection Capacity Analysis Study to Mott MacDonald.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

2017 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

The approved Capital Improvements Program (CIP) includes a project to study high traffic volume intersections in Morgan Hill to determine if there are measures that can be taken to improve the capacity, efficiency, and safety of those intersections. The objective of the study is to evaluate the existing intersection configuration, traffic signal timing, vehicle and bicycle movement and volumes, and then make recommendations on how the intersections can be improved to provide a safer and more efficient conveyance for vehicles and bicycles.

The intersections that are recommended for study include:

- Ø Condit Road and E. Dunne Avenue
- Ø Butterfield Blvd. and Tennant Avenue
- Ø Monterey Road. and Main Avenue
- Ø Butterfield Blvd. and E. Dunne Avenue
- Ø Monterey Road and Tennant Avenue

Staff had considered additional intersections, however after having received the proposals, learned that the budgeted funds in the CIP allow for the study of up to three intersections. Staff is recommending that the Council approve a budget amendment to provide sufficient funds to study the five intersections listed above. The five that were chosen are all high traffic volume intersections that are also utilized by bicyclists. In addition, each of the intersections were identified in the Master Plan Update for Parks,

Recreation, Trails & Bikeways as locations where improvements could be made to enhance multi-modal traffic.

Given the move towards Complete Streets design and the increase in both vehicle and bicycle volumes in Morgan Hill since the subject intersections were designed, this proposed study can provide valuable information for potentially improving the traffic flow through the intersections. The first scope item of the proposed study is to take traffic counts (vehicle and bicycle) and movement observations during peak traffic volume time frames. Traffic signal timing information will also be collected. From this data, the consultant will apply a state of the art traffic modeling program to identify inefficiencies and safety issues. Recommendations for improvement will then be prepared in a final report. Specific areas of improvement could include altering the geometry of the intersection, increasing or decreasing the number of lanes, extending or adding turning lanes, adjusting traffic signal timing, and employing traffic signal detection and alternative signal technologies for managing and controlling the traffic through the intersection.

Staff contacted four traffic engineering firms to seek proposals to perform this analysis. Only two firms responded and staff evaluated the two proposals to determine the most qualified firm. Mott MacDonald was determined to be the most qualified firm based on its expertise, experience with these types of studies, and the inclusion in its proposal of an outside consultant who specializes in bicycle and pedestrian modes for transportation planning.

The findings in the study could be used to define future CIP projects, to prepare grant applications, or to modify intersections as a shorter-term maintenance effort. Mott MacDonald will provide the Administrative Draft Report within 12 weeks of receiving authorization to proceed. The Final Report will be completed within 2 weeks of receiving comments from the City.

COMMUNITY ENGAGEMENT: Inform, Engage

While there has been no specific community engagement with respect to improving vehicle movements through the recommended intersections, there has been extensive engagement through the development of the Master Plan Update for Parks, Recreation, Trails & Bikeways to improve bicycle movements.

ALTERNATIVE ACTIONS:

The Council could direct staff to reduce the scope of the project to match the funding currently available in the approved CIP, and/or direct staff to return with a revised scope to include intersections not currently recommended to be analyzed.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Intersection Capacity Analysis project was approved by the Council to be included in the FY 2016/17 through 2021/22 CIP budget.

FISCAL AND RESOURCE IMPACT:

This intersection capacity analysis project is in the approved CIP as Project No. 575015

with a budgeted amount of \$30,000 (\$15,000 from Traffic Impact Fund (309) and \$15,000 from Public Facilities Fund (346). To accomplish the study for the five intersections identified above, staff recommends amending the CIP to provide an additional \$30,000. Additionally, after re-evaluating the project's funding sources, staff recommends that the entire project be funded by Fund 309. This requires a budget amendment of \$45,000. If approved, this would provide a total of \$60,000. The consultant's not-to-exceed fee is \$55,715. The remaining \$4,285 would be held in the project budget for potential expenses to complete the project, if needed.

CEQA (California Environmental Quality Act):

Not a Project - Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. Mott Consultant Agreement
2. Reso for Appropriations Final
3. Budget Scorecard - Intersection Capacity Analysis Final

CONSULTANT AGREEMENT
Mott MacDonald

THIS AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and MOTT MACDONALD, LLC, a Delaware Limited Liability Company ("CONSULTANT"), duly authorized to do business in California and will remain so during the term of this Agreement, hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until December 31, 2017, at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be intersection capacity analysis at various intersections in Morgan Hill as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$55,715.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed FIFTY FIVE THOUSAND, SEVEN HUNDRED FIFTEEN AND NO/100 dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with a monthly invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and

CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to CONSULTANT. The CITY Manager of CITY is authorized to terminate this AGREEMENT on behalf of CITY.

6. **Performance of Work.** CONSULTANT represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by CONSULTANT in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of the CONSULTANT'S profession. By delivery of completed work, CONSULTANT certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. CONSULTANT shall perform all work and services under this Agreement in conformance with the time schedule set forth on Exhibit C, "Schedule of Performance," attached hereto and incorporated herein by this reference. CITY's City Manager is authorized on behalf of CITY to modify the timeframes set forth on the Schedule of Performance within the term of this Agreement. If CONSULTANT desires to leave or store any of CONSULTANT's equipment at a CITY site while CONSULTANT is performing work or service pursuant to this Agreement, CONSULTANT will first obtain the consent of CITY's City Manager, or his delegate, to do so, and any such storage shall occur only in the manner and location allowed by such CITY official and entirely at CONSULTANT's sole risk.

7. **Insurance Requirements.** CONSULTANT shall procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of CONSULTANT, including its subcontractors, employees and agents, relating to or arising from the performance of any work or service under this Agreement, and must remain in full force and effect at all times during the period covered by this Agreement. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. CONSULTANT further understands that the CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to CONSULTANT, at any time as deemed necessary to protect the interests of the CITY.

7.1. **Insurance Types and Amounts.**

- 7.1.1. **Commercial General Liability (CGL).** CONSULTANT shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, and a minimum of two million dollars (\$2,000,000.00) combined annual aggregate limit.
- 7.1.2. **Automobile Liability.** CONSULTANT shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if CONSULTANT does not own automobiles, then CONSULTANT shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage.
- 7.1.3. **Workers' Compensation Insurance and Employer's Liability.** CONSULTANT shall maintain Workers Compensation coverage, as required by law, in the minimum amount of one million dollars (\$1,000,000.00) for any one accident or occurrence.
- 7.1.4. **Pollution (Environmental) Liability.** If the performance of CONSULTANT'S work or service under this Agreement involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases

or hazardous materials, CONSULTANT shall procure and maintain Pollution Liability covering the contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of one million dollars (\$1,000,000.00) for any one accident or occurrence, and a minimum of two million dollars (\$2,000,000.00) annual aggregate.

7.1.5. Professional Liability.

7.1.5.1. If the performance of CONSULTANT's work or service under this Agreement involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, and appraisers), CONSULTANT shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of one million dollars (\$1,000,000.00) each claim, and a minimum of two million dollars (\$2,000,000.00) annual aggregate. Further, if CONSULTANT maintains a claims-made policy, CONSULTANT shall provide written evidence of such insurance to the CITY for at least five (5) years after the completion of work performed under this Agreement.

7.1.5.2. If the performance of CONSULTANT's work or service under this Agreement relates to Information Technology or related services (examples include, but are not limited to computer programmers, software designers, hardware engineers, or other systems consultants), CONSULTANT shall procure and maintain a claims made Errors and Omission liability insurance, including Cyber Liability and Data Breach, in the minimum amount of one million dollars (\$1,000,000.00) each claim.

7.2. Endorsements. CONSULTANT shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

7.2.1. General Liability.

7.2.1.1. The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;

7.2.1.2. the insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and,

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. Workers Compensation.

The insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

7.3. Qualification of Insurers. All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and an financial size rating of "VII" or better.

- 7.4. **Certificates.** CONSULTANT shall furnish CITY of Morgan Hill with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the CONSULTANT's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

City of Morgan Hill
Attn: Risk Management
17575 Peak Avenue
Morgan Hill, CA 95037

8. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.
9. **Compliance with Law.** CONSULTANT and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. CONSULTANT and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.
10. **Independent Contractor.** CONSULTANT is an independent contractor and not an agent or employee of CITY.
11. **Confidentiality.** All data, documents, or other information received by CONSULTANT from CITY or prepared in connection with CONSULTANT'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by CONSULTANT without prior written consent by CITY.
12. **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
13. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of CONSULTANT is as follows:

Mott MacDonald
1300 B First Street
Gilroy, CA 95020

Address of CITY is as follows:

City Engineer
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

with a copy to:
City Clerk
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

14. **Licenses, Permits and Fees.** CONSULTANT shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.

15. **Maintenance of Records.**

15.1. **Maintenance.** CONSULTANT shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. CONSULTANT shall maintain records for a period of at least 3 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 3 year period, then CONSULTANT shall retain said records until such action is resolved.

15.2. **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 CONSULTANT and its subcontractors related to services 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.

15.3. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT for work performed under this Agreement shall, upon CONSULTANT'S receipt of payment for all work performed under this Agreement, be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

16. **Familiarity with Work.** By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed and (2) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.

17. **Time is a Material Condition.** Time is a material condition in the performance of this Agreement.

18. **No Assignment.** Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.

19. **Attorney Fees.** In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.

20. **Defense and Indemnification.**

20.1. **Defense and Indemnification.** CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations

contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").

20.2. Exceptions. CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the CITY.

20.3. Not limited by insurance. The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMs alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.

20.4. Right to Offset. CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (20) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

20.5. Interpretation. This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

21. Entire Agreement; Modification; Conflicting Provisions. This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by a subsequent mutual written agreement executed by CITY and CONSULTANT. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.

22. Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.

23. Interpretation. This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.

24. Preservation of Agreement. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.

25. Binding Agreement. Notwithstanding the provisions of Section 18 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of CONSULTANT in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

26. Authority to Execute. Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

IN WITNESS THEREOF, these Parties have executed this Agreement on the day and year shown below.

AS SET FORTH IN CA. CORP. CODE § 313, TWO SIGNATURES ARE REQUIRED FOR CALIFORNIA CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
 (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Wilson

Steve Rymer

Print Name

Print Name

Date:

Date:

APPROVED AS TO FORM:

Mott MacDonald

City Attorney

By:

Donald A. Larkin

Title:

Print Name

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date:

Date:

By:

Title:

Print Name and Title of Signer.

If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date:

**EXHIBIT A
SCOPE OF SERVICES**



Mott MacDonald
1300 B First Street, Gilroy, CA 95020
T (408) 848.3122 F (408) 848.2202
www.mottmac.com/americas

March 17, 2017

Mr. Karl Bjarke, PE
Public Works Director
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

SUBJECT: TRAFFIC ANALYSIS FOR THE MORGAN HILL INTERSECTION CAPACITY ANALYSIS

Dear Mr. Bjarke:

Mott MacDonald is pleased to submit our proposal for the Traffic Analysis for the Morgan Hill Intersection Capacity Analysis project. The City desires to improve overall capacity and safety for five major intersections throughout the City. We have worked with the City to meet traffic engineering and civil design needs for over 30 years and strive to continue this partnership on this project. Our strengths are described below.

Local Knowledge

One of our primary advantages is our experience in the area. Our staff has a long history of performing traffic analyses, signal timing revisions, and traffic-related civil design in and around the City of Morgan Hill, including at most of these intersections. We therefore can provide the best combination of area knowledge, background information and project expertise to result in an efficient, successful project for the City of Morgan Hill.

Signal Operations Software and Complete Streets Experience

We have prepared numerous Synchro analyses, including signal optimization studies on some of the corridors included in this study. Our team also routinely applies Complete Streets concepts on all of our projects.

Project Team

The Project Team will be led by **Leo Trujillo, PE, TE**. Leo is supported by a team of analysts and designers with extensive experience in operational analysis and intersection design. Principal-in-Charge, **Jason Nesdahl, PE**, will actively support the team with alternative solutions and provide quality control/quality assurance. Our team also includes **John Ciccarelli** of Bicycle Solutions, who will provide insights in bike and pedestrian enhancements.

The Mott MacDonald Project Team is excited and ready to start work, and is fully committed to provide the City with quality engineering services. If you have any questions, please do not hesitate to call me (408.848.5263, leo.trujillo@mottmac.com).

If you have any questions regarding this proposal, please contact me at your convenience. Thank you for the opportunity to assist you with this project.

Respectfully submitted,

Mott MacDonald

Leo Trujillo, PE, TE
Principal Engineer
T 408.848.5263 F 408.848.2202
leo.trujillo@mottmac.com

Attachment: Mott Consultant Agreement (1070 : Intersection Capacity Analysis)

A. Similar Experience

Mott MacDonald has prepared multiple analyses similar to this project throughout California. This includes projects in Santa Cruz, Anaheim, Salinas, Aptos, Scotts Valley, Monterey County and the South Bay region of Los Angeles County. All of these projects included operational evaluations, identification of deficiencies and conceptual designs of recommended improvements. We worked in consultation with these jurisdictions to identify improvements that both improved operations and met their respective goals. Many of these projects also addressed pedestrian and bicycle circulation needs, including necessary upgrades to improve bicycle and pedestrian connectivity across and between intersections.

The process of identifying deficient operations and suggested improvements is also inherent in any traffic impact analysis report. Mott MacDonald has prepared thousands of traffic impact analysis reports across Santa Clara, Monterey, Santa Cruz, San Benito and San Luis Obispo County, including in Morgan Hill, Gilroy and San Martin. Each of these project involved identification of necessary improvements that both enhance operations and are feasible to implement. This includes both vehicle capacity and multimodal circulation improvements.

Selected relevant projects, all of which included signal operations and/or bike and pedestrian facilities as a major component of the project, include:

- Bayshore Specific Plan Bike Signals, Mountain View
- Union/Blossom Hill Bike and Signal Improvements, San Jose
- River St. / River St. S. Intersection Improvement Study, Santa Cruz
- State College Boulevard Grade Separation, Anaheim
- State Route 1 / Dolan Rd. Feasibility Study, Moss Landing
- Red Morton Park Pedestrian and Bike Access, Redwood City
- Pacific Coast Highway (State Route 1) User-Based Study, Multiple Cities, Los Angeles County
- Carlton Drive Protected Bike and Pedestrian Facilities, Del Rey Oaks
- Mount Hermon Rd. / Scotts Valley Dr. Improvements, Scotts Valley
- Cochrane Road Bike Lane
- Cochrane Road Signal Timing, Morgan Hill
- Dunne/Condit, Monterey/Tennant, Tennant/Butterfield, Monterey/Cochrane Traffic Signal or Signal Modification Design, Morgan Hill
- Various Bike and Pedestrian Improvements, UC Santa Cruz
- Morgan Hill Bike Master Plan (2001), Morgan Hill

C. Project Approach

1. Proposed Approach and Project Understanding

The study intersections for this analysis are the following: 1. Condit Road / East Dunne Avenue; 2. Butterfield Boulevard / Tennant Avenue; 3. Monterey Road / Main Street; 4. Butterfield Boulevard / East Dunne Avenue; and 5. Monterey Road / Tennant Avenue.

B. Firm Information

Proposer's Project Office

Mott MacDonald
1300 B First Street
Gilroy CA 95020

Proposal Primary Contact

Leo Trujillo, PE, TE
leo.trujillo@mottmac.com
408.848.5263

Years Providing Traffic Engineering Services

34 Years

Type of Organization

Limited Liability Corporation

Year Established

1989 (as Mott MacDonald.
Mott MacDonald acquired
Higgins Associates, Gilroy, in
2008)

Management (North America)

President/CEO: Nick DeNichilo
West Unit Manager: Tony
Purdon

Northern California Division
Manager: Chris Metzger

Local Manager: Leo Trujillo

Total Offices (North America)

62 Offices

Other California Offices

Pleasanton, San Francisco, San
Jose, Gilroy, Sacramento, Los
Angeles, Orange, San Diego.
The project will be managed
from our Gilroy office.

Other Personnel Working on Project

Please see Section E of this
proposal

The *Morgan Hill Bikeways, Trails, Parks and Recreation Master Plan, 2016*, identifies the five study intersections for multimodal improvements. These include accommodating protected or buffered bike lanes. Many segments of the intersecting arterials can easily accommodate buffered or protected bike lanes. The challenge is incorporating these improvements at the intersections with existing left and right turn lanes. The National Association of City Transportation Officials (NACTO), in addition to the FHWA and Caltrans, have developed guidelines for bikeway design that describe the various intersection treatments that will be considered. These include bike boxes, intersection crossing markings, combined bike/turn lanes and approach treatments. Signal timing to create time-separation as well as physical separation are also to be provided where feasible. We are currently working on several design projects incorporating many elements of protected or buffered bike lanes and intersection treatments. In addition, John Ciccarelli is a bikeway standards expert and served on the National (NCUTCD) Bicycle Technical Committee and the California Traffic Control Devices Committee (CTCDC) for over 13 years and conducts seminars on complete streets. He will provide additional insight into appropriate strategies and solutions for each of the study intersections.

Our focus will be on identifying cost-effective improvements that address existing multi-modal capacity and circulation deficiencies at the study intersections, including accommodating city and regional vehicular traffic while improving pedestrian, bike and mobility-challenged users of the intersections. In addition, other more basic design issues such as ADA compliance, provision and functionality of existing pedestrian push buttons and bike detection as well as vehicle detection, intersection lighting for nighttime visibility, provision of sidewalks in the proximity of the intersection, lane and median widths that could be narrowed to accommodate enhanced bike facilities. Interconnection between signals along individual arterials will be confirmed. The benefits of central traffic signal control will also be discussed with City staff.

The analysis will be based primarily upon observations and analysis at the study intersections during typical weekday morning and evening peak periods as well as input from City Public Works and Parks staff. Recurring congestion occurs at many of these intersections from traffic that neither begins or ends in Morgan Hill, but passes through the City to avoid congestion on US 101. This will be taken into consideration in identifying appropriate improvements. We will also apply Complete Streets concepts to better accommodate and improve the safety of all travel modes at the intersections, including vehicles, bicyclists and pedestrians.

2. Scope of Work Outline

We are proposing the following Scope of Services for this project:

Task 1 – Kick-Off Meeting - Topics of discussion will include obtaining information already available from the City, a review of objectives for the project, project schedule, proposed approach to achieve objectives, and a determination of the information required of the City.

Task 2 – Data Collection - The following data will be obtained from the City for each of the five study intersections: existing signal timing information; traffic collision data (at least the most recent 2- to 3-year period); and confirmation of current level of service standard.

Intersection turning movement counts including cars, trucks, buses, pedestrians and bicycles will be conducted at the study intersections during the weekday AM and PM peak periods (7 am to 9am and 4 pm to 6 pm).

The project team (preferably including City staff) will visit each study intersection to document existing conditions. This will include existing traffic controls, intersection geometry, on-street parking restrictions, locations of transit stops and pedestrian and bicycle facilities, existing operational issues, existing vehicle queueing, interactions between pedestrians/bicyclists/vehicles, etc. The field visit will be supplemented by a review of aerial images of each intersection.

Task 3 – Findings, Analysis, Recommendations, Documentation and Meetings - A summary of the key findings from the field visits and aerial reviews under Task 2 will be prepared, including any geometric issues, observed operational deficiencies, and findings from the Complete Streets evaluation at each study intersection. This will include relevant standards and guidance in the California Manual of Uniform Traffic Control Devices (CA MUTCD), NACTO, Caltrans, FHWA, and other resources.

The peak one-hour AM and PM count periods (from Task 2) will be analyzed for operations at the study intersections. The Synchro software analysis program and the Highway Capacity Manual methodologies will be utilized in this effort. Vehicle queuing will be quantified for all movements of each study intersection.

Based upon the field visits and aerial reviews (Task 2) and analysis (Task 3), findings will be summarized and deficiencies will be identified for each study intersection. Recommendations to improve vehicle traffic capacity and/or efficiency will be made as necessary. Recommendations to improve bicycle traffic safety and the ability to negotiate intersections will also be made as necessary. The recommendations will be accompanied by a high-level conceptual plan on an aerial background.

The results of this analysis will be summarized in a report, with appropriate graphics. This includes observed conditions, analyzed conditions, and recommendations for improvements. An Administrative Draft Report will be authored and 3 copies submitted to you. Comments from you will be incorporated into a Draft Report (3 bound copies and 1 electronic copy) for discussion with the City Parks and Recreation Commission and the City Council. Comments from both government bodies will be incorporated into a Final Report (3 bound copies and 1 electronic copy) for use by the City.

Mott MacDonald staff will attend one meeting with City staff at City Hall to review our findings and recommendations; one meeting of the City Parks and Recreation Commission; and one meeting of the City Council. This will include the preparation of PowerPoint presentations for both government bodies.

3. Schedule

We anticipate completion of the Administrative Draft Report within 10 weeks of authorization to proceed. The Draft Report and Final Report will be completed in 2 weeks after receipt of city comments on the prior version of the report. We can start immediately upon authorization, although traffic counts may need to be delayed due to weather.

D. Responsible Personnel

Mott MacDonald

Leo Trujillo, PE, TE will serve as **Project Manager**. Mr. Trujillo has 18 years of experience during which he has managed and designed numerous traffic-related and general civil engineering projects. His experience includes highway lighting design, traffic signal design, intersection geometrics design, lighted crosswalk design, traffic control design, bikeway facilities and street design.

Jeff Waller, TE, will assist with the operational analysis and improvement needs assessment. Mr. Waller has over 17 years of experience in preparing traffic impact analyses, municipal engineering and Complete Streets circulation studies. As part of these studies, Mr. Waller has developed customized project trip generation estimates, and evaluated pedestrian and bicycle circulation and safety.

Jason Nesdahl, PE, will serve as **Principal-in-Charge** and perform quality assurance/quality control for the project. Mr. Nesdahl is a transportation professional with 17 years' experience in transportation planning and traffic engineering, including traffic impact analyses; safety analysis; capacity analysis; conceptual interchange design; pedestrian and bicycle studies; transportation systems management; and transportation demand management.

Celina Lee, PE, TE, will assist with the conceptual design of recommended improvements. Ms. Lee has over 12 years of experience during which she has designed numerous traffic-related and general civil engineering projects. Specific design experience includes street, highway, intersection and pedestrian and bikeway, traffic signal and street lighting design, and rail alignment design. She also has experience in traffic signal timing and coordination.

Erik Trujillo, EIT, will assist with the conceptual design of recommended improvements. Mr. Trujillo has 2 years of experience, during which he has assisted on many residential and some traffic based projects. His experience includes street design, grading and drainage design, utility design, storm water, and sewer report preparation and SWPPP report preparation.

Bicycle Solutions

John Ciccarelli will assist the assessment of Complete Streets facilities and the identification of Complete Streets improvements. Mr. Ciccarelli is a transportation planner and designer with 20 years of experience specializing in bicycle and pedestrian modes, with particular expertise in network planning, rapid field assessment, and peer reviews. John founded Bicycle Solutions in 1999 after serving as Stanford University's first Bicycle Coordinator. He has participated in the development of Bicycle and Active Transportation plans for many agencies including Morgan Hill (2001), VTA / Santa Clara Countywide (2015-present), Santa Clara County Expressways (2013 and 2003), Sunnyvale, Palo Alto, San Mateo and Albany. He is a bikeway standards expert and served on the National (NCUTCD) Bicycle Technical Committee and the California Traffic Control Devices Committee (CTCDC) for over 13 years.



E. Project Management

Our approach to project management focuses on planning and communication through the project. During the kick-off meeting, the schedule for this project will be finalized. We will keep in regular contact with City staff regarding issues and schedule, and will inform City staff if there are any issues that would delay agreed upon submittal dates. Mott MacDonald also has a quality control / quality assurance (QA/QC) process for internal review of all analysis and design work products that we apply on all of our projects – this process has been accounted for in our proposed budget and schedule for this project.

F. Consultant Fee

Our fee for this project is provided in a separate envelope accompanying this proposal.

G. Exceptions to City Consulting Services Agreement

Regarding the City's Consulting Services Agreement, Mott MacDonald has successfully negotiated past agreements with the City of Morgan Hill, including earlier projects in 2016. As such, we envision no obstacles to rapidly finalizing an agreement for this project using a mutually agreeable set of terms that are consistent with those past agreements.

**Morgan Hill Intersection Capacity Analysis
Morgan Hill, California
Fee Estimate**

Submitted by
Mott MacDonald
March 17, 2017

Project Work Task	Personnel and Hourly Billing Rates						Total Hour	Traffic Count Lump Sum	Total Fee
	Mott MacDonald					Bicycle Solutions			
	Principal Engineer	Sr. Project Engineer	Project Engineer	Engineer II	Admin. Assistant III				
	\$245	\$232	\$195	\$119	\$95				
						\$150			
1. Kick-Off Meeting	5		2			4	11		\$2,215
2. Data Collection									
Obtain Data from City			4			4	8		\$1,380
Intersection Traffic Volume Counts			2				2	\$1,320	\$1,710
Field Visit	6		12			4	22		\$4,410
3. Findings, Analysis, Recommendations, Documentation and Meetings							0		\$0
Findings	2	4	4			5	15		\$2,020
Analysis	5	4	20				29		\$5,125
Recommendations	10	3	20	80		15.5	128.5		\$18,195
Documentation	6	3	24		8	24	65		\$10,510
Meetings	12		12		2	8	34		\$6,670
Total Hours :	46	14	100	80	10	64.5	314.5		\$52,235
Staff Expenses :	\$11,270	\$3,248	\$19,500	\$9,520	\$950	\$9,675		\$1,320	\$55,483
Travel Expenses :							\$175		
Printing, Shipping, etc. :							\$57		
Total Costs :							\$55,715		

Note:

1. This fee estimate is based on hourly rates effective until December 2017.
2. Traffic counts will be performed using a sub-contractor. The cost listed above includes a 10% markup.

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

**ATTACHMENT B****FEE SCHEDULE**

Effective through December 2017

PERSONNEL

Classification	Rate/Hour
Vice President	\$308
Principal Engineer	\$245
Senior Consultant	\$245
Senior Project Engineer	\$232
Senior Planner / Senior Traffic Modeler	\$232
Project Engineer	\$195
Senior Planner	\$180
Associate Planner	\$164
Engineer III	\$164
Specialist IV – Assistant Planner	\$144
Specialist III – Senior CAD Technician	\$144
CAD Technician, Designer	\$144
Planner III	\$112
Engineer II – Assistant CAD Technician	\$109
Planner II	\$95
Administrative Assistant III	\$95
Specialist II – Traffic Count Supervisor, Field Technician	\$81
Technician I – Traffic Counter	\$63
Minimum Consultation Fee	\$567
Expert Witness (Rates Available on Request)	

SUB-CONSULTANTS

Professional Service by Others	Cost + 10%
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EXPENSES

Materials, External Copying & Printing, Phone, Fax	Cost + 15%
Internal Copying - Letter Size (per single-sided page + labor)	\$0.10
Internal Copying - Ledger Size (per single-sided page + labor)	\$0.21
Large Sheet Prints - Bond or Blueline (per D size sheet + labor)	\$2.08
Large Sheet Plots - Vellum (per D size sheet + labor)	\$4.16
Large Sheet Plots - Mylar (per D size sheet + labor)	\$6.24
Delivery/Courier Service	Cost + 15%
Auto Expenses (per mile)	\$0.54
Travel Expenses	Cost + 10%

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

Morgan Hill Intersection Capacity Analysis
Morgan Hill, California
Project Schedule

Submitted by
Mott MacDonald
March 17, 2017

Task #	Task Description	Weeks																		
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
1.	Kick-Off Meeting																			
2.	Data Collection																			
	Obtain Data from City																			
	Intersection Traffic Volume Counts																			
	Field Visit																			
3.	Findings, Analysis, Recommendations, Documentation and Meetings																			
	Findings																			
	Analysis																			
	Recommendations																			
	Documentation																			
	Administrative Draft Report																			
	Draft Report																			
	Final Report																			
	Meetings																			

Notes:

1. Schedule for Weeks 1-10 subject to change based upon city staff availability for site visit.
2. Schedule for Weeks 11-19 subject to change based upon receipt of comments from city staff and scheduling of meetings with City Parks and Recreation Commission and City Council.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AMENDMENTS TO THE CITY'S FISCAL YEAR 2016-2017 BUDGET BY APPROPRIATING AN ADDITIONAL \$45,000 FROM THE TRAFFIC IMPACT FUND (FUND 309) AND REDUCING THE APPROPRIATION OF \$15,000 FROM THE PUBLIC FACILITIES FUND (FUND 346) FOR THE INTERSECTION CAPACITY ANALYSIS STUDY (CIP NO. 575015).

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Annual Budget for Fiscal Year 2016-2017, as set forth on Exhibit A to this Resolution, to appropriate and reduce the appropriation of the requisite funds to implement the actions authorized by this Resolution; and

WHEREAS, the reasons supporting the recommended amendments described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled "APROVE CONSULTING SERVICES AGREEMENT FOR INTERSECTION CAPACITY ANALYSIS STUDY WITH MOTT MACDONALD" submitted for City Council consideration at its meeting of April 19, 2017, submitted to the City Council by the City Manager (the "Staff Report"), the contents of which Staff Report are incorporated herein by this reference; and

WHEREAS, the consideration by City Council of the adoption of this Resolution has been duly noticed pursuant to applicable laws and has been placed upon the City Council Meeting Agenda on the date set forth in the Staff Report, or to such date that the City Council may have continued or deferred consideration of this Resolution, and on such date the City Council conducted a duly noticed public meeting at which meeting the City Council provided members of the public an opportunity to comment and be heard and considered any and all testimony and other evidence provided in connection with the adoption of this Resolution; and

WHEREAS, the activities allowed under this Resolution do not constitute a project under the provisions of California Environmental Quality Act of 1970; and

WHEREAS, the City Council determines that adoption of this Resolution is in the public interest.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY FIND, DETERMINE, RESOLVE AND ORDER AS FOLLOWS:

Section 1. Recitals. The City Council does hereby find, determine and resolve that all of the foregoing recitals are true and correct.

Section 2. Approval and Authorization. The City Council does further resolve, order and/or direct as follows:

- a. That the City's previously adopted Fiscal Year 2016-2017 Annual Budget, as the same has been amended to date, is hereby further amended in accordance with and as reflected on Exhibit A attached hereto and incorporated herein by this reference; and
- b. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Year 2016-2017 Annual Budget of City.

Section 3. This Resolution shall take effect immediately upon adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a Regular Meeting held on the 19th day of April, 2017.

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:** None
ABSTAIN: **COUNCIL MEMBERS:** None
ABSENT: **COUNCIL MEMBERS:** None

APPROVED:

ATTEST:

STEVE TATE, Mayor

IRMA TORREZ, City Clerk

∞ **CERTIFICATION** ∞

I, **Irma Torrez, City Clerk of the City of Morgan Hill, California**, do hereby certify that the foregoing is a true and correct copy of Resolution No. ____, adopted by the City Council at a regular meeting held on April 19, 2017.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

Exhibit A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2016-17

ADJUSTMENT #

075

FUND:

DEPARTMENT:

OBJECT:

309	Traffic Impact Fund
8053	Traffic Impact
86360	CONSTRUCTION

AGENDA DATE:

AGENDA ITEM TITLE:

04/19/17
Intersection Capacity Analysis

	07/01/16 AUDITED BEGINNING FUND BALANCE	ESTIMATED REVENUES	APPROPRI- ATIONS	06/30/17 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	5,109,589	1,360,910	1,032,805	5,437,694
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION	-	-	45,000	(45,000)
RESULT OF RECOMMENDED ACTION	<u>5,109,589</u>	<u>1,360,910</u>	<u>1,077,805</u>	<u>5,392,694</u>

Attachment: Budget Scorecard - Intersection Capacity Analysis Final (1070 : Intersection Capacity Analysis)

AGENDA BUDGET SCORECARD**FISCAL YEAR 2016-17****ADJUSTMENT #**

076

FUND:**DEPARTMENT:****OBJECT:**

346 Public Facilities (Non AB1600)

8049 Public Facility/Non AB1600

86360 CONSTRUCTION

AGENDA DATE:**AGENDA ITEM TITLE:**

04/19/17

Intersection Capacity Analysis

	07/01/16 AUDITED BEGINNING FUND BALANCE	ESTIMATED REVENUES	APPROPRI- ATIONS	06/30/17 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	1,272,644	962,561	1,091,197	1,144,008
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	1,094,089	(1,094,089)
RECOMMENDED ACTION	-	-	(15,000)	15,000
RESULT OF RECOMMENDED ACTION	<u>1,272,644</u>	<u>962,561</u>	<u>2,170,286</u>	<u>64,919</u>



CITY COUNCIL STAFF REPORT

MEETING DATE: April 19, 2017

PREPARED BY: Angie Gonzalez, Council Services Assistant
APPROVED BY: City Manager

ADOPT ORDINANCE 2233, NEW SERIES, AN ORDINANCE OF THE CITY OF MORGAN HILL APPROVING AN AMENDED DEVELOPMENT AGREEMENT FOR THE DUNNE HILL MEADOW SIX LOT RESIDENTIAL DEVELOPMENT LOCATED ON THE NORTHEASTERLY CORNER OF EAST DUNNE AVENUE AND HILL ROAD (ASSESSOR'S PARCEL NUMBER 728-11-026)

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2233, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

On April 5, 2017, the City Council Introduced Ordinance No. 2233 New Series, by the Following Roll Call Vote: AYES: Carr, Constantine, Robinett Jachimowicz, Tate; NOES: None; ABSTAIN: None; ABSENT: Spring.

Staff provided a brief presentation on the project, noting that the requested Development Agreement Amendment would incorporate a six-month extension of time approved by the Planning Commission on March 14, 2017. Staff relayed that the Planning Commission recommended approval of an amendment to the Exhibit "C" Development Schedule to the Development Agreement to incorporate the six-month extension of the Commence Construction deadline to September 30, 2017. The Commission recommended adding an additional milestone to the Development Schedule adding a July 31, 2017 deadline to record the Final Map.

The applicant, Scott Murray spoke in support of the project.

COMMUNITY ENGAGEMENT: Inform

The required public hearing notice was published in the Morgan Hill Times for the minimum 10-day public noticing period. Property owners within 300 feet of the subject

property were notified of the Development Agreement Amendment hearing 10- days prior to the public hearing.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council considered a Development Agreement Amendment request on September 7, 2016, and adopted Ordinance No. 2217 granting a six-month extension, with a commencement of construction deadline of March 30, 2017. The Planning Commission considered an Extension and Development Agreement Amendment request at its March 14, 2017 meeting. Based on the information presented, the Planning Commission determined that the current owner has not delayed processing of the project since the acquisition. Under the provisions outlined in Section 18.78.170 (Extensions) of the Municipal Code, the Commission approved a six-month extension to the building allotment to September 30, 2017. The Commission recommended the City Council approve an amendment to the Development Agreement Exhibit "C" Development Schedule to incorporate the six-month extension by extending the date to obtain building permits to June 30, 2017 and the commencement of construction deadline to September 30, 2017. The motion passed (7-0-0).

FISCAL AND RESOURCE IMPACT:

The applicant has paid application fees applied to the project.

CEQA (California Environmental Quality Act):

Categorical Exemption

The project was determined to be exempt from CEQA in accordance Section 15332 of the CEQA Guidelines (In-fill Development Projects). No further environmental analysis is required.

LINKS/ATTACHMENTS:

1. Ordinance 2233 Dunne-Leung

ORDINANCE NO. 2233, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL APPROVING AN AMENDED DEVELOPMENT AGREEMENT FOR THE DUNNE HILL MEADOW SIX LOT RESIDENTIAL DEVELOPMENT LOCATED ON THE NORTHEASTERLY CORNER OF EAST DUNNE AVENUE AND HILL ROAD (ASSESSOR'S PARCEL NUMBER 728-11- 026)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Morgan Hill Municipal Code and Resolution No. 15-64, has awarded allotments to a certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MMC-13-20: Dunne - Leung	6, FY 2015-16 allotments

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner(s) set forth in detail the development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council of the City of Morgan Hill found that the project approved pursuant hereto is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15332 of the CEQA Guidelines and Section 21083 of the Public Resources Code because the project has been characterized as in-fill development.

SECTION 6. ADOPTION OF AMENDED EXHIBIT "C" TO DEVELOPMENT AGREEMENT. The City Council hereby approves the Development Agreement Amendment for AAE2017-0001: East Dunne-Leung (APN 728-11-026) attached to this Ordinance as Exhibit A.

SECTION 7. The amended Exhibit “C” attached to this Ordinance hereby supersedes and replaces the Exhibit “C” to the Development Agreement adopted under Ordinance No. 2217.

SECTION 8. The City Council hereby finds that the development proposal and agreement approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 9. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 10. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 11. Effective Date; Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 5TH DAY OF APRIL 2017 AND WAS FINALLY ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 19TH DAY OF APRIL 2017 AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

AYES:	COUNCIL MEMBERS:	Larry Carr, Rich Constantine,
		Caitlin Robinett Jachimowicz, Steve Tate
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	Rene Spring

APPROVED:

DATE:

STEVE TATE, Mayor

ATTEST:

DATE:

IRMA TORREZ, City Clerk

Attachment: Ordinance 2233 Dunne-Leung (1129 : Ordinance 2233 Dunne-Leunge)

Effective Date: May 19, 2017

⌘ **CERTIFICATE OF THE CITY CLERK** ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2233, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 19th day of April 2017.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Ordinance 2233 Dunne-Leung (1129 : Ordinance 2233 Dunne-Leung)

Exhibit A

Exhibit “C” to Ordinance 2217, New Series, shall be amended as follows:

EXHIBIT C DEVELOPMENT SCHEDULE

MMC-13-20 Dunne-Leung
FY 2015-2016, 6 allotments

I.	SUBDIVISION APPLICATION Applications Filed:	10-13-15
II.	SITE REVIEW APPLICATION Submit Application:	06-11-15
III.	FINAL MAP SUBMITTAL Map, Improvements Agreement and Bonds: FY 2015-16, 6 units	12-30-15
IV.	BUILDING PERMIT SUBMITTAL Submit plans to Building Division for plan check: FY 2015-16, 6 units	04-28-17
V.	RECORD FINAL MAP Planning Commission recommended new milestone	07-31-17
VI.	BUILDING PERMITS Obtain Building Permits: FY 2015-16, 6 units	06-30-17
VII.	COMMENCE CONSTRUCTION: FY 2015-16, 6 units	09-30-17

Failure to obtain building permits by the dates listed above shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit one (1) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

If a portion of the project has been completed (physical commencement on at least one dwelling unit and lot improvements have been installed per the plans and specifications), the property owner may apply for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.



CITY COUNCIL STAFF REPORT

MEETING DATE: April 19, 2017

PREPARED BY: Edith Ramirez, Economic Development Director
APPROVED BY: City Manager

ADOPTION OF ECONOMIC BLUEPRINT

RECOMMENDATION(S)

1. Hold Economic Blueprint workshop;
2. Adopt Economic Blueprint; and
3. Direct staff to develop a budget recommendation to implement the Economic Blueprint for City Council consideration on May 3, 2017.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community
Fostering a Positive Organizational Culture
Preserving and Cultivating Public Trust
Preserving Our Cultural Heritage

2017 Strategic Priorities

Infrastructure, Telecommunications

****Note: Discussion on the Economic Blueprint will begin with a workshop and be considered for adoption as part of the Regular City Council meeting**

POLICY CONSIDERATIONS:

There are many policy considerations that the City Council may want to discuss as part of its Economic Blueprint consideration. These include though may not be limited to:

- Should existing employment lands (Industrial Lands) be protected for job creation purposes by clearly stating the City discourages General Plan amendments for the conversion of Industrial Lands?
- Should the City enhance the General Plan language and modify the Zoning Code to attract commercial and industrial development, streamline entitlement processes, and enhance value of industrial lands?
- Should the City develop policies, similar to the Auto Incentive Policy, to attract hotel and healthcare development?
- Should the City investigate ways to enhance existing and build new sports/recreation facilities such as increasing the Transient Occupancy Tax or developing a Tourism Business Improvement District Tax?

- Should the City revise zoning regulations to make it easier for wineries, tasting rooms, and craft distilleries to locate in Morgan Hill?
- Should the City work with shopping centers to revise rules and regulations such as signage, parking, landscaping, or approved uses to help retail development?

PROJECT SUMMARY:

The City's most recent adoption of "*Sustainable Morgan Hill*" develops a lens through which all future City Council decisions can be viewed. The goals and objectives of a sustainable Morgan Hill include developing a thriving economy, fostering a highly inclusive community, having a healthy environment, and ensuring fiscal stability. To this end, the proposed Economic Blueprint is intended to provide a strategy that aligns policies, projects, programs, and initiatives to create long term economic sustainability and prosperity for the community.

In recent years, the City Council identified the need for an Economic Blueprint to strategically focus the City's economic development efforts. To accomplish this, the Economic Development team engaged in an extensive community outreach process that included dozens of meetings with various stakeholders, including residents, businesses, and community leaders. The Economic Blueprint embarked on a unique outreach process that included a peer review by other economic development professionals and the engagement of thought leaders and local path finders. In addition, regional industry leaders provided advice and guidance during the development of the document.

The Economic Blueprint, if adopted, identifies four key industries which will drive economic prosperity, create a fiscally sustainable future, and guide the City's Economic Development activities in the coming years. At the core of the document is the goal to significantly increase local, professional jobs. The four industries are:

1. **Innovation and Advanced Manufacturing:** *Grow existing companies, attract new industry, and significantly grow professional jobs.*
2. **Retail:** *Grow retail offerings and strengthen commercial nodes.*
3. **Tourism:** *Grow leisure, agriculture, wine country & recreational tourism.*
4. **Healthcare:** *Grow and foster the medical service and diagnostics industry by attracting services and facilities.*

The Economic Blueprint identifies 13 strategies and 35 specific actions that the City will champion to achieve economic prosperity and further the community's quality of life by attracting investment, development, and jobs.

It is important to recognize that to achieve success in growing these industries, the City, the community, and its economic development partners should align efforts to support the four key industries and thereby share in combined prosperity and success. There are other strategies that further the goals of the Economic Blueprint and rely on the future efforts of community partners. To keep City efforts focused, the proposed Economic Blueprint's actions are limited to areas that the City can directly influence. In the Economic Blueprint, the City's primary responsibility is to make land use and policy

decisions that attract investment, remove unnecessary barriers, achieve economic sustainability, and in return, enhance the community's quality of life. By articulating clear intentions with these industries, and developing implementation strategies, the City, the business community, developers, investors, and other economic development partners will be better positioned to realize the dividends of focused and collaborative work.

This Economic Blueprint is grounded in guiding principles from the General Plan, Morgan Hill 2035, Sustainable Morgan Hill and incorporates feedback from over 400 residents, businesses, and community leaders engaged and invested in the future of Morgan Hill. The Economic Blueprint also provides a baseline of vital statistics that range from jobs and revenues to vacancy rates and other industry-specific economic indicators to help establish benchmarks to track progress.

COMMUNITY ENGAGEMENT: Collaborate

The Economic Blueprint engaged the community in a year-long process that included focus groups and one-on-one meetings with various resident, business, and organizational stakeholders to ascertain the opportunities that exist for investment in Morgan Hill. The City's economic development team has solicited and received feedback from over 400 individuals, including the Downtown Association, Planning Commission, Kiwanis, Rotary, Chamber of Commerce, City teammates, and Morgan Hill residents. In addition, there have been several one-on-one meetings with small and large companies doing business in Morgan Hill.

ALTERNATIVE ACTIONS:

The Council may choose to add or delete or change the recommended industry goals, strategies, or actions.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Planning Commission reviewed the Economic Blueprint at its April 11, 2017 meeting.

FISCAL AND RESOURCE IMPACT:

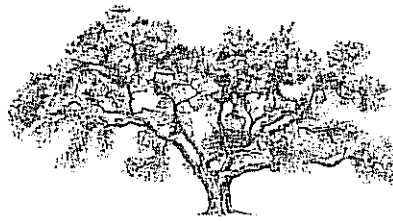
The Economic Blueprint will require new City investment to implement and advance various strategies and actions. It is recommended that a budget plan be developed and brought back to City Council at the May 3rd meeting after adoption of the Economic Blueprint on April 19th. This information would then be recommended to be included in the budget mid-cycle discussion on May 19th.

CEQA (California Environmental Quality Act): The Economic Blueprint is a policy document that identifies mechanisms for implementing the City's 2035 General Plan. The 2035 General Plan EIR was certified by the City Council on July 27, 2016.

LINKS/ATTACHMENTS:

1. Economic Blueprint Document
2. Letter from John Kent
3. Economic Blueprint Workprogram

4. Planning Commission Comments



PACIFIC OAK PROPERTIES, INC.

To: Morgan Hill City Council

From: John P. Kent

Date: April, 11, 2017

Re: Economic Blueprint

It was my pleasure to work (as a thought leader) with Leslie Little, Edith Ramirez and John Lang on the Economic Blueprint.

First, I wish to commend Leslie, Edith and John on their very fine work. Throughout the process, I was constantly impressed by their professionalism, their vision and their genuine desire to help Morgan Hill. The City is fortunate to have such very fine team members.

I also wish to note that City staff's decision to invite "peer groups" to review and comment on the draft document was brilliant. I sat in on the "peer group meeting" and was very pleased to witness the collaboration and respect between experienced and engaged professionals.

The resultant document is exceptional!

I wholeheartedly support its adoption and implementation.

Well done!!

Attachment: Letter from John Kent (1134 : Economic Blueprint)

INDUSTRY	STRATEGY AND CITY ACTIONS		TIMEFRAME				CITY LEAD
			Current/In Process	Near Term 2017-2018	Mid-Term 2018-2019	Long Term 2019-2021	
 INNOVATION & ADVANCED MANUFACTURING	PRESERVE INDUSTRIAL LANDS						
	1	Adopt an Employment (Industrial) Land Preservation Policy					ED/Planning
	2	Strengthen General Plan Language to Prevent Conversion of Industrial Lands					ED/Planning
	IMPROVE AND FACILITATE DEVELOPMENT OF CRITICAL INFRASTRUCTURE						
	3	Create a Telecommunications Master Plan to Improve Access to Fiber					ED/Engineering/Planning/IT
	ATTRACT DEVELOPMENT						
	4	Update Zoning Code and Parking Requirements to Modernize Zoning Code and Allow for New Hybrid of Developments that are Considered "Class A Industrial" or "Flex Space"					ED/Planning
	5	Explore Incentive Programs to Attract Industry-Specific Development					ED/Finance
	6	Allow Greater Intensification (FAR) and Taller Buildings to Increase Value of Employment Lands					ED/Planning
	7	Complete the Monterey Corridor Flex-Zoning Update and Optimize Development Opportunity					ED/Planning
	8	Streamline Permitting Process by allowing Administrative Approvals as Part of Zoning Code Update					ED/Planning
	FOSTER AN ENVIRONMENT THAT SUPPORTS BUSINESS GROWTH						
9	Deploy Open-Counter Online Business Ombudsman Platform					ED/IT/Planning	
10	Market Economic Blueprint Vision, Process & Incentives to Attract business Investment					ED	
11	Formalize City's Expedited Process and Market it					ED	
SUPPORT EDUCATIONAL FACILITIES & A LIFE LONG LEARNING ECOSYSTEM							
12	Connect Education Assets to Industry					ED	
 RETAIL	RETAIL FLEXIBILITY						
	13	Develop a Retail Concentration Strategy					ED/Planning
	14	Continually Revisit Retail Industry Trends & Requirements					ED
	15	Pursue Sports Recreation Uses as Anchor Tenants; increase Permitted Use allowance up to 15K sq ft.					ED/Planning
	16	Re-Evaluate and Propose Changes to Shopping Center -Site Specific Zoning Requirements					ED/Planning
	17	Change Zoning to Allow incidental Wine, Beer and Alcohol Tasting Rooms and Distilleries in Downtown and Throughout the City in Commercial and Industrial Zoned Areas					ED/Planning
	18	Promote Co-Working facilities in Commercial Nodes					ED/Planning
	SUPPORT DOWNTOWN DEVELOPMENT						
	19	Identify Parking Management Strategies					ED/Planning/PD
	20	Encourage Housing Development & Office Development					ED/Planning
	21	Create Business Improvement District (BID) to Support Downtown Improvements and Programming					ED/Finance
	22	Terminate Administrative Permit Process for Morgan Hill Plaza Shopping Center					ED/Planning
 TOURISM	ENHANCE FACILITY UTILIZATION AND GROW SPORTS/RECREATION FACILITIES						
	23	Upgrade the Outdoor Sports Center & Aquatics Center (Infrastructure & Amenities)					ED/CS
	24	Develop a Financing Plan to Construct and Operate New Sports/Recreation Facilities					ED/CS
	SUPPORT LODGING						
	25	Ensure General Plan and Zoning Code Address Bed & Breakfasts, Air B&B and Hotel Development					ED/Planning
	26	Develop Plan to Help Upgrade or Transition Aging Hotel Facilities					ED/Planning/Housing/Finance
	27	Identify Pre-zoned Lodging Sites					ED/Planning
	LEVERAGE RESOURCES THROUGH PROFESSIONAL LINKAGES AND PARTNERSHIPS						
	28	Work with Hotels to Develop a Tourism Based Improvement District (TBID) to help Finance Capital Improvements to Sports Recreation Facilities and to Promote and Market the Region					ED/Finance/CS
	29	Collaborate with Regional Partners to Enhance Branding, Marketing and Promotions or Regional Assets					ED/CS
	SUPPORT A TOURISM ENVIRONMENT						
	30	Target Retail Attraction Towards Sport Recreation, Entertainment, Boutique and Food Retailers					ED/Planning
31	Continue to Create A Lively Downtown with Entertainment Offerings					ED/Planning/CS/ PD	
 HEALTHCARE	EXPAND LOCATIONS OF WHERE MEDICAL USES ARE ALLOWED						
	32	Ensure General Plan & Zoning Code Allow for a Range of Medical Uses					ED/Planning
	ACTIVELY PROMOTE LOCATIONS FOR MEDICAL USES						
	33	Identify & Market Pre-Zoned Medical Sites					ED/Planning
	34	Increase Outreach and Medical Service Providers					ED
	35	Create & Implement a Targeted Marketing Campaign					ED

Planning Commission Comments on Economic Blueprint Presentation

April 11, 2017

7 pm

Commissioner Downey

- Good that there are actionable items within the workplan
- How is the workplan going to be achieved given many projects are being lead by economic development?
 - Are there enough resources to achieve the workplan?
- What projects give the City the biggest bang for the buck?

Commissioner Mueller

- If (lack of) signage for retailers is an issue, Planning Commission should understand and discuss the issue, this should not be an impediment to locating retailers in Morgan Hill
- Need to work closely with Gilroy and St. Louise Hospital to help support region's medical/healthcare services needs
- Need pre-approved shovel ready sites (specifically for industrial, auto & healthcare)
- Need to identify 3 concentrated sites to drive Healthcare too
 - Need to make sites shovel ready (We need to clearly define what shovel ready is)
 - Need to have flexibility for medical users- folks interested in leasing or purchasing space
- High speed internet is key to supporting healthcare
- VTA site is the last known site in downtown for future development, what is the next site? Is it Morgan Hill Plaza Shopping Center?
- Time to figure out which retail/commercial centers City should focus on next
 - Need a shopping center life cycle strategy
- City should have both a retention and expansion policy in addition to attraction strategy for business investment
- Should change the jobs/housing metric to number of people living and working in Morgan Hill (28%)
- Flexibility is good but we need to hold the line (re-enforce pre-identified sites)
- Need to fight for the Economic Blueprint/General Plan

Commissioner McKay

- Where are we at the telecommunications masterplan process?
- Need to promote Economic Development

Commission Toombs

- Marijuana opportunities. Why is the Economic Blueprint silent on marijuana as an economic driver?
- Workplan seems over whelming
- What is the Plan B for the Economic Blueprint? What about changes in the economy or High Speed Rail?

Planning Commission Comments on Economic Blueprint Presentation

April 11, 2017

7 pm

Chairperson Tanda

- Direct correlation between improving the economic picture and the general fund
- Initiate a study on commercial vacant land (what is the years of supply)
- Could we have temporary uses on commercial lands in the interim.

Commissioner Martinez Beltran

- Planning Commission is open to workshopping projects (distilleries, wineries, complex zoning).
Want to help staff
- Economic Blueprint is brilliant!
- The Economic Blueprint is ambitious!
- What are the low hanging fruit items?
- Need to work with partners on going after low hanging fruit
- What is the opportunity to go after Start-ups?
- Are there public/private partnership opportunities?
- What about incubation Center model?
- How do we know when we hit success?
- Opportunity to do Mello-Roos for industrial development?



CITY COUNCIL STAFF REPORT

MEETING DATE: April 19, 2017

PREPARED BY: Leslie Little, Assistant City Manager for Community Development
APPROVED BY: City Manager

ANNEXATION EIR/LAFCO SETTLEMENT AND URBAN SERVICE AREA (USA) EXPANSION AND ANNEXATION REQUESTS

RECOMMENDATION(S)

1. Accept Report;
2. Provide direction regarding the preparation of an Annexation EIR; and
3. Provide direction regarding the timing and acceptance of Urban Service Area expansion and Annexation requests.
4. If necessary, direct staff to return at a subsequent City Council meeting to discuss the existing policies governing the filing, frequency, and timing of USA expansion and annexation requests.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Maintaining Fiscal Responsibility
Preserving Our Cultural Heritage

2017 Strategic Priorities

Infrastructure, Regional Initiatives

POLICY CONSIDERATIONS:

1. Should the City proactively prepare an Annexation Environmental Impact Report (EIR) to facilitate future processing of Urban Service Area (USA) expansion and annexation requests which are consistent with the General Plan or wait until the Climate and Agricultural Protection Program (CAPP) is completed?
2. Is the completion of the CAPP the proper time to start considering USA expansion and annexation applications, including the potential Catholic High School?

REPORT NARRATIVE:

After considering and responding to all comments on the Morgan Hill 2035 Draft Environmental Impact Report (DEIR), the City Council certified the Morgan Hill 2035 Final EIR and adopted the Morgan Hill 2035 General Plan on July 27, 2016.

On August 3, 2016, the Santa Clara County Local Agency Formation Commission (LAFCO) voted to initiate litigation against the City regarding the adequacy of the Morgan Hill 2035 EIR. To avoid litigation, the City and LAFCO engaged in discussions regarding how to address LAFCO's concerns regarding the Morgan Hill 2035 EIR.

Subsequently, LAFCO and the City have entered into a settlement agreement (draft attached) that resolves all future disputes and claims related to the Morgan Hill 2035 EIR, but requires the City to perform additional environmental review under certain circumstances. The settlement also provides clarity to the utility of the SEQ EIR.

Settlement Agreement:

1. The City of Morgan Hill will conduct further CEQA review (Annexation EIR) prior to consideration of USA amendments and/or annexation of property located within the City's Urban Growth Boundary (UGB).
2. The preparation of the Annexation EIR for this purpose shall not tier from, or rely in any way, on the Morgan Hill 2035 EIR.
3. The Annexation EIR's analysis of environmental impact will be based on the level of development authorized by the voters of the City on November 8, 2016 (including the population cap of 58,200).
4. The Annexation EIR will be required to include:
 - A full water supply assessment
 - An assessment of the City's Water Infrastructure Master Plan and Wastewater Infrastructure Master Plans
5. The City of Morgan Hill will not consider any proposal for USA amendment until such time as the Annexation EIR has been certified. Projects already within the USA may rely on, and tier off of, the Morgan Hill 2035 EIR.

USA Expansion/Annexation

Like the City, LAFCO endorses the County of Santa Clara and the Open Space Authority preparation of a county-wide, comprehensive Climate and Agricultural Protection Program (CAPP) and that process is on-going, with a product delivery timeline of Sep/Oct 2017, according to the County website. Because LAFCO also found fault with the City's Agricultural Lands Preservation Program, even though it exceeds the guidelines established by both the State Department of Conservation and LAFCO itself, it may be difficult for any project or proposal to obtain consensus from LAFCO on a USA expansion/annexation request until this project/process is complete if it involves existing agricultural land. While the posted timeline for completion of the study is Sep/Oct 2017, according to the published schedule, the first deliverable was due in February 2017, and is not yet available.

It is important to recognize that not all potential annexations include existing agricultural lands. As stated above, the City must conduct further CEQA review (Annexation EIR) prior to consideration of USA amendments and/or annexation of property located within the City's Urban Growth Boundary (UGB). Thus, if the Council decides to wait until after the CAPP is completed to conduct the Annexation EIR, no applications besides the Catholic High School (for the reasons described below) could be considered.

The Catholic High School is seeking the City to accept an application and file a USA expansion/annexation application with LAFCO within the next year for hearing no later than early 2019. This would allow for the completion of the CAPP and respect the comments that the City heard at the LAFCO hearing(s) as well as from the County, when its Planning Director discussed the CAPP process and requested the City defer implementation of its Agricultural Preservation Policy until the completion of the countywide effort.

The only “project level” analysis contained in the SEQ EIR was the proposed Catholic High School. With this settlement, there is no question that the High School already has a certified, project level EIR (SEQ EIR). Unless the project changes significantly, no further review would be required. That said, an addendum that addresses any changes to the project including a water supply assessment and review of the City’s Wastewater and Water Masterplans relative to the proposed project would be advised to enhance favorable consideration.

For the Council’s convenience, attached is the existing policies governing the filing, frequency, and timing of USA expansion and annexation requests.

ALTERNATIVE ACTIONS:

The City Council could consider a number of alternative actions relative to the Annexation EIR preparation including:

1. Wait to prepare the Annexation EIR until a major landowner/developer requests a USA expansion/annexation and prepare the document in conjunction with that project;
2. Defer preparation of the Annexation EIR until the City collects enough long-range planning funds to begin preparation of an “Agrihood” comprehensive planning process to inform land use decisions for the area identified in the Morgan Hill 2035 General Plan, east of 101 generally bounded by Diana, Half, and Hill Roads;
3. Prepare the Annexation EIR and assess future annexation applicants a proportionate share of costs, to recover the expenditure over time; or
4. Adopt a policy of not accepting any annexation requests for a defined period of time.

FISCAL AND RESOURCE IMPACT:

Preparation of an Annexation EIR is estimated to cost +/- \$200,000 (consultant costs only) and take a minimum of 8-10 months. Should the City wish to proceed in preparing an Annexation EIR, opportunities for collaborative cost sharing are uncertain. The City has received one request to consider annexation of a small, peninsula of land located on the east side of Highway 101, but not enough interest to significantly offset the potential cost associated with the preparation. The cost of preparation could be funded in part by the Long-Range Planning Fund (207).

The SEQ project application costs include City and LAFCO application fees for 1) Annexation and 2) USA expansion. They are as follows:

Fees for Annexation:

City Processing to Council = \$6,834*

*If approved by Council to go to LAFCO, then additional fees as follows:

- City Processing fee = \$6,834
- LAFCO = \$1,154 plus current State Board of Equalization fees, County Assessor fees, and Surveyor fees.

Fees for USA:

City Processing to Council = \$8,673*

*If approved by Council to go to LAFCO, then additional fees as follows:

- City Processing fee = \$16,692
- LAFCO = Deposit of \$11,574 plus actual costs.

In addition, if an EIR Addendum is desired by the Catholic High School, there would be environmental review costs. The City would collaborate with the applicant to prepare a scope of work for an addendum and then seek proposals from an environmental consultant for preparation. These costs would be borne by the applicant.

CEQA (California Environmental Quality Act):

Not a Project

LINKS/ATTACHMENTS:

1. LAFCO Settlement
2. Council Policy

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into as of _____, 2017 ("Effective Date") by and between the Local Agency Formation Commission of Santa Clara County ("LAFCO") and the City of Morgan Hill ("City"). LAFCO and City are collectively referred to as the "Parties" and individually referred to as a "Party."

RECITALS

A. Pursuant to the California Environmental Quality Act, Public Resources Code section 21000, et seq. ("CEQA") the City prepared an Environmental Impact Report for its proposed 2035 General Plan Update ("General Plan EIR").

B. Consistent with LAFCO's duties as a responsible agency, LAFCO submitted extensive comments to the City regarding the adequacy of the General Plan EIR under CEQA.

C. On or about July 27, 2016, after considering and responding to all of the comments on the General Plan EIR, City adopted the Morgan Hill 2035 General Plan pursuant to the General Plan EIR.

D. On or about August 2, 2016, City filed a Notice of Determination regarding its adoption of the Morgan Hill 2035 General Plan pursuant to the General Plan EIR. Pursuant to Public Resources Code section 21167, this Notice of Determination began a 30-day statute of limitations for bringing an action to set aside certification of the General Plan EIR.

E. On August 25, 2016, the Parties entered into a Tolling Agreement ("Tolling Agreement") to toll the statute of limitations for LAFCO to bring a challenge to the General Plan EIR.

F. On September 29, 2016, the Parties entered into the First Amendment to the Tolling Agreement to extend the period for which the statute of limitations is tolled until December 31, 2016.

G. On December 19, 2016, the Parties entered into the Second Amendment to the Tolling Agreement to extend the period for which the statute of limitations is tolled until February 15, 2017.

H. During this tolling period, the Parties have been engaged in discussions regarding the means by which to address LAFCO's concerns with the EIR without proceeding with litigation.

I. LAFCO and City have now agreed to compromise and settle all matters and disputes between themselves in order to achieve a full and complete resolution of all claims that have been asserted or that could be asserted by LAFCO in any future disputes, claims, or legal action in relation to the General Plan EIR.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and/or covenants contained in this Agreement and any other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree, promise, and covenant as follows:

1. Recitals and Definitions Incorporated. Each recital and definition set forth above is incorporated herein by reference and is made part of this Agreement.
2. No Admission. All Parties understand and agree that nothing in this Agreement, or in the execution of this Agreement, shall constitute or be construed as an admission of error or wrongdoing by any Party or of any inadequacy or impropriety in connection with City's certification of the EIR.
3. City Obligations. Without admitting any liability, and in consideration of the terms of this Agreement, upon execution of the Agreement, City shall implement the following terms and actions:
 - 3.1. The City shall conduct environmental review under CEQA prior to any decision as to whether to initiate and carry-out a project (as defined in Public Resources Code section 21065 and CEQA Guidelines section 15378) concerning Urban Service Area ("USA") amendments and/or annexation of property located within the City's Urban Growth Boundary as defined in Figure CNF-1 of the Morgan Hill 2035 General Plan attached as "Exhibit A" and incorporated herein by reference.
 - 3.2. The nature of the project to be carried out by the City may be developed at the discretion of the City, but shall, in any event, result in the preparation and certification of an Environmental Impact Report considering the potential impacts of USA amendments and/or annexation of the property located within the City's Urban Growth Boundary as defined in Figure CNF-1 of the Morgan Hill 2035 General Plan ("Annexation EIR") and shall not tier from, or rely in any way (e.g., pursuant to CEQA, including but not limited to Public Resources Code sections 21094, 21083.3 and 21166 and/or CEQA Guidelines sections 15152, 15153, 15162, 15168, 15183, and 15385), on the General Plan EIR.
 - 3.2.1. The Annexation EIR's analysis of environmental impacts will be based on the level of development authorized by the voters of the City on November 8, 2016 in its Ordinance updating and extending the City's Residential Development Control System until the year 2035 by amending the General Plan and Chapter 18.78 of the Municipal Code, also known as "Measure S."
 - 3.2.2. The Annexation EIR will include:
 - 3.2.2.1. A full water supply assessment; and

- 3.2.2.2. An assessment of the City's Water Infrastructure Master Plan and Wastewater Infrastructure Master Plan.
- 3.3. Environmental review under CEQA of any proposal made to LAFCO for a USA amendment shall only rely on, or tier from, the Annexation EIR.
- 3.4. The City shall not consider any proposal for USA amendment until such time as the Annexation EIR has been certified. However, projects within the USA as it exists as of the Effective Date of this Agreement may rely on and tier off of the General Plan EIR.
- 3.5. This Agreement does not apply to, and is not intended to limit, the City's use of any previously certified EIR as the basis for submitting an annexation application to LAFCO.
4. LAFCO Obligations. Without admitting any liability, and in consideration of the terms of this Agreement, upon execution of the Settlement Agreement LAFCO shall implement the following terms and actions:
- 4.1. LAFCO will not to file any lawsuit challenging the General Plan EIR.
- 4.2. LAFCO will not to seek any fees or costs from City associated with LAFCO's participation in the administrative process for the General Plan EIR or associated with LAFCO's contemplated litigation regarding the General Plan EIR.
- 4.3. LAFCO reserves its rights, as a responsible agency, with regard to its review and consideration of the adequacy of the Annexation EIR and any CEQA documents that City may approve, adopt, or certify in support of any future application it may submit to LAFCO.
5. Joint Obligations. The City and LAFCO will work together to ensure preparation of adequate CEQA documents for any proposed annexation application.
6. Third Party Beneficiary. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties, any rights or benefits under or by reason of this Agreement.
7. Enforcement of Agreement. No action for breach of this Agreement shall be brought or maintained until: (a) the non-breaching Party provides written notice to the breaching Party which explains with particularity the nature of the claimed breach, and (b) within thirty (30) days after receipt of said notice, the breaching Party fails to cure the claimed breach or, in the case of a claimed breach which cannot be reasonably remedied within a thirty (30) day period, the breaching Party fails to commence to cure the claimed breach within such thirty (30) day period, and thereafter diligently complete the activities reasonably necessary to remedy the claimed breach.

8. Mutual Release. LAFCO and the City mutually release each other's affiliates, members, directors, officers, employees, agents, assigns, and attorneys from any and all claims, demands, liabilities, obligations, costs, expenses, fees, actions, and/or causes of action that the City and LAFCO have as of the effective date of this Agreement arising out of, or connected to, the General Plan EIR, whether known, unknown or suspected. Upon the Effective Date of this Agreement, the City and LAFCO have read and have otherwise been informed of the meaning of Section 1542 of the California Civil Code, and have consulted with their respective counsel, to the extent that any was desired, and understands the provisions of Section 1542. The City and LAFCO hereby expressly waive the rights and benefits conferred upon it by the provisions of Section 1542 of the California Civil Code, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

LAFCO Initials

City Initials

9. Damages. The Parties agree that (i) the performance of the obligations of this Agreement are paramount; (ii) in the event of a breach, monetary damages will provide inadequate relief; and (iii) that each may seek equitable relief to enforce such obligations. In the event of litigation to enforce this Agreement, the prevailing party shall be entitled to reimbursement for costs and reasonable attorney's fees.

10. Miscellaneous Provisions.

- 10.1. Notices. Any notice, request, or communication required to be given to either Party under this Agreement shall be given in writing and shall be personally delivered or mailed by prepaid registered or certified mail to the addresses below:

If to LAFCO:

Neelima Palacherla, Executive Officer
70 W. Hedding Street, 11th Floor, East Wing
San Jose, CA 95110
Telephone: (408) 993-4713
Email: Neelima.Palacherla@ceo.sccgov.org

With copies sent to:

Mala Subramanian
Best Best & Krieger LLP

2001 N. Main Street, Suite 390
 Walnut Creek, CA 94596
 Telephone: (925) 977-3303
 Email: msubramanian@bbklaw.com

If to City:

City Manager
 17575 Peak Avenue
 Morgan Hill, CA 95037-4128
 city.manager@morganhill.ca.gov

With copies sent to:

City Attorney
 17575 Peak Avenue
 Morgan Hill, CA 95037-4128
 city.attorney@morganhill.ca.gov

In the event that any Party's address or contact information changes, that Party shall be responsible for notifying the other Party within five (5) working days of the change.

- 10.2. Entire Agreement. The Parties acknowledge that this Agreement is signed and executed without reliance upon any actual or implied promises, warranties, or representations made by either Party or by any representative of any Party, other than those which are expressly contained within this Agreement. This Agreement, including the true and correct Recitals above, inclusive of all definitions contained therein, that are incorporated by reference herein as operative covenants and specifically relied upon by the Parties in executing this Agreement, constitutes the entire agreement and understanding among and between the Parties and supersedes any and all other agreements whether oral or written between the Parties.
- 10.3. Amendments and Modifications. This Agreement may only be amended or modified through writing executed by all the Parties.
- 10.4. Choice of Law and Choice of Forum. This Agreement shall be deemed to have been executed and delivered within the State of California; the rights and obligations of the Parties hereunder shall be governed, construed, and enforced in accordance with the laws of the State of California. The venue for any dispute arising from or related to this Agreement, its performance, and its interpretation shall be the Superior Court of California, County of Santa Clara.
- 10.5. Authorized Signatory. Each Party represents and warrants to each other Party that its signature to this Agreement has the authority to bind the Party, and this Agreement does in fact bind the Party.

- 10.6. Counterparts. This Agreement may be executed in counterparts and when so executed by the Parties, shall become binding upon them and each such counterpart will be an original document.
- 10.7. Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the rest of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
- 10.8. Effective Date. This Agreement is effective as of the Effective Date written in the first paragraph.

IN WITNESS WHEREOF, this Agreement is executed and agreed to by the following:

**LOCAL AGENCY FORMATION COMMISSION
OF SANTA CLARA COUNTY**

By: _____ Date: _____

Name: _____

Title: _____

CITY OF MORGAN HILL

By:  _____ Date: 1/23/2017

Name: Donald A. Larkin

Title: City Attorney

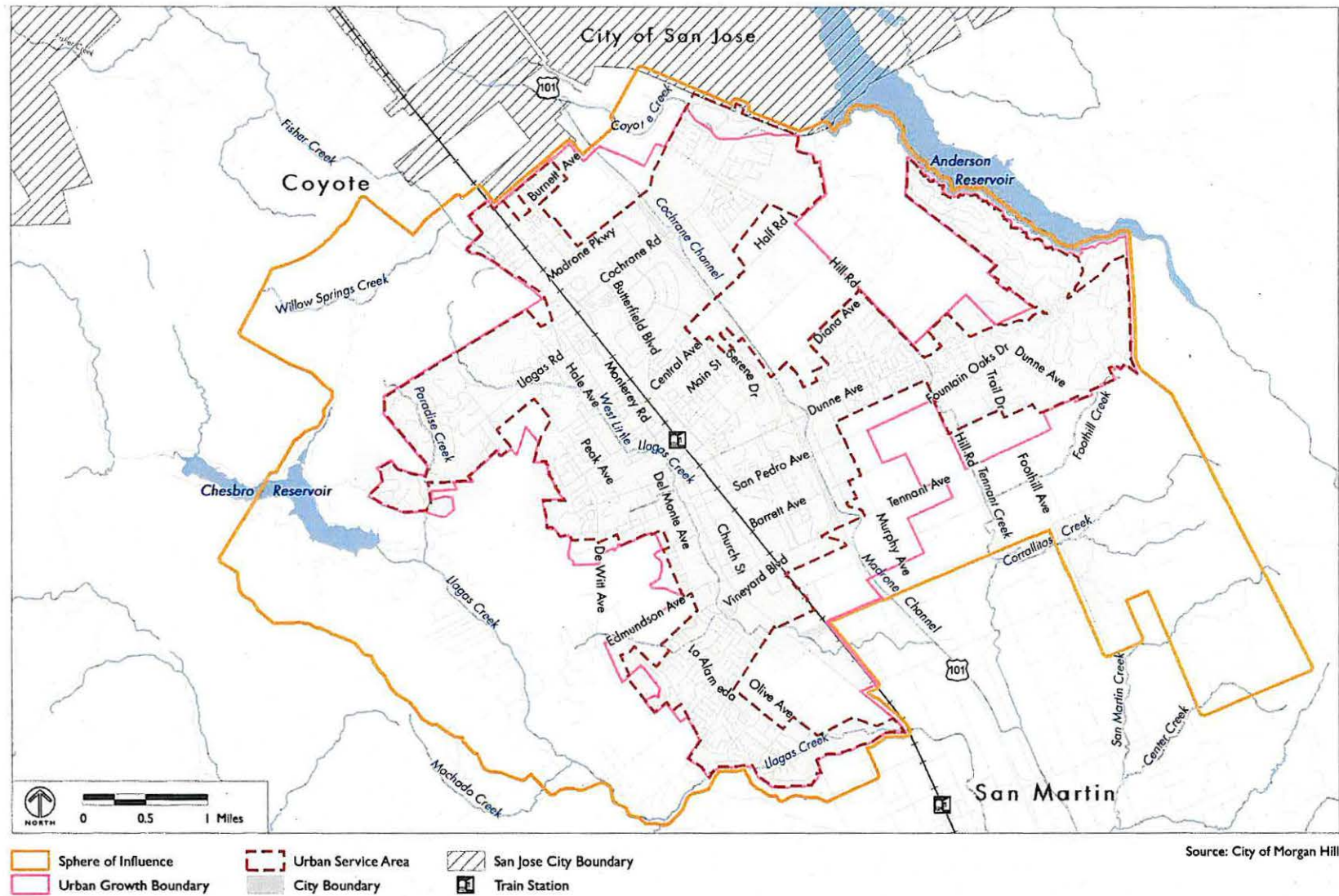
EXHIBIT A

Figure CNF-1 of the Morgan Hill 2035 General Plan

[Attached behind this page]

MORGAN HILL 2035 GENERAL PLAN
CITY AND NEIGHBORHOOD FORM

Figure CNF-1 City Boundaries



Attachment: LAFCO Settlement (1110 : Annexation EIR/LAFCO Settlement Discussion)

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP 07-05

**SUBJECT: PROCESSING APPLICATIONS FOR GENERAL PLAN AMENDMENTS AND
URBAN SERVICE AREA (USA) BOUNDARY AMENDMENTS**

EFFECTIVE DATE: AUGUST 22, 2007

REVISION DATE: _____

It shall be the policy of the City of Morgan Hill to utilize the following procedures for accepting and processing applications for General Plan Amendments and Urban Service Area (USA) Boundary Amendments.

GENERAL PLAN AMENDMENTS

The City of Morgan Hill will periodically review the General Plan in order to determine whether amendments of one or more of its elements may be needed or desirable in order to reflect changes in goals, policies, or physical, social and economic conditions. This City Council Policy establishes procedures that apply to proposed General Plan Amendments.

Initiation of Proposed Amendments. General Plan Amendment (GPA) applications may be initiated by the City Council, the Planning Commission, or owners of property included in the subject amendment.

Timing of Filing Applications for Amendments. The Planning Commission and the City Council may initiate General Plan Amendments at any time of the year. **The City will accept applications from private property owners for amendments to the Land Use Element during the months of January and June of each year.** The Community Development Director has the authority to determine how and when to carry out environmental review under the California Environmental Quality Act (CEQA), and may decide to defer processing private applications for General Plan Land Use Amendments for up to six months or more, so that a consolidated environmental review process may be conducted. The Director will also manage scheduling of public hearings, in order to ensure compliance with State laws that limit the frequency of amendments.

Limitations on Frequency of Amendments. Except as specifically provided in State Government Code Section 65358, no mandatory element of the General Plan may be amended more frequently than four times per year. Each amendment may include more than one change. Mandatory elements under State law, and the corresponding element within the adopted 2001 Morgan Hill General Plan, are listed below:

<i>Required Elements</i>	<i>Morgan Hill General Plan (2001) Chapter where Required Element Located</i>
Land Use	Community Development; Economic Development; Regional Coordination
Housing	Housing
Circulation	Circulation
Noise	Public Health and Safety
Conservation	Open Space and Conservation
Open Space	Open Space and Conservation
Safety	Public Health and Safety

One of the exceptions in State law regarding limits of frequency of amendment is that the limitation does not apply to amendments of the General Plan requested and necessary for a single development of residential units, at least 25% of which will be occupied by or available to persons and families of low or

moderate income, as defined by Section 50093 of the Health and Safety Code. The specified percentage of low- or moderate-income housing may be developed on the same site as the other residential units proposed for development, or on another site or sites encompassed by the General Plan, in which case the combined total number of residential units shall be considered a single development proposal for the purpose of applying the exception.

Referral of Plan Amendment Applications. Proposals to substantially amend the General Plan must be referred to other entities prior to Planning Commission and City Council public hearings. The Community Development Director has the authority to determine whether a proposed amendment is substantial. The entities to be sent copies of the project description and environmental document shall include but not be limited to the following:

Santa Clara County Planning Department	Morgan Hill Public Works Department
Santa Clara County Fire Department	Santa Clara Valley Water District
Morgan Hill Unified School District	Gavilan College
Santa Clara County Local Agency Formation Commission	Bay Area Air Quality Management District
Santa Clara Valley Transportation Agency (VTA)	

In addition to these agencies, proposals shall be referred to Native American tribes with traditional lands located in Morgan Hill area that are on contact list maintained by Native American Heritage Commission; as well as to the Association of Bay Area Governments (ABAG) if the proposal is regionally significant.

Timing of Planning Commission Public Hearings. Planning Commission public hearings shall be scheduled such that the hearings are held after the public comment period for a Negative Declaration or Mitigated Negative Declaration has concluded, or after a Final EIR is completed.

URBAN SERVICE AREA (USA) BOUNDARY AMENDMENTS

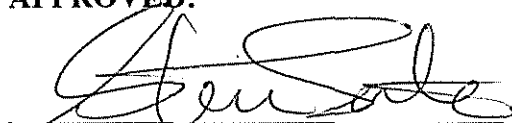
The City of Morgan Hill will periodically review the Urban Service Area Boundary in order to determine whether amendments may be needed or desirable in order to maintain consistency with the goals of the adopted General Plan. This City Council Policy establishes procedures that apply to proposed USA Boundary Amendments. Criteria for evaluating proposed adjustments of the USA Boundary are contained in Council Policy 94-02, as amended.

Initiation of Proposed Amendments. USA Boundary Amendment applications may be initiated by the City Council, the Planning Commission, or owners of property included in the subject amendment.

Timing of Filing Applications for Amendments. The Planning Commission and the City Council may initiate USA Boundary Amendments at any time of the year. **The City will accept applications from private property owners for Urban Service Area Boundary Amendments during January of each year.** The Community Development Director has the authority to determine how and when to carry out environmental review under the California Environmental Quality Act (CEQA), and may decide to defer processing private applications for USA Boundary Amendments to up to six months or more, so that a consolidated environmental review process may be conducted. The Director will also manage scheduling of public hearings and the timing of submittal of the annual USA Boundary Amendment application by the City to the Santa Clara County Local Agency Formation Commission (LAFCO).

LAFCO Limitations on Frequency of Amendments. LAFCO will review/amend the USA once a year, if such review is initiated by city resolution and application. Until the city's application has been heard and acted upon by LAFCO, no further USA amendments are accepted for filing. LAFCO may make an exception to the once a year limitation on USA amendment requests where amendment is needed to carry out some special institutional development or activity that is in the public interest. Such exceptions are not normally extended in connection with proposed residential, commercial, or industrial development.

APPROVED:

A handwritten signature in black ink, appearing to read "Steve Tate", written over a horizontal line.

STEVE TATE, MAYOR

R:\PLANNING\WP51\POLICIES MAN\2007\CP 2007-X Processing GPA & USA Amendments.doc

Attachment: Council Policy (1110 : Annexation EIR/LAFCO Settlement Discussion)



CITY COUNCIL STAFF REPORT

MEETING DATE: April 19, 2017

PREPARED BY: Anthony Eulo, Program Administrator
APPROVED BY: City Manager

LONG-TERM WATER CONSERVATION POLICY DISCUSSION

RECOMMENDATION(S)

Direct staff to prepare an updated Water Conservation Ordinance that institutes additional long-term water conservation measures and return to the City Council with the updated ordinance at the May 17th Council Meeting.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

Preserving and Cultivating Public Trust

POLICY CONSIDERATIONS:

What steps should the City take, if any, to achieve permanent reductions in water consumption?

REPORT NARRATIVE:

During the recent historic drought, the Morgan Hill community responded exceptionally to the call for conservation. As indicated in the attached chart, the City's per capita water production was reduced by over 35% in 2015 and 2016 when compared to the index year of 2013. The community saved nearly a billion gallons of water in 2015 alone.

While the bountiful winter brought the State, Region, and City out of the drought, most experts agree that California must continue to treat water as a precious resource that is highly valued. When considered together, climate change, seismic instability, and biological concerns paint an uncertain picture of California's future water supply. With this in mind, the State Water Resources Control Board released *Making Water Conservation a California Way of Life (Draft)* in November 2016. The framework introduced in this report will evolve into regulations requiring all water agencies, including the City, to take steps toward higher levels of permanent conservation.

In evaluating the City's current ordinance, the City has a set of permanent measures, that are always in effect, along with additional tiered sets of water supply shortage measures that are instituted during droughts. In order to permanently encourage greater levels of conservation, staff recommends the following:

- Continue the full range of economic assistance (rebates), demonstration gardens, and educational programs to encourage water conservation;
- Shift limiting irrigation to three days per week in the summer and one day per week in the winter to the list of permanent measures (while allowing for more frequent watering to support occasional major re-landscaping projects) and make associated adjustments in the Level 1, Level 2, and Level 3 water supply shortage restrictions in order to maintain the ability to generate additional reductions during droughts;
- Continue to solely enforce the restrictions on a complaint basis; and
- Make additional minor adjustments to update the City's ordinance to be consistent with recent State regulations.

If approved by the Council, staff will schedule a public hearing for the May 17th meeting to bring back a revised ordinance reflecting these adjustments to the City's water conservation rules.

COMMUNITY ENGAGEMENT: Consult

Staff requested input from the community via a survey, e-mails, and at a public meeting. A full report on these engagement activities is attached. The key results were:

- Public Meeting - There was an overall tone of acceptance among the participants that the City shouldn't return to "business as usual" now that the drought has passed since drought will almost certainly return. City staff introduced the concept of limiting irrigation to three days a week in the summer on an ongoing basis (with allowances for new plantings) and there was general acceptance of the concept.
- Survey Responses – 143 responses were received. Highlights are:
 - Respondents reported that they personally engaged in a wide variety of water conserving measures during the drought. Nearly 90% of the respondents indicated that they watered less frequently.
 - 94% reported that they watered three times or less in 2016 – indicating that the survey respondents largely complied with the City's drought restrictions in 2016.
 - 63% thought that watering should be limited to three times per week or less during times of normal (non-drought) weather.
- E-mailed Input – The input received via e-mails did not address the specific concept of expanding water conservation activities. Notably, 50% of the e-mails indicated an opinion that the City shouldn't continue building new housing units if there isn't ample water for existing residents.

ALTERNATIVE ACTIONS:

The City Council could decline to take action at this time to encourage higher levels of permanent water conservation or could direct staff to evaluate other measures to achieve permanent conservation such as enhanced public education, water allocations with fines, or other restrictions.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council has considered and adopted changes to the City's water conservation ordinance several times in the past ten years. The most recent action was taken on November 18, 2015.

FISCAL AND RESOURCE IMPACT:

There are no direct fiscal impacts from this item and no budget adjustment is requested at this time. While permanent reductions in water consumption will lead to permanently reduced water sales, these reductions were anticipated in the City's last water rate study and the new rate structure reduces the fiscal impact of reduced sales by increasing the fixed charges for each water account.

CEQA (California Environmental Quality Act):

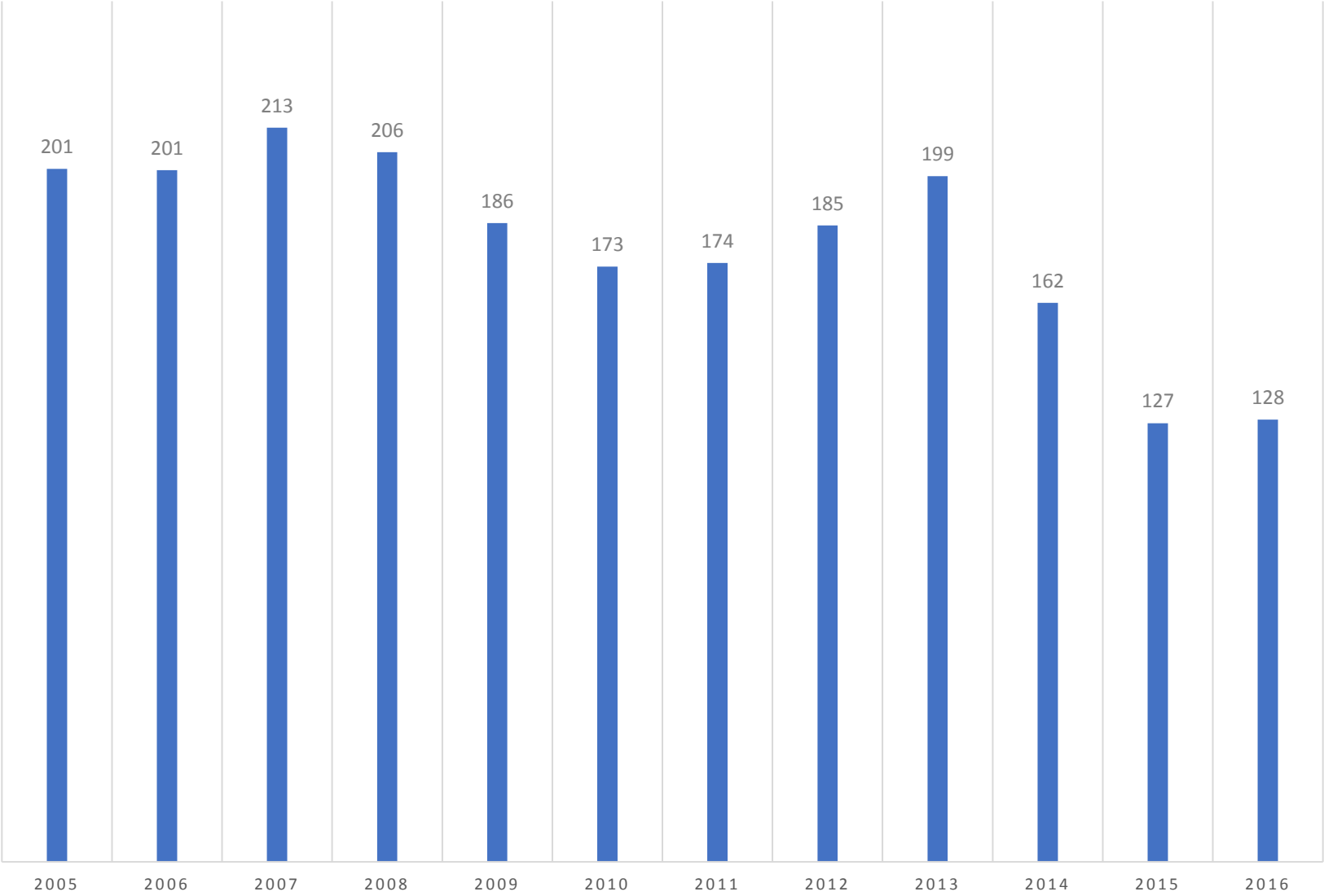
Not a Project

This is an administrative policy discussion that will not lead to direct changes in the physical environment and this action, therefore, is not a project under the CEQA Guidelines. If staff is directed to return to the Council with a revised ordinance, the environmental impacts of that proposed action will be addressed.

LINKS/ATTACHMENTS:

1. GPCD Chart Shortened
2. City of Morgan Hill Water Conservation Engagement Results

**MORGAN HILL WATER PRODUCTION
GALLONS PER CAPITA PER DAY**



Attachment: GPCD Chart Shortened (1132 : Water Conservation Policy)

Water Conservation Public Engagement Report (April 2017)

City staff engaged the community by soliciting their input on the future direction of the City's Water Conservation program. The following message was sent out as an "e-blast" to the community and was reinforced with Facebook and Nextdoor messages and on the City's website:



Greetings Morgan Hill Community!

By saving nearly a billion gallons of water a year, the Morgan Hill Community has done an outstanding job in conserving water during the recent drought. While the record winter rains have washed away this drought, we know that drought in California can always be just one dry winter away and that water is always a precious resource in Morgan Hill. With this in mind, we are working to make Water Conservation a Way of Life in Morgan Hill....and California. Based on the community's recent success, it is clear that Morgan Hill residents and businesses can permanently use water more efficiently by converting their yards to California-friendly landscapes, watering less often, replacing inefficient fixtures and appliances, and reducing system leakage and runoff. The City will be evaluating changes to the City's Water Conservation Ordinance this April and is interested in hearing what ideas local residents and businesses have about ensuring that Morgan Hill continues to use water efficiently.

We have three ways that you can share your ideas with us.

One - Come to a Meeting

The City will be convening a meeting at 7 pm on Thursday, April 6 in the City Council Chambers West Conference Room, 17555 Peak Avenue, to discuss ideas the community has about our water conservation future. Please come ready to share your thoughts with your friends and neighbors. Click [here](#) for the meeting flyer.

Two - Complete a Brief Survey

We have prepared a quick, 3-question on-line survey that you can complete to share your thoughts. [Take the survey now.](#)

Three - Send Us Your Thoughts

Don't like surveys or meetings? You can directly [email](#) us your ideas about changes you'd like to see in the City's water conservation program.

Even if you're unable to make the meeting, please take the [Water Conservation Survey](#) or send us an [email](#) and let us know your thoughts on the future of water conservation in Morgan Hill. Thank you for your input!

[Survey Link](#)

As a result of this outreach, the City received public input via all three identified paths of providing input.

1. **Public Meeting** – the public meeting was held on Thursday, April 6th with five residents attending. Given the small size of the group, the discussion was far-ranging and there was a general collegial feel to the meeting. There was an overall tone of acceptance among the participants that the City shouldn't return to "business as usual" now that the drought has passed since drought will almost certainly return. City staff introduced the concept of limiting irrigation to three days a week in the summer on an ongoing basis (with allowances for new plantings) and there was general acceptance of the concept. Staff pledged to work with one participant, in particular, to follow up with his idea of enhancing stormwater capture as a way of increasing water supplies.
2. **Survey Responses** – the City received 143 responses to the brief electronic survey. The complete survey results and analysis are included as Attachment A. The highlights of the responses are:
 - Respondents reported that they personally engaged in a wide variety of water conserving measures during the drought. Nearly 90% of the respondents indicated that they watered less frequently.
 - 94% reported that they watered three times or less in 2016 – indicating that the survey respondents largely complied with the City's drought restrictions in 2016
 - 63% thought that watering should be limited to three times per week or less during times of normal (nondrought) weather
3. **E-mailed Input:** The City received eight responses directly e-mailed to us. There responses are copied verbatim in Attachment B. Since it may not have been clear that the comments would be publicly attributed to an individual when the City solicited this input, the sender's name has not been included.

While the eight e-mails are unsurprisingly different from one another, the following commonalities were present:

- Four of the e-mails indicated an opinion that the City shouldn't continue building new housing units if there isn't ample water for existing residents;
- Two of them mentioned higher water rates; and
- Two of them mentioned the water that flowed to the ocean during recent rains.

Attachment A

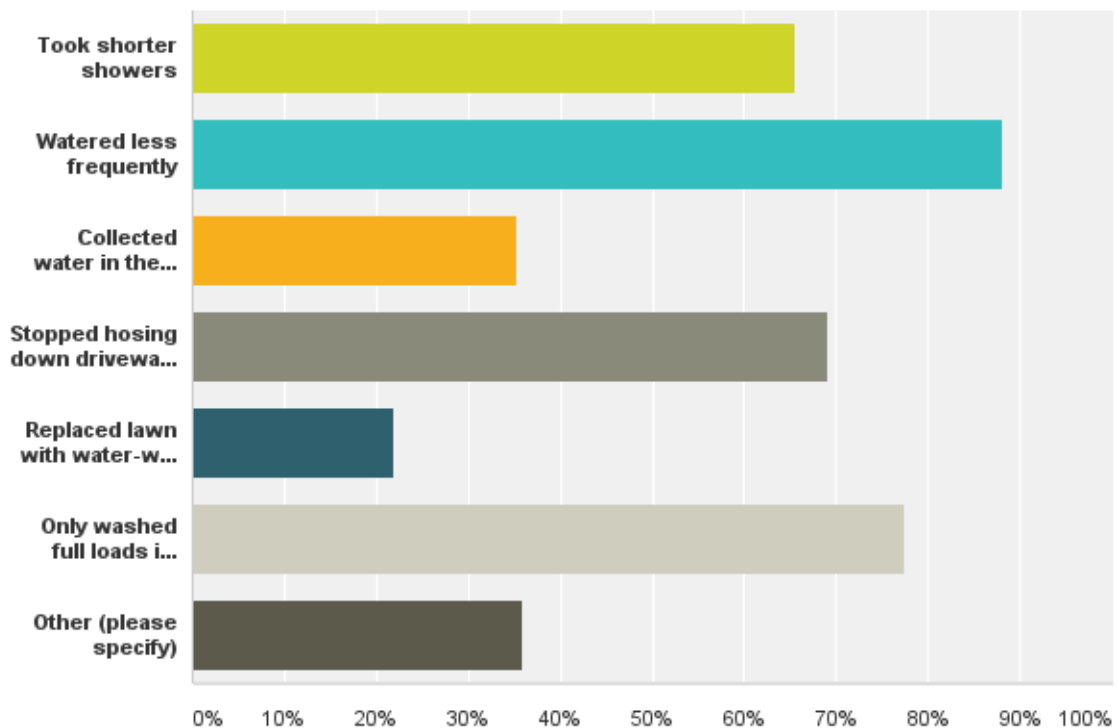
City of Morgan Hill Water Conservation Survey Results

March – April 2017

143 Total Responses

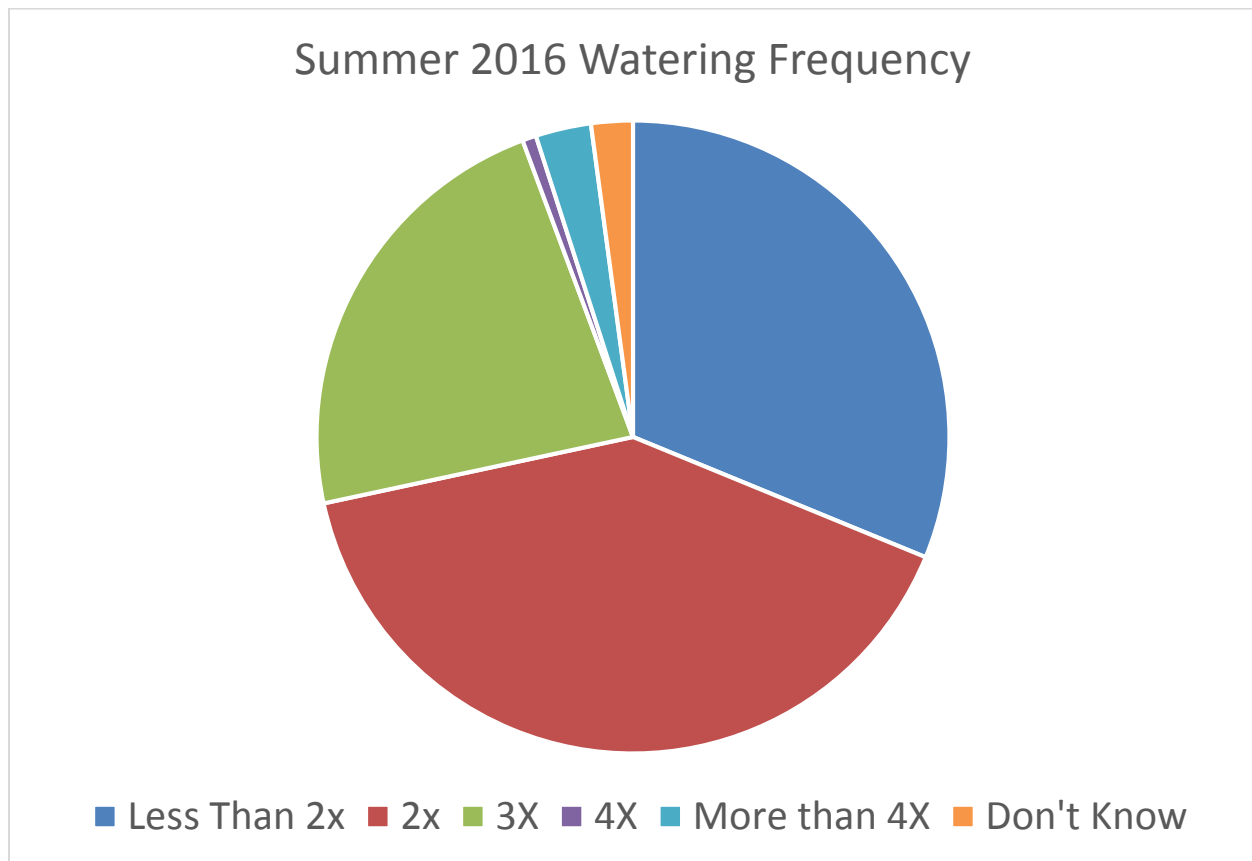
Q1 What did you do at your home to conserve water during the drought?

Answered: 142 Skipped: 1



The 51 “Other” responses included a wide variety of different ideas. Common responses were flushing the toilet less often, reusing graywater or captured water for the landscape, and letting portions of the landscape die.

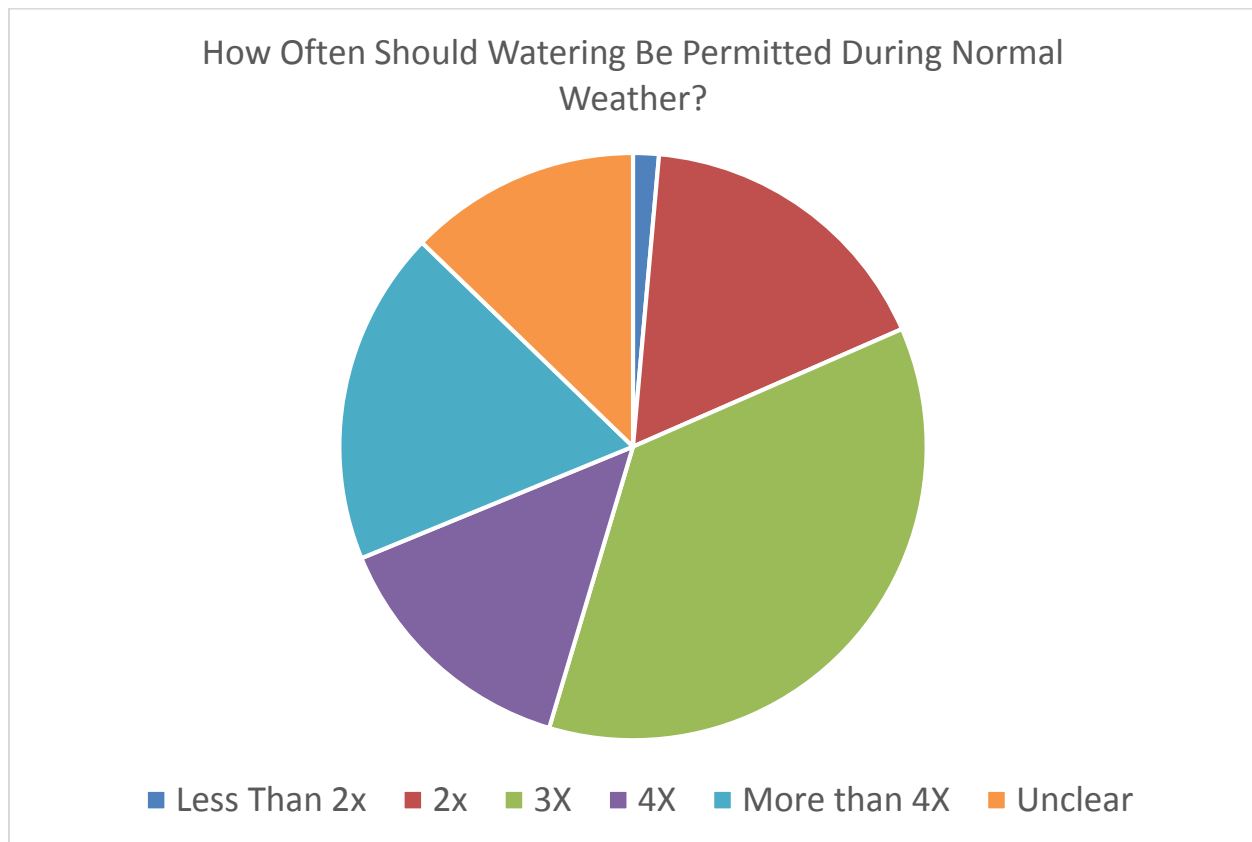
Question 2 was, “On average, how frequently did you water your landscape in the summer of 2016?”



31%	Less than two times per week
40%	Two times per week
23%	Three times per week
1%	Four times per week
3%	More than four times per week
2%	Don't know or didn't answer

The overwhelming majority of survey respondents (94%) complied with the City's irrigation restrictions in 2016 which allowed for irrigation three times per week.

Question 3 was, “During normal weather, when California isn’t in a drought, how frequently should watering in Morgan Hill be permitted?”



1%	Less than two times per week
17%	Two times per week
36%	Three times per week
14%	Four times per week
18%	More than four times per week
13%	Don't know or didn't answer

Since the number of different options and the level of unclear responses clouds the analysis, a second analysis of the responses was done which eliminated the unclear responses and separated the answers into the two choices of “3X Per Week or Less” and “More Than 3X Per Week.”

63%	3X Per Week or Less
37%	More Than 3X Per Week

Question 4 was, “Is there anything else you’d like the City to consider in its water conservation program?”

We received the following 91 responses that are broad ranging and difficult to quantify. They are listed below verbatim.

- how much and long thy water
- Tax, landscape discount programs like OTHER cities provide. We all know this is a very financially revenue stable county and simply saying to conserve is not enough. If this is something the city of MH already does, I would suggest cascading this down to its residents.
- stricter enforcement on violators. residential developers don't seem to follow rules very well
- Making sure that homeowner's associations allow native gardens in front yards.
- The rates are not fair for those who do save the water and yet there is corporations just down the street who are blasting water in the middle of the day. I would like to have more flexibility to water since it doesn't help the lawn when it's being water in the middle of the night and can grow fungus.
- No more NEW residents until water supply is sufficient for EXISTING residents WITHOUT severe water restrictions!
- Ask the state to build more damn so we don't need to conserve. Water is a natural occurring product and we should be able to use what we want.
- The continuing restrictions, in light of all the rain, are viewed by many as a farce. I recognize that the governor has much to do with this, but the whole campaign, and the government, loses credibility and is seen as an excuse to raise rates. Many see this as just another created crises to make more laws and additional money grabs for a dysfunctional government. Further, some residents see this as an excuse not maintain their yards and encourage blight. I hope I don't have to tell you why that is not good. We are seeing our urban forest being destroyed because of the failure to adequately train on how to preserve it with a short sighted goal of just water reduction.
- keep reminding customers
- No washing of vehicles except at commercial car washes.
- None
- Encourage citizens to report leaks or incorrect time of day/over use of irrigation - including office buildings, and car company hosing of cars on lots
- take into consideration that not all families of equal size share the same water conservation tools and don't punish families for using a tad more. who says what is normal usage anyway
- Make rain barrel available and affordable. Other than occasional tips with water bills, there isn't a comprehensive City water conservation educational program. These should appeal to families and non English speaking
- perhaps restricting installation of new lawn areas (unless for a park) and consider offering some incentive for those who remove existing lawns or discontinue lawn watering/maintenance
- Provide rebates for upgrading irrigation controllers to smart controllers that use weather data in determining watering scheduling.
- Yes, consider alternative water savings like subsurface watering for lawns. Most people over water, so educate rather than regulate. Sod is very important resource for the urban environment. In only

using high water pricing as a means of regulating use hurts those most vulnerable while disallowing the benefits of water use on the urban environment as well as the home.

- offer cistern installation programs
- Offer rebates for changing landscape...
- no
- Perhaps having a group of volunteers surveying yards. There's very little you have to do to see the water sats. Be backed by the city /County in sending out notices and following up with some of the consequences.
- Stop building apartments! We will have less water because of all the building.
- I don't think landscape should be the primary focus of water conservation. Plants are beneficial in so many ways. I think whatever is encouraged will be viewed with skepticism because our community was financially penalized for conserving. We do not want to be fined for being responsible citizens.
- Reclaimed water for landscaping, rain "smart" sprinklers that auto shut off if it rains. It is so frustrating to see sprinklers going when it is pouring rain. An anonymous "tip line" to report offenders....
- Ways to collect more water in wet years so that we do not have such severe problems in dry years.
- Charge commercial water rates or higher water rates to all the private homes watering vineyards
- After all this rain we have had, we shouldn't have to conserve. Our water bill should go down and not up.
- no
- Not that I can think of---the program has been very successful as is.
- no
- Ban lawns! except in public places, like parks
- Monitor office buildings who do not follow suggestions on the use of water
- No. After conservation, city will increase the rate. We already save the water, if city need money, they can not depends increase rate!
- We need to educate residents on how much water is actually needed for flora to survive. My neighbors started watering their lawns immediately after the rain stopped. Due to the volume of rain, there is still enough water in the ground for us to go weeks without watering. I do not think people understand this and are wasting water now.
- Who is monitoring the median strip watering? I see sprinklers on when it's raining and water running down the street very often.
- drill more wells build more aquifers build more dams
- yes, stop building apartments and houses and parks that use more water!!!! Why keep building something that needs a commodity we are short on!!! Doesn't make sense.
- Spraying down concrete and other surfaces should be permitted when needed to avoid health issues
- Not allowing individuals to let their landscape just die. There are other options rather than blighting the neighborhood. It would be nice if the City would spend sometime educating the population about being good neighbors. Also water use. Such as rather than watering for 10 minutes at a time, watering for 3 minutes 3 hours apart, most timers will accommodate that, you put more water where you want it eliminates run off and saves one minute of water.
- Require new residents to install drought-tolerant landscaping

- Home owners should be allowed to power wash outside walls in preparation for painting. Also home car washing should be allowed as long as water is not running constantly from the hose
- I've lived here for over 40 years. Every drought(and there have been several) we cut back and to reward us you raise our rates. :-(
- Provide homeowners money to replace what we were required to let die by not being allowed to water.
- Having only one designated day a week to water sometimes forced us to water when we didn't need it because the plants would need it before the next available day. If there was some rain or cool days we could have waited to water, but knowing we have to wait an entire week we sometimes watered anyway in case the following 7 days were hot or dry.
- Yes, the amount of houses being built, and the water that is needed to support that housing. (Landscaping, parks, and more residents.)
- encourage and provide assistance for replacing grass with natural, drought tolerant yards
- That during normal rain fall years, underground water does not get saved from year to year. Once it is full, the excess is run off. On normal years, the rainfall replenishes underground water. So conserving during normal years at the same level of drought years is a waste. Also, some of the water used on landscape filters back down to under ground water reservoirs.
- Making people aware of the conservation program who rent. Renters water usage is usually included in their rent payment. The rent is not adjustable each month regardless of how much water you use.
- LOWER WATER AND SEWAGE BILL.
- better programs to help identify leaks. It would be great if you could get water assessments done on your property.

Attachment B

City of Morgan Hill Water Conservation E-mailed Input March – April 2017

Good morning,

I have lived in Morgan Hill for almost 4 years and in California for 67 years. The idea of an ordinance to mandate water conservation, is in my opinion, Orwellian.

Why don't you look at ways to capture the millions of gallons of water that have been wasted from the release from Anderson Dam?

I at times feel government creates problems that do not exist.

Just curious why we are so concerned about water and we keep building all these apartments.

Hundreds of them are being built, and we are still building and worried about water. Stop building and that would help our town save water. Worry about the congestion on 101, Santa Teresa, and Butterfield for all the commuters. Open 101 to 4 lanes and maybe that would help.

Thank you. I will be out of town April 6 for your conservation meeting. If I were there I would request consideration of weather-base initiated watering perhaps as a trial by registered home owners.

you asked us to cut back on our water usage and conserve due to the drought. We complied only to have our water bill increase!

you ask us to cut back on water usage because we need to continue to conserve for future needs.

- then you build apartments, houses, parks that all need to use the water you are telling us we're short on!

Start practicing what you preach . . . stop punishing us for doing a good job of conservation.

Here's a tip for you (Stop dumping it in the ocean) and the lower my water bill

I have sent medals before about water conservation and wanted to add a couple more, i dont think I can make the meeting

First off, I think each household should be given an allotment of water per month and have each homeowner decide how they would like to use their water. Having government decide for you is not how it should be. If I want to install water saving devices in my home so I can water my plants/grass as needed, I should be able to.

Ban water softners. They waste a lot of water and there are other ways to filter the water with no waste

Install hot water circulators. How many people actually know how much water they waste when the let the water run until it gets hot. Especially showers

Install smart irrigation controls that predict the weather before watering. They adjust more or less deeding on the weather of that day. Including how much rain..

Install irrigation sprinkler heads that not only save water, but do not throw the water too far into the air to prevent watering sidewalks, etc

There are so many ways to save water but it should be up to the homeowner to decide where. And if an allotment were given, all of us would realize who much we really use and save. And dont penalize people like myself that have been installing all types of water saving devices in my home for years. When we go on restrictions, you put out to everyone to save 20% from the previous year. If I am already saving, why do I need to save 20 more percent when other people could be abusing and the 20% form them is just going back to normal.. An allotment would solve all of this. You would also be saving money on the time you investigate people abusing. It would be on their bill.

My 2 cents.

The city should consider the option of stopping the housing boom in Morgan Hill, which would significantly reduce the amount of water the community needs.

While I would like to join the meeting Thursday to express my concerns, I may have a conflict. In case I can't attend, please advise the Council that you have received this. As I have mentioned before, the need to conserve water would be greatly reduced if we did not have so many new residents coming in to the City. Instead of restricting our water use, the City should take care of EXISTING resident's needs. In other words, only allow NEW residents when there is sufficient supply for the EXISTING residents WITHOUT severe restrictions! Thank you and please do not hesitate to contact me with any questions.



CITY COUNCIL STAFF REPORT

MEETING DATE: April 19, 2017

PREPARED BY: John Baty, Principal Planner/Development Services

APPROVED BY: City Manager

RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDSCS) AVAILABLE ALLOTMENTS FOR 2017 COMPETITION YEAR

RECOMMENDATION(S)

1. Adopt resolution establishing 215 Fiscal Year 2019/20 allotments for the 2017 RDSCS competition; and
2. Direct staff to schedule a study session to comprehensively review RDSCS outstanding processing and procedural questions including but not limited to multi-year project administration, adding allotments to agreements administratively, and the practice of swapping allotments.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

Maintaining Fiscal Responsibility

Preserving and Cultivating Public Trust

POLICY CONSIDERATIONS:

1. Should RDSCS building allotments awarded in 2017 and scheduled for construction in 2019-20, be reduced in accordance with the Planning Commission recommendation to 200? Should it remain at 215? Should it be reduced to another number?
2. Should the final authority to grant RDSCS time extensions remain with the Planning Commission?
3. Should Development Agreement Amendments that include a Planning Commission approved RDSCS time extension, be amended administratively rather than via City Council public hearing action?
4. Should a streamlined agreement process be developed to memorialize RDSCS commitments? Specifically, would the City Council support the amendment process being delivered by an RDSCS agreement adopted by Resolution, rather than a development agreement by Ordinance, to limit the need for extraordinary noticing and dual public hearings?

REPORT NARRATIVE:

A comprehensive update of the City of Morgan Hill's Residential Development Control

System (RDCS) was approved by voters on November 8, 2016 and became effective on March 1, 2017. The RDCS ordinance is codified in Chapter 18.78 of Title 18 (Zoning) of the Morgan Hill Municipal Code (attached).

Section 18.78.110 of the RDCS ordinance states:

- A. Beginning with the 2017 RDCS competition, the City may allocate no more than 215 allotments in any given year for residential development that must compete for allotments.
- B. No later than six months prior to the RDCS application submittal deadline each year, the Planning Commission may recommend and the City Council may reduce the number of available allotments for an RDCS competition year upon making certain findings.

At its hearing on March 14, 2017, the Planning Commission considered the planning team's recommendation to set the number of available Fiscal Year 2019/20 allotments for the 2017 RDCS competition at 215 (see attached Planning Commission staff report) and recommended a reduction to 200 allotments for the reasons summarized in the Prior Actions section below and pursuant to the attached Commission resolution.

The RDCS application submittal deadline is set six months from the City Council meeting date in which it establishes the number of allotments for the upcoming competition. If the City Council sets the number at its April 19, 2017 meeting, October 19, 2017, would be the deadline for this year's competition.

At the April 5, 2017 City Council meeting, the Council requested that potential RDCS process improvement items be brought forward for discussion. Several of the most critical discussion items are also a part of this report. However, staff suggests that the City Council schedule a study session on May 17, 2017 to comprehensively discuss a number of other outstanding processing and procedural questions including but not limited to multi-year project administration, adding allocations to agreements administratively, and the practice of swapping allotments. The discussion of a number of these issues potentially inform the NBS study that is currently in process reviewing the adequacy of existing fees for service, and set to determine fees for new permit activities. This discussion must occur prior to the completion of the fee study.

Analysis and Staff Recommendation

2017 Residential Development Control System Allotments

The purpose of this discussion is for the City Council to determine if the number of available Fiscal Year 2019/20 allotments for the 2017 RDCS competition should be reduced. The City Council may choose to allocate up to 215 allotments for the 2017 RDCS competition (i.e., no reduction), consider the Planning Commission's recommendation to reduce the number of available Fiscal Year 2019/20 allotments to 200, or establish an alternative number of available allotments. Should the City Council desire to reduce the number of allotments from 215, consistent with Measure S, that decision should be made based upon the five (5) findings listed in Section 18.78.110.B

of the RDCS Ordinance and analyzed below.

1. *Reducing the number of allotments is necessary to prevent a sudden spike in construction of new housing caused by a backlog of awarded allotments which have not yet been exercised.*

Reducing the number of allotments available for the 2017 RDCS competition for units that would likely be under construction in Fiscal Year 2019/20 would only be necessary if it is anticipated that Fiscal Year 2018/19 allotments would not meet their commence construction deadlines and would be granted extensions into the next fiscal year.

Given the new extension provisions (Section 18.78.170), which state that a project may receive no more than one extension for a maximum of one additional year period, projects with commence construction deadlines in earlier fiscal years (i.e., 2016/17 and 2017/18) would not be able to have project commence construction deadlines extended into Fiscal Year 2019/20.

For projects to receive an extension they would need to demonstrate, pursuant to Section 18.78.170.F (Eligibility Criteria) of the Morgan Hill Municipal Code, that any delay was outside of their control. In addition, the Planning Commission (or City Council on appeal) may not approve an extension request due to reasons such as difficulties obtaining financing, changes to the project not required by the City or other public agency, applicant delays responding to requests from the City or other public agency, personal circumstances of the applicant, or changes in property ownership.

The attached table details projects which have successfully received allotments via the RDCS, with the corresponding number of outstanding allotments and the fiscal year that they are scheduled to commence construction.

2. *Public infrastructure and services are or will be inadequate to accommodate the new development. Public infrastructure and services include public schools, the transportation system, parks, police, fire service, storm drainage, wastewater, and water service.*

It is anticipated that public infrastructure and services would be available to accommodate new development associated with 215, Fiscal Year 2019/20 allotments.

3. *Other conditions are present that necessitate a reduction in the number of available allotments to achieve the RDCS purpose as stated in Section 18.78.010 (RDCS Purpose and History).*

No other conditions are present that would conflict with the purpose of the RDCS.

4. *Downtown and/or Agricultural Preservation Set-Aside allotments have been issued. The number of annual allotments must be reduced to address the issuance of any set-aside allotments.*

No Downtown or Agricultural Preservation Set-Aside allotments have been issued under Measure S for the 2019-20 construction cycle. Downtown allotments have been issued under the previous RDCS; however, construction commencement of those allotments is anticipated in Fiscal Year 2017/18, and therefore not anticipated to overlap with units that would be under construction if awarded through the 2017 RDCS competition.

5. *There is insufficient demand necessary to produce high quality developments or public benefits.*

There is no indication that there would be insufficient demand necessary to produce high quality developments and public benefits.

Based on the above analysis of the required findings for reduction in the number of available allotments, staff recommends that the City Council maintain the 215 Fiscal Year 2019/20 allotments for the 2017 RDCS competition.

Measure S Process Improvements

The purpose of this discussion is to consider whether modifications to the non-voter approved sections of Chapter 18.78 (Measure S) of the Morgan Hill Municipal Code are desired.

1. Development Agreement Extensions

Section 18.78.170 (Extensions) of the Morgan Hill Municipal Code governs RDCS time extensions. The Planning Commission has the authority to approve or deny an extension, with the City Council having the authority to review a time extension only upon appeal. Based on current municipal code language, the City Council would not review RDCS time extensions or have the ability to alter an extension unless an appeal of the Planning Commission action occurred.

The City has received 14 Development Agreement time extensions that would potentially extend commencement timing for 204 building allotments. Two of these requests, for 9 allotments, were made for projects that do not yet have a Development Agreement. They are therefore eligible to receive one, 6-month administrative extension. The Planning Commission will be considering the other 12 RDCS time extension requests for 195 building allotments at its meeting on April 25, 2017. When considering the extensions, the Planning Commission will consider the following finding:

"The Planning Commission may approve an extension only when the City or other public agency is responsible for a delay in the issuance of permits or granting approvals required to exercise the allotments, or due to an earthquake, flood, fire, or other severe act of nature outside of the applicant's control. It is the applicant's

responsibility to provide evidence that the request is consistent with this requirement.”

The Planning Commission cannot approve a time extension because an applicant has difficulties obtaining financing, changes the project (not required by the City), has delays responding to requests from the City, or other personal circumstances.

As the Ordinance is currently written, the City Council will then be asked to amend project development agreements for these time extensions at the meeting on May 17, 2017; however, the City Council will not be asked to consider the extension requests, only to adjust the agreements to be consistent with Planning Commission action.

The Planning team seeks to re-affirm that the City Council desires to support RDCS time extension authority remain with the Planning Commission. In the alternative, the City Council could request that an ordinance amendment be processed with the RDCS Competition Manual requiring that future RDCS time extensions require City Council approval.

2. Development Agreement Amendments

As currently constructed in Measure S, the City Council does not approve or review RDCS time extensions. However, Section 18.78.120.J (RDCS Procedures) of the Morgan Hill Municipal Code requires an applicant enter into a development agreement with the City confirming the specific development commitments, including allocations and timing. Therefore, when an RDCS time extension is approved by the Planning Commission, as a matter of procedure, the City Council would review and approve amendments to a Development Agreement to include the new development schedule.

Should the City Council maintain this process, in which a development agreement amendment includes the Planning Commission approved RDCS time extension, would the City Council allow the development agreement to be administratively approved by the City Manager? Standard procedures require a development agreement be considered by the Planning Commission at a public hearing, with a recommendation to the City Council. RDCS development agreements are approved by Ordinance. A development agreement can be modified or canceled by mutual consent. Development agreements can specify procedures for administrative approval of minor amendments by mutual consent of the applicant and City Manager. The City Council could request that future agreements provide the ability for administrative approval of RDCS time extensions, following Planning Commission approval.

3. Residential Development Agreements.

The City's process for statutory Development Agreements is specified in Chapter 18.80 (Development Agreements) of the Morgan Hill Municipal Code. This Chapter applies to Development Agreements that are approved in accordance with Government Code Sections 65864—65869.5. Statutory Development Agreements bind a developer to existing zoning laws, as well as all conditions of approval (including exactions), and

provide additional public benefits to the City, such as infrastructure improvements. The RDCS development agreements are not statutory Development Agreements. RDCS development agreements provide a developer certainty of awarded building allotments, and in exchange the City is provided public benefit commitments for a potential development. However, RDCS development agreements lack a number of other provisions of statutory agreements. The City has been processing these non-statutory RDCS development agreements under the procedures for statutory Development Agreements, and adopting them by Ordinance. This creates confusion for all parties due to the term “Development Agreement” indicating an agreement consistent with the Government Code.

Given the above assumptions, would the City Council support a streamlined agreement process, which could cut the processing time by several months by using an alternative type of agreement that would be approved by resolution rather than an ordinance? A statutory Development Agreement requires a public hearing before the Planning Commission, and then, because it is adopted by ordinance, two public hearings (a first and second reading plus a 30-day effective date) before the City Council. The Development Agreement ordinance is not effective for 30 days after final adoption. Providing an example, a project was randomly selected and reviewed for timing. DA-15-04 – Secretariat-Quail Meadows. PC noticing: early June 2015; PC hearing 6/23/15; CC Hearing No. 1, Ordinance introduced 7/15/15; CC Hearing No. 2 8/5/15 Adoption; Effective Date 9/5/15.

4. Next Steps

With the examination of the Measure S implementation issues discussed above, additional implementation questions requiring Council direction have surfaced regarding items such as multi-year project administration, adding allotments to agreements administratively after the first year, the past practice of swapping allotments and varying year commitment administration, definition of delay, etc. The Planning team recommends holding a workshop with the City Council to review these specific implementation questions and receive direction from the Council on future ordinance amendments.

COMMUNITY ENGAGEMENT: Collaborate

Planning Commission workshops on the RDCS are open to the public and include opportunities for community members to participate in discussions by asking questions and providing input on the development of the RDCS Competition Manual and Implementation of the RDCS.

ALTERNATIVE ACTIONS:

- Adopt a resolution supporting the Planning Commission’s recommendation to reduce the number of available Fiscal Year 2019/20 allotments from 215 to 200; or
- Adopt a resolution reducing the number of available Fiscal Year 2019/20 allotments from 215 to some other number.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

At its hearing on March 14, 2017, the Planning Commission recommended, with a 4-3 vote, that the number of available Fiscal Year 2019/20 allotments for the 2017 RDCS competition be reduced from 215 to 200. The members of the Commission that supported the recommended reduction in allotments did so with the following rationale:

- A slight correction is needed to ensure that by the year 2035, the population ceiling of 58,200 would not be exceeded, particularly considering the base projected year 2020 population is higher than previously expected (i.e., greater than 48,000).
- Recently approved Downtown allotments may be under construction at the same time as the first units approved under Measure S.
- Allotments approved under the previous RDCS (Measure C), if extended, could be under construction at the same time as Measure S units.

FISCAL AND RESOURCE IMPACT:

For any reduction from 215 allotments, there may be a potential loss of RDCS related revenues received from developers.

CEQA (California Environmental Quality Act):

Review and reduction of the number of available RDCS allotments is not subject to the California Environmental Quality Act (CEQA) as no physical changes in the environment will occur from the proposed action.

LINKS/ATTACHMENTS:

1. Chapter 18.78 Residential Development Control System
2. Planning Commission Reso No. 17-07
3. Remaining Allotments
4. Planning Commission Staff Report-March 14, 2017
5. CC- Resolution - Set aside allotments

Chapter 18.78 – Residential Development Control System

Sections:

18.78.010	RDSC Purpose and History
18.78.020	Amendments to RDSC Ordinance
18.78.030	Transitional Provisions
18.78.040	Population Limit
18.78.050	Allotments– General
18.78.060	Downtown and Agricultural Preservation Set Asides
18.78.070	Urban Service Area Boundaries
18.78.080	Competition for Allotments
18.78.090	Competition Categories
18.78.100	Competition Manual
18.78.110	Number of Available Allotments
18.78.120	RDSC Procedures – Application Submittal and Review, Project Scoring, and Award of Allotments [CCA]
18.78.130	Pre-Application Review [CCA]
18.78.140	Project Phasing [CCA]
18.78.150	Land Use Entitlements Required [CCA]
18.78.160	Expiration of Allotments [CCA]
18.78.170	Extensions [CCA]

Note: Sections which may be amended or repealed by the City Council without voter approval are identified with the note “[CCA]” following the section heading.

18.78.010 RDCS Purpose and History

A. Purpose. This chapter establishes requirements for the Morgan Hill Residential Development Control System (RDCS). The purpose of the RDCS is to:

1. Establish a limit on the amount and rate of residential growth in Morgan Hill through 2035.
2. Encourage high quality residential development that enhances residents' quality of life.
3. Ensure that new residential development does not adversely impact the level of public services and infrastructure provided for current and future residents.
4. Promote a diverse stock of high quality housing to meet the full range of housing needs within Morgan Hill.
5. Encourage new residential development to contribute community benefits that enhance the public health, safety, and welfare.
6. Encourage an orderly, efficient, and sustainable residential development pattern.
7. Advance the goals and policies of the General Plan and Downtown Specific Plan.
8. Provide certainty to residents that residential development patterns will reflect local goals and values.

B. History. The RDCS is a continuation and refinement of the voter-approved growth management system first established in Morgan Hill in 1977. The RDCS was originally approved by voters in response to concerns over the amount and pace of residential growth and the impacts of this growth on city services and infrastructure. RDCS ballot measures adopted by the voters include the following:

1. Measure E (1977), which set a target population of 30,000 for year 2000 and established the RDCS.
2. Measure P (1990), which refined the RDCS and established a population ceiling of 38,800 for 2010.
3. Measure C (2004), which again refined the RDCS and set the population ceiling to 48,000 for 2020.
4. Measure F (2006) and Measure A (2009), which established exemptions for units constructed Downtown.
5. Measure [TBD] (2016), which was adopted in conjunction with the City's General Plan Update to further refine the RDCS and set the population ceiling to 58,200 for 2035.

18.78.020 Amendments to RDCS Ordinance

This ordinance (Chapter 18.78 of the Morgan Hill Municipal Code) was adopted by the voters of Morgan Hill in 2016 and may be amended or repealed only with voter approval except as specified in subsections A and B below.

A. Amendments Allowed without Voter Approval. The following sections may be amended by an ordinance duly adopted by the City Council in accordance with state law:

1. 18.78.120 (RDSCS Procedures – Application Submittal and Review, Project Scoring, and Award of Allotments).
2. 18.78.130 (Pre-Application Review).
3. 18.78.140 (Project Phasing).
4. 18.78.150 (Land Use Entitlements Required).
5. 18.78.160 (Expiration of Allotments).
6. 18.78.170 (Extensions).

B. Reorganizing and Renumbering of Municipal Code. The Morgan Hill Municipal Code may be reorganized or readopted in a different format, and individual provisions may be renumbered or reordered, in the course of ongoing updates of the Municipal Code, provided that the provisions of this ordinance adopted by the voters of Morgan Hill in 2016 remains in the Municipal Code unless earlier repealed or amended by the voters or by the City Council in accordance with subsection A, above.

18.78.030 Transitional Provisions

- A. Replacement of Prior RDSCS Ordinance.** This ordinance repeals and replaces in its entirety the prior RDSCS ordinances, previously codified in Division IV (Residential Development Code) of Title 18 (Zoning) of the Morgan Hill Municipal Code.
- B. Prior Actions Remain Valid.** Any City action taken or approval granted pursuant to the prior RDSCS ordinance is not affected by the enactment of this ordinance. All future actions and approvals shall comply with this ordinance.
- C. Previously Approved Allotments.**
1. Allotments awarded and exercised prior to March 1, 2017 shall remain valid and are not affected by this ordinance.
 2. Allotments awarded prior to March 1, 2017 but which have not yet been exercised shall remain valid until the expiration date established at the time of allotment or as established in the project's Development Agreement. Applicant requests for an extension to the date by which these allotments must be exercised and City action on these requests are governed by Section 18.78.170 (Extensions) of this ordinance.
- D. No Changes to Prior Projects Required.** No provision of this ordinance shall require any change in the plans, construction, or design of the portion of a project which received allotments prior to March 1, 2017.

18.78.040 Population Limit

- A. Maximum Population.** Morgan Hill's population as of January 1, 2035 shall not exceed 58,200.
- B. Ceiling, Not a Target.** The 58,200 population limit is a maximum ceiling, not a target. The City is not required to actively strive to reach 58,200 residents by 2035. Instead, the City shall ensure that Morgan Hill's population does not exceed this limit by 2035 while continuing to meet the full range of housing needs in Morgan Hill.

- C. Limit to all Population Growth.** Morgan Hill's population limit is intended to limit all population growth, including growth from new housing exempt from receiving RDCS allotments as specified in Section 18.78.050.C (Exemptions from Allotments) and set-aside allotments awarded as allowed by Section 18.78.070 (Downtown and Agricultural Preservation Set Asides). The number of allotments available each year and the process to adjust this number is intended to ensure that residential growth from all sources does not result in a population that exceeds the population limit of 58,200 residents in 2035.

18.78.050 Allotments – General.

- A. Allotments Based on Population Limit.** The City Council shall establish a maximum number of residential allotments available each year, not to exceed 215 allotments per year, such that the population in Morgan Hill does not exceed 58,200 as of January 1, 2035.
- B. Allotment Requirement.** A residential allotment authorizes an applicant to apply for land use entitlements and to construct these units should the City approve these entitlements. No residential unit may be developed without first obtaining an allotment, except for exempt units specified in Section C below.
- C. Exemptions from Allotments.** The following types of residential projects may be developed without first receiving any allotments:
1. One single-family home on a lot existing as of March 1, 2017;
 2. Secondary dwelling units;
 3. The conversion of an existing single-family home into a duplex provided that a new detached primary structure is not constructed on the lot or lots;
 4. Assisted living/nursing homes; and
 5. The annexation of existing dwelling units outside of City limits into the City.
- D. Timing of Allotment Use.** To maintain a steady rate of residential development, allotments must be used ("exercised") by a specific date as established in Section 18.78.160 (Expiration of Allotments). Allotments that are not used by the specified date expire and are no longer valid. Projects with expired allotments must reapply for allotments in the same manner as all other new proposed projects requesting allotments.
- E. Rate of Growth.** The Planning Commission shall allocate available allotments each year with the goal of maintaining a steady rate of growth.
- F. Cancellation of Allotment Awards.** The City Council may cancel the process to award allotments upon finding that public services and facilities are inadequate to accommodate additional residential development and that awarding allotments would significantly impact the public health, safety and welfare.

18.78.060 Downtown and Agricultural Preservation Set Asides

- A. General.** Through 2035 a certain number of allotments are set aside for residential projects in Downtown Morgan Hill and for projects that contribute to the City's agricultural preservation goals.
- B. Eligibility.** To be eligible to receive set-aside allotments, a project must receive at least 80 percent of the total maximum score in the RDCS competition criteria.
- C. Competition Not Required.** Eligible projects are not required to compete for set-aside allotments. Instead, allotments are issued to eligible projects by the Planning Commission on a first-come, first-served basis up to the total number of available set-aside allotments each year.
- D. Number of Available Set-Aside Allotments.**
 - 1. **Downtown Set-Asides.** Through 2035, 500 allotments are set aside for housing within the Downtown Specific Plan boundaries set forth in the City's General Plan as of July 27, 2016. No more than 100 set-aside allotments are available for downtown projects within a single year.
 - 2. **Agricultural Preservation Set-Asides.** Through 2035, 300 allotments are set-aside for housing that may be applied anywhere within the City. Recipient projects must directly establish permanent agricultural conservation easements within the City Limits or within the City's Priority Agricultural Conservation Area. Easements must be established within the City's Sphere of Influence in a manner consistent with the Citywide Agricultural Lands Preservation Program. The number of allotments granted to an eligible project shall be commensurate with the community benefit obtained from the resulting preservation of agricultural lands. No more than 35 set-aside allotments are available for agricultural preservation projects within a single year.

18.78.070 Urban Service Area Boundaries

- A. Allotments within Urban Service Area Only.** The City may approve allotments only for projects located within the City's Urban Service Area boundaries.
- B. Application to Expand Urban Service Area.** The City may apply to the Santa Clara County Local Agency Formation Commission to expand the Urban Service Area boundary of the City to accommodate additional residential development if the City Council first makes all of the following findings supported by substantial evidence on the record of a duly noticed public hearing on the matter:
 - 1. The expansion is necessary to accommodate the amount, rate, location, and type of residential development envisioned in the General Plan.
 - 2. The expansion is consistent with any City adopted plans, policies, or ordinances specifying a preferred sequence of future annexations.
 - 3. Public services and infrastructure are or will be sufficient to accommodate development resulting from the expansion of the Urban Service Area boundary. Additional development will not adversely impact public services and infrastructure, including public schools, the transportation system, parks, police, fire service, storm drainage, wastewater, and water service.

4. The expansion supports an orderly development pattern that prioritizes infill development adjacent to existing development and served by existing public services and infrastructure.
5. The expansion is necessary to accommodate the housing and/or employment needs of Morgan Hill.
6. The expansion promotes fiscal responsibility, cost-effective service delivery, and the City's ability to plan for and adequately maintain urban services over time.

18.78.080 Competition for Allotments

- A. Annual Competition.** Each year the City may conduct a competition for allotments for development of residential units, except when the City Council cancels the competition allowed by Paragraph D below. Projects exempt from the RDCS competition as specified in Section 18.78.050.C (Exemptions from Allotments) and projects eligible for set-aside allotments as specified in Section 18.78.060 (Downtown and Agricultural Preservation Set Asides) do not participate in the competition.
- B. Minimum Score.** To be eligible to compete for allotments, a project must receive a minimum score of at least 80 percent of the total maximum score in the RDCS competition criteria.
- C. Award of Allotments.** The Planning Commission shall award allotments based on a scoring of projects using criteria established by the City Council pursuant to Section 18.78.100 (Competition Manual). The Planning Commission may award a project fewer than the total number of allotments requested by the applicant. In such a case, the Planning Commission may award the surplus allotments to the next highest scoring projects if doing so would help create a more balanced and equitable distribution of allotments and help to achieve the goals of the General Plan.
- D. Cancellation of Allotment Awards.** The City Council may cancel the process to award allotments upon finding that public services and facilities are inadequate to accommodate additional residential development and that awarding allotments would significantly impact the public health, safety and welfare, or if there is insufficient demand necessary to produce high quality developments.

18.78.090 Competition Categories

- A. General.** Each year the City Council may establish competition categories for certain types of projects. Projects within a competition category will compete for allotments only with other projects in the same competition category. For each competition category, the City Council shall identify the number of allotments available for projects competing within the competition category.
- B. Example Competition Categories.** Example of competition categories may include, but are not limited to, projects within the Monterey Road corridor, small projects (less than 15 units), senior housing, vertical mixed use, and multi-family rental.
- C. Affordable Housing.** When establishing competition categories, the City Council shall ensure that an adequate number of allotments are available for affordable housing projects consistent with the City's Regional Housing Needs Allocation (RHNA) and adopted Housing Element.

18.78.100 Competition Manual

The City Council shall adopt and maintain an RDCS Competition Manual that establishes criteria and point values for the RDCS competition. The Competition Manual shall define terms and provide detail as needed to ensure that the City awards points consistently for all competing projects.

A. Competition Criteria. The Competition Manual shall identify the criteria that the City will use to award allotments to competing projects. Competition criteria in the Competition Manual shall advance the nine City objectives below, which may be modified only with voter approval.

1. **Schools.** Provide safe and convenient access to schools and ensure high quality schools in Morgan Hill.
2. **Location.** Encourage infill development adjacent to existing development and close to existing community services and facilities.
3. **Affordable Housing.** Increase the supply of housing affordable to households of all incomes levels.
4. **Housing Diversity.** Provide a variety of housing types and sizes to meet the range of housing needs within Morgan Hill.
5. **Parks and Open Space.** Provide high quality parks and recreational facilities and protect and preserve open space and productive agricultural land.
6. **Environmental Protection.** Increase energy efficiency, renewable energy, energy conservation, water conservation, habitat protection, and achieve other sustainability goals.
7. **Transportation.** Support a balanced and efficient transportation system for pedestrians, cyclists, public transit, and automobiles that maintains quality of life in residential neighborhoods.
8. **Infrastructure and Services.** Emphasize efficient use of public infrastructure and services.
9. **Project Quality.** Ensure quality design related to general livability, public safety, neighborhood form, site planning, building design, and landscape design.

B. Points. The Competition Manual shall establish points available for competition criteria that advance the City goals identified in Section A above.

1. **Limitations on Number of Points and Changes.** The total number of points for each of the nine objectives above (e.g., schools, location, affordable housing, etc.) shall be no more than 20 percent and no less than 5 percent of the total number of available RDCS competition points. The City Council may adjust the number of points within each objective by no more than 15 percent of the points available within the objective the previous year.
2. **Intent of Points.** Points shall be awarded only for projects that provide for excellence in project design and provide a community benefit that exceeds minimum requirements of the City and other governmental agencies. All projects must comply with City standards established in the General Plan, Municipal Code, and other City rules and regulations together with other applicable laws.

C. Revisions to Criteria and Points. In order to promote long term consistency and reduce uncertainty for applicants for residential development, the City Council shall amend competition criteria and point values in the Competition Manual only when necessary and no more frequently than once a year. The Planning Commission shall recommend to the City Council any revisions to the competition criteria and/or point values. If amended, competition criteria and/or point values shall be established no later than six months prior to the RDCS application submittal deadline.

18.78.110 Number of Available Allotments

A. Annual Allocations. Beginning with the competition in year 2017, the City may allocate no more than 215 allotments in any given year for residential development that must compete for allotments. Set-aside allotments as described in Section 18.78.060 (Downtown and Agricultural Preservation Set-Asides) may be awarded in addition to the annual allotment maximum.

B. Annual Reductions to Available Allotments. Each year staff shall provide the Planning Commission with an assessment of conditions, per the findings below, that may necessitate a reduction in the number of available allotments. No later than six months prior to the RDCS application submittal deadline each year, the Planning Commission may recommend and the City Council may reduce the number of available allotments for an RDCS competition year upon finding that:

1. Reducing the number of allotments is necessary to prevent a sudden spike in construction of new housing caused by a backlog of awarded allotments which have not yet been exercised.
2. Public infrastructure and services are or will be inadequate to accommodate the new development. Public infrastructure and services include public schools, the transportation system, parks, police, fire service, storm drainage, wastewater, and water service.
3. Other conditions are present that necessitate a reduction in the number of available allotments to achieve the RDCS purpose as stated in Section 18.78.010 (RDCS Purpose and History).
4. Downtown and/or Agricultural Preservation Set-Aside allotments have been issued. The number of annual allotments must be reduced to address the issuance of any set-aside allotments.
5. There is insufficient demand necessary to produce high quality developments or public benefits.

18.78.120 RDCS Procedures – Application Submittal and Review, Project Scoring, and Award of Allotments [CCA]

- A. Pre-Competition Orientation.** The City shall hold an open pre-competition orientation meeting at least four months prior to the RDCS application submittal deadline. At this meeting the City shall review with prospective applicants the RDCS schedule, application requirements, and competition criteria for awarding points.
- B. Pre-Application Review.** To be eligible to submit an RDCS application, applicants must have completed Pre-Application Review as described in Section 18.78.130 (Pre-Application Review).
- C. Applications.** Applicants shall submit an RDCS application consisting of the information and materials required by the City. Applications shall be submitted on a date determined by the Community Development Director. Applications may not be modified after submittal except as otherwise provided for in this chapter.
- D. General Plan and Zoning Consistency Determination.** After deeming an RDCS application complete, the Community Development Director or the Director's designee shall evaluate each application for consistency with the City's General Plan and Zoning Code and reject any applications which are found to be inconsistent with either the City's General Plan or Zoning Code. The Community Development Director's determination is appealable to the City Council. The City Council may direct the applicant to make modifications to the application and if these modifications bring the application into compliance with the General Plan and Zoning Code the application may continue to compete for allotments.
- E. Staff Scoring of Applications.** After deeming an RDCS application complete and consistent with the General Plan and Zoning Code, the Community Development Director or Director's designee shall recommend point assignments to projects using scoring criteria established by the City Council. City staff shall forward recommended scoring to the Planning Commission.
- F. Planning Commission Hearings – Project Scores.** The Planning Commission shall hold a public hearing to consider the scoring recommendation and to make a final determination of project scoring.
- G. Staff Recommendation – Award of Allotments.** After the completion of the appeal period following the Planning Commission determination of project scoring, the Community Development Director or the Director's designee shall recommend the award of allotments based on the project scoring. City staff shall forward recommended award of allotments to the Planning Commission.
- H. Planning Commission Hearings – Award of Allotments.** The Planning Commission shall hold a public hearing to consider the award of allotment recommendation and to award allotments based on the project scoring. The Planning Commission may award fewer than the total number of allotments requested for a project and may award allotments to lower-scoring projects if doing so would create a more balanced and equitable distribution of allotments and help to achieve the goals of the General Plan.
- I. Appeals.** All decisions of the Planning Commission may be appealed to the City Council pursuant to Municipal Code Chapter 18.64.

- J. Development Agreement.** The City may issue building permits only after the applicant has entered into a Development Agreement with the City confirming the specific development commitments made by the applicant at the time the Planning Commission awarded allotments.

18.78.130 Pre-Application Review [CCA]

- A. Pre-Application Review Requirement.** Applicants may apply for allotments only after completing the Pre-Application Review process. Pre-Application Review is required only once for a development project – projects which previously received allotments and reapply for additional allotments in subsequent competitions are not required to complete Pre-Application Review again prior to reapplication. Significant changes to a project, as determined by the Community Development Director, will require Pre-Application Review.
- B. Project Quality and Consistency.** Pre-Application Review allows City staff to evaluate the overall project quality as well as consistency with the General Plan, any applicable specific plan, the Morgan Hill Municipal Code, Architectural Review Handbook, and other applicable City rules and regulations. Pre-Application Review is intended to help ensure that projects receiving allotments can be built consistent with their approved RDCS application.
- C. Timing and Schedule.** The Community Development Director shall establish a schedule for submittal of materials and City staff review that provides sufficient time for the completion of Pre-Application Review prior to the RDCS application submittal date.
- D. Project Information Required.** Applicants shall submit information and materials for Pre-Application Review necessary to present the project concept and demonstrate compliance with City land use and neighborhood design policies in the General Plan. Detailed architectural plans are not required. Materials submitted for Pre-Application Review become part of the public record and are not confidential.
- E. Multi-Department Review.** The City Planning Division of the Community Development Department, Engineering Division of the Public Works Department, and other City staff involved in the land use entitlement approval process shall participate in the Pre-Application Review.
- F. Review Letter.** After reviewing the submittal and meeting with the applicant, the Community Development Director shall provide applicants with a Pre-Application Review Letter either making a preliminary finding that for the purposes of the RDCS competition the project is consistent with City policies and ordinances, or recommending changes to a project necessary to achieve consistency with those policies and regulations. The Pre-Application Review Letter is not a project approval or final determination by the City as to a project's conformity to City policies and ordinances.
- G. Applicant Response.** Applicants shall submit their Pre-Application Review Letter with their allotment application and any response, if needed, detailing the changes made to the project to address staff comments, or reasons why changes were not possible or desirable.
- H. Planning Commission Consideration.** The Planning Commission shall consider the Pre-Application Review Letter and the applicant's response to the letter when awarding competition points under the Project Quality criteria category.

18.78.140 Project Phasing [CCA]

- A. Multi-Year Allotments.** The Planning Commission may distribute allotments awarded to a single project over multiple years as allowed by this section.
- B. Intent.** Multi-year allotments are intended to support a fair and efficient RDCS process by allowing high quality projects constructed over multiple years to compete one time for allotments.
- C. Eligibility.** The Planning Commission shall have the discretion to determine which projects are eligible for multi-year allotments.
- D. Number of Years.** The Planning Commission may award allotments over a period of up to:
 - 1. Three years for projects with less than 100 units; and
 - 2. Five years for projects with 100 or more units.
- E. Findings.** The Planning Commission may award multi-year allotments to projects only upon finding that:
 - 1. The multi-year allotments will support a steady rate of growth and help to avoid a sudden spike in construction of new housing;
 - 2. The multi-year allotments will help the City to plan for adequate public services and infrastructure to accommodate new development;
 - 3. The City will benefit from requiring the applicant to compete only once to receive allotments for all project phases; and
 - 4. An adequate number of allotments will remain in future years to accommodate a range of housing types to meet Morgan Hill's housing needs.
- F. Use of Allotments.**
 - 1. Multi-year allotments must be exercised by the date specified by the Planning Commission consistent with Section 18.78.160 (Expiration of Allotments).
 - 2. If allotments for one year are not exercised by the specified expiration date, all multi-year allotments awarded to the project shall expire.
- G. Regular Rate of Growth.** Allotments awarded for future years shall be subtracted from the number of allotments available to other projects in those years so as to maintain a regular rate of growth consistent with the RDCS.

18.78.150 Land Use Entitlements Required [CCA]

- A. Authorization to Apply for Entitlements.** An award of an allotment is not an entitlement to develop. Allotments authorize an applicant to apply for land use entitlements and to construct these units should the City approve the required land use entitlements.
- B. Effective Allotment.** Applicants may submit an application for land use entitlements only after receiving an award of allotment. Planned Development Zoning applications may be filed prior to receiving an award of allotment.

- C. Finding of Compliance with Approved RDCS Application.** To approve land use entitlements, the City must find that the project substantially complies with the RDCS application as approved by the Planning Commission.

18.78.160 Expiration of Allotments [CCA]

- A. Exercise of Allotment.** Allotments must be exercised within 30 months of approval or by an alternative date specified in the Development Agreement. An allotment is considered exercised with the recordation of a final map, issuance of a grading permit, or the commencement of construction if no final map or grading permit is required. The City may grant an extension to an allotment only as permitted under Section 18.78.170 (Extensions).
- B. Expiration.** Allotments that are not exercised consistent with the terms above expire the day following the exercise date specified in the Development Agreement.
- C. Reapplication.** Projects with expired allotments must reapply for allotments in the same manner as all other new proposed projects requesting allotments.

18.78.170 Extensions [CCA]

- A. General.** The City may approve an extension to the date by which an allotment must be exercised only as allowed by this section.
- B. Extension Request.** Extension requests shall be submitted in writing to the Community Development Department a minimum of 60 days prior to the allotment expiration date and shall describe how the project meets the extension eligibility criteria in Subsection F below.
- C. Administrative Extension.** For projects that received allotments under the previous RDCS, but have not secured a Development Agreement, the Community Development Director may issue a six month extension.
- D. Number and Duration.** In addition to receiving an Administrative Extension and/or prior extensions under the previous RDCS, a project may receive no more than one extension for a maximum one additional year period. Phased projects may only receive one one-year extension.
- E. Public Notice and Hearing.** The Planning Commission shall review and act on an extension request at a noticed public hearing.
- F. Eligibility Criteria.**
1. The Planning Commission may approve an extension only when the City or other public agency is responsible for a delay in the issuance of permits or granting approvals required to exercise the allotments, or due to an earthquake, flood, fire, or other severe act of nature outside of the applicant's control. It is the applicant's responsibility to provide evidence that the request is consistent with this requirement.
 2. The Planning Commission may not approve an extension for any reason other than in Paragraph E.1 above, including but not limited to difficulties obtaining financing, changes to the project not required by the City or other public agencies, applicant delays responding to requests from the City or other public agency, personal circumstances of the applicant, or changes in property ownership.

- G. Appeals.** Planning Commission denial of a requested extension may be appealed to the City Council. The City Council may grant the appeal only upon finding that the request complies with the eligibility criteria in Paragraph F above.
- H. Effect of Denial.** If a request for extension is denied, the allotments shall expire the day following the exercise date specified in the Development Agreement. Projects with expired allotments must reapply for allotments in the same manner as all other new proposed projects requesting allotments.

RESOLUTION NO. 17-07

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING THE NUMBER OF FISCAL YEAR 2019/20 ALLOTMENTS AVAILABLE FOR THE 2017 RESIDENTIAL DEVELOPMENT CONTROL SYSTEM COMPETITION

WHEREAS, building allotments under the City's Residential Development Control System would be available in Fiscal Year 2019/20; and

WHEREAS, no later than six months prior to the RDCS application submittal deadline, the Planning Commission is required to provide a recommendation to the City Council regarding the total number of available building allotments for the competition year; and

WHEREAS, the Planning Commission has reviewed recommendations contained in the March 14, 2017 staff report on this item, and has determined the distribution of building allotments contained therein, is consistent with the General Plan and Chapter 18.78 of the Morgan Hill Municipal Code; and

WHEREAS, testimony received at the March 14, 2017 meeting has also been considered in the review process;

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL THAT:

SECTION 1: Pursuant to Section 18.78.110 of the Morgan Hill Municipal Code, the Planning Commission recommends the City Council reduce the number of Fiscal Year 2019/20 allotments available for the 2017 Residential Development Control System (RDCS) competition from 215 to 200 based on the following findings:

1. *Reducing the number of allotments is necessary as there will be a sudden spike in construction of new housing caused by a backlog of awarded allotments.*

Any allotments approved under the previous RDCS (Measure C), if extended, could be under construction at the same time as Measure S units.

2. *Public infrastructure and services are or will be inadequate to accommodate the new development. Public infrastructure and services include public schools, the transportation system, parks, police, fire service, storm drainage, wastewater, and water service.*

It is anticipated that public infrastructure and services would be available to accommodate new development associated with 215 or the recommended 200 Fiscal Year 2019/20 allotments.

Resolution No. 17-07

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3. *There are other conditions present that necessitate a reduction in the number of available allotments to achieve the RDCS purpose as stated in Section 18.78.010 (RDCS Purpose and History).*

A slight correction is needed to ensure that by the year 2035 the population ceiling of 58,200 would not be exceeded, particularly considering the base projected year 2020 population is higher than previously expected (i.e., greater than 48,000). A revised estimated base population of approximately 49,000 includes all awarded allotments and assisted living units that have been approved, but likely not accounted for in the Department of Finance yearly population estimates.

4. *Downtown Set-Aside allotments have been issued under Measure A, prior to March 1, 2017.*

The City Council issued 83 Measure A Downtown allotments (Sunsweet Project) on February 15, 2017. These allotments were issued prior to the March 1, 2017 effective date of Measure S. The 83 Measure A allotments have been considered in the overall backlog of awarded allotments; however, because they may be under construction at the same time as the first units approved under Measure S, a small reduction in allotments is necessary over time to account for an anticipated spike.

5. *There is insufficient demand necessary to produce high quality developments or public benefits.*

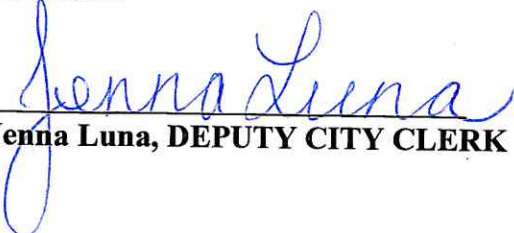
There is no indication that there would be insufficient demand necessary to produce high quality developments and public benefits.

PASSED AND ADOPTED THIS 14th DAY OF MARCH 2017, AT A REGULAR MEETING OF THE MORGAN HILL PLANNING COMMISSION BY THE FOLLOWING VOTE:

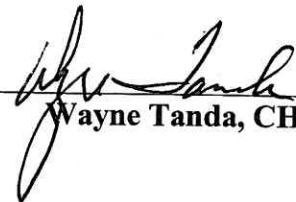
AYES	COMMISSIONERS:	TANDA, TOOMBS, MULLER, DOWNEY
NOES	COMMISSIONERS:	MARTINEZ, OROSCO, MCKAY
ABSTAIN	COMMISSIONERS:	NONE
ABSENT	COMMISSIONERS:	NONE

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ATTEST:


Jenna Luna, DEPUTY CITY CLERK

APPROVED:


Wayne Tanda, CHAIR

Attachment: Planning Commission Reso No. 17-07 (1092 : 2017 RDCS AVAILABLE ALLOTMENTS)

Remaining Allotments (by Fiscal Year)*

Project	Commence Construction							
	FY 16/17			FY 17/18			FY 18/19	FY 19/20
	Extended	Extension Request	2014	Extended	Downtown	2015	2016	2017
MMC-04-10 E. Dunne-Kruse				3				
MC-05-03 Monterey-Gunter		15						
MC-12-09 Diana-Sherimar	2							
MC-13-15 Monterey-Young	37							
MC-13-10/11 Cochrane-CalAtlantic	7							
MC-13-13 Monterey-City Ventures	35							
MC-13-18 Butterfield-Dividend		41						
MMC-13-20 Dunne-Leung		6						
MC-13-15 Monterey-Young	6							
MC-13-16 Dunne-MDMH		12						
MC-13-12 Monterey-Gippeti/KB (B)		26						
MC-14-13 Monterey-Gippeti/KB (B)		32						
MC-13-14 Monterey Central-ECA		12						
MC-10-01 Watsonville-Dividend		8						
MC-14-08 San Pedro-Presidio/Mana		8						
MMC-14-09 Butterfield-DPC*				6				
MC-14-11 Monterey-Liou			11					
MC-14-12 Cochrane-Borello		15						
MC-14-15 Altimira-Alicante		2						
MC-14-16 Laurel-TriPointe		18		1				
MC-14-17 Monterey-UHC			7					
E 3rd City Ventures					29			
MC-13-21 Cochrane-Borello				25				
MC-14-03/04 Cochrane-CalAtlantic				30				
MC-14-15 Altimira-Alicante						5		
MC-15-06 Laurel-TriPointe						15		
MC-14-03/04 Cochrane-CalAtlantic						12		
MC-15-15 Butterfield-MH Butterfield						37		
MC-15-16 Dunne-Mana						16		
MC-15-17 San Pedro-Presidio						30		
MC-15-14 Monterey-UHC						32		
MMC-15-07 Dewitt-Murray						3		
MMC-15-08 Price-Conn						1		
MMC-15-09 Peak-Finnamore						1		
MC-15-10 Walnut Grove-Newland						5		
MC-15-11 San Pedro-Presidio/Mana						4		
MC-15-18 Condit/San Pedro-Presidio						80		
W Dunne-Gera					11			
E 4th-Garcia Sunsweet					83			
RDCS2016-0018 Condit/San Pedro-Presidio							88	
RDCS2016-0013 Cochrane-CalAtlantic							52	
RDCS2016-0008 Old Monterey-Vo							5	
RDCS2016-0011 Llagas-Silvas							3	
RDCS2016-0012 Walnut Grove-Newland							4	
RDCS2016-0016 Jarvis-Mwest							10	
RDCS2016-0009 E Dunne-Mana							15	
RDCS2016-0010 Monterey-Dynasty							2	
RDCS2016-0014 Laurel-DeRose							11	
RDCS2016-0015 Cochrne Borello							16	
RDCS2016-0017 Murphy-Presidio							44	
RDCS2017 TBD								TBD
	87	195	18	65	123	241		
(B) = Building Permits Issued		300			429		250	TBD

Attachment: Remaining Allotments [Revision 1] (1092 : 2017 RDCS AVAILABLE ALLOTMENTS)

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING THE AVAILABLE BUILDING ALLOTMENTS FOR FISCAL YEAR 2019/20 FOR THE 2017 RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) COMPETITION

WHEREAS, on April 19, 2017, the City Council approved the annual building allotment for Fiscal Year 2019/20; and

WHEREAS, a building allotment under the City's Residential Development Control System would be available in the 2019/20 fiscal year; and

WHEREAS, the City Council has reviewed recommendations contained in the April 19, 2017 Staff Report and the recommendations of the Planning Commission, all as submitted to the City Council for consideration in connection with the adoption of this Resolution, together with any and all testimony and other evidence submitted to the City Council through the hearing conducted by the Council on April 19, 2017 for this item, and has determined that the recommended building allotments contained herein is consistent with the General Plan and the City's Municipal Code requirements under Chapter 18.78 of the Morgan Hill Municipal Code; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL THAT:

SECTION 1: Pursuant to Sections 18.78.080 and 18.78.110 of the Morgan Hill Municipal Code, the City Council hereby authorizes a Residential Development Control System (RDCS) competition to be conducted in 2017 with a set-aside of 215 residential building allotments.

A. The RDCS competition authorized by this Resolution shall be for Fiscal Year 2019/20.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 19th day of April, 2017 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

STEVE TATE, Mayor

DATE: _____

Attachment: CC- Resolution - Set aside allotments (1092 : 2017 RDCS AVAILABLE ALLOTMENTS)

ATTEST:

IRMA TORREZ, City Clerk

DATE: _____

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No.16-080, adopted by the City Council at the meeting held on May 18, 2016.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: April 19, 2017

PREPARED BY: Terry Linder, Senior Planner
APPROVED BY: City Manager

SITE REVIEW, SR2017-0004: DEPOT – SUNSWEET MORGAN HILL LLC: REQUEST FOR A SITE, ARCHITECTURE AND LANDSCAPE PLAN APPROVAL FOR A MIXED-USE PROJECT CONSISTING OF 83 RESIDENTIAL UNITS AND 8,051 SQUARE FEET OF COMMERCIAL SPACE LOCATED ON THE WEST SIDE OF DEPOT STREET BETWEEN EAST THIRD STREET AND EAST FOURTH STREET.

RECOMMENDATION(S)

Recommend City Council approve the Site Review application request pursuant to the attached resolution.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Preserving and Cultivating Public Trust

2017 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

Republic Properties is requesting site, architectural, and landscape plan approval for an 83-unit apartment building with 8,051 (gross) square feet of commercial space on a 1.65-acre site located on the west side of Depot Street between East Third Street and East Fourth Street, approximately 300 feet east of Monterey Road. The project also includes a below grade, 129 space parking garage.

The City of Morgan Hill requires a Design Permit for new construction in accordance with Chapter 18.74 (Design Review) of the Zoning Ordinance. Specific Design Guidelines have also been adopted for the City's Downtown as part of the City's Downtown Specific plan. Design Permits are typically an administrative (staff-level) action; however, the Downtown Specific plan requires any Design Permit for a "significant project" to be acted upon by the City Council, after receiving a recommendation from staff and/or the Planning Commission. The Sunsweet project has been deemed significant due to its size and its prominent location on Third Street.

Design Guideline Consistency:

Chapter 5 of the City's Downtown Specific Plan contains 32 pages of design guidelines specific to development within the Downtown area. The Downtown Specific Plan design guidelines provide basic design principles and specific design guidelines to determine the appropriateness of proposed plans and architectural designs for the Downtown. Prior to issuance of any Design Permit, the decision-making body must make a finding

of substantial conformance of the proposed design with these Design Guidelines. Compliance with the Design Guidelines is discussed in the attached March 28, 2017 Planning Commission staff report.

BACKGROUND:

In February 2017, the Council approved a Planned Development (PD) designation for the site allowing for the following exceptions to the Central Business District (CBD)/Ground Floor Overlay (GFO) site development and use standards:

- A five-foot increase to the maximum allowed building height
- A 53 percent reduction in the overall required commercial square footage
- A 5 to 35-foot reduction in the required commercial space depth
- Inclusion of a 2,000 square foot ground floor office use on Third Street
- Payment of the parking in-lieu fee for three parking stalls

During the Council's consideration of the Planned Development (PD) request, the Council asked the applicant to address the following areas of concern:

- Minimize the amount of commercial frontage devoted to the leasing office use
- Minimize the appearance of the fifth story loft elements
- Provide additional articulation on the Depot Street elevation
- Increase the commercial square footage
- Provide useable commercial space depths
- Maximize the number of on-site parking spaces available
- Provide a parking management plan for the residents

Site:

Setbacks

The subject site has a General Plan designation of Mixed-Use, is zoned CBD, with a Planned Development (PD) Overlay, and is also zoned GFO along the East Third Street frontage. The required minimum setbacks for commercial and mixed use development in the CBD zoning are zero front, zero side, and zero rear. The building as proposed is setback zero feet from property line (30 feet from the face of the curb) on Third Street. The building setback from property line on Depot Street is 8-15 feet and 15 feet along Fourth Street. The fifth-floor lofts are setback 16-19 feet from property line along Depot Street, providing a 5.5-foot set-back from the fourth floor below. The loft spaces on Fourth Street are setback 20 feet from property line. The building setbacks as proposed meet or exceed the minimum setback requirements.

To respond to the City Council's request for additional commercial space, less office space and greater retail depths, the applicant increased the commercial space from 5,750 square feet to 8,051 square feet. This was accomplished by decreasing the leasing office space to 1,250 square feet (previously 2,000 square feet), increasing the commercial space depths to 45-55 feet (previously 21-40 feet), and expanding the corner commercial space toward Depot Street.

Per the Council's request to minimize the appearance of the leasing office on Third Street, the applicant has reduced the frontage width from 32 feet to 29 feet, recessed the office frontage 3.5 feet behind the adjacent commercial space, minimized the storefront windows, and introduced a different architectural entry detail.

Building Height

The maximum height for a four-story building in the CBD zoning district is 55 feet. The majority of the proposed building is four story (50 feet) with eight, fifth story loft elements which pop-up along the Depot and East Fourth Streets frontage. A five-foot height exception was allowed through the PD approval for ten loft spaces to reach a 60-foot maximum building height.

To respond to the City Council's request to minimize the appearance of the lofts, the applicant has reduced the number of loft spaces from 10 to 8. Architecturally the loft spaces are now capped with a decorative cornice and window patterns similar to the lower floors.

Parking & Pedestrian Access

Two gated, two-way vehicle access points to the underground garage are located on Depot Street. The garage will contain 129-standard parking stalls, of which 64 are tandem spaces, four handicap stalls and four with electric vehicle charging stations. Seven parking spaces are located outside of the gated area at the northern garage entrance for use by visitors and office staff. The 1,250 square feet of leasing office requires five spaces, the 83 residential units require 119, for a required project total of 124. A total of 129 spaces are provided in the basement parking garage which addresses the Council's request to maximize the on-site parking.

The Fire Department requires access areas on both the Third Street and Depot Street project frontage. To accommodate this requirement, three existing on-street parking spaces will be eliminated on Third Street by extending the plaza and is consistent with what was shown on the PD plans. The reconfiguration of this area will require coordination with the existing improvements which include the Sternberg light fixtures, decorative colored paving and decorative bollards adjacent to the existing parking along Third Street. Four curb-side parking spaces are proposed for loading and unloading only. As an alternative, this loading and unloading area could be designated during daytime hours to accommodate deliveries and tenant loading and unloading in addition to fire access, but timed to provide parking in the evening.

The Council also requested the applicant provide a parking management plan. The requested plan was provided to the Planning Commission for review. Each of the residential units will be provided a space within the basement parking garage. The plan explicitly asks the residents not to park in the adjacent public parking garage and requires each resident vehicle to have a numbered parking sticker that will assist in identifying residents who utilize the public parking garage for vehicle storage.

Architecture:

The building will be of standard wood framed construction finished with a medium texture stucco and brick. The building roof line varies in height from 18 feet at the

second floor above the commercial space, 29 feet at the third-floor terrace to 50 feet at the top plate of the fourth floor, 57 feet at the elevator and stairwell tower, and 57 feet to the top of the lofts. The building incorporates both straight and pitched roof forms. Metal is proposed on the pitched roof forms and a 3-foot wide cornice detail with a 9-inch projection is proposed along the straight roof lines. A second cornice detail (2.5 feet wide with a 22-inch projection) with bracket is also proposed on various roof lines.

The building is architecturally defined by vertical columns of three to four feet in width. On Third Street, the ground floor commercial spaces are each fitted with 25-foot by nine-foot wide metal storefront systems that are recessed 12-18 inches behind the front face of the columns. An “eye-brow” element has been introduced over each garage entrance on Depot Street, the resident entrance on Fourth Street, and over the main residential entry and leasing office entrance on Third Street. The awning styles also vary between the commercial space on the east and west side of the plaza; metal flat awning to east and fabric angled awnings on the west. The various floors are identified with cornice details that are to be painted with the medium trim color. The column footings are detailed with a bull-precast base and a vertical band of brick. A vertical brick detail is also proposed at the top of the columns. The fixed window areas surrounded by brick will be detailed with a vertical row of brick below and a smooth stucco cap above.

To respond to the City Council’s request for additional articulation on Depot Street, the applicant has incorporated the eye-brow detail over the entries, recessed windows, recessed the elevator tower, incorporated storefront windows with awning on the commercial space, and incorporated decorative cornice at the second and fourth floor roof lines.

Landscaping:

The landscape plans submitted are conceptual in nature and do not include dimensions, material details, and quantities. The plans include a landscape palette that primarily consists of low water use plants, including a variety of grasses and drought-tolerant shrubs. The plans also include numerous call-outs and photo details of landscape features throughout the site which give a visual as well as a basic idea of where various landscape features will occur. At this time, the landscape site plans do not coordinate with the architectural site plans as they do not correctly address the proposed street improvements along Third Street. As a condition of approval, the final landscape plans are to be reviewed and approved by the Community Development Director prior to the issuance of a building permit. The staff level review would ensure the appropriate quantities, size, and quality of the proposed landscape elements.

COMMUNITY ENGAGEMENT: Inform

The required public hearing notice was published in the Morgan Hill Times for the minimum 10-day public noticing period. Property owners within 300 feet of the subject property were notified of the Site Review application prior to public hearing.

ALTERNATIVE ACTIONS:

If the Council finds the proposed site, architectural, or landscape plans inconsistent with the Downtown Specific Plan design guidelines, the Site Review application can be denied or the application can be continued with instruction to the applicant and staff to make modifications.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Planning Commission considered the Site Review application request at its March 28, 2017 meeting. The Commission voted unanimously to recommend City Council approval.

FISCAL AND RESOURCE IMPACT:

The applicant has paid application fees to cover the cost of processing the application.

CEQA (California Environmental Quality Act):

An addendum was prepared which found the project consistent with the Environmental Impact Report prepared for the Downtown Specific Plan, and therefore, no further environmental assessment is required.

LINKS/ATTACHMENTS:

1. Resolution
2. Planning Commission Staff Report-March 28, 2017

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DESIGN PERMIT FOR A PROJECT CONSISTING OF 83 MARKET RATE RENTAL UNITS AND 8051 SQUARE FEET OF COMMERCIAL SPACE. (APNS 767-13-032, 044 & 054)

WHEREAS, such request was considered by the City Council at its regular meeting of April 19, 2017, at which time the City Council approved of site review application, SR-17-04: Depot-Sunsweet; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL CITY COUNCIL DOES RESOLVE AS FOLLOWS:

- SECTION 1.** The proposed project is consistent with the Downtown Specific Plan, Zoning Ordinance, and the General Plan.
- SECTION 2.** An Environmental Impact Report (EIR) has been prepared and certified for the Downtown Specific Plan. An addendum analyzing the 83-unit Mixed-Use project was completed in January 2017, which concluded the project is consistent with the development projections analyzed in the EIR for the project site. No further environmental assessment is required. The project shall be subject to compliance with the mitigation measures of the Downtown Specific Plan EIR on file in the Community Development Department.
- SECTION 3.** Pursuant to the authority set forth under Chapter 5, Design Guidelines of the Downtown Specific Plan and adopted by Ordinance No. 1956, New Series, the City Council hereby finds the project to be in substantial conformance with those Design Guidelines and therefore approves the Design Permit for the Sunsweet project, as contained in that certain series of documents date stamped March 17, 2017, on file in the Community Development Department, entitled "Sunsweet-Mixed Use" prepared by MH Engineering, Bassenian/Lagoni, and HMM Landscape Architecture.
- SECTION 4.** The approved project shall be subject to the conditions as identified in the set of standard conditions attached hereto, as exhibit "A", and by this reference incorporated herein.

PASSED AND ADOPTED THIS 19th DAY OF APRIL, 2017, AT A REGULAR MEETING OF THE CITY COUNCIL BY THE FOLLOWING VOTE:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSTAIN: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

ATTEST:

IRMA TORREZ
City Clerk

A F F I D A V I T

I, _____, **applicant**, hereby agree to accept and abide by the terms and conditions specified in this resolution.

(Type Name), **Applicant**

Date

R:\PLANNING\WP51\Site Review\SR\2017\SR2017-0004 Depot - Sunsweet Morgan Hill LLC\Reports & Resos\SR1704.r1cc.docx

Attachment: Resolution (1124 : SITE REVIEW, SR2017-0004: DEPOT – SUNSWEET MORGAN HILL LLC)

EXHIBIT "A"

STANDARD CONDITIONS

APPLICATION: SR-17-04: Depot-Sunsweet

THE FOLLOWING ARE STANDARD CONDITIONS OF APPROVAL THAT MUST BE MET PRIOR TO THE ISSUANCE OF BUILDING PERMITS AND/OR SITE DEVELOPMENT PERMITS EXCEPT AS MAY BE SPECIFIED IN THE CONDITIONS. THE APPROVAL REQUIREMENTS INCLUDE THESE REQUIREMENTS AND ANY SPECIAL CONDITIONS THAT ARE APPLIED THROUGH THE DEVELOPMENT APPROVAL PROCESS. APPLICANTS ARE REQUIRED TO SIGN THE RESOLUTION FORM INDICATING THEY UNDERSTAND AND AGREE TO IMPLEMENT THESE STANDARD CONDITIONS AND ANY SPECIAL CONDITIONS APPLIED TO THEIR PERMIT APPROVAL.

PLANNING DIVISION

I TIME LIMITS

The Design Review approval granted under this Resolution shall remain in effect for two years to April 19, 2019. Failure to obtain building permits within this term shall result in termination of approval unless an extension of time is granted with a showing of just cause prior to expiration date.

II SITE DEVELOPMENT

- A. Final selection of color and pattern for the concrete walkway shall be coordinated with the Third St. improvement project.
- B. FINAL SITE DEVELOPMENT PLANS: Final site development plans shall be reviewed and approved by the Community Development Department prior to issuance of a building permit. All such plans shall include:
 1. Detail depicting all concrete curbs as full formed.
 2. Provision of catalogue drawings depicting the proposed parking area lighting fixtures. Exterior lighting of the building and site shall be designed so that lighting is not directed onto adjacent properties and light source is shielded from direct off-site viewing.
 3. Ramps, special parking spaces, signing and other physical features for the disabled, shall be provided throughout the site for all publicly used facilities.
 4. All mechanical equipment, including electrical and gas meters, post indicator valve, backflow prevention devices, etc., shall be architecturally screened from view or located interior to the building. All ground mounted utility appurtenances such as transformers shall not be visible from any public right-of-way and shall be adequately screened through the use or combination of concrete or masonry walls, berming, and landscaping. For additional screening, backflow preventers shall be painted dark green, except the fire connection which shall be painted yellow. Final method of screening shall be coordinated and detailed as part of the Third St. improvement project approval.

5. All existing on-site overhead utilities shall be placed underground in an approved conduit from the service connection at the street or at the property line to the service connection at the building.
6. On-site lighting levels and intensity (including building, parking, security and signage lighting) shall be subject to review and approval of the Planning Division, and is subject to modification after project approval should lighting negatively impact surrounding uses.

- C. DUST, NOISE, VIBRATION, AND MATERIALS MANAGEMENT PLAN: A management plan detailing strategies for control of noise, dust and vibration, and storage of hazardous materials during construction of the project shall be on all site development and grading plans. The intent of this condition is to minimize construction related disturbance of residents of the nearby or adjacent properties.

The plan must include the following “Basic Construction Mitigation Measures” per Bay Area Air Quality Management District’s guidelines:

1. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
2. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
3. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
4. All vehicle speeds on unpaved roads shall be limited to 15 mph.
5. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
6. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
7. All construction equipment shall be maintained and properly tuned in accordance with manufacturer’s specifications. All equipment shall be checked by a certified visible emissions evaluator.
8. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District’s phone number shall also be visible to ensure compliance with applicable regulations.
9. All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.

10. All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph.
11. Wind breaks (e.g., trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Wind breaks should have at maximum 50 percent air porosity.
12. Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
13. The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time.
14. All trucks and equipment, including their tires, shall be washed off prior to leaving the site.
15. Site accesses to a distance of 100 feet from the paved road shall be treated with a 6 to 12-inch compacted layer of wood chips, mulch, or gravel.
16. Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than one percent.
17. Minimizing the idling time of diesel powered construction equipment to two minutes.
18. The project shall develop a plan demonstrating that the off-road equipment (more than 50 horsepower) to be used in the construction project (i.e., owned, leased, and subcontractor vehicles) would achieve a project wide fleet-average 20 percent NOX reduction and 45 percent PM reduction compared to the most recent ARB fleet average. Acceptable options for reducing emissions include the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available.
19. Use low VOC (i.e., ROG) coatings beyond the local requirements (i.e., Regulation 8, Rule 3: Architectural Coatings).
20. Requiring that all construction equipment, diesel trucks, and generators be equipped with Best Available Control Technology for emission reductions of NOx and PM.
21. Requiring all contractors use equipment that meets CARB's most recent certification standard for off-road heavy duty diesel engines.

II. BUILDING DESIGN

- A. Roof mounted mechanical equipment: All roof mounted mechanical equipment shall be placed within a screened roof top enclosure depicted on the elevation drawings or located below the parapet level and shall not be visible from the ground at any distance from the building. Cross section roof drawings shall be provided at the building permit stage indicating the relative height of the screen wall or parapet. Minimum screen height or parapet depth shall be 3-feet or greater to match the height of any proposed equipment.
- B. Lighting:
1. Lighting fixtures shall not project above the fascia or roofline of the building.
 2. Accent lighting shall be provided under the store front awnings. Final location, number and type of fixture shall be reviewed and approved by the Community Development Director prior to the issuance of a building permit.
 3. Any ground mounted lighting projecting onto the building or site will be subject to the review and approval of the Director of Community Development.
 4. Adjustment to the lighting intensity may be required after the commencement of the use.
 5. All lighting fixtures shall be coordinated with the Third St. improvement plans and approved by the Community Development Director.
 6. Lighting within the plaza area will consist of low bollard lights in addition to Sternberg lights currently installed along the Third St. frontage. Lighting within the plaza space shall be a minimum of 2 foot candles per the city requirements.
 7. Lighting at the garage entries shall be a minimum of 5 foot candles.
 8. Lighting will be provided at regular intervals along the Depot St., Fourth St., and west sides of the structure at 1-2 foot candles and along the front facade of the commercial buildings.
- C. Site Elements
1. The project management shall maintain a parking management plan that details the assignment of the tandem parking spaces and includes ways to discourage residents from storing vehicles in the adjacent City parking garages.
 2. A 3-4 space bike rack shall be provided in proximity to the commercial space. The final location and type of bike rack shall be reviewed and approved by the Community Development Director prior to the issuance of a building permit.
 3. A decorative fence and gate(s), (minimum 10-feet wide) shall be provided at the south west corner of the site between the City parking garage and ADA ramp. The gate/fence location shall be location, height and style shall be approved by the Community Development Director and Public Works Director.

4. A decorative fence shall be provided between the leasing office and the adjacent commercial building to the west. ramp The fence location, height and style shall be approved by the Community Development Director and Public Works Director.

D. Architectural elements

1. The wall surface finish and scoring pattern on the west elevation of the leasing office shall be coordinated with a proposal for an art feature.
2. All vents, gutters, downspouts, flashing, electrical conduits, etc. shall be painted to match the color of the adjacent surface or otherwise designed in harmony with the building exterior.
3. Soffits and other architectural elements visible from view but not detailed on the plans shall be finished in a material in harmony with the exterior of the building.
4. A detail of the roll-up door and its framing shall be reviewed and approved by the Community Development Director prior to the issuance of a building permit.
5. Detail of the trellis element over third floor residents lounge shall be reviewed and approved by the Community Development Director prior to the issuance of building permit.
6. Clear glazing shall be provided in all window areas-no tinted or mirrored glass.
7. Details of all door hardware shall be reviewed and approved by the Community Development Department prior to the issuance of a building permit.

E. Other

1. The design details and placement of the “Sunsweet Arch” shall be reviewed and approved by the Community Development Director prior to issuance of any occupancy permit.
2. Public art shall be provided on the west elevation of the leasing office space. The final art design shall be reviewed by the City’s Library, Culture and Arts Commission with a recommendation to the Community Development Director prior to the occupancy of any of the commercial or leasing office space.
3. Detail and location of a bike rack shall be provided and approved by the Community Development Director prior to the issuance of a building permit.
4. To insure coordination with the existing Third Street improvements, field approval of the finishes, colors and material specifications for the plaza pavers and walkway shall be required prior to installation. Approval shall be granted by the Community Development Director and Public Works Director.

III LANDSCAPING

- A. Detailed final landscape plans and irrigation working drawings shall be reviewed and approved by the Community Development Director prior to the issuance of a building permit. The plans shall include the appropriate quantities, size, quality of the material, street furniture and lighting proposed to the satisfaction of the Community Development Director.
- B. The landscape plans shall include elements to invite pedestrian activity along Depot Street. Such elements shall include but are not limited to pedestrian level lighting, waiting areas, benches and landscaping.
- C. Avoid over-spray from automatic irrigation systems.
- D. Any damaged plants or trees within the public right of way shall be replaced to the satisfaction of the Community Development Director and Public Works Director.
- E. Provide at least 7 feet of vertical clearance between branches and sidewalk.
- F. Tree grates specified for the project shall match or coordinate with the grates used along Monterey Rd. and the adjacent parking garage project.
- G. Any truncated domes shall be consistent with the domes used in the City plaza and Third Street improvements.
- H. The applicant shall enter into a two-year landscape maintenance agreement effective upon acceptance of landscaping improvements and provide an appropriate bond as required by the Design Review Ordinance. Bond amount shall be equal to 100 percent of the value of the landscaping and irrigation improvements for the development project
- I. TREES AND SHRUBS MINIMUM SIZE: All trees within approved landscape plans shall be of a minimum fifteen-gallon size. All shrubs shall be minimum 5-gallon size unless otherwise approved by the Community Development Director.
- J. MAINTENANCE OF LANDSCAPING: The landscaping installed and accepted with this project shall be maintained on the site as per the approved plans. Any alteration or modification to the landscaping shall not be permitted unless otherwise approved by the Community Development Director or Design Review Board.
- K. WATER CONSERVING LANDSCAPE ORDINANCE: The landscape plans shall be in conformance with the City's Water Conserving Landscape Ordinance that was developed in accordance with California law. This Ordinance restricts landscaping turf to certain areas, specifies plant selection, requires certain types of irrigation equipment, and calls for the development of comprehensive water use calculations as an aspect of the submitted landscape plans. It is strongly suggested that the project's landscape designer refer to the City's Ordinance prior to beginning development of the project's landscape plans. (MHMC 18.73)

IV SIGNS

Prior to issuance of a certificate of occupancy for the commercial structure, a sign program covering all signs for the garage and commercial structure, shall be submitted and reviewed and approved by the Community Development Director.

V HABITAT PLAN

- A. The approved project is covered under the Santa Clara Valley Habitat Plan (Habitat Plan) and subject to fees and conditions contained in the Habitat Plan.
- B. Prior to issuance of building permits or grading permits the project shall complete and submit a Habitat Plan Application Package. All fees must be paid prior to issuance building permits or grading permits.

VI OTHER CONDITIONS

- A. This Design Review approval is limited to the plan set dated March 17, 2017, on file (SR 17-0004: Depot-Sunsweet) with the Community Development Department. The approved site and building plans must be in substantial conformance with these plans as determined by the Community Development Director.
- B. DEFENSE AND INDEMNITY: Applicant agrees to defend and indemnify and hold City, its officers, agents, employees, officials and representatives free and harmless from and against any and all claims, losses, damages, injuries, costs and liabilities arising from any suit for damages or for equitable or injunctive relief which is filed against City by reason of its approval of this Site Review approval. In addition, applicant shall pay all pre-tender litigation costs incurred on behalf of the City including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals, but shall not be required to pay any litigation from the City. However, applicant shall continue to pay reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted. The undersigned hereby represents that they are fully empowered by the applicant as their agent to agree to provide the indemnification, defense and hold harmless obligations, and the signature below represents the unconditional agreement by applicant to be bound by such conditions.
- C. MITIGATION FEE ACT: Notice is hereby given that, pursuant to the Mitigation Fee Act, the City of Morgan Hill charges certain fees (as such term is defined in Government Code Section 66000) in connection with approval of your development project for the purpose of defraying all or a portion of the cost of public facilities related to your development project (Mitigation Fee Act Fees). These fees do not include fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements, or as a part of your application for development allocations under the City's Residential Development Control System. The Mitigation Fee Act Fees applying to your project are listed in the schedule of fees provide. Notice is also hereby given that you have the opportunity to protest the imposition of the Mitigation Fee Act Fees within 90 days of the approval of the approval or conditional approval of your development project and that the 90-day approval period in which you may protest has begun.

- D. Signed copies of Resolution: Submit two (2) signed copies of Resolution No. _____ to the Planning Division prior to issuance of building permits.
- E. Signed development agreement: Prior to approval of the final map (or issuance of a building permit where no map is required), the property owner shall submit to the Planning Division two (2) signed notarized copies of the Development Agreement for the proposed project.
- F. An encroachment agreement shall be completed between the property owner and the City of Morgan Hill to allow for the encroachment of the ADA ramp (south west corner) into the maintenance easement along the western portion of the site.

VII PROJECT MITIGATION MEASURES

The project shall be subject to compliance with the mitigation measures as contained in the Downtown Specific Plan EIR and as specified within the project Mitigation, Monitoring and Reporting Program as adopted under Planning Commission Resolution 16-008.

ENGINEERING LAND DEVELOPMENT

I. PROJECT SPECIFIC

- A. A one lot **Parcel Map** (lot merger) shall be submitted to certify configuration of the property boundary to eliminate all senior interior parcel lines.
- B. All existing frontage public improvements shall remain in place: curb, gutter, sidewalk and street pavement; if damage occurs through the life of the project, the improvements shall be replaced in kind, as required by the City inspectors.
- C. Project improvement plans shall include the reconfiguration of the plaza space along Third Street. All street, landscape and sidewalk alteration shall be reviewed and approved by the Director of Public Works and Director of Community Development.
- D. The only portions of the Depot Street frontage that shall be modified are at the driveway curb cuts. Trees and lighting which are eliminated by the proposed driveway shall be replaced as required by Planning and Engineering.
- E. Install curb, gutter, and sidewalk along the Fourth Street frontage as needed.
- F. Trees shall be planted along the Fourth Street frontage, coordinate with Planning and Engineering.
- G. For the trash enclosure located on Depot Street next to the north driveway approach, provide comprehensive a trash collection plan which has been coordinated and approved by the trash collection agency.
- H. Show proposed location of project's transformer and utility boxes.

- I. Encroachment permits shall be obtained for all awnings and grease interceptors placed within the sidewalk areas.
- J. New water laterals shall only be tapped on Fourth Street.
- K. All commercial units shall have separate water and fire service with the appropriate back flow devices with location to be approved by Planning and Engineering.
- L. Irrigation system shall be separately metered with the appropriate back flow device with location to be approved by Planning and Engineering.
- M. Sanitary connections shall have positive drainage to the City sanitary main; system shall not rely on private pump system. Garage shall have an emergency private pump system for sanitary spills flowing into the garage level.
- N. Sanitary lateral shall have the appropriate sanitary test manhole as required by Pre-treatment.
- O. Sanitary lateral for commercial units shall have the necessary grease traps; location shall be approved by City Engineer.
- P. New sanitary laterals shall only be made on Fourth Street.
- Q. The garage finish floor should not be lower than the City storm drain main invert; garage design with finished floor lower than City storm drain main shall be approved by the City Engineer.
- R. In case of garage flooding (storm water, domestic water), garage shall have emergency private sump pump system in place. Power of pump system shall have a backup power generator.
- S. Project shall provide proportionate flood retention for loss of pervious area; if not applicable, explain and provide calculations/drawings. Show on plans.
- T. Project retention/detention facility shall have positive drainage/outfall into the City storm drain main. If system relies on a private pump system, pump shall have an appropriate back up power generator. Show on plans.
- U. Project shall provide percolation test at the depth and location of the proposed detention facility.
- V. Plans shall include a Stormwater Control Plan (SCP) sheet to summarize stormwater quality treatment and post construction development design.
- W. Soils report shall provide provisions for construction activities adjacent to existing parking structure to the west of the projects. Construction of project shall in no way effect the existing foundations of the existing parking structure.
- X. Storm Water Runoff Management Plan (SWRMP) shall be submitted (per section IX. H) shall include:

1. All calculations and work sheets as required from the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements (per Section IX.A)
2. All elements of a Stormwater Control Plans per the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements.
3. All requirements of section IX. I, J, K, L, M of these conditions.
4. Summary and applicable calculations of Section V of these conditions.

Y. Project shall pay impact fees prior to issuance of any Building Permit.

II. GENERAL

- A. The applicant shall cause the construction of all public and private improvements in accordance with the latest City Standard Drawings and Specifications. **(MHMC 12.02.090 A; 17.32.010 A)**
- B. The applicant shall have a Parcel Map prepared by a registered engineer (licensed prior to 01/01/1982: registration number 33,965 or lower) or licensed land surveyor delineating all parcels and easements created. There shall be concurrence in writing by PG & E, Telephone, Cable TV and any other affected agencies to all improvements and easements which are applicable to them. The number and locations of monuments shall be set as required by the Public Works Department. **(MHMC 17.20.200 A; 17.20.290; 17.24.010)**
- C. The applicant shall submit as part of the improvement drawings for the project, profiles of all improvements in the project and typical cross-sections of all streets and details of curbs, gutters, and sidewalks, to be accomplished to the satisfaction of the Director of Public Works prior to submittal of Parcel Map. **(MHMC Sec 17.32.060 B; 17.32.070; 17.32.080 A)**
- D. Obtain necessary encroachment permits from the City of Morgan Hill and provide guarantee covering off-site improvements. **(MHMC 12.08.040 A; 12.08.090)**
- E. Improvement plans are to show water lines, sanitary Sewer, storm drain system, pavement widths, and existing utilities.
- F. If necessary, enter into a Improvement Agreement (IA) with the City of Morgan Hill to cover required improvements. **(MHMC 12.02.150; 17.32.010 B; 17.32.160)**
- G. **IMPACT FEE INCREASE**-The City of Morgan Hill, pursuant to City Muni-code Chapter 3.56 has established impact fees to finance the cost of improvements required by new development. City Code Chapter 3.56.050 provides for automatic annual (July 1st) adjustment of those fees in existence utilizing the Engineering News Record Index for the preceding twelve months. The City Public Works Department maintains historical records on the Engineering News Record Index. These records are available for inspection during normal business hours. **(MHMC 3.56.010; 3.56.030; 3.56.050)**

III. STREET IMPROVEMENTS

- A. The project shall install and dedicate street improvement including, but not limited to, curb and gutter, sidewalk, compaction, street paving, oiling, storm drainage facilities, sewer and water, fire protection, undergrounding of utilities and street lighting in conformance with City of Morgan Hill requirements. **(MHMC 12.02.010; 12.02.50; 12.02.080; 12.02.100; 17.28.010; 17.32.060)**

IV. SANITARY SEWER SYSTEM

- A. The applicant shall cause to be undertaken the design and construction of sanitary sewer improvements including, but not limited to installation of sewer line extension on the proposed public street(s) or private street(s)/drive aisle(s). The sanitary collection system shall include, but not be limited to manholes with manhole frames and covers, cleanouts, wye-branches and laterals, and separate sewer taps. These are to be installed by the developer. **(MHMC 13.20.355; 17.32.020 C; CMH Sewer System Master Plan; CMH Design Standards and Standard Details for Construction)**
- B. All existing and future sewer lines shall be tied into the City's system and existing septic systems shall be abandoned in accordance with City requirements. **(MHMC 13.24.060; 17.32.20 C)**

V. STORM DRAIN SYSTEM

- A. A complete storm drainage study of the proposed development must be submitted showing amount of run-off, and existing and proposed drainage structure capacities. This study shall be subject to review and approval by the Director of Public Works. All needed improvements will be made by the applicant. No overloading of the existing system will be permitted. **(MHMC 17.32.020 B; 17.32.090; CMH Design Standards and Standard Details for Construction)**
- B. The applicant shall cause the design and construction to be undertaken for a storm drainage collection system shown on the Tentative Map/Site Review plans. All storm drain improvements shall be constructed to the satisfaction of the Director of Public Works. **(MHMC 17.32.020 A & B)**
- C. Collection system shall be designed to be capable of handling a 10-year storm without local flooding. On-site detention facilities shall be designed to a 25-year storm capacity. Streets shall be designed to carry a 100-year storm. Items of construction shall include, but not be limited to installation of storm line extension on proposed public street(s), surface and subsurface storm drain facilities, manholes with manhole frames and covers, catch basins and laterals. Note: the project may be required to **retain** storm water runoff as part of resolution R3-2013-0032 prior to releasing discharge rates at pre-development flows. **(MHMC 17.32.020 B; 18.74.440; CMH Design Standards and Standard Details for Construction; CMH Storm Drainage System Master Plan)**
- D. Prior to final map approval or issuance of a grading permit the applicant shall complete the following to the satisfaction of the Director of Public Works.

1. Storm drain calculations to determine detention/retention facility sizing and operations.
2. Plan describing how material excavated during construction will be controlled to prevent this material from entering the storm drain system.
3. Water Pollution Control Drawings (WPCD) for Sediment and Erosion Control.

(CMH Design Standards and Standard Details for Construction)

- E. As required by the State Water Resources Control Board (SWRCB) Order No. 2009-0009-DWQ, construction activity resulting in a land disturbance of one (1) acre or more of soil, or whose projects are part of a larger common plan of development that in total disturbs more than one (1) acre, are required to obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 for Discharges of Storm Water Associated with Construction Activity (General Permit). To be permitted with the SWRCB under the General Permit, owners must file a complete Notice of Intent (NOI) ONLINE at: <http://smarts.waterboards.ca.gov/smarts/faces/SwSmartsLogin.jsp> and develop a Storm Water Pollution Prevention Plan (SWPPP) Manual in accordance with the General Permit. The SWPPP Manual shall follow the CASQA SWPPP template/format at <https://www.casqa.org/store/products/tabid/154/p-167-construction-handbookportal-initial-subscription.aspx> and shall be approved by Public Works Engineering. A Waste Discharger Identification (WDID) number will be issued to the construction site after the SWRCB receives and verifies the submitted ONLINE NOI information. The WIDI number and approved SWPPP Manual shall be provided to Public Works and the Building Department prior to any approval of grading activities **(SWRCB NPDES General Permit CA000002)**.
- F. NPDES GENERAL PERMIT SITE SWPPP INSPECTIONS AND COMPLIANCE:
 1. ALL project onsite and offsite construction activity shall have the site inspected by a **qualified third party SWPPP Inspector (QSD or QSP or RCE)**.
 2. SWPPP Inspections shall occur weekly during the rainy season (September 15th thru May 1st).
 3. SWPPP Inspections shall occur bi-weekly during the non-rainy season.
 4. 48 hours prior to and following a forecasted rain event, SWPPP Inspections shall occur in addition to those of items 2 or 3 above.
 5. Per each of the inspection conditions 2, 3, or 4, the NPDES SWPPP Inspector shall certify in writing to the Building and Public Works Department if the site is in compliance or non-compliance with the NPDES General Permit for Stormwater, site SWPPP Manual, and Water Pollution Control Drawings (per the CMH-SWPPP Inspection Check List to be provided by Public Works). QSD/QSP SWPPP Inspectors shall forward onsite and offsite information/certification to the Building (on-site private property issues) and Public Works (public right-of-way issues) inspectors respectively.
 6. Prior to rain events, BMPs not in compliance will need to be corrected immediately.

7. Illicit discharges per the NPDES General Permit, non-compliance of tracking control, and inlet protection within the public right of way shall be address immediately.
8. Other non-compliance issues need to be addressed within a 24 hour period.
9. Non-compliance issues which have been corrected shall be verified by NPDES SWPPP Inspector by a follow up inspection.

VI. WATER SYSTEM

A. Water metering:

1. All residential units shall have separate water meters or be privately sub metered as approved by City Engineer per section 13.04.130.C of the municipal code as follows: The owner of a multiunit residential development that includes habitable dwellings, may, upon compliance with the following, install separate submeters to each residential unit in lieu of installing separate meters directly to the municipal water system.
 - a. The owner must obtain a permit from the Public Works Department for the submeter system.
 - i Any submeters shall accurately and completely measure all water consumed from the municipal water system.
 - ii The owner shall agree to charge the tenant of each unit a water utility charge strictly based on the consumption by the occupants of the unit.
 - iii Installation, maintenance and monitoring of the submeter system shall be the responsibility of the owner, and in no circumstances, shall the city be responsible therefore.
 - iv If any water conservation plan is implemented or imposed by the city, the owner shall be responsible for complying with any reductions required by such plan as measured by consumption on the meter(s) directly connected to the municipal water system.
2. Failure to abide by the above conditions, and/or any other conditions the city may impose, may result in revocation of any permit issued and/or other action as authorized by law, such as at the owner's expense install individual public water meters for each unit.
3. Owner/developer shall provide an agreement with the City to cover/outline the requirements of section 13.04.130.C of the municipal code to be reviewed and approved by the City Engineer and City Attorney.
4. Records of bookkeeping and private sub-metering usage shall be accurately maintained digitally. Upon request form the City, records shall be produce to the city within a 24-hour period.

VII. FEMA CONDITIONS

- A. Project has filed a FEMA Letter of Map Revision based on fill (LOMR-F). Existing grades around the perimeter of the property cannot be lower than the published base flood elevation (BFE) during construction activities. Residential or commercial lowest finished floors shall be elevated 1 foot above the FEMA base flood elevation (BFE).
- B. Parking entrances finished grades shall be 0.1 feet clear of the published BFE.

VIII. OTHER CONDITIONS

- A. The owner shall dedicate all necessary utility easements. **(MHMC 12.02.080 D; 17.28.010 A)**
- B. The applicant shall cause the design and construction required to underground all electric, gas, Cable TV and communication lines within the development. Such design and construction shall be to the satisfaction of the affected utilities and the Director of Public Works. **(MHMC 17.32.020 E.1)**
- C. The parcel map shall be signed by the City Engineer and the Planning Commission Secretary prior to issuance of a grading permit. **(MHMC 17.20.390; 17.24.210)**
- D. Landscaping and irrigation systems serving common areas that are required to be installed in the public right-of-way on the perimeter of this tract area shall be continuously maintained by the property owner.
- E. Final landscape plans shall be submitted with and included as part of the improvement plans for the subdivision. **(MHMC 17.08.090)**
- F. Prior to the approval of any Building Permit for grading activity, the developer shall schedule a preconstruction meeting with the Public Works Inspection Division with the following project team members:
 - 1. Civil Engineer of record.
 - 2. Geotechnical Engineer of record.
 - 3. Third Party QSD/QSP SWPPP Inspector.
 - 4. General Contractor.
 - 5. Sub Contractors.

IX. NPDES WATER QUALITY STORMWATER MANAGEMENT DEVELOPMENT STANDARDS FOR ALL PROJECTS

- A. State Water Resources Control Board Post Construction Requirements (PCRs): Project shall comply with the California Regional Water Quality Control Board Central Coast Region Resolution No. R3-2013-0032 as documented by the **Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements** (developed from Resolution No. R-2013-0032 Attachment 1 and 2 at:
http://www.waterboards.ca.gov/centralcoast/water_issues/programs/stormwater/docs/lid/lid

[hydromod_charette_index.shtml](#)). A copy of the guidance manual can be obtained through the Department of Public Works internet site. Project shall provide Stormwater Control Plan Checklist and applicable calculations per the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements. Project shall meet the applicable requirements of the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements:

1. Performance Requirement 1: Site Design and Runoff Reduction
2. Performance Requirement 2: Water Quality Treatment
3. Performance Requirement 3: Runoff Retention
4. Performance Requirement 4: Peak Management

- B. **Peak Storm Water Runoff Discharge Rates** - Post-development peak storm water runoff discharge rates shall not exceed the estimated pre-development rate for developments where the increased peak storm water discharge rate will result in increased potential for downstream erosion. Note: the project may be required to **retain** stormwater runoff as part of resolution R3-2013-0032 prior to releasing discharge rates at pre-development flows.
- C. **Minimize Storm Water Pollutants of Concern** - Storm water runoff from a site has the potential to contribute oil and grease, suspended solids, metals, gasoline, pesticides, and pathogens to the storm water conveyance system. The development must be designed so as to minimize, to the maximum extent practicable, the introduction of pollutants of concern that may result in significant impacts, generated from site runoff of directly connected impervious areas (DCIA), to the storm water conveyance system as approved by the building official. Pollutants of concern consist of any pollutants that exhibit one or more of the following characteristics: current loadings or historic deposits of the pollutant are impacting the beneficial uses of a receiving water, elevated levels of the pollutant are found in sediments of a receiving water and/or have the potential to bio-accumulate in organisms therein, or the detectable inputs of the pollutant are at concentrations or loads considered potentially toxic to humans and/or flora and fauna.

In meeting this specific requirement, “minimization of the pollutants of concern” will require the incorporation of a BMP or combination of BMPs best suited to maximize the reduction of pollutant loadings in that runoff to the Maximum Extent Practicable. Those BMPs best suited for that purpose are those listed in:

1. [California Stormwater Quality Association \(CASQA\) Handbook: BMPs for New Development and Redevelopment](#)
2. [Bay Area Stormwater Management Agencies Association \(BASMAA\) Design Guidance Manual for Stormwater Quality Protection: Start at the Source 1999](#)
3. [California Storm Water Best Management Practices Handbooks](#)
4. [Caltrans Storm Water Quality Handbook: Planning and Design Staff Guide](#)

- D. **Provide Storm Drain System Stenciling and Signage** - Storm drain stencils are highly visible source controls that are typically placed directly adjacent to storm drain inlets. The stencil contains a brief statement that prohibits the dumping of improper materials into the

storm water conveyance system. Graphical icons, either illustrating anti-dumping symbols or images of receiving water fauna, are effective supplements to the anti-dumping message. All storm drain inlets and catch basins within the project area must be stenciled with prohibitive language (such as: “NO DUMPING – DRAINS TO CREEK”) and/or graphical icons to discourage illegal dumping. Signs and prohibitive language and/or graphical icons, which prohibit illegal dumping, must be posted at public access points along channels and creeks within the project area. Legibility of stencils and signs must be maintained.

E. Properly Design Outdoor Material Storage Areas - Outdoor material storage areas refer to storage areas or storage facilities solely for the storage of materials. Improper storage of materials outdoors may provide an opportunity for toxic compounds, oil and grease, heavy metals, nutrients, suspended solids, and other pollutants to enter the storm water conveyance system. Where proposed project plans include outdoor areas for storage of materials that may contribute pollutants to the storm water conveyance system, the following Structural or Treatment BMPs are required:

1. Materials with the potential to contaminate storm water must be: (1) placed in an enclosure such as, but not limited to, a cabinet, shed, or similar structure that prevents contact with runoff or spillage to the storm water conveyance system; or (2) protected by secondary containment structures such as berms, dikes, or curbs.
2. The storage area must be paved and sufficiently impervious to contain leaks and spills.
3. The storage area must have a roof or awning to minimize collection of storm water within the secondary containment area.

F. Properly Design Trash Enclosure Areas - All trash enclosure areas must meet the following Structural or Treatment Control BMP requirements (individual single family residences are exempt from these requirements):

1. **Roof Required:** Trash enclosure areas shall have an all-weather noncombustible solid roof to prevent rainwater from mixing with the enclosure’s contents
 - a. **Walls Required:** Trash enclosure shall have structural walls to prevent unauthorized off-site transport of trash.
 - b. **Doors:** Trash enclosure shall have door(s) which can be secured when closed.
 - c. **Grades:** The pad for the enclosure shall be designed to not drain outward, and the grade surrounding the enclosure shall be designed to not drain into the enclosure.
 - d. **Drain Inlet:** Within the enclosure, an area drain with an approved (Zurn) vandal proof drain shall be installed and shall be plumbed to the sanitary sewer system with grease trap. Grease trap shall be located within the trash enclosure footprint.

G. Design Standards for Structural or Treatment Control BMPs - The post-construction treatment control BMPs shall incorporate, at a minimum, either a volumetric or flow based treatment control design standard, or both, as identified below to mitigate (infiltrate, filter or treat) storm water runoff:

1. Volumetric Treatment Control BMP

- a. The 85th percentile 24-hour runoff event determined as the maximized capture storm water volume for the area, from the formula recommended in Urban Runoff Quality Management, WEF Manual of Practice No. 23/ASCE Manual of Practice No. 87, (1998); or
- b. The volume of annual runoff based on unit basin storage water quality volume, to achieve 80 percent or more volume treatment by the method recommended in California Stormwater Best Management Practices Handbook – Industrial/Commercial, (2003); or
- c. The volume of runoff produced from a historical-record based reference 24-hour rainfall criterion for “treatment” that achieves approximately the same reduction in pollutant loads achieved by the 85th percentile 24-hour runoff event.

2. Flow Based Treatment Control BMP

- a. The flow of runoff produced from a rain event equal to at least two times the 85th percentile hourly rainfall intensity for the area; or
- b. The flow of runoff produced from a rain event that will result in treatment of the same portion of runoff as treated using volumetric standards above.

H. **Stormwater Runoff Management Plan (SWRMP) required** - The stormwater runoff management plan shall include sufficient information to evaluate the environmental characteristics of affected areas, the potential impacts of the proposed development on water resources, and the effectiveness and acceptability of measures (post construction BMPs) proposed for managing stormwater runoff.

1. The stormwater runoff management plan shall be prepared under the direction of a professional civil engineer registered in the State of California. The responsible professional civil engineer shall stamp and sign the approved stormwater runoff management plan.
2. The chief engineer or designee may require a developer to provide a signed certification from the civil engineer responsible for preparing the stormwater runoff management plan that all stormwater best management practices have been designed to meet the requirements of this chapter.
3. Each certifying civil engineer shall establish to the city's satisfaction that such person has been trained on the design of stormwater quality best management practices not more than three years prior to the certification signature date.
4. Qualifying training shall be conducted by an organization with stormwater quality management expertise, such as a university, the Bay Area Stormwater Management Agencies Association, the American Society of Civil Engineers, the American Public Works Association, or the California Water Environment Association.

I. Stormwater BMP operation, maintenance, and replacement responsibility

1. All on-site stormwater management facilities shall be operated and maintained in good condition and promptly repaired/replaced by the property owner(s), an owners' or homeowners' association or other legal entity approved by the city.
2. Any repairs or restoration/replacement and maintenance shall be in accordance with city-approved plans.
3. The property owner(s) shall develop a maintenance schedule for the life of any stormwater management facility and shall describe the maintenance to be completed, the time period for completion, and who shall perform the maintenance. This maintenance schedule shall be included with the approved stormwater runoff management plan.

J. Stormwater BMP operation and Maintenance Agreement (SWBOMA) required -

Improper maintenance is one of the most common reasons why water quality controls will not function as designed or which may cause the system to fail entirely. It is important to consider who will be responsible for maintenance of a permanent BMP, and what equipment is required to perform the maintenance properly.

1. Prior to the issuance of any building permit requiring stormwater management BMPs, the owner(s) of the site shall enter into a formal written stormwater BMP operation and maintenance agreement with the city. The city shall record this agreement, against the property or properties involved, with the County of Santa Clara and it shall be binding on all subsequent owners of land served by the storm water management treatment BMPs (City standard STORMWATER BMP OPERATION AND MAINTENANCE AGREEMENT to be provided by Public Works Engineering).
2. The stormwater BMP operation and maintenance agreement shall require that the BMPs not be modified and BMP maintenance activities not alter the designed function of the facility from its original design unless approved by the city prior to the commencement of the proposed modification or maintenance activity.
3. The stormwater BMP operation and maintenance agreement shall provide that in the event that maintenance or repair is neglected, or the stormwater management facility becomes a danger to public health or safety, the city shall have the authority to perform maintenance and/or repair work and to recover the costs from the owner.

K. Stormwater BMP inspection responsibility

1. The property owner(s) shall be responsible for having all stormwater management facilities inspected for condition and function by a **Registered Civil Engineer (RCE)**.
2. Unless otherwise required by the chief engineer or designee, stormwater facility inspections shall be done at least twice per year (April 15th and September 15th) by the RCE. Written records shall be kept of all inspections and shall include, at minimum, the following information:
 - a. Site address;
 - b. Date and time of inspection;

- c. Name of the person conducting the inspection;
 - d. List of stormwater facilities inspected;
 - e. Condition of each stormwater facility inspected;
 - f. Description of any needed maintenance or repairs; and
 - g. As applicable, the need for site re-inspection.
- 3. Upon completion of each inspection, an inspection report shall be submitted to Public Works Engineering.
- L. **Records of maintenance and inspection activities** - On or before April 15th and September 15th of each year, the party responsible for the operation and maintenance of on-site stormwater management facilities under the BMP operation and maintenance agreement shall provide the chief engineer or designee with records of all inspections, maintenance and repairs.
- M. **Annual Certification of SWRMP** – On or before September 30th of each year a Registered Civil Engineer (RCE) shall provide written certification that the developments stormwater quality design standards are properly maintained and functioning as required by the SWRMP.

BUILDING DIVISION

I. EXISTING STRUCTURES

- A. Removal of any existing sewage disposal facilities and connection to city services shall be required prior to final inspection. **(MHMC 13.24)**

II. GRADING

- A. Prior to issuance of a building permit, the applicant shall provide contract documents for on-site improvements including comprehensive site grading and a drainage plan. The plan shall provide for exportation of excess soil material as necessary. **(CBC Appendix chapter 33)**
- B. Prior to issuance of building permits, the applicant shall provide contract documents for on-site improvements including:
 - 1. Comprehensive site grading and drainage plan. Said plan shall provide for exportation of excess soil material as necessary and controlled drainage of storm water away from building.
 - 2. Comprehensive erosion control plan, including hydro-mulching or hand-seeding methods to be used in all graded or cleared areas.

III. SITE DEVELOPMENT

- A. Prior to issuance of building permits, the applicant shall provide two copies of a soils (Geotechnical) engineering report prepared by a registered Civil (Geotechnical) Engineer. The report shall include data regarding the nature, distribution and strength of existing soils, conclusions and recommendations for grading criteria for corrective measures, and opinion on adequacy for the intended use of sites to be developed by the proposed grading as

affected by soils engineering factors, including the stability of slopes. The report shall also include a soil classification and foundation investigation. **(CBC Appendix chapter 33)**

- B. Prior to issuance of building permits, the applicant shall provide two copies of an engineering geology report, prepared by a registered Engineer Geologist. The report shall include an adequate description of the geology of the site, conclusions and recommendations regarding the effect of geologic conditions on the proposed development, and opinion on the adequacy for the intended use of sites to be developed by the proposed grading, as affected by geologic factors. **(CBC Appendix chapter 33)**
- C. Record of survey required. Lot stakes to be set by registered Civil Engineer or licensed Land Surveyor prior to issuance of building permits. **(CBC 108.1)**

IV. OTHER CONDITIONS

- A. The applicant shall have an acoustical analysis prepared by a licensed professional, specifying the manner in which interior noise levels will be reduced to the required forty-five (45) dba. The details of noise attenuation recommended in the report will be subject to review and approval of the Chief Building Official prior to issuance of the building permit. **(CBC Appendix chapter 1208)**
- B. Submit minimum six (6) complete sets of working drawings and specifications. Building plans shall be drawn at a minimum 1/4" scale. Minimum sheet size shall be 18" x 24". Submit minimum six (6) complete sets of drawings for all commercial and or industrial buildings. **(CBC 106.3.3)**
- C. A demolition permit from the Building Division is required prior to the demolition of any structure. All structures which are 50 years old or older must complete a 15-day posting requirement. All structures must obtain a permit from the Bay Area Air Quality Control Board prior to demolition. **(MHMC 15.60)**
- D. Permits for new structures or additions will require compliance with the Building Security Ordinance. Requirements such as the installation of dead bolts on doors, protection methods for windows, garage door security, commercial roof opening security, lighting at all exit doors, etc. may be required. **(MHMC 15.40)**
- E. Permits for new structures or additions to existing structures may require the installation of fire sprinklers. **(MHMC 15.08.070)**
- F. All copper tube for water piping shall have a weight of not less than type "L". **(MHMC 15.20.050)**

FIRE DEPARTMENT

- A. **Preliminary Review Only:** The requirements and conditions stated in this review are preliminary and are intended to be used for the purposes of project planning. An official Fire Department review of the project will be conducted upon receipt of a complete plan submittal application that clearly shows all intended grading, demolition, construction or building modifications.
- B. **Proposal limited to:** Review of this Development proposal is limited to acceptability of site access as they pertain to fire department operations, and shall not be construed as a substitute for formal plan review to determine compliance with adopted model codes. Prior to performing any work, the applicant shall make application to, and receive from, the Building Department all applicable construction permits.
- C. **Automatic Fire Sprinkler System Required.** Buildings requiring automatic fire sprinkler system shall be equipped throughout with an approved automatic fire sprinkler system. The fire sprinkler system shall be hydraulically designed per National Fire Protection Association (NFPA) Standard #13. **(CFC Chapter 9 as amended by MHMC 15.44.170)**
- D. **Fire Apparatus (Engine) Access Roads Required,** Prior to the commencement of combustible construction, an access roadway with a paved all weather surface and a minimum unobstructed width of 20 feet, vertical clearance of 13 feet, 6 inches shall be provided, with minimum circulating turning radius of 36 feet outside and 23 feet inside, and a maximum slope of 15%, unless otherwise approved in writing by the Fire Marshal. Installations shall conform to the City of Morgan Hill Standard Details and Specifications 11-B. **(CFC section 503 as amended by MHMC 15.44.140)**
- E. **Public Fire Hydrant(s) required:** Provide public fire hydrant(s) at location(s) to be determined jointly by the Fire Department and the City of Morgan Hill Public Works Department. Maximum hydrant spacing shall be 500 feet and the minimum single flow hydrant shall be 1000 GPM at 20 psi residual pressure. If fire hydrants are already in place, include civil drawings showing location of all hydrants with the building permit submittal. **(CFC 507)**
- F. **Fire Hydrant Location Identifier,** Prior to project final inspection, the general contractor shall ensure that an approved ("Blue Dot") fire hydrant location identifier has been placed in the roadway, as directed by the fire department.
- G. **Premises Identification:** Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Numbers shall contrast with their background and be a minimum of four inches in height. **(CFC section 505)**

- H. **Timing of Required Roadway Installations.** Prior to the commencement of combustible construction, the required roadway installations, up through first lift of asphalt, shall be in place, inspected, and accepted by the City of Morgan Hill unless otherwise approved in writing by the Fire Marshal. Bulk combustible construction materials shall not be delivered to the construction site until installations are completed as stated above. During construction, emergency access roads shall be maintained clear and unimpeded. Issuance of building permits may be withheld until installations are completed. **(CFC Chapter 14 as amended by MHMC 15.44.180)**
- I. **Timing of Required Water Supply Installations.** Prior to the commencement of combustible construction, the required Fire Hydrant and Water Supply installations shall be in place, inspected, tested, and accepted by the Fire Department and the City of Morgan Hill, unless otherwise approved in writing by the Fire Marshal. Bulk construction materials may not be delivered to the construction site until installations are completed as stated above. Clearance for building permits may be held until installations are completed. **(CFC Chapter 14 as amended by MHMC 15.44.180)**
- J. **Fire Lane Marking Required.** Provide marking for all roadways within the project. Markings shall be per fire department specifications. Installations shall also conform to Local Government Standards and the City of Morgan Hill Standard Details and Specifications 11-F. **(CFC section 503)**
- K. **Fire Ladder Truck Set Up Area(s).** Provide Fire Department Ladder Truck Set up Areas with a minimum unobstructed width of 30 feet and minimum length of 60 feet. Area shall support 72,000 pounds of gross vehicle weight. Area shall be paved or other engineered surfaces may be used with Fire Department approval. **(CFC section 503 as amended by MHMC 15.44.140) Loading areas are required on Third, Fourth and Depot Streets that meet the above dimensions.**
- L. **AERIAL FIRE APPARATUS ACCESS ROADS**
1. **Where required:** Buildings or portions of buildings or facilities exceeding 30 feet (9144 mm) in height above the lowest level of fire department vehicle access shall be provided with approved fire apparatus access roads capable of accommodating fire department aerial apparatus. Overhead utility and power lines shall not be located within the aerial fire apparatus access roadway.
 2. **Width:** Fire apparatus access roads shall have a minimum unobstructed width of 26 feet (7925) in the immediate vicinity of any building or portion of building more than 30 feet (9144 mm) in height.
 3. **Proximity to building:** At least one of the required access routes meeting this condition shall be located within a minimum of 15 feet (4572) and a maximum of 30 feet (9144mm) from the building, and shall be positioned parallel to one entire side of the building, as approved by the fire code official.

- M. **Parking Along Roadways.** The required width of fire access roadways shall not be obstructed in any manner. Parking shall not be allowed along roadways less than 28 feet in width. Parking will be allowed along one side of the street for roadways 28-35 feet in width. For road ways equal to or greater than 36 feet, parking will be allowed on both sides of the roadway. Roadway widths shall be measured face to face of curb. Parking spaces are based on an 8-foot wide space. **(CFC section 503)**
- N. Review of these plans does not release the developer, architect, or contractor of the responsibility for the corrections of mistakes, errors or omissions contained therein.

POLICE DEPARTMENT

I. SITE DEVELOPMENT

- A. The applicant shall comply with applicable provisions of the City's building security ordinance. Exterior lighting shall comply with criteria specified in the Design Review Ordinance. **(MHMC 18.74.370)**
- B. The common main entrance door to a multi-family residential building shall be coupled with a voice intercom and electric door controls for each living unit to monitor control of visitor access to the building's interior. There shall be no master keying of residential units.
- C. On directories used in a multiple family dwelling, the residents listed shall be by alphabetical listing only and shall not correspond to numbering of dwelling unit. **(MHMC 15.40.410)**
- D. Where electronic security gates are provided to a development, a voice intercom or phone and electric gate control shall be provided. Gate location shall be designed to provide adequate area for turn-around of vehicles. Applicant will establish gate code in cooperation with and the approval of the Morgan Hill Police Department.

II. BUILDING DESIGN

- A. Commercial space shall have all exterior transoms, glass skylights, and other openings of glass which are accessible from any surface on the premises shall be constructed of burglary- resistant glass or equally resistant glasslike material or secured on the inside with the following protective devices:
1. Iron bars of at least one-half (½) inch round or one (1) inch x one-quarter (1/4) inch flat steel material no more than five (5) inches apart and securely fastened; or
 2. Iron or steel grills of at least one-eighth (1/8) inch thickness with mesh not to exceed two (2) inches secured with non-removable type screws. **(MHMC 15.40.250)**
- B. All commercial space hatchway openings shall be secured with the following protective devices:
1. If the hatchway is of wooden material, it shall be covered on the inside with at least sixteen (16) gauge sheet steel, or its equivalent, attached with screws.

2. The hatchway shall be secured from the outside with a slide bar or slide bolt with a minimum of one (1) inch throw. The use of a crossbar or padlock must be approved by the Fire Department.
 3. Outside hinges on all hatchway openings shall be provided with non-removable pins using pin-type hinges. **(MHMC 15.40.280)**
- C. All air duct or air vent openings exceeding eight (8) inches x twelve (12) inches on the roof or exterior walls of any building shall be secured by covering the same with either of the following:
1. Iron bars of at least one-half ($\frac{1}{2}$) inch round or one (1) inch x one-quarter ($\frac{1}{4}$) inch flat steel material, spaced no more than five (5) inches apart and securely fastened; or
 2. Iron or steel grills of at least one-eighth ($\frac{1}{8}$) inch thickness with mesh not to exceed two (2) inches and secured with non-removable type screws.
 3. If the barrier is on the outside, it shall be secured with galvanized round-head through bolts of at least three-eighths ($\frac{3}{8}$) inch diameter on the outside. **(MHMC 15.40.290)**

OFFICE OF JOINT POWERS PRETREATMENT

COMMERCIAL AND INDUSTRIAL BUILDINGS

- A. Restaurants and food preparation facilities shall install grease interceptors. The type, size and location of said interceptors shall be to the approval of the Public Works Director and the Pretreatment Office.
- B. Installation of a sewer test manhole in lieu of a property line clean-out, shall be provided for each building, in accordance with standard city specifications. **(MHMC 13.20.270)**



CITY COUNCIL STAFF REPORT

MEETING DATE: April 19, 2017

PREPARED BY: Rich Buikema, Contract Planner
APPROVED BY: City Manager

DEVELOPMENT AGREEMENT AMENDMENT APPLICATION AAE2016-0010: WALNUT GROVE-NEULAND: REQUEST FOR A DEVELOPMENT AGREEMENT AMENDMENT TO ADD FOUR FISCAL YEAR 2018-2019 BUILDING ALLOTMENTS FOR A NINE LOT SUBDIVISION. THE PROPERTIES, IDENTIFIED BY ASSESSOR PARCEL NUMBER(S) 726-07-089, 726-07-023 AND 726-07-024 ARE LOCATED ON THE EAST SIDE OF WALNUT GROVE, SOUTH OF DIANA AVENUE

RECOMMENDATION(S)

Recommendations

1. Open and close public hearing;
2. Waive first and second reading of Development Agreement Amendment Ordinance;
and
3. Introduce Development Agreement Amendment Ordinance.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

Newland Homes is requesting approval of a Development Agreement Amendment to memorialize commitments made during the 2016 Residential Control System (RDCS) processes. The Development Agreement provides for the subdivision of 2.1 acres of a larger parcel (4.7 acres) into 9 lots. The site is located on the east side of Walnut Grove Drive, south of Diana Avenue.

The City Council approved a Development Agreement for five RDCS building allotments on December 14, 2016. An additional four RDCS building allotments were awarded in the 2016 RDCS competition for Fiscal Year 2018-19 (Application No. RDCS2016-0012 Walnut Grove-Newland Homes). The Development Agreement Amendment incorporates the newly awarded allotments.

The Planning Commission held a public hearing on the Development Agreement Amendment at its March 28, 2017 meeting. The Planning Commission recommended approval of the Development Agreement Amendment. The amended Development Agreement (DAA) maintains the same commitments as the original Development

Agreement, revising only the Development Schedule (Exhibit C) to include the additional four allotments obtained in the 2016 RDCS competition.

COMMUNITY ENGAGEMENT:

The Morgan Hill Community was informed about the project through public notification, including site signage, newspaper notice, and direct mail to property owners within 300 feet.

ALTERNATIVE ACTIONS:

In addition to denial of the Development Agreement Amendment, the City Council could direct staff to make changes to the Development Agreement.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

A General Plan Amendment (GPA-97-11 Walnut Grove-La Mere) was approved in October 1998 amending the land use designation of the project site from Office Industrial to Single Family Medium (3-5 dwelling units per acre). Concurrently, the site was rezoned from Office Industrial (MO) to R-1-9,000/RPD (ZA-97-20 Walnut Grove-La Mere). A Precise Plan was not submitted within the required timeframe specified by Chapter 18.18.140 of the Municipal Code, therefore, the zoning reverted to the MO zone district.

In August 2016, the City Council approved a Zoning Amendment (ZA2016-0005) amending the zoning on the site from Office Industrial MO to the R-1 9,000 zone district to conform to the Single Family Medium General Plan land use designation.

The Development Agreement was reviewed by the Planning Commission at its November 22, 2016 meeting at which the Commission held a public hearing. The Planning Commission recommended approval of the Development Agreement to the City Council. The Planning Commission also approved a vesting Tentative Subdivision Map at its November 22, 2016 meeting, allowing the development of five single-family residences on a 2.1-acre portion of a 4.7-acre vacant site.

The City Council approved the Development Agreement on December 14, 2016. A provision was added to the project Development Agreement requiring that the Developer provide written disclosure to potential purchasers of property within the subdivision that the property is within, or adjacent to an area being considered as a route for the construction of the California High Speed Rail project.

The subject Development Agreement amendment was reviewed by the Planning Commission at its March 28, 2017 meeting, at which the Commission held a public hearing (see attached Staff Report). The Planning Commission recommended approval of the Development Agreement Amendment. The Planning Commission also approved a vesting Tentative Subdivision Map Amendment at its March 28, 2017 meeting, allowing the development of nine single-family residences.

FISCAL AND RESOURCE IMPACT:

The City development review functions are cost-recovery, with fees collected from applicants to cover cost of services. These fees have been collected.

CEQA (California Environmental Quality Act):

A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.

LINKS/ATTACHMENTS:

1. Draft CC Ordinance & Development Agreement Amendment
2. Planning Commission Staff Report (3-28-17)

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF MORGAN HILL
APPROVING AN AMENDED DEVELOPMENT
AGREEMENT FOR A NINE LOT DEVELOPMENT
PROJECT AAE2017-0010: WALNUT GROVE-NEWLAND
LOCATED ON THE EAST SIDE OF WALNUT GROVE
DRIVE, SOUTH OF DIANA AVENUE (APN 726-07-089,726-
07-023, -024)**

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3: The Planning Commission, pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code and Resolution No. 16-02, has an awarded allotment to a certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MMC-15-10: Walnut Grove-Newland	5, FY 2017-2018 allotments
RDCS2016-0012 Walnut Grove-Newland	4, FY 2018-2019 allotments

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the Developer set forth in detail the development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the development proposal and agreement approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 6. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

- SECTION 7.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.
- SECTION 8.** Effective Date; Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.
- SECTION 9.** Notice is hereby given that, pursuant to the Mitigation Fee Act, the City of Morgan Hill charges certain fees (as such term is defined in Government Code Section 66000) in connection with approval of your development project for the purpose of defraying all or a portion of the cost of public facilities related to your development project (Mitigation Fee Act Fees). These fees do not include fees for processing applications for governmental regulatory actions or approvals, or fees collected under development agreements, or as a part of your application for development allocations under the City's Residential Development Control System. The Mitigation Fee Act Fees applying to your project are listed in the schedule of fees provide. Notice is also hereby given that you have the opportunity to protest the imposition of the Mitigation Fee Act Fees within 90 days of the approval or conditional approval of your development project and that the 90-day approval period in which you may protest has begun. This right to protest does not apply to voluntary Residential Development Control System fees.
- SECTION 10.** The approved project shall be subject to the conditions as identified in the set of standard conditions attached hereto, as Exhibit "A" by this reference incorporated herein.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 19th DAY OF APRIL 2017, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE ____ DAY OF MAY 2017, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSTAIN: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

ATTEST:

APPROVED:

IRMA TORREZ, City Clerk

STEVE TATE, Mayor

⌘ CERTIFICATION ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. _____, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the _____ day of _____, 2017.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

Exhibit A

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Morgan Hill
Community Development Agency
17575 Peak Avenue
Morgan Hill, CA 95037

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF MORGAN HILL
AND
NEWLAND HOMES
REGARDING
THE WALNUT GROVE DRIVE
SINGLE FAMILY RESIDENTIAL DEVELOPMENT PROJECT

Attachment: Draft CC Ordinance & Development Agreement Amendment (1121 : DAA AAE2016-0010: WALNUT GROVE-NEWLAND)

RESIDENTIAL DEVELOPMENT AGREEMENT
 BY AND BETWEEN
 THE CITY OF MORGAN HILL
 AND
 NEWLAND HOMES
 REGARDING THE
 SINGLE FAMILY RESIDENTIAL DEVELOPMENT PROJECT

This Development Agreement ("**Agreement**") is entered into on the below-stated "**Effective Date**" by and between the City of Morgan Hill, a California municipal corporation, (hereinafter "**City**"), and Newland Homes, and their successor and assigns (hereinafter, collectively, "**Developer**"), pursuant to section 65864 *et seq.* of the Government Code of the State of California and City's police powers. City and Developer are, from time to time, also hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code sections 65864 *et seq.* ("**Development Agreement Statute**"), which regulates development agreements with any person having a legal or equitable interest in real property providing for the development of that property and establishes certain development rights in the property. In accordance with the Development Agreement Statute, and by virtue of its police powers, City has the authority to enter into development agreements, and has reflected that authority in its Morgan Hill Municipal Code (Chapter 18.80 *et seq.*) ("**Enabling Ordinance**"). This Agreement has been drafted and processed pursuant to the Development Agreement Statute and the Enabling Ordinance.

B. Developer currently has a legal and/or equitable interest in the Property.

C. Developer proposes to plan, develop, construct, operate and maintain the Project on the Property (as such terms are defined herein).

D. As of the Effective Date, various land use regulations, allotments, entitlements, grants, permits and other approvals have been adopted, issued, and/or granted by City relating to the Project (collectively "**Existing Approvals**"), including without limitation, all of the following:

1. Five building allotments (Fiscal Year 2017-18) pursuant to the RDSCS, and conditions attached to the award of such allotments; and
2. Four building allotments (Fiscal Year 2018-19) pursuant to the RDSCS, and conditions attached to the award of such allotments

The existing approvals are more particularly described in the resolutions adopting the Existing Approvals.

E. For the reasons recited herein, Developer and City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will help to eliminate uncertainty in planning, provide for the orderly development of the Project consistent with the planning goals, policies, and other provisions of the City's General Plan and City's Municipal Code, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

F. On January 13, 2016 and January 10, 2017, the Morgan Hill Planning Commission approved allotments for the Project as set forth in the Developer's application for a development allotment pursuant to Chapter 18.78 of the Morgan Hill Municipal Code ("**Residential Development Control System**", or "**RDCS**"). This Agreement serves to secure in a permanent and enforceable manner the public benefits included in the Developer's application as required under Section 18.78.060A of Chapter 18.78 of the Code.

G. On November 22, 2016 and March 28, 2017, following a duly noticed and conducted public hearings, the Planning Commission of the City ("**Planning Commission**"), the hearing body for purposes of the Development Agreement Statute and the Enabling Ordinance, adopted Resolutions that affirmed CEQA compliance for this Agreement, adopted findings that this Agreement is consistent with the City's General Plan and the Existing Approvals and recommended that this Agreement be approved by the City Council.

ARTICLE 1

ADMINISTRATION

1.01 Effective Date. On April 19, 2017, following a duly noticed and conducted public hearing, the Morgan Hill City Council ("City Council") introduced Ordinance No. _____, an ordinance that affirms CEQA compliance, that adopts findings that this Agreement is consistent with the City's General Plan and the Existing Approvals, that approves this Agreement, and that directs this Agreement's execution by City ("Approving Ordinance"). The City adopted the Approving Ordinance on ____, 20__, the Approving Ordinance became effective thirty (30) days later, and the Parties signed the Agreement. The "Effective Date" in this Agreement shall be the date that the Approving Ordinance became effective.

1.02 Definitions.

(a) The following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

(1) "**Applicable Law**" shall have that meaning set forth in Section 2.01(a) of this Agreement.

(2) "**Existing Approvals**" shall have that meaning set forth in Recital paragraph D of this Agreement.

(3) **"Existing City Laws"** shall mean all City ordinances, resolutions, rules, regulations, guidelines, motions, practices and official policies governing land use, zoning and development, RDSCS, permitted uses, density and intensity of use, maximum height, bulk and size of proposed buildings, and other City land use regulations in force and effect on the Effective Date of this Agreement.

(4) **"Impact Fees"** shall mean those fees imposed so that developments bear a proportionate share of the cost of public facilities and service improvements that are reasonably related to the impacts and burdens of the Project, adopted pursuant to Morgan Hill Municipal Code Chapter 3.56 and California Government Code Section 66001 et seq.

(5) **"Legal Effect"** shall mean the ordinance, resolution, permit, license or other grant of approval has been adopted by City and has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and all applicable administrative appeal periods and statutes of limitations have expired.

(6) **"New City Laws"** shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations, whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes **"Legal Effect"** after the Effective Date of this Agreement, and that applies City wide.

(7) **"Project"** mean the development containing a residential use, as more particularly described in the Residential Development Control System Application MMC-15-10: Walnut Grove-Newland . Any reference in this Agreement to the "Project" shall mean and include the "Property".

(8) **"Project Approvals"** mean, collectively, the Project's Existing Approvals and the Subsequent Approvals.

(9) **"Property"** shall mean that certain real property consisting of approximately 2.1 acres located within the City, as more particularly described and shown on **Exhibit A** to this Agreement.

(10) **"RDSCS"** means the Residential Development Control System set forth in Chapter 18.78 of the Morgan Hill Municipal Code.

(11) **"Second Notice"** shall have that meaning set forth in Section 4.07(c) of this Agreement.

(12) **"Subdivision Document"** means, pursuant to Government Code section 66452.6(a) and this Agreement, the term of any tentative map, vesting tentative map, parcel map, vesting parcel map, final map or vesting final maps, or any such new map or any amendment to any such map, or any resubdivision.

(13) **"Subsequent Approvals" and "Subsequent Approval"** mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of

the Project, that are sought by Developer, and that are granted by City after the City Council adopts the Approving Ordinance (defined below), including without limitation, a City Resolution of Application for Annexation and subdivision maps and any Subdivision Document.

(b) To the extent that any defined terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them elsewhere in this Agreement, or if not in this Agreement, by controlling law.

1.03 Term/Subdivision Documents.

(a) The term ("**Term**") of this Agreement shall commence on the Effective Date, and then shall continue (unless this Agreement is otherwise terminated, modified or extended as provided in this Agreement) until the earliest of (1) the loss of all development allocation for the Project under the RDCS, if applicable, (2) the issuance of a certification of occupancy for all units in the Project or (3) ten (10) years plus one day after the Effective Date; provided however that Developer's obligations under Sections 2.03 and 2.04 shall survive the termination of this Agreement until such obligations are fully performed and completed in accordance with this Agreement.

(b) Any Subdivision Document relating to the Project shall automatically be extended to and until the end of the Term of this Agreement. The termination of this Agreement shall have no effect on the remaining term of a Subdivision Document that has not yet expired. Any improvement agreement entered into pursuant to the Subdivision Map Act (Gov. Code §§ 66410 *et seq.*) or other State or local regulation shall have that term determined by City. If this Agreement terminates for any reason prior to the expiration of vested rights otherwise given under the Subdivision Map Act to any vesting tentative map, vesting parcel map, vesting final map or any other type of vesting map on the Property (or any portion of the Property) (collectively, "**Vesting Map**"), such Vesting Map approved during the Term of this Agreement shall NOT extend the Applicable Law beyond the stated Term of this Agreement and the City rules, regulations and official policies applicable to that portion of the Property covered by such Vesting Map shall become those City rules, regulations and official policies in effect as of the date of the termination of this Agreement; provided, however, that City and Developer may agree to an extension of the Term of this Agreement with respect to the area covered by any such Vesting Map.

(c) If any "**Third Party Challenge**" (as that term is defined in Section 4.06(a) of this Agreement) is filed, then the Term of this Agreement shall be tolled for the period or periods of time from the date of the filing of such litigation until the conclusion of such litigation by dismissal or entry of a final judgment ("**Litigation Tolling**"). Notwithstanding the foregoing, regardless of the number of Third Party Challenges that may be filed during the Term of this Agreement, the sum total of such Litigation Tolling shall not exceed five (5) years. The filing of any Third Party Challenge shall not delay or stop the development, processing or construction of the Project, or the approval or issuance of any Project Approvals, unless enjoined or otherwise controlled by a court of competent jurisdiction. The Parties shall not stipulate to the issuance of any such order unless mutually agreed to.

ARTICLE 2

APPLICABLE LAW

2.01 Applicable Law—Generally.

(a) As used in this Agreement, "**Applicable Law**" shall mean all of the items listed below in this Section 2.01, subject only to the conditions set forth in Section 2.02(c) of this Agreement. The order of their importance is the order in which they are listed (with highest importance listed first, second most important listed second, etc.); in the event of a conflict between them, their order shall determine which one controls (the one listed higher controlling over the one listed lower):

(1) All the provisions, terms and conditions of this Agreement.

(2) The Existing Approvals. Developer hereby waives any legal or equitable right to challenge administratively or judicially any Existing Approvals including conditions of those Existing Approvals. Such waiver includes any requirements for notice, acts of protest and/or right to litigation pursuant to the Mitigation Fee Act and/or any other applicable law.

(3) The Subsequent Approvals, provided such Subsequent Approvals are:

- (i) In compliance with all controlling California law;
- (ii) Mutually agreed to by the Parties; and
- (iii) Duly enacted by City.

(4) The "Existing City Laws" that are not in conflict with this Agreement and the Project Approvals.

(5) Any "New City Laws" Developer is subject to under this Agreement; for example, as provided in, but not limited to, Section 2.09. Additionally, any New City Laws to which Developer elects to be subject pursuant to Section 2.09(e).

(b) The Parties acknowledge that the Subsequent Approvals may be processed in stages and therefore one or more Subsequent Approvals may be adopted and approved before other Subsequent Approvals needed for development of the Project are adopted and approved by City.

(c) The Parties shall cooperatively assemble all of the necessary documents to memorialize, to the best of their abilities, the Project Approvals, Existing City Laws, and the terms and conditions contained in this Agreement to assist Developer to maintain the documents assembled and to provide a continuing reference source for the approvals granted and the ordinances, policies and regulations in effect on the Effective Date of this Agreement.

(d) Nothing contained herein will give Developer a vested right to develop the described Project or to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

(e) Nothing contained herein will give Developer a vested right to develop the described Project absent valid and unexpired development allocations under the RDCS.

2.02 Vested Right to Applicable Law.

(a) During the Term of this Agreement, Developer shall have the vested right to develop the Project subject only to, and in accordance with, the Applicable Law, and during the Term of this Agreement City shall have the right to regulate the development and use of the Project subject only to, and in accordance with, the Applicable Law. Nothing contained herein will give Developer a vested right to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

(b) Under this Agreement, the Applicable Law will be an expanding body of law, such as, for example, when Subsequent Approvals are granted by City, and/or when Developer becomes subject to a New City Law pursuant to this Agreement.

(c) If the RDCS is applicable to the Project or any portion thereof, the vested rights to develop the Project according with Applicable Law and this Agreement shall be vested only to those residential units having a RDCS allotment. If the Project defined in this Agreement includes units that have not been awarded RDCS allotments ("Pending Units"), the RDCS allotments for the Pending Units shall be a necessary Subsequent Approval and this Agreement shall be amended to reflect the application and conditions attaching to the RDCS allotments for the Pending Units.

(d) Developer agrees that the terms and conditions of this Agreement and conditions of approval issued pursuant to this Agreement shall govern and dictate the vesting of the Developer's right to develop in lieu of any other instrument of vesting, including any vesting tentative map or any other agreement, instrument or document purporting to vest any right of development. Developer agrees to waive any vesting rights by operation of any otherwise applicable city, state or federal law.

2.03 Project Impacts and Costs.

(a) Agreement Subject to Project Mitigation Requirements. Notwithstanding any other express or implied term or condition of this Agreement (or the Approvals) to the contrary, throughout the Term of this Agreement, the full and complete mitigation of all environmental (including any mitigation measure adopted pursuant to CEQA), physical, fiscal and other impacts of the Project and the Property on the community and on the City of Morgan Hill and its services, facilities, operations and maintenance (collectively, "**Project Mitigation**") shall be borne by and shall be the sole and exclusive responsibility of the Project (and the Developer who is the owner of same). Such Project Mitigation may be conditions of any Applicable Law or Project Approval and may include a mix of different approaches, including without limitation, Developer construction of and/or financing of such services, facilities, operations and maintenance through the payment of impact fees or other fees, taxes, levies, assessments, or other financing

mechanisms including without limitation, reimbursement agreements, Landscaping and Lighting Districts, Mello-Roos Districts, Community Facilities Districts, Assessment Districts, Tax-Exempt and Taxable Financing Mechanisms, Maintenance Districts, Homeowners Associations, and participation in the Statewide Communities Infrastructure Program (collectively, "**Financing Mechanisms**"). The necessary scope and extent of such Project Mitigation, and which combination of Financing Mechanisms should be employed relating to such Project Mitigation to assure success of the Project Mitigation, shall be determined by City, in its sole and exclusive discretion, pursuant to appropriate City ordinance, resolution, regulations or procedures, taking into account and guided by the pre-existing rights of others in the existing and future public services and facilities (including their operations and maintenance) that Developer may seek to use. If no Financing Mechanism is available to fund the Project Mitigation, then the Project shall not progress forward.

(b) Impact Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04 and as part of the Project's sole and exclusive obligation (and the Developer's as the owner of same) to cover Project Mitigation, Developer shall pay all Impact Fees and in the amounts in legal effect at the time any such Impact Fees become due and payable as provided for in the City's Municipal Code.

(c) Processing Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04, the Project (including Developer as owner of same) shall be responsible for the costs to City of processing any and all Developer-requested land use approvals, including without limitation, building permits, plan checks, environmental studies required under CEQA and other similar requests for City permits and entitlements, when such costs are incurred by City. City shall impose those funding requirements needed to ensure that the processing costs to the City are fully covered by the Project (including Developer as owner of same). Further, if additional, accelerated, or more frequent inspections are requested by Developer of City than would otherwise take place in City's ordinary course of business, then City may either hire additional contract inspectors, plan checkers, engineers or planners, or City may hire a full or part time employee. If City hires additional contractors, then Developer shall reimburse City, on a monthly basis in arrears, the cost to City of hiring such additional contract inspectors, plus Developer shall pay to City an additional ten percent (10%) of such cost to City on the same payment schedule. City shall use such additional 10% to defray administrative costs. If City hires a full or part time employee, then Developer shall reimburse City, on a monthly basis, in arrears, for a pro rata share of the total cost to the City of such employee, plus ten percent (10%) for administrative costs, for the period from hire to the end of the Term of this Agreement.

2.04 RDCS and Other Specific Project-Specific Requirements.

(a) The following specific requirements set forth in Exhibit D are voluntarily assumed by Developer in return for benefits derived from the City's RDCS building allotment approval program. These requirements are not Project Mitigation within the meaning of Section 2.03 of this Agreement or otherwise imposed to mitigate impacts of the Project. Developer hereby agrees that these requirements are not subject to credit, refund or reimbursement or prohibition under otherwise applicable city, state or federal law and waives any such right to credit, refund, reimbursement or prohibition. Instead, these requirements are voluntarily assumed by Developer in return for benefits derived from the RDCS. For example, under the RDCS, awarding of

residential allotments to new development is a competitive process based on a point system. Additional points can be awarded to a development proposal that is willing to pay fees in addition to those already required to mitigate its impacts. The payment of these additional fees results in additional points being awarded to the development proposal under the RDCS, thereby allowing the development proposal to secure a higher score under the RDCS, which in turn may provide a high enough score for the development proposal to secure allotments. The obligation that results (to pay such additional fees and to otherwise abide by the requirements derived from that RDCS process in return for additional points under the RDCS) are enforced through this Agreement.

(b) The Developer's RDCS application - MMC-15-10: Walnut Grove-Newland approved January 13, 2016 and RDCS2016-0012 Walnut Grove-Newland approved January 10, 2017 and approval actions (as reflected in the official records, including agendas and minutes of the City Planning Commission and City Council) shall be incorporated into this Agreement; provided however, the Project under this Agreement may constitute only part of the development or Property to which said RDCS application and approvals apply and cover only part of the allotments awarded to the Property or development. Attachment A identifies the portion of the Property, the phase of the development and the number of allotments that the Project and this Agreement covers. If this Agreement covers multiple phases of a development on the Property, then Attachment C also identifies the phase during which each of the specific requirements shall apply.

2.05 Construction Codes.

With respect to the development of any or all of the Project or the Property, Developer shall be subject to the California Building Code and all those other State-adopted construction, fire and other codes applicable to improvements, structures, and development, and the applicable version or revision of said codes by local City action (collectively referred to as "**Construction Codes**") in place at that time that a plan check application for a building, grading or other permit subject to such Construction Codes is submitted to City for approval, provided that such Construction Codes have been adopted by City and are in effect on a City-wide basis.

2.06 Timing of Development.

(a) Securing Building Permits and Beginning Construction. Developer agrees to secure building permits and to begin construction of the Project in accordance with the time requirements set forth in the Construction Codes and the RDCS, if applicable, as these exist on the Effective Date. In the event Developer fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the RDCS, the RDCS allotment shall expire pursuant to Section 18.78.125 of Chapter 18.78 of the Morgan Hill Municipal Code.

(b) Progress Reports Until Construction of Project is Complete. Developer shall make reports to the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

(c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of off-site and landscaping contracts or documents for purpose of

determining the amount of any bond to secure performance under said contracts, Developer agrees to furnish such documents to the City and the City agrees to maintain the confidentiality of such documents and not disclose the nature or extent of such documents to any person or entity in conformance with the requirements of the California Public Records Act.

(d) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units in the Project, the City shall provide Developers with an instrument in recordable form certifying completion of the entire project. Upon issuance of the certificate of completion for 100% of the total units of the Project, this Development Agreement shall be deemed terminated as to the entire Project.

2.07 Improvements.

In any instance where Developer is required to install improvements (including those set forth in Exhibit D), Developer shall obtain City approval of the plans and specifications and the timing and manner of the installation of improvements, and provided Developer has supplied all information required by City, City shall review and act on the application for such approval with good faith and in a reasonable manner. Where the actual cost of any improvement exceed Developer's estimated cost or commitment, Developer shall be solely responsible for all improvements costs in excess of those approved by City unless otherwise provided for in a reimbursement agreement.

2.08 Overcapacity, Oversizing.

(a) City may require Developer to construct on-site and off-site improvements in a manner that provides for oversizing or overcapacity so that the constructed improvement will serve other development or residents or facilities and services outside of the Project ("**Oversizing**"). Such Oversizing shall be reasonable in scope. The Parties recognize that the City shall not require any Oversizing from Developer except in connection with the Project Approvals and in accordance with provisions of the Subdivision Map Act and Applicable Law.

(b) Unless no credit or reimbursement is owed to Developer pursuant to Section 2.04 of this Agreement, Developer's right to receive credits and reimbursements for Oversizing or excessive payment or performance shall be determined and processed pursuant to the City's Municipal Code and controlling practices (relative to credits and reimbursements) on the Effective Date.

2.09 New City Laws.

(a) City may apply any New City Law to the Project that is not in conflict with this Agreement and the Applicable Law it describes. City shall not apply any New City Law to the Project that is in conflict with this Agreement and the Applicable Law it describes, nor otherwise reduces the development rights or assurances provided by this Agreement. City shall not apply to the Project nor Property any no-growth or slow-growth ordinance, measure, policy, regulation or development moratorium either adopted by City or by a vote of the electorate and whether or not by urgency ordinance, interim ordinance, initiative, referendum or any other change in the laws of the City by any method or name which would alter the Applicable Law that may stop, delay, or effect the rate, timing or sequence of development.

(b) Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, a New City Law shall be deemed to be in conflict with this Agreement or the Applicable Law or to reduce the development rights provided hereby if the application to the Project would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which affects or applies to the Project:

(1) Change any land use designation or permitted use of the Property allowed by the Applicable Law or limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the total number of residential dwelling units, square footage, floor area ratio, height of buildings, or number of proposed non-residential buildings, or other improvements;

(2) Limit or control the availability of public utilities, services, or facilities otherwise allowed by the Applicable Law;

(3) Limit or control the rate, timing, phasing or sequencing of the approval, development, or construction of all or any part of the Project in any manner, or take any action or refrain from taking any action that results in Developer having to substantially delay construction of the Project or require the acquisition of additional permits or approvals by the City other than those required by the Applicable Law;

(4) Limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations in the Existing Approvals and the Subsequent Approvals (as and when they are issued);

(5) Limit the processing of Subsequent Approvals.

(c) If City determines that it has the right under this Agreement to impose/apply a New City Law on the Property/Project, it shall send written notice to Developer of that City determination ("**Notice of New City Law**"). Upon receipt of the Notice of New City Law, if Developer believes that such New City Law is in conflict with this Agreement, Developer may send written notice to the City of the alleged conflict within thirty (30) days of receipt of City's Notice of New Law ("**Objection to New City Law**"). Developer's Objection to New City Law shall set forth the factual and legal reasons why Developer believes City cannot apply the New City Law to the Property/Project. City shall respond to Developer's Objection to New City Law ("**City Response**") within thirty (30) days of receipt of said Developer Objection to New City Law. The City Response shall set forth the factual and legal reasons why City believes it can apply the New City Law to the Project. Thereafter, the Parties shall meet and confer within thirty (30) days of the date of Developer's receipt of the City Response (the "**Meet and Confer Period**") with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. Within fifteen (15) days of the conclusion of the Meet and Confer Period, City shall make its determination, and shall send written notice to Developer of that City determination. If City determines to "impose/apply" the New City Law to the Project, then Developer shall have a period of ninety (90) days from the date of receipt of such City determination within which to file legal action challenging such City action. In other words, a 90-day statute of limitations regarding Developer's right to judicial review of the New City Law shall commence upon Developer's receipt of City's determination following the conclusion of the Meet and Confer Period. If upon

conclusion of judicial review of the New City Law (at the highest judicial level sought and granted), the reviewing court determines that Developer is not subject to the New City Law, such New City Law shall cease to be a part of the Applicable Law, and City shall return Developer to the position Developer was in prior to City's application of such New City Law (*e.g.*, City return fees, return dedications, etc.). The above-described procedure shall not be construed to interfere with City's right to adopt or apply the New City Law with regard to all other areas of City (excluding the Project).

(d) Developer in its sole and absolute discretion may elect to have applied to the Project a New City Law that is not otherwise a part of the Applicable Law, subject to the limitations set forth in this subdivision (d). In the event Developer so elects to be subject to a New City Law that is not otherwise a part of the Applicable Law, Developer shall provide notice to City of that election and thereafter such New City Law shall be part of the Applicable Law. In no event shall any New City Law become part of the Applicable Law if it would relieve Developer from, or impede Developer's compliance with, Developer's obligations under this Agreement, including without limitation Developer's obligations of full "Project Mitigation" under Section 2.03 or the "RDCS and Other Project Specific Requirement" under Section 2.04. Further, for the purposes of this Agreement, the "New City Laws" Developer may elect to be subject to pursuant to this Section shall not mean nor include any or all individual development agreements with other developers (including without limitation such development agreements' term and conditions, exhibits, etc.) executed before or after the Effective Date of this Agreement.

(e) City shall not be precluded from adopting and applying New City Laws to the Project to the extent that such New City Laws are specifically required to be applied by State or Federal laws or regulations, and implemented through the Federal, State, regional and/or local level) ("**Mandated New City Laws**"), including without limitation those provisions in the Development Agreement Statute concerning property located in a flood hazard zone (Gov. Code § 65865.5), or that such New City Laws are necessitated by or arise from a declaration of City, local, state or federal declaration of a state of emergency.

(f) In the event that an administrative challenge and/or legal challenge (as appropriate) to a Mandated New City Laws preventing compliance with this Agreement is brought and is successful in having the Mandated New City Law determined to not apply to this Agreement, this Agreement shall remain unmodified and in full force and effect.

ARTICLE 3

PROCESSING

3.01 Processing.

(a) This Agreement does not provide Developer with any right to the approval of Subsequent Approvals nor to develop or construct the Project beyond that which is authorized in the Existing Approvals. For any Subsequent Approvals necessary for the Project, this Agreement simply provides a process by which such Subsequent Approvals may be processed by Developer, and later included into this Agreement, if and only if such Subsequent Approvals are compliant with all controlling California law (including proper Planning and Zoning Law and

CEQA compliance), have secured approval of the Parties, and are adopted/approved by City, which shall retain all lawful discretion in this regard. That public review process is ongoing, and following the City's adoption of this Agreement, that public review process shall continue. Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit the discretion of City or any of its officers or officials with regard to the Project Approvals that legally require the exercise of discretion by City. City's discretion as to the granting of Subsequent Approvals shall be the discretion afforded by the Applicable Law.

(b) Upon submission by Developer of any and all necessary and required applications for Subsequent Approvals and payment of any and all appropriate processing and other fees as provided in this Agreement, City shall use its best efforts to promptly commence and diligently complete all steps necessary to acting on the requested Subsequent Approvals, including, but not limited to, (i) the holding of any and all required public hearings and notice for such public hearings, and (ii) the granting of the requested approval to the extent that it is consistent with Applicable Law.

3.02 Significant Actions by Third Parties Necessary to Implement the Approvals.

(a) At Developer's sole discretion, Developer shall apply for such other permits, grants of authority, agreements, and other approvals from other private and/or public and quasi-public agencies, organizations, associations or other entities ("**Other Entity**") as may be necessary to the development of, or the provision of services and facilities to, the Project ("**Other Permits**").

(b) City shall cooperate with Developer in its endeavors to obtain any Other Permits and shall, from time to time, at the request of Developer, join with Developer in the execution of such permit applications and agreements as may be required to be entered into with any such other agency.

(c) In the event that any such Other Permit is not obtained from an Other Entity within the time permitted by law for such other entity to act and such circumstance materially deprives Developer of the ability to proceed with development of the Project or any portion thereof, or materially deprives City of a bargained-for public benefit of this Agreement, then, in such case, and at the election of either party, Developer and City shall meet and confer with the objective of attempting to mutually agree on solutions that may include alternatives, Subsequent Approvals, or an amendment(s) to this Agreement to allow the development of the Project to proceed with each Party substantially realizing its bargained-for benefit therefrom.

3.03 Administrative Amendments.

(a) Upon the written request of Developer for an amendment or modification of this Agreement or a Project Approval, the City Manager or his designee shall determine: (1) whether the requested amendment or modification is minor; and (2) whether the requested amendment or modification is consistent with this Agreement and the Applicable Law. If the City Manager or his designee finds that the proposed amendment or modification is both minor and consistent with this Agreement and the Applicable Law, and provided further that the Project and the Developer are otherwise in compliance with all agreements and approvals related to the project,

the City Manager or his designee may approve the proposed amendment or modification without notice and public hearing. Such minor amendments or modifications approved pursuant to this Section shall not constitute subsequent discretionary approvals triggering further CEQA review. Any minor amendment must be made in writing signed by the City Manager (and approved by the City Attorney) of the City and by the Developer. After approval and signatures from the City Manager and the Developer, the amendment shall be recorded with the Santa Clara County Clerk Recorder.

(b) For the purpose of this Agreement, a minor amendment shall include any of the following:

(1) Any extension, postponement or amendment of the time for commencement of construction of the Project that is concurrent and to the same extent as the time extension granted pursuant to an "exception to the loss of allotment" granted by the City Council pursuant to Section 18.78.125 of Chapter 18.78 of the Morgan Hill Municipal Code, or

(2) The addition of subsequent allocations granted as part of an "Ongoing Project" providing all of the following criteria and conditions are met:

(A) Those subsequent allocations are and shall be obligated to meet all of the Project Requirements and Commitments (including without limitation RDCS set forth in Exhibit D); and

(B) Such subsequent allocations are and shall be added to Exhibit B and Exhibit C, with time provisions as may be adjusted pursuant to the year in which such subsequent allocations are awarded to the Project as an "Ongoing Project" and with reference to such additional Project Phase.

(c) A "minor amendment" shall not include any of the following:

(i) Any material amendment or modification, or elimination of provisions required pursuant to the Morgan Hill Municipal Code and California Government Code Section 65865.2, or its successor legislation, including provisions relating to: (1) the duration or term of this Agreement, (2) the permitted uses of the subject property, (3) the density or intensity of uses, (4) the maximum height and size of proposed buildings, (5) provisions for reservation or dedication of land for public purposes, (6) general location of the uses or proposed buildings or (7) the relation of the project to adjacent properties; or

(ii) Any material amendment or modification, or eliminations of provisions set forth in Article 2 of this Agreement or Exhibits to this Agreement or any reduction in fees or Project Mitigations hereunder.

3.04 Amendments.

Any request by Developer for an amendment or modification to this Agreement or a Project Approval that is determined to be not minor by the City Manager or his designee shall be subject to the applicable substantive and procedural provisions of the City's General Plan, zoning, subdivision, and other applicable land use ordinances and regulations (i.e., City review and approval) in effect when such an amendment or modification request is approved.

ARTICLE 4

DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT

4.01 Defaults.

(a) Any failure by City or Developer to perform any material term or provision of this Agreement, which failure continues uncured for a period of sixty (60) days (or 150 days for a Mortgagee (as that term is defined in Section 4.10(a)) following written notice of such failure from the other Party (unless such period is extended by written mutual consent) ("**Notice of Default**"), shall constitute a default under this Agreement ("**Default**"). Any Notice of Default shall specify the nature of the alleged failure and, where appropriate, the manner in which such alleged failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 60-day period (or 150 days for a Mortgagee), then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 60-day period (or 150 days for a Mortgagee). If the alleged failure is cured, then no Default shall exist and the noticing Party shall take no further action. If the alleged failure is not cured, then a Default shall exist under this Agreement and the non-defaulting Party may exercise any of the remedies available under this Article.

(b) No failure or delay in giving notice of default shall constitute a waiver of default; provided, however, that the provision of written notice and opportunity to cure shall nevertheless be a prerequisite to the enforcement or correction of any default. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

4.02 Actions During Cure Period.

(a) During any cure period and during any period prior to any delivery of notice of failure or default, the Party charged shall not be considered in default for purposes of this Agreement. If there is a dispute regarding the existence of a default, the Parties shall otherwise continue to perform their obligations hereunder, to the maximum extent practicable in light of the disputed matter and pending its resolution or formal termination of the Agreement as provided herein.

(b) City will continue to process in good faith development applications during any cure period, but need not approve any such application if it relates to an alleged default of Developer hereunder.

4.03 Resolution of Disputes.

(a) In the event either Party is in default under the terms of this Agreement, the other Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies as provided herein; (iii) pursue judicial remedies as provided for herein; and/or (iv) terminate this Agreement.

(b) Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default by another Party to this Agreement, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation hereunder, or to seek specific performance. It is expressly understood and agreed that the sole legal remedy available to Developer for a breach or violation of this Agreement by City shall be a legal action in mandamus, specific performance, and/or other injunctive or declaratory relief to enforce the provisions of this Agreement, and that Developer shall not be entitled to bring an action for damages including, but not limited to, lost profits, consequential damages or other economic damages. For purposes of instituting a legal action under this Agreement, any City Council determination under this Agreement shall be deemed a final agency action.

(c) The Parties agree to meet and confer regarding any dispute, in an effort to agree on utilizing Judicial Arbitration Mediation Services ("JAMS") for Alternative Dispute Resolution ("ADR"). However, no party shall be required to use JAMS or ADR.

4.04 Periodic Review.

(a) The City shall review this Agreement at least four times per year and on a schedule to assure compliance with the RDCS, at which time the Developer is required to demonstrate good faith compliance with the terms of this Agreement.

(b) If, as a result of such periodic review, the City finds and determines, on the basis of substantial evidence, that Developer has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded under the RDCS.

4.05 Force Majeure Delay, Extension of Times of Performance.

(a) Performance by any Party hereunder shall be excused, waived or deemed not to be in default where delays or defaults are due to acts beyond a Party's control such as war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, unexpected acts of governmental entities other than City, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, enactment of conflicting State or Federal laws or regulations, or litigation (including without limitation litigation contesting the validity, or seeking the enforcement or clarification of this Agreement whether instituted by the Developer, City, or any other person or entity) (each a "**Force Majeure Event**").

(b) Any Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay and an estimated length of delay. Upon

the other Party's receipt of such notice, an extension of time shall be granted in writing for the period of the Force Majeure Event, or longer as may be mutually agreed upon by the Parties, unless the other Party objects in writing within ten (10) days after receiving the notice. In the event of such objection, the Parties shall meet and confer within thirty (30) days after the date of objection to arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached, any Party may take action as permitted in this Agreement.

4.06 Third Party Legal Actions.

(a) In the event of any administrative, legal or equitable action or other proceeding instituted by any person, entity or organization (that is not a Party to this Agreement) challenging the validity of this Agreement, any Project Approvals, or the sufficiency of any environmental review under CEQA ("**Third Party Challenge**"), the Parties shall cooperate with each other in good faith in the defense of any such challenge.

(b) City shall have the option to defend such Third Party Challenge or to tender the complete defense of such Third Party Challenge to the Developer ("**Tender**"). If City chooses to defend the Third Party Challenge or Developer refuses City's Tender, City shall control all aspects of the defense and Developer shall pay City's attorneys fees and costs (including related court costs).

(c) If Developer accepts City's Tender, Developer shall control all aspects of the defense and shall pay its own attorneys fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge. If City wishes to assist Developer when Developer has accepted the Tender, Developer shall accept that assistance and City shall pay City's own attorneys fees and costs (including related court costs) ("**City Costs**"), and Developer shall pay its own attorneys fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge (such third party fees and costs shall not include City Costs).

(d) If any part of this Agreement or any Project Approval is held by a court of competent jurisdiction to be invalid, the City shall: (1) use its best efforts to sustain and/or re-enact that part of this Agreement and/or Project Approval; and (2) take all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement, and then adopting or re-enacting such part of this Agreement and/or Project Approval as necessary or desirable to permit execution of this Agreement and/or Project Approval.

4.07 Estoppel Certificate.

(a) Any Party may, at any time, and from time to time, deliver written notice to any other Party, and/or to the Developer's lender, requesting such Party to certify in writing that, to the knowledge of the certifying Party:

(1) This Agreement has not been amended or modified either orally or in writing or if so amended, identifying the amendments.

(2) The Agreement is in effect and the requesting Party is not known to be in default of the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults.

(b) This written certification shall be known as an "**Estoppel Certificate.**" A Party receiving a request hereunder shall execute and return such Estoppel Certificate within ten (10) days following the receipt of the request, unless the Party, in order to determine the appropriateness of the Estoppel Certificate, promptly commences and proceeds to conclude an Annual Review. The Parties acknowledge that an Estoppel Certificate may be relied upon by Assignees and other persons having an interest in the Project, including holders of mortgages and deeds of trust. The City Manager shall be authorized to execute an Estoppel Certificate for City.

(c) If a Party fails to deliver an Estoppel Certificate within the ten (10) day period, as provided for in Section 4.07(b) above, the Party requesting the Estoppel Certificate may deliver a second notice (the "**Second Notice**") to the other Party stating that the failure to deliver the Estoppel Certificate within ten (10) working days following the receipt of the Second Notice shall constitute conclusive evidence that this Agreement is without modification and there are no unexcused defaults in the performance of the requesting Party. Failure to deliver the requested Estoppel Certificate within the ten (10) working day period shall then constitute conclusive evidence that this Agreement is in full force and effect without modification and there are no unexcused defaults in the performance of the requesting Party.

4.08 Assignment/Covenants Run with the Land.

(a) Right to Assign. Developer shall have the right to sell, assign, or transfer this Agreement with all its rights, title and interests therein to any person, firm or corporation acquiring an interest in the Project or Property (or portion thereof associated with the Project) at any time during the term of this Agreement ("**Assignee**"). Developer shall provide City with written notice of any assignment or transfer of all or a portion of the Property no later than thirty (30) days prior to such action, which notice shall include specific portions of the Project or Property to be assigned and the proposed form of assignment. Any proposed assignment shall be subject to the express written consent of City, which consent shall not be unreasonably withheld, delayed or conditioned. City's approval of a proposed assignment or transfer shall be based upon the proposed assignee's reputation, experience, financial resources and access to credit and capability to successfully carry out the development of the Property to completion. The written assignment, assumption or release of rights or obligations with respect to a portion of the Project or of the Property shall specify the portion of the Project or Property and the rights assigned and obligations assumed, and shall be approved by the City Attorney. The express written assumption by an Assignee of the obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred shall relieve Developer of such obligations so assumed. Any such assumption of Developer's obligations under this Agreement shall be deemed to be to the satisfaction of the City Attorney if executed in the form as may be approved by the City Attorney.

(b) Release Upon Assignment. Upon assignment, in whole or in part, and the express written assumption by the Assignee of such assignment, of Developer's rights and interests under this Agreement, Developer shall be released from its obligations with respect to the

Property/Project (or any portion thereof), and any lot, parcel, or portion thereof so assigned to the extent arising subsequent to the effective date of such assignment. A default by any Assignee shall only affect that portion of the Property/Project owned by such Assignee and shall not cancel or diminish in any way Developer's rights or obligations hereunder with respect to the assigned portion of the Property/Project not owned by such Assignee. The Assignee shall be responsible for the reporting and annual review requirements relating to the portion of the Property/Project owned by such Assignee, and any amendment to this Agreement between City and Assignee shall only affect the portion of the Property/Project owned by such Assignee.

(c) Covenants Run with the Land. This Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants and obligations shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Project and/or Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Civil Code section 1468. This Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee, or any other successor of Developer acquiring a completed residential unit comprising all or part of the Project ("**Consumer**") unless such Consumer is specifically bound by a provision of this Agreement or by a separate instrument or Agreement.

4.09 Encumbrances on the Property.

The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole and absolute discretion, from encumbering the Property, or any portion thereof or any improvements thereon with any Mortgage securing financing with respect to the construction, development, use or operation of the Project. Mortgagee may require certain modifications to this Agreement, and City shall negotiate in good faith any such request for modification or subordination.

4.10 Obligations and Rights of Mortgage Lenders.

(a) The holder of any mortgage, deed of trust or other security arrangement with respect to the Property, or any portion thereof ("**Mortgagee**"), shall not be obligated under this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement that pertain to the Property or such portion thereof in which it holds an interest.

(b) Each Mortgagee shall be entitled to receive written notice from City of results of the annual review to be done pursuant to Section 4.04 and any default by Developer under this Agreement, provided such Mortgagee has informed City of its address for notices. Each Mortgagee shall have a further right, but not an obligation, to cure such default in accordance with the default and default cure provisions in Sections 4.01, 4.02, and 4.03 of this Agreement. In the event Developer (or any permitted Assignee) becomes subject to an order for relief under any chapter of Title 11 of the United States Code (the "**Bankruptcy Code**"), the cure periods provided

for a Mortgagee in Section 4.01(a) of this Agreement shall be tolled for so long as the automatic stay of section 362 of the Bankruptcy Code remains in effect as to Developer (or any permitted Assignee); provided, however, if City obtains relief from the automatic stay under Bankruptcy Code section 362 to declare any default by or exercise any remedies against Developer (or any permitted Assignee), the tolling of any Mortgagee's cure period shall automatically terminate on the earlier of: (i) the date that is sixty days after entry of the order granting City relief from the automatic stay, or (ii) the date of the entry of an order granting Mortgagee relief from the automatic stay. Each Mortgagee shall be entitled to receive written notice from City of the filing of any motion by City in which City seeks relief from the automatic stay of section 362 of the Bankruptcy Code to declare any default by or exercise any remedies against Developer (or any permitted Assignee).

(c) Any Mortgagee who comes into possession of the Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Property, or such portion thereof, subject to any pro rata claims for payments or charges against the Property, or such portion thereof, that have accrued prior to the time such holder comes into possession. In addition, any Mortgagee who comes into possession of the Property or any portion thereof, pursuant to a foreclosure of mortgage or deed of trust, or deed in lieu of such foreclosure, shall, subject to Section 4.10(a) above, be a permitted Assignee and, as such, shall succeed to all the rights, benefits and obligations of Developer under this Agreement.

(d) Nothing in this Agreement shall be deemed to be construed to permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereof, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

4.11 Compliance with Government Code Section 65867.5.

In accordance with the requirements of Government Code section 65867.5, City and Developer agree that any tentative subdivision map(s) for the Project is hereby made subject to a condition that a sufficient water supply shall be available. Proof of the availability of a sufficient water supply shall be secured in accordance with the provisions of Government Code section 66473.7.

4.12 Termination.

This Agreement shall terminate upon the expiration of the Term, as set forth in Section 1.03(a), or at such other time as this Agreement is terminated in accordance with the terms hereof, whichever occurs first. Upon termination of this Agreement, the City shall record a notice of such termination, in a form satisfactory to the City Attorney that the Agreement has been terminated.

ARTICLE 5

GENERAL PROVISIONS

5.01 Miscellaneous.

(a) Preamble, Recitals, Exhibits. References herein to "this Agreement" shall include the Preamble, Recitals and all of the exhibits of this Agreement.

(b) Requirements of Development Agreement Statute. The permitted uses, density and/or intensity of use, maximum height and size of buildings and other structures, provisions for reservation or dedication of land, and other terms and conditions applicable to the Project shall be those set forth in the Applicable Law. As Subsequent Approvals are adopted and therefore become part of the Applicable Law, the Subsequent Approvals will refine the permitted uses, density and/or intensity of use, maximum height and size of buildings and other structures, provisions for reservation or dedication of land, and other terms and conditions applicable to the Project.

(c) Governing Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California and legal actions commenced under or pursuant to this Agreement shall be brought in Santa Clara Superior Court. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court.

(d) Project as a Private Undertaking. No partnership, joint venture, or other association of any kind between Developer, on the one hand, and City on the other hand, is formed by this Agreement. The development of the Property is a separately undertaken private development. The only relationship between City and Developer is that of a governmental entity regulating the development of private Property and the owners of such private Property.

(e) Indemnification. Developer shall hold City, its elective and appointive boards, commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's contractors, subcontractors', agents' or employees' operations on the Project, whether such operations be by Developer or by any Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors. Developer shall indemnify and defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations and Developer shall pay all reasonable attorney's fees and costs that the City may incur. City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold-harmless requirement of Developer because of the acceptance of improvements by City, or the deposit of security with City by Developer. The aforesaid hold-harmless requirement of Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this subsection, regardless of whether or not City has

prepared, supplied or approved of, plans and/or specifications for the subdivision. Notwithstanding anything herein to the contrary, Developer's indemnification of City shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the active negligence of the City. Developer shall, during the life of this Agreement take out and maintain insurance coverage with an insurance carrier authorized to transact business in the State of California as will protect the Developer or any Contractor or any Subcontractor or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, from claims for damages because of bodily injury, sickness, disease, or death of their employees or any person other than their employees, or for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom. The minimum limits of liability for such insurance coverage which shall include comprehensive general and automobile liability, including contractual liability assumed under this agreement, shall be as follows:

Limit of Liability for Injury or Accidental Death:

Per Occurrence \$1,000,000

Limit of Liability for Property Damage:

Aggregate Liability for Loss \$1,000,000

Such liability insurance policies shall name the City as an additional insured, by separate endorsement, and shall agree to defend and indemnify the City against loss arising from operations performed under this agreement and before permitting any Contractor or Subcontractors to perform work under this agreement, the Subdivider shall require Contractor or Subcontractors to furnish satisfactory proof that insurance has been taken out and is maintained similar to that provided by the Subdivider as it may be applied to the Contractor's or Subcontractor's work.

(f) Interpretation/Construction. This Agreement has been reviewed and revised by legal counsel for both Developer and City, and any rule or presumption that ambiguities shall be construed against the drafting Party shall not apply to the interpretation or enforcement of this Agreement. The standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of City. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(g) Notices.

(1) All notices, demands, or other communications that this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the respective Party as follows:

If to City:

City Clerk
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7259
Fax: (408) 779-3117

With a Copy To: City Attorney
 17575 Peak Avenue
 Morgan Hill, CA 95037
 Tel: (408) 779-7271
 Fax: (408) 779-1592

If to Developer: Newland Homes
 3121 Michelson Dr Suite 110
 Irvine, CA 92612

(2) Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to the Developer as required by this Agreement shall also be given to any lender which requests that such notice be provided. Any lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.

(h) Recordation. The Clerk of the City shall record, within ten (10) days after the Effective Date, a copy of this Agreement in the Official Records of the Recorder's Office of Santa Clara County. Developer shall be responsible for all recordation fees, if any.

(i) Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

(j) Jurisdiction. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California.

(k) Entire Agreement. This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(l) Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement may be executed in multiple originals, each of which is deemed to be an original.

(m) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

(n) Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A Legal Description of Lot on Which Project is to be Located.

Exhibit B Description of Project.

Exhibit C Development Schedule**Exhibit D Project Requirements and Commitment (including RDCS)**

5.02 Limitations on Time to Challenge Validity of this Agreement. Developer shall have ninety (90) days from the date that the City Council approved this Agreement to commence and effect service of summons of any action or proceeding to attack, review, set aside, void or annul this Agreement or any part of this Agreement. Thereafter, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the decision of the proceedings, acts or determinations, including any provision of this Agreement or the enforcement hereof.

5.03 Notice of 90-day Right to Protest. Developer is hereby notified that Developer shall have ninety (90) days from the date of the imposition of any fees, dedications, reservations, or other exactions, to file a protest of the imposition of any such fees, dedications, reservations or other exactions; provided however that any challenge to the validity of any provisions of this Agreement, including Project Mitigations, or any RDCS or Project Specific Requirements, shall be subject to Section 5.02 and that this notice of the right to protest shall not supplant, extend or start anew any protest period already commenced pursuant to previous notices.

5.04 Disclosure Requirements: Developer shall provide written disclosure to potential purchasers of property if the site is within, or adjacent to an area being considered by the California High Speed Rail for the construction of the California High Speed Rail project.

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first hereinabove written.

CITY OF MORGAN HILL:**DEVELOPER:**

s/ _____
Steve Rymer, City Manager

s/ _____
Brian Avila, Property Owner

Date: _____

Date: _____

Attest:

s/ _____
Michelle Wilson, Deputy City Clerk

Approved as to Form:

s/ _____
Donald A. Larkin, City Attorney

Date: _____

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,
MUST BE ACKNOWLEDGED BY A NOTARY)**

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY ON WHICH
PROJECT IS BE LOCATED

Real property in the City of Morgan Hill, County of Santa Clara, State of California, described as Follows:

All that certain real property situated in the City of Morgan Hill, County of Santa Clara, State of California, bound on the east by the South Valley Freeway – U.S. 101, bound on the south by the northerly line of Parcel 3 as shown on that Parcel Map filed in Book 303 of Maps, at Page 54, on the west by Walnut Grove Drive and bound on the north by Diana Avenue including the following Parcels:

- Parcel 1, as said parcel is shown upon that certain Parcel Map filed for record on June 29, 1972 in Book 303 of Maps, at Page 54, excepting Parcel One as granted to the City of Morgan Hill, recorded August 10, 2006, as Document Number 19056635.
- Lot 23, as said lot is shown upon that certain Tract Map No. 8494 titled “Diana Estates – Phase 2”, filed for record on December 24, 1991 in Book 633 of Maps, at Pages 12 through 14
- That Parcel described as Parcel 23 in Exhibit “A” in that certain Stipulated Judgment filed for record on November 12, 2009, in Document Number 20504866
- That portion of Diana Avenue described in the Quitclaim Deed from the City of Morgan Hill to The Light of the World Apostolic Church of San Jose, recorded October 5, 2006 as Document Number 19132844

APN: 726-07-023, -024, and -089

EXHIBIT B
DESCRIPTION OF PROJECT

DEVELOPMENT AGREEMENT, DA-16-01/: WALNUT GROVE - NEWLAND:

Development Agreement for five residential building allotments for Fiscal Year 2017-2018 and four residential building allotments for Fiscal Year 2018-2019 on a 2.1-acre site. The proposed development would be a nine-unit single-family residential project. The properties, identified by Assessor Parcel Number(s) 726-07-089, 726-07-023 and 726-07-024, are located at the east side of Walnut Grove Drive, south of Diana Avenue

MMC-15-10: Walnut Grove-Newland

FY 2017-2018, Five building allotments

AAE2017-0010: Walnut Grove – Newland

FY 2018-2019, Four building allotments

EXHIBIT C
DEVELOPMENT SCHEDULE

MMC-15-10: Walnut Grove-Newland
FY 2017-2018, 5 allotments
RDCS 2016-0012
FY2018-2019, 4 allotments

I. SUBDIVISION APPLICATION	
Application Submitted:	4-1-16
II. SITE REVIEW APPLICATION	
Application submitted:	06-20-16
III. FINAL MAP SUBMITTAL	
Map, Improvements Agreement and Bonds:	
FY 2017-17, five units	09-30-17
FY 2018-19, four units	09-30-18
IV. BUILDING PERMIT SUBMITTAL	
Submit plans to Building Division for plan check:	
FY 2017-18, five units	01-05-18
FY 2018-19, four units	01-05-19
V. BUILDING PERMITS	
Obtain Building Permits:	
FY 2017-18, five units	03-31-18
FY 2018-19, four units	03-31-19
VI. COMMENCE CONSTRUCTION:	
FY 2017-18, five units	06-30-18
FY 2018-19, four units	06-30-19

Failure to obtain a building permit by the date listed above shall result in the loss of the building allotment. Submitting a Final Map Application or a Building Permit one (1) or more months beyond the filing dates listed above shall result in the applicant being

charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allotments. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least one dwelling unit and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

EXHIBIT D SPECIFIC RESTRICTIONS AND REQUIREMENTS

The following chart describes the applicable reference in the Morgan Hill Municipal Code to the requirement, a description of the commitments specific to the Project, the requirement timing of the implementation and the total estimated costs of improvement or applicable fee commitment. These commitments are IN ADDITION to any mitigation requirements under CEQA, impact fee, in-lieu fees or other requirements under federal or state laws, or the Morgan Hill Municipal Code (See Section 2.03 of the Agreement)

*Estimated cost are estimates and may require augmentation for the completion of improvements. Impact fees are subject to the provisions of Section 2.03 (b) of this Agreement.

Municipal Code Reference	Description of Requirement	<u>Time of Implementation</u> (specify date or phase #)	<u>Estimated Cost or Fee Amount*</u>
18.78.210	Schools		
B 1. Developer fees	Pay district adopted developer fees as provided by the Leroy F. Green School Facilities Act of 1988.	Prior to issuance of each building permit.	Fee at time of perr issuance.
B 4. Off-site pedestrian safety improvements	Provide off-site pedestrian safety improvements or traffic safety improvements to an elementary school located within 3/4 miles of the project site or to a middle school or high school up to \$4,950 per unit.	Prior to the issuance of a Certificate of Occupancy	\$4,950 per unit
18.78.220	Open Space		
4. Transfer Development Credit (TDC)	Pay double the amount for Transfer of Development Credit	Prior to the issuance of a Certificate of Occupancy	Fee at time of perr issuance.
18.78.240	Public Facilities		

Attachment: Draft CC Ordinance & Development Agreement Amendment (1121 : DAA AAE2016-0010:

2.f Provides public improvements	Provides public facility, off-site storm drainage improvements or pedestrian improvements from a City-approved list or improvements on or adjacent to the project in excess of standard requirements, e.g. sewer, traffic control to be determined by Public Works. The project commits to provide up to \$4,400 per unit.	Prior to the issuance of a Certificate of Occupancy	\$4,400 per unit
2.g Contribution to RDCS Capital Improvements fund	The project will contribute \$1,100 per unit to the RDCS Capital Improvement Program Fund.	Prior to the issuance of a Certificate of Occupancy	\$1,100 per unit
18.78.250	Parks and Paths		
1. ≤50 units: Fees in lieu of park land dedications (State amount calculated pursuant to Muni Code Chapter 17.28)	The project shall pay an in-lieu fee consistent with the requirements contained in Chapter 17.28 of the Municipal Code.	Prior to the issuance of a Certificate of Occupancy	NA
3. Bike Lanes	Project shall provide at least .225 miles of Class II bike lanes. Prior to installation, the Project shall coordinate with City of Morgan Hill to determine the location for the Class II bike lane improvements to be installed.	Prior to improvement plan approval	NA
7. ≤50 units. Triple standard park impact fees (State Amount)	In addition to standard park fees, project shall pay the lesser of either eighteen times the in-lieu park fees or \$6,600 per unit.	Prior to the issuance of a Certificate of Occupancy	\$6,600 per unit
18.78.260	Housing Needs		
1. Secondary Units	The project will include two secondary units.	Prior to issuance of Architectural and Site Plan Review.	NA
2a. Housing mitigation fee (State Amount)	The project will pay the standard housing fee computed at eight percent (8%) of the total project.	Prior to the issuance of a Certificate of Occupancy	NA

Attachment: Draft CC Ordinance & Development Agreement Amendment (1121 : DAA AAE2016-0010:

2b. Payment of double standard housing in-lieu fee	In addition to the payment of the standard housing fee stated in 2a above, the project will pay double the standard housing fee computed at 8% of the total project (including replacement units).	Prior to the issuance of a Certificate of Occupancy	NA
18.78.270	Housing Types		
4. Visibility Accessible Units	The project will include 3 units as visitability accessible units.	Prior to issuance of Architectural and Site Plan Review.	NA
18.78.280	Quality of Construction		
B1. Over and above commitments made in the Natural and Environmental category, the proposed development will install the following:	a. Installation of OSB/Plywood wrap b. Foundations: 20% reduction of cement in the concrete mix design by use of fly ash, slag, silica fume or rice hull ash c. Installation of light weight wallboard for all walls excluding code requirement for fire walls d. Installation of one dedicated ¾ inch electrical raceway for a future circuit to accommodate two 220 Volt electric car charging stations inside the garage f. Installation of 90% high efficiency fan forced heating g. Zoned heating and air conditioning for all one and two-story homes. For multi-family projects with multi-story units, air returns are installed on two floors to improve temperature distribution. h. The proposed development will provide all the following: 1. Listed sound attenuated materials in walls that adjoin a bathroom and/or bedroom walls; 2. Installation of high efficiency energy star water heater with energy factor of 0.70; 3. Installation of ultra high efficiency or dual flush toilet; and 4. Installation of rain sensor monitor on irrigation system.	Prior to issuance of a building permit.	NA
18.78.300	Circulation Efficiency		

B4. General Community Benefit	The applicant agrees to spend \$2,200/unit toward the construction of roadway improvements near or adjacent to the proposed development.	Prior to improvement plan approval.	NA
18.78.310	Safety and Security		
B1. Enhances safety and security	The project shall install the following features to enhance safety and security: a. Install a fire proof safe that is bolted to the floor or in another suitable location. b. Provides a first aid kit with a poison control document to be installed in the kitchen area of the home. d. Lighting on all buildings shall meet Police Department specifications, California Electrical Code and MHMC. f. Illuminated address numbers for each unit and painted reflective curb numbers will be provided. g. Dead bolts will be provided on all swinging exterior doors. k. All pedestrian walkways to the front doors will be illuminated with a minimum of one (1) foot candle to ensure safe nighttime conditions.	Prior to the issuance of a Certificate of Occupancy	NA
B2. Crime Prevention through Environmental Design (CPTED)	The listed principles of Crime Prevention through Environmental Design (CPTED) will be incorporated in the development design.	Prior to Design Permit approval	NA
B3. Lockable Hardware	Lockable hardware will be installed on all side yard and patio gates.	Prior to the issuance of a Certificate of Occupancy	NA
B4. Alarm Systems	Project will install an intrusion, fire alarm and heat detector system, monitored by a central station. Project will include a one-year monitoring contract with each home purchase.	Prior to the issuance of first Certificate of Occupancy	NA

B5. Emergency Preparedness	Project will establish a Neighborhood Preparedness Program to be administered by the HOA. Project developer will direct HOA to contact the Office of Emergency Services to schedule a resident meeting within 180 days of the first homeowners taking occupancy.	Prior to the issuance of first Certificate of Occupancy	NA
18.78.335	Livable Communities		
6. Architectural variation and differentiation	The project architecture shall include the following features to provide variation and differentiation: a. Porches, balconies, for any area viewed from the public right-of-way on at least 25% of units to promote a neighborhood feel b. Use of at least two different roof lines and two different pitches throughout the project, i.e. gable, hipped, dormers, Mansard, etc. c. Use of architecture, profiles and massing that are compatible and work with the existing surrounding neighborhoods. d. Provides a consistent level of architectural relief and detailing on all four building elevations. Where two-story rear and/or side-yard building elevations occur, architectural relief shall include some third dimensional design element such as bay windows, balconies, covered porches, decorative trellis, etc. In addition, each standard trim and base color must represent no more than 15% (project size permitting) of the project.	Prior to Design Permit approval	NA

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CITY OF MORGAN HILL

Teammate Recognition

April 2017



Welcome to our New Teammates!



City of Morgan Hill

New Teammate

Previous Position:

Collections System Operator,
City of Watsonville

Works with our Preventative Maintenance Team performing water/wastewater collection system maintenance. His duties include pump station maintenance, pipeline cleaning and inspection, and heavy equipment operation.



Leo Rocha
Utility Worker I



City of Morgan Hill

New Teammate

Previous Position:

Director of Planning and Environmental Review
City of Goleta

Georgia Institute of Technology, Georgia

Master's of City Planning

University of California, Santa Cruz

Bachelor's in Environmental Studies

Manages the operations of the community development programs including development of land use and leads community development team.



Jennifer Carman

Community Development Director



City of Morgan Hill

New Teammate

Previous Position:

Building Inspector I
City of Gilroy

**International Code Council (ICC)
Residential Building Inspector License**

Conducts field inspections for commercial and residential structures. Interprets and enforces applicable codes and regulations.



Shawn Lopez
Building Inspector II



City of Morgan Hill

New Teammate

Previous Position:

Sr. Civil Engineer/ Development Engineer
City of Gilroy

University of Santo Tomas, Philippines
Bachelor's in Civil Engineering

Project manager for civil engineering construction projects and leads the Development Services Department engineering team.



Maria Angeles

Sr. Engineer for Land Development



City of Morgan Hill

New Teammate

Previous Position:

Public Safety Dispatcher
Santa Clara County Communications

American Military University, West Virginia
Bachelor's in Emergency and Disaster
Management

Receives and dispatches local emergency calls for services, refer and coordinate response to emergency calls.



Kenna Wright

Public Safety Dispatcher



City of Morgan Hill

New Teammate

Previous Position:

Special Services Associate
The Home Depot, Morgan Hill

Thomas Edison State University, New Jersey
Bachelor's in Communications

Works transporting prisoners, responds to non-hazardous calls for service and non-criminal incidents, parking and vehicle abatement enforcement.



Kyle Tolentino
Police Multi-Service Officer



**Congratulations to our recent
PROMOTION!**



City of Morgan Hill

Teammate

Started with the City June 2005

Previous Positions:

Assistant Engineer

Associate Engineer

San Jose State University

Bachelor's in Civil Engineering

Supports Development Services Department with land development matters and preparation of engineering reports.



Charlie Ha

Supervising Civil Engineer