



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, September 27, 2017 5:30 PM

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

SPECIAL/REGULAR MEETING

(5:30 P.M. Workshop/ 7:00 P.M. Regular Meeting)

SPECIAL MEETING

A Special meeting is called for the purpose of conducting a workshop.

5:30 P.M.

CALL TO ORDER

(Mayor Tate)

ROLL CALL ATTENDANCE

(Deputy City Clerk Wilson)

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
(Deputy City Clerk Wilson)

WORKSHOP

The purpose of the workshop is to discuss cannabis related policies.

REGULAR MEETING

7:00 P.M.

The City Council has adopted a policy that regular meetings shall not continue beyond 11:00 p.m. unless extended by a majority of the City Council.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Spring

CITY ATTORNEY'S REPORT

OTHER REPORTS

PRESENTATIONS

Donation for Downtown Parks from Rotary Club of Morgan Hill

Donation for the Community Park tennis courts from the Morgan Hill Tennis Club

YAC Presentation Asset #6 - Parent Involvement in Schooling

PROCLAMATIONS

Proclaiming Sunday, October 22, 2017 as the Bicentennial Birthday of Bahá'u'lláh

CITY MANAGER'S REPORT

PUBLIC COMMENT

Members of the public are entitled to address the City Council concerning any item within the Morgan Hill City Council's subject matter jurisdiction. Public comments are limited to no more than three minutes. Except for certain specific exceptions, the City Council is prohibited from discussing or taking action on any item not appearing on the posted agenda. (See additional noticing at the end of this agenda)

ADOPTION OF AGENDA

OTHER BUSINESS

1. APPOINTMENT OF CITY MANAGER

Recommendation:

1. Appoint Christina Turner as City Manager for the City of Morgan Hill;
2. Approve the Employment Agreement; and
3. Authorize the Mayor to execute the agreement on behalf of the City.

Estimated Time: 5 Minutes

OATH OF OFFICE

Incoming City Manager Christina Turner

ADJOURN TO RECEPTION

RECONVENE

CONSENT CALENDAR

Items appearing on the Consent Calendar are considered routine and may be approved by one motion. Pursuant to City Council Policies and Procedures (CP 97-01), any member of the Council or public may request to have an item removed from the Consent Calendar for comment and action.

Time Estimate for Consent Calendar: 1 - 10 Minutes

2. ROTARY DONATION FOR DOWNTOWN PARKS

Recommendation:

1. Accept donation of \$100,000 from the Rotary Club of Morgan Hill in support of elements of the Downtown Parks Project; and
2. Authorize the City Manager to execute and administer a donation agreement with the Rotary Club of Morgan Hill.

3. ACCEPT DONATION FROM THE MORGAN HILL TENNIS CLUB AND MAKE RELATED ADJUSTMENTS TO THE FISCAL YEAR 2017-18 BUDGET

Recommendation:

Adopt resolution accepting a \$11,000 donation from the Morgan Hill Tennis Club for court lighting improvements and amending the City's Adopted Fiscal Year 2017-18 Budget to reflect the increased revenues and expenses associated with the project.

4. APPROVE PROPOSAL FOR RAILROAD PARK SOUND WALL MURAL

Recommendation:

Approve art proposal for Railroad Park sound wall mural by Pamela Mossing.

5. CITY POSITION ON PENDING LEGISLATION AB 726 AND AB 813

Recommendation:

Receive legislative correspondence in opposition of AB 726 (Holden) Energy and AB 813 (Holden) Electricity: Independent System Operator: California Renewable Portfolio Standard Program: procurement.

6. AMEND AGREEMENT WITH ASSET PROTECTION GROUP PRIVATE SECURITY, INC.

Recommendation:

Approve the First Amendment to Consultant Agreement with Asset Protection Group Private Security Inc., increasing the contract amount from \$44,500 to \$65,500.

7. GRANT APPLICATION FOR IMPROVEMENTS AT LAKE SILVEIRA AND INSTALLATION OF THE SOUTHERN SEGMENT OF THE WEST LITTLE LLAGAS CREEK INTERPRETIVE WILDLIFE TRAIL PROJECT

Recommendation:

Adopt resolution authorizing the submission of a grant application to the State of California Habitat Conservation Fund (HCF) Program and the execution of grant documents if the grant application is successful.

8. SERVICES AGREEMENT WITH WATERSMART SOFTWARE FOR CUSTOMER ENGAGEMENT SERVICES

Recommendation:

Authorize the City Manager to execute an agreement for \$228,062 with WaterSmart Software for customer engagement services for a 57-month program.

9. CONSULTANT AGREEMENT WITH WILLDAN FINANCIAL SERVICES FOR DEVELOPMENT IMPACT FEE STUDY

Recommendation:

Approve consultant agreement with Willdan Financial Services to provide professional consulting services for a Development Impact Fee Study for \$74,320.

10. FINAL MAP APPROVAL OF DUNNE HILL MEADOWS - TRACT NO. 10378

Recommendation:

1. Approve the Final Map;
2. Authorize the City Manager to execute the Subdivision Improvements Agreement with Hanalei Land Co. 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, Subdivision Improvements Agreement, and the Stormwater BMP Operation and Maintenance Agreement.

11. ADOPT ORDINANCE 2260, NEW SERIES, AN ORDINANCE OF THE CITY OF MORGAN HILL RENAMING CHAPTER 12.20 (CITY PARKS AND RECREATION BUILDINGS) AND SECTION 12.20.020 (PARK USE – GENERAL PROVISIONS) AND AMENDING SECTIONS 12.20.010 (DEFINITIONS) AND 12.20.060 (CONDUCT IN PARKS – GENERALLY) AND 12.20.80 (ACTIVITIES OR ACTIONS REQUIRING PRIOR APPROVAL FROM THE CITY) AND ADDING SECTIONS 12.20.062 (CONDUCT IN PUBLIC BUILDINGS AND FACILITIES), 12.20.064 (CONDUCT IN CITY PUBLIC PARKING LOTS AND FACILITIES), AND 12.20.067 (CONDUCT ON PUBLIC STREETS AND SIDEWALKS)

Recommendation:

Waive the reading, adopt Ordinance No. 2260, 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.

12. ADOPT ORDINANCE 2261, NEW SERIES, AN ORDINANCE OF THE CITY OF MORGAN HILL REPEALING ORDINANCE NO. 1398 ENTITLED "FLOOD DAMAGE PREVENTION ORDINANCE" IN ITS ENTIRETY AND CREATING A NEW CHAPTER 15.80 UNDER TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE MORGAN HILL MUNICIPAL CODE ENTITLED "FLOOD DAMAGE PREVENTION"

Recommendation:

Waive the reading, adopt Ordinance No. 2261, 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.

13. APPROVE THE SEPTEMBER 6, 2017 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

14. ADOPT FLAG RAISING POLICY

Recommendation:

Adopt City Council policy establishing criteria and procedures for raising flags at City facilities.

Estimated Time: 10 Minutes

15. COMPLETE STREETS POLICY TO MAINTAIN THE CITY'S ELIGIBILITY FOR REGIONAL TRANSPORTATION FUNDING

Recommendation:

Adopt resolution approving a Complete Streets Policy.

Estimated Time: 10 Minutes

16. JUNE 2017 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

Estimated Time: 10 Minutes

PUBLIC HEARING

17. APPROVE AMENDMENT TO FY 2017-18 CAPITAL IMPROVEMENT PROGRAM

Recommendation:

Adopt resolution amending the City's FY 2017-2018 Capital Improvement Program Budget to include the Rehabilitation of Sutter Boulevard (from Cochrane Road to Serene Drive).

Estimated Time: 15 Minutes

18. CONSIDERATION OF REVISED DEVELOPMENT SERVICES FEE SCHEDULE- TO BE CONTINUED TO OCTOBER 18, 2017

Recommendation:

Open the public hearing to consider adoption of a resolution establishing revised development services user fees and continue the item to a date certain of October 18, 2017.

Estimated Time: 10 Minutes

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.



CITY COUNCIL STAFF REPORT

MEETING DATE: September 27, 2017

PREPARED BY: Steve Tate, Mayor

APPROVED BY: Steve Tate, Mayor

APPOINTMENT OF CITY MANAGER

RECOMMENDATION(S)

1. Appoint Christina Turner as City Manager for the City of Morgan Hill;
2. Approve the Employment Agreement; and
3. Authorize the Mayor to execute the agreement on behalf of the City.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

Fostering a Positive Organizational Culture

Preserving and Cultivating Public Trust

REPORT NARRATIVE:

Following the current City Manager's announcement in early August 2017 that he had accepted the City Administrator position for the City of Rochester, Minnesota, the City Council conducted an expedited and thorough internal recruitment. As a result of the recruitment, the City Council has selected Christina Turner to serve as City Manager. Ms. Turner has worked for the City of Morgan Hill since March 2016 as the Assistant City Manager for Administrative Services which includes finance, human resources, information services, council services, and utility billing divisions. Since joining the Morgan Hill team, Ms. Turner has been involved in transitioning Morgan Hill to a two-year budget cycle, providing strategic leadership for information services, and assessing existing policies and processes to enhance customer satisfaction and organizational efficiency in the most cost-effective manner.

Ms. Turner has agreed to the terms outlined in the attached Employment Agreement, which is recommended for Council approval. Under this agreement, Ms. Turner will start effective October 1, 2017 with a salary of \$230,000. Beginning July 1, 2018, and annually thereafter, Ms. Turner shall receive an annual cost of living adjustment in her base salary equal to the percentage increase in the San Francisco Oakland/San Jose Urban Wage Earner Index, Base Rate Index for the twelve-month period ending on June 30. She will pay the employee contribution to the California Public Employees' Retirement System (CalPERS) and will split any future CalPERS employer rate increases at 50/50 ratio with the City. The City will provide a housing allowance, including a housing loan up to a maximum of \$1,300,000 to purchase a residence and property in Morgan Hill, and relocation expenses up to \$15,000.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the recommended Employment Agreement.

ALTERNATIVE ACTIONS:

The City Council could choose not to approve the Employment Agreement and re-enter into negotiations.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On May 3, 2017, the City Council approved the current City Manager's Amended and Restated Employment Agreement.

FISCAL AND RESOURCE IMPACT:

The costs of the agreement will be accommodated within the budget of the City Manager's Office.

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. Employment Agreement

EMPLOYMENT AGREEMENT
BETWEEN THE CITY OF MORGAN HILL
AND
CHRISTINA TURNER

This Employment Agreement between the City of Morgan Hill ("CITY") and Christina Turner ("TURNER") is hereby executed by and between the parties this 27th day of September 2017, with an effective date of October 1, 2017 (the "Effective Date").

RECITALS

- A. TURNER has been employed by CITY since March 7, 2016;
- B. TURNER has been appointed by CITY to serve as City Manager of Morgan Hill beginning of the Effective Date;
- C. TURNER will also serve as the Executive Director of the Successor Agency to the Morgan Hill Redevelopment Agency; and
- D. At a duly noticed public meeting, the City Council approved this Agreement on September 27, 2017.

AGREEMENT

In consideration of the mutual promises set forth herein and for good and valuable consideration hereby acknowledged, the parties agree as follows:

- 1. Parties: The parties to this agreement ("Agreement") are CITY and TURNER (collectively "the Parties").
- 2. Purpose: The purpose of this Agreement is to provide the terms for the employment of TURNER as City Manager of CITY, as currently provided by Title 2, Chapter 2.08 of the Municipal Code of CITY.
- 3. Duties: CITY hereby agrees to employ TURNER to perform the functions and duties of City Manager for the CITY and as Executive Director of the Successor Agency to the Redevelopment Agency of CITY as specified in the Municipal Code of CITY, the Job Description (a copy of which is attached hereto and which is included herein by this reference), applicable state statutes pertaining to Successor Agencies, any and all other applicable CITY ordinances, resolutions or policies, and to perform such other legally permissible and proper duties and functions as the CITY shall from time to time assign. TURNER agrees that, to the best of her ability and experience, she will at all times loyally and conscientiously perform all of the duties and obligations required of her either expressly or impliedly by the terms of this Agreement.

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4. Agreement Provisions:

- 4.1 **Term:** This Agreement shall commence on the Effective Date and terminate on June 30, 2019 (the "Termination Date") unless either: (1) the term is modified hereafter by written agreement of the Parties, or (2) the Agreement renews automatically in accordance with the provisions of Section 4.3 herein. TURNER agrees to remain in the exclusive employ of the CITY during the term of the Agreement and neither to accept other employment nor become employed by another employer until the Termination Date, unless the term is modified as provided herein.
- 4.2 **Exclusivity:** The term "exclusive employ of the CITY" as used in section 4.1 above shall not be construed to preclude occasional teaching, writing, or military service performed by TURNER as long as it does not conflict with her primary responsibilities as City Manager and Executive Director as described in this Agreement. Also, CITY and TURNER recognize the value of participation in League of California Cities and International City Managers' Association activities, and that speaking requests and teaching are valuable resources to the CITY. CITY may permit non-conflicting services to other entities upon prior approval of the City Council.
- 4.3 **Automatic Renewal:** At the conclusion of the term of this Agreement, it shall automatically renew each year, effective every July 1, unless terminated by the delivery of an Election of Non-Renewal by either party by no later than December 30 of the then current term. Notice of an Election of Non-Renewal shall be conveyed by written notice to the other party.

5. Separation from Employment:

- 5.1 **Employment At-Will:** The City Council may, subject to provisions set out below, terminate the services of TURNER at any time, it being expressly understood and agreed between the parties that TURNER serves as an at-will employee of the City Council. CITY must provide TURNER with thirty (30) days written notice prior to separation from employment. For any period following an election of the Mayor or a member of the City Council, CITY may not give notice of separation from employment to TURNER until sixty (60) days after such election. The intent of the time period is to allow the new City Council to have adequate time to review the City Manager's performance.
- 5.2 **Severance Payment:**
- 5.2.1 In the event of TURNER's separation from employment in accordance with Section 5.1 while TURNER is still willing and able to perform the duties of City Manager, where such termination is without cause, TURNER shall be entitled to receive compensation, consisting of a lump-

sum payment of six (6) months of base salary and benefits ("Severance Payment");

5.2.2 The Severance Payment shall include all benefits payable to or on behalf of TURNER with the exception of vacation not yet accrued as of the date of separation. Both salary and benefits shall be computed at the rates in effect as of the date of separation from employment;

5.2.3 TURNER's acceptance of the Severance Payment shall release CITY from any further obligation under this Agreement, and also from any actual or alleged liability to TURNER that may be asserted in any claim of any nature by TURNER against CITY based upon or arising from her employment or her termination. Contemporaneously with the delivery of the Severance Payment and in consideration therefore, TURNER agrees to execute and deliver to CITY a release releasing CITY of all claims that TURNER may have against CITY. In return for such Severance Payment, TURNER further agrees to be available for consultation and assistance to the incoming acting, interim or permanent City Manager for a period of at least sixty (60) days.

5.2.4 TURNER shall **not** be entitled to the Severance Payment in the following events:

5.2.4.1 The Agreement expires and CITY elects not to renew this Agreement pursuant to Section 4.3, above;

5.2.4.2 TURNER is terminated because of her conviction of a felony or misdemeanor involving moral turpitude, or is convicted of any illegal act involving personal gain to herself; or

5.2.4.3 TURNER becomes incapable of discharging her responsibilities as described in this Agreement due to a permanent disability pursuant to Section 7 herein.

5.3 **Termination By TURNER:** TURNER may resign at any time from her position with CITY provided that she gives CITY sixty (60) days advance written notice. Should TURNER not provide CITY with sixty (60) days written notice, she shall not be entitled to cash-out of any benefit other than as required by law.

6. Abuse of Office: If TURNER is convicted of a crime involving an abuse of her office or position, she shall fully reimburse the CITY for the following items of costs to the CITY:

6.1 Leave salary paid to TURNER by CITY pending an investigation of the crime of which she is convicted;

6.2 Any funds paid by CITY for the legal defense of TURNER;

- 6.3 Any cash settlement paid to TURNER by CITY related to the termination of this Agreement;
- 6.4 Any payments by CITY to TURNER that were not agreed upon in this Agreement; and
- 6.5 For the purpose of this section the term “abuse of her office or position” means either:
 - a. an abuse of public authority including but not limited to waste, fraud, and violation of law under color of authority, or
 - b. a crime against public justice including but not limited to a crime described in Title 7 of Part 1 of the California Penal Code.
- 7. Disability: If, during the course of this Agreement, TURNER becomes permanently disabled or is otherwise unable to perform the full range of the essential functions of her position because of sickness, accident, injury, mental incapacity, or other health reason for a period of four (4) successive weeks beyond exhaustion of all accrued sick leave, CITY shall have the option to terminate this Agreement pursuant to Section 5.1.
- 8. Performance Evaluation:
 - 8.1 Annually, the City Council, in consultation with TURNER, shall define goals and performance objectives for the City Manager which they determine to be necessary for the proper operation of CITY; and
 - 8.2 The City Council shall review and evaluate the performance of TURNER at least annually and shall meet with TURNER to discuss the evaluation between October 1 and November 30 of each year. The review shall be in accordance with a process developed jointly by CITY and TURNER, which may be modified by mutual agreement. This evaluation shall be private and confidential, and the results shall be summarized and discussed in closed session, to the extent permitted by law, or through some other mutually acceptable format. The parties agree that the primary purpose of the evaluation is to facilitate open and frank discussion, define roles and expectations, identify performance strengths and weaknesses, and provide an opportunity for TURNER to take affirmative action to address weaknesses and areas needing improvement. TURNER shall be provided with a summary written statement of the findings of City Council, and she shall be provided with an opportunity to discuss her performance evaluation with City Council.
- 9. Compensation:
 - 9.1 Effective October 1, 2017 CITY agrees to pay TURNER, for her services rendered pursuant hereto, an annual salary of Two Hundred Thirty Thousand dollars (\$230,000) (“Base Salary”) payable at the same time and in the same manner as other employees of the CITY are paid. Beginning July 1, 2018, and annually

thereafter and except as otherwise provided in this Agreement, TURNER shall receive an annual cost of living adjustment ("COLA") in her base salary equal to the percentage increase in the San Francisco Oakland/San Jose Urban Wage Earner Index, Base Rate Index for the twelve month period ending on June 30. The City Council, in its sole discretion and at a duly noticed public meeting, may grant additional merit increases to TURNER during the term of this Agreement;

- 9.2 CITY agrees to provide TURNER a Five Hundred dollar (\$500) per month vehicle allowance;
 - 9.3 TURNER shall be entitled to the same benefits provided to CITY employees in the range of the "A" group of the CITY's Management Salary Resolution, as it is amended from time to time by City Council action; and
 - 9.4 TURNER shall make periodic payments to CalPERS in an amount commensurate with CITY employees in the range of the "A" group of the CITY's Management Salary Resolution.
10. Hours of Work, Administrative Leave: It is recognized that TURNER must devote a great deal of time outside of normal working hours to the business of CITY. To that end, TURNER is granted total annual administrative leave of one hundred twenty (120) hours per fiscal year, with a maximum accumulation of two hundred forty (240) hours, above which maximum amount TURNER shall not earn or accrue additional administrative leave. Administrative leave may be taken by TURNER at her discretion. The accrued amount up to the maximum may be cashed out at TURNER's option in accordance with the regulations governing the managers administrative leave program.
11. Deferred Compensation: TURNER shall be entitled to receive deferred compensation equal to five percent (5%) of base salary, such amounts to be credited to her account as deferred compensation.
12. Professional Development: The CITY agrees to budget for and to pay membership fees/dues, conference/meeting registrations, and the travel and subsistence expenses of TURNER for professional development and official travel, meetings and occasions adequate to continue her professional development and to adequately pursue necessary official and other functions of CITY, including but not limited to the annual Conference of the League of California Cities ("LCC"), the LCC Spring City Manager's Department meeting, and annual ICMA Conference. Travel and conference expenses shall be reimbursed for reasonable expenses only and in accordance with the CITY's policies governing travel and conference expense reimbursement. The CITY further agrees to reimburse TURNER for tuition, fees, books, software and related educational expenses for professional development.

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13. Housing Loan/Relocation:

- 13.1 CITY agrees to loan TURNER a maximum of One Million-Three Hundred Thousand Dollars (\$1,300,000) to purchase a residence and property ("Property") in Morgan Hill. Loan proceeds shall be used to purchase Property within City limits which will be TURNER'S primary residence. The loan shall be evidenced by a Promissory Note made by TURNER payable to the CITY and secured by a First Deed of Trust on the Property. The principal amount of the loan shall bear interest at the 10 Year Treasury Rate plus one quarter percent (.25%) rounded to the nearest one-eighth percent (1/8%), amortized over a thirty (30) year period, and recalculated according to the same formula on the 10th and 20th anniversary dates of the loan. TURNER shall pay principal and interest for fifty percent (50%) of the loan amount and interest only for the remaining fifty percent (50%) of the loan amount. Principal and interest shall be amortized and payable in equal bi-weekly installments through an automatic payroll deduction with the entire balance due in 30 years. Payments on the loan shall be deferred until TURNER closes escrow on the sale of her current home or six months from close of escrow on her new home, whichever comes first. The loan may be prepaid earlier without penalty. Payoff of the Promissory Note shall occur within 12 months of voluntary or involuntary separation from employment with the CITY. TURNER agrees to a recourse loan. TURNER shall be responsible to pay all applicable taxes, insurance, and homeowner fees and shall be responsible at her expense to maintain the property in good and habitable conditions at all times.
- 13.2 CITY agrees to reimburse TURNER for her reasonable relocation expenses up to Fifteen Thousand dollars (\$15,000). Reimbursable expenses include packing, transportation, and unpacking household goods and personal effects; costs of connecting or disconnecting utilities; and costs reasonably incurred to prepare TURNER's current residence for sale.
14. Non-Liability of Officials and Employees: No official or employee of CITY shall be personally liable for any default or liability under this Agreement.
15. Bonding: CITY shall bear the full cost of any fidelity or other bonds required of TURNER under any law or ordinance.
16. Other Terms and Conditions of Employment:
- 16.1 The City Council, in conjunction with TURNER, shall fix any other terms and conditions of employment, as it may determine from time to time, relating to the performance of TURNER, provided such terms and conditions are not inconsistent or in conflict with the provisions of this Agreement or applicable laws; and

- 16.2 In addition to the benefits enumerated specifically for the benefit of TURNER in this Agreement, all provisions of the CITY's Municipal Code, and regulations and rules of the CITY relating to vacation and sick leave, retirement and pension system contributions, holidays and other fringe benefits and working conditions as they may now exist or may be amended, shall also apply to TURNER as they now do to other CITY employees, except as provided in this Agreement. Absent any change to vacation benefits, TURNER will continue to accrue vacation at a rate of one hundred sixty (160) hours per year based on years of service with a maximum accrual of three hundred twenty (320) hours.
17. No Reduction in Benefits: CITY shall not at any time during the term of this Agreement reduce the salary, compensation or financial benefits to TURNER.
18. Notice: Notices pursuant to this Agreement shall be given by deposit in the custody of the U.S. Postal Service. Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial proceedings. Notices shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the U.S. Postal Service to the addresses set forth below or as subsequently communicated by one party to the other in writing.
- 18.1 Notice to TURNER shall be sent to: Christina Turner, c/o City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, CA 95037; and
- 18.2 Notice to CITY shall be sent to: Mayor, City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, CA 95037.
19. General Provisions:
- 19.1 The Agreement shall be binding and inure to the benefit of the heirs at law and executors of TURNER;
- 19.2 If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or enforceable, the remainder shall be deemed severable, shall not be deemed ineffective, and shall remain in full force and effect;
- 19.3 The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement;
- 19.4 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 subsequent mutual written agreement executed by CITY and TURNER;
- 19.5 This Agreement shall be interpreted under the laws of the State of California; and

19.6 This Agreement shall be interpreted as though prepared by both parties.

IN WITNESS WHEREOF the Parties hereby agree to the foregoing by executing below:

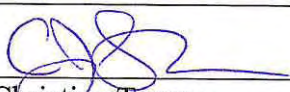
CITY OF MORGAN HILL

CHRISTINA TURNER

Date: _____

Date: September 22, 2017

By: _____
Steve Tate, Mayor

By: 
Christina Turner

Attest: _____
Irma Torrez, City Clerk

Date: _____

APPROVED AS TO FORM

By: _____
Donald A. Larkin
City Attorney

Date: _____

Attachment: Employment Agreement (1419 : Appointment of City Manager)



CITY COUNCIL STAFF REPORT

MEETING DATE: September 27, 2017

PREPARED BY: Chris Ghione, Community Services Director
APPROVED BY: City Manager

ROTARY DONATION FOR DOWNTOWN PARKS

RECOMMENDATION(S)

1. Accept donation of \$100,000 from the Rotary Club of Morgan Hill in support of elements of the Downtown Parks Project; and
2. Authorize the City Manager to execute and administer a donation agreement with the Rotary Club of Morgan Hill.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community

2017 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

The City is nearing completion of constructing three park spaces in Downtown Morgan Hill. The Rotary Club (Club) approached City staff some months back to discuss various City projects that the Club might find an interest in supporting. After reviewing several different opportunities of support, the Rotary Club selected supporting two elements within the Downtown Parks.

At the Third Street Creek Park, the Club will sponsor the "Rotary Bridge." This element is a pedestrian bridge near Second Street. The sponsorship would be identified through a sign near the front of the bridge and a Rotary symbol in the concrete at the center of the bridge.

At Nob Hill Trail Park, the club will sponsor the "Rotary Slide." The slide is located at the top of the trail near the water reservoir. This sponsorship would be recognized through a sign near the top of the slide and a bench with the Rotary logo.

City staff has developed a donation agreement that ensures the donation is recognized into the future.

COMMUNITY ENGAGEMENT: Inform

City team members have worked with the Rotary to develop a recognition promotion plan that will inform the community of the donation.

ALTERNATIVE ACTIONS:

The Council could choose to not accept the donation and direct staff to further negotiate the donation agreement.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council approved the Downtown Parks Project on February 22, 2017.

FISCAL AND RESOURCE IMPACT:

The donation would reduce the amount of funding required to support the project providing a \$100,000 net increase to the Park Impact Fund (301).

CEQA (California Environmental Quality Act):

Project and Categorical Exemption

Railroad Park and Nob Hill Trail park were declared categorically exempt from the provisions of CEQA per Section 15332 of the Public Resource Code. For the Third Street Creek Park, an initial study was conducted, and a Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Program (MMRP) were adopted to meet CEQA requirements.

LINKS/ATTACHMENTS:

1. Attachment 1 - Partially Executed with Exhibits

Gift Agreement

This Gift Agreement (the “**Agreement**”), effective as of August ____, 2017 (the “**Effective Date**”), is made and entered into by and between the ROTARY CLUB OF MORGAN HILL, a California non-profit corporation (“**Donor**”) and the CITY OF MORGAN HILL (“**City**”) for the Construction of Downtown Parks (the “**Facility**”). Based upon the Recitals below, and in consideration of the mutual promises and benefits hereunder, the parties hereto hereby agree as follows:

RECITALS

- A. On the terms and conditions set forth in this Agreement, Donor wishes to make charitable gifts to the City for the benefit of the Facility consisting of a Cash Gift (as defined in Paragraph 1 below) and an In-Kind Gift (as defined in Paragraph 2 below); and
- B. The City desires to accept such gifts, subject to the terms and conditions set forth in this Agreement.

AGREEMENT

1. **The Cash Gift.** Donor hereby pledges to the City for the use and benefit of the Facility the following gift: one hundred thousand dollars and no cents (\$100,000.00) (the “**Cash Gift**”).
 - a. **Payment of the Cash Gift.** The Cash Gift is an irrevocable pledge that will be paid to City within thirty (30) days after the later to occur of the following: (i) Final approval and acceptance of this Agreement by the parties hereto; or (ii) Completion of construction of the Facility by City.
 - b. **Use of the Cash Gift.** The Cash Gift shall be used solely for the specific purpose of contributing to the funding construction of a portion of the Facility to be located in the Morgan Hill downtown area, specifically including, without limitation:
 - i An “upper slide”, which shall be in substantially the form and location depicted in Exhibit “1.b.i” attached hereto and incorporated herein by reference;
 - ii A “lower slide”, which shall be in substantially the form and location depicted in Exhibit “1.b.ii.” attached hereto and incorporated herein by reference; and
 - iii A “pedestrian bridge”, which shall be in substantially the form and location depicted in Exhibit “1.b.iii.” attached hereto and incorporated herein by reference.
2. **The In-Kind Gift.** Donor hereby pledges to the City for the use and benefit of the Facility the following gift: to, at the sole cost of Donor, configure, construct, and install, one or more sitting areas with benches and saplings for shade trees, which shall be in

substantially the form and location depicted in Exhibit “2” attached hereto and incorporated herein by reference (the “In-Kind Gift”).

- a. **Delivery and Installation of the In-Kind Gift.** The In-Kind Gift is an irrevocable pledge that will be delivered to City and installed in the designated location(s) within within thirty (30) days after the later to occur of the following: (i) Final approval and acceptance of this Agreement by the parties hereto; or (ii) Completion of construction of the Facility by City.
3. **Acknowledgment.** In consideration for and acknowledgment of the Cash Gift and the In-Kind Gift, the City of Morgan Hill will:
 - a. At the City’s sole cost, install one square sign with sides measuring two feet each (4 square feet) naming and identifying the “Rotary Slide”, adjacent to the Hill Top Trail slide, which shall be in substantially the form and location depicted in Exhibit “3.a.” attached hereto and incorporated herein by reference;
 - b. At the City’s sole cost, install one square sign with sides measuring two feet each (4 square feet) naming and identifying the “Rotary Bridge”, on or adjacent to the pedestrian bridge within the Downtown Creek Park, which shall be in substantially the form and location depicted in Exhibit “3.b.” attached hereto and incorporated herein by reference;
 - c. At the City’s sole cost, install and imbed a twenty-four (24) inch cast bronze indoor/outdoor emblem of the “Rotary International” logo into the cement floor of the Rotary Bridge at the apex of the pedestrian bridge, which shall be in substantially the form and location depicted in Exhibit “3.c.” attached hereto and incorporated herein by reference; and
 - d. At Donor’s sole cost, Donor shall install a small brass plaque on the reverse side of the In-Kind Gift bench, which shall be in in substantially the form and location depicted in Exhibit “3.d.” attached hereto and incorporated herein by reference.
 4. **Termination of Naming.** In addition to any rights and remedies available at law, the City of Morgan Hill may terminate this Agreement and all rights and benefits of the Donor hereunder, including terminating the Naming:
 - a. In the event of any default in payment of the Gift as provided in this Agreement, or
 - b. In the unlikely event that due solely to the intentional malfeasance of Donor, continuation of the Naming provided for herein would materially adversely impact the reputation, image, mission or integrity of the City, as the result of a continued association with Donor.

Upon any such termination of this Agreement and/or the Naming hereunder, the City shall have no further obligation or liability to Donor and shall not be required to return any portion of the Gift already paid. The City, however, may in its sole and absolute discretion determine an alternative recognition for the portion of the Gift already received.

5. **Modification of Naming.** The City, at the City's sole expense, shall keep and maintain the Facility and the signs described in Paragraph 4 above in good condition and repair. Notwithstanding the foregoing, if the Facility is closed, deconstructed, destroyed or severely damaged, the Donor, in reasonable consultation with the City, will have the right, for no additional payment, to have another equivalent facility named after the Donor. If, within sixty (60) days after the Facility is closed, deconstructed, destroyed or severely damaged, the parties have not mutually agreed upon an equivalent facility to be named after Donor in accordance with this paragraph, then City shall have thirty (30) days thereafter within which to give Donor with written notice of three (3) possible facilities that, in the reasonable determination of City, are equivalent to the Facility, and Donor shall select one of those three (3) proposed facilities as the successor Facility for purposes of this Gift Agreement. If the City fails to deliver written notice designating three (3) possible successor facilities within the foregoing thirty (30) period, then, in its sole determination, shall have the right to select and designate another reasonably equivalent facility, which shall become the successor Facility for purposes of this Gift Agreement.
6. **Publicity.** For purposes of publicizing the Gift and the Naming, the City will have the right, without charge, to photograph the Donor and use the names, likenesses, and images of the Donor in photographic, audiovisual, digital or any other form of medium (the "Media Materials") and to use, reproduce, distribute, exhibit, and publish the Media Materials in any manner and in whole or in part, including in brochures, website postings, informational and marketing materials, and reports and publications describing the City's development and business activities.
Donor shall have the right to publicize the Gift and the Naming. Donor shall have the right to create and utilize Media Materials depicting the Facility, recognition signage and adjacent park site, and the launch event(s), and to use, reproduce, distribute, exhibit, and publish such Media Materials in any manner and in whole or in part, including in brochures, website postings, informational and marketing materials, and reports and publications describing the Donor's Gift.
8. **Assignment.** This Agreement and the rights and benefits hereunder may not be assigned by either party without the prior written consent of the other party, which consent shall be in the sole and absolute discretion of the non-assigning party.
9. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with regard to the matters referred to herein, and supersedes all prior oral and written agreement, if any, of the parties in respect hereto. This Agreement may not be modified or amended except by written agreement executed by both parties hereto. The captions

inserted in this Agreement are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

10. **Governing Law and Venue.** This Agreement will be governed by and construed in accordance with the laws of the State of California without regard to any conflict of laws rule or principle that might refer the governance or construction of this Agreement to the laws of another jurisdiction. Subject to the sovereign immunity of the State of California, any legal proceeding brought in connection with disputes relating to or arising out of this Agreement will be filed and heard in Santa Clara County, California, and each party waives any objection that it might raise to such venue and any right it may have to claim that such venue is inconvenient.
11. **City Approval.** This Agreement and the recognition and naming provided for herein are subject to the approval by the City and this Agreement will not be effective unless and until approved by the City.

ACCEPTED AND AGREED TO:

DONOR:

THE ROTARY CLUB OF MORGAN HILL,
a California non-profit corporation


By: J. Randall Toch, President

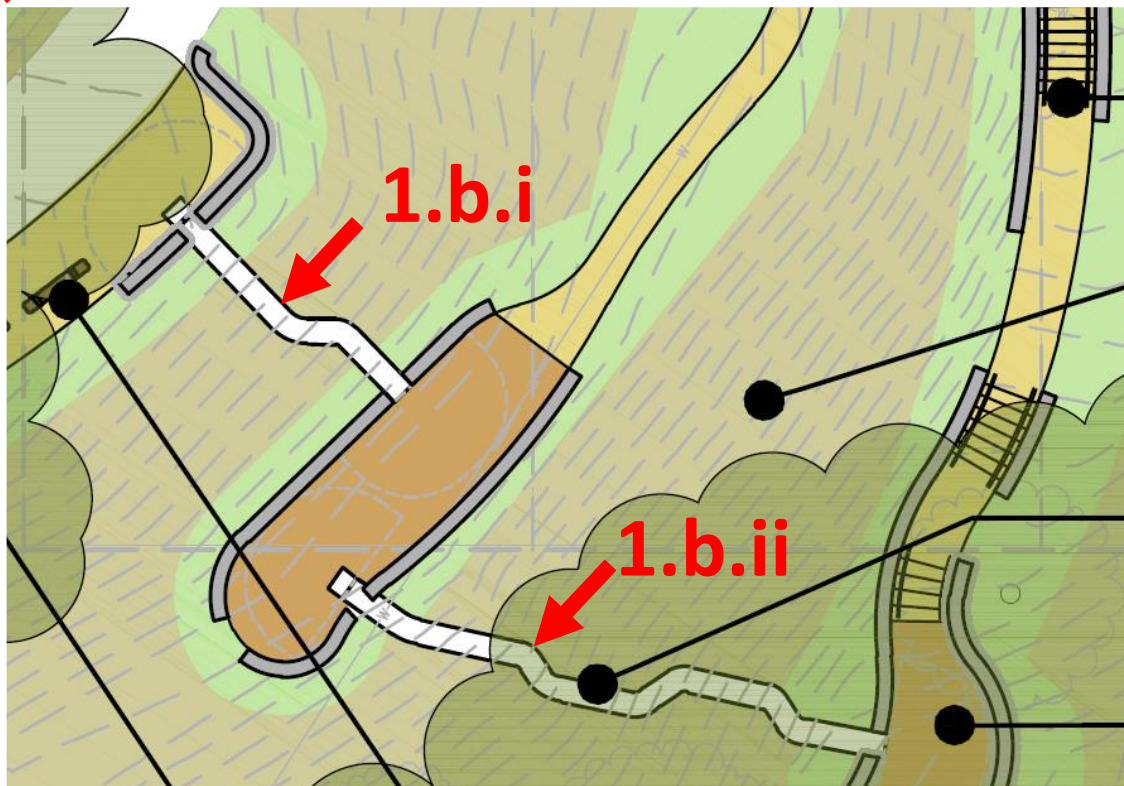
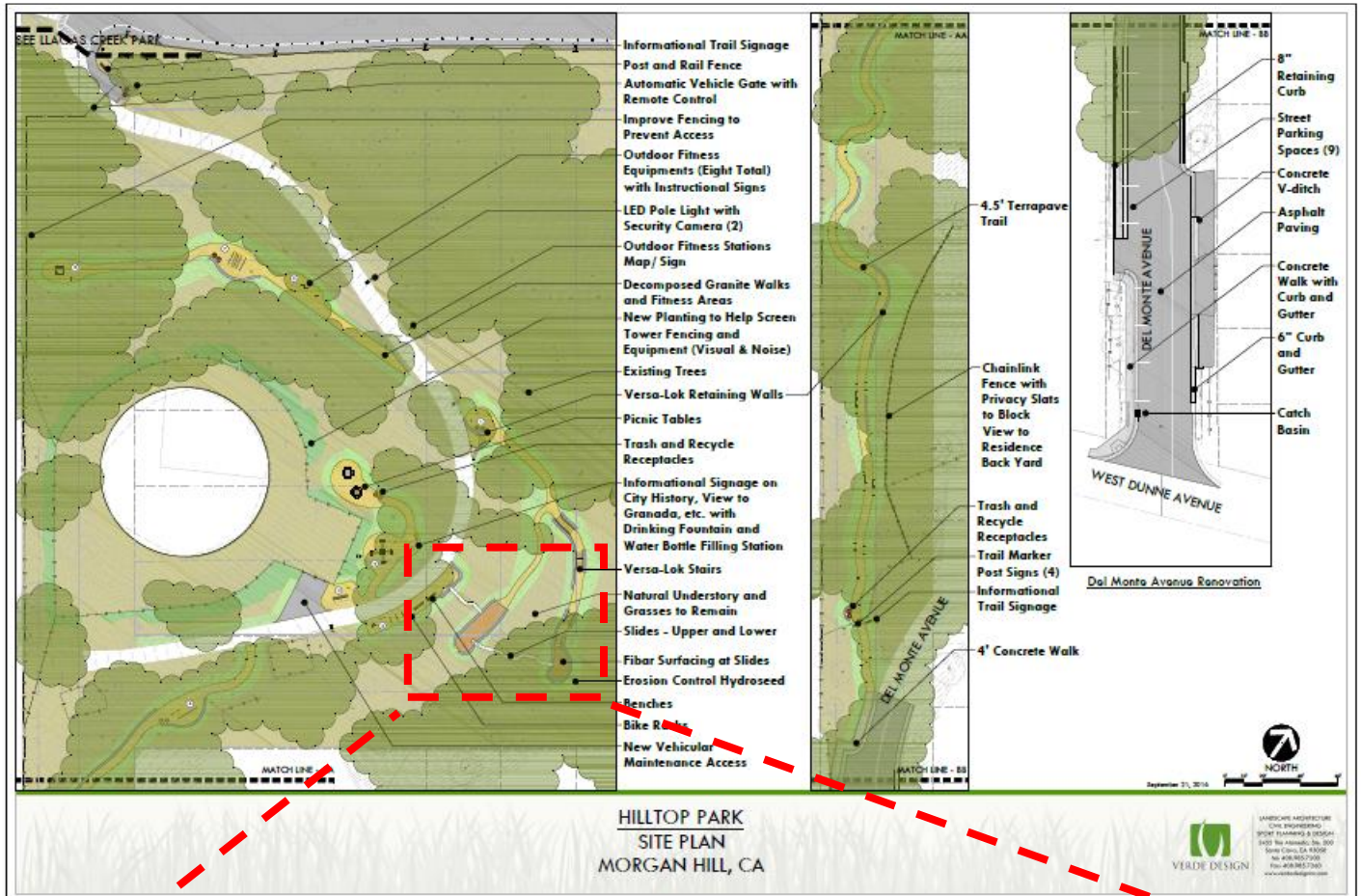

By: Lorena Tuohey, Secretary

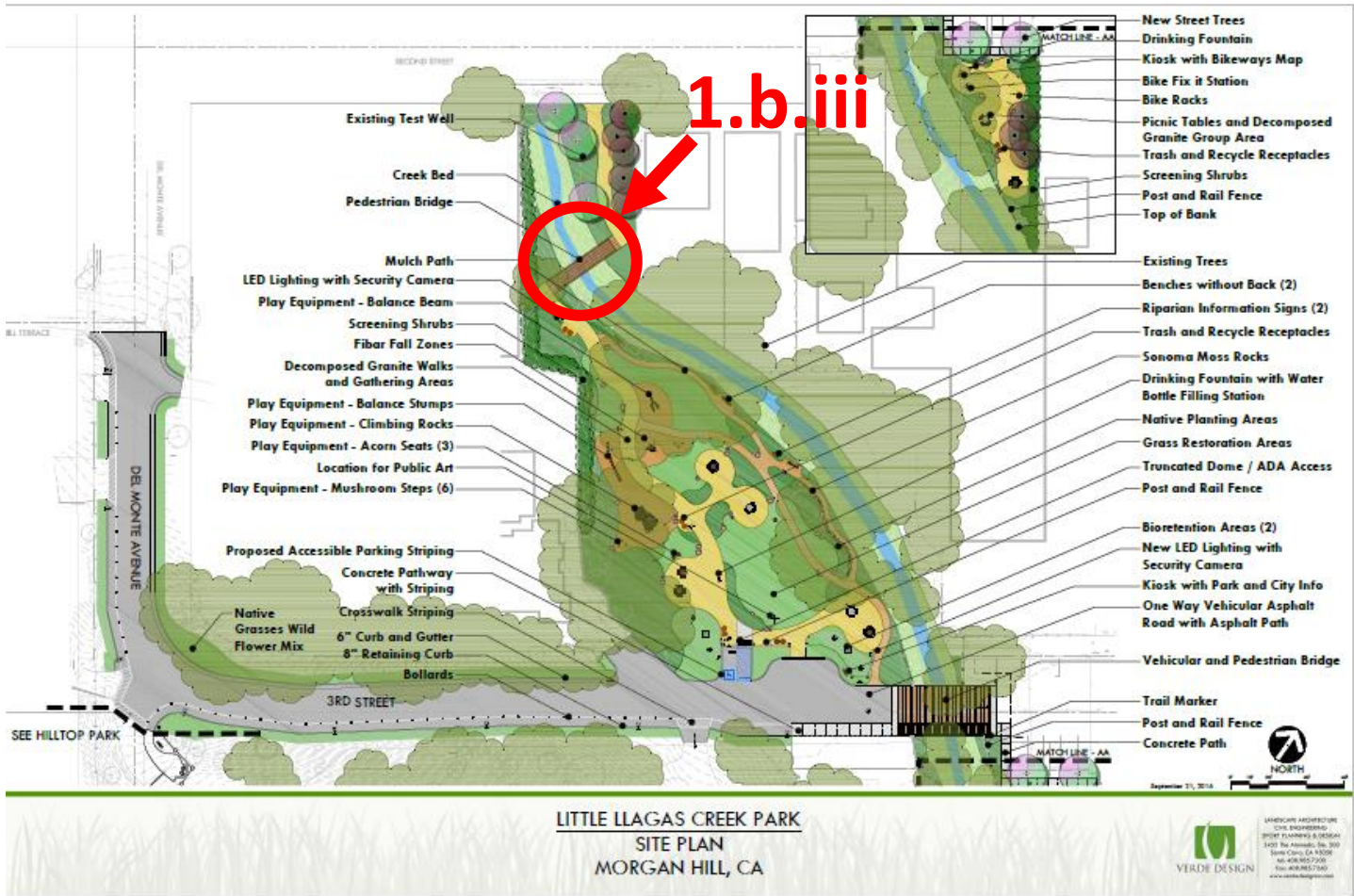
THE CITY:

CITY OF MORGAN HILL

By: _____
Its: City Manager

Exhibit 1



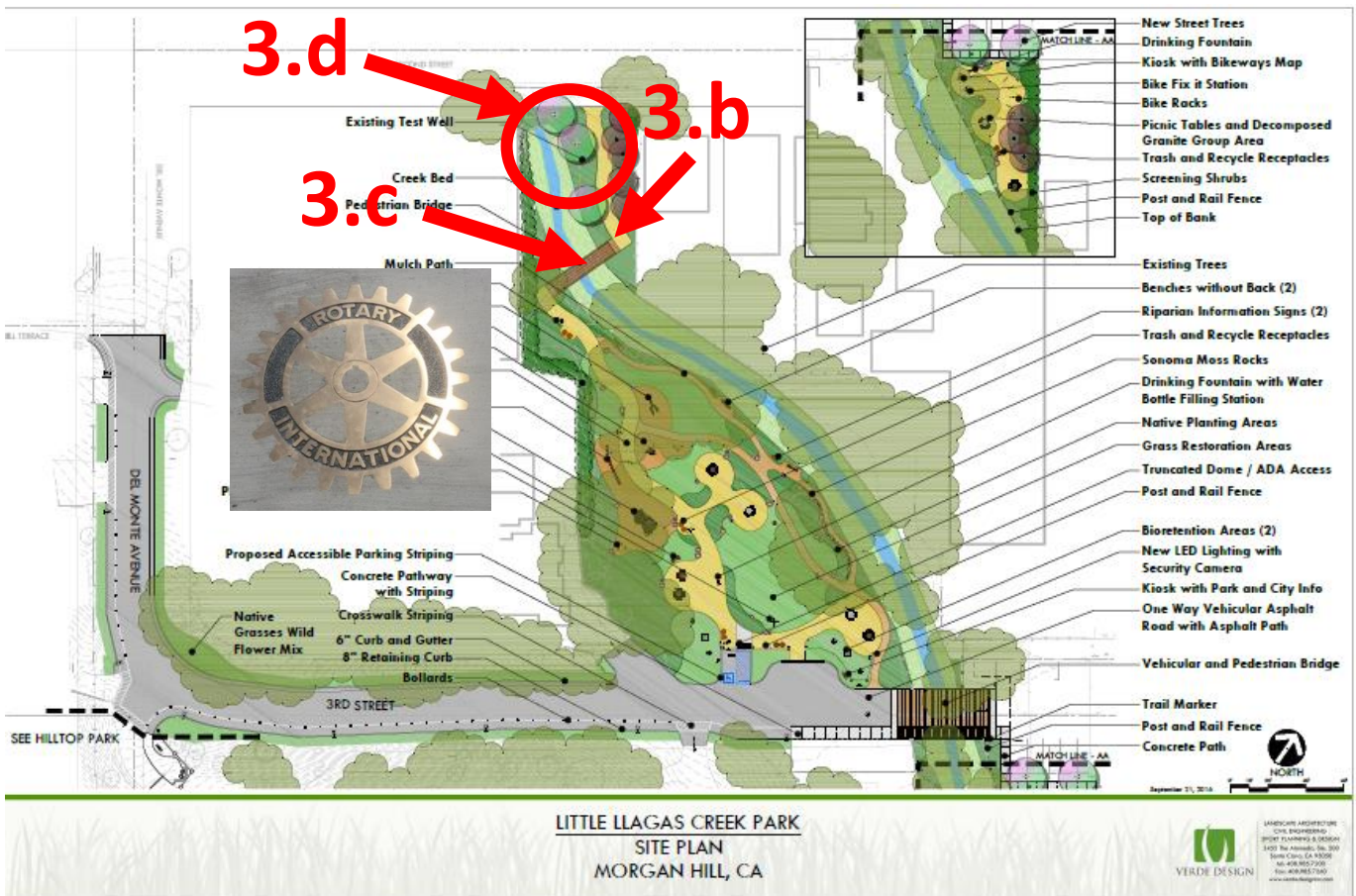
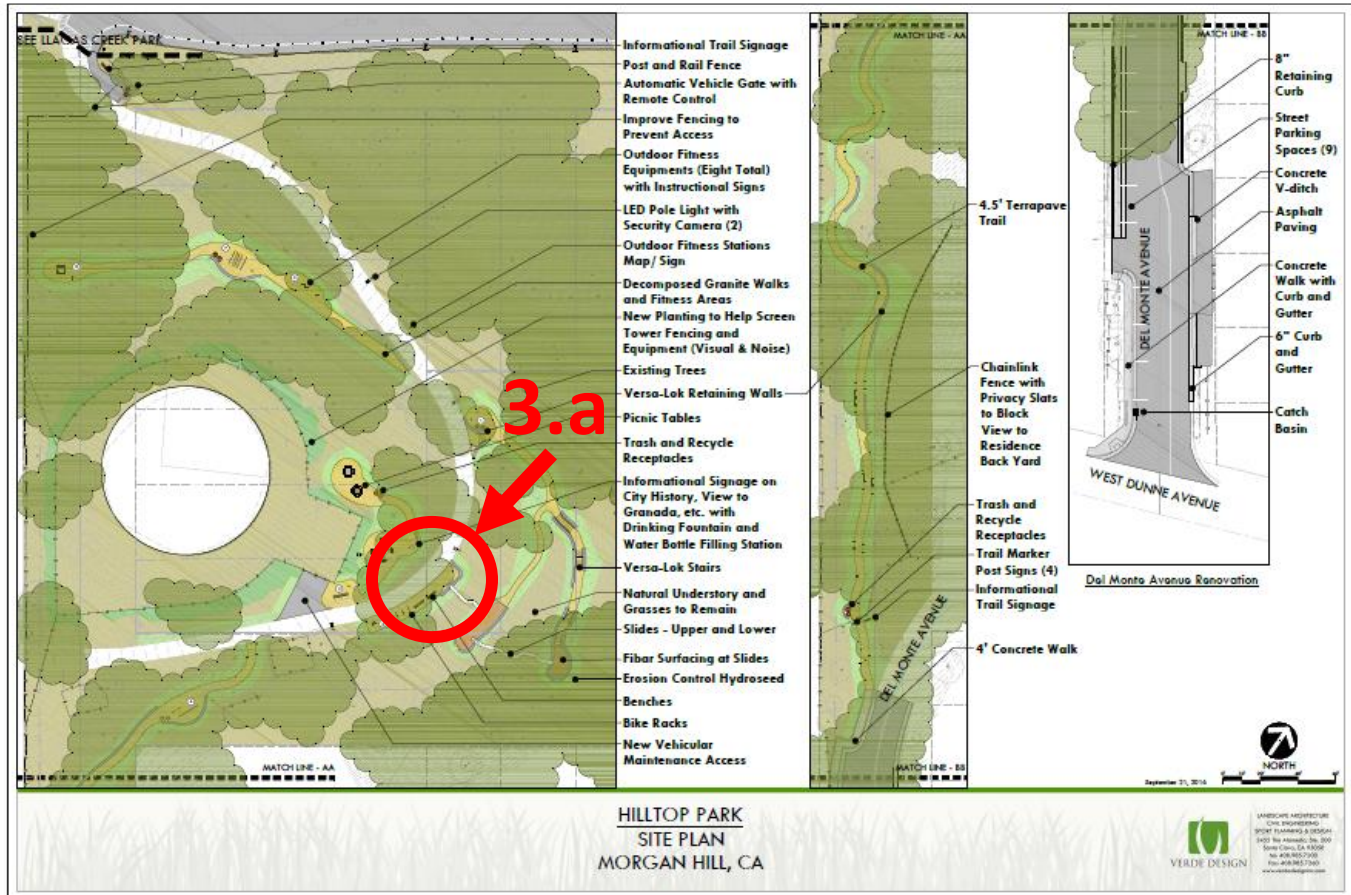


Attachment 1 - Partially Executed with Exhibits (1385 : Rotary Donation for Downtown Parks)

Exhibit 2



Exhibit 3





CITY COUNCIL STAFF REPORT

MEETING DATE: September 27, 2017

PREPARED BY: Anthony Eulo, Program Administrator
APPROVED BY: City Manager

ACCEPT DONATION FROM THE MORGAN HILL TENNIS CLUB AND MAKE RELATED ADJUSTMENTS TO THE FISCAL YEAR 2017-18 BUDGET

RECOMMENDATION(S)

Adopt resolution accepting a \$11,000 donation from the Morgan Hill Tennis Club for court lighting improvements and amending the City's Adopted Fiscal Year 2017-18 Budget to reflect the increased revenues and expenses associated with the project.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

The purpose of this report is to provide the City Council with an opportunity to accept a donation from the Morgan Hill Tennis Club (Club) for court lighting improvements and make related adjustments to the City's Adopted Budget.

The Club has long partnered with the City on the maintenance and improvement of the Community Park Tennis Courts. In addition to providing court maintenance, the Club has made substantial improvements over the years including a new shade structure, signage, and other amenities. As the City's "Home Club" at the courts, the Club sponsors tournaments and youth activities that support the community.

The Club has long indicated that the lighting on the center four courts is inadequate and that they would be willing to contribute \$11,000 to an improvement project. The City has twice budgeted funds to make the improvements over the past five years, but on both occasions the replacement technology was not quite affordable and the project was suspended.

With the ongoing assistance of the Club, the City has again solicited bids to improve the lighting and now has a viable project. In addition to the donation from the Club, the City is also eligible to receive a rebate from PG&E as a result of the energy savings associated with the LED lights on the courts.

COMMUNITY ENGAGEMENT: Collaborate

The City and Tennis Club are collaborating on this project with the Club taking the lead on envisioning the project and the City taking the lead on project delivery. Players will be notified well in advance of the court closures needed to complete the project.

ALTERNATIVE ACTIONS:

The Council could decline to adopt the resolution and cancel the project or provide staff with alternative direction.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council specifically incorporated new funding for this project when amending the Fiscal Year 2017-18 budget.

FISCAL AND RESOURCE IMPACT:

A negotiated bid for the project has been received for \$40,770. With the existing \$25,000 appropriation for this project, the \$11,000 donation from the Tennis Club, and the \$6,035 rebate from PG&E, the City will be able to complete the project.

If adopted, the attached budget scorecard will increase anticipated revenues in the Park Maintenance Fund (302) by \$17,035 and will increase the appropriation for the project in Fund 302 by \$17,035.

CEQA (California Environmental Quality Act):

Categorical Exemption

All activities resulting from this grant will be minor alterations of existing facilities and are categorically exempt from CEQA per Section 15301 (Existing Facilities) of the CEQA Guidelines.

LINKS/ATTACHMENTS:

1. Court Lighting Resolution
2. Tennis Lighting Budget Scorecard

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ACCEPTING A DONATION FROM THE MORGAN HILL TENNIS CLUB AND APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2017-18 BUDGET IN THE PARK MAINTENANCE FUND (FUND NO. 302) TO APPROPRIATE \$17,035 THEREFOR

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 acceptance of a donation from the Morgan Hill Tennis Club described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled "Resolution accepting donation from the Morgan Hill Tennis Club and making related adjustments to the Fiscal Year 2017-18 budget" submitted for City Council consideration at its meeting of September 27, 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, recommended amendments are needed and proposed to the City's previously adopted Budget for Fiscal Year 2017-18 as set forth on Exhibit A to this Resolution, to appropriate the requisite funds to implement the actions authorized by this Resolution; and

WHEREAS, the activities allowed under this Resolution are categorically exempt under the provisions of California Environmental Quality Act of 1970 per Section 15301 (Existing Facilities); 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 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 Authorization. The City Council does further resolve, order and/or direct as follows:

- a. That the \$11,000 donation from the Morgan Hill Tennis Club is hereby accepted; and
- b. That the City's previously adopted Fiscal Year 2017-18 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
- c. 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 2017-18 Budget of City.

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 27th day of September, 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 September 27, 2017.

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

DATE: _____

Irma Torrez, CITY CLERK

Attachment: Court Lighting Resolution (1410 : Tennis Club Donation)

AGENDA BUDGET SCORECARD**FISCAL YEAR 2017-18****ADJUSTMENT #**

010

FUND:**DEPARTMENT:****OBJECT:**

302	Park Maintenance Fund
8030	Park Maintenance
86360	CONSTRUCTION

AGENDA DATE:**AGENDA ITEM TITLE:**

09/27/17
Tennis Court Lights Conversion

	07/01/17 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/18 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	5,426,265	888,026	958,151	5,356,140
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	1,492,000	(1,492,000)
RECOMMENDED ACTION	-	17,035	17,035	-
RESULT OF RECOMMENDED ACTION	<u>5,426,265</u>	<u>905,061</u>	<u>2,467,186</u>	<u>3,864,140</u>

Attachment: Tennis Lighting Budget Scorecard (1410 : Tennis Club Donation)



CITY COUNCIL STAFF REPORT

MEETING DATE: September 27, 2017

PREPARED BY: Chris Ghione, Community Services Director
APPROVED BY: City Manager

APPROVE PROPOSAL FOR RAILROAD PARK SOUND WALL MURAL

RECOMMENDATION(S)

Approve art proposal for Railroad Park sound wall mural by Pamela Mossing.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community

REPORT NARRATIVE:

On February 22, 2017, the City Council approved the Downtown Parks Project and included funding for Public Art within that project. City staff worked with the Library, Culture and Arts Commission (Commission) to develop a Call for Artists to select artists to complete the following three art projects within the Downtown Parks:

- Artistic Bike Rack Art Contest - \$15,000
- Mural on the Railroad Park Sound Wall - \$20,000
- Sculpture or Other Art for the Downtown Creek Park - \$15,000

Outreach for the projects focused on finding local artists to complete the artwork. Proposals were due on June 30. The City received five proposals, including two proposals for the sculpture in the Downtown Creek Park and three proposals for work to create the mural. An art review panel convened on July 24th to review the proposals. This panel was made up of two members of the Library, Culture and Arts Commission, two members of the Parks and Recreation Commission, the Project Manager for the Downtown Parks Project, and the City's Maintenance Coordinator.

The action requested of Council tonight is only in relation to the Railroad Park sound wall mural. The Bronze Sculpture component was approved by Council on August 23, and artist Evelyn Davis is now working on the sculpture. Since no applications were received for the artistic bike rack, the City staff is working with the Commission to issue a revised call for artists for that specific project.

After the initial review, the panel invited the three muralists that submitted proposals to an interview to understand each proposal in more detail. Following the interviews, the panel recommended that Pamela Mossing be selected as the muralist. The panel also

recommended that the artwork be adjusted in the following ways:

1. Broaden appeal through a reduction of cartoonish feel
2. Include historical features in the mural
3. Add more natural wildlife features.

The Commission concurred with the panel's recommendation to select Pamela Mossing as the artist for the sound wall mural, but did not agree with the first modification to the proposed artwork. The Commission felt the whimsical cartoon characters in the proposal were appropriate for the mural adjacent to the park designed for children. On August 29, the Commission recommended that the City Council approve the Pamela Mossing sound wall mural proposal (Attachment 1). The proposal meets the guidelines of the City's Public Art Policy. The art will be a mural that includes two sections of the sound wall next to the Railroad Park and the adjacent restroom building.

If approved the City would work with the general contractor for the Downtown Parks Project to process a change order so the artwork is installed under its supervision. This will be necessary to ensure site coordination and to meet liability issues.

COMMUNITY ENGAGEMENT: Involve

A "Call for Artists" was promoted through the community and targeted towards local artists. A selection panel made up of City teammates, Library, Culture and Arts Commissioners, and Parks and Recreation Commissioners reviewed the projects and made an initial recommendation to the full Library, Culture and Arts Commission. The Commission reviewed the proposal during its regular meeting allowing for public comment.

ALTERNATIVE ACTIONS:

The Council could choose to not approve the proposal and provide alternative direction for City staff and the Commission. The Council could also choose to approve the proposal and provide further direction on the modifications to the artist directly.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

February 22, 2017 – The City Council approved the Downtown Parks Project and included funding for public art.

August 23, 2017 – The City Council approved the Bronze Fox art proposal by Evelyn Davis.

August 29, 2017 – The Library, Culture and Arts Commission recommended approval of Pamela Mossing's sound wall mural proposal.

FISCAL AND RESOURCE IMPACT:

The funding for the mural is \$20,000 which was previously approved as a component of the Downtown Parks Project. Overall project funding sources include grant funding, Park Impact (301) funds, and Public Facilities (346) funds.

CEQA (California Environmental Quality Act):
Categorical Exemption

The installation of the sound wall mural is a component of the Railroad Park. The Railroad park site was found to be categorically exempt from the provisions of CEQA. Section 15332 of the CEQA Guidelines provides a categorical exemption for infill projects that meet specific criteria and the Railroad Park was found to meet these criteria.

LINKS/ATTACHMENTS:

1. Attachment 1 - Pamela Mossing Full Proposal

Application – Call for Artists
Morgan Hill Downtown Parks Project

Contact Name	Pam Mossing
Organization Name (If Applicable)	
Address	730 Dalewood Court San Jose, CA 95120
Email	Pmossing@yahoo.com
Phone Numbers	408-460-4099
Name of Artist	Pam Mossing
Art Proposal Area (Check One)	☐ Artistic Bike Rack ☒ <u>Sound Wall Mural</u> ☐ Wildlife Sculpture
Description of Art Being Proposed (200 Words Max)	See attached Word document
Required Documents (Provide as Additional Attachments)	☒ Artist Resume (max 2 pages) ☐ Concept Sketch or Design of Art Being proposed ☒ Statement of Interest (max 1 page) Under statement of interest, applicant may describe what motivates him/her to create public art, what attracts him/her to this project.
Optional Documents (Provide as Additional Attachments)	☒ Samples of Representative Work (Up to 10 projects with photos of work) ☐ Other documents necessary to provide artist or proposal background (max 2 pages)

There are three reasons that I am attracted to the Depot Park mural: trains, animals and community.

I grew up in Toledo, OH, a major train junction in the Midwest. I would walk to school along the train tracks. My grandpa would take me to the train yards. As a girl, I had a train set, which was unusual in those days. You could always hear the trains in Toledo. As a matter of fact, when I go back to visit, I fall asleep to the sound of the trains in the distance. Really.

Animals have always been an important part of my life. I help several pet rescues fostering kittens and dogs. My daughter, Mackenzie, worked at a wildlife refuge in Paso Robles and would often bring home young or injured animals such as racoons, African porcupines and others.

I have illustrated or painted animals for most of my career. One of the first freelance projects that I had was designing a calendar for a Fortune 500 company, Owens-Illinois. Each month featured an illustration of a regional animal (beavers, gray wolves, bobcats, etc.). This calendar was sent to over 10,000 customers.

Perhaps my first real experience in doing “public art” was when I did murals for Trader Joes in 2004-5. TJs is a private company, but the traffic in their stores makes it a public place. I did large scale murals in four of their stores. Each store’s murals reflect the city’s unique culture and history. These murals provide the customers a real sense of community.

More recently, I have done public art projects in, Morgan Hill (Los Paseos School) Campbell and Foster City. Every time I am out painting, residents will approach to thank me for making their city a more beautiful place. It is clear to me from my interactions with residents, plus the customers at Trader Joe’s, that people want art in their lives. I feel really good when I can do this for them.

The theme of my mural proposal for the Depot Park is FUN! I want people to laugh and smile when they see this mural!

I have taken the old-fashioned train theme from Depot Park and blended it with the animal theme from the new Llagas park.

I selected a typical steam train locomotive and caboose from the 1800s that families will be familiar with from popular literature such as Thomas The Tank Engine, Polar Express and Harry Potter's Hogwarts Express. The colors are identical to colors used in those original steam trains.

The train crew members are local animals, dressed as humans, that most children will recognize. The animals are all smiling and very lovable!

The restroom has been designed to look like a real train station ticket office – I hope nobody gets confused! The colors for the restroom reflect the colors in the murals.

In my proposal, the locomotive is coming out on the right-hand side of the wall to give it more prominence. The caboose is on the left-hand side. The locomotive and caboose, however, can be switched.

Finally, I added an anachronism to this 1800s look with a plane from the 20th century. Will the adults notice?

Pamela Mossing

Muralist

730 Dalewood Ct.
San Jose, CA 95120
408.460.4099
pmossing@yahoo.com

Specialties

Murals, hand-painted signs, chalkboards, illustration and watercolors.

EXPERIENCE

Pamurals.com, San Jose, CA - Owner

June 2015 - PRESENT

- Murals & Hand-painted signs for businesses, non-profits and government.
- Clients include: Morgan Hill Unified Schools, City of Campbell, Goodwill, Tipalti, Real Time Innovations, South Bay Development LLC, City of Foster City, Ninyo & Moore, etc.

Trader Joe's, San Jose, CA - Artist-in-Residence

October 2006 - September 2013

- Murals in 5 Trader Joe stores
- Designed hand-painted signs, chalkboards and in-store displays

Freelance Artist, San Jose, CA

June 1997 - September 2006

- Murals, watercolors, logos.
- Designed and painted theatre sets for SJUSD
- Taught private art lessons

EDUCATION

Bowling Green State University, Bowling Green, OH- Bachelor of Fine Arts in Graphic Design - 1980

DeAnza College- AA Degree- Digital Graphic Design 2014

Pam Mossing

Quotation

730 Dalewood Ct.
San Jose, CA 95120
408-460-4099

DATE July 24, 2017
Quotation # 97

Bill To:
City of Morgan Hill
Attn: Chris Ghione
17575 Peak Avenue
Morgan Hill, CA 95027

Quotation valid until: November 30, 2017

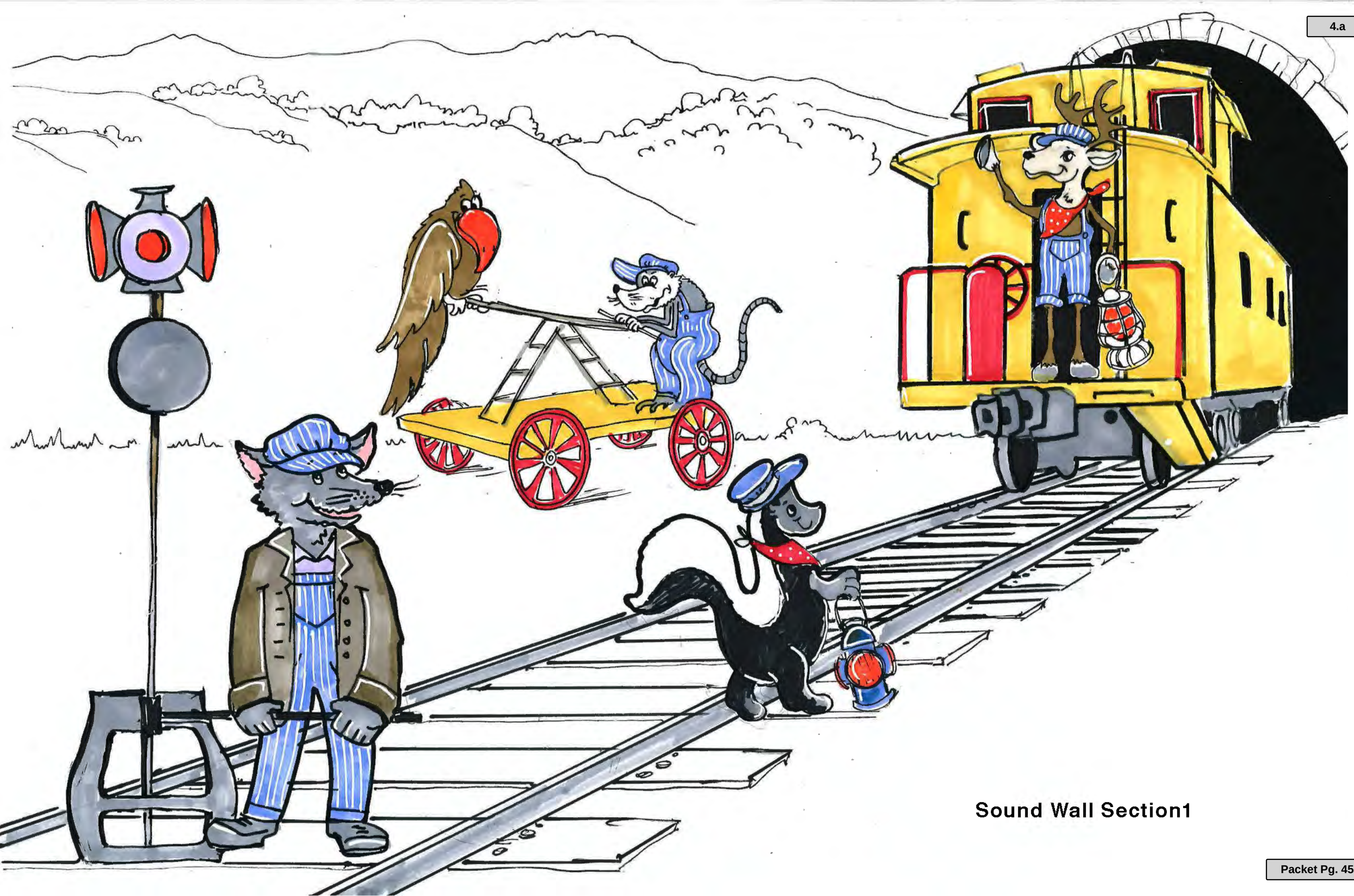
Comments or special instructions: Not included in quotation is the addition of anti-graffiti coating
Anti-graffiti coating would be an additional charge of \$2000

Description	AMOUNT
Murals for Depot Park Project Includes time, labor and materials for: a: Sound Wall Section 1: 7' x 20' b. Sound Wall Section 2: 7" x 60' c. Restroom Building 8' x 27' This project will be hand-painted to give it an authentic, old-fashioned look NO spray paints involved High quality Benjamin Moore, or similar, exterior latex paint to be used.	\$ 15,500.00
TOTAL	\$ 15,500.00

If you have any questions concerning this quotation, contact Pam Mossing, 408-460-4099, pmossing@yahoo.com

THANK YOU FOR YOUR BUSINESS!

Attachment: Attachment 1 - Pamela Mossing Full Proposal (1411 : Downtown Parks Art Approval)



Sound Wall Section1



Sound Wall Section 2





Restroom Building with Front Wall and Side Walls

Representative Work





200



240 UNION



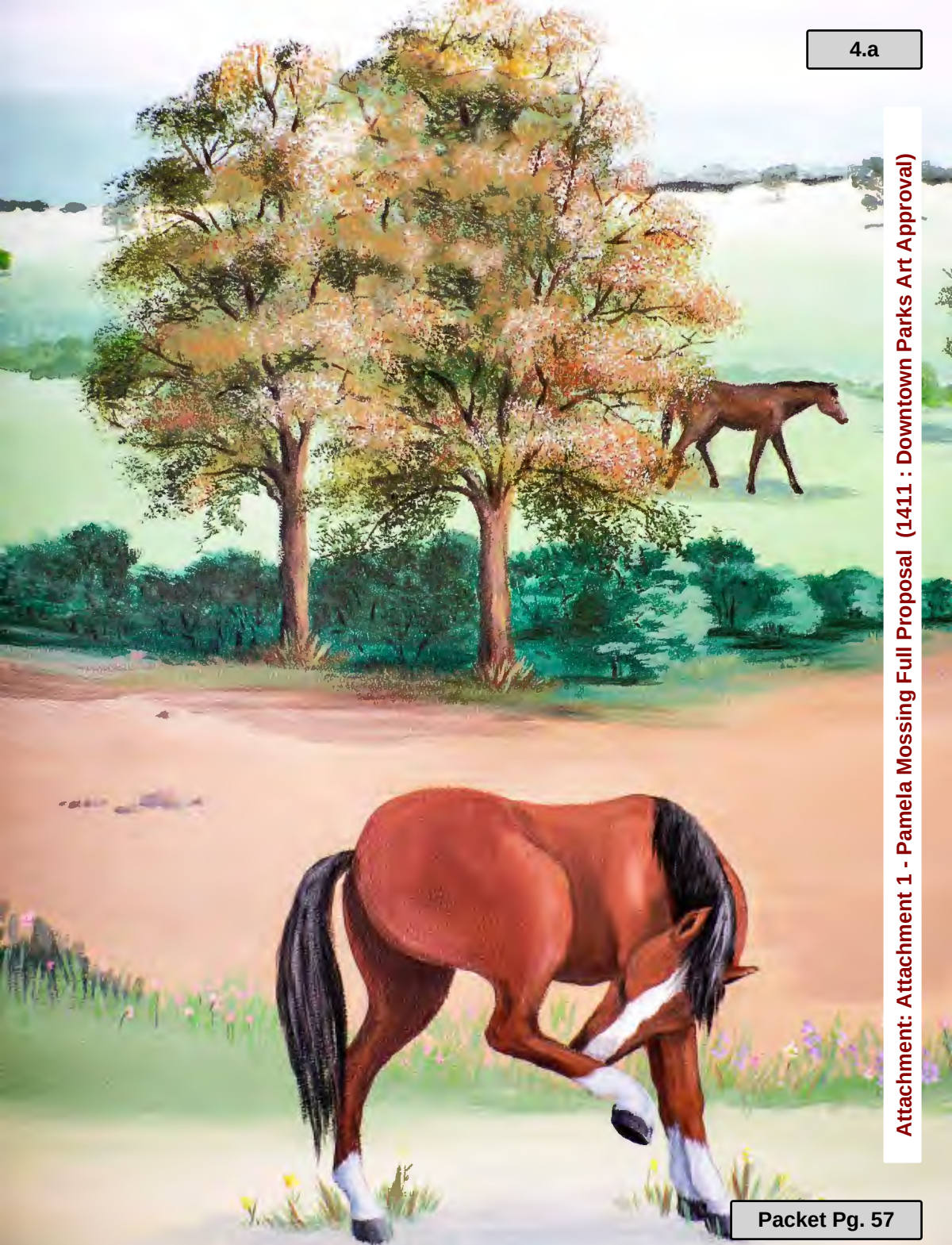






ARC



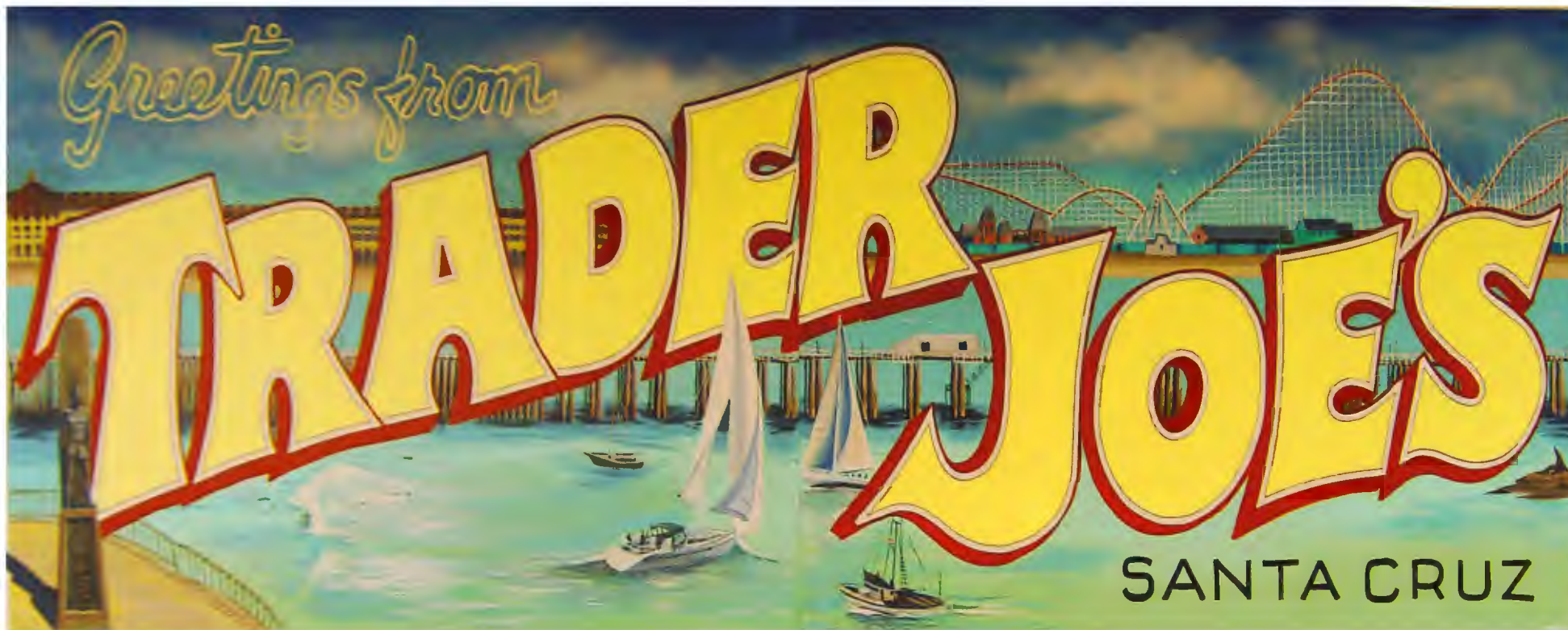




Welcome to Los Paseos Elementary

Attachment: Attachment 1 - Panels Missing Full Proposal [141] - Downtown Parks Art Approval







CITY COUNCIL STAFF REPORT

MEETING DATE: September 27, 2017

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

CITY POSITION ON PENDING LEGISLATION AB 726 AND AB 813

RECOMMENDATION(S)

Receive legislative correspondence in opposition of AB 726 (Holden) Energy and AB 813 (Holden) Electricity: Independent System Operator: California Renewable Portfolio Standard Program: procurement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

2017 Strategic Priorities

Regional Initiatives

POLICY CONSIDERATIONS:

Per Resolution No. 6851, the City Council recognizes occasional situations arise in which communication indicating support or opposition on pending State legislation is timely and may occur prior to the next scheduled City Council meeting. Under these circumstances, the Mayor or City Manager is delegated the authority to prepare, execute, and transmit written or verbal communications indicating a City's position on pending legislation as long as the following criteria are met: a) the League of California Cities has requested the City to comment or take a position, b) the timing to express a position occurs prior to the next scheduled Council meeting, and c) the pending State legislation clearly supports or clearly hinders the implementation or fulfillment of an adopted City Council Priority, Goal, or Strategy. When this occurs, a written report to the City Council for comment and acceptance is required at the next possible meeting.

REPORT NARRATIVE:

The League of California Cities, Silicon Valley Clean Energy (SVCE), and LEAN Energy called attention to AB 726 (attachment 1) and AB 813 (attachment 2) on September 12, 2017 urging cities to oppose both bills by calling elected officials immediately. Staff requested the Mayor call Senator Monning's office that day. These bills, which were essentially identical, would have severely compromised the ability of new community choice energy programs to develop in other parts of the state by requiring them to purchase a significant portion of their electricity from the existing incumbent energy provider. While this would not have impacted SVCE directly, SVCE's ultimate strength and impact will be enhanced by having more community choice energy programs throughout the State.

After the Mayor's correspondence and at the time of writing this staff report, the City received notification both bills have been pulled and will not go forward this year. Stopping these bills was a major priority for the California Community Choice Association (Association). The Association's demonstrated growing ability to impact legislation should pay dividends in future legislative sessions.

COMMUNITY ENGAGEMENT: Inform

This report informs the community of two legislative bills and the City's response.

ALTERNATIVE ACTIONS:

Council could rescind position taken.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None

FISCAL AND RESOURCE IMPACT:

No fiscal impact at this time. Tracking legislation is a responsibility of the Administrative Analyst in the City Manager's Office.

CEQA (California Environmental Quality Act):

Not a Project - Proposals for legislation to be enacted by the State Legislature

LINKS/ATTACHMENTS:

1. AB 726 Bill Text
2. AB 813 Bill Text

AMENDED IN SENATE SEPTEMBER 8, 2017

AMENDED IN SENATE SEPTEMBER 6, 2017

AMENDED IN SENATE JULY 18, 2017

AMENDED IN SENATE JULY 3, 2017

AMENDED IN ASSEMBLY MAY 2, 2017

AMENDED IN ASSEMBLY APRIL 6, 2017

AMENDED IN ASSEMBLY MARCH 15, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 726

Introduced by Assembly Member Holden

February 15, 2017

An act to amend Sections 334, 335, 336, 337, 338, 339, 340, 341, 341.1, 341.2, 341.3, 341.4, 341.5, 347, 348, 349, 352, and 359 of, to add ~~Section~~ Sections 399.23 and 745.5 to, and to repeal and add Section 359.5 of, the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 726, as amended, Holden. ~~Electricity: natural gas: rates: notification of energy usage and billing information. Energy.~~

The existing restructuring of the electrical industry within the Public Utilities Act provides for the establishment of the Electricity Oversight Board and the Independent System Operator (ISO) and requires the ISO to ensure efficient and reliable operation of the electrical transmission grid. Certain existing law prohibits the ISO from entering into a multistate entity or regional organization unless the ISO receives

approval from the Electricity Oversight Board. Other existing law states the intent of the Legislature to provide for the evolution of the ISO into a regional organization to promote the development of regional electricity transmission markets in the western states. The Clean Energy and Pollution Reduction Act of 2015 provided for the transformation of the ISO into a regional organization, with the approval of the Legislature, pursuant to a specified process, and repealed or made inoperative those other provisions of existing law relating to the ISO entering into a multistate entity or transforming into a regional organization.

This bill would repeal the existing law governing the transformation of the ISO into a regional organization adopted as part of the Clean Energy and Pollution Reduction Act of 2015 and replace it with provisions authorizing the transformation of the ISO into a regional organization if the ISO governing board undertakes certain steps and the Commission on Regional Grid Transformation, which the bill would create, makes specified findings by December 31, 2018. The bill would make inoperative other provisions of existing law relating to the ISO entering into a multistate entity or transforming into a regional organization unless the Commission on Regional Grid Transformation does not make the specified findings by that date. The bill would make existing provisions relating to the formation of advisory committees to the ISO governing board, the adoption of maintenance, repair, and replacement standards for transmission facilities, requiring the ISO to conduct performance reviews following certain major outages, and establishing the Electricity Oversight Board and specifying its responsibilities inoperative if the Commission on Regional Grid Transformation makes the specified findings.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, while local publicly owned electric utilities, as defined, are under the direction of their governing boards. The California Renewables Portfolio Standard Program requires the commission to establish a renewables portfolio standard requiring all retail sellers, as defined, to procure a minimum quantity of electricity products from eligible renewable energy resources, as defined, so that the total kilowatthours of those products sold to their retail end-use customers achieves 25% of retail sales by December 31, 2016, 33% by December 31, 2020, 40% by December 31, 2024, 45% by December 31, 2027, and 50% by December 31, 2030. The program additionally requires each local publicly owned electric

utility to procure a minimum quantity of electricity products from eligible renewable energy resources to achieve the procurement requirements established by the program. The program, consistent with the goals of procuring the least-cost and best-fit eligible renewable energy resources that meet project viability principles, requires that all retail sellers and local publicly owned electric utilities procure a balanced portfolio of electricity products from specified categories of eligible renewable energy resources. The provisions defining these categories and imposing this obligation on retail sellers are referred to as the portfolio content requirements.

This bill would require the commission, by March 31, 2018, to require electrical corporations with more than 100,000 service connections in California to procure tax-advantaged renewable resources, as defined, in an amount specified by the commission that are over and above those resources necessary to meet the procurement requirements for the applicable renewables portfolio standard compliance period if the commission makes specified determinations. The bill would require each electrical corporation, in procuring tax-advantaged renewable resources, to give priority to projects that provide flexible and controllable eligible renewable energy resources that support the grid management needs of the Independent System Operator or that can displace conventional generation in locally constrained resource areas. The bill would require that an electrical corporation submit executed contracts for tax-advantaged renewable resources to the commission for review by no later than September 1, 2018, and require the commission to act on all final contracts by December 31, 2018. The bill would provide that the procurement of tax-advantaged renewable resources pursuant to this authority would be on behalf of retail end-use customers of all retail sellers and would require the commission to authorize an electrical corporation to recover expenses for the procurement subject to certain conditions. The bill would authorize an electric service provider or community choice aggregator meeting certain requirements to elect to provide its proportionate share of tax-advantaged renewable resources specified by the commission that would otherwise be procured by an electrical corporation and would reduce the procurement obligation of the electrical corporation in the event of such an election.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations and gas corporations. Existing law authorizes the commission to fix the rates

and charges for every public utility and requires that those rates and charges be just and reasonable.

Existing law requires a provider of mobile telephony services, as defined, to provide subscribers with a means by which a subscriber can obtain reasonably current and available information on the subscriber's calling plan or plans and service usage. Existing law additionally requires that a provider of mobile telephony services provide subscribers with a means by which a subscriber can obtain reasonably current and available information, as determined by the provider, on the subscriber's text messaging and Internet usage and charges. A provider of mobile telephony service is required to inform subscribers to their service at the time service is established of the availability of this usage information and how it may be obtained.

Unless the customer exercises the option to not receive notifications, this bill would require an electrical corporation or gas corporation to provide a residential customer with a smart meter with energy usage or energy billing notifications at appropriate times, based on the customer's usage of electricity or gas, as specified. The bill would require an electrical corporation or gas corporation to offer the option to a residential customer with a smart meter to receive energy bill alert notifications when the customer's energy bill exceeds an amount specified by the customer or when the customer's rate of energy usage, if it continues through a billing period, will result in a projected bill that exceeds an amount specified by the customer. The bill would require an electrical corporation or gas corporation to notify a residential customer with a smart meter that the customer may receive notification of the customer's energy usage and billing information as required by the bill, the manner by which the customer can provide appropriate contact information to receive this information, and the customer's opportunity to opt in or opt out of receiving this information. The bill would authorize the commission to modify or adjust these requirements for any electrical corporation with fewer than 100,000 service connections, as individual circumstances merit. The bill would require an electrical corporation or gas corporation to seek authority from the commission to be exempted from these requirements with respect to a category of residential customers when compliance is impractical or infeasible and would require the commission to determine whether to grant an exemption on those grounds.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill would be a part of the act, the bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 334 of the Public Utilities Code is
2 amended to read:
3 334. (a) The Legislature finds and declares that in order to
4 ensure the success of electric industry restructuring, in the transition
5 to a new market structure it is important to ensure a reliable supply
6 of electricity. Reliable electric service is of paramount importance
7 to the safety, health, and comfort of the people of California.
8 Transmission connections between electric utilities allow them to
9 share generation resources and reduce the number of powerplants
10 necessary to maintain a reliable system. The connections between
11 utilities also create exposure to events that can cause widespread
12 and extended transmission and service outages that reach far
13 beyond the originating utility service area. California utilities and
14 those in the western United States voluntarily adhere to reliability
15 standards developed by the Western Electricity Coordinating
16 Council. The economic cost of extended electricity outages, such
17 as those that occurred in California and throughout the Western
18 Electricity Coordinating Council on July 2, 1996, and August 10,
19 1996, to California's residential, commercial, agricultural, and
20 industrial customers is significant. The proposed restructuring of
21 the electricity industry would transfer responsibility for ensuring
22 short- and long-term reliability away from electric utilities and
23 regulatory bodies to the Independent System Operator and various
24 market-based mechanisms. The Legislature has an interest in
25 ensuring that the change in the locus of responsibility for reliability

1 does not expose California citizens to undue economic risk in
2 connection with system reliability.

3 *(b) This section shall become inoperative if the Commission on*
4 *Regional Grid Transformation makes the findings required in*
5 *subdivision (d) of Section 359.5.*

6 SEC. 2. Section 335 of the Public Utilities Code is amended
7 to read:

8 335. (a) In order to ensure that the interests of the people of
9 California are served, a five-member Electricity Oversight Board
10 is hereby created as provided in Section 336. For purposes of this
11 chapter, any reference to the Oversight Board shall mean the
12 Electricity Oversight Board. Its functions shall be all of the
13 following:

14 (a)

15 (1) To oversee the Independent System Operator and the Power
16 Exchange.

17 (b)

18 (2) To determine the composition and terms of service and to
19 exercise the exclusive right to decline to confirm the appointments
20 of specific members of the governing board of the Power Exchange.

21 (c)

22 (3) To serve as an appeal board for majority decisions of the
23 Independent System Operator governing board, as they relate to
24 matters subject to exclusive state jurisdiction, as specified in
25 Section 339.

26 (d)

27 (4) Those members of the Power Exchange governing board
28 whose appointments the Oversight Board has the exclusive right
29 to decline to confirm include proposed governing board members
30 representing agricultural end users, industrial end users,
31 commercial end users, residential end users, end users at large,
32 nonmarket participants, and public interest groups.

33 (e)

34 (5) To investigate any matter related to the wholesale market
35 for electricity to ensure that the interests of California's citizens
36 and consumers are served, protected, and represented in relation
37 to the availability of electric transmission and generation and
38 related costs, during periods of peak demand.

1 (b) *This section shall become inoperative if the Commission on*
2 *Regional Grid Transformation makes the findings required in*
3 *subdivision (d) of Section 359.5.*

4 SEC. 3. Section 336 of the Public Utilities Code is amended
5 to read:

6 336. (a) The five-member Oversight Board shall be ~~comprised~~
7 *composed* as follows:

8 (1) Three members, who are California residents and electricity
9 ratepayers, appointed by the Governor from a list jointly provided
10 by the California Energy Resources Conservation and Development
11 Commission and the Public Utilities Commission, and subject to
12 confirmation by the Senate.

13 (2) One member of the Assembly appointed by the Speaker of
14 the Assembly.

15 (3) One member of the Senate appointed by the Senate
16 Committee on Rules.

17 (b) Legislative members shall be nonvoting members, however,
18 they are otherwise full members of the board with all rights and
19 privileges pertaining thereto.

20 (c) Oversight Board members shall serve three-year terms with
21 no limit on reappointment. For purposes of the initial appointments
22 set forth in paragraph (1), the Governor shall appoint one member
23 to a one-year term, one to a two-year term, and one to a three-year
24 term.

25 (d) The Governor shall designate one of the voting members as
26 the chairperson of the Oversight Board who shall preside over
27 meetings and direct the executive director in the routine
28 administration of the Oversight Board's business. The chairperson
29 may designate one of the other voting members to preside over
30 meetings in the absence of the chairperson.

31 (e) Two voting members shall constitute a quorum. Any decision
32 or action of the Oversight Board shall be by majority vote of the
33 voting members.

34 (f) The members of the Oversight Board shall serve without
35 compensation, but shall be reimbursed for all necessary expenses
36 incurred in the performance of their duties.

37 (g) *This section shall become inoperative if the Commission on*
38 *Regional Grid Transformation makes the findings required in*
39 *subdivision (d) of Section 359.5.*

1 *SEC. 4. Section 337 of the Public Utilities Code is amended*
 2 *to read:*

3 337. (a) The Independent System Operator governing board
 4 shall be composed of a five-member independent governing board
 5 of directors appointed by the Governor and subject to confirmation
 6 by the Senate. Any reference in this chapter or in any other
 7 provision of law to the Independent System Operator governing
 8 board means the independent governing board appointed under
 9 this subdivision.

10 (b) A member of the independent governing board appointed
 11 under subdivision (a) may not be affiliated with any actual or
 12 potential participant in any market administered by the Independent
 13 System Operator.

14 (c) (1) All appointments shall be for three-year terms.

15 (2) There is no limit on the number of terms that may be served
 16 by any member.

17 (d) The Oversight Board shall require the articles of
 18 incorporation and bylaws of the Independent System Operator to
 19 be revised in accordance with this section, and shall make filings
 20 with the Federal Energy Regulatory Commission as the Oversight
 21 Board determines to be necessary.

22 (e) For the purposes of the initial appointments to the
 23 Independent System Operator governing board, as provided in
 24 subdivision (a), the Governor shall appoint one member to a
 25 one-year term, two members to a two-year term, and two members
 26 to a three-year term.

27 (f) ~~This section becomes shall become inoperative on if the date~~
 28 ~~Commission on which Regional Grid Transformation makes the~~
 29 ~~governance modifications set forth findings required in Section~~
 30 ~~359.5 become effective and is repealed on January 1 subdivision~~
 31 ~~(d) of the following year. Section 359.5.~~

32 *SEC. 5. Section 338 of the Public Utilities Code is amended*
 33 *to read:*

34 338. (a) The Oversight Board shall have the exclusive right
 35 to approve procedures and the qualifications for Power Exchange
 36 governing board members specified in *paragraph (4) of* subdivision
 37 ~~(d)~~ (a) of Section 335, all of whom shall be required to be
 38 electricity customers in the area served by the Power Exchange.
 39 The Power Exchange governing board shall include, but not be
 40 limited to, representatives of investor-owned electric distribution

1 companies, publicly owned electric distribution companies,
2 nonutility generators, public buyers and sellers, private buyers and
3 sellers, industrial end-users, commercial end-users, residential
4 end-users, agricultural end-users, public interest groups, and
5 nonmarket participant representatives. The structural composition
6 of the Power Exchange governing board existing on July 1, 1999,
7 shall remain in effect until an agreement with a participating state
8 is legally in effect. However, prior to such an agreement, California
9 shall retain the right to change the Power Exchange governing
10 board into a nonstakeholder board. In the event of such a legislative
11 change, revised bylaws shall be filed with the Federal Energy
12 Regulatory Commission under Section 205 of the Federal Power
13 Act (16 U.S.C.A. Sec. 824d).

14 *(b) This section shall become inoperative if the Commission on*
15 *Regional Grid Transformation makes the findings required in*
16 *subdivision (d) of Section 359.5.*

17 SEC. 6. Section 339 of the Public Utilities Code is amended
18 to read:

19 339. (a) The Oversight Board is the appeal board for majority
20 decisions of the Independent System Operator governing board
21 relating to matters that are identified in subdivision (b) as they
22 pertain to the Independent System Operator.

23 (b) The following matters are subject to California's exclusive
24 jurisdiction:

25 (1) Selections by California of governing board members, as
26 described in Sections 335, 337, and 338.

27 (2) Matters pertaining to retail electric service or retail sales of
28 electric energy.

29 (3) Ensuring that the purposes and functions of the Independent
30 System Operator and Power Exchange are consistent with the
31 purposes and functions of California nonprofit public benefit
32 corporations, including duties of care and conflict of interest
33 standards for directors of the corporations.

34 (4) State functions assigned to the Independent System Operator
35 and Power Exchange under state law.

36 (5) Open meeting standards and meeting notice requirements.

37 (6) Appointment of advisory representatives representing state
38 interests.

39 (7) Public access to corporate records.

40 (8) The amendment of bylaws relevant to these matters.

(c) Only members of the Independent System Operator governing board may appeal a majority decision of the Independent System Operator related to any of the matters specified in subdivision (b) to the Oversight Board.

(d) This section shall become inoperative if the Commission on Regional Grid Transformation makes the findings required in subdivision (d) of Section 359.5.

SEC. 7. Section 340 of the Public Utilities Code is amended to read:

340. (a) The Oversight Board shall take the steps that are necessary to ensure the earliest possible incorporation of the Independent System Operator and the Power Exchange as separately incorporated public benefit, nonprofit corporations under the Corporations Code.

(b) This section shall become inoperative if the Commission on Regional Grid Transformation makes the findings required in subdivision (d) of Section 359.5.

SEC. 8. Section 341 of the Public Utilities Code is amended to read:

341. The Oversight Board may do all of the following:

(a) Meet at the times and places it may deem proper.

(b) Accept appropriations, grants, or contributions from any public source, private foundation, or individual.

(c) Sue and be sued.

(d) Contract with state, local, or federal agencies for services or work required by the Oversight Board.

(e) Contract for or employ any services or work required by the Oversight Board that in its opinion cannot satisfactorily be performed by its staff or by other state agencies.

(f) Appoint advisory committees from members of other public agencies and private groups or individuals.

(g) As a body, or on the authorization of the Oversight Board, as a subcommittee composed of one or more members, hold hearings at the times and places it may deem proper.

(h) Issue subpoenas to compel the production of books, records, papers, accounts, reports, and documents and the attendance of witnesses.

(i) Administer oaths.

1 (j) Adopt or amend rules and regulations to carry out the
2 purposes and provisions of this chapter, and to govern the
3 procedures of the Oversight Board.

4 (k) Exercise any authority consistent with this chapter delegated
5 to it by a federal agency or authorized to it by federal law.

6 (l) Make recommendations to the Governor and the Legislature
7 at the time or times the Oversight Board deems necessary.

8 (m) Participate in proceedings relevant to the purposes of this
9 chapter or to the purposes of Division 4.9 (commencing with
10 Section 9600) or, as part of any coordinated effort by the state,
11 participate in activities to promote the formation of interstate
12 agreements to enhance the reliability and function of the electricity
13 system and the electricity market.

14 (n) Do any and all other things necessary to carry out the
15 purposes of this chapter.

16 (o) *This section shall become inoperative if the Commission on*
17 *Regional Grid Transformation makes the findings required in*
18 *subdivision (d) of Section 359.5.*

19 SEC. 9. Section 341.1 of the Public Utilities Code is amended
20 to read:

21 341.1. (a) Regulations adopted within 120 days of the effective
22 date of this section may be adopted as emergency regulations in
23 accordance with Chapter 3.5 (commencing with Section 11340)
24 of the Government Code, and for the purposes of that chapter,
25 including Section 11349.6 of the Government Code, the adoption
26 of the regulations shall be considered by the Office of
27 Administrative Law to be necessary for the immediate preservation
28 of the public peace, health, safety, and general welfare.

29 (b) *This section shall become inoperative if the Commission on*
30 *Regional Grid Transformation makes the findings required in*
31 *subdivision (d) of Section 359.5.*

32 SEC. 10. Section 341.2 of the Public Utilities Code is amended
33 to read:

34 341.2. (a) The Bagley-Keene Open Meeting Act (Article 9
35 (commencing with Section 11120) of Chapter 1 of Part 1 of
36 Division 3 of Title 2 of the Government Code) applies to meetings
37 of the Oversight Board. In addition to the allowances of that act,
38 the Oversight Board may hold a closed session to consider the
39 appointment of one or more candidates to the governing board of
40 the Power Exchange, deliberate on matters involving the removal

1 of a member of the governing board of the Power Exchange, or to
2 consider a matter based on information that has received a grant
3 of confidential status pursuant to regulations of the Oversight
4 Board, provided that any action taken on such a matter shall be
5 taken by vote in an open session.

6 *(b) This section shall become inoperative if the Commission on*
7 *Regional Grid Transformation makes the findings required in*
8 *subdivision (d) of Section 359.5.*

9 SEC. 11. Section 341.3 of the Public Utilities Code is amended
10 to read:

11 341.3. (a) Voting members of the Oversight Board shall be
12 required to file financial disclosure statements with the Fair
13 Political Practices Commission. The appointing authority for voting
14 members shall avoid appointing persons with conflicts of interest.

15 *(b) This section shall become inoperative if the Commission on*
16 *Regional Grid Transformation makes the findings required in*
17 *subdivision (d) of Section 359.5.*

18 SEC. 12. Section 341.4 of the Public Utilities Code is amended
19 to read:

20 341.4. (a) The Oversight Board shall appoint, and fix the salary
21 of, an executive director who shall have charge of administering
22 the affairs of the Oversight Board, including entering into contracts,
23 subject to the direction and policies of the Oversight Board.
24 Notwithstanding Sections 11042 and 11043 of the Government
25 Code, the Oversight Board shall appoint an attorney who shall
26 advise the Oversight Board and each member and represent the
27 Oversight Board as a party in any state or federal action or
28 proceeding related to the purposes of this chapter or to an action
29 of the Oversight Board and who shall perform generally all the
30 duties of attorney to the Oversight Board. For purposes of this
31 section, the Oversight Board may appoint a person exempt pursuant
32 to subdivision (e) of Section 4 of Article VII of the California
33 Constitution. The executive director shall, in accordance with
34 Article VII of the California Constitution and subject to the
35 approval of the Oversight Board, appoint employees as may be
36 necessary to carry out the Oversight Board's duties and
37 responsibilities.

38 *(b) This section shall become inoperative if the Commission on*
39 *Regional Grid Transformation makes the findings required in*
40 *subdivision (d) of Section 359.5.*

1 *SEC. 13. Section 341.5 of the Public Utilities Code is amended*
2 *to read:*

3 341.5. (a) The Independent System Operator and Power
4 Exchange bylaws shall contain provisions that identify those
5 matters specified in subdivision (b) of Section 339 as matters within
6 state jurisdiction. The bylaws shall also contain provisions which
7 state that California's bylaws approval function with respect to
8 the matters specified in subdivision (b) of Section 339 shall not
9 preclude the Federal Energy Regulatory Commission from taking
10 any action necessary to address undue discrimination or other
11 violations of the Federal Power Act (16 U.S.C.A. Sec. 791a et
12 seq.) or to exercise any other commission responsibility under the
13 Federal Power Act. In taking any such action, the Federal Energy
14 Regulatory Commission shall give due respect to California's
15 jurisdictional interests in the functions of the Independent System
16 Operator and Power Exchange and to attempt to accommodate
17 state interests to the extent those interests are not inconsistent with
18 the Federal Energy Regulatory Commission's statutory
19 responsibilities. The bylaws shall state that any future agreement
20 regarding the apportionment of the Independent System Operator
21 and Power Exchange board appointment function among
22 participating states associated with the expansion of the
23 Independent System Operator and Power Exchange into multistate
24 entities shall be filed with the Federal Energy Regulatory
25 Commission pursuant to Section 205 of the Federal Power Act (16
26 U.S.C.A. Sec. 824d).

27 (b) Any necessary bylaw changes to implement the provisions
28 of Section 335, 337, 338, 339, or subdivision (a) of this section,
29 or changes required pursuant to an agreement as contemplated by
30 subdivision (a) of this section with a participating state for a
31 regional organization, shall be effective upon approval of the
32 respective governing boards and the Oversight Board and
33 acceptance for filing by the Federal Energy Regulatory
34 Commission.

35 (c) *This section shall become inoperative if the Commission on*
36 *Regional Grid Transformation makes the findings required in*
37 *subdivision (d) of Section 359.5.*

38 *SEC. 14. Section 347 of the Public Utilities Code is amended*
39 *to read:*

1 347. (a) The Independent System Operator governing board
2 may form appropriate technical advisory committees composed
3 of market and nonmarket participants to advise the Independent
4 System Operator governing board on issues including, but not
5 limited to, rules and protocols and operating procedures.

6 (b) *This section shall become inoperative if the Commission on*
7 *Regional Grid Transformation makes the findings required in*
8 *subdivision (d) of Section 359.5.*

9 SEC. 15. Section 348 of the Public Utilities Code is amended
10 to read:

11 348. (a) The Independent System Operator shall adopt
12 inspection, maintenance, repair, and replacement standards for the
13 transmission facilities under its control no later than September
14 30, 1997. The standards, which shall be performance or prescriptive
15 standards, or both, as appropriate, for each substantial type of
16 transmission equipment or facility, shall provide for high quality,
17 safe, and reliable service. In adopting its standards, the Independent
18 System Operator shall consider: cost, local geography and weather,
19 applicable codes, national electric industry practices, sound
20 engineering judgment, and experience. The Independent System
21 Operator shall also adopt standards for reliability, and safety during
22 periods of emergency and disaster. The Independent System
23 Operator shall report to the Oversight Board, at such times as the
24 Oversight Board may specify, on the development and
25 implementation of the standards in relation to facilities under the
26 operational control of the Independent System Operator. The
27 Independent System Operator shall require each transmission
28 facility owner or operator to report annually on its compliance
29 with the standards. That report shall be made available to the
30 public.

31 (b) *This section shall become inoperative if the Commission on*
32 *Regional Grid Transformation makes the findings required in*
33 *subdivision (d) of Section 359.5.*

34 SEC. 16. Section 349 of the Public Utilities Code is amended
35 to read:

36 349. (a) The Independent System Operator shall perform a
37 review following a major outage that affects at least 10 percent of
38 the customers of the entity providing the local distribution service.
39 The review shall address the cause of the major outage, the
40 response time and effectiveness, and whether the transmission

1 facility owner or operator's operation and maintenance practices
 2 enhanced or undermined the ability to restore service efficiently
 3 and in a timely manner. If the Independent System Operator finds
 4 that the operation and maintenance practices of the transmission
 5 facility owner or operator prolonged the response time or was
 6 responsible for the outage, the Independent System Operator may
 7 order appropriate sanctions, subject to the Federal Energy
 8 Regulatory Commission approving that authority.

9 *(b) This section shall become inoperative if the Commission on*
 10 *Regional Grid Transformation makes the findings required in*
 11 *subdivision (d) of Section 359.5.*

12 *SEC. 17. Section 352 of the Public Utilities Code is amended*
 13 *to read:*

14 352. (a) The Independent System Operator may not enter into
 15 a multistate entity or a regional organization as authorized in
 16 Section 359 unless that entry is approved by the Oversight Board.

17 ~~(b) This section becomes shall become inoperative on the date~~
 18 ~~on which the governance modifications set forth in if the~~
 19 ~~Commission on Regional Grid Transformation makes the findings~~
 20 ~~required in subdivision (d) of Section 359.5 become effective and~~
 21 ~~is repealed on January 1 of the following year. 359.5.~~

22 *SEC. 18. Section 359 of the Public Utilities Code is amended*
 23 *to read:*

24 359. (a) It is the intent of the Legislature to provide for the
 25 evolution of the Independent System Operator into a regional
 26 organization to promote the development of regional electricity
 27 transmission markets in the western states and to improve the
 28 access of consumers served by the Independent System Operator
 29 to those markets.

30 (b) The preferred means by which the voluntary evolution
 31 described in subdivision (a) should occur is through the adoption
 32 of a regional compact or other comparable agreement among
 33 cooperating party states, the retail customers of which states would
 34 reside within the geographic territories served by the Independent
 35 System Operator.

36 (c) The agreement described in subdivision (b) should provide
 37 for all of the following:

38 (1) An equitable process for the appointment or confirmation
 39 by party states of members of the governing boards of the
 40 Independent System Operator.

(2) A respecification of the size, structure, representation, eligible membership, nominating procedures, and member terms of service of the governing boards of the Independent System Operator.

(3) Mechanisms by which each party state, jointly or separately, can oversee effectively the actions of the Independent System Operator as those actions relate to the assurance of electricity system reliability within the party state and to matters that affect electricity sales to the retail customers of the party state or otherwise affect the general welfare of the electricity consumers and the general public of the party state.

(4) The adherence by publicly owned and investor-owned utilities located in party states to enforceable standards and protocols to protect the reliability of the interconnected regional transmission and distribution systems.

(d) (1) Except for paragraphs (2) and (3), this section becomes inoperative on January 1, 2016.

(2) This section becomes operative on January 1, 2019, if Article 5.5 (commencing with Section 359.5) becomes inoperative on that date.

~~(3) If the governance modifications set forth in Section 359.5 This article shall become effective, this article is repealed inoperative if the Commission on January 1 of Regional Grid Transformation makes the year following the effective date findings required in subdivision (d) of the governance modifications. Section 359.5.~~

SEC. 19. Section 359.5 of the Public Utilities Code is repealed.

~~359.5. (a) It is the intent of the Legislature to provide for the transformation of the Independent System Operator into a regional organization to promote the development of regional electricity transmission markets in the western states and to improve the access of consumers served by the Independent System Operator to those markets, and that the transformation should only occur where it is in the best interests of California and its ratepayers.~~

~~(b) The transformation of the Independent System Operator into a regional organization shall not alter its obligations to the state or to electricity consumers within the state or its obligations to comply with state laws. The Independent System Operator shall retain its obligations set forth in Section 345.5, shall maintain the standards for open meetings and public access to corporate records~~

1 as set forth in Section 345.5, and shall facilitate effective tracking
2 and reporting mechanisms in support of state enforcement of
3 Division 25.5 (commencing with Section 38500) of the Health and
4 Safety Code.

5 (c) The voluntary transformation described in subdivision (a)
6 shall occur through additional transmission owners joining the
7 Independent System Operator with approval from their own state
8 or local regulatory authorities, as applicable.

9 (d) Modifications to the Independent System Operator
10 governance structure, through changes to its bylaws or other
11 corporate governance documents, would be needed to allow this
12 transformation.

13 (e) The Independent System Operator shall prepare the
14 governance modifications needed as described in subdivision (d);
15 but they shall not become effective until all of the following occur:

16 (1) The Independent System Operator conducts one or more
17 studies of the impacts of a regional market enabled by the proposed
18 governance modifications, including overall benefits to ratepayers,
19 including the creation or retention of jobs and other benefits to the
20 California economy, environmental impacts in California and
21 elsewhere, impacts in disadvantaged communities, emissions of
22 greenhouse gases and other air pollutants, and reliability and
23 integration of renewable energy resources. The modeling, including
24 all assumptions underlying the modeling, shall be made available
25 for public review.

26 (2) The commission, Energy Commission, and State Air
27 Resources Board jointly hold at least one public workshop where
28 the Independent System Operator presents the proposed governance
29 modifications and the results of the studies described in paragraph
30 (1). The related Independent System Operator documents shall be
31 made public before the workshop.

32 (3) The Independent System Operator submits to the Governor
33 the studies described in paragraph (1) and revised bylaws or other
34 corporate governance documents setting forth the proposed
35 modifications to its governance structure.

36 (4) The Governor transmits to the Legislature the studies
37 described in paragraph (1) and revised bylaws or other corporate
38 governance documents setting forth the proposed modifications
39 to its governance structure, no later than December 31, 2017.

~~(5) The Legislature enacts a statute implementing the revised governance changes.~~

~~(f) The Independent System Operator shall expeditiously adopt the modifications to its governance structure enacted by the Legislature pursuant to paragraph (5) of subdivision (e) so that the modifications become effective before new transmission owners from outside California complete the process of joining the Independent System Operator.~~

~~(g) The revised governance structure shall not alter or abridge the contractual rights of a transmission owner to withdraw from participation in the Independent System Operator.~~

~~(h) One year after the seating of the new, revised governing board of the Independent System Operator pursuant to the modifications of its governance structure, and every two years thereafter, the Independent System Operator shall prepare a report to the states within the areas it serves documenting its furtherance of applicable state and federal laws and regulations affecting the electric industry.~~

~~(i) This article is repealed on January 1, 2019, if a statute implementing the governance modifications has not become effective on or before January 1, 2019.~~

SEC. 20. Section 359.5 is added to the Public Utilities Code, to read:

359.5. (a) (1) It is the intent of the Legislature to establish a process to change the governance of the Independent System Operator, consistent with the requirements set forth in this section.

(2) It is the intent of the Legislature that the Public Utilities Commission should continue to act in the interests of California ratepayers and pursue strong principles of cost causation, including economic efficiency, alignment of transmission development with the public interest, and encouraging application of best practices for quality of service and price levels.

(3) It is the intent of the Legislature that the State Air Resources Board continue to consult with California balancing authorities to ensure that the state board can quantify changes in emissions of greenhouse gases for the purposes of the state's greenhouse gas inventory and climate programs.

(4) It is the intent of the Legislature to facilitate the transition to a regional grid to provide benefits to California ratepayers, including benefits with respect to the creation or retention of jobs

1 *and other benefits to the California economy, environmental*
2 *impacts in California and elsewhere, impacts in disadvantaged*
3 *communities, emissions of greenhouse gases and other air*
4 *pollutants, and the reliability and integration of renewable energy*
5 *resources.*

6 *(b) On or before October 31, 2018, the Independent System*
7 *Operator governing board shall develop and approve proposed*
8 *revised corporate governing documents and shall submit those*
9 *documents to the Commission on Regional Grid Transformation*
10 *established pursuant to subdivision (f) for review and certification*
11 *as set forth in subdivision (d). The proposed revised corporate*
12 *governing documents shall be developed through a process that*
13 *includes opportunity for public review and comment.*

14 *(c) The proposed revised corporate governing documents shall*
15 *set forth a proposed governance structure that does all of the*
16 *following:*

17 *(1) Acknowledges and preserves state authority over matters*
18 *traditionally regulated by the states themselves, including the*
19 *continuing right of all states to determine and control resource*
20 *procurement policy, resource adequacy, planning for their*
21 *electrical utilities, and other policy issues. The proposal must also*
22 *include a transparent mechanism for tracking emissions of*
23 *greenhouse gases and other air pollutants from sources of*
24 *electricity generation that use the services of the Independent*
25 *System Operator.*

26 *(2) Includes an open and transparent governance framework,*
27 *a robust and meaningful stakeholder process, and inclusive public*
28 *participation, that includes both of the following:*

29 *(A) One or more diverse stakeholder advisory committees,*
30 *advisory to the governing board, that include, but are not*
31 *necessarily limited to, members chosen by each state with a*
32 *participating transmission owner that is under the operational*
33 *control of the Independent System Operator, as well as*
34 *representatives of participating transmission owners,*
35 *transmission-dependent utilities, local publicly owned electric*
36 *utilities, end-use consumers, environmental and environmental*
37 *justice interests, exempt wholesale generators, emerging*
38 *technologies, and labor organizations.*

39 *(B) Access to data and reasoning underlying decisions.*

1 (3) *Permits participating transmission owners to withdraw from*
2 *the Independent System Operator, including if required to do so*
3 *by a participating transmission owner's state or local regulatory*
4 *authority.*

5 (4) *Includes a process for transitioning the Independent System*
6 *Operator's governing board to a new independent board when,*
7 *and if, the Commission of Regional Grid Transformation issues*
8 *the findings described in subdivision (d).*

9 (d) *The proposed revised corporate governing documents*
10 *developed by the Independent System Operator shall not become*
11 *effective unless, on or before December 31, 2018, the Commission*
12 *on Regional Grid Transformation finds that all the following are*
13 *true:*

14 (1) *The proposed revised corporate governing documents*
15 *comply with the requirements of subdivision (c).*

16 (2) *The proposal ensures that individual states or intervening*
17 *parties, including state regulators, regulated utilities, local publicly*
18 *owned electric utilities, direct access customers, and individual*
19 *plaintiffs, are not hindered or inhibited from challenging a*
20 *transmission project or allocation of costs before the Federal*
21 *Energy Regulatory Commission.*

22 (3) *The proposal provides a role for state regulators on issues*
23 *regarding transmission needs and cost allocations, including*
24 *provisions ensuring that any such involvement by state regulators*
25 *shall not hinder or inhibit the individual states or their utility*
26 *regulators from acting to protect the interests of ratepayers through*
27 *challenges to new transmission projects, tariffs, or transmission*
28 *cost allocation in filings made before the Federal Energy*
29 *Regulatory Commission.*

30 (4) *The proposal ensures that no member of the new governing*
31 *board is affiliated with any actual or potential participant in any*
32 *market administered by the Independent System Operator and the*
33 *board, as a whole, is diverse in terms of geography and expertise,*
34 *and reflects the interests of its stakeholders.*

35 (e) *Before making the findings described in subdivision (d), the*
36 *Commission on Regional Grid Transformation shall hold at least*
37 *one public meeting.*

38 (f) *The Commission on Regional Grid Transformation is hereby*
39 *created. The membership of the Commission on Regional Grid*
40 *Transformation shall be as follows:*

1 (1) The Governor or his or her representative, who shall chair
2 the commission.

3 (2) The chair of the Assembly Committee on Utilities and
4 Energy.

5 (3) The chair of the Senate Committee on Energy, Utilities and
6 Communications.

7 (4) The chair of the Energy Commission.

8 (5) The president of the Public Utilities Commission.

9 (6) The chair of the California Air Resources Board.

10 (7) A member of the Assembly appointed by the Speaker of the
11 Assembly.

12 (8) A member of the Senate appointed by the Senate Committee
13 on Rules.

14 (g) At least annually, the balancing authorities operating in
15 California, in consultation with the State Air Resources Board,
16 shall make available a public report on emissions of greenhouse
17 gases from resources used to serve California load in their
18 balancing authority areas, and shall describe those emissions of
19 greenhouse gases, and trends in those emissions, from the
20 resources supplying that electricity.

21 (h) This article is repealed on January 1, 2019, unless by
22 December 31, 2018, the Commission on Regional Grid
23 Transformation makes the findings required in subdivision (d).
24 The Commission on Regional Grid Transformation shall promptly
25 notify the Secretary of State and the Legislative Counsel if it makes
26 the findings required in subdivision (d), and shall notify those
27 same parties if it has not made the findings by December 31, 2018.

28 SEC. 21. Section 399.23 is added to the Public Utilities Code,
29 to read:

30 399.23. (a) The Legislature finds and declares all of the
31 following:

32 (1) The California Renewables Portfolio Standard Program
33 requires all retail sellers to procure a minimum quantity of
34 electricity products from eligible renewable energy resources.
35 Preliminary modeling results in the commission Rulemaking
36 16-02-007 (filed February 11, 2016), Order Instituting Rulemaking
37 to Develop an Electricity Integrated Resource Planning Framework
38 and to Coordinate and Refine Long-Term Procurement Planning
39 Requirements, has identified a potential ratepayer savings of six
40 hundred thirty-three million dollars (\$633,000,000) from procuring

1 up to 4,000 megawatts of eligible renewable energy resources that
2 qualify for federal investment tax credits and production tax credits
3 before those tax credits begin to expire in 2020.

4 (2) While early procurement of eligible renewable energy
5 resources that are eligible for federal production tax credits and
6 investment tax credits would reduce long-term electricity costs for
7 ratepayers, there are already sufficient resources to meet
8 forecasted electrical demand in the portions of the state served by
9 the Independent System Operator and California's large electrical
10 corporations have contracts with eligible renewable energy
11 resources to meet their compliance obligations under the
12 renewables portfolio standard. Additionally, long-term load
13 forecasts for the electrical corporations are uncertain due to
14 expansion of community choice aggregators and associated
15 departing load from the electrical corporations.

16 (3) While accelerated procurement of tax advantaged, eligible
17 renewable energy resources will benefit California ratepayers in
18 the long term, it may result in early procurement of resources not
19 needed until later in the California Renewables Portfolio Standard
20 Program, especially for electrical corporations. In the near term,
21 such procurement could lead to increases in the need for the
22 Independent System Operator to curtail electricity supplied by
23 eligible renewable energy resources at certain times of the year,
24 but curtailments to date have been minimal, and the benefits of
25 early procurement will outweigh the potential for increased
26 curtailment. Additionally, state agencies and the Independent
27 System Operator are already working to minimize the impact of
28 curtailment.

29 (4) While any requirement to accelerate procurement of eligible
30 renewable energy resources will benefit California ratepayers as
31 a whole, it could negatively impact ratepayers of electrical
32 corporations unless they are able to equitably spread the cost of
33 that procurement to customers who depart the service of the
34 electrical corporation to receive service from other entities,
35 including community choice aggregators and electric service
36 providers.

37 (5) In order for wind and solar projects to be eligible for the
38 federal tax credits, and for the identified ratepayer savings to
39 occur, projects must begin construction no later than December
40 31, 2019.

1 (6) The Legislature intends that the accelerated procurement
2 of eligible renewable energy resources authorized in this section
3 should be implemented by the commission in a manner that
4 effectuates the purposes of this section. To the extent necessary to
5 implement this section, the commission should develop rules for
6 this procurement that are separate from the rules implementing
7 the procurement and compliance obligations of the renewables
8 portfolio standard generally. Any special rules should be for the
9 purposes of implementing this section only, and should not be
10 applied to any other aspects of the California Renewables Portfolio
11 Standard Program. Any procurement of eligible renewable energy
12 resources under this section may count toward a retail seller's
13 renewables portfolio standard procurement obligation under this
14 article.

15 (b) For purposes of this section, "tax-advantaged renewable
16 resource" means a new or repowered eligible renewable energy
17 resource that satisfies all of the following:

18 (1) Achieves initial commercial operation after January 1, 2019.

19 (2) Is eligible for a federal investment tax credit (26 U.S.C. Sec.
20 48) of at least 22 percent or the federal production tax credit (26
21 U.S.C. Sec. 45) of at least 80 percent and passes the savings
22 associated with these credits through to retail sellers and their
23 customers.

24 (3) Provides a bundled renewable electricity product meeting
25 the product content category requirements of paragraph (1) of
26 subdivision (b) of Section 399.16.

27 (4) Was not under contract to any retail seller or local publicly
28 owned electric utility, including load serving entities serving
29 customers outside the state, as of September 30, 2017.

30 (c) In order to reduce the long-term costs of procuring eligible
31 renewable energy resources by taking advantage of available
32 federal incentives, by no later than March 31, 2018, the
33 commission shall require electrical corporations to procure tax -
34 advantaged renewable resources. The commission may exercise
35 this authority to require an electrical corporation with more than
36 100,000 service connections in California to procure a specified
37 amount of tax-advantaged renewable resources over and above
38 those resources necessary to meet the procurement requirements
39 for the applicable compliance period only if the commission
40 determines that procuring those resources would be consistent

1 with the reference system plan developed by the commission in
2 support of its duties pursuant to Sections 454.51 and 454.52, and
3 the plan shows that earlier-than-required procurement in order
4 to meet the procurement requirements of this article will reduce
5 the overall long-term expense of procuring eligible renewable
6 energy resources of retail end-use customers of all retail sellers.

7 (d) In conducting procurement of tax-advantaged renewable
8 resources pursuant to this section, each electrical corporation
9 shall give priority to projects that provide flexible and controllable
10 eligible renewable energy resources that support the grid
11 management needs of the Independent System Operator or can
12 displace conventional generation in locally constrained resource
13 areas. Contracts executed by an electrical corporation for
14 tax-advantaged renewable resources shall be submitted to the
15 commission for review by no later than September 1, 2018.

16 (e) Procurement of tax-advantaged renewable resources
17 pursuant to subdivision (c) shall be on behalf of retail end-use
18 customers of all retail sellers. The commission shall act on all
19 final contracts by December 31, 2018, and shall authorize an
20 electrical corporation to recover expenses for the procurement of
21 tax-advantaged renewable resources pursuant to subdivision (c),
22 subject to both of the following:

23 (1) Each retail seller operating within the service territory of
24 an electrical corporation shall be allocated the portion of the
25 tax-advantaged renewable resource, including all associated
26 renewable energy credits, assigned to its retail end-use customers.
27 This portion shall be adjusted annually in the event that retail
28 end-use customers elect to be served by other retail sellers.

29 (2) Upon the delivery of electricity products to them, the retail
30 end-use customers shall be deemed to have purchased that
31 electricity from the electrical corporation. Payment for any sale
32 shall be a direct obligation of the retail end-use customer.

33 (f) The electricity products and associated renewable energy
34 credits allocated to the retail end-use customers of a retail seller
35 other than an electrical corporation pursuant to subdivision (e)
36 shall be applied to that retail seller's requirements to procure
37 electricity products from eligible renewable energy resources
38 meeting the portfolio content requirements of paragraph (1) of
39 subdivision (b) of Section 399.16.

(g) An electric service provider, community choice aggregator serving retail end-use customers as of September 1, 2017, or community choice aggregator receiving certification of an implementation plan pursuant to paragraph (7) of subdivision (c) of Section 366.2 prior to September 1, 2017, may elect to provide its proportionate share of any tax-advantaged renewable resource identified by the commission pursuant subdivision (c) through procurement of long-term contracts on behalf of its retail end-use customers subject to all of the following:

(1) The electrical corporation's obligation to procure tax-advantaged renewable resources pursuant to subdivision (c) shall be reduced by the proportionate share of any electric service provider or community choice aggregator electing to self-provide.

(2) An electric service provider or community choice aggregator electing to self-provide shall notify the commission of its intent by written declaration within 30 days after the commission has imposed a procurement obligation on electrical corporations pursuant to subdivision (c), and shall demonstrate that sufficient contracts have been executed and approved no later than September 1, 2018, by reporting its plan for compliance to the commission.

(3) Retail end-use customers of an electric service provider or community choice aggregator demonstrating successful self-provision shall not be subject to any of the cost obligations in subdivision (e).

(4) If any electric service provider or community choice aggregator electing to self-provide fails to demonstrate the execution of sufficient enforceable and financeable procurement commitments by September 1, 2018, any shortfall attributable to their retail end-use customers shall be procured by the respective electrical corporation pursuant to subdivision (e).

SECTION 1.

SEC. 22. Section 745.5 is added to the Public Utilities Code, to read:

745.5. (a) For purposes of this section, the following terms have the following meanings:

(1) "Energy utility" means an electrical corporation, a gas corporation, or both an electrical corporation and a gas corporation.

(2) "Smart meter" means a meter that is capable of recording electricity or gas consumption at minimum daily intervals and that

1 is capable of communicating the consumption information to the
2 utility providing electric or gas service.

3 (b) (1) An energy utility shall provide energy usage or energy
4 billing information to a residential customer with a smart meter
5 that promotes the customer's ability to make informed energy
6 usage decisions and to minimize the risk of the customer being
7 unpleasantly surprised after the fact by the size of the customer's
8 energy bill during a billing period.

9 (2) The energy usage or energy billing notification requirements
10 of this section apply to those residential customers of an energy
11 utility who have smart meters.

12 (3) The energy usage or energy billing notification requirements
13 of this section do not apply if the customer exercises the option to
14 not receive energy usage or billing information.

15 (4) Implementation of a system for providing energy usage or
16 energy billing notifications to those customers that are not exempt
17 or do not opt out of receiving notifications shall be completed not
18 later than when the energy utility commences to provide service
19 pursuant to a default time-of-use rate structure or December 31,
20 2019, whichever comes first.

21 (c) Unless the customer has exercised the option to not receive
22 notifications, a residential customer of an energy utility with a
23 smart meter shall receive energy usage or energy billing
24 notifications from the customer's energy utility at appropriate
25 times, which may include when the customer's usage of electricity
26 or gas approaches a level that will cause the customer to be charged
27 for electricity or gas consumption in excess of his or her average
28 monthly bill, when crossing into a higher tiered rate, or when
29 significantly exceeding the customer's historical pace of electricity
30 or gas usage at some point during a billing period.

31 (d) An energy utility shall offer the option to a customer to
32 receive energy bill alert notifications when the customer's projected
33 bill exceeds an amount specified by the customer or when the
34 customer's rate of electricity or gas usage, if it continues through
35 a billing period, will result in a periodic bill that exceeds an amount
36 specified by the customer. Notification shall inform the customer
37 as to how much the customer's bill would be for that billing period
38 if usage continues at the rate of usage up to the time of the
39 notification.

1 (e) The commission may adopt more demanding requirements
2 for an energy utility to provide electricity or gas bill alert
3 notifications to residential customers and may review the
4 requirements of this section to ensure that customers are positioned
5 to make informed decisions as to their electricity or gas usage and
6 avoid experiencing higher than expected energy bills.

7 (f) When available, notification pursuant to this section shall
8 be by electronic mail, mobile software application, or another
9 electronic method of communication. Notification shall not be by
10 automatic dialing-announcing device, commonly known as a
11 robocaller, or short message service, commonly known as a text
12 message, unless the customer expressly elects to receive
13 notification in one of these manners. Notifications may, but need
14 not, include specification of taxes, special fees imposed by order
15 of the commission, or special discounts.

16 (g) An energy utility shall notify a residential customer with a
17 smart meter that the customer may receive notification of the
18 customer's energy usage or billing information as required pursuant
19 to this section, the manner by which the customer can provide
20 appropriate contact information to receive notifications, and the
21 customer's opportunity to opt in to or opt out of receiving
22 notifications. If a customer provides appropriate contact
23 information to receive energy usage or billing information
24 notifications pursuant to this section, the customer shall be deemed
25 to have opted in to receiving notifications unless the customer
26 notifies the energy utility that the customer does not wish to receive
27 notifications. If the customer has previously provided the energy
28 utility with an electronic mail address, the customer shall be
29 deemed to have opted in to receiving notifications by electronic
30 mail unless the customer notifies the energy utility that the
31 customer does not wish to receive notifications. If the customer,
32 after having received appropriate notice as required by this
33 subdivision, fails to supply the energy utility with any contact
34 information to receive notifications, the customer shall be deemed
35 to have opted out of receiving notifications. If a customer supplies
36 contact information but the supplied means of contact are
37 inappropriate or inadequate to supply the customer with the
38 required notifications, the customer shall be deemed to have opted
39 out of receiving notifications. A customer may opt in to or out of

1 these notification services in any other manner determined by the
2 commission.

3 (h) The commission may modify or adjust the requirements of
4 this section for any electrical corporation with fewer than 100,000
5 service connections, as individual circumstances merit.

6 (i) An energy utility shall seek authority from the commission
7 to be exempted from the requirements of this section with respect
8 to a category of residential customers when complying with those
9 requirements is impracticable or infeasible with respect to those
10 customers. If, in response to a request by an energy utility pursuant
11 to this subdivision, the commission determines that it is impractical
12 or infeasible to comply with the requirements of this section for a
13 category of customers, the commission shall exempt the energy
14 utility from the requirements of this section with respect to those
15 customers.

16 (j) A customer notification provided pursuant to this section is
17 not, and shall not be construed to be, a bill forecast, and no
18 electrical corporation or gas corporation shall be liable if actual
19 bills differ from information provided in the notifications required
20 by this section.

21 ~~SEC. 2.~~

22 *SEC. 23.* No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because this act creates a new crime or
26 infraction, eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section 17556 of
28 the Government Code, or changes the definition of a crime within
29 the meaning of Section 6 of Article XIII B of the California
30 Constitution.

O

AMENDED IN SENATE SEPTEMBER 8, 2017

AMENDED IN SENATE AUGUST 31, 2017

AMENDED IN ASSEMBLY MAY 30, 2017

AMENDED IN ASSEMBLY MARCH 21, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 813

Introduced by Assembly Member Holden

February 15, 2017

~~An act to add Section 399.23 to the Public Utilities Code, relating to energy.~~ *An act to amend Sections 334, 335, 336, 337, 338, 339, 340, 341, 341.1, 341.2, 341.3, 341.4, 341.5, 347, 348, 349, 352, and 359 of, to add Section 399.23 to, and to repeal and add Section 359.5 of, the Public Utilities Code, relating to electricity.*

LEGISLATIVE COUNSEL'S DIGEST

AB 813, as amended, Holden. ~~Renewable energy resources.~~ *Electricity: Independent System Operator: California Renewables Portfolio Standard Program: procurement.*

The existing restructuring of the electrical industry within the Public Utilities Act provides for the establishment of the Electricity Oversight Board and the Independent System Operator (ISO) and requires the ISO to ensure efficient and reliable operation of the electrical transmission grid. Certain existing law prohibits the ISO from entering into a multistate entity or regional organization unless the ISO receives approval from the Electricity Oversight Board. Other existing law states the intent of the Legislature to provide for the evolution of the ISO into a regional organization to promote the development of regional

electricity transmission markets in the western states. The Clean Energy and Pollution Reduction Act of 2015 provided for the transformation of the ISO into a regional organization, with the approval of the Legislature, pursuant to a specified process, and repealed or made inoperative those other provisions of existing law relating to the ISO entering into a multistate entity or transforming into a regional organization.

This bill would repeal the existing law governing the transformation of the ISO into a regional organization adopted as part of the Clean Energy and Pollution Reduction Act of 2015 and replace it with provisions authorizing the transformation of the ISO into a regional organization if the ISO governing board undertakes certain steps and the Commission on Regional Grid Transformation, which the bill would create, makes specified findings by December 31, 2018. The bill would make inoperative other provisions of existing law relating to the ISO entering into a multistate entity or transforming into a regional organization unless the Commission on Regional Grid Transformation does not make the specified findings by that date. The bill would make existing provisions relating to the formation of advisory committees to the ISO governing board, the adoption of maintenance, repair, and replacement standards for transmission facilities, requiring the ISO to conduct performance reviews following certain major outages, and establishing the Electricity Oversight Board and specifying its responsibilities inoperative if the Commission on Regional Grid Transformation makes the specified findings.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, while local publicly owned electric utilities, as defined, are under the direction of their governing boards. The California Renewables Portfolio Standard Program requires the commission to establish a renewables portfolio standard requiring all retail sellers, as defined, to procure a minimum quantity of electricity products from eligible renewable energy resources, as defined, so that the total kilowatthours of those products sold to their retail end-use customers achieves 25% of retail sales by December 31, 2016, 33% by December 31, 2020, 40% by December 31, 2024, 45% by December 31, 2027, and 50% by December 31, 2030. The program additionally requires each local publicly owned electric utility to procure a minimum quantity of electricity products from eligible renewable energy resources to achieve the procurement requirements established by the program. The program, consistent with

the goals of procuring the least-cost and best-fit eligible renewable energy resources that meet project viability principles, requires that all retail sellers and local publicly owned electric utilities procure a balanced portfolio of electricity products from specified categories of eligible renewable energy resources. The provisions defining these categories and imposing this obligation on retail sellers are referred to as the portfolio content requirements.

This bill would require the commission, by March 31, 2018, to require electrical corporations with more than 100,000 service connections in California to procure tax-advantaged renewable resources, as defined, in an amount specified by the commission that are over and above those resources necessary to meet the procurement requirements for the applicable renewables portfolio standard compliance period if the commission makes specified determinations. The bill would require each electrical corporation, in procuring tax-advantaged renewable resources, to give priority to projects that provide flexible and controllable eligible renewable energy resources that support the grid management needs of the Independent System Operator or that can displace conventional generation in locally constrained resource areas. The bill would require that an electrical corporation submit executed contracts for tax-advantaged renewable resources to the commission for review by no later than September 1, 2018, and require the commission to act on all final contracts by December 31, 2018. The bill would provide that the procurement of tax-advantaged renewable resources pursuant to this authority would be on behalf of retail end-use customers of all retail sellers and would require the commission to authorize an electrical corporation to recover expenses for the procurement subject to certain conditions. The bill would authorize an electric service provider or community choice aggregator meeting certain requirements to elect to provide its proportionate share of tax-advantaged renewable resources specified by the commission that would otherwise be procured by an electrical corporation and would reduce the procurement obligation of the electrical corporation in the event of such an election.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because violation of an order of the commission made pursuant to the bill's provisions would be a crime, this bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, while local publicly owned electric utilities, as defined, are under the direction of their governing boards. The California Renewables Portfolio Standard Program requires the commission to establish a renewables portfolio standard requiring all retail sellers, as defined, to procure a minimum quantity of electricity products from eligible renewable energy resources, as defined, so that the total kilowatthours of those products sold to their retail end-use customers achieves 25% of retail sales by December 31, 2016, 33% by December 31, 2020, 40% by December 31, 2024, 45% by December 31, 2027, and 50% by December 31, 2030. The program additionally requires each local publicly owned electric utility to procure a minimum quantity of electricity products from eligible renewable energy resources to achieve the procurement requirements established by the program. The program, consistent with the goals of procuring the least-cost and best-fit eligible renewable energy resources that meet project viability principles, requires that all retail sellers and local publicly owned electric utilities procure a balanced portfolio of electricity products from specified categories of eligible renewable energy resources. The provisions defining these categories and imposing this obligation on retail sellers are referred to as the portfolio content requirements.~~

~~This bill would require the commission to require electrical corporations to procure eligible renewable energy resources meeting specified portfolio content requirements that are eligible for the federal production tax credit or the federal investment tax credit and that are over and above those resources necessary to meet the procurement requirements for the applicable compliance period if the commission makes specified determinations, including that earlier-than-required procurement would reduce the overall long-term expense of procuring eligible renewable energy resources. The bill would provide that the procurement of additional eligible renewable energy resources pursuant to this authority would be on behalf of all retail end-use customers of retail sellers and would require the commission to authorize an electrical~~

corporation to recover expenses for the procurement as a nonbypassable charge on distribution. The bill would specify the allocation of these electricity products and associated renewable energy credits to retail sellers.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because violation of an order of the commission made pursuant to the bill's provisions would be a crime, this bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 334 of the Public Utilities Code is
- 2 amended to read:
- 3 334. (a) The Legislature finds and declares that in order to
- 4 ensure the success of electric industry restructuring, in the transition
- 5 to a new market structure it is important to ensure a reliable supply
- 6 of electricity. Reliable electric service is of paramount importance
- 7 to the safety, health, and comfort of the people of California.
- 8 Transmission connections between electric utilities allow them to
- 9 share generation resources and reduce the number of powerplants
- 10 necessary to maintain a reliable system. The connections between
- 11 utilities also create exposure to events that can cause widespread
- 12 and extended transmission and service outages that reach far
- 13 beyond the originating utility service area. California utilities and
- 14 those in the western United States voluntarily adhere to reliability
- 15 standards developed by the Western Electricity Coordinating
- 16 Council. The economic cost of extended electricity outages, such
- 17 as those that occurred in California and throughout the Western
- 18 Electricity Coordinating Council on July 2, 1996, and August 10,
- 19 1996, to California's residential, commercial, agricultural, and
- 20 industrial customers is significant. The proposed restructuring of

1 the electricity industry would transfer responsibility for ensuring
 2 short- and long-term reliability away from electric utilities and
 3 regulatory bodies to the Independent System Operator and various
 4 market-based mechanisms. The Legislature has an interest in
 5 ensuring that the change in the locus of responsibility for reliability
 6 does not expose California citizens to undue economic risk in
 7 connection with system reliability.

8 *(b) This section shall become inoperative if the Commission on*
 9 *Regional Grid Transformation makes the findings required in*
 10 *subdivision (d) of Section 359.5.*

11 *SEC. 2. Section 335 of the Public Utilities Code is amended*
 12 *to read:*

13 335. (a) In order to ensure that the interests of the people of
 14 California are served, a five-member Electricity Oversight Board
 15 is hereby created as provided in Section 336. For purposes of this
 16 chapter, any reference to the Oversight Board shall mean the
 17 Electricity Oversight Board. Its functions shall be all of the
 18 following:

19 ~~(a)~~

20 (1) To oversee the Independent System Operator and the Power
 21 Exchange.

22 ~~(b)~~

23 (2) To determine the composition and terms of service and to
 24 exercise the exclusive right to decline to confirm the appointments
 25 of specific members of the governing board of the Power Exchange.

26 ~~(c)~~

27 (3) To serve as an appeal board for majority decisions of the
 28 Independent System Operator governing board, as they relate to
 29 matters subject to exclusive state jurisdiction, as specified in
 30 Section 339.

31 ~~(d)~~

32 (4) Those members of the Power Exchange governing board
 33 whose appointments the Oversight Board has the exclusive right
 34 to decline to confirm include proposed governing board members
 35 representing agricultural end users, industrial end users,
 36 commercial end users, residential end users, end users at large,
 37 nonmarket participants, and public interest groups.

38 ~~(e)~~

39 (5) To investigate any matter related to the wholesale market
 40 for electricity to ensure that the interests of California's citizens

1 and consumers are served, protected, and represented in relation
2 to the availability of electric transmission and generation and
3 related costs, during periods of peak demand.

4 *(b) This section shall become inoperative if the Commission on*
5 *Regional Grid Transformation makes the findings required in*
6 *subdivision (d) of Section 359.5.*

7 *SEC. 3. Section 336 of the Public Utilities Code is amended*
8 *to read:*

9 336. (a) The five-member Oversight Board shall be ~~comprised~~
10 *composed* as follows:

11 (1) Three members, who are California residents and electricity
12 ratepayers, appointed by the Governor from a list jointly provided
13 by the California Energy Resources Conservation and Development
14 Commission and the Public Utilities Commission, and subject to
15 confirmation by the Senate.

16 (2) One member of the Assembly appointed by the Speaker of
17 the Assembly.

18 (3) One member of the Senate appointed by the Senate
19 Committee on Rules.

20 (b) Legislative members shall be nonvoting members, however,
21 they are otherwise full members of the board with all rights and
22 privileges pertaining thereto.

23 (c) Oversight Board members shall serve three-year terms with
24 no limit on reappointment. For purposes of the initial appointments
25 set forth in paragraph (1), the Governor shall appoint one member
26 to a one-year term, one to a two-year term, and one to a three-year
27 term.

28 (d) The Governor shall designate one of the voting members as
29 the chairperson of the Oversight Board who shall preside over
30 meetings and direct the executive director in the routine
31 administration of the Oversight Board's business. The chairperson
32 may designate one of the other voting members to preside over
33 meetings in the absence of the chairperson.

34 (e) Two voting members shall constitute a quorum. Any decision
35 or action of the Oversight Board shall be by majority vote of the
36 voting members.

37 (f) The members of the Oversight Board shall serve without
38 compensation, but shall be reimbursed for all necessary expenses
39 incurred in the performance of their duties.

(g) *This section shall become inoperative if the Commission on Regional Grid Transformation makes the findings required in subdivision (d) of Section 359.5.*

SEC. 4. *Section 337 of the Public Utilities Code is amended to read:*

337. (a) The Independent System Operator governing board shall be composed of a five-member independent governing board of directors appointed by the Governor and subject to confirmation by the Senate. Any reference in this chapter or in any other provision of law to the Independent System Operator governing board means the independent governing board appointed under this subdivision.

(b) A member of the independent governing board appointed under subdivision (a) may not be affiliated with any actual or potential participant in any market administered by the Independent System Operator.

(c) (1) All appointments shall be for three-year terms.

(2) There is no limit on the number of terms that may be served by any member.

(d) The Oversight Board shall require the articles of incorporation and bylaws of the Independent System Operator to be revised in accordance with this section, and shall make filings with the Federal Energy Regulatory Commission as the Oversight Board determines to be necessary.

(e) For the purposes of the initial appointments to the Independent System Operator governing board, as provided in subdivision (a), the Governor shall appoint one member to a one-year term, two members to a two-year term, and two members to a three-year term.

(f) ~~This section becomes shall become inoperative on if the date Commission on which Regional Grid Transformation makes the governance modifications set forth findings required in Section 359.5 become effective and is repealed on January 1 subdivision (d) of the following year. Section 359.5.~~

SEC. 5. *Section 338 of the Public Utilities Code is amended to read:*

338. (a) The Oversight Board shall have the exclusive right to approve procedures and the qualifications for Power Exchange governing board members specified in ~~subdivision (d) paragraph (4) of subdivision (a)~~ of Section 335, all of whom shall be required

1 to be electricity customers in the area served by the Power
2 Exchange. The Power Exchange governing board shall include,
3 but not be limited to, representatives of investor-owned electric
4 distribution companies, publicly owned electric distribution
5 companies, nonutility generators, public buyers and sellers, private
6 buyers and sellers, industrial end-users, commercial end-users,
7 residential end-users, agricultural end-users, public interest groups,
8 and nonmarket participant representatives. The structural
9 composition of the Power Exchange governing board existing on
10 July 1, 1999, shall remain in effect until an agreement with a
11 participating state is legally in effect. However, prior to such an
12 agreement, California shall retain the right to change the Power
13 Exchange governing board into a nonstakeholder board. In the
14 event of such a legislative change, revised bylaws shall be filed
15 with the Federal Energy Regulatory Commission under Section
16 205 of the Federal Power Act (16 U.S.C.A. Sec. 824d).

17 *(b) This section shall become inoperative if the Commission on*
18 *Regional Grid Transformation makes the findings required in*
19 *subdivision (d) of Section 359.5.*

20 *SEC. 6. Section 339 of the Public Utilities Code is amended*
21 *to read:*

22 339. (a) The Oversight Board is the appeal board for majority
23 decisions of the Independent System Operator governing board
24 relating to matters that are identified in subdivision (b) as they
25 pertain to the Independent System Operator.

26 (b) The following matters are subject to California's exclusive
27 jurisdiction:

28 (1) Selections by California of governing board members, as
29 described in Sections 335, 337, and 338.

30 (2) Matters pertaining to retail electric service or retail sales of
31 electric energy.

32 (3) Ensuring that the purposes and functions of the Independent
33 System Operator and Power Exchange are consistent with the
34 purposes and functions of California nonprofit public benefit
35 corporations, including duties of care and conflict of interest
36 standards for directors of the corporations.

37 (4) State functions assigned to the Independent System Operator
38 and Power Exchange under state law.

39 (5) Open meeting standards and meeting notice requirements.

(6) Appointment of advisory representatives representing state interests.

(7) Public access to corporate records.

(8) The amendment of bylaws relevant to these matters.

(c) Only members of the Independent System Operator governing board may appeal a majority decision of the Independent System Operator related to any of the matters specified in subdivision (b) to the Oversight Board.

(d) This section shall become inoperative if the Commission on Regional Grid Transformation makes the findings required in subdivision (d) of Section 359.5.

SEC. 7. Section 340 of the Public Utilities Code is amended to read:

340. (a) The Oversight Board shall take the steps that are necessary to ensure the earliest possible incorporation of the Independent System Operator and the Power Exchange as separately incorporated public benefit, nonprofit corporations under the Corporations Code.

(b) This section shall become inoperative if the Commission on Regional Grid Transformation makes the findings required in subdivision (d) of Section 359.5.

SEC. 8. Section 341 of the Public Utilities Code is amended to read:

341. The Oversight Board may do all of the following:

(a) Meet at the times and places it may deem proper.

(b) Accept appropriations, grants, or contributions from any public source, private foundation, or individual.

(c) Sue and be sued.

(d) Contract with state, local, or federal agencies for services or work required by the Oversight Board.

(e) Contract for or employ any services or work required by the Oversight Board that in its opinion cannot satisfactorily be performed by its staff or by other state agencies.

(f) Appoint advisory committees from members of other public agencies and private groups or individuals.

(g) As a body, or on the authorization of the Oversight Board, as a subcommittee composed of one or more members, hold hearings at the times and places it may deem proper.

1 (h) Issue subpoenas to compel the production of books, records,
2 papers, accounts, reports, and documents and the attendance of
3 witnesses.

4 (i) Administer oaths.

5 (j) Adopt or amend rules and regulations to carry out the
6 purposes and provisions of this chapter, and to govern the
7 procedures of the Oversight Board.

8 (k) Exercise any authority consistent with this chapter delegated
9 to it by a federal agency or authorized to it by federal law.

10 (l) Make recommendations to the Governor and the Legislature
11 at the time or times the Oversight Board deems necessary.

12 (m) Participate in proceedings relevant to the purposes of this
13 chapter or to the purposes of Division 4.9 (commencing with
14 Section 9600) or, as part of any coordinated effort by the state,
15 participate in activities to promote the formation of interstate
16 agreements to enhance the reliability and function of the electricity
17 system and the electricity market.

18 (n) Do any and all other things necessary to carry out the
19 purposes of this chapter.

20 (o) *This section shall become inoperative if the Commission on*
21 *Regional Grid Transformation makes the findings required in*
22 *subdivision (d) of Section 359.5.*

23 SEC. 9. Section 341.1 of the Public Utilities Code is amended
24 to read:

25 341.1. (a) Regulations adopted within 120 days of the effective
26 date of this section may be adopted as emergency regulations in
27 accordance with Chapter 3.5 (commencing with Section 11340)
28 of the Government Code, and for the purposes of that chapter,
29 including Section 11349.6 of the Government Code, the adoption
30 of the regulations shall be considered by the Office of
31 Administrative Law to be necessary for the immediate preservation
32 of the public peace, health, safety, and general welfare.

33 (b) *This section shall become inoperative if the Commission on*
34 *Regional Grid Transformation makes the findings required in*
35 *subdivision (d) of Section 359.5.*

36 SEC. 10. Section 341.2 of the Public Utilities Code is amended
37 to read:

38 341.2. (a) The Bagley-Keene Open Meeting Act (Article 9
39 (commencing with Section 11120) of Chapter 1 of Part 1 of
40 Division 3 of Title 2 of the Government Code) applies to meetings

1 of the Oversight Board. In addition to the allowances of that act,
2 the Oversight Board may hold a closed session to consider the
3 appointment of one or more candidates to the governing board of
4 the Power Exchange, deliberate on matters involving the removal
5 of a member of the governing board of the Power Exchange, or to
6 consider a matter based on information that has received a grant
7 of confidential status pursuant to regulations of the Oversight
8 Board, provided that any action taken on such a matter shall be
9 taken by vote in an open session.

10 *(b) This section shall become inoperative if the Commission on*
11 *Regional Grid Transformation makes the findings required in*
12 *subdivision (d) of Section 359.5.*

13 *SEC. 11. Section 341.3 of the Public Utilities Code is amended*
14 *to read:*

15 341.3. (a) Voting members of the Oversight Board shall be
16 required to file financial disclosure statements with the Fair
17 Political Practices Commission. The appointing authority for voting
18 members shall avoid appointing persons with conflicts of interest.

19 *(b) This section shall become inoperative if the Commission on*
20 *Regional Grid Transformation makes the findings required in*
21 *subdivision (d) of Section 359.5.*

22 *SEC. 12. Section 341.4 of the Public Utilities Code is amended*
23 *to read:*

24 341.4. (a) The Oversight Board shall appoint, and fix the salary
25 of, an executive director who shall have charge of administering
26 the affairs of the Oversight Board, including entering into contracts,
27 subject to the direction and policies of the Oversight Board.
28 Notwithstanding Sections 11042 and 11043 of the Government
29 Code, the Oversight Board shall appoint an attorney who shall
30 advise the Oversight Board and each member and represent the
31 Oversight Board as a party in any state or federal action or
32 proceeding related to the purposes of this chapter or to an action
33 of the Oversight Board and who shall perform generally all the
34 duties of attorney to the Oversight Board. For purposes of this
35 section, the Oversight Board may appoint a person exempt pursuant
36 to subdivision (e) of Section 4 of Article VII of the California
37 Constitution. The executive director shall, in accordance with
38 Article VII of the California Constitution and subject to the
39 approval of the Oversight Board, appoint employees as may be

1 necessary to carry out the Oversight Board's duties and
2 responsibilities.

3 *(b) This section shall become inoperative if the Commission on*
4 *Regional Grid Transformation makes the findings required in*
5 *subdivision (d) of Section 359.5.*

6 SEC. 13. Section 341.5 of the Public Utilities Code is amended
7 to read:

8 341.5. (a) The Independent System Operator and Power
9 Exchange bylaws shall contain provisions that identify those
10 matters specified in subdivision (b) of Section 339 as matters within
11 state jurisdiction. The bylaws shall also contain provisions which
12 state that California's bylaws approval function with respect to
13 the matters specified in subdivision (b) of Section 339 shall not
14 preclude the Federal Energy Regulatory Commission from taking
15 any action necessary to address undue discrimination or other
16 violations of the Federal Power Act (16 U.S.C.A. Sec. 791a et
17 seq.) or to exercise any other commission responsibility under the
18 Federal Power Act. In taking any such action, the Federal Energy
19 Regulatory Commission shall give due respect to California's
20 jurisdictional interests in the functions of the Independent System
21 Operator and Power Exchange and to attempt to accommodate
22 state interests to the extent those interests are not inconsistent with
23 the Federal Energy Regulatory Commission's statutory
24 responsibilities. The bylaws shall state that any future agreement
25 regarding the apportionment of the Independent System Operator
26 and Power Exchange board appointment function among
27 participating states associated with the expansion of the
28 Independent System Operator and Power Exchange into multistate
29 entities shall be filed with the Federal Energy Regulatory
30 Commission pursuant to Section 205 of the Federal Power Act (16
31 U.S.C.A. Sec. 824d).

32 (b) Any necessary bylaw changes to implement the provisions
33 of Section 335, 337, 338, 339, or subdivision (a) of this section,
34 or changes required pursuant to an agreement as contemplated by
35 subdivision (a) of this section with a participating state for a
36 regional organization, shall be effective upon approval of the
37 respective governing boards and the Oversight Board and
38 acceptance for filing by the Federal Energy Regulatory
39 Commission.

1 (c) *This section shall become inoperative if the Commission on*
2 *Regional Grid Transformation makes the findings required in*
3 *subdivision (d) of Section 359.5.*

4 SEC. 14. *Section 347 of the Public Utilities Code is amended*
5 *to read:*

6 347. (a) The Independent System Operator governing board
7 may form appropriate technical advisory committees composed
8 of market and nonmarket participants to advise the Independent
9 System Operator governing board on issues including, but not
10 limited to, rules and protocols and operating procedures.

11 (b) *This section shall become inoperative if the Commission on*
12 *Regional Grid Transformation makes the findings required in*
13 *subdivision (d) of Section 359.5.*

14 SEC. 15. *Section 348 of the Public Utilities Code is amended*
15 *to read:*

16 348. (a) The Independent System Operator shall adopt
17 inspection, maintenance, repair, and replacement standards for the
18 transmission facilities under its control no later than September
19 30, 1997. The standards, which shall be performance or prescriptive
20 standards, or both, as appropriate, for each substantial type of
21 transmission equipment or facility, shall provide for high quality,
22 safe, and reliable service. In adopting its standards, the Independent
23 System Operator shall consider: cost, local geography and weather,
24 applicable codes, national electric industry practices, sound
25 engineering judgment, and experience. The Independent System
26 Operator shall also adopt standards for reliability, and safety during
27 periods of emergency and disaster. The Independent System
28 Operator shall report to the Oversight Board, at such times as the
29 Oversight Board may specify, on the development and
30 implementation of the standards in relation to facilities under the
31 operational control of the Independent System Operator. The
32 Independent System Operator shall require each transmission
33 facility owner or operator to report annually on its compliance
34 with the standards. That report shall be made available to the
35 public.

36 (b) *This section shall become inoperative if the Commission on*
37 *Regional Grid Transformation makes the findings required in*
38 *subdivision (d) of Section 359.5.*

39 SEC. 16. *Section 349 of the Public Utilities Code is amended*
40 *to read:*

1 349. (a) The Independent System Operator shall perform a
2 review following a major outage that affects at least 10 percent of
3 the customers of the entity providing the local distribution service.
4 The review shall address the cause of the major outage, the
5 response time and effectiveness, and whether the transmission
6 facility owner or operator's operation and maintenance practices
7 enhanced or undermined the ability to restore service efficiently
8 and in a timely manner. If the Independent System Operator finds
9 that the operation and maintenance practices of the transmission
10 facility owner or operator prolonged the response time or was
11 responsible for the outage, the Independent System Operator may
12 order appropriate sanctions, subject to the Federal Energy
13 Regulatory Commission approving that authority.

14 (b) *This section shall become inoperative if the Commission on*
15 *Regional Grid Transformation makes the findings required in*
16 *subdivision (d) of Section 359.5.*

17 SEC. 17. *Section 352 of the Public Utilities Code is amended*
18 *to read:*

19 352. (a) The Independent System Operator may not enter into
20 a multistate entity or a regional organization as authorized in
21 Section 359 unless that entry is approved by the Oversight Board.

22 (b) ~~This section becomes shall become inoperative on if the date~~
23 ~~Commission on which Regional Grid Transformation makes the~~
24 ~~governance modifications set forth findings required in Section~~
25 ~~359.5 become effective and is repealed on January 1 subdivision~~
26 ~~(d) of the following year. Section 359.5.~~

27 SEC. 18. *Section 359 of the Public Utilities Code is amended*
28 *to read:*

29 359. (a) It is the intent of the Legislature to provide for the
30 evolution of the Independent System Operator into a regional
31 organization to promote the development of regional electricity
32 transmission markets in the western states and to improve the
33 access of consumers served by the Independent System Operator
34 to those markets.

35 (b) The preferred means by which the voluntary evolution
36 described in subdivision (a) should occur is through the adoption
37 of a regional compact or other comparable agreement among
38 cooperating party states, the retail customers of which states would
39 reside within the geographic territories served by the Independent
40 System Operator.

(c) The agreement described in subdivision (b) should provide for all of the following:

(1) An equitable process for the appointment or confirmation by party states of members of the governing boards of the Independent System Operator.

(2) A respecification of the size, structure, representation, eligible membership, nominating procedures, and member terms of service of the governing boards of the Independent System Operator.

(3) Mechanisms by which each party state, jointly or separately, can oversee effectively the actions of the Independent System Operator as those actions relate to the assurance of electricity system reliability within the party state and to matters that affect electricity sales to the retail customers of the party state or otherwise affect the general welfare of the electricity consumers and the general public of the party state.

(4) The adherence by publicly owned and investor-owned utilities located in party states to enforceable standards and protocols to protect the reliability of the interconnected regional transmission and distribution systems.

(d) (1) Except for paragraphs (2) and (3), this section becomes inoperative on January 1, 2016.

(2) This section becomes operative on January 1, 2019, if Article 5.5 (commencing with Section 359.5) becomes inoperative on that date.

~~(3) If the governance modifications set forth in Section 359.5 This article shall become effective, this article is repealed inoperative if the Commission on January 1 of Regional Grid Transformation makes the year following the effective date findings required in subdivision (d) of the governance modifications. Section 359.5.~~

SEC. 19. Section 359.5 of the Public Utilities Code is repealed.

~~359.5. (a) It is the intent of the Legislature to provide for the transformation of the Independent System Operator into a regional organization to promote the development of regional electricity transmission markets in the western states and to improve the access of consumers served by the Independent System Operator to those markets, and that the transformation should only occur where it is in the best interests of California and its ratepayers.~~

~~(b) The transformation of the Independent System Operator into a regional organization shall not alter its obligations to the state or to electricity consumers within the state or its obligations to comply with state laws. The Independent System Operator shall retain its obligations set forth in Section 345.5, shall maintain the standards for open meetings and public access to corporate records as set forth in Section 345.5, and shall facilitate effective tracking and reporting mechanisms in support of state enforcement of Division 25.5 (commencing with Section 38500) of the Health and Safety Code.~~

~~(c) The voluntary transformation described in subdivision (a) shall occur through additional transmission owners joining the Independent System Operator with approval from their own state or local regulatory authorities, as applicable.~~

~~(d) Modifications to the Independent System Operator governance structure, through changes to its bylaws or other corporate governance documents, would be needed to allow this transformation.~~

~~(e) The Independent System Operator shall prepare the governance modifications needed as described in subdivision (d); but they shall not become effective until all of the following occur:~~

~~(1) The Independent System Operator conducts one or more studies of the impacts of a regional market enabled by the proposed governance modifications, including overall benefits to ratepayers, including the creation or retention of jobs and other benefits to the California economy, environmental impacts in California and elsewhere, impacts in disadvantaged communities, emissions of greenhouse gases and other air pollutants, and reliability and integration of renewable energy resources. The modeling, including all assumptions underlying the modeling, shall be made available for public review.~~

~~(2) The commission, Energy Commission, and State Air Resources Board jointly hold at least one public workshop where the Independent System Operator presents the proposed governance modifications and the results of the studies described in paragraph (1). The related Independent System Operator documents shall be made public before the workshop.~~

~~(3) The Independent System Operator submits to the Governor the studies described in paragraph (1) and revised bylaws or other~~

~~1 corporate governance documents setting forth the proposed
2 modifications to its governance structure.~~

~~3 (4) The Governor transmits to the Legislature the studies
4 described in paragraph (1) and revised bylaws or other corporate
5 governance documents setting forth the proposed modifications
6 to its governance structure, no later than December 31, 2017.~~

~~7 (5) The Legislature enacts a statute implementing the revised
8 governance changes.~~

~~9 (f) The Independent System Operator shall expeditiously adopt
10 the modifications to its governance structure enacted by the
11 Legislature pursuant to paragraph (5) of subdivision (e) so that the
12 modifications become effective before new transmission owners
13 from outside California complete the process of joining the
14 Independent System Operator.~~

~~15 (g) The revised governance structure shall not alter or abridge
16 the contractual rights of a transmission owner to withdraw from
17 participation in the Independent System Operator.~~

~~18 (h) One year after the seating of the new, revised governing
19 board of the Independent System Operator pursuant to the
20 modifications of its governance structure, and every two years
21 thereafter, the Independent System Operator shall prepare a report
22 to the states within the areas it serves documenting its furtherance
23 of applicable state and federal laws and regulations affecting the
24 electric industry.~~

~~25 (i) This article is repealed on January 1, 2019, if a statute
26 implementing the governance modifications has not become
27 effective on or before January 1, 2019.~~

~~28 SEC. 20. Section 359.5 is added to the Public Utilities Code,
29 to read:~~

~~30 359.5. (a) (1) It is the intent of the Legislature to establish a
31 process to change the governance of the Independent System
32 Operator, consistent with the requirements set forth in this section.~~

~~33 (2) It is the intent of the Legislature that the Public Utilities
34 Commission should continue to act in the interests of California
35 ratepayers and pursue strong principles of cost causation,
36 including economic efficiency, alignment of transmission
37 development with the public interest, and encouraging application
38 of best practices for quality of service and price levels.~~

~~39 (3) It is the intent of the Legislature that the State Air Resources
40 Board continue to consult with California balancing authorities~~

1 to ensure that the state board can quantify changes in emissions
2 of greenhouse gases for the purposes of the state's greenhouse
3 gas inventory and climate programs.

4 (4) It is the intent of the Legislature to facilitate the transition
5 to a regional grid to provide benefits to California ratepayers,
6 including benefits with respect to the creation or retention of jobs
7 and other benefits to the California economy, environmental
8 impacts in California and elsewhere, impacts in disadvantaged
9 communities, emissions of greenhouse gases and other air
10 pollutants, and the reliability and integration of renewable energy
11 resources.

12 (b) On or before October 31, 2018, the Independent System
13 Operator governing board shall develop and approve proposed
14 revised corporate governing documents and shall submit those
15 documents to the Commission on Regional Grid Transformation
16 established pursuant to subdivision (f) for review and certification
17 as set forth in subdivision (d). The proposed revised corporate
18 governing documents shall be developed through a process that
19 includes opportunity for public review and comment.

20 (c) The proposed revised corporate governing documents shall
21 set forth a proposed governance structure that does all of the
22 following:

23 (1) Acknowledges and preserves state authority over matters
24 traditionally regulated by the states themselves, including the
25 continuing right of all states to determine and control resource
26 procurement policy, resource adequacy, planning for their
27 electrical utilities, and other policy issues. The proposal must also
28 include a transparent mechanism for tracking emissions of
29 greenhouse gases and other air pollutants from sources of
30 electricity generation that use the services of the Independent
31 System Operator.

32 (2) Includes an open and transparent governance framework,
33 a robust and meaningful stakeholder process, and inclusive public
34 participation, that includes both of the following:

35 (A) One or more diverse stakeholder advisory committees,
36 advisory to the governing board, that include, but are not
37 necessarily limited to, members chosen by each state with a
38 participating transmission owner that is under the operational
39 control of the Independent System Operator, as well as
40 representatives of participating transmission owners,

1 transmission-dependent utilities, local publicly owned electric
2 utilities, end-use consumers, environmental and environmental
3 justice interests, exempt wholesale generators, emerging
4 technologies, and labor organizations.

5 (B) Access to data and reasoning underlying decisions.

6 (3) Permits participating transmission owners to withdraw from
7 the Independent System Operator, including if required to do so
8 by a participating transmission owner's state or local regulatory
9 authority.

10 (4) Includes a process for transitioning the Independent System
11 Operator's governing board to a new independent board when,
12 and if, the Commission of Regional Grid Transformation issues
13 the findings described in subdivision (d).

14 (d) The proposed revised corporate governing documents
15 developed by the Independent System Operator shall not become
16 effective unless, on or before December 31, 2018, the Commission
17 on Regional Grid Transformation finds that all the following are
18 true:

19 (1) The proposed revised corporate governing documents
20 comply with the requirements of subdivision (c).

21 (2) The proposal ensures that individual states or intervening
22 parties, including state regulators, regulated utilities, local publicly
23 owned electric utilities, direct access customers, and individual
24 plaintiffs, are not hindered or inhibited from challenging a
25 transmission project or allocation of costs before the Federal
26 Energy Regulatory Commission.

27 (3) The proposal provides a role for state regulators on issues
28 regarding transmission needs and cost allocations, including
29 provisions ensuring that any such involvement by state regulators
30 shall not hinder or inhibit the individual states or their utility
31 regulators from acting to protect the interests of ratepayers through
32 challenges to new transmission projects, tariffs, or transmission
33 cost allocation in filings made before the Federal Energy
34 Regulatory Commission.

35 (4) The proposal ensures that no member of the new governing
36 board is affiliated with any actual or potential participant in any
37 market administered by the Independent System Operator and the
38 board, as a whole, is diverse in terms of geography and expertise,
39 and reflects the interests of its stakeholders.

1 (e) Before making the findings described in subdivision (d), the
2 Commission on Regional Grid Transformation shall hold at least
3 one public meeting.

4 (f) The Commission on Regional Grid Transformation is hereby
5 created. The membership of the Commission on Regional Grid
6 Transformation shall be as follows:

7 (1) The Governor or his or her representative, who shall chair
8 the commission.

9 (2) The chair of the Assembly Committee on Utilities and
10 Energy.

11 (3) The chair of the Senate Committee on Energy, Utilities and
12 Communications.

13 (4) The chair of the Energy Commission.

14 (5) The president of the Public Utilities Commission.

15 (6) The chair of the California Air Resources Board.

16 (7) A member of the Assembly appointed by the Speaker of the
17 Assembly.

18 (8) A member of the Senate appointed by the Senate Committee
19 on Rules.

20 (g) At least annually, the balancing authorities operating in
21 California, in consultation with the State Air Resources Board,
22 shall make available a public report on emissions of greenhouse
23 gases from resources used to serve California load in their
24 balancing authority areas, and shall describe those emissions of
25 greenhouse gases, and trends in those emissions, from the
26 resources supplying that electricity.

27 (h) This article is repealed on January 1, 2019, unless by
28 December 31, 2018, the Commission on Regional Grid
29 Transformation makes the findings required in subdivision (d).
30 The Commission on Regional Grid Transformation shall promptly
31 notify the Secretary of State and the Legislative Counsel if it makes
32 the findings required in subdivision (d), and shall notify those
33 same parties if it has not made the findings by December 31, 2018.

34 SEC. 21. Section 399.23 is added to the Public Utilities Code,
35 to read:

36 399.23. (a) The Legislature finds and declares all of the
37 following:

38 (1) The California Renewables Portfolio Standard Program
39 requires all retail sellers to procure a minimum quantity of
40 electricity products from eligible renewable energy resources.

1 Preliminary modeling results in the commission Rulemaking
2 16-02-007 (filed February 11, 2016), Order Instituting Rulemaking
3 to Develop an Electricity Integrated Resource Planning Framework
4 and to Coordinate and Refine Long-Term Procurement Planning
5 Requirements, has identified a potential ratepayer savings of six
6 hundred thirty-three million dollars (\$633,000,000) from procuring
7 up to 4,000 megawatts of eligible renewable energy resources that
8 qualify for federal investment tax credits and production tax credits
9 before those tax credits begin to expire in 2020.

10 (2) While early procurement of eligible renewable energy
11 resources that are eligible for federal production tax credits and
12 investment tax credits would reduce long-term electricity costs for
13 ratepayers, there are already sufficient resources to meet
14 forecasted electrical demand in the portions of the state served by
15 the Independent System Operator and California's large electrical
16 corporations have contracts with eligible renewable energy
17 resources to meet their compliance obligations under the
18 renewables portfolio standard. Additionally, long-term load
19 forecasts for the electrical corporations are uncertain due to
20 expansion of community choice aggregators and associated
21 departing load from the electrical corporations.

22 (3) While accelerated procurement of tax advantaged, eligible
23 renewable energy resources will benefit California ratepayers in
24 the long term, it may result in early procurement of resources not
25 needed until later in the California Renewables Portfolio Standard
26 Program, especially for electrical corporations. In the near term,
27 such procurement could lead to increases in the need for the
28 Independent System Operator to curtail electricity supplied by
29 eligible renewable energy resources at certain times of the year,
30 but curtailments to date have been minimal, and the benefits of
31 early procurement will outweigh the potential for increased
32 curtailment. Additionally, state agencies and the Independent
33 System Operator are already working to minimize the impact of
34 curtailment.

35 (4) While any requirement to accelerate procurement of eligible
36 renewable energy resources will benefit California ratepayers as
37 a whole, it could negatively impact ratepayers of electrical
38 corporations unless they are able to equitably spread the cost of
39 that procurement to customers who depart the service of the
40 electrical corporation to receive service from other entities,

1 including community choice aggregators and electric service
2 providers.

3 (5) In order for wind and solar projects to be eligible for the
4 federal tax credits, and for the identified ratepayer savings to
5 occur, projects must begin construction no later than December
6 31, 2019.

7 (6) The Legislature intends that the accelerated procurement
8 of eligible renewable energy resources authorized in this section
9 should be implemented by the commission in a manner that
10 effectuates the purposes of this section. To the extent necessary to
11 implement this section, the commission should develop rules for
12 this procurement that are separate from the rules implementing
13 the procurement and compliance obligations of the renewables
14 portfolio standard generally. Any special rules should be for the
15 purposes of implementing this section only, and should not be
16 applied to any other aspects of the California Renewables Portfolio
17 Standard Program. Any procurement of eligible renewable energy
18 resources under this section may count toward a retail seller's
19 renewables portfolio standard procurement obligation under this
20 article.

21 (b) For purposes of this section, "tax-advantaged renewable
22 resource" means a new or repowered eligible renewable energy
23 resource that satisfies all of the following:

24 (1) Achieves initial commercial operation after January 1, 2019.

25 (2) Is eligible for a federal investment tax credit (26 U.S.C. Sec.
26 48) of at least 22 percent or the federal production tax credit (26
27 U.S.C. Sec. 45) of at least 80 percent and passes the savings
28 associated with these credits through to retail sellers and their
29 customers.

30 (3) Provides a bundled renewable electricity product meeting
31 the product content category requirements of paragraph (1) of
32 subdivision (b) of Section 399.16.

33 (4) Was not under contract to any retail seller or local publicly
34 owned electric utility, including load serving entities serving
35 customers outside the state, as of September 30, 2017.

36 (c) In order to reduce the long-term costs of procuring eligible
37 renewable energy resources by taking advantage of available
38 federal incentives, by no later than March 31, 2018, the
39 commission shall require electrical corporations to procure tax -
40 advantaged renewable resources. The commission may exercise

1 this authority to require an electrical corporation with more than
2 100,000 service connections in California to procure a specified
3 amount of tax-advantaged renewable resources over and above
4 those resources necessary to meet the procurement requirements
5 for the applicable compliance period only if the commission
6 determines that procuring those resources would be consistent
7 with the reference system plan developed by the commission in
8 support of its duties pursuant to Section 454.51 and 454.52, and
9 the plan shows that earlier-than-required procurement in order
10 to meet the procurement requirements of this article will reduce
11 the overall long-term expense of procuring eligible renewable
12 energy resources of retail end-use customers of all retail sellers.

13 (d) In conducting procurement of tax-advantaged renewable
14 resources pursuant to this section, each electrical corporation
15 shall give priority to projects that provide flexible and controllable
16 eligible renewable energy resources that support the grid
17 management needs of the Independent System Operator or can
18 displace conventional generation in locally constrained resource
19 areas. Contracts executed by an electrical corporation for
20 tax-advantaged renewable resources shall be submitted to the
21 commission for review by no later than September 1, 2018.

22 (e) Procurement of tax-advantaged renewable resources
23 pursuant to subdivision (c) shall be on behalf of retail end-use
24 customers of all retail sellers. The commission shall act on all
25 final contracts by December 31, 2018, and shall authorize an
26 electrical corporation to recover expenses for the procurement of
27 tax-advantaged renewable resources pursuant to subdivision (c),
28 subject to both of the following:

29 (1) Each retail seller operating within the service territory of
30 an electrical corporation shall be allocated the portion of the
31 tax-advantaged renewable resource, including all associated
32 renewable energy credits, assigned to its retail end-use customers.
33 This portion shall be adjusted annually in the event that retail
34 end-use customers elect to be served by other retail sellers.

35 (2) Upon the delivery of electricity products to them, the retail
36 end-use customers shall be deemed to have purchased that
37 electricity from the electrical corporation. Payment for any sale
38 shall be a direct obligation of the retail end-use customer.

39 (f) The electricity products and associated renewable energy
40 credits allocated to the retail end-use customers of a retail seller

1 other than an electrical corporation pursuant to subdivision (e)
2 shall be applied to that retail seller's requirements to procure
3 electricity products from eligible renewable energy resources
4 meeting the portfolio content requirements of paragraph (1) of
5 subdivision (b) of Section 399.16.

6 (g) An electric service provider, community choice aggregator
7 serving retail end-use customers as of September 1, 2017, or
8 community choice aggregator receiving certification of an
9 implementation plan pursuant to paragraph (7) of subdivision (c)
10 of Section 366.2 prior to September 1, 2017, may elect to provide
11 its proportionate share of any tax-advantaged renewable resource
12 identified by the commission pursuant subdivision (c) through
13 procurement of long-term contracts on behalf of its retail end-use
14 customers subject to all of the following:

15 (1) The electrical corporation's obligation to procure
16 tax-advantaged renewable resources pursuant to subdivision (c)
17 shall be reduced by the proportionate share of any electric service
18 provider or community choice aggregator electing to self-provide.

19 (2) An electric service provider or community choice aggregator
20 electing to self-provide shall notify the commission of its intent by
21 written declaration within 30 days after the commission has
22 imposed a procurement obligation on electrical corporations
23 pursuant to subdivision (c), and shall demonstrate that sufficient
24 contracts have been executed and approved no later than
25 September 1, 2018, by reporting its plan for compliance to the
26 commission.

27 (3) Retail end-use customers of an electric service provider or
28 community choice aggregator demonstrating successful
29 self-provision shall not be subject to any of the cost obligations in
30 subdivision (e).

31 (4) If any electric service provider or community choice
32 aggregator electing to self-provide fails to demonstrate the
33 execution of sufficient enforceable and financeable procurement
34 commitments by September 1, 2018, any shortfall attributable to
35 their retail end-use customers shall be procured by the respective
36 electrical corporation pursuant to subdivision (e).

37 SEC. 22. No reimbursement is required by this act pursuant
38 to Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 *infraction, eliminates a crime or infraction, or changes the penalty*
 2 *for a crime or infraction, within the meaning of Section 17556 of*
 3 *the Government Code, or changes the definition of a crime within*
 4 *the meaning of Section 6 of Article XIII B of the California*
 5 *Constitution.*

6 ~~SECTION 1. Section 399.23 is added to the Public Utilities~~
 7 ~~Code, to read:~~

8 ~~399.23. (a) In order to reduce the long-term costs of procuring~~
 9 ~~eligible renewable energy resources by taking advantage of~~
 10 ~~available federal incentives, the commission shall require electrical~~
 11 ~~corporations to procure eligible renewable energy resources~~
 12 ~~meeting the portfolio content requirements of paragraph (1) of~~
 13 ~~subdivision (b) of Section 399.16, which are eligible for the federal~~
 14 ~~production tax credit (26 U.S.C. Sec. 45) or the federal investment~~
 15 ~~tax credit (26 U.S.C. Sec. 48). The commission may exercise this~~
 16 ~~authority to require an electrical corporation to procure eligible~~
 17 ~~renewable energy resources over and above those resources~~
 18 ~~necessary to meet the procurement requirements for the applicable~~
 19 ~~compliance period if the commission determines that procuring~~
 20 ~~those resources would be consistent with the requirements of~~
 21 ~~Section 454.52, and that earlier-than-required procurement in order~~
 22 ~~to meet the procurement requirements of this article will reduce~~
 23 ~~the overall long-term expense of procuring eligible renewable~~
 24 ~~energy resources.~~

25 ~~(b) Procurement of eligible renewable energy resources pursuant~~
 26 ~~to subdivision (a) shall be on behalf of all retail end-use customers~~
 27 ~~of retail sellers. The commission shall authorize an electrical~~
 28 ~~corporation to recover expenses for the procurement of eligible~~
 29 ~~renewable energy resources pursuant to subdivision (a) as a~~
 30 ~~nonbypassable charge on distribution.~~

31 ~~(c) A retail seller shall receive the portion of the electricity~~
 32 ~~products from eligible renewable energy resources procured~~
 33 ~~pursuant to subdivision (a), and any associated renewable energy~~
 34 ~~credits, in the same percentage as the percentage of the total~~
 35 ~~nonbypassable charges under this section that is paid by its retail~~
 36 ~~end-use customers. The allotted electricity products and associated~~
 37 ~~renewable energy credits shall be applied to that retail seller's~~
 38 ~~requirements to procure electricity products from eligible renewable~~
 39 ~~energy resources meeting the portfolio content requirements of~~
 40 ~~paragraph (1) of subdivision (b) of Section 399.16.~~

1 ~~SEC. 2.— No reimbursement is required by this act pursuant to~~
2 ~~Section 6 of Article XIII B of the California Constitution because~~
3 ~~the only costs that may be incurred by a local agency or school~~
4 ~~district will be incurred because this act creates a new crime or~~
5 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
6 ~~for a crime or infraction, within the meaning of Section 17556 of~~
7 ~~the Government Code, or changes the definition of a crime within~~
8 ~~the meaning of Section 6 of Article XIII B of the California~~
9 ~~Constitution.~~

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CITY COUNCIL STAFF REPORT

MEETING DATE: September 27, 2017

PREPARED BY: Jennie Tucker, Community Services Supervisor
APPROVED BY: City Manager

AMEND AGREEMENT WITH ASSET PROTECTION GROUP PRIVATE SECURITY, INC.

RECOMMENDATION(S)

Approve the First Amendment to Consultant Agreement with Asset Protection Group Private Security Inc., increasing the contract amount from \$44,500 to \$65,500.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

In July 2016, the City of Morgan Hill entered into an exclusive two-year consultant agreement with Asset Protection Private Group Security, Inc. to provide security at the Community and Cultural Center during events that include alcohol and dancing. Facility renters pay for this service, as needed, through their rental contract fees. The contract also allows for security services to be requested at additional one-time or ongoing events at other locations within the City.

As rentals at the Community Center have continued to increase over the past year and a half, the request for additional security services has concurrently increased. This past summer, in partnership with the Morgan Hill Police Department, the Safe Parking Program at Morgan Hill Bible Church utilized the services from Asset Protection for its security needs on site.

The current agreement is valid until June 30, 2018, with an option to extend the term for an additional year with City Manager approval. The compensation in the current agreement is set to not exceed \$44,500. Due to the additional needs for Asset Protection services, staff recommends that the compensation amount for this contract be increased to not exceed \$65,500. This will provide enough funds for the Safe Parking Program, the additional services requested at the Community Center, and future one-time events at other locations within the City.

COMMUNITY ENGAGEMENT: Inform

Before entering into an agreement with Asset Protection, the City conducted a formal Request for Proposals (RFP) to find the best possible security company to meet the

needs of the City. The community was informed of this request for proposal on the City website and in the local newspaper.

ALTERNATIVE ACTIONS:

The Council could elect to not approve the amendment and provide additional direction to staff on use of security services.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

City Council adopted the FY 2016-17 and 2017-18 budget, which included the security services as an expense.

FISCAL AND RESOURCE IMPACT:

The remaining balance of the current contract is \$10,861. It is anticipated that an additional \$21,000 will be required for security services through the end of this Fiscal Year, requiring the contract to be amended to not exceed \$65,500. The majority of the expenses for this contract at the CCC are paid for through charges to facility renters. The funding for security at the Safe Parking Program is funded through a grant. There are adequate funds within the existing budget to cover this additional expense. Funds for security services at the CCC are budgeted in Community Services Department 010.2150.42231. Security for the Safe Parking Program is funded through the Police Department 010.3210.42231.

CEQA (California Environmental Quality Act):

Categorical Exemption.

The planned maintenance and management of city facilities falls within the CEQA categorical exemption of Class 1, Existing Facilities.

LINKS/ATTACHMENTS:

1. First Amendment and Signed Agreement-Asset Protection

**FIRST AMENDMENT TO AGREEMENT
ASSET PROTECTION GROUP PRIVATE SECURITY, 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, Asset Protection Group Private Security 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 September 27, 2017.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of 6/24/2016, for consultant services for a maximum compensation of \$44,500 ("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 4.1 shall be amended and replaced in its entirety by the following:

- 1.1. "4.1. **Amount.** Compensation under this Agreement shall not exceed SIXTY FIVE THOUSAND AND FIVE HUNDRED DOLLARS (\$65,500) 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.

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, 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:

City Attorney

Date: _____

**Asset Protection Group Private Security,
Inc.**

By: _____

Title: _____

Print Name and Title of Signer.

If Corporate: Chairman, President or
Vice President

Date: _____

By: _____

Title: _____

Print Name and Title of Signer.

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

Date: _____

Attachment: First Amendment and Signed Agreement-Asset Protection (1403 : Asset Protection)

CONSULTANT AGREEMENT
Asset Protection Group Private Security, Inc.

THIS AGREEMENT is entered into and becomes effective on 6/24/16 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Asset Protection Private Group Security, 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 authority of the City Manager pursuant to Chapter 3.04 of the Morgan Hill Municipal Code.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 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 security services as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$44,500. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed FORTY FOUR THOUSAND FIVE HUNDRED 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, 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:

Asset Protection Group Private Security, Inc.
1430 Blossom Hill Road
San Jose, Ca 95118

Address of CITY is as follows:

CSD	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.

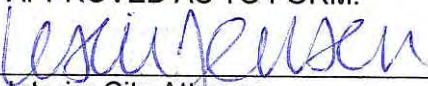
ATTEST:


 City Clerk/Deputy City Clerk

 Michelle Wilson
 Print Name

Date: 4/27/16

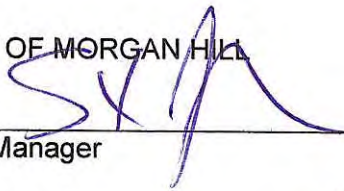
APPROVED AS TO FORM:


 Interim City Attorney

 Gary M. Baum
 Print Name

Date: 06/21/16

CITY OF MORGAN HILL

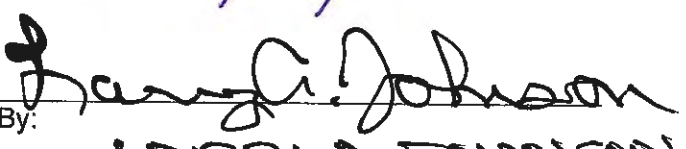

 City Manager

Steve Rymer
 Print Name

Date: 6/24/16

By:

Title:


 LARRY A. JOHNSON
 PRESIDENT
 Print Name and Title of Signer.

If Corporate: Chairman, President or
 Vice President

Date: 5-23-2016

By:

Title:


 CHIEF FINANCIAL OFFICER
 NOLAN JOHNSON
 Print Name and Title of Signer.

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

Date: 5-23-2016

**EXHIBIT A
SCOPE OF SERVICES**

Special Event and Banquet Security: Provide security services for the City at selected special events and banquets occurring at the Community and Cultural Center or other locations designated by the City. Responsibilities include:

1. Supply the Cities requested number of security officers for special events to provide customer service and a visible presence at the event.
2. Work under the direction of the City Building Coordinator or other staff designated by the City to maintain general order and ensure City policies and procedures are enforced.
3. Ensure that room capacities for events are not exceeded.
4. Verify attendees are over the age of 21 if alcohol is being served.
5. Periodically patrol the Community Center parking lot and grounds during events.
6. Contact the police department in the event of a disturbance, breach of the peace, or other emergency.
7. Ensure that the Community Center or other City facilities are secure and locked after special events have ended and escort the City employee to his or her car after the event.

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

Weekdays (Monday-Thursday) \$20 per hour

Weekends (Friday, Saturday, Sunday) \$20 per hour

Holidays \$30 per hour

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

As arranged by Community Services Department

Attachment: First Amendment and Signed Agreement-Asset Protection (1403 : Asset Protection)



CITY COUNCIL STAFF REPORT

MEETING DATE: September 27, 2017

PREPARED BY: Anthony Eulo, Program Administrator
APPROVED BY: City Manager

GRANT APPLICATION FOR IMPROVEMENTS AT LAKE SILVEIRA AND INSTALLATION OF THE SOUTHERN SEGMENT OF THE WEST LITTLE LLAGAS CREEK INTERPRETIVE WILDLIFE TRAIL PROJECT

RECOMMENDATION(S)

Adopt resolution authorizing the submission of a grant application to the State of California Habitat Conservation Fund (HCF) Program and the execution of grant documents if the grant application is successful.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Maintaining Fiscal Responsibility

REPORT NARRATIVE:

The purpose of this staff report is to request the City Council's authorization to submit a grant application to the State for the construction of a segment of the West Little Llagas Creek Trail and related features.

The Santa Clara Valley Water District (SCVWD) will soon begin construction of the Upper Llagas Creek Flood Protection Project (Flood Protection Project) which will realign West Little Llagas Creek in a new channel that will flow under Watsonville Road and continue to the south, past Lake Silveira, to Monterey Road. As mitigation for environmental impacts from the Flood Protection Project, Phase 1 of the project includes restoration of Lake Silveira to a wetland area. Phase 1 of the Flood Protection Project will begin in Spring 2018 and is expected to take two years.

Morgan Hill's Lake Silveira is an existing passive walking area located south of Middle Avenue on a 52-acre parcel. Restorative components planned by SCVWD for Lake Silveira include eradication of nonnative plant species, planting of native plants and/or trees, installation of turtle basking logs, and the creation of islands and wetlands where native birds can breed and nest without predator interference. Currently, the Flood Protection Project does not include formal public amenities, including recreational or interpretive features that would allow the Morgan Hill community to enjoy and learn about the newly restored Lake Silveira.

The State of California Department of Parks and Recreation, Office of Grants and Local Services is currently accepting Habitat Conservation Fund (HCF) grant applications for

trail projects that attract urban residents to park and wildlife areas. City staff have prepared a draft application to support the installation of a bridge and an Americans with Disabilities Act compliant pathway with interpretive features around the south and east perimeters of the Lake Silveira restoration area. The trail segment along the eastern perimeter of the Lake Silveira restoration area would constitute approximately 3,385 linear feet of the southern end of the future West Little Llagas Creek Trail - which will eventually connect to downtown Morgan Hill.

COMMUNITY ENGAGEMENT: Inform

The 2017 Master Bikeways, Trails, Parks, and Recreation Master Plan (Master Plan) supports bicycle/pedestrian access at Lake Silveira and along West Little Llagas Creek. The Master Plan was prepared with extensive input from the Morgan Hill community. The City will inform the neighborhood about project details at an upcoming community meeting.

ALTERNATIVE ACTIONS:

The Council could choose to not authorize the submission of the application and forego the opportunity for the grant or direct staff to apply for a different grant amount.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council approved inclusion of West Little Llagas Creek Trail as a project in the City's approved Capital Improvement Program. The Council has previously authorized submission for a West Little Llagas Creek Trail grant through the Transportation Fund for Clean Air (TFCA), which awarded the City \$135,000. Extension of West Little Llagas Creek Trail to the south and around Lake Silveira is a project that has been supported by City Council through approval of the following City of Morgan Hill formally adopted Master Plans:

- ☐ 2017 Master Bikeways, Trails, Parks, and Recreation Master Plan as described above;
- ☐ Previously adopted Parks, Facilities, and Recreational Facilities Master Plan which called for the installation of bike and pedestrian trails along all creeks and channels including trails at Lake Silveira; and
- ☐ Previously adopted Trails Master Plan which called for a paved trail along West Little Llagas Creek.

FISCAL AND RESOURCE IMPACT:

Staff estimates that installation of the proposed parts of the West Little Llagas Creek Interpretive Wildlife Trail and improvements at Lake Silveira will cost approximately \$765,000. Of this amount, \$229,500 (thirty percent of the total cost) is projected to be covered by the HCF grant. The City's matching amount of \$535,500 would be provided by park impact funds and would be incorporated into the Capital Improvement Program. A budget amendment would be presented to the City Council upon grant award.

CEQA (California Environmental Quality Act):

Categorical Exemption

The submission of a grant application is an administrative action and does not constitute a project under CEQA. However, to be awarded an HCF grant, all CEQA components required for a project must be complete, or nearing completion, at the time the grant application is submitted. The installation of the West Little Llagas Creek Interpretive Wildlife Trail will be categorically exempt from CEQA under Section 15304, Minor Alterations to Land, which covers minor public or private alterations to the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees for forestry or agricultural purposes, including the creation of bicycle lanes on existing rights-of-way.

LINKS/ATTACHMENTS:

1. HCF Grant Resolution

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL
APPROVING THE APPLICATION FOR GRANT FUNDS FROM THE HABITAT
CONSERVATION FUND (HCF) PROGRAM**

WHEREAS, the people of the State of California have enacted the California Wildlife Protection Act of 1990, which provides funds to the State of California for grants to local agencies to acquire, enhance, restore or develop facilities for public recreation and fish and wildlife habitat protection purposes; and

WHEREAS, the State Department of Parks and Recreation has been delegated the responsibility for the administration of the HCF Program, setting up necessary procedures governing project application under the HCF Program; and

WHEREAS, said procedures established by the State Department of Parks and Recreation require the applicant to certify by resolution the approval of application(s) before submission of said application(s) to the State; and

WHEREAS, the applicant will enter into a contract with the State of California to complete the project(s);

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby:

1. Approves the filing of an application for the Habitat Conservation Fund Program; and
2. Certifies that said applicant has or will have available, prior to commencement of any work on the project included in this application, the required match and sufficient funds to complete the project; and
3. Certifies that the applicant has or will have sufficient funds to operate and maintain the project(s); and
4. Certifies that the applicant has reviewed, understands, and agrees to the provisions contained in the contract shown in the Grant Administration Guide; and
5. Delegates the authority to the City Manager to conduct all negotiations, execute, and submit all documents, including, but not limited to applications, agreements, amendments, payment requests, and so on, which may be necessary for the completion of the project; and
6. Agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations, and guidelines; and
7. Finds based upon the facts and information in the record for this Resolution that the West Little Llagas Creek Trail Project and Improvements at Lake Silveira are categorically exempt from

environmental review under the California Environmental Quality Act pursuant to California Code of Regulations, Title 21, Section 15304 (Minor Alterations to Land.)

Approved and Adopted the 27th day of September, 2017.

I, the undersigned, hereby certify that the foregoing resolution number_____was duly adopted by the City Council following a roll call vote:

AYES:

COUNCIL MEMBERS:

NOES:

COUNCIL MEMBERS:

ABSTAIN:

COUNCIL MEMBERS:

ABSENT:

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 September 27, 2017.

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

DATE: _____

Irma Torrez, CITY CLERK

Attachment: HCF Grant Resolution (1400 : HCF Grant 2017)



CITY COUNCIL STAFF REPORT

MEETING DATE: September 27, 2017

PREPARED BY: Anthony Eulo, Program Administrator
APPROVED BY: City Manager

SERVICES AGREEMENT WITH WATERSMART SOFTWARE FOR CUSTOMER ENGAGEMENT SERVICES

RECOMMENDATION(S)

Authorize the City Manager to execute an agreement for \$228,062 with WaterSmart Software for customer engagement services for a 57-month program.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

REPORT NARRATIVE:

The purpose of this staff report is to consider the approval of an extended contract with WaterSmart Software for customer engagement services.

A significant component of the City's successful drought response efforts has pivoted off of the City's customer engagement reports distributed by WaterSmart. Serving as a quasi "report card" for each water customer, WaterSmart's bimonthly reports give residents information on how their water usage compares with households with roughly the same sized yard and the same number of occupants. Many customers appreciate receiving these reports which are distributed in hard-copy form for traditionally-billed customers and in an electronic form for customers with e-billing.

In addition to the bimonthly reports, the service includes a web portal that allows customers to evaluate their usage at any time. With the roll out of advanced meters that provide hourly monitoring, the WaterSmart portal also serves as the customer portal for the advanced metering information. Most importantly, the WaterSmart system sends out leak alerts to customers when continuous water use, or dramatically increased water use, is recorded. This enables customers to identify and respond to leaks as quickly as possible in order to minimize water waste.

With the City's current agreement with WaterSmart reaching its termination, the City included a solicitation for "engagement services" as a component of its recent bid solicitation for billing print, mailing, and processing services. Two responses were received from vendors providing engagement services. In addition to WaterSmart's response, the City received a bid from AquaHawk for equivalent services. The bid amounts were:

WaterSmart \$47,727 annually
 AquaHawk \$79,206 annually + \$12,450 set up fee

With WaterSmart being the lower bidder and already servicing the City's customers, staff recommends awarding a 57-month (4 years and 9 months) contract to WaterSmart. If awarded, the 57-month contract will expire simultaneously with the contract recently awarded to Infosend for billing services. This synchronized termination will enable the City to jointly solicit bids again for these complementary services.

COMMUNITY ENGAGEMENT: Empower

The WaterSmart program empowers residents to carefully monitor their water consumption and provides them with the tools and information needed to take steps to use water most efficiently.

ALTERNATIVE ACTIONS:

The Council could decline to authorize the execution of the agreement, which would end the customer engagement program, or could direct staff to further negotiate the agreement with different terms.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council authorized the original WaterSmart contract on April 2, 2014 and approved a second agreement on March 16, 2016.

FISCAL AND RESOURCE IMPACT:

If approved, the total cost of the 57-month program will be \$228,062. Annual appropriations to support these expenses have been historically included in the Water Operations budget of Fund 650. The City's Memorandum of Understanding (MOU) with the Santa Clara Valley Water District has historically included funding to reimburse the City for one-half of WaterSmart expenses. If the MOU is continued, the City's net expenses for this agreement will be \$114,031. Supporting this program administratively is included in the work program of the Community Services, Administrative Services, and Engineering and Utilities Departments.

CEQA (California Environmental Quality Act):

Not a Project

This action authorizes an administrative activity which will not directly or indirectly lead to changes in the physical environment and it is, therefore, not a project under CEQA.

LINKS/ATTACHMENTS:

1. WaterSmart Year 3 - 7 Contract (002) One Party Signed

CONSULTANT AGREEMENT WaterSmart Software

THIS AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and WATERSMART SOFTWARE, INC a Delaware corporation, duly authorized to do business in California and will remain so during the term of this Agreement, ("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 June 30, 2022 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 provide a comprehensive suite of water conservation reports and on-line resources as further described in Exhibit A.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$228,062.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed two hundred twenty-eight thousand sixty-two 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, unless the Scope has been amended to include additional services.
 - 4.2. **Billing.** CONSULTANT shall invoice CITY upon signing of the Agreement and be compensated as set forth in the Schedule B Compensation Schedule, and the CITY shall pay invoices within 30 days of receipt. Additional Services, requested and approved by the CITY, for work performed and expenses outside the Scope of Work, as described in Exhibit A, are not included in the total compensation in 4.1. CITY shall pay for requested and approved additional services pursuant to the terms and conditions set forth in an Amendment to this Agreement signed by both Parties and described in revised Exhibits A and B.
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, 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, based on data, documents or information received from CITY, are deemed confidential and shall not be disclosed to any third party by CONSULTANT without prior written consent by CITY. This Article 11 is subject to and further clarified by Section C of the Software-as-a-Service Provisions attached hereto and incorporated as Exhibit D (the "SaaS Provisions").
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:

Accounting Department
 WaterSmart Software
 20 California Street, Suite 200
 San Francisco, CA 94111

Address of CITY is as follows:

Comm. Services 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

Attachment: WaterSmart Year 3 - 7 Contract (002) One Party Signed (1399 : WaterSmart)

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 reasonably examine, monitor and audit all records, documents, conditions, and activities of the CONSULTANT and its subcontractors related to services under this Agreement, during CONSULTANT's business hours with reasonable advance notice. 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 for CITY 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. The respective intellectual property rights of the Parties are further clarified by the SaaS Provisions attached and incorporated as Exhibit D (which Exhibit also includes other supplemental terms customary in the software-as-a-service sector).

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, provided, however, CONSULTANT may assign this Agreement without consent in connection with its merger, acquisition, or other change in control.

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.

Signatures of Next Page

Attachment: WaterSmart Year 3 - 7 Contract (002) One Party Signed (1399 : WaterSmart)

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
 Print Name

Steve Rymer
 Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

WATERSMART SOFTWARE, INC

City Attorney

By:

Donald A. Larkin
 Print Name

Title: ROBIN GILTHORPE • PRESIDENT
 Print Name and Title of Signer.
 If Corporate: Chairman, President or Vice President

Date: _____

Date: 23 AUGUST 2017

By: Dominique Gromet

Title: Dominique Gromet, Secretary
 Print Name and Title of Signer.
 If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: August 25, 2017

Exhibit A: Scope of Work

Program at a Glance

Program Overview

- Program Length: One 9 month term, Four 12-month terms, starting in October 2017
- Current Accounts:
 - 9,970 Single Family Residential (SFR) Accounts
 - 2,312 Multi-Family Residential (MFR) Accounts
 - 783 Commercial, Institutional and Industrial (CII) Accounts
 - 559 Irrigation Only Accounts
 - 158 Other Accounts
- Meter Data:
 - ☒ AMI
 - ☒ AMR/Manual
 - ☐ Rolling Reads

Dashboard and Portal

- Customer Portal:
 - Access for all accounts
 - Electronic Bill Presentment
 - ☒ Link to Existing Payments Portal
- Utility Analytics Dashboard: Profiles for all accounts
 - Group Messenger & List Builder: Included

Customer Letter

- Not selected

Water Reports

- Recipients: Up to 10,500 SFR and Commercial accounts
- Frequency:
 - Up to 6 Water Reports per account (note: delays on part of utility may reduce cycles sent during term)
- ☒ Rolling Enrollment

Optional Services:

- ☒ Single Sign-On (SSO) to Info Send

Section 1: Introduction and Program Elements

Introduction

WaterSmart Software ("WaterSmart") is a customer engagement and analytics platform. City of Morgan Hill ("Utility") has contracted with WaterSmart to continue a customer engagement program to serve its population.

The program is comprised of the following elements, which are explained in more detail below:

- Utility Analytics Dashboard: Analytics, customer support tools and Program performance data for Utility staff
- Customer Portal: Additional engagement and information for account owners
- Alerts: Leak and high usage alerts (if selected)
- Water Reports and Customer Letters: Customized communications mailed or emailed to each participant (if selected)
- Single Sign On (SSO): We support SSO (Single Sign On) using the SAML2 protocol, as well as Facebook Connect. For SAML2 and OAuth integrations, the utility or their solution provider must be capable of acting as a compliant Identity Provider (IdP). We have the capability to easily integrate this data with your utilities' website.

As a software-as-a-service (SaaS) provider, WaterSmart provides all major program elements to the Utility:

- Hosting of WaterSmart Customer Portal and Utility Analytics Dashboard;
- Creation and delivery of Utility-branded Water Reports and alerts to Utility water customers (if selected); and
- Measurement and verification to allow the Utility to evaluate the program (if selected).

Utility is responsible for providing WaterSmart key program inputs including account information, regular feeds of meter data, and logos and contact information. Utility maintains responsibility as the primary contact for customer inquiries and technical assistance.

WaterSmart and Utility shall each designate a Project Manager for the program. All Utility decisions shall be channeled through the Utility Project Manager. In addition, Utility shall designate a Data contact who is responsible for providing the data indicated below.

This scope of work and agreement cover services rendered over term of the agreement.

Utility Analytics Dashboard

The Utility Analytics Dashboard is available to staff through web interface, and unlike the Portal, is not optimized for mobile. The Dashboard provides insights on customer engagement and water use efficiency, both on an aggregate level and for individual customer accounts. The Utility Analytics Dashboard includes data for all customer classes whose data is provided to WaterSmart. WaterSmart host the Utility Analytics Dashboard and is responsible for all maintenance and security. The Utility may use the Utility Analytics Dashboard to create individualized, separate logins for as many Utility staff as it wishes.

Customer Portal

The WaterSmart Customer Portal, available to customers through a mobile and web interface, allows the Utility to engage with its customers, deliver targeted, personalized messages about their water use, alert them about potential leaks, inform them about rebate programs, educate them on the value of water, and, if selected, allow a user to view and pay their bill. The Portal features an integrated customer survey to gather important customer details related to occupancy, appliance age, water use behavior, and other important metrics. Users or managers of multiple units, such as homeowners associations and commercial organizations, can also see a combined view of all consumption data in a unified view. WaterSmart host the Customer Portal and is responsible for all maintenance and security.

Alerts and Notifications

WaterSmart can provide alerts to residential customers to notify of a potential leak, to notify a customer that they have reached a self-selected consumption threshold, or, if selected, notify a customer of a bill being available, due or overdue. Alerts and notifications can be sent through multiple channels -- email, SMS text message, or automated voice call. Customers must opt-in through the Customer Portal to receive alerts via SMS text message or automated voice call.

Customer Letter

If selected (specified in Program at a Glance), Customers who have access to the Customer Portal and/or that receive Water Reports are sent a Customer Letter to explain the program and its benefits. Through the Customer Letter sent to single-family residential (SFR) customers also directs them to an online survey to fill out their household profiles. The Customer Letter is branded for the Utility (including Utility logo, contact information and a signature line from an appropriate Utility representative) and informs recipients about the program and what they can expect to receive.

Water Reports

Water Reports are informative, carefully designed reports that help deliver targeted messages from the Utility to customers including messages about water efficiency, social comparisons, the value of water, and rate changes. Water Reports can be sent via mail or email, and may be targeted to certain accounts (specified in "Special Circumstances" under the Program at a Glance and subject to approval by WaterSmart), sent to randomly selected accounts as part of a randomized control trial, or sent to all of a utility's customers. Content and design of all materials are subject to change over time, as WaterSmart incorporates new features.

Surveys

WaterSmart invites enrolled accounts to respond to two surveys on behalf of the Utility. The first is the Customer Profile available to customers through the Customer Profile and linked to in the Customer Letter. For those utilities which are including Water Reports or Customer Letters in their Program, WaterSmart also sends a digital invitation to complete a post-launch Satisfaction Survey on behalf of the Utility to all accounts for which an email address is available.

Group Messenger & List Builder

Group Messenger is a module within the Utility Analytics Dashboard that allows the Utility to send targeted, personalized messages to groups of customers quickly. The Utility can select from preloaded message templates or create their own, and select recipients quickly from preloaded lists, custom created lists (using our List Builder tool), as well as exclude certain recipients. Group Messenger tracks message delivery times, delivery rates, open and click rates, and other engagement metrics.

2: Program Design

Experimental and Control Group

If selected, WaterSmart uses a randomized control group design to ensure the water saved in single-family residential accounts as a result of the WaterSmart program can be accurately measured and verified. While the Residential Recipients, as specified in the Program at a Glance, receives Water Reports the Control Group does not. This program design allows WaterSmart to compare the changes in water consumption and customer satisfaction of the participants versus the control group and provide the Utility with formal statistical results. While the group of Residential Recipients may expand after the first term of the project, only the first group of recipients are used to measure results.

Water Reports

Recipients

The number of recipients (specified in the Program at a Glance) may vary slightly in any cycle of Water Reports based on the availability of valid meter data available for each account and the number of new or closed accounts in a given period. Water Reports are sent digitally where valid email addresses are available, and by print otherwise.

Number and Scheduling of Cycles and Shipments per Report

Each enrolled account is eligible to receive a Water Report in each of the 4, 6 or 12 cycles of reports per term, as specified in the Program at a Glance. Some accounts may receive fewer Water Reports due to a missed or incorrect reads, or a closing or opening of a new account with the Utility.

Each cycle of reports can be sent in one or more shipments, with each shipment going to a subset of households. WaterSmart ships Water Reports based on the schedule that the Utility transfers billing data to WaterSmart. For utilities that provide account billing data to WaterSmart on a rolling basis (with billing data for a subset of accounts transferred each day or each week), WaterSmart sends out shipments for each cycle on a weekly basis. For utilities that provide account billing data to WaterSmart once per billing period, WaterSmart sends each cycle of Water Reports in a single shipment.

The schedule of these shipments is given below:

Table 1: Schedule of Water Reports Shipments

Utility Transfers Billing Data to WaterSmart:	WaterSmart Sends Shipments of each Report Cycle:
Daily	Weekly
Weekly	Weekly
Monthly	Monthly
Bi-Monthly	Bi-Monthly

The report delivery schedule is designed so that every customer account is eligible to receive a report in each cycle. If the Utility wishes to stagger the initial set of reports over more than one cycle or in such a way that it does not correspond to the utility billing data transfer schedule, these are special circumstances that must be identified in advance in the "Program at a Glance" section at the front of this Scope and are subject to approval by WaterSmart.

The delivery of the Customer Letter and the initial cycle of Water Reports are scheduled in conjunction with the Utility. Email deliveries may be scheduled to arrive on, or avoid, a specific day of the week. Print deliveries are subject to postal schedules and cannot be guaranteed for specific dates. Utility-requested delays in sending materials may result in fewer reports per recipient than the maximum number specified in the contract.

Cohort Group

For utilities sending Water Reports to single family residential customers, WaterSmart creates cohort groups of similar residences in order to maximize the relevance of water use comparisons and potential water savings. Cohort groups may include the following variables:

- Number of occupants per home (based on user-generated information and real-estate based estimates)
- Irrigable area (e.g. small, medium, large, etc.) to be determined based on home size and lot size information contained in real estate data obtained by WaterSmart, or optionally, provided by Utility if it already possesses such information
- Residence location (e.g. city, zip code, etc.) for utilities which span large areas

Post-Launch Survey

A post-launch survey is available to those Utilities which have selected WaterSmart Water Reports. WaterSmart sends a link to a post-launch survey to accounts with email addresses. The post-launch survey typically is conducted after at least eight months of engagement. WaterSmart provides a sample of the Satisfaction Survey invitation, including one block of content, which the utility may personalize. Utility should provide consolidated comments and final approvals to WaterSmart no more than ten (10) business days from when initial materials are provided to Utility. The results of the surveys are used to gauge customer satisfaction and Water Report perceptions. WaterSmart shares all results of the surveys with Utility.

Measurement and Verification

WaterSmart reports changes in consumption for the experimental group versus a randomized control group selected from Utility's entire population of residential households. After three Water Reports have been sent,

WaterSmart prepares an efficiency study that details the change in water usage for the experimental versus control group, and load those results into the Utility Analytics Dashboard. This evaluation is performed with a Fixed-Effects regression model using the consumption data for each household in the experimental and control groups. The efficiency study report includes percentage savings, GPD (Gallons per Day) savings and Acre Foot savings at the program level for all months after the first Water Reports were sent. While WaterSmart can continue to measure results after the first term (as long as a control group is maintained), Water Report recipients added to the program after the first term is not be included in the experimental group.

Section 3: Customer Service and Support

Customer Service Support

Utility shall have first tier responsibility for providing customer service to Customers. WaterSmart provides a list of Frequently Asked Questions to both enrolled Customers and Utility staff to facilitate this process. WaterSmart also provides a Customer Detail section within the Utility Analytics Dashboard, which is designed to help customer service representatives respond to Customer inquiries.

WaterSmart's project manager works with Utility's primary contact to assist in addressing additional customer issues. All inquiries from Utility customers outside the scope indicated above, including without limitation questions about water data, is directed to the Utility. WaterSmart provides service and support to Utility's Project Manager regarding technical questions about WaterSmart's Customer Portal and Utility Analytics Dashboard Web applications and Water Reports between the hours of 7 a.m. and 6 p.m. PST Monday thru Friday, excluding federal holidays. Post launch, Project Managers are available for one hour of discretionary assistance per week. Additional assistance is available at the hourly rate of \$200 per hour for Project Managers, and \$250 per hour for Engineering Support.

To further assist in answering questions, WaterSmart offers a Support Site with product guides, instructional videos, frequently asked questions, marketing materials, and many other useful resources. The Utility Analytics Dashboard also offers a chat feature ("Intercom") that allows Utility staff to communicate and engage actively with the entire Customer Success team, for a more high-level response of customer and product support in-app and through email. Utility staff can use the Intercom feature to ask questions and provide feedback, and can expect to receive a response within two business hours from members of the WaterSmart team.

Maintenance of Web Applications

WaterSmart maintains commercially reasonable systems and controls designed to maximize monthly uptime and minimize unscheduled outages of the Customer Portal and Utility Analytics Dashboard. Excluding any down time for maintenance and/or upgrades, WaterSmart makes strong efforts to provide Customers and Utility with access to their respective Web applications on a continuous basis. WaterSmart provides advance notification of any planned outages and notifies Utility without unreasonable delay if it detects or receives notice of any material problems relating to the Customer Portal and/or the Utility Analytics Dashboard.

WaterSmart's Web Applications include dynamic and interactive charts and tables that may not be compatible with older Internet browsers.

The Internet browser and operating system requirements are:

- Windows XP: Chrome 38+, Firefox 32+
- Windows 7, 8, 8.1, 10: IE 9+, Chrome 38+, Firefox 32+
- Mac: Chrome 38+, Firefox 32+, Safari

Data Security and Privacy

WaterSmart does not share personally identifiable customer information or customer-specific water use information with any third party without prior consent from Utility. Data transferred to WaterSmart from Utility is stored in a database dedicated to Utility and its WaterSmart project. The data is not be comingled with the data provided by any other entity; provided, however, that certain anonymous data may be copied and consolidated with data provided by one or more other entities for the research and product development purposes subject to the terms of the Agreement.

WaterSmart enacts standard controls, policies, and procedures to ensure the security of Utility's data and customer provided information, including but not limited to choosing a reputable cloud-server vendor with appropriate physical security of server infrastructure, secure public-private key-based login to all WaterSmart server infrastructure, password authentication on all Web site interaction, and audit logging.

WaterSmart provides Utility with private key access to a secure FTP destination for regular delivery of the data. This secure FTP site is hosted on WaterSmart's server infrastructure. Utility agrees to send data only through this secure channel and not through any other method.

Appendix A: Water Report Configurable Areas

Figure 1: Configurable Areas in Home Water Reports setup during Initialization

Settings supplied by utility

1. Utility logo
2. Utility address
3. Utility phone
4. Utility email, 25 char max
5. Program URL, 30 char max
6. Native units
7. Social media links

Defaults can be updated by request, within the space limitations of the report

- A. Program name
- B. 2 Registration keys

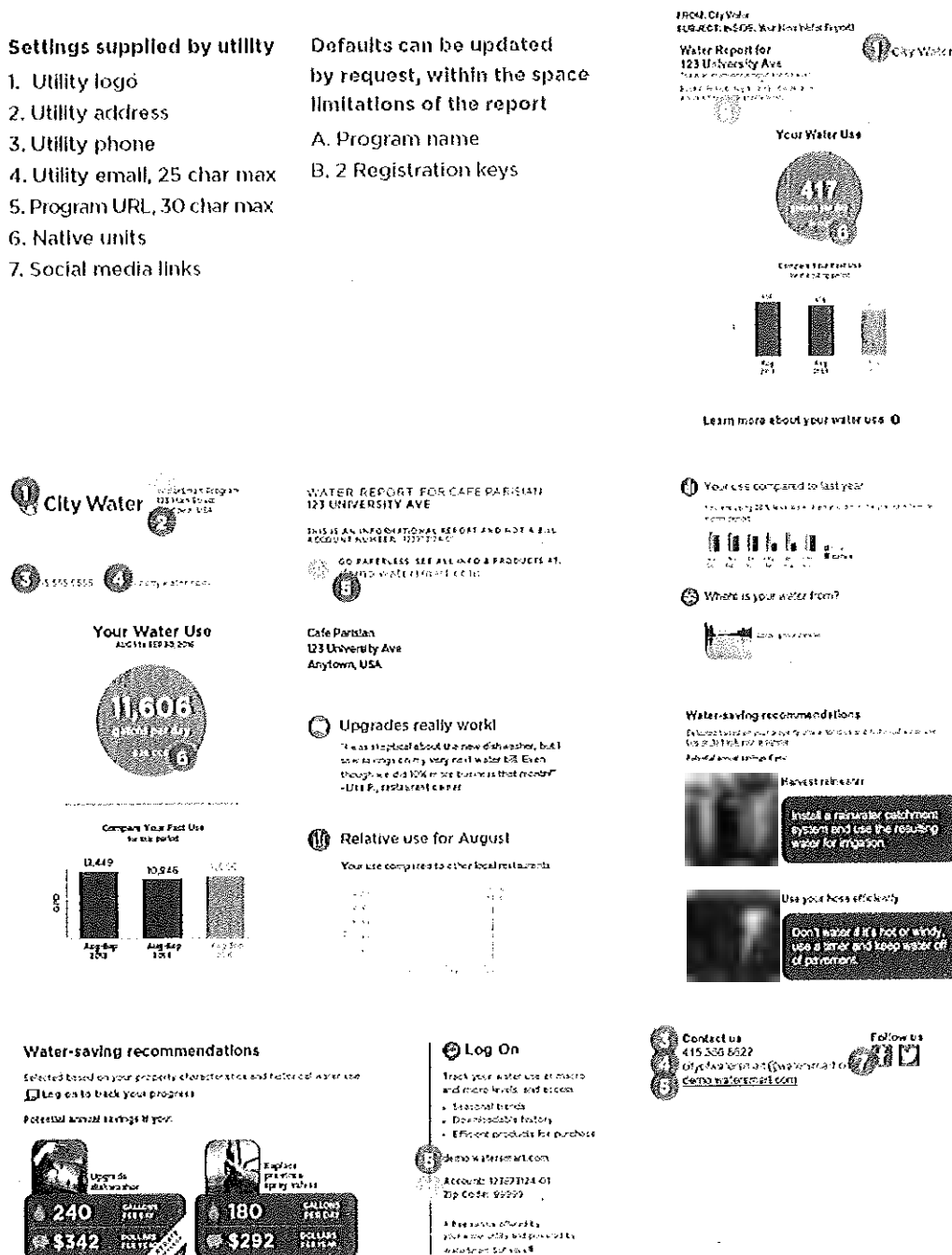


Exhibit B: Payment Terms

Compensation and Utility Obligations

For items listed in the above Scope of Services, Utility shall compensate WaterSmart according to the Fee Schedule below. Utility acknowledges its responsibilities and obligations, in particular in regards to the expertise and planned IT commitment to provide data needs as described in the Data Specification file. Delays on the part of the utility may reduce the number of months the Utility and its customers have access to WaterSmart products and services, but does not reduce Fee Schedule.

Table 2: Fee Schedule

Table A: Fee for 5 Year Program Discount is based on multiyear program		
Item Summary	Fee	
	Payment Due	
Year 1: 9 months: Includes up to 6 Water Reports to SFR & CII customers; access to the Customer Portal for all customers; AML (real-time) water use data on the Customer Portal and Dashboard; AML leak and high water-use alerts via text, voice and/or email; and Utility Analytics Dashboard with all account information, customer support tools and reports, plus Group Messenger	\$37,154	Biannually; first payment is due 30 days contract signing and then every six months
Year 2: 12 months: Same as Year 1 and any new features & capabilities within the Scope of Work.	\$47,727	Biannually: at the start of year 2 and then every six months
Year 3: 12 months: Same as Years 1-2 and any new features & capabilities within the Scope of Work.	\$47,727	Biannually: at the start of year 3 and then every six months
Year 4: 12 months: Same as Years 1-3 and any new features & capabilities within the Scope of Work.	\$47,727	Biannually: at the start of year 4 and then every six months
Year 5: 12 months: Same as Years 1-4 and any new features & capabilities within the Scope of Work.	\$47,727	Biannually: at the start of year 5 and then every six months
Total for 57 month program	\$228,062	

Contact for Invoices

Utility contact for all invoicing purposes is Anthony Eulo, Program Administrator, City of Morgan Hill, 17575 Peak Ave, Morgan Hill, CA, 95037.

For any questions regarding WaterSmart Contracts, please contact WaterSmart Accounting at business@watersmart.com, 415.366.8622 x 815. All written correspondence can be sent to:

Accounting Department

WaterSmart Software

20 California Street, Suite 200

San Francisco, CA 94111

Exhibit C: Schedule of Performance

Implementation Schedule

WaterSmart proposes the following schedule to complete all work required to fulfill the Scope of Work.

Table 3: 6 Water Report Implementation Schedule

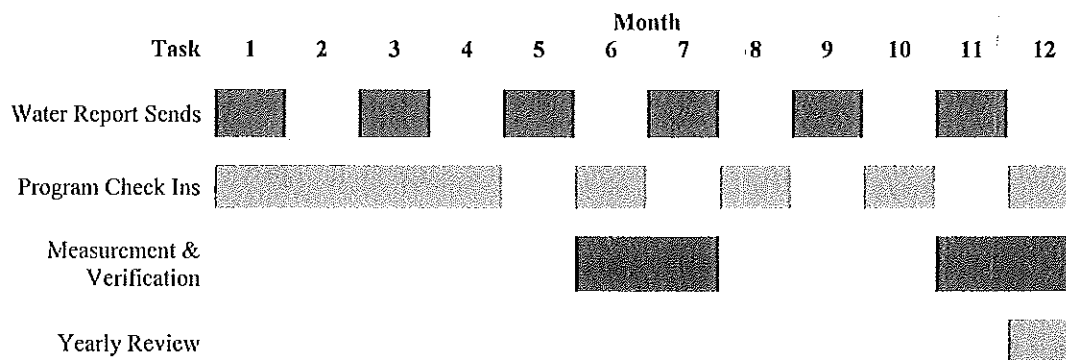




Exhibit D

SOFTWARE-AS-A-SERVICE PROVISIONS

BACKGROUND: WATERSMART's customer engagement and data analytics services are to be provided primarily by utilization of WATERSMART's proprietary software hosted on WATERSMART's computer systems and accessed by authorized users over the Internet. This is a shared cost software utilization model which enables customers to achieve substantial cost savings versus commissioning custom development of software or licensing software for installation and maintenance on customers' computer systems. Companies like WATERSMART are commonly referred to as "SaaS" or "software-as-a-service" providers. Certain supplemental provisions which are customary within the SaaS sector and essential to enabling WATERSMART's SaaS service model and providing substantial cost savings for Utility, are set forth below and incorporated by reference in the Agreement. Also included below are additional terms applicable to bill payment, leak alert and group messenger services if such services are elected by Utility.

A. WATERSMART's reservation of intellectual property rights

WATERSMART has created, acquired or otherwise currently has rights in, and may, in connection with the performance of this Agreement or otherwise develop, create, employ, provide, modify, acquire or otherwise obtain rights in various inventions, concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates, software, applications, documentation, user interfaces, screen and print designs, source code, object code, databases, algorithms, development framework repositories, system designs, processing techniques, tools, utilities, routines and other property or materials, including without limitation any and all subject matter protected or which may be protected under patent, copyright, mask work, trademark, trade secret, or other laws relating to intellectual property, whether existing now or in the future, whether statutory or common law, in any jurisdiction in the world ("WATERSMART IP"). Utility acknowledges that WATERSMART owns and shall own all intellectual property rights in and to deliverables hereunder, the WATERSMART IP and derivative works of WATERSMART IP (whether independently or jointly conceived), regardless of whether or not incorporated in any print or electronic Water Reports, Customer Portal, Utility Dashboard, or other software or deliverable provided to Utility by WATERSMART, and that Utility shall acquire no right or interest in the same.

Utility agrees to assign, and hereby does assign, any right, title and interest in any suggestions, enhancement requests, or other feedback provided by Utility relating to services

offered by WATERSMART. If and to the extent any such assignment is ineffective, Utility hereby grants to WATERSMART a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into its services any such suggestions, enhancement requests, or other feedback provided by Utility.

Subject to the foregoing, authorized employees and customers of Utility may during the term of the Agreement access and use the WATERSMART SaaS services, print and electronic Water Reports, Customer Portal, Utility Dashboard, Extended Messaging Services, other deliverables provided to Utility by WATERSMART, and applicable bill presentment and payment services, each as so specified by the Scope of Work, for purposes of Utility's customer engagement program, customer billing, and for Utility's internal purposes, so long as Utility is current with respect to its financial and other obligations under the Agreement. Such authorization is limited to Utility's service territory and is non-exclusive, non-transferable, and non-sublicenseable. If Utility enters into an agreement with a third party contractor of WATERSMART related to bill payment services, the intellectual property provisions of such agreement shall apply with respect to intellectual property owned or controlled by such third party. Any rights not expressly granted herein are reserved by WATERSMART and its licensors.

B. Utility's cooperation in providing necessary inputs

Deliverables to be provided by WATERSMART via its proprietary software require certain data from Utility. Utility shall provide WATERSMART with those data, records, reports, approvals and other inputs identified for Utility to provide in the Scope of Work or otherwise requested by WATERSMART. Utility shall ensure that such inputs are accurate and within Utility's legal rights to share with WATERSMART subject to the confidentiality and other applicable provisions of the Agreement. Time is of the essence, and Utility shall provide its inputs within the timeframes specified for Utility by the Scope of Work. If bill payment services are included in the Scope of Work, Utility shall cooperate with WATERSMART and its applicable third party partner(s) in timely providing the data, records, reports, approvals and other inputs requested for such services. WATERSMART shall not be responsible for delays outside WATERSMART's control, and deadlines for WATERSMART's performance shall be adjusted, if necessary, to accommodate delays by Utility.

C. Confidentiality and WATERSMART's use of aggregated data

All data, documents and other information received or accessed by one party ("Receiver") from the other party or its end users (collectively, "Discloser") for performance of this Agreement, including without limitation personally identifiable information and financial

information, are deemed confidential. Such information shall not be used or disclosed by the Receiver without the prior written consent of the Discloser or owner (which may include without limitation consent by end users to share any information with additional users they authorize), except to the Receiver's employees and contractors on a need-to-know basis for performance of this Agreement with appropriate confidentiality protections. For this purpose, protected confidential information shall not include (i) information that, at the time of disclosure, is publicly available or generally known or available to third parties, or information that later becomes publicly available or generally known or available to third parties through no act or omission by the Receiver; (ii) information that the Receiver can demonstrate was in its possession prior to receipt from the Discloser; (iii) information received by the Receiver from a third party who, to the Receiver's knowledge and reasonable belief, did not acquire such information on a confidential basis from the Discloser; (iv) information the Receiver can demonstrate was independently developed by it or a third party; or (v) information that the Receiver is legally required or compelled by a court to disclose.

The foregoing confidentiality obligations are subject to the following clarification of the parties' rights and obligations with respect to aggregated and anonymous data. Utility hereby gives its permission to WATERSMART to use and disclose on an anonymous and/or aggregated basis (excluding any personally identifiable information) any data pertaining to Utility end customers and their water consumption, including without limitation derivative data and data combined with the data of other utilities, for purposes of project evaluation and any research, product development, marketing, or other legitimate business purposes. This Section C shall survive any termination or expiration of the Agreement.

Each party shall post and comply with its applicable privacy policy.

D. Software corrections and third party acts; limitation of liability for SaaS services

In the event that WATERSMART's services fail to meet specifications or other requirements specified by the Scope of Work, Utility shall promptly notify WATERSMART and WATERSMART shall promptly correct any defect or substitute services, software, or products to achieve the functionality and benefits originally specified. If WATERSMART promptly makes such correction or substitution, WATERSMART shall have no further liability with respect to said defect(s), notwithstanding any other provision of the Agreement. All warranties not expressly stated in the Agreement are disclaimed. Utility understands that Utility's use of WATERSMART's services provided online may be interrupted by circumstances beyond WATERSMART's control involving third parties, including without limitation computer, telecommunications, network, Internet service provider or hosting facility failures or delays

involving hardware, software, networks, or power systems not within WATERSMART's possession or direct control, and network intrusions or denial of service attacks (collectively, "Third Party Acts"). WATERSMART shall not be responsible or otherwise liable for any Third Party Acts, including, without limitation, any delays, failures, or security breaches and damages resulting from or due to any Third Party Acts, provided that WATERSMART has exercised due care. However, in the case of any Third Party Act which delays or prevents WATERSMART from providing online services to Utility, WATERSMART promptly notifies Utility and assist in mitigating any impact. Neither party is liable to the other, under any non-indemnity claim relating to this Agreement, for any indirect, incidental, exemplary, special, reliance or consequential damages, including loss of profits or loss of data, even if advised of the possibility of these damages. Under no circumstances or event shall WATERSMART's total cumulative liability for losses or damages of any kind arising under or relating to this Agreement and under any theory (contract, tort, defense and indemnity, or otherwise), exceed (i) the fees received by WATERSMART for the services that give rise to the liability in the twelve months preceding the accrual of such liability, or (ii) available insurance proceeds from WATERSMART's carriers, whichever is higher. If Utility enters into an agreement with a third party contractor of WATERSMART related to bill payment services which specifies a lower limit of liability with respect to such services, the same limit shall apply to WATERSMART's liability (if any) with respect to such services. The foregoing limited remedy and limitation of liability provisions shall apply notwithstanding any conflicting provisions or any failure of essential purpose with respect to a limited remedy or limitation of liability, and shall survive any termination or expiration of the Agreement. Utility acknowledges that pricing for WATERSMART's services would be substantially higher without the aforementioned limitations.

E. Technology and services infrastructure vendors

WATERSMART as a SaaS provider utilizes the secure cloud hosting platform of a third party industry leader in cloud computing with state-of-the art security to host the data of all WATERSMART customers. WATERSMART utilizes a reputable third party vendor to perform printing and mailing services when included within the scope of WATERSMART's work. For bill payment services, including credit card, debit card, and ACH payments and authentication, WATERSMART utilizes leading edge, reputable third party vendors specializing in such functions. Since the referenced cloud hosting platform, printing and mailing vendors, bill payment services providers, and certain other vendors performing similar or related functions, are integral components of WATERSMART's technology and services infrastructure used

across its pertinent customer base and are not specific to Utility and services under this Agreement, Utility acknowledges that such utilization is not considered subcontracting of WATERSMART's services under this Agreement.

If Utility enters into an agreement with any third party contractor of WATERSMART for any services ancillary or related to the services provided by WATERSMART during the term of this Agreement, Utility shall first seek and exhaust all remedies from such third party contractor prior to seeking any remedy from WATERSMART with respect to such services.

F. Compliance With Laws

WaterSmart shall comply with all federal, state and local laws, regulations, regulatory rulings, and ordinances as may be applicable to the performance of services under this Agreement. Utility shall comply with all federal, state and local laws, regulations, regulatory rulings, and ordinances related to this Agreement, and shall have sole responsibility for securing any necessary regulatory approvals, if any, for this Agreement and/or the services hereunder.

Utility shall be responsible for obtaining from its end customers any consents and providing any notices, if any are legally required, for the services to be provided by WaterSmart hereunder.

G. Extended Messaging Services

If Utility elects to utilize WATERSMART's leak alert or group messenger services, certain supplemental legal terms shall apply. These supplemental terms ("Extended Messaging Terms") are set forth below and shall prevail in the event of any conflict or inconsistency. For avoidance of doubt, the Extended Messaging Terms apply to all WATERSMART services involving automated phone calls (conventional and mobile), pre-recorded messages, text messages, and other such bulk communications (including emails outside of WATERSMART's core customer engagement offerings) (collectively, "Extended Messaging Services").

1. Utility shall be solely responsible for the content of any messages or communications to end customers which Utility initiates or authorizes in connection with the Extended Messaging Services, as well as Utility's selection of any vehicle (ie., conventional phone, mobile phone, text, email) for such messages or communications. WATERSMART shall have no responsibility or liability of any kind with respect to messages or communications initiated or authorized by Utility or its representatives. In furtherance of the foregoing, Utility shall hold harmless, defend and indemnify WATERSMART and its officers, directors,

employees, contractors, representatives and volunteers from and against all claims, damages, losses and expenses including without limitation any statutory damages, penalties, and attorney's fees, arising out of or relating to the Extended Messaging Services or any breach by Utility of the Agreement including without limitation these Extended Messaging Terms. For avoidance of doubt, if the Agreement has other indemnity provisions in favor of Utility such provisions shall not apply to the Extended Messaging Services, except in the event of WATERSMART's willful misconduct.

2. If Utility elects to make available to its end customers Extended Messaging Services offered by WATERSMART to alert end users of potential leaks or high water usage, the pertinent end users and Utility assume all risks associated with such alerts, and no indemnity provisions in favor of Utility shall apply to such risks (including without limitation any liability claims for failure to alert or inaccurate alerts), except in the event of WATERSMART's willful misconduct.
3. With respect to Extended Messaging Services, WATERSMART's role is limited to delivering via its technology platform Utility's communications through vehicles selected by Utility; accordingly, compliance with applicable laws (which may vary by state and locale) is strictly Utility's responsibility with respect to Extended Messaging Services notwithstanding any provision to the contrary.
4. Utility is encouraged to consult legal counsel of its own with respect to this Agreement and in reference to Federal Communications Commission Declaratory Ruling FCC 16-88 (released August 4, 2016), any Extended Messaging Services, and compliance with applicable federal, state and local laws, regulations and regulatory rulings, and ordinances. Utility shall not rely on WATERSMART or WATERSMART's representatives for legal advice or guidance concerning the content or appropriate vehicles (ie., conventional phone, mobile phone, text, email) for communications with Utility end customers.
5. In order to provide the Extended Messaging Services at efficient cost and with optimal levels of security and reliability, WATERSMART may utilize one or more third party communications technology and communications services providers. Since such providers are utilized across WATERSMART's pertinent customer base and are not specific to Utility and service choices by Utility under the Agreement, Utility acknowledges that such utilization is not considered subcontracting of WATERSMART's services under the Agreement.



CITY COUNCIL STAFF REPORT

MEETING DATE: September 27, 2017

PREPARED BY: Harjot Sangha, Accounting Manager
APPROVED BY: City Manager

CONSULTANT AGREEMENT WITH WILLDAN FINANCIAL SERVICES FOR DEVELOPMENT IMPACT FEE STUDY

RECOMMENDATION(S)

Approve consultant agreement with Willdan Financial Services to provide professional consulting services for a Development Impact Fee Study for \$74,320.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

2017 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

Last year, the City of Morgan Hill adopted its updated General Plan, outlining a plan for the growth of the City through the year 2035. More recently, the City adopted its Public Safety Master Plan, serving as a foundational document for service delivery decision well into the future. The City recently conducted the workshop to review the completed Administrative Drafts of the Utilities Master Plan Documents to help the Council and the public understand the future build out of the City's water and wastewater systems. Growth brings the need for both new and expanded infrastructure. A key element of planning for growth is identifying the funding mechanism to pay for such infrastructures.

The City relies on various resources to fund new infrastructure, a portion of funding may come from outside sources, such as federal or state grants, but much of the funding, must be raised at the local level. Therefore, the City works to ensure that new development pays for the infrastructure need it creates. The City has in place a development impact fee program, assessing various impact fees to new developments to fund infrastructure improvements. Such fees assessments are allowed under the Mitigation Fee Act (California Government Code Section 66000 et seq., also known as Assembly Bill 1600). It is a good practice for cities to periodically review and update the impact fees. As a result, City staff conducted a Request for Proposal (RFP), seeking services from a qualified firm to update nine (9) of its impact fees, as listed below.

Impact fees to be updated:

- Traffic (Roads and Bikeways)
- Water (Infrastructure identified in new Water Master Plan)
- Sewer (Infrastructure identified in new Sewer Master Plan)
- Drainage (Infrastructure identified in new Storm Drainage Master Plan)
- Police (Infrastructure identified in Public Safety Master Plan)

- Fire (Infrastructure identified in Public Safety Master Plan)
- Parks (Infrastructure identified in adopted Bikeways, Trails, Parks and Recreation Master Plan)
- Library
- Public Facilities

The RFP was issued on August 1, 2017, with a proposal submittal deadline of August 18, 2017. A total of seven (7) firms submitted a proposal.

- Harris & Associates
- Matrix Consulting Group
- David Taussig & Associates
- Michael Baker International
- Revenue & Cost Specialist, LLC
- Hansford Economic Consulting
- Willdan Financial Services

An evaluation committee, consisting of staff from various departments (Development Services, Finance, and Engineering and Utilities), reviewed the proposals for qualifications, experience, understanding of the scope, and the City's goals. As a result, three (3) firms were selected to further interview and reference check. Firms selected for interview were Matrix Consulting Group, Revenue & Cost Specialist, and Willdan Financial Services.

While all responding firms meet the minimum qualifications to do the work, based on the review of the proposals received and the interviews conducted, Willdan Financial Services illustrated the best qualifications experience, understanding of the scope and the City's goals. Staff recommends the award of consultant contract to Willdan Financial Services to provide professional consulting services for a Development Impact Fee Study for a total cost of \$74,320. The contract anticipates the full scope of work to take 6 months.

Willdan Financial Services is headquartered in Anaheim, CA, with regional offices in Oakland, CA, Phoenix, AZ, Plano, TX, Washington, DC, and Orlando, FL. Willdan Financial Services is a leading nationwide provider of value added professional, technical, and consulting services. The firm has assisted more than 100 California government agencies with development and/or update of all fee types. The firm's personnel assigned to the project have over 26 years of experience combined in preparing similar studies. The firm is also familiar with the City of Morgan Hill, as it has prepared several of City's impact fee studies in the past.

COMMUNITY ENGAGEMENT: Inform

This staff report serves to inform the community of the recommended award of a consultant contract for a Development Impact Fee Study. Once the project commences and the draft is completed, several community stakeholder (including developer)

meetings are expected be held. These meetings will be scheduled and communicated through the City's various communication channels.

ALTERNATIVE ACTIONS:

The City Council can direct staff to consider an alternative firm for this fee study project.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

In September 2007, the City updated its water and wastewater impact fees.

In April 2010, the City updated six (6) of its impact fees.

In June 2015, the City reestablished the recreation center impact fee, and adjusted the traffic impact fees.

FISCAL AND RESOURCE IMPACT:

The total cost of the development impact fee study is \$74,320 and will be funded with an equal split between the nine (9) impact fee funds. Budget scorecard is attached.

CEQA (California Environmental Quality Act):

Award of consultant agreement for development impact fee study is not a project. The organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment are not a project under CEQA.

LINKS/ATTACHMENTS:

1. Morgan Hill Impact Fee Agrmnt (WFS Executed) 9-11-17_14482
2. Resolution
3. Exhibit A - Budget Scorecard

CONSULTANT AGREEMENT
Willdan Financial Services

THIS AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Willdan Financial Services 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 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 for completion of a comprehensive development impact fee study as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$74,320.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Seventy-Four Thousand Three-Hundred Twenty 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:

Willdan Financial Services
Attn: James Edison
27368 Via Industrial, Suite 200
Temecula, CA 92590

Address of CITY is as follows:

Dat Nguyen, Finance 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
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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

 City Manager

 Michelle Wilson

 Steve Rymer

 Print Name

 Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

 City Attorney

By: 

 Donald A. Larkin

Title: Anne Pelej, Vice President, Group Manager

 Print Name

Print Name and Title of Signer.

If Corporate: Chairman, President or
 Vice President

Date: _____

Date: September 11, 2017



By:

Title: Rebekah Smith, Assistant Secretary

Print Name and Title of Signer.

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

Date: September 11, 2017

EXHIBIT A SCOPE OF SERVICES

This scope of services includes preparing the documentation necessary to update the nine impact fees identified within the City's Request for Proposals (RFP) dated August 1, 2017. Willdan will consider and recommend modifications to the existing program structure, cost components, and fee amounts. In addition to the services for which the City presently charges fees, the study shall identify and recommend other permissible development impact fees consistent with the City's adopted goals and objectives.

We want to ensure that our scope of services is responsive to the City's needs and specific local circumstances. We will work with the City to revise our proposed scope based on input prior to approval of a contract, and as needed during the course of the study.

Task 1: Identify and Resolve Policy Issues

Objective: Identify and resolve policy issues raised by the study.

Description: Review agency documents related to existing capital planning policies and funding programs including existing impact fees and current public facility master plans. Meet with representatives of affected City departments to gather background regarding the City's fee program. Bring policy issues to City staff's attention, as appropriate, during the project and seek guidance prior to proceeding.

Potential policy issues include:

- Land use categories for imposition of fees;
- Nexus approach to determining facility standards and to allocating cost burden among land uses;
- Potential alternative funding sources, if needed;
- Funding existing deficiencies, if identified;
- Master-planned development and relationship to fee program; and
- Implementation concerns and strategies.

Meetings: One meeting to initiate the project, discuss data needs, and begin discussion of applicable policy issues. Additional meetings on the same day (or next day) with affected City departments, as needed.

Deliverables: Information requests; revised project scope and schedule (if needed); and summary of policy decisions (if needed).

Task 2: Identify Existing Development and Future Growth

Objective: Identify estimates of existing levels of development; and a projection of future growth consistent with current planning policy.

Description: Identify base year for estimating existing levels of development and for calculating facility standards based on existing facility inventories (see Task 3). Include entitled development that would be exempt from fee program.

Consult with City staff to identify growth projections to a defined long range planning horizon (10 to 30 years). Projections provide a basis for determining the facilities needed to accommodate growth (see Task 4). Consider projections from the City's General Plan and from regional metropolitan planning agencies and other available sources.

Develop approach for converting land use data to measure of facility demand. For example, identify population and employment density factors to convert population and employment estimates to dwelling units and building square footage. Select appropriate approach for each impact fee based on: available local data on facility demand by land use category; approaches used by other agencies; and support for other agency policy objectives.

Changes to estimates and projections during subsequent tasks could cause unanticipated effort and require an amendment to the scope of services and budget. Willdan will obtain approval of estimates and projections from City staff prior to proceeding.

Deliverables: Memorandum summarizing estimates of existing development and projections for new development.

Task 3: Determine Facility Standards

Note: Conduct Tasks 3, 4, and 5 separately for each facility and fee type. Conduct tasks concurrently because of the effect of facility standards, facility needs, and alternative funding on the fee calculation(s).

Objective: Determine standards to identify facilities required to accommodate growth.

Description: Identify and evaluate possible facility standards depending upon the facility type, current facility inventory data, and available facility planning documents. Consider use of: 1) adopted policy standards (e.g. General Plan, master facility plans); 2) standards derived from existing facility inventories; or 3) standards derived from a list of planned facility projects. City staff to provide policies, inventories, and project lists. This analysis will include a calculation for alternative public improvements, as needed.

Task 4: Determine Facilities Needs and Costs

Objective: Identify the type, amount and cost of facilities required to accommodate growth and correct deficiencies.

Description: Quantify total planned facilities based on growth projections (Task 2) and facility standards (Task 3). Express planned facilities in general quantities such as acres of parkland, or as a specific list of capital projects from a master facility plan. If only a general description of planned facilities is available through the planning horizon, City staff should provide a list of specific capital projects for use of fee revenues during the short term (e.g. five years).

Distinguish between: facilities needed to serve growth (that can be funded by impact fees); and facilities needed to correct existing deficiencies (that cannot be funded by impact fees). Use one of three cost allocation methods (existing inventory, system plan, or planned facilities) to calculate the fee schedule.

Gather planning-level data on new facilities costs based on lump sum project cost estimates, or unit costs and project quantities. Consider recent City experience, local market data, and Willdan experience from prior projects. Inflate older cost estimates to base year using appropriate cost indices.

Willdan will prepare/update cost estimates as needed. We will utilize data available from the City, most likely from new, applicable master plan estimates, and supplement as necessary from projects in other comparable communities. Estimates found within the water, sewer and storm drain master plans will be updated/corrected as necessary.

Task 5: Identify Funding and Financing Alternatives

Objective: Determine the extent of alternative (non-fee) funding available for new facilities.

Description: There are two types of alternative funding sources that we will identify: funding from non-impact fee sources to correct existing deficiencies; and funding from new development other than impact fees that must be credited against new development's impact fee contributions, possibly including taxes paid to finance facilities.

Identify anticipated alternative funding based on information from City staff, or note that funds are still to be identified based on a list of probable funding alternatives. If fees will fund debt service include financing costs in the total cost of facilities.

Assume facilities to be funded predominantly on a pay-as-you-go basis.

Task 6: Calculate Fees and Present to City

Objective: Calculate fees and prepare draft report tables for City review and feedback.

Description: Generate fee schedule to apportion facility costs to individual development projects. Use facility costs per unit of demand multiplied by demand by land use category based on data developed in prior tasks. Prepare draft report tables for City staff to review that document each step of the analysis, including schedule of maximum justified fees by facility type land use category.

Following one round of comments from City staff on the quantitative analysis and fee schedules, prepare administrative draft report.

Meeting: Meet with City staff to review findings prior to preparation of draft study report. Willdan will provide information to support findings to date and the proposed fees.

Task 7: Prepare and Present Impact Fee Report

Objective: Provide technically defensible fee report that comprehensively documents project assumptions, methodologies, and results.

Description: Upon receipt of one round of comments from City staff on the quantitative analysis and fee schedules, prepare administrative draft report. Willdan will present the draft study report, with assistance from City staff, to share findings with stakeholders, including developers and engineers. It will be our responsibility to facilitate the meeting, provide exhibits and formal presentation, collect input and prepare meeting minutes capturing public input. In the report or separately, Willdan will provide guidance and advice to the City on best practices in balancing the need for infrastructure with other objectives, such as economic development.

After mutually agreed upon comments on the administrative draft have been incorporated, prepare the public draft for presentation to interested parties, the public and elected officials during a City Council meeting with assistance from City staff.

Prepare final report based on one round of comments received on the public draft report. Attend a second City Council meeting to follow up and to present final report. Willdan will prepare the formal presentation and answer questions specific to the final report. Submit up to ten bound copies of each report. If requested, post report on our website for public access.

Meetings: Three public meetings. One public meeting to present the draft study and two City Council meetings to present the draft and final versions of the study, respectively, for review and subsequent adoption.

Deliverables: Draft report tables, administrative draft report, public draft report, final report, and slide presentation.

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

Based on the proposed scope of services outlined within the technical proposal, Willdan Financial Services ("Willdan") proposes a lump sum, fixed fee of \$74,320.

Hourly Rates

Additional services may be authorized by the City and will be billed at our then-current hourly overhead consulting rates. Our current hourly rates are listed below.

Position	Hourly Rate
Group Manager	\$250
Managing Principal	\$240
Principal Consultant	\$210
Senior Project Manager	\$185
Project Manager	\$165
Senior Project Analyst	\$135
Senior Analyst	\$125
Analyst	\$110
Assistant Analyst	\$100

EXHIBIT C SCHEDULE OF PERFORMANCE

City of Morgan Hill Development Impact Fee Study 2017/2018 Estimated Project Schedule

	Month #1				Month #2				Month #3				Month #4				Month #5				Month #		
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
Scope of Services																							
Task 1: Identify & Resolve Policy Issues																							
Task 2: Identify Existing Development & Future Growth																							
Task 3: Determine Facility Standards																							
Task 4: Determine Facilities Needs & Costs																							
Task 5: Identify Funding & Financing Alternatives																							
Task 6: Calculate Fees & Present to City																							
Task 7: Prepare Impact Fee Report																							

Attachment: Morgan Hill Impact Fee Agrmnt (WFS Executed) 9-11-17_14482 (1398 : Development Impact Fee Study)

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL APPROVING AMENDMENTS TO
THE CITY'S FISCAL YEAR 2017-2018 BUDGET BY
APPROPRIATING AN ADDITIONAL \$74,320 FROM
NINE DEVELOPMENT IMPACT FEE FUNDS FOR THE
DEVELOPMENT IMPACT FEE STUDY**

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Annual Budget for Fiscal Year 2017-2018, as set forth on Exhibit A to this Resolution, to appropriate 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 "CONSULTANT AGREEMENT WITH WILL DAN FINANCIAL SERVICES FOR DEVELOPMENT IMPACT FEE STUDY" submitted for City Council consideration at its meeting of September 27, 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 2017-2018 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 2017-2018 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 27th day of September, 2017.

AYES:

NOES:

ABSTAIN:

ABSENT:

COUNCIL MEMBERS:

COUNCIL MEMBERS:

COUNCIL MEMBERS:

COUNCIL MEMBERS:

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 September 27, 2017.

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

DATE: _____

IRMA TORREZ, City Clerk

AGENDA BUDGET SCORECARD
FISCAL YEAR 2017-18
ADJUSTMENT #

012

FUND:

DEPARTMENT:

OBJECT:

Various	Various
Various	Various
42231	CONTRACT SERVICES

AGENDA DATE:

AGENDA ITEM TITLE:

09/27/17
Impact Fee Study

	07/01/17 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/18 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	-	-	-	-
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION	-	-	74,320	-
RESULT OF RECOMMENDED ACTION	-	-	74,320	-



CITY COUNCIL STAFF REPORT

MEETING DATE: September 27, 2017

PREPARED BY: Charlie Ha, Supervising Civil Engineer
APPROVED BY: City Manager

FINAL MAP APPROVAL OF DUNNE HILL MEADOWS - TRACT NO. 10378

RECOMMENDATION(S)

1. Approve the Final Map;
2. Authorize the City Manager to execute the Subdivision Improvements Agreement with Hanalei Land Co. 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, Subdivision Improvements Agreement, and the Stormwater BMP Operation and Maintenance Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

2017 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

Dunne Hill Meadows – Tract No. 10378 is a 6-lot subdivision located on the northeasterly corner of East Dunne Avenue and Hill Road (see attached site map). The developer, Hanalei Land Co. LLC, has completed all the conditions specified by the Planning Commission in the approval of the Tentative Map on October 13, 2015.

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 approve the Final Map, authorize the City Manager to sign a Subdivision Improvements Agreement on behalf of the City, authorize the City Manager to sign a Stormwater BMP Operation and Maintenance Agreement pending review and approval by the City Attorney, and authorize the recordation of the Final Map, Subdivision Improvements Agreement, and the Stormwater BMP Operation and Maintenance Agreement.

COMMUNITY ENGAGEMENT: Involve

On October 13, 2015, 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 November 4, 2015, the City Council approved the Development Agreement.

FISCAL AND RESOURCE IMPACT:

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

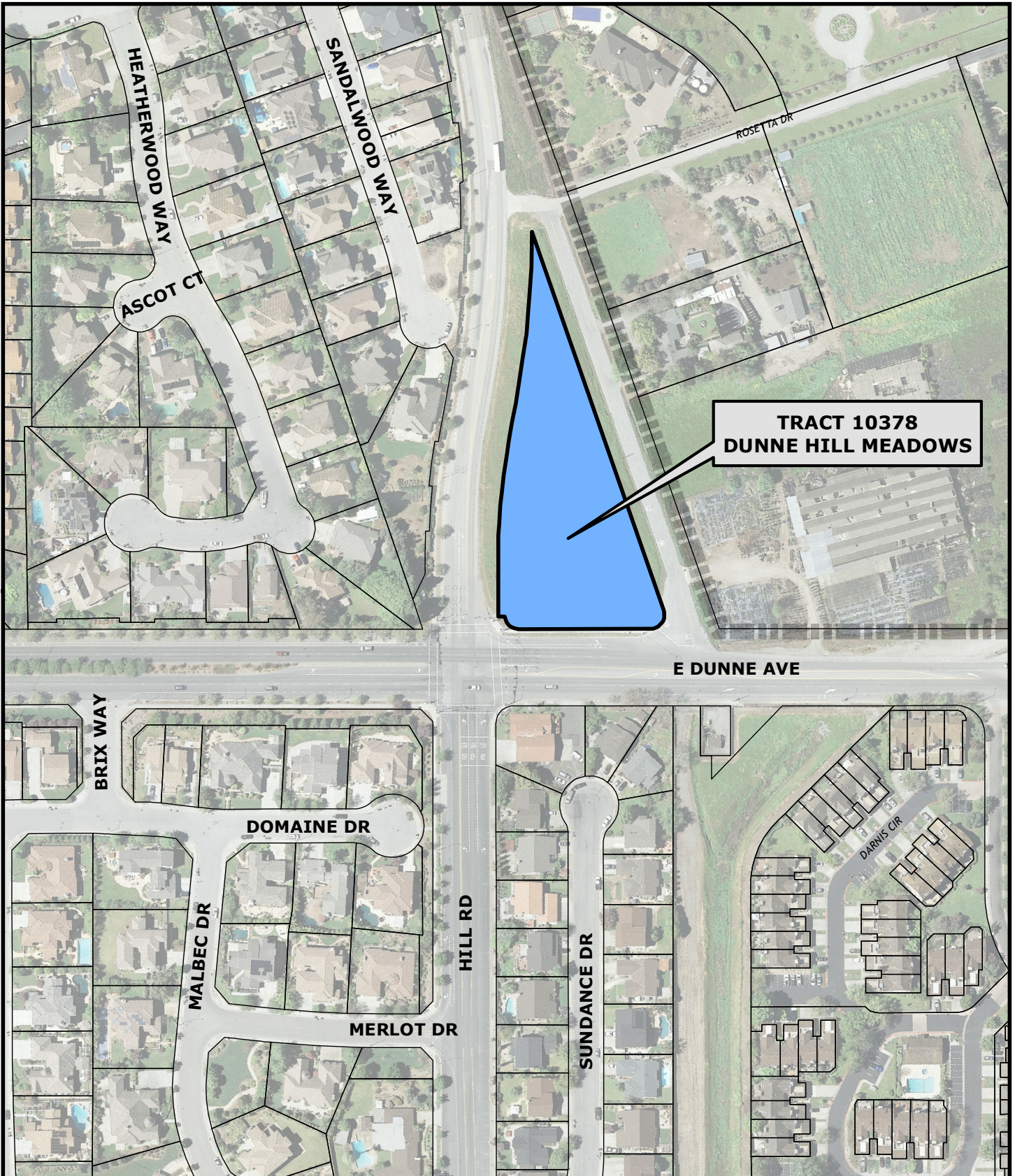
CEQA (California Environmental Quality Act):

Categorical Exemption

Section 15332 of the State CEQA Guidelines – Infill Development Projects.

LINKS/ATTACHMENTS:

1. Site Map Tract 10378
2. Exhibit A Map Tract 10378
3. Exhibit B Subdivision Improvements Agreement Tract 10378 with Cash DP
4. Exhibit C Stormwater BMP Operation and Maintenance Agreement Form Tract 10378



Attachment: Site Map Tract 10378 (1127 : Final Map Approval of Dunne Hill Meadows - Tract No. 10378)



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

G:\R-14\Proj\GIS\JohnCharlie_DunneHillMeadows_FinalMap.mxd

SITE PLAN
TRACT 10378
DUNNE HILL MEADOWS



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 HILL ROAD, 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 HOMEOWNERS' ASSOCIATION, FOR THE BENEFIT OF LOTS 1 THROUGH 6, A PARCEL OF LAND, DELINEATED AND DESIGNATED AS OPEN SPACE, FOR THE PURPOSE OF INSTALLATION AND MAINTENANCE OF LANDSCAPING/RECREATIONAL AMENITIES AND ALL OTHER APPURTENANCES THERETO. NO FURTHER SUBDIVISION AND OR RESIDENTIAL DEVELOPMENT IN SAID OPEN SPACE PARCEL SHALL BE ALLOWED.

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 OWNER:

HANAIE LAND CO., LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

BY: _____ DATE: _____
NAME: _____

AS TRUSTEES:

CHICAGO TITLED COMPANY BDS CAPITAL, INC., A CALIFORNIA CORPORATION

BY: _____ BY: _____
NAME: _____ NAME: _____

AS BENEFICIARIES:

ECA PARTNERS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY
FB INVESTORS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

BY: _____
NAME: _____

MICHAEL A. CHUCK

BY: _____
NAME: _____

OFFENBERG FAMILY TRUST

BY: _____
NAME: _____

TRACT No. 10378

"DUNNE HILL MEADOWS"

BEING ALL OF PARCEL 2, AS SAID PARCEL IS SHOWN AND DELINEATED ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON AUGUST 17, 1995 IN BOOK 669 OF MAPS, AT PAGES 17 AND 18, AT THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

AND LYING WITHIN THE
CITY OF MORGAN HILL, COUNTY OF SANTA CLARA
STATE OF CALIFORNIA
APRIL 3, 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 2.112 ACRES.
- 3.) ALL DISTANCES AND DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
- 4.) A GEOTECHNICAL REPORT WAS PREPARED BY EARTH SYSTEMS PACIFIC ON SEPTEMBER 29, 2016 AND RECORDED BY SAID COMPANY AS FILE NO. SH-1312B-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.

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-____-____.

NAME: ANDREW GRABTREE
SECRETARY OF THE PLANNING COMMISSION

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 STREETS AND EASEMENTS OFFERED FOR DEDICATION FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF THE OFFER OF DEDICATION. I ALSO, HEREBY STATE THAT SAID CITY COUNCIL HAS AUTHORIZED THE ABANDONMENT OF THAT PORTION OF THE EXISTING "HILL ROAD" RIGHT-OF-WAY DEDICATION PER "F" OF MAPS, PG 11 AND 669 OF MAPS, PGS 17-18, AND THOSE PORTIONS OF THE EXISTING "PUBLIC SERVICE EASEMENTS" PER 628 OF MAPS, PGS. 39-40 AND 669 OF MAPS, PGS 17-18 PER SECTION 66434 (g) OF THE SUBDIVISION MAP ACT.

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 JOHN TRAY, ON JANUARY 29, 2014; 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
F.L.S. NO. 6809



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 3



MH engineering Co.

16075 Vineyard Boulevard
Morgan Hill, CA 95037

26007

Packet Pg. 189

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, _____
(insert name and title of the officer)

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 _____

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is/are subscribed to the within instrument and acknowledged to me that he/she/they
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WITNESS my hand and official seal.

Signature _____ (Seal)

Principal County Of Business: _____

Commission Expires: _____

Commission # Of Notary: _____

TRACT No. 10378 "DUNNE HILL MEADOWS"

BEING ALL OF PARCEL 2, AS SAID PARCEL IS SHOWN AND DELINEATED ON
THAT CERTAIN PARCEL MAP FILED FOR RECORD ON AUGUST 17, 1995 IN
BOOK 669 OF MAPS, AT PAGES 17 AND 18, AT THE OFFICE OF THE
RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

AND LYING WITHIN THE
CITY OF MORGAN HILL COUNTY OF SANTA CLARA
STATE OF CALIFORNIA
APRIL 3, 2017

ACKNOWLEDGMENT

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State Of California
County Of _____

On _____, before me, _____
(insert name and title of the officer)

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State Of California
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State Of California
County Of _____

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(insert name and title of the officer)

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
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WITNESS my hand and official seal.

Signature _____ (Seal)

Principal County Of Business: _____

Commission Expires: _____

Commission # Of Notary: _____

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State Of California
County Of _____

On _____, before me, _____
(insert name and title of the officer)

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: _____

SHEET 2 OF 3



MH engineering Co.

16075 Vineyard Boulevard
Morgan Hill, CA 95037

26007

Packet Pg. 190

L:\PROJECTS\2007\26007\DWG\26007PLDWG 04/03/17 19:19

Attachment: Exhibit A Map Tract 10378 (1127 : Final Map Approval of Dunne Hill Meadows - Tract No.

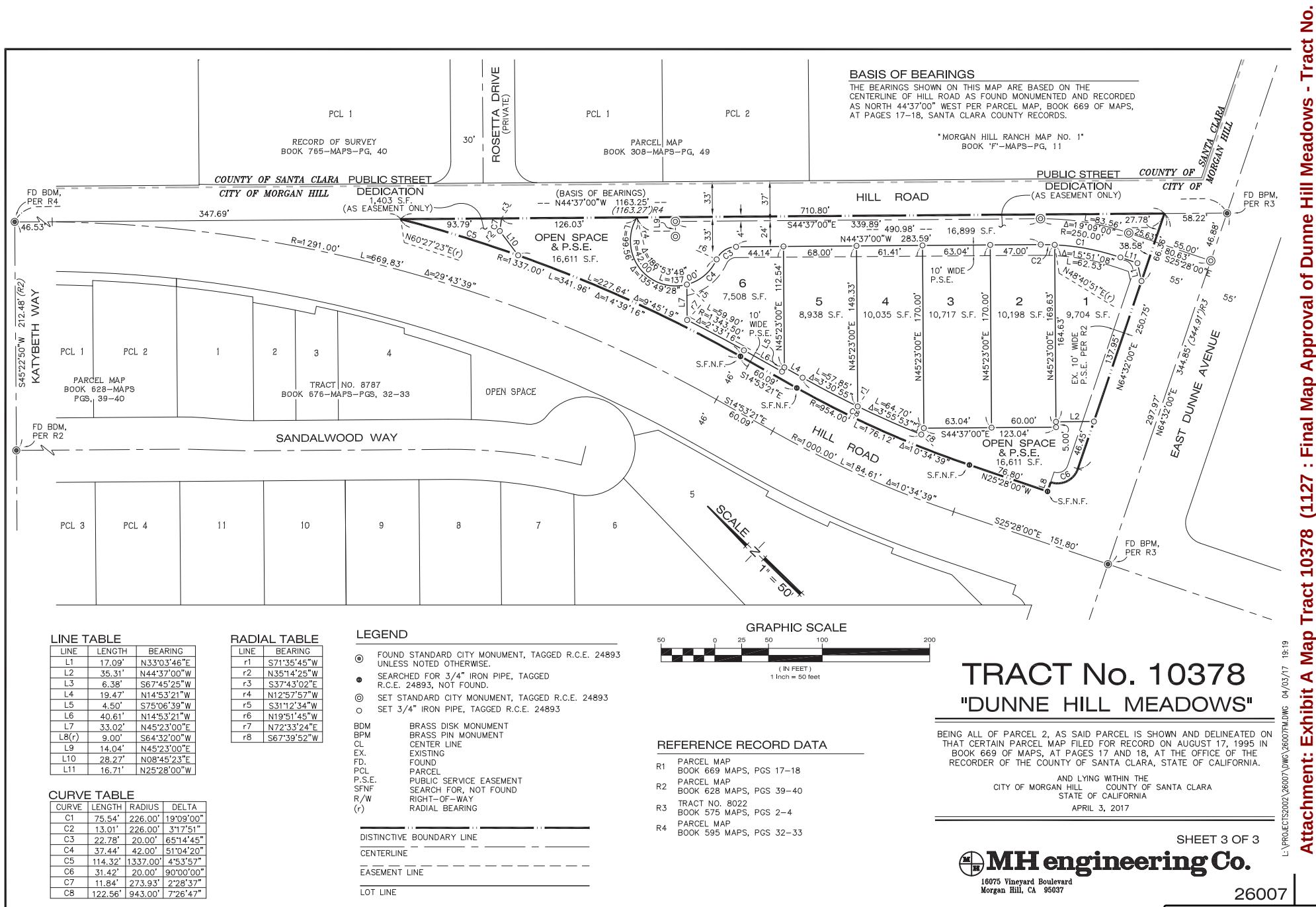


EXHIBIT B

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

HANALEI LAND CO LLC DUNNE HILL MEADOWS – TRACT NO. 10378

This Subdivision Improvements Agreement ("Agreement") between the City of Morgan Hill, a municipal corporation ("City"), and **Hanalei Land Co 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. 10378**, the subdivision known as **Dunne Hill Meadows** ("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 Hill Meadows, Tract No. 10378**" ("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 Hill Meadows, Tract No. 10378**".

(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:
HANALEI LAND CO 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"

HANALEI LAND CO 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					
3	Existing AC pavement off haul	1	LS	\$55,000.00	\$55,000.00
4	Existing drain inlet removal	2	EA	\$600.00	\$1,200.00
7	Street finish grading	23,452	SF	\$0.30	\$7,035.60
9	AC pavement (4"AC/16AB)	17,570	SF	\$5.00	\$87,850.00
10	City std. curb and gutter	660	LF	\$25.00	\$16,500.00
11	City std. electroliers	3	EA	\$3,000.00	\$9,000.00
12	Sidewalk and drive approaches	2780	SF	\$6.00	\$16,680.00
14	Signing & striping	1	LS	\$4,000.00	\$4,000.00
15	Street Monuments	5	EA	\$500.00	\$2,500.00
16	Stop sign and legend	1	LS	\$800.00	\$800.00
17	Relocated ex. Electroliers	1	EA	\$3,000.00	\$3,000.00
Schedule II - Water Improvements					
1	City std. hydrants	2	EA	\$3,500.00	\$7,000.00
2	1" water services	7	EA	\$1,500.00	\$10,500.00
3	1-1/2" irrigation w/RPBP	1	EA	\$2,000.00	\$2,000.00
4	8" DIP water main	468	LF	\$40.00	\$18,720.00
Schedule III - Sanitary Sewer					
1	4" sanitary lateral	7	EA	\$2,200.00	\$15,400.00
Schedule IV - Storm Drainage					
1	15" RCP SD	121	LF	\$65.00	\$7,865.00
4	City std. curb inlets	3	EA	\$3,000.00	\$9,000.00
Schedule V - Hill Road Improvements					
	1' sawcut and removal of existing Pavement	707	LF	\$1.50	\$1,060.50
	Street finish grading	29582	SF	\$0.30	\$8,874.60
	City std. curb and gutter	713	LF	\$25.00	\$17,825.00
	AC pavement (4"AC/16AB)	23584	SF	\$5.00	\$117,920.00
	City std. sidewalk	3340	SF	\$6.00	\$20,040.00
	Signing & striping	5000	LS	\$1.00	\$5,000.00
				Sub Total	\$444,770.70
				10%	
				Contingency	\$44,477.07
				Total	\$489,247.77

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 **HANALEI LAND CO LLC** (hereinafter designated as "principal") have entered into a Subdivision Improvement Agreement:

HANALEI LAND CO LLC
DUNNE HILL MEADOWS – TRACT NO. 10378

whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 2017, and identified as project **Dunne Hill Meadows – Tract No. 10378**, 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, **HANALEI LAND CO LLC** (hereinafter designated as "the principal") have entered into a Subdivision Improvement Agreement:

HANALEI LAND CO LLC
DUNNE HILL MEADOWS – TRACT NO. 10378

whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated _____, 2017, and identified as project **Dunne Hill Meadows – Tract No. 10378**, 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
HANALEI LAND CO LLC
DUNNE HILL MEADOWS – TRACT NO. 10378

THIS AGREEMENT is made this ____ day of _____, 2017, by the City of Morgan Hill, a municipal corporation, ("City"), and **HANALEI LAND CO 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 Hill Meadows**, 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 **eight hundred thirty one thousand seven hundred twenty one dollars (\$831,721)** 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 forty two thousand four hundred seventy three dollars (\$342,473)** 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 **eight hundred thirty one thousand seven hundred twenty one dollars (\$831,721)** 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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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"
HANAIEI LAND CO LLC**

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

By: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

**"SUBDIVIDER"
HANAIEI LAND CO 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 HILL MEADOWS 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. 10378** 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: September 27, 2017

PREPARED BY: Angie Gonzalez, Council Services Assistant
APPROVED BY: City Manager

ADOPT ORDINANCE 2260, NEW SERIES, AN ORDINANCE OF THE CITY OF MORGAN HILL RENAMING CHAPTER 12.20 (CITY PARKS AND RECREATION BUILDINGS) AND SECTION 12.20.020 (PARK USE – GENERAL PROVISIONS) AND AMENDING SECTIONS 12.20.010 (DEFINITIONS) AND 12.20.060 (CONDUCT IN PARKS – GENERALLY) AND 12.20.80 (ACTIVITIES OR ACTIONS REQUIRING PRIOR APPROVAL FROM THE CITY) AND ADDING SECTIONS 12.20.062 (CONDUCT IN PUBLIC BUILDINGS AND FACILITIES), 12.20.064 (CONDUCT IN CITY PUBLIC PARKING LOTS AND FACILITIES), AND 12.20.067 (CONDUCT ON PUBLIC STREETS AND SIDEWALKS)

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2260, 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

Enhancing Public Safety

Protecting the Environment

REPORT NARRATIVE:

On September 6, 2017, the City Council introduced Ordinance No. 2260 New Series, by the following roll call vote: AYES: Carr, Constantine, Spring, Robinett Jachimowicz, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

This ordinance was introduced in order to regulate undesirable activities in Morgan Hill parking lots and the parking structure and to clarify regulations relating to the launching or landing of unmanned aircraft (drones) in City parks.

Streets, Public Facilities, and Parking Lots

The Code's section that currently addresses activities on public property is Section 12.20.060 which specifically addresses activities in parks. This ordinance adds additional parallel sections that specifically address streets, public facilities, and parking lots. This approach allows the language in each section to remain straightforward and easy to understand. With regard to the parking section, 12.20.064, the Police Department specifically recommended the inclusion of these restrictions in order to

address some of the problems they have witnessed in the Structure including loitering, smoking, climbing, and riding skateboards and bicycles.

Drones

The Code currently is somewhat ambiguous when it comes to drone use. While using model aircraft is prohibited in parks, most drone users wouldn't consider their drone to be a model aircraft and wouldn't necessarily believe that drone use is prohibited in parks. Furthermore, use on streets, facilities, and parking is currently not addressed. Since most drone "use" occurs in airspace above both private and public lands and is generally outside of the City's jurisdiction, City regulations should focus on the launching and landing of drones. To balance the interests of local hobbyists with public safety, staff is proposing that drone take offs and landings be allowed in certain parks, and prohibited on streets, public buildings and facilities, and parking lots unless the use in these areas was allowed as a component of a special use permit or facility rental. Initially, staff recommends that the City's largest parks, Community and Galvan, be designated as the only parks where drone use is allowed.

COMMUNITY ENGAGEMENT: Consult

Staff convened a broadly publicized community meeting to focus on drone use on public properties. Nine community members attended and the attendees included seven recreational drone operators and two drone-curious residents. No individuals opposed to drone use attended. The major takeaways from this meeting were:

- Most operators prefer flying in wide-open spaces
- Take-offs and landings can occur in relatively small areas
- The City should consider exempting commercial operators from the proposed ordinance

The meeting attendees recommended several refinements to the City's draft regulations which have been incorporated into the recommended ordinance.

ALTERNATIVE ACTIONS:

None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council has not recently revised the Code in this area. The Parks and Recreation Commission (PRC) considered the use of drones in public parks at its meeting on August 15th. The majority of the PRC was not supportive of drone use in public parks and voted to recommend that staff conduct further study on options the City has available to limit drone use in private airspace and to require the permitting or registration of drones in Morgan Hill. This type of regulation and permitting goes beyond the purview of the Community Services Department and would need to be led by the Police Department. At this time, the Police Department believes that drone use is not a high public safety concern and recommends that the City's public safety resources should not be dedicated to this activity. Instead, the Police Department will continue to monitor resident concerns in this area and respond when appropriate. State law already provides the Police Department with the legal tools to charge drone users who are inappropriately invading the privacy of others.

The ordinance supports the PRC recommendations in most areas by not allowing the launching and landing of drones in facilities, parking lots, streets, and sidewalks. The ordinance would allow drones in these areas with a permit, which is designed to provide controlled use at the Outdoor Sports Center and as a carefully-considered component of special events or facility rentals. The proposed ordinance would, however, allow the limited use at specific parks. Should the use of drones at Galvan and Community Park lead to any public safety issues, the Code would allow for the use of drones in the parks to be eliminated quickly.

FISCAL AND RESOURCE IMPACT:

There are no fiscal impacts from the recommended action and no budget adjustment is requested. Addressing activities on public property is an activity included in the work program of the Community Services Department.

CEQA (California Environmental Quality Act):**Categorical Exemption**

The activities described in this staff report are categorically exempt under CEQA, specifically pursuant to Section 15301 of the CEQA Guidelines (Existing Facilities), as the subject work involves the permitting, leasing, licensing, or minor alteration of existing City facilities.

LINKS/ATTACHMENTS:

1. 2260 Activities on public property

ORDINANCE NO. 2260, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL RENAMING CHAPTER 12.20 (CITY PARKS AND RECREATION BUILDINGS) AND SECTION 12.20.020 (PARK USE – GENERAL PROVISIONS) AND AMENDING SECTIONS 12.20.010 (DEFINITIONS) AND 12.20.060 (CONDUCT IN PARKS – GENERALLY) AND 12.20.80 (ACTIVITIES OR ACTIONS REQUIRING PRIOR APPROVAL FROM THE CITY) AND ADDING SECTIONS 12.20.062 (CONDUCT IN PUBLIC BUILDINGS AND FACILITIES), 12.20.064 (CONDUCT IN CITY PUBLIC PARKING LOTS AND FACILITIES), AND 12.20.067 (CONDUCT ON PUBLIC STREETS AND SIDEWALKS)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Findings.

- a. The City of Morgan Hill currently does not have provisions pertaining to conduct in Public Buildings and Facilities, conduct in Public Parking Lots and Facilities, and conduct in Public Streets and Sidewalks.
- b. The City of Morgan Hill is continuing to grow and develop and the need to promote and enforce safe behavior is of the utmost importance.
- c. To ensure individuals can safely enjoy City of Morgan Hill public facilities, additional provisions are desired.

Section 2. Declaration of Purpose and Intent.

- a. The purpose of this Ordinance is to amend the City of Morgan Hill’s Chapter 12.20 to include more public spaces and public facilities. The ordinance’s purpose is to improve and promote safe behaviors in City locations, including parks, facilities, streets and parking lots. The provisions listed shall provide opportunities for individuals to pursue and enjoy leisure activities and to assure the general welfare of the community.
- b. This Ordinance amends current Ordinance with the intent to monitor and enforce positive conduct in Public Spaces.

Section 3. Chapter 12.20 is hereby renamed “ACTIVITIES ON CITY PARKS, STREETS, PARKING FACILITIES, AND PUBLIC FACILITIES”

Section 4. Section 12.20.010 (Definitions) of Chapter 12.20 (Activities on City Parks, Streets, Parking Facilities, and Buildings) of Title 12 (Streets, Sidewalks and Public Places) is hereby amended in its entirety to read as follows:

“12.20.010 - Definitions

Whenever the following words and phrases are used in this chapter they shall have the meanings ascribed to them in this section:

- A. "City" refers to the city of Morgan Hill, California.
- B. "Park" means a park, playground, open space area, trail, or any other area, or grounds in the city, owned or used by the city and devoted to active or passive recreation including parking lots constructed directly in and around the park to serve the customers of the park.
- C. "Person" means any person, firm, partnership, association, corporation, company or organization of any kind.
- D. "Vehicle" means any wheeled conveyance, whether motor-powered or drawn except for wheelchairs and vehicles in the service of the city.
- E. "Unmanned Aircraft" means an aircraft weighing less than 55 pounds, including everything that is onboard or otherwise attached to the aircraft, that can be flown without the possibility of direct human intervention from within or on the aircraft.
- F. "FAA" refers to Federal Aviation Administration.
- G. "Public Building and Facility" means City-owned buildings including general governmental buildings, recreation centers, public service centers and any other building used by the city for public purposes including parking lots constructed directly around the City-owned building to serve the customers of the building.
- H. "Recreation Center" means a public building primarily dedicated for recreation purposes.
- I. "Public Parking Lots and Parking Facilities" means a City-owned parking lot or parking facility constructed to provide parking to a general area of the City that isn't primarily a "Park" or "Public Building" as defined. "

Section 5. Section 12.20.020 (Park use-General provisions) of Chapter 12.20 (Activities on City Parks, Streets, Parking Facilities, and Buildings) of Title 12 (Streets, Sidewalks and Public Places) is hereby renamed and amended in its entirety to read as follows

“12.20.020 – General provisions

The provisions of this chapter shall apply to all parks, public facilities, and public places in the city to provide opportunities for individuals to pursue and enjoy leisure activities and to assume the general welfare of the community.”

Section 6. Section 12.20.060 (Conduct in Parks - Generally) of Chapter 12.20 (Activities on City Parks, Streets, Parking Facilities, and Buildings) of Title 12 (Streets, Sidewalks and Public Places) is hereby amended in its entirety to read as follows:

“12.20.060 - Conduct in parks—Generally.

No person in a park shall do any of following:

A. Damage to Park Property. Willfully mark, deface, disfigure, injure, tamper with or displace or remove any buildings, bridges, tables, benches, fireplaces, railings, signs, markers, monuments, trash receptacles, paving or paving materials, water lines, or other public utilities or part or appurtenances whatsoever, either real or personal;

B. Use of Restrooms. If over the age of six years, use restrooms and washrooms designated for the opposite sex, unless disabled or handicapped and in need of assistance;

C. Removal of Vegetation. Dig or remove any soil, rock, stones, trees, shrubs or plants, down timber or other wood or materials, or make any excavation by tool, equipment, blasting or other means or agency;

D. Damage to Vegetation. Damage, cut, carve, transplant or remove any tree or plant, or injure the bark, or pick the flowers or seeds of any tree or plant. Nor shall any person attach any rope, wire or other contrivance to any tree or plant. No person shall dig in, or otherwise disturb any grass area, or in any way injure or impair the natural beauty or usefulness of any areas;

E. Climbing, Standing Sitting. Climbing, standing or sitting on trees, monuments, buildings or walls, vases, fountains, railing, fence or upon any other property not designated or customarily used for such purposes;

F. Hunting Animals, Reptiles or Birds. Hunt, molest, frighten, kill, trap, chase, tease, shoot or throw missiles at any animal, reptile or bird; nor shall any person remove or have in his/her possession the young of any animal, or the eggs or nest or young of any reptile or bird;

G. Drinking of Alcoholic Beverages. Drink alcoholic beverages in parks except where a special permit for this activity has been issued by the City;

H. Glass Bottles. Bring and/or dispose of glass bottles into the park unless specifically authorized in a permit issued pursuant to the provisions of Chapter 12.16 of this code;

I. Under the Influence of Alcohol or Drugs. Enter or remain in a park while under the influence of an intoxicating liquor or any drug;

J. Unauthorized Gambling. Play, bet at or against, or wager on for money, chips, shell, credit or any other representative of value any game that is prohibited by the Penal Code of the state of California;

K. Possession of Firearms, Weapons. Use, carry or possess firearms of any description, or air rifles, spring guns, bows and arrows, slings, or any other forms of weapons potentially dangerous to wildlife or human safety. Shooting into park areas from beyond park boundaries is prohibited;

L. Pollution of Waters. Throw, discharge or otherwise place or cause to be placed in the waters of any fountain, pond, lake, stream, bay or other body of water in or adjacent to any park or any tributary, stream, storm sewer or drain flowing into such waters, any substance, matter or thing, liquid or solid, which will or may result in the pollution of such waters;

M. Disposal of Waste, Rubbish. Dump, deposit or leave any bottles, broken glass, ashes, paper, boxes, cans, refuse or trash on the grounds thereof. Such items shall be placed in the proper receptacles where these are provided; and where such receptacles are not provided, all such rubbish or waste shall be carried away from the park by the person responsible for its presence, and properly disposed of elsewhere;

N. Public Bathing, Swimming. Swim, bathe, wade in or pollute the water of any fountain, pond, lake or stream not specifically provided for that purpose and so posted. Swimming in the nude or nude sunbathing is prohibited anywhere in a park. For the purposes of this section, "nude" means exposure of any part of the genitals or full exposure of the breast in the case of women;

O. Overnight Camping. Camp or park overnight except under conditions provided for under Section 12.20.080 of this chapter;

P. Possession of Fireworks. Bring, possess or set off, or otherwise cause to explode or discharge or burn, any firecrackers, torpedoes, rockets or other fireworks or explosives of flammable material or discharge them or throw them into any such area from land or any roadway adjacent thereto. This prohibition includes any substance, compound, mixture or articles that, in conjunction with any other substance or compound, would be dangerous from any of the foregoing standpoints. This prohibition also includes fireworks that may otherwise be legal to possess within this state;

Q. Fires. Make or kindle a fire for any purpose except at places provided for such purpose;

R. Animals. Except as otherwise regulated by law, lead, ride, drive, keep or let loose any animal, reptile or fowl of any kind on any park facility unless under proper control by the animal's owner or attendant. The owner shall be responsible for any damage or injury that may be caused by the animal;

S. Powered Model Airplanes, Watercraft, or Rockets. Use powered model airplanes, watercraft, or rockets at any time;

T. Powered Aircraft, Cars, or Trucks. Use powered aircraft (that are not airplanes), cars, or trucks in a manner that is dangerous, negligent, careless, reckless or that otherwise poses a risk of harm, danger or injury to life or property or in a manner which may interfere, in any

way, with another person or entity's right to privacy, right to quiet enjoyment of his/her property, business operations or recreational activities;

U. Unmanned Aircraft. Use unmanned aircraft in a manner that is inconsistent with the state or federal law, including FAA regulations, or at a park not designated for unmanned aircraft use by the City Manager. Takeoff and/or land unmanned aircraft before 8 am or after sunset. Operate unmanned aircraft within the City to capture, record, or transmit any visual image or audio recording of any persons or private real property located in the City under circumstances in which the subject person or owner of the subject real property has a reasonable expectation of privacy (including, but not limited to, inside a private residence or office, inside a hotel room, and inside of an enclosed yard);

V. Golf or Archery. Play or practice or use golf clubs or practice archery;

W. Feed Nondomestic Animals. Feeding nondomestic animals any food, including breads, seeds, nuts or other foods as many cause unintentional harm, illness, or death;

X. Use of Illegal Drugs. Use any controlled substance in a manner that is prohibited under state or federal law;

Y. Smoking. Engage in smoking activities as defined by Section 8.44.020 (11) of the Morgan Hill Municipal Code."

Section 7. Section 12.20.062 (Conduct in Public Buildings and Facilities) of Chapter 12.20 (Activities on City Parks, Streets, Parking Facilities, and Buildings) of Title 12 (Streets, Sidewalks and Public Places) is hereby added as follows:

"12.20.062 - Conduct in Public Buildings and Facilities.

No person at a Public Building or Facility shall do any of following:

A. Damage to Property. Willfully mark, deface, disfigure, injure, tamper with or displace or remove any buildings, bridges, tables, benches, fireplaces, railings, signs, markers, monuments, furniture, trash receptacles, paving or paving materials, water lines, or other public utilities or part or appurtenances whatsoever, either real or personal;

B. Removal of Vegetation. Dig or remove any soil, rock, stones, trees, shrubs or plants, down timber or other wood or materials, or make any excavation by tool, equipment, blasting or other means or agency;

C. Damage to Vegetation. Damage, cut, carve, transplant or remove any tree or plant, or injure the bark, or pick the flowers or seeds of any tree or plant. Nor shall any person attach any rope, wire or other contrivance to any tree or plant. No person shall dig in, or otherwise disturb any grass area, or in any way injure or impair the natural beauty or usefulness of any areas;

D. Climbing, Standing, Sitting. Climbing, standing or sitting on trees, monuments, buildings or walls, vase, fountain, railing, fence or upon any other property not designated or customarily used for such purposes;

E. Hunting Animals, Reptiles or Birds. Hunt, molest, frighten, kill, trap, chase, tease, shoot or throw missiles at any animal, reptile or bird; nor shall any person remove or have in his/her possession the young of any animal, or the eggs or nest or young of any reptile or bird;

F. Drinking of Alcoholic Beverages. Drink alcoholic beverages in facilities except when the consumption is approved as part of a facility rental or permit;

G. Use of Illegal Drugs. Use any controlled substance in a manner that is prohibited under state or federal law;

H. Smoking. Engage in smoking activities as defined by Section 8.44.020 (11) of the Morgan Hill Municipal Code;

I. Unauthorized Gambling. Play, bet at or against, or wager on for money, chips, shell, credit or any other representative of value any game that is prohibited by the Penal Code of the state of California;

J. Possession of Firearms, Weapons. Use, carry or possess firearms of any description, or air rifles, spring guns, bows and arrows, slings, or any other forms of weapons potentially dangerous to wildlife or human safety.

K. Pollution of Waters. Throw, discharge or otherwise place or cause to be placed in the waters of any fountain, pond, lake, stream, bay or other body of water in or adjacent to any park or any tributary, stream, storm sewer or drain flowing into such waters, any substance, matter or thing, liquid or solid, which will or may result in the pollution of such waters;

L. Disposal of Waste, Rubbish. Dump, deposit or leave any bottles, broken glass, ashes, paper, boxes, cans, refuse or trash on the grounds thereof. Such items shall be placed in the proper receptacles where these are provided; and where such receptacles are not provided, all such rubbish or waste shall be carried away from the facility by the person responsible for its presence, and properly disposed of elsewhere;

M. Public Bathing, Swimming. Swim, bathe, wade in or pollute the water of any fountain, not specifically provided for that purpose and so posted. Swimming in the nude or nude sunbathing is prohibited anywhere in the facility. For the purposes of this section, "nude" means exposure of any part of the genitals or full exposure of the breast in the case of women;

N. Overnight Camping. Camp or park overnight except under conditions provided for under Section 12.20.080 of this chapter;

O. Possession of Fireworks. Bring, possess or set off, or otherwise cause to explode or discharge or burn, any firecrackers, torpedoes, rockets or other fireworks or explosives of

flammable material or discharge them or throw them into any such area from land or any roadway adjacent thereto. This prohibition includes any substance, compound, mixture or articles that, in conjunction with any other substance or compound, would be dangerous from any of the foregoing standpoints. This prohibition also includes fireworks that may otherwise be legal to possess within this state;

P. Fires. Make or kindle a fire for any purpose except at places provided for such purpose;

Q. Animals. Except as otherwise regulated by law, lead, ride, drive, keep or let loose any animal, reptile or fowl of any kind at any facility unless under proper control by the animal's owner or attendant. The owner shall be responsible for any damage or injury that may be caused by the animal;

R. Animals at Recreation Centers. Possess animals within the indoor areas of any recreation center, within the fenced areas of the Aquatics Center, or within the fenced areas of the Outdoor Sports Center except for service animals or when the possession of the animal is approved as part of a facility rental or permit;

S. Powered Model Airplanes, Watercraft, or Rockets. Use powered model airplanes, watercraft, or rockets at any time;

T. Powered Aircraft, Cars, or Trucks. Use powered aircraft (that are not airplanes), cars, or trucks in a manner that is dangerous, negligent, careless, reckless or that otherwise poses a risk of harm, danger or injury to life or property or in a manner which may interfere, in any way, with another person or entity's right to privacy, right to quiet enjoyment of his/her property, business operations or recreational activities;

U. Unmanned Aircraft. Use of unmanned aircraft except when approved as part of a facility rental or permit;

V. Golf or Archery. Play or practice or use golf clubs or practice archery;

W. Feed Nondomestic Animals. Feeding nondomestic animals any food, including breads, seeds, nuts or other foods as many cause unintentional harm, illness, or death.

X. Ride-on Wheeled Vehicles. Ride or use bicycles, skateboards, roller skates, in-line skates, or scooters;"

Section 8. Section 12.20.064 (Conduct in City Public Parking Lots and Parking Facilities) of Chapter 12.20 (Activities on City Parks, Streets, Parking Facilities, and Buildings) of Title 12 (Streets, Sidewalks and Public Places) is hereby added as follows:

"12.20.064 - Conduct in City Public Parking Lots and Parking Facilities.

No person at a City Public Parking Lot or Parking Facility shall do any of following:

A. Damage to Property. Willfully mark, deface, disfigure, injure, tamper with or displace or remove any buildings, bridges, tables, benches, fireplaces, railings, signs, markers, monuments, trash receptacles, paving or paving materials, water lines, or other public utilities or part or appurtenances whatsoever, either real or personal;

B. Loitering. Remain present in a City parking lot for any other purpose than to travel to and from a vehicle parked within the parking lot;

C. Climbing, Standing, Sitting. Climbing, standing or sitting on walls, ledges, railings, rooftops, parapets, fences or upon any other property not designated for such purposes;

D. Ride-on Wheeled Vehicles. Ride or use bicycles, skateboards, roller skates, in-line skates, or scooters;

E. Hunting Animals, Reptiles or Birds. Hunt, molest, frighten, kill, trap, chase, tease, shoot or throw missiles at any animal, reptile or bird; nor shall any person remove or have in his/her possession the young of any animal, or the eggs or nest or young of any reptile or bird;

F. Drinking of Alcoholic Beverages. Drink alcoholic beverages except when the consumption is approved as part of a facility rental or permit;

G. Use or Consumption of Illegal Drugs. Use any controlled substance in a manner that is prohibited under state or federal law;

H. Smoking. Engage in smoking activities as defined by Section 8.44.020 (11) of the Morgan Hill Municipal Code;

I. Unauthorized Gambling. Play, bet at or against, or wager on for money, chips, shell, credit or any other representative of value any game that is prohibited by the Penal Code of the state of California;

J. Possession of Firearms, Weapons. Use, carry or possess firearms of any description, or air rifles, spring guns, bows and arrows, slings, or any other forms of weapons potentially dangerous to wildlife or human safety.

K. Pollution of Waters. Throw, discharge or otherwise place or cause to be placed in the waters of any fountain, pond, lake, stream, bay or other body of water in or adjacent to any parking lot or facility or any tributary, stream, storm sewer or drain flowing into such waters, any substance, matter or thing, liquid or solid, which will or may result in the pollution of such waters;

L. Disposal of Waste, Rubbish. Dump, deposit or leave any bottles, broken glass, ashes, paper, boxes, cans, refuse or trash on the grounds thereof. Such items shall be placed in the proper receptacles where these are provided; and where such receptacles are not provided, all such rubbish or waste shall be carried away from the facility by the person responsible for its presence, and properly disposed of elsewhere;

M. Overnight Camping. Camp overnight except under conditions provided for under Section 12.20.080 of this chapter;

N. Possession of Fireworks. Bring, possess, or set off, or otherwise cause to explode or discharge or burn, any firecrackers, torpedoes, rockets or other fireworks or explosives of flammable material or discharge them or throw them into any such area from land or any roadway adjacent thereto. This prohibition includes any substance, compound, mixture or articles that, in conjunction with any other substance or compound, would be dangerous from any of the foregoing standpoints. This prohibition also includes fireworks that may otherwise be legal to possess within this state;

O. Fires. Make or kindle a fire for any purpose except at places provided for such purpose;

P. Animals. Except as otherwise regulated by law, lead, ride, drive, keep or let loose any animal, reptile or fowl of any kind at any facility unless under proper control by the animal's owner or attendant. The owner shall be responsible for any damage or injury that may be caused by the animal;

Q. Powered Model Airplanes or Rockets. Use powered model airplanes or rockets at any time;

R. Powered Aircraft, Cars, or Trucks. Use powered aircraft (that are not airplanes), cars, or trucks in a manner that is dangerous, negligent, careless, reckless or that otherwise poses a risk of harm, danger or injury to life or property or in a manner which may interfere, in any way, with another person or entity's right to privacy, right to quiet enjoyment of his/her property, business operations or recreational activities;

S. Unmanned Aircraft. Use unmanned aircraft except when approved as part of a facility rental or permit;

T. Golf or Archery. Play or practice or use golf clubs or practice archery;

U. Removal of Vegetation. Dig or remove any soil, rock, stones, trees, shrubs or plants, down timber or other wood or materials, or make any excavation by tool, equipment, blasting or other means or agency;

V. Damage to Vegetation. Damage, cut, carve, transplant or remove any tree or plant, or injure the bark, or pick the flowers or seeds of any tree or plant. Nor shall any person attach any rope, wire or other contrivance to any tree or plant. No person shall dig in, or otherwise disturb any grass area, or in any way injure or impair the natural beauty or usefulness of any areas."

Section 9. Section 12.20.067 (Conduct on Public Streets and Sidewalks) of Chapter 12.20 (Activities on City Parks, Streets, Parking Facilities, and Buildings) of Title 12 (Streets, Sidewalks and Public Places) is hereby added as follows:

“12.20.067 - Conduct on City Public Streets and Sidewalks.

No person on a public street or sidewalk shall do any of following:

A. Damage to Property. Willfully mark, deface, disfigure, injure, tamper with or displace or remove any buildings, bridges, tables, benches, fireplaces, railings, signs, markers, monuments, trash receptacles, paving or paving materials, water lines, or other public utilities or part or appurtenances whatsoever, either real or personal;

B. Removal of Vegetation. Dig or remove any soil, rock, stones, trees, shrubs or plants, down timber or other wood or materials, or make any excavation by tool, equipment, blasting or other means or agency;

C. Damage to Vegetation. Damage, cut, carve, transplant or remove any tree or plant, or injure the bark, or pick the flowers or seeds of any tree or plant. Nor shall any person attach any rope, wire or other contrivance to any tree or plant. No person shall dig in, or otherwise disturb any grass area, or in any way injure or impair the natural beauty or usefulness of any areas;

D. Climbing, Standing Sitting. Climbing, standing or sitting on trees, monuments, buildings or walls, vase, fountain, railing, fence or upon any other property not designated or customarily used for such purposes;

E. Hunting Animals, Reptiles or Birds. Hunt, molest, frighten, kill, trap, chase, tease, shoot or throw missiles at any animal, reptile or bird; nor shall any person remove or have in his/her possession the young of any animal, or the eggs or nest or young of any reptile or bird;

F. Drinking of Alcoholic Beverages. Drink alcoholic beverages except where a special permit for this activity has been issued by the city manager;

G. Glass Bottles. Bring and/or dispose of glass bottles unless specifically authorized in a permit issued pursuant to the provisions of Chapter 12.16 of this code;

H. Under the Influence of Alcohol or Drugs. Enter or remain while under the influence of an intoxicating liquor or any drug;

I. Unauthorized Gambling. Play, bet at or against, or wager on for money, chips, shell, credit or any other representative of value any game that is prohibited by the Penal Code of the state of California;

J. Possession of Firearms, Weapons. Use, carry or possess firearms of any description, or air rifles, spring guns, bows and arrows, slings, or any other forms of weapons potentially dangerous to wildlife or human safety. Shooting onto street or sidewalk areas from other areas is prohibited;

K. Pollution of Waters. Throw, discharge or otherwise place or cause to be placed in the waters of any fountain, pond, lake, stream, bay or other body of water in or adjacent to a public street or sidewalk or any tributary, stream, storm sewer or drain flowing into such waters, any substance, matter or thing, liquid or solid, which will or may result in the pollution of such waters;

L. Disposal of Waste, Rubbish. Dump, deposit or leave any bottles, broken glass, ashes, paper, boxes, cans, refuse or trash on the grounds thereof. Such items shall be placed in the proper receptacles where these are provided; and where such receptacles are not provided, all such rubbish or waste shall be carried away by the person responsible for its presence, and properly disposed of elsewhere;

M. Public Bathing, Swimming. Swim, bathe, wade in or pollute the water of any fountain, pond, lake or stream not specifically provided for that purpose and so posted. Swimming in the nude or nude sunbathing is prohibited anywhere on public streets and sidewalks. For the purposes of this section, "nude" means exposure of any part of the genitals or full exposure of the breast in the case of women;

N. Overnight Camping. Camp overnight except under conditions provided for under Section 12.20.080 of this chapter;

O. Possession of Fireworks. Bring, possess or set off, or otherwise cause to explode or discharge or burn, any firecrackers, torpedoes, rockets or other fireworks or explosives of flammable material or discharge them or throw them into any such area from land or any roadway adjacent thereto. This prohibition includes any substance, compound, mixture or articles that, in conjunction with any other substance or compound, would be dangerous from any of the foregoing standpoints. This prohibition also includes fireworks that may otherwise be legal to possess within this state;

P. Fires. Make or kindle a fire for any purpose except at places provided for such purpose;

Q. Animals. Except as otherwise regulated by law, lead, ride, drive, keep or let loose any animal, reptile or fowl of any kind unless under proper control by the animal's owner or attendant. The owner shall be responsible for any damage or injury that may be caused by the animal;

R. Powered Model Airplanes, Watercraft, or Rockets. Use powered model airplanes, watercraft, or rockets at any time;

S. Powered Aircraft, Cars, or Trucks. Use powered aircraft (that are not airplanes), cars, or trucks in a manner that is dangerous, negligent, careless, reckless or that otherwise poses a risk of harm, danger or injury to life or property or in a manner which may interfere, in any way, with another person or entity's right to privacy, right to quiet enjoyment of his/her property, business operations or recreational activities;

T. Unmanned Aircraft. Use unmanned aircraft except when approved as part of a facility rental or permit;

U. Golf or Archery. Play or practice or use golf clubs or practice archery;

V. Feed Nondomestic Animals. Feeding nondomestic animals any food, including breads, seeds, nuts or other foods as many cause unintentional harm, illness, or death.”

Section 10. Section 12.20.070 (Use of bicycles and vehicles in parks) of Chapter 12.20 (Activities on City Parks, Streets, Parking Facilities, and Buildings) of Title 12 (Streets, Sidewalks and Public Places) is hereby renamed and amended in its entirety to read as follows:

“12.20.070 - Use of bicycles and vehicles in parks, City Parking Lots and City Facilities.

No person shall do any of the following in a park, City parking lot, or City facility:

A. Compliance With Vehicle Code. Fail to comply with all applicable provisions of the Vehicle Code of the state in regard to equipment and operation of vehicles, together with such regulations as are contained in this chapter and any other ordinances of the city regulating traffic;

B. Obedience to Traffic Officers, Peace Officers and their designees authorized to enforce the Vehicle Code, or Park Employees. Fail to obey all traffic officers, peace officers and their designees, and park employees who are hereafter authorized and instructed to direct traffic in the parks, City parking lot and City facilities, in accordance with the provisions of this chapter and such supplementary regulations as may be issued by the city;

C. Observance of Traffic Regulations. Fail to observe carefully all traffic signs indicating speed, direction, caution, stopping or parking, and all other signs posted for proper control and to safeguard life and property;

D. Excessive Speed. Ride or drive a vehicle at a rate of speed exceeding fifteen miles per hour;

E. Parking Areas. Park a vehicle in other than an established or designated parking area, and such use shall be in accordance with the posted directions there, and with the instructions of any attendant who may be present;

F. Vehicle Driveways and Access Drive. Drive any vehicle on any area except paved roads or parking areas, or such other areas as may be designated as temporary parking areas by the city;

G. Bicycle Pathway. Leave a bicycle lying on the pathway or paving, or in any place or position where other persons may cause injury.”

Section 11. Section 12.20.080 (Activities or Actions Requiring Prior Approval From The City) of Chapter 12.20 (Activities on City Parks, Streets, Parking Facilities, and Buildings) of Title 12 (Streets, Sidewalks and Public Places) is hereby amended in its entirety to read as follows:

“12.20.080 – Activities or actions requiring prior approval from the city.

The following activities require prior approval and/or a special permit:

A. Picnic Area Reservations. Reservations for any portion of the picnic areas, or any of the park buildings or structures for the purpose of holding an activity to the exclusion of other persons, or for public admission;

B. Sale of Articles. Expose or offer for sale any article, service, or thing; nor shall she/he station or place any stand, cart or vehicle for the transportation, sale or display of any such article or thing;

C. Announcements, Advertisements of Articles for Sale. Announce, advertise or call to the public attention in any way to any article or service for sale or hire;

D. Post Signs. Paste, glue, tack or otherwise post any sign, placard, advertisement or inscription;

E. Construct Temporary Building, Structure. Construct or erect any building or structure of whatever kind, whether permanent or temporary in character, or run or string any public service utility into, upon or across such lands;

F. Conduct, Advertise Professional Pyrotechnic Displays. Conduct, advertise, or plan for any professional pyrotechnic display;

G. Plan Activities After Operational Hours. Plan or conduct any activity that exceeds the operational hours of the park, parking lot, or public building;

H. Chemical Toilets. Temporary use of chemical toilets.”

Section 12. Severability

If any section, subsection, sentence, clause or phrase in this Ordinance is for any reason held invalid, the validity of the remainder of the Ordinance will not be affected. The city council hereby declares it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, or phrases or is declared invalid.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 6th DAY OF SEPTEMBER 2017, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 27th DAY OF SEPTEMBER 2017, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

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

APPROVED:

STEVE TATE, Mayor

ATTEST:

IRMA TORREZ, City Clerk

DATE: _____

Effective Date: October 28, 2017

⌘ 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. 2260, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the 27th day of September 2017.

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

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: September 27, 2017

PREPARED BY: Angie Gonzalez, Council Services Assistant
APPROVED BY: City Manager

ADOPT ORDINANCE 2261, NEW SERIES, AN ORDINANCE OF THE CITY OF MORGAN HILL REPEALING ORDINANCE NO. 1398 ENTITLED “FLOOD DAMAGE PREVENTION ORDINANCE” IN ITS ENTIRETY AND CREATING A NEW CHAPTER 15.80 UNDER TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE MORGAN HILL MUNICIPAL CODE ENTITLED “FLOOD DAMAGE PREVENTION”

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2261, 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

REPORT NARRATIVE:

On September 6, 2017, the City Council introduced Ordinance No. 2261 New Series, by the following roll call vote: AYES: Carr, Constantine, Spring, Robinett Jachimowicz, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

The revisions to the Flood Damage Prevention Ordinance were proposed mainly to comply with the updates required from a recent community assistance visit conducted by the Federal Emergency Management Agency (FEMA). The other changes were proposed: a) to conform to the State of California’s Model Floodplain Management Ordinance; b) to allow the City to obtain additional credits through the Community Rating System (CRS) Program of the National Flood Insurance Program (NFIP); c) to assist staff with implementation and enforcement of the regulations; and d) to reorganize certain sections for clarity.

Adoption of Ordinance 2261 will reflect the proposed revisions in a newly created chapter, Chapter 15.80 entitled “Flood Damage Prevention”, under Title 15 (Buildings and Construction) of the city’s Municipal Code.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the proposed revisions to the Flood Damage Prevention Ordinance.

ALTERNATIVE ACTIONS:

None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council has considered and adopted changes to the City's Flood Damage Prevention Ordinance on February 17, 1988 and June 17, 1998.

FISCAL AND RESOURCE IMPACT:

There are no direct fiscal impacts from this item and no budget adjustment is requested. The time spent to prepare this report and revised ordinance is a function of existing land development engineering personnel resources.

CEQA (California Environmental Quality Act):

Not a Project

This ordinance and actions taken hereafter pursuant to this ordinance are considered as organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. 2261 Flood Ordinance

ORDINANCE NO. 2261, NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
REPEALING ORDINANCE NO. 1398 ENTITLED “FLOOD
DAMAGE PREVENTION ORDINANCE” IN ITS ENTIRETY
AND CREATING A NEW CHAPTER 15.80 UNDER TITLE 15
(BUILDINGS AND CONSTRUCTION) OF THE MORGAN
HILL MUNICIPAL CODE ENTITLED “FLOOD DAMAGE
PREVENTION”**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY
ORDAIN AS FOLLOWS:**

SECTION 1: The existing Ordinance No. 1398, adopted June 17, 1998, entitled “Flood Damage Prevention Ordinance” is hereby repealed in its entirety; and,

SECTION 2: The Morgan Hill Municipal Code Chapter 15.80 entitled “Flood Damage Prevention” is hereby adopted to read as follows:

CHAPTER 15.80

FLOOD DAMAGE PREVENTION

Sections:

15.80.010 - Statutory Authorization.

The Legislature of the State of California has in Governmental Code Sections 65302, 65560, and 65800 conferred upon local government the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City Council of the City of Morgan Hill adopts the following floodplain management regulations.

15.80.020 - Findings of Fact.

- A. The flood hazard areas of the City of Morgan Hill are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- B. When floodplains are developed without taking appropriate precautions, flood heights, frequencies, and velocities increase, causing a greater threat to humans, damage to property, destruction of natural floodplain functions and adverse impacts to water quality.
- C. These flood losses are caused by uses that are inadequately elevated, floodproofed, or protected from flood damage. The cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities also contribute to the flood loss.

15.80.030 - Statement of Purpose.

It is the purpose of this chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by legally enforceable regulations applied uniformly throughout the City of Morgan Hill to all publicly and privately owned land within flood prone, mudslide, or flood-related erosion areas. These regulations are designed to:

- A. Protect human life and health;
- B. Minimize expenditure of public money for costly flood control projects;
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. Minimize prolonged business interruptions;
- E. Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines; and streets and bridges located in areas of special flood hazard;
- F. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future blighted areas caused by flood damage;
- G. Ensure that potential buyers are notified that property is in an area of special flood hazard; and
- H. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

15.80.040 - Methods of Reducing Flood Losses.

In order to accomplish its purposes, this chapter includes methods and provisions to:

- A. Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or flood heights or velocities;
- B. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- C. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- D. Control filling, grading, dredging, and other development which may increase flood damage; and
- E. Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

15.80.050 - Definitions.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

“Accessory Structure” means a structure that is either:

1. Solely for the parking of no more than 2 cars; or
2. A small, low cost shed for limited storage, less than 150 square feet and \$1,500 in value.

“Accessory Use” means a use which is incidental and subordinate to the principal use of the parcel of land on which it is located.

“Adversely Affects” means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will increase the water surface elevation of the base flood more than one foot at any point.

“Appeal” means a request for a review of the Floodplain Administrator's interpretation of any provision of this chapter.

“Area of Shallow Flooding” means a designated AO or AH Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

“Area of Special Flood Hazard”: See **“Special Flood Hazard Area (SFHA).”**

“Base Flood” means a flood which has a one percent (1%) chance of being equaled or exceeded in any given year (also called the **“One-Hundred-Year Flood”**). Base flood is the term used throughout this chapter.

“Base Flood Elevation (BFE)” means the elevation shown on the Flood Insurance Rate Map for Zones AE, AH, A1-30, VE and V1-V30 that indicates the water surface elevation resulting from a flood that has a one percent (1%) or greater chance of being equaled or exceeded in any given year.

“Basement” means any area of the building having its lowest floor more than two feet subgrade, i.e., below ground level on all sides.

“Biennial Report” means the report completed by communities participating in the National Flood Insurance Program that describes the community’s progress in the previous two years in implementing floodplain management measures and on its needs for remapping and technical assistance. This report is submitted annually or biennially as determined by the administrator of the National Flood Insurance Program.

“Building”: See **“Structure.”**

“Conditional Letter of Map Revision (CLOMR)” means the comment from the Federal Emergency Management Agency (FEMA) on a proposed project that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA). The letter does not revise an effective Flood Insurance Rate Map (FIRM), it indicates whether the project, if built as proposed, would be recognized by FEMA.

“Crawlspace” means the enclosed area contained inside the foundation walls and below the habitable floor of a structure. Crawlspaces having the lowest floor two feet or less below grade level on all sides shall not be considered a basement.

“Development” means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

“Encroachment” means the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain which may impede or alter the flow capacity of a floodplain.

“Existing Manufactured Home Park or Subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before June 18, 1980.

“Expansion to an Existing Manufactured Home Park or Subdivision” means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

“Flood, Flooding, or Flood Water” means:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters; the unusual and rapid accumulation or runoff of surface waters from any source; and/or mudslides (i.e., mudflows); and
2. The condition resulting from flood-related erosion.

“Flood Boundary and Floodway Map (FBFM)” means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the floodway.

“Flood Insurance Rate Map (FIRM)” means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

“Flood Insurance Study” means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Insurance Rate Map, the Flood Boundary and Floodway Map, and the water surface elevation of the base flood.

“Floodplain or Flood-prone Area” means any land area susceptible to being inundated by water from any source. See **“Flooding.”**

“Floodplain Administrator” is the city official appointed by title to administer and enforce the floodplain management regulations.

“Floodplain Management” means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

“Floodplain Management Regulations” means this chapter and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as grading and erosion control) and other application of police power which control development in flood-prone areas. This term describes federal, state or local regulations in any combination thereof which provide standards for preventing and reducing flood loss and damage.

“Floodproofing” means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents. For guidelines on dry and wet floodproofing, see FEMA Technical Bulletin 1 (Openings in Foundation Walls and Walls of Enclosures, 2008), Technical Bulletin 3 (Non-Residential Floodproofing - Requirements and Certification, 1993), and Technical Bulletin 7 (Wet Floodproofing Requirements, 1993), and subsequent amendments and/or revisions thereto.

1. “Dry floodproofing” means floodproofing measures that are designed to prevent floodwaters from entering a structure. Dry floodproofing techniques may include, but are not limited to, installation of closure and sealants, watertight walls, small floodwalls or levees, flood shields, and watertight doors.
2. “Wet floodproofing” means floodproofing measures that minimize damage to a structure and its contents from floodwater that is allowed into the structure.

“Flood-related erosion” means the collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical level or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusually and unforeseeable event which results in flooding.

“Flood-related erosion area” or “Flood-related erosion prone area” means a land area adjoining the shore of a lake or other body of water, which due to the composition of the shoreline or bank and high water levels or wind-driven currents, is likely to suffer flood-related erosion damage.

“Flood-related erosion area management” means the operation of an overall program of corrective and preventive measures for reducing flood-related erosion damage, including but not limited to emergency preparedness plans, flood-related erosion control works, and floodplain management regulations.

“Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. Also referred to as **“Regulatory Floodway.”**

“Floodway Encroachment Lines” means the lines marking the limits of floodways on federal, state and local floodplain maps.

“Floodway Fringe” is that area of the floodplain on either side of the “Regulatory Floodway” where encroachment may be permitted.

“Fraud and Victimization” as related to Sections 15.80.240, 15.80.245, and 15.80.250, Variances, of this chapter, means that the variance granted must not cause fraud on or victimization of the public. In examining this requirement, the City Council will consider the fact that every newly constructed building adds to government responsibilities and remains a part of the community for fifty to one hundred years. Buildings that are permitted to be constructed below the base flood elevation are subject during all those years to increased risk of damage from floods, while future owners of the property and the community as a whole are subject to all the costs, inconvenience, danger, and suffering that those increased flood damages bring. In addition, future owners may purchase the property, unaware that it is subject to potential flood damage, and can be insured only at very high flood insurance rates.

“Functionally Dependent Use” means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long-term storage or related manufacturing facilities.

“Governing Body” is the local governing unit, i.e., City Council that is empowered to adopt and implement regulations to provide for the public health, safety and general welfare of its citizenry.

“Hardship” as related to Sections 15.80.240, 15.80.245, and 15.80.250, Variances, of this chapter means the exceptional hardship that would result from a failure to grant the requested variance. The City Council requires that the variance be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or

requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

“Highest Adjacent Grade” means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

“Historic Structure,” for floodplain management purposes, means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
4. Individually listed on the city’s master list of historic structures, provided this local inventory is consistent with state-approved or certified historic preservation programs as determined by the Secretary of the Interior or directly by the Secretary of the Interior in states without approved programs.

“Letter of Map Revision (LOMR)” means FEMA's modification to an effective Flood Insurance Rate Map (FIRM), or Flood Boundary and Floodway Map (FBFM), or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA). The LOMR officially revises the FIRM or FBFM, and sometimes the Flood Insurance Study (FIS) report, and when appropriate, includes a description of the modifications. The LOMR is generally accompanied by an annotated copy of the affected portions of the FIRM, FBFM, or FIS report.

“Letter of Map Revision Based on Fill (LOMR-F)” means FEMA's modification of the Special Flood Hazard Area (SFHA) shown on the FIRM based on the placement of fill outside the existing regulatory floodway.

“Levee” means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.

“Levee System” means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accord with sound engineering practices.

“Lowest Floor” means the lowest floor of the lowest enclosed area, including basement. See **“Basement”** definition. An unfinished or flood resistant enclosure below the lowest floor that is

usable solely for parking of vehicles, building access or storage in an area other than a basement area, is not considered a building's lowest floor provided it conforms to the applicable non-elevation design requirements, including, but not limited to:

1. The flood openings standard in Section 15.80.160.C.3;
2. The anchoring standards in Section 15.80.160.A;
3. The construction materials and methods standards in Section 15.80.160.B; and
4. The standards for utilities in Section 15.80.170.

“Manufactured Home” means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

“Manufactured Home Park or Subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale; also see **“Existing Manufactured Home Park or Subdivision.”**

“Market Value” means the current estimated fair market value of a structure, excluding the current estimated fair market value of the land on which the structure is located and the current estimated fair market value of any landscaping, and any detached accessory structures on such land. The current tax assessed value of the structure as provided by the County Tax Assessor’s office shall be used as the market value of the structure where the cost of the proposed improvement to the structure does not exceed forty five percent (45%). In the event the cost of the improvement to the structure exceeds forty five percent (45%) of the current tax assessed value of the structure, the market value shall be determined from an independent appraisal prepared by a qualified professional appraiser using a building cost estimating method recognized by the building construction industry, which shall be reviewed and accepted by the Floodplain Administrator.

“Mean Sea Level” means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

“Mixed-use Structure” means any structure that has only nonresidential uses in areas of the structure at or below the base flood elevation, but has residential uses in areas of the structure above the base flood elevation with access to residential uses dry floodproofed.

“Mudslide” means a condition where there is a river, flow or inundation of liquid mud down a hillside, usually as a result of a dual condition of loss of brush cover and the subsequent accumulation of water on the ground, preceded by a period of unusually heavy or sustained rain.

“Mudslide (i.e., mudflow) prone area” means an area with land surfaces and slopes of unconsolidated material where the history, geology, and climate indicate a potential for mudflow.

“New Construction,” for floodplain management purposes, means structures for which the “start of construction” commenced on or after June 18, 1980, and includes any subsequent improvements to such structures.

“New manufactured Home Park or Subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after June 18, 1980; also see **“Existing Manufactured Home Park or Subdivision.”**

“Obstruction” includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

“One-Hundred-Year Flood, or “100-year Flood”: See **“Base Flood.”**

“Principal Structure” means a structure used for the principal use of the property as distinguished from an accessory use.

“Public Safety and Nuisance” as related to Sections 15.80.240, 15.80.245, 15.80.250, Variances, of this chapter means that the granting of a variance must not result in anything which is injurious to safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

“Recreational Vehicle” means a vehicle which is:

1. Built on a single chassis;
2. Four hundred square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light-duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

“Regulatory Floodway”: See **“Floodway.”**

“Remedy a Violation” means to bring the structure or other development into compliance with State or local floodplain management regulations, or if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other

affected development from flood damages, implementing the enforcement provisions of this chapter or otherwise deterring future similar violations, or reducing State or Federal financial exposure with regard to the structure or other development.

“Repetitive Loss” means flood-related damages sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such event, on the average, equals or exceeds twenty five percent (25%) of the market value of the structure before the damage occurred.

“Riverine” means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

“Sheet Flow Area”: See **“Area of Shallow Flooding.”**

“Special Flood Hazard Area (SFHA)” means an area in the floodplain subject to a one percent (1%) or greater chance of flooding in any given year. It is shown on an FHBM or FIRM as Zone A, AO, A1-A30, AE, A99, or AH.

“Start of Construction” includes substantial improvement and other proposed new development and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty days from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

“Structure” means a walled and roofed building that is principally above ground; this includes a gas or liquid storage tank or a manufactured home.

“Substantial Damage” means:

1. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred; or
2. Flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such event, on the average, equals or exceeds twenty five percent (25%) of the market value of the structure before the damage occurred. This is also known as “repetitive loss.”

“Substantial Improvement or Substantially Improved” means any combination of repairs, reconstruction, rehabilitation, addition, or other proposed new development of a structure taking place during a five-year period, the cumulative cost of which equals or exceeds fifty percent (50%) of the market value of the structure before the "start of construction" of the improvement. For each structure, the five-year period begins on the date of the first improvement or repair of that structure subsequent to the effective date of the ordinance codified in this chapter. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
2. Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

“Variance” means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.

“Violation” means the failure of any structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this chapter is presumed to be in violation until such time as that documentation is provided.

“Water Surface Elevation” means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

“Watercourse” means a lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

15.80.060 - Applicability.

This chapter shall apply to all areas of special flood hazards within the jurisdiction of the City of Morgan Hill.

15.80.070 - Basis for Establishing the Areas of Special Flood Hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in the Flood Insurance Study (FIS) for the City of Morgan Hill dated December 1979 and accompanying Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs) dated June 18, 1980, and all subsequent amendments and/or revisions, are hereby

adopted by reference and declared to be a part of this ordinance. This FIS and attendant mapping is the minimum area of applicability of this ordinance and may be supplemented by studies for other areas which allow implementation of this ordinance and which are recommended to the City Council by the Floodplain Administrator. The study, FIRMs, and FBFMs are on file at the City of Morgan Hill's Development Services Center located at 17575 Peak Avenue, Morgan Hill, CA 95037.

15.80.080 - Compliance.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the term of this chapter and other applicable regulations. Violation of the requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Nothing herein shall prevent the City Council from taking such lawful action as is necessary to prevent or remedy any violation.

15.80.090 - Abrogation and Greater Restrictions.

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

15.80.100 - Interpretation.

In the interpretation and application of this chapter, all provisions shall be

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under state statutes.

15.80.110 - Warning and Disclaimer of Liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the City of Morgan Hill, the city council, any officer or employee thereof, the State of California, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

15.80.115 – Severability.

This chapter and the various parts thereof are hereby declared to be severable. Should any section of this chapter be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the chapter as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

15.80.120 - Establishment of Development Permit.

A development permit shall be obtained before any construction or other development, including manufactured homes, begins within any area of special flood hazard established in Section 15.80.070. Application for a development permit shall be made on forms furnished by the Floodplain Administrator. The applicant shall provide the following minimum information:

- A. Plans in duplicate, drawn to scale, as required showing:
 1. Location, dimensions, and elevation of the area in question, existing or proposed structures, storage of materials and equipment and their location;
 2. Proposed locations of water supply, sanitary sewer, and other utilities;
 3. Grading information showing existing and proposed contours, any proposed fill, and drainage facilities;
 4. Location of the regulatory floodway when applicable;
 5. Base flood elevation information as specified in Section 15.80.070 or Section 15.80.140.C;
 6. Proposed elevation in relation to mean sea level, of the lowest floor (including basement) of all structures - in Zone AO, elevation of highest adjacent grade and proposed elevation of lowest floor of all structures; and
 7. Proposed elevation in relation to mean sea level to which any nonresidential or mixed-use structure will be floodproofed, as required in Section 15.80.160.C.2 and detailed in FEMA Technical Bulletin 3 (Non-Residential Floodproofing - Requirements and Certification, 1993) and subsequent amendments and/or revisions thereto.
- B. Certification from a registered civil engineer or architect that the nonresidential or mixed-use, floodproofed building meets the floodproofing criteria in Section 15.80.160.C.2.
- C. For a crawlspace foundation, location and total net area of foundation openings as required in 15.80.160.C.3 and detailed in FEMA Technical Bulletin 1 (Openings in Foundation Walls and Walls of Enclosures, 2008) and Technical Bulletin 7 (Wet Floodproofing Requirements, 1993) and subsequent amendments and/or revisions thereto.
- D. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
- E. All appropriate certifications listed in Section 15.80.140.E.

15.80.130 - Designation of the Floodplain Administrator.

The City Engineer or his or her designee is appointed to administer, implement, and enforce this chapter by granting or denying development permits in accord with its provisions.

15.80.140 - Duties and responsibilities of the Floodplain Administrator.

The duties and responsibilities of the Floodplain Administrator shall include, but not be limited to the following:

A. Permit Review.

Review all development permit applications to determine whether:

1. Permit requirements of this chapter have been satisfied, including determination of substantial improvement and substantial damage of existing structures;
2. All other required state and federal permits have been obtained;
3. The site is reasonably safe from flooding;
4. The proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated. For purposes of this ordinance, "adversely affects" means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will increase the water surface elevation of the base flood more than one foot at any point within the City of Morgan Hill; and
5. All Letters of Map Revision (LOMRs) for flood control projects are approved prior to the issuance of building permits.

B. Development of Substantial Improvement and Substantial Damage Procedures.

1. Using FEMA publication FEMA 213, "Answers to Questions About Substantially Damaged Buildings," develop detailed procedures for identifying and administering requirements for substantial improvement and substantial damage, to include defining "Market Value."
2. Assure procedures are coordinated with other departments/divisions and implemented by city staff.

C. Review, Use and Development of Other Base Flood Data.

When base flood elevation data has not been provided in accordance with Section 15.80.070, the Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal or state agency, or other source, in order to administer any section in this chapter. Any such information shall be submitted to the City Council for adoption.

All new developments located in an area without a base flood elevation specified on the FIRM shall provide the Floodplain Administrator with a proposed base flood elevation. A base flood elevation shall be obtained using one of two methods from the FEMA publication, FEMA 265, "Managing Floodplain Development in Approximate Zone A

Areas – A Guide for Obtaining and Developing Base (100-year) Flood Elevations” dated July 1995, and subsequent amendments and/or revisions thereto.

At the discretion of the Floodplain Administrator, the applicant may be required to provide a hydrologic and hydraulic engineering analysis that generates base flood elevations and floodway boundaries for the development proposal. The applicant shall be responsible for the peer review costs associated with the Floodplain Administrator’s review of the flood analysis.

D. Notification of Other Agencies.

1. In alteration or relocation of a watercourse within the City of Morgan Hill:
 - a. Notify adjacent communities and the California Department of Water Resources prior to alteration or relocation;
 - b. Submit evidence of such notification to the Federal Emergency Management Agency (FEMA); and
 - c. Assure that the flood-carrying capacity within the altered or relocated portion of said watercourse is maintained.
2. Base Flood Elevation changes due to physical alterations:
 - a. Within six months of information becoming available or project completion, whichever comes first, the Floodplain Administrator shall submit or assure that the permit applicant submits technical or scientific data to FEMA for a Letter of Map Revision (LOMR).
 - b. All LOMRs for flood control projects are approved prior to the issuance of building permits. Building Permits must not be issued based on Conditional Letters of Map Revision (CLOMRs). Approved CLOMRs allow construction of the proposed flood control project and land preparation as specified in the “start of construction” definition.

Such submissions are necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements are based on current data.

3. Changes in corporate boundaries:

Notify FEMA in writing whenever the corporate boundaries have been modified by annexation or other means and include a copy of a map of the community clearly delineating the new corporate limits.

E. Documentation of Floodplain Development.

Obtain and maintain for public inspection and make available as needed the following:

1. Certification required by Section 15.80.160.C.1 and Section 15.80.190 (lowest floor elevations);
2. Certification required by Section 15.80.160.C.2 (elevation or floodproofing of nonresidential and mixed-use structures);
3. Certification required by Sections 15.80.160.C.3 (wet floodproofing standard);
4. Certification of elevation required by Section 15.80.180.A (subdivisions and other proposed development standards);
5. Certification required by Section 15.80.200.B (floodway encroachments);
6. Reports required by Section 15.80.210 (mudflow standards);
7. Maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its biennial report submitted to FEMA.

F. Map Determinations.

Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazard, where there appears to be a conflict between a mapped boundary and actual field conditions. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 15.80.150.

G. Remedial Action.

Take action to remedy violations of this chapter as specified in Section 15.80.080.

H. Biennial Report.

Complete and submit Biennial Report to FEMA.

I. Planning.

Assure city's General Plan is consistent with floodplain management objectives herein.

15.80.150 - Appeals.

The City Council shall hear and decide appeals pursuant to Section 15.80.250 when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this chapter.

Appeals shall be submitted in writing to the Floodplain Administrator by an applicant on an official City application form accompanied by a fee, as established by resolution of the City Council, within ten (10) calendar days of the determination which is the cause for the appeal. The appeal

application shall contain all grounds for the appeal and shall include a statement of the specific facts and all documentation regarding the appeal.

When an appeal has been filed, the Floodplain Administrator shall prepare a report on the matter, including all of the application materials submitted, and schedule the matter for City Council hearing within 90 days of receiving the appeal.

15.80.160 - Standards of Construction.

In all areas of special flood hazards, City permits will not be issued unless plans comply with the following standards:

A. Anchoring.

1. All new construction and substantial improvements shall be adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
2. All manufactured homes shall meet the anchoring standards of Section 15.80.190.

B. Construction Materials and Methods.

All new construction and substantial improvement of structures, including manufactured homes, shall be constructed:

1. With flood resistant materials, and utility equipment resistant to flood damage for areas below the base flood elevation;
2. Using methods and practices that minimize flood damage;
3. With electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding; and
4. If the new construction or substantial improvement is located within Zones AH or AO, it shall be constructed so that there are adequate drainage paths around structures on slopes to guide flood waters around and away from proposed structures.

C. Elevation and Floodproofing. (See Section 15.80.050, Definitions, for "new construction," "substantial damage" and "substantial improvement.")

1. Residential construction.

All new construction or substantial improvements of residential structures shall have the lowest floor, including basement as follows:

- a. In an AO zone, elevated above the highest adjacent grade to a height at least one foot above the depth number specified in feet on the FIRM, or elevated at least three feet above the highest adjacent grade if no depth number is specified.

- b. In an A zone, without base flood elevations specified on the FIRM (unnumbered A zone), elevated at least one foot above the base flood elevation, as determined under Section 15.80.140.C.
- c. In AE, AH and A1-30 zones, elevated at least one foot above the base flood elevation.

Upon the completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered civil engineer or licensed surveyor, and verified by the Floodplain Administrator or city building inspector to be properly elevated. Such certification or verification shall be provided to the Floodplain Administrator.

2. Nonresidential and Mixed-use construction.

All new construction or substantial improvements of nonresidential or mixed-use structures shall either be elevated to conform with Section 15.80.160.C.1 or together with attendant utility and sanitary facilities:

- a. Be floodproofed below the elevation recommended under Section 15.80.160.C.1 so that the structure is watertight with walls substantially impermeable to the passage of water;
- b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
- c. Be certified by a registered civil engineer or architect that the standards of Section 15.80.160.C.2.a and b are satisfied. Such certification shall be provided to the Floodplain Administrator.

3. Flood openings.

All new construction and substantial improvements of structures with fully enclosed areas below the lowest floor (excluding basements) that are usable solely for parking of vehicles, building access or storage, and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must meet or exceed the following minimum criteria:

- a. Be certified by a registered civil engineer or architect; or
- b. For non-engineered openings:
 - 1) Have a minimum of two openings on different sides having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 - 2) The bottom of all openings shall be no higher than one foot above grade;

- 3) Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwater; and
 - 4) Buildings with more than one enclosed area must have openings on exterior walls for each area to allow floodwater to directly enter.
4. Manufactured homes.
 - a. See Section 15.80.190.
 5. Garages and low-cost accessory structures.
 - a. Attached garages.
 - 1) A garage attached to a residential structure, constructed with the garage floor slab below the base flood elevation, must be designed to allow for the automatic entry of floodwaters. See Section 15.80.160.C.3. Areas of the garage below the base flood elevation must be constructed with flood resistant materials. See Section 15.80.160.B.
 - 2) A garage attached to a nonresidential structure must meet the above requirements or be dry floodproofed. For guidance on below-grade parking areas, see FEMA Technical Bulletin 6 (Below-Grade Parking Requirements, 1993), and subsequent amendments and/or revisions thereto.
 - b. Detached garages and accessory structures.
 - 1) “Accessory structures” used solely for parking (two-car detached garages or smaller) or limited storage (small, low-cost sheds), as defined in Section 15.80.050, may be constructed such that its floor is below the base flood elevation, provided the structure is designed and constructed in accordance with the following requirements:
 - i. Use of the accessory structure must be limited to parking or limited storage;
 - ii. The portions of the accessory structure located below the base flood elevation must be built using flood-resistant materials;
 - iii. The accessory structure must be adequately anchored to prevent flotation, collapse and lateral movement;
 - iv. Any mechanical and utility equipment in the accessory structure must be elevated or floodproofed a minimum of one foot above the base flood elevation;
 - v. The accessory structure must comply with the floodway encroachment provisions in Section 15.80.200; and

vi. The accessory structure must be designed to allow for the automatic entry of floodwaters in accordance with Section 15.80.160.C.3.

2) Detached garages and accessory structures not meeting the above standards must be constructed in accordance with all applicable standards in Section 15.80.160.

6. Crawlspace construction.

This sub-section applies to buildings with crawlspaces up to two feet below grade. Below-grade crawlspace construction in accordance with the requirements listed below will not be considered basements.

- a. The building must be designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Crawlspace construction is not allowed in areas with flood velocities greater than five feet per second unless the design is reviewed by a qualified design professional, such as a registered engineer;
- b. The crawlspace is an enclosed area below the base flood elevation and, as such, must have openings that equalize hydrostatic pressures by allowing for the automatic entry and exit of floodwaters. For guidance on flood openings, see FEMA Technical Bulletin 1 (Openings in Foundation Walls and Walls of Enclosures, 2008) and subsequent amendments and/or revisions thereto;
- c. Crawlspace construction is not permitted in V zones. Open pile or column foundations that withstand storm surge and wave forces are required in V zones;
- d. Portions of the building below the base flood elevation must be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any joists, insulation, or other materials that extend below the base flood elevation; and
- e. Any building utility systems within the crawlspace must be elevated a minimum of one foot above base flood elevation or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions.
- f. Requirements for all below-grade crawlspace construction, in addition to the above requirements, to include the following:
 - 1) The interior grade of a crawlspace below the base flood elevation must not be more than two feet below the lowest adjacent exterior grade (LAG), shown as D in figure 3 of FEMA Technical Bulletin 11 (Crawlspace Construction for Buildings Located in Special Flood Hazard Areas, 2001);
 - 2) The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall, must not

exceed four feet at any point, shown as L in figure 3 of FEMA Technical Bulletin 11 (Crawlspace Construction for Buildings Located in Special Flood Hazard Areas, 2001);

- 3) There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace within a reasonable period of time after a flood event, not to exceed seventy two hours; and
- 4) The velocity of floodwaters at the site should not exceed five feet per second for any crawlspace. For velocities in excess of five feet per second, other foundation types should be used.

15.80.170 - Standards for Utilities.

- A. All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate:
 1. Infiltration of floodwaters into the systems; and
 2. Discharge from the systems into floodwaters.
- B. On-site waste disposal systems shall be located to avoid impairment to them, or contamination from them during flooding.

15.80.180 - Standards for Subdivisions and Other Proposed Development.

- A. All new subdivision proposals and other proposed development, including proposals for manufactured home parks and subdivisions, greater than fifty lots or five acres, whichever is the lesser, shall:
 1. Identify the Special Flood Hazard Areas (SFHA) and Base Flood Elevations (BFEs).
 2. Identify the elevations of lowest floors of all proposed structures and pads on the final plans.
 3. If the site is filled above the base flood elevation, the following as-built information for each structure shall be certified by a registered civil engineer or licensed land surveyor and provided as part of an application for a Letter of Map Revision based on Fill (LOMR-F) to the Floodplain Administrator:
 - a. Lowest floor elevation.
 - b. Pad elevation.
 - c. Lowest adjacent grade.
- B. All subdivision proposals and other proposed development shall be consistent with the need to minimize flood damage.

- C. All subdivision proposals and other proposed development shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
- D. All subdivisions and other proposed development shall provide adequate drainage to reduce exposure to flood hazards.

15.80.190 - Standards for Manufactured Homes.

- A. All manufactured homes that are placed or substantially improved, on sites located: (1) Outside of a manufactured home park or subdivision; (2) in a new manufactured home park or subdivision; (3) in an expansion to an existing manufactured home park or subdivision; or (4) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, shall:
 - 1. Within a Special Flood Hazard Area (SFHA) on the city's Flood Insurance Rate Map, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated at least one foot above the base flood elevation and be securely fastened to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
- B. All manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within a Special Flood Hazard Area (SFHA) on the city's Flood Insurance Rate Map that are not subject to the provisions of Section 15.80.190.A will be securely fastened to an adequately anchored foundation system to resist flotation, collapse, and lateral movement, and be elevated so that either the:
 - 1. Lowest floor of the manufactured home is at least one foot above the base flood elevation; or
 - 2. Manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six inches in height above grade.

Upon the completion of the structure, the elevation of the lowest floor including basement shall be certified by a registered civil engineer or licensed land surveyor, and verified by the city building inspector and/or the Floodplain Administrator to be properly elevated. Such certification and verification shall be provided to the Floodplain Administrator.

15.80.195 - Standards for Recreational Vehicles.

- A. All recreational vehicles placed on sites within Zones AE, AH and A1-30 on the city's Flood Insurance Rate Map will either:
 - 1. Be on the site for fewer than one hundred eighty consecutive days; or
 - 2. Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by

quick disconnect type utilities and security devices, and has no permanently attached additions; or

3. Meet the permit requirements of Sections 15.80.120 of this chapter and the elevation and anchoring requirements for manufactured homes in Section 15.80.190.A.

15.80.200 - Floodways.

Since floodways are an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- A. Until a regulatory floodway is adopted, no new construction, substantial development, or other development (including fill) shall be permitted within Zones AE and A1-30, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other development, will not increase the water surface elevation of the base flood more than one foot at any point within the City of Morgan Hill.
- B. Within an adopted regulatory floodway, prohibit encroachments, including fill, new construction, substantial improvement, and other development unless certification by a registered civil engineer is provided demonstrating that the proposed encroachment shall not result in any increase in the base flood levels during the occurrence of the base flood discharge.
- C. If subsections A and B of this section are satisfied, all new construction, substantial improvement, and other proposed new development shall comply with all other applicable flood hazard reduction provisions of Sections 15.80.160, 15.80.170, 15.80.180, 15.80.190, 15.80.195, 15.80.200, 15.80.210, and 15.80.220.

15.80.205 - Engineered Fill.

All proposed developments with engineered fill within a Special Flood Hazard Area (SFHA) shall follow the guidelines for ensuring that structures built on fill are reasonably safe from flooding. See FEMA Technical Bulletin 10 (Ensuring that Structures Built on Fill In or Near Special Flood Hazard Areas are Reasonably Safe From Flooding, 2001), and subsequent amendments and/or revisions thereto.

15.80.210 - Mudslide (i.e., Mudflow) Prone Areas.

- A. The Floodplain Administrator shall review permits for proposed construction of other development to determine if it is proposed within a mudslide area.
- B. Permits shall be reviewed to determine that the proposed site and improvement will be reasonably safe from mudslide hazards. Factors to be considered in making this determination include but are not limited to the:
 1. Type and quality of soils;
 2. Evidence of groundwater or surface water problems;

3. Depth and quality of any fill;
 4. Overall slope of the site; and
 5. Weight that any proposed development will impose on the slope.
- C. Within areas which may have mudslide hazards, the Floodplain Administrator shall require that:
1. A site investigation and further review be made by persons qualified in geology and soils engineering;
 2. The proposed grading, excavations, new construction, and substantial improvement be adequately designed and protected against mudslide damages;
 3. The proposed grading, excavations, new construction, and substantial improvement not aggravate the existing hazard by creating either on-site or off-site disturbances; and
 4. Drainage, planting, watering, and maintenance not endanger slope stability.

15.80.220 - Flood-related Erosion-prone Areas.

- A. The Floodplain Administrator shall require permits for proposed construction and other development within all flood-related erosion-prone areas as known to the community.
- B. Permit applications shall be reviewed to determine whether the proposed site alterations and improvements will be reasonably safe from flood-related erosion and will not cause flood-related erosion hazards or otherwise aggravate the existing hazard.
- C. If a proposed improvement is found to be in the path of flood-related erosion or would increase the erosion hazard, such improvement shall be relocated or adequate protective measures shall be taken to avoid aggravating the existing erosion hazard.
- D. Within flood-related erosion-prone areas, a setback is required for all new development from the ocean, lake, bay, riverfront, or other body of water to create a safety buffer consisting of a natural vegetative or contour strip. This buffer shall be designed according to the flood-related erosion hazard and erosion rate, in relation to the anticipated "useful life" of structures, and depending upon the geologic, hydrologic, topographic, and climatic characteristics of the land. The buffer may be used for suitable open space purposes, such as for agricultural, forestry, outdoor recreation and wildlife habitat areas, and for other activities using temporary and portable structures only.

15.80.240 - Variances.

The issuance of a variance is for floodplain management purposes only. Insurance premium rates are determined by statute according to actuarial risk and will not be modified by the granting of a variance.

The variance criteria set forth in this section of this chapter are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this chapter would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners.

It is the duty of the City Council to help protect its citizens from flooding. This need is so compelling and the implications of the cost of insuring a structure built below flood level are so serious that variances from the flood elevation or from other requirements in the flood ordinance are quite rare. The long-term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided in this ordinance are more detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

A. Variances Requiring City Council Approval.

Requests for a variance shall be submitted in writing to the Floodplain Administrator by an applicant on an official City application form accompanied by all required documentation and a fee, as established by resolution of the City Council.

When a variance request has been filed, the Floodplain Administrator shall prepare a report on the matter, including all of the application materials submitted, and schedule the matter for City Council hearing within 90 days of receiving the variance request.

B. Administrative Variances.

The Floodplain Administrator shall approve or deny an application requesting an administrative variance after receipt of a complete application. Administrative variances may only be granted to existing structures with substantial improvements to allow the structure to deviate from certain higher standards in this chapter that exceed the minimum National Flood Insurance Program standards. Requests for an administrative variance must demonstrate that complying to the higher standards will pose a financial burden and/or will conflict with the city's architectural or aesthetic requirements.

15.80.245 - Conditions for Variances.

- A. Generally, variances may be issued for new construction, substantial improvement, and other proposed new development to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing that the procedures of Sections 15.80.120, 15.80.140, 15.80.160, 15.80.170, 15.80.180, 15.80.190, 15.80.195, 15.80.200, 15.80.205, 15.80.210, and 15.80.220 of this chapter have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

- B. Variances do not need to be issued for any “accessory structures” (as defined in Section 15.80.050) within a special flood hazard area. All accessory structures shall meet the standards in Section 15.80.160.C.5.
- C. Variances shall not be issued within any mapped regulatory floodway if any increase in flood levels during the base flood discharge would result.
- D. Variances shall only be issued upon a determination that the variance is the "minimum necessary" considering the flood hazard, to afford relief. "Minimum necessary" means to afford relief with a minimum of deviation from the requirements of this ordinance. For example, in the case of variances to an elevation requirement, this means that the City Council need not grant permission for the applicant to build at grade, or even to whatever elevation the applicant proposes, but only to that elevation which the City Council believes will both provide relief and preserve the integrity of the local ordinance.
- E. Any applicant to whom a variance is granted by the City Council shall be given written notice over the signature of a city official that:
 - 1. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars for one hundred dollars of insurance coverage; and
 - 2. Such construction below the base flood level increases risks to life and property. A copy of the notice shall be recorded by the Floodplain Administrator in the Office of the Santa Clara County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

The applicant will be required to indemnify and hold harmless the City for any incident which may result from the issuance of the variance.
- F. The Floodplain Administrator will maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its biennial report submitted to the Federal Emergency Management Agency.

15.80.250 - Appeal Board.

The City Council shall act as the appeal board and shall hear and decide the appeals and non-administrative requests for variances from the requirements in this chapter. The appeal or non-administrative variance request shall be considered by the City Council at a public hearing to be held, noticed and conducted in accordance with the provisions in California Government Code Sections 65905(b), and 65091. Consideration shall be limited to the evidence and matters presented in the first instance to the Floodplain Administrator and to the specific grounds of the appeal or variance; provided, however, that the City Council may, by motion duly passed, elect in its discretion to grant a hearing de novo. The applicant shall have the burden of establishing cause why the action appealed from should be altered, reversed or modified, or why the variance should be granted. The decision of the City Council on the appeal or variance request shall be final and shall be effective on the date the decision is rendered.

- A. In passing upon requests for variances, the City Council shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and the:
1. Danger that materials may be swept onto other lands to the injury of others;
 2. Danger of life and property due to flooding or erosion damage;
 3. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the existing individual owner and future owners of the property;
 4. Importance of the services provided by the proposed facility to the community;
 5. Necessity to the facility of a waterfront location, where applicable;
 6. Availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 7. Compatibility of the proposed use with existing and anticipated development;
 8. Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 9. Safety of access to the property in time of flood for ordinary and emergency vehicles;
 10. Expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and
 11. Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water system, and streets and bridges.
- B. Variances shall only be issued upon a:
1. Showing of good and sufficient cause;
 2. Determination that failure to grant the variance would result in exceptional "hardship" (as defined in Section 15.80.050 of this chapter) to the applicant; and
 3. Determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create a nuisance (as defined in Section 15.80.050 - see "Public safety and nuisance"), cause fraud or victimization (as defined in Section 15.80.050) of the public, or conflict with existing local laws or ordinances.
- C. Variances may be issued for new construction, substantial improvements, and other proposed new development necessary for the conduct of a functionally dependent use provided that the provisions of subsections A through D of this section are satisfied and that the structure or other development is protected by methods that minimize flood

damages during the base flood and does not result in additional threats to public safety and does not create a public nuisance.

- D. Upon consideration of the factors of Section 15.80.245.A and the purposes of this chapter, the City Council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter, and as permitted by California Government Code Section 65909.

SECTION 3: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Morgan Hill hereby declares that it would have passed and adopted this Ordinance, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases may be declared invalid or unconstitutional.

SECTION 4: This Ordinance shall take effect thirty (30) days after the date of its passage and adoption. The City Clerk is hereby directed to publish in full or summary this Ordinance pursuant to §36933 of the Government Code in a newspaper of general circulation in the City of Morgan Hill.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 6th DAY OF SEPTEMBER 2017, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 27th DAY OF SEPTEMBER 2017, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

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

APPROVED:

STEVE TATE, Mayor

ATTEST:

IRMA TORREZ, City Clerk

DATE: _____

Effective Date: October 28, 2017

⌘ 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. 2261, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the 27th day of September 2017.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: 2261 Flood Ordinance (1393 : Adopt Ordinance 2261)

DRAFT



Meeting Minutes City Council

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

Wednesday, September 6, 2017 7:00 PM

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

The City Council has adopted a policy that regular meetings shall not continue beyond 11:00 P.M. unless extended by a majority of the City Council.

CALL TO ORDER

Mayor Steve Tate called the meeting to order at 7:00 p.m.

ROLL CALL ATTENDANCE

Minutes Clerk Angie Gonzalez called the roll.

Attendee Name	Title	Status	Arrived
Steve Tate	Mayor	Present	
Larry Carr	Mayor Pro Tem	Present	
Rich Constantine	Council Member	Present	
Caitlin Jachimowicz	Council Member	Present	
Rene Spring	Council Member	Present	

DECLARATION OF POSTING AGENDA

Minutes Clerk Angie Gonzalez declared the posting of the agenda.

Minutes Acceptance: Minutes of Sep 6, 2017 7:00 PM (CONSENT CALENDAR)

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Mayor Pro Tem Carr spoke regarding the South County Regional Wastewater Authority, our wastewater treatment plant that we jointly own with Gilroy. Over the past year as Chair he has worked on approving and putting in solar systems. A wastewater treatment plant is a huge consumer of electricity and so we approved and installed two solar systems on site to help reduce some of those costs. The small system is on line now and the energy offset that system gives to us is the equivalent of the energy use of 47 homes. It will save our organization, in the first year, about \$40,000 and in years 1-10 over half a million dollars. It offsets about 75% of the power that is used for parts of facility. There is also a larger system that has been built on site, it offsets the equivalency of the energy use of 344 homes, saving in year one about \$140,000 and from years 1-10 over two million dollars to the cost of running the plant in Gilroy. It is another way that we are trying to live our values of being greener communities, preserving our environment, and trying to be fiscally responsible with the users' money, in this case, the sewer costs that we pay.

CITY MANAGER'S REPORT

City Manager Steve Rymer recognized two teams for their efforts during the heat wave, he recognized the Morgan Hill Fire Department and the Morgan Hill Police Department. One of the things they did was that they divided up and went to eight different facilities twice a day to do welfare checks during the heat. That really speaks to the dedication of our team, the caring culture that we have in our organization, and the caring culture of the Morgan Hill Community.

He informed us that Cal Fire has taken the lead as a state agency in the fire in Gilroy. Chief Witmer said that response is going great because of the collaboration and mutual aid that we have been receiving. Not only is it Gilroy and Cal Fire, but the Counties of Santa Cruz, Santa Barbara, Alameda, Santa Clara, and Yolo have all sent out personnel to help fight the fire. It really shows that there are times when Morgan Hill and Gilroy have sent resources and there are times when our region receives those resources. He thanked our local firefighters and those in all the different counties and agencies that sent personnel here.

He announced that the annual Second Chance Week will be September 9-17th, you can go to secondchanceweek.com for more information. Family Fun Night at Aquatics Center will be on September 16th from 7:00-9:00 p.m.

He stated that the second reading of the By-District Elections Ordinance is listed as a consent item, that is typically how we do our second readings. He wants to make the Council and the public aware that those items can always be pulled from consent.

He concluded by speaking to the evening's supplements and presentations.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin announced that the Council met in closed session at its meeting earlier today and there was no reportable action on either item.

OTHER REPORTS

There were no other reports.

PROCLAMATIONS

Proclaiming the month of September 15, 2017 to October 15, 2017 as National Hispanic Heritage Month

PUBLIC COMMENT

Mayor Steve Tate opened public comment at 7:15 p.m.

Hearing no requests to speak, the public comment was closed.

ADOPTION OF AGENDA

MOTION

Adopting the agenda as presented.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Larry Carr, Mayor Pro Tem
SECONDER:	Rene Spring, Council Member
AYES:	Tate, Carr, Constantine, Jachimowicz, Spring

CONSENT CALENDAR

Approving item 1 and 3 through 8.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Rene Spring, Council Member
SECONDER:	Rich Constantine, Council Member
AYES:	Tate, Carr, Constantine, Jachimowicz, Spring

1. REALLOCATION OF PART-TIME HUMAN RESOURCES ASSISTANT POSITION TO FULL-TIME

Recommendation:

Approve reallocation of Part-Time Human Resources Assistant Position to Full-Time (.50 Full-Time Equivalent (FTE) to 1.0 FTE).

2. ITEM 2 HAS BEEN PULLED FOR DISCUSSION

3. REJECT BIDS FOR GALVAN PARK HANDBALL COURT IMPROVEMENTS PROJECT

Recommendation:

Reject bids for the Galvan Park Handball Court Improvements Project and direct staff to re-bid the project with design amendments.

4. FIRST AMENDMENT TO AGREEMENT WITH ACCELA, INC.

Recommendation:

Authorize the City Manager to execute a First Amendment to Consultant Agreement with Accela, Inc. for total compensation of \$58,560 for legislative management services for the initial two years.

Minutes Acceptance: Minutes of Sep 6, 2017 7:00 PM (CONSENT CALENDAR)

5. ADOPT ORDINANCE 2258, NEW SERIES, AN ORDINANCE OF THE CITY OF MORGAN HILL AMENDING CHAPTER 1.16 OF TITLE 1, OF THE MORGAN HILL MUNICIPAL CODE REGARDING ELECTIONS

Recommendation:

Waive the reading, adopt Ordinance No. 2258, 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.

6. ADOPT ORDINANCE 2259, NEW SERIES, AN ORDINANCE OF THE CITY OF MORGAN HILL ADDING A NEW CHAPTER 15.37 (ELECTRIC VEHICLE CHARGING STATION PERMITTING) TO TITLE 15 (BUILDINGS AND CONSTRUCTION) TO PROVIDE AN EXPEDITED, STREAMLINED PERMITTING PROCESS FOR ELECTRIC VEHICLE CHARGING STATIONS

Recommendation:

Waive the reading, adopt Ordinance No. 2259, 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.

7. APPROVE THE AUGUST 23, 2017 MEETING MINUTES

Recommendation:

Approve Minutes.

8. APPROVE THE AUGUST 24, 2017 MEETING MINUTES

Recommendation:

Approve Minutes.

ITEMS PULLED FROM CONSENT

2. AWARD MORGAN HILL PLAYHOUSE SEATING REPLACEMENT PROJECT

Recommendation:

1. Award contract to Seating Concepts, LLC for the removal and replacement of all seats in the Community Playhouse in the amount of \$82,489.94;
2. Authorize the expenditure of construction contingency funds not to exceed \$7,510.06; and
3. Authorize the City Manager to execute and administer that certain contract with Seating Concepts, LLC.

Community Services Director Chris Ghione presented the report.

MOTION:

Approving the recommended actions.

RESULT: APPROVED [UNANIMOUS]
MOVER: Larry Carr, Mayor Pro Tem
SECONDER: Rene Spring, Council Member
AYES: Tate, Carr, Constantine, Jachimowicz, Spring

OTHER BUSINESS

9. DOWNTOWN PARKING STRUCTURE SAFETY ENHANCEMENT

Recommendation:

1. Adopt resolution appropriating \$200,000 from the Public Facilities Fund (346) for improvements within the Parking Structure;
2. Authorize the City Manager to negotiate, execute, and administer agreements up to \$200,000 for parking structure improvements; and
3. Direct the City Manager to provide a full report to the City Council on actions implemented and the associated agreements for services and materials.

Community Services Director Chris Ghione presented the report.

Mayor Steve Tate opened the public comment at 7:23 p.m.
Hearing no requests to speak, the public comment was closed.

MOTION:

Approving the recommended actions.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Larry Carr, Mayor Pro Tem
SECONDER: Caitlin Jachimowicz, Council Member
AYES: Tate, Carr, Constantine, Jachimowicz, Spring

10. INTRODUCE AMENDMENT TO MUNICIPAL CODE REGULATING ACTIVITIES OCCURRING ON PUBLIC PROPERTY INCLUDING DRONE USE

Recommendation:

1. Waive the first and second reading of the ordinance; and
2. Introduce ordinance regulating activities on public property.

Community Services Director Chris Ghione presented the report.

Mayor Steve Tate opened the public comment at 7:42 p.m.
Hearing no requests to speak, the public comment was closed.

MOTION:

Waiving the first and second reading of the Ordinance.

RESULT: WAIVED [UNANIMOUS]
MOVER: Larry Carr, Mayor Pro Tem
SECONDER: Caitlin Jachimowicz, Council Member
AYES: Tate, Carr, Constantine, Jachimowicz, Spring

MOTION:

Introducing Ordinance.

RESULT:	INTRODUCED [UNANIMOUS]
MOVER:	Larry Carr, Mayor Pro Tem
SECONDER:	Caitlin Jachimowicz, Council Member
AYES:	Tate, Carr, Constantine, Jachimowicz, Spring

11. REVISIONS TO CITY'S FLOOD DAMAGE PREVENTION ORDINANCE

Recommendation:

1. Waive the first and second reading of the ordinance; and
2. Introduce ordinance.

Senior Civil Engineer Maria Angeles presented the report.

Mayor Steve Tate opened public comment at 7:51 p.m.
Hearing no requests to speak, the public comment was closed.

MOTION:

Waiving the first and second reading of the Ordinance.

RESULT:	WAIVED [UNANIMOUS]
MOVER:	Rich Constantine, Council Member
SECONDER:	Larry Carr, Mayor Pro Tem
AYES:	Tate, Carr, Constantine, Jachimowicz, Spring

MOTION:

Introducing Ordinance.

RESULT:	INTRODUCED [UNANIMOUS]
MOVER:	Rich Constantine, Council Member
SECONDER:	Larry Carr, Mayor Pro Tem
AYES:	Tate, Carr, Constantine, Jachimowicz, Spring

CLOSED SESSION

No closed session was needed at this meeting.

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Spring requested an update on High Speed Rail.

ADJOURNMENT

There being no further business Mayor Tate adjourned the meeting at 7:53 p.m.

MINUTES PREPARED BY:

Angie Gonzalez, Minutes Clerk

Minutes Acceptance: Minutes of Sep 6, 2017 7:00 PM (CONSENT CALENDAR)



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.



CITY COUNCIL STAFF REPORT

MEETING DATE: September 27, 2017

PREPARED BY: Donald Larkin, City Attorney
APPROVED BY: City Manager

ADOPT FLAG RAISING POLICY

RECOMMENDATION(S)

Adopt City Council policy establishing criteria and procedures for raising flags at City facilities.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

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

2017 Strategic Priorities

Inclusiveness

POLICY CONSIDERATIONS:

Should the City fly flags at City facilities other than the California and United States flags?

Should the City establish criteria for flying flags other than the California and United States flags?

REPORT NARRATIVE:

At the July 19, 2017 City Council meeting, Council Member Jachimowicz asked staff to develop a policy for flag raisings at City facilities.

The proposed policy establishes criteria and procedures for flying flags at City facilities that honor or commemorate a historic event, cause, nation or people. Under the proposed policy, commemorative flags shall be displayed at City facilities only upon City Council direction, after finding that the flag raising is “consistent with the City’s vision, mission, and ongoing and strategic priorities, incorporating themes of diversity, equity, social justice, and inclusion.”

The policy would limit the display of commemorative flags to City Hall, the Community and Cultural Center, and the Centennial Recreation Center.

COMMUNITY ENGAGEMENT: Empower

The proposed policy empowers the City Council to recognize and commemorate historic events, causes, and people consistent with the City’s ongoing priorities of supporting our youth, seniors, and entire community; fostering a positive organizational culture;

preserving and cultivating public trust; and preserving our cultural heritage. The proposed policy also further fosters the City Council's strategic priority of inclusiveness.

Community Engagement – If approved, staff will reach out to community groups and others who have asked to have flags raised on City flag poles and inform them of the City Council's new direction. Resolutions authorizing the display of commemorative flags will be brought forward to the City Council as appropriate.

ALTERNATIVE ACTIONS:

The City Council could continue to consider the display of commemorative flags on a case by case basis.

The City Council could decide that no commemorative flags will be displayed on City flag poles.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council has previously approved the display of flags other than the flags of California and the United States on a case by case basis.

FISCAL AND RESOURCE IMPACT:

There will be no significant fiscal impacts from adoption of the proposed policy.

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 are not projects under CEQA.

LINKS/ATTACHMENTS:

1. Flag Raising 2017

CITY OF MORGAN HILL

COUNCIL POLICIES AND PROCEDURES

CP-17-02

SUBJECT: FLAG RAISING

EFFECTIVE DATE _____, 2017

ORIGINATING DEPARTMENT: CITY ATTORNEY'S OFFICE

BACKGROUND

The City of Morgan Hill displays the flags of the State of California and of the United States of America on poles located at facilities throughout Morgan Hill. City flag poles are not a public forum, but from time to time the City Council will authorize the display of ceremonial flags consistent with the City's ongoing and strategic priorities.

PURPOSE

Establish guidelines for the City Council to approve the display of flags other than those of the City of Morgan Hill, the State of California or the United States of America.

POLICY

It is the policy of the City of Morgan Hill that the City's flag poles are not intended to serve as a forum for free expression by the public, but rather for the display of the Flags of the United States and the State of California. The flag poles located at City Hall, the Community and Cultural Center and Centennial Recreation Center may also be used to display the flags of the City of Morgan Hill, Sister Cities, and any Commemorative Flags as may be authorized by the City Council as an expression of the City's official sentiments.

A Commemorative Flag under this policy means a flag that identifies with a specific date, historical event, cause, nation or group of people, whereby the City honors or commemorates the date, event, cause, nation or people by flying the flag. Commemorative Flags shall be displayed at City facilities only upon City Council direction, consistent with the City's vision, mission, and ongoing and strategic priorities, incorporating themes of diversity, equity, social justice, and inclusion.

PROCEDURE

In addition to the flags of the State of California and the United States of America, the City Council may, by resolution, direct City staff to display any Commemorative Flag on the flag poles of City Hall, the Community and Cultural Center and/or the Centennial Recreation Center as an expression of the City's official sentiments, for those dates and times and on those terms and conditions as set forth in the resolution. Commemorative Flags shall be displayed for a period of time that is reasonable or customary for the subject that is to be commemorated, but no longer than 30 continuous days.

Attachment: Flag Raising 2017 (1415 : Flag Raising Policy)

This Policy shall remain in effect until modified by the City Council.

APPROVED:

STEVE TATE, MAYOR



CITY COUNCIL STAFF REPORT

MEETING DATE: September 27, 2017

PREPARED BY: Jennifer Carman, Community Development Director
APPROVED BY: City Manager

COMPLETE STREETS POLICY TO MAINTAIN THE CITY'S ELIGIBILITY FOR REGIONAL TRANSPORTATION FUNDING

RECOMMENDATION(S)

Adopt resolution approving a Complete Streets Policy.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community

2017 Strategic Priorities

Regional Initiatives

POLICY CONSIDERATIONS:

Should the City of Morgan Hill adopt a Complete Streets Policy in order to participate in Measure B funding opportunities?

REPORT NARRATIVE:

On November 8, 2016, the voters of Santa Clara County overwhelmingly approved a 30-year, 1/2 cent sales tax measure supporting transportation projects and services. 2016 Measure B, adopted by the VTA Board of Directors in June 2016, lists and describes the following nine program categories: Local Streets and Roads; BART Phase II; Bicycle and Pedestrian; Caltrain Grade Separations; Caltrain Corridor Capacity Improvements; Highway Interchanges; County Expressways; SR 85 Corridor; and Transit Operations.

The City will benefit from the Measure B program through a variety of projects, including the Hale Avenue Extension, the annual street maintenance funds, and the upgrade of Caltrain service to the south county.

In response to input received from member agencies and members of the public, 2016 Measure B supports multiple modes of transportation. Specifically, 2016 Measure B requires "the cities and the County [to] apply Complete Streets best practices in order to improve bicycle and pedestrian elements of the street system." VTA Staff recommended expanding the Complete Streets requirement to apply to all capital program categories in 2016 Measure B. Applying Complete Streets best practices to projects funded by 2016 Measure B will assist member agencies in implementing bicycle and pedestrian projects identified in local plans.

In order to be eligible for Measure B funding, all member agencies must adopt a resolution (attached) which contains the nine (9) Complete Streets elements below. This list is drawn from Metropolitan Transportation Commission's (MTC) model Complete Streets resolution, which was in turn based on the work of SMART Growth America National Complete Streets Coalition. More information can be found on MTC's website: <https://mtc.ca.gov/tools-and-resources/digital-library/obag-2-complete-streets-resolution-guidance>

Complete Streets Principles

1. Serve all Users
2. Context Sensitivity
3. Complete Streets in all Departments
4. All Projects/Phases Implementation
5. Plan Consultation
6. Street Network/Connectivity
7. Local Bicycle and Pedestrian Advisory Committee Consultation
8. Evaluation
9. Exemption Process

VTA's approach to Complete Streets compliance keeps design decisions local, while increasing the transparency of these decisions and ensuring the requirements of 2016 Measure B are met. VTA will need to separately evaluate the project on its own merits to determine eligibility for Measure B funding, if a project a) does not provide Complete Streets infrastructure that is identified in a local, countywide, or regional adopted plan within the project's geographical limits; b) severs an existing bicycle, pedestrian, or transit connection; or c) does not meet minimum design standards or guidelines for Complete Streets infrastructure. Therefore, to ensure that the City's eligible Measure B projects are approved and constructed, the adoption of a Complete Streets resolution is necessary and the implementation of Complete Streets principles in the projects is essential.

The Complete Streets Principles listed within the attached resolution are consistent with the City's General Plan which contains goals and policies encouraging a circulation and transportation system designed for a healthy, active community based on complete streets, smart growth, and Sustainable Communities strategies that reflect a balanced, safe, multimodal transportation system for all users.

ALTERNATIVE ACTIONS:

The City Council could choose not to adopt the proposed resolution, however not adopting the attached Complete Streets Policy Resolution could result in the City being considered ineligible for Measure B funding.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact associated with the adoption of the attached Complete Streets Policy Resolution. Not adopting the attached Complete Streets Policy Resolution could result in the City being ineligible for Measure B funds.

CEQA (California Environmental Quality Act):

The proposed resolution is a statement of policy that is consistent with the City's adopted plans. For this reason, adoption of the proposed resolution is exempt from review pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3).

LINKS/ATTACHMENTS:

1. Complete Streets Policy Resolution

RESOLUTION NO.**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MORGAN HILL ADOPTING A COMPLETE STREETS
POLICY**

WHEREAS, the term “Complete Streets” describes a comprehensive, integrated transportation network with infrastructure and design that allows safe and convenient travel along and across streets for all users, including pedestrians, bicyclists, persons with disabilities, motorists, movers of commercial goods, users and operators of public transportation, seniors, children, youth, and families; and,

WHEREAS, the City of Morgan Hill acknowledges the benefits and value for the public health and welfare of reducing vehicle miles traveled and increasing transportation by walking, bicycling, and public transportation; and,

WHEREAS, the City recognizes that the planning and coordinated development of Complete Streets infrastructure provides benefits for local governments in the areas of infrastructure cost savings; public health; and environmental sustainability; and,

WHEREAS, the State of California has emphasized the importance of Complete Streets by enacting the California Complete Streets Act of 2008 (also known as AB 1358), which requires that when cities or counties revise general plans, they identify how they will provide for the mobility needs of all users of the roadways, as well as through Deputy Directive 64, in which the California Department of Transportation explained that it “views all transportation improvements as opportunities to improve safety, access, and mobility for all travelers in California and recognizes bicycle, pedestrian, and transit modes as integral elements of the transportation system”; and,

WHEREAS, the California Global Warming Solutions Act of 2006 (known as AB 32) sets a mandate for the reduction of greenhouse gas emissions in California, and the Sustainable Communities and Climate Protection Act of 2008 (known as SB 375) requires emissions reductions through coordinated regional planning that integrates transportation, housing, and land-use policy, and achieving the goals of these laws will require significant increases in travel by public transit, bicycling, and walking; and,

WHEREAS, numerous California counties, cities, and agencies have adopted Complete Streets policies and legislation in order to further the health, safety, welfare, economic vitality, and environmental well-being of their communities; and,

WHEREAS, the City therefore, in light of the foregoing benefits and considerations, wishes to improve its commitment to Complete Streets and desires that its streets form a comprehensive and integrated transportation network promoting safe, equitable, and convenient travel for all users while preserving flexibility, recognizing community context, and using the latest and best design guidelines and standards.

NOW, THEREFORE, the City Council of the City of Morgan Hill resolves as follows:

Section 1. The City of Morgan Hill adopts the Complete Streets Policy attached hereto as Exhibit A, and made part of this Resolution.

Section 2. The City's General Plan Transportation Element incorporates Complete Streets policies and principles consistent with the California Complete Streets Act of 2008 (AB1358) and with the Complete Streets Policy adopted by this resolution.

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 27th day of September, 2017 by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: 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 September 27, 2017.

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

DATE: _____

Irma Torrez, CITY CLERK

Attachment: Complete Streets Policy Resolution (1412 : Complete Streets Policy)

EXHIBIT A

CITY OF MORGAN HILL COMPLETE STREETS POLICY

A. Complete Streets Principles

1. **Complete Streets Serving All Users.** The City of Morgan Hill expresses its commitment to creating and maintaining Complete Streets that provide safe, comfortable, and convenient travel along and across streets (including streets, roads, highways, bridges, and other portions of the transportation system) through a comprehensive, integrated transportation network that serves all categories of users, including pedestrians, bicyclists, persons with disabilities, motorists, movers of commercial goods, users and operators of public transportation, seniors, children, youth, and families.
2. **Context Sensitivity.** In planning and implementing street projects, City departments shall maintain sensitivity to local conditions in both residential and business districts as well as urban, suburban, and rural areas, and shall work with residents, merchants, and other stakeholders to ensure that a strong sense of place is maintained.
3. **Complete Streets Routinely Addressed by All Departments.** All City departments shall work towards making Complete Streets practices a routine part of everyday operations, approach every relevant project, program, and practice as an opportunity to improve streets and the transportation network for all categories of users, and work in coordination with other departments, agencies, and jurisdictions to maximize opportunities for Complete Streets, connectivity, and cooperation. Potential Complete Streets opportunities could apply to projects such as transportation projects, road rehabilitation, new development, utilities, etc.
4. **All Projects and Phases.** Complete Streets infrastructure sufficient to enable reasonably safe travel along and across the right of way for each category of users shall be incorporated into all planning, funding, design, approval, and implementation processes for any construction, reconstruction, retrofit, maintenance, operations, alteration, or repair of streets (including streets, roads, highways, bridges, and other portions of the transportation system), except that specific infrastructure for a given category of users may be excluded if an exemption is approved via the process set forth in section C.1 of this policy.

B. Implementation

1. **Plan Consultation and Consistency.** Maintenance, planning, and design of projects affecting the transportation system shall be consistent with local bicycle, pedestrian, transit, multimodal, and other relevant plans, except that where such consistency cannot be achieved without negative consequences, consistency shall not be required if the head of the relevant department provides written approval explaining the basis of such deviation.

EXHIBIT A

2. **Street Network/Connectivity.** As feasible, the City shall incorporate Complete Streets infrastructure into existing streets to improve the safety and convenience of users and to create employment, with the particular goal of creating a connected network of facilities accommodating each category of users, and increasing connectivity across jurisdictional boundaries and for existing and anticipated future areas of travel origination or destination.
3. **Advisory Group Input.** Input will be solicited from a public advisory group regarding bicycling and pedestrian needs early in the planning and design stage of transportation projects.
4. **Evaluation.** All relevant departments shall perform evaluations of how well the streets and transportation network of the City of Morgan Hill are serving each category of users by collecting baseline data and collecting follow-up data on a regular basis.

C. Exemptions

1. **Approval of Exemptions.** Projects that seek Complete Streets exemptions must provide written findings to support the decision to exclude accommodations for any mode that was not included in the project as approved by the City Engineer. Projects that are granted exceptions must be made available for review by the public.



CITY COUNCIL STAFF REPORT

MEETING DATE: September 27, 2017

PREPARED BY: Dat Nguyen, Finance Director
APPROVED BY: City Manager

JUNE 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 preliminary fiscal year ending June 30, 2017 Financial and Investment Reports. The preliminary Revenue and Expense Summary for the fiscal year is included on the first page. Overall, revenue received for the year for all funds is approximately \$6.6 million or 6% lower than the budgeted amount, and approximately \$4.0 million or 4% lower than the prior fiscal year primarily due to lower collection of development impact fees. Expenditures, including encumbrances, came in at 82% of the budget.

General Fund revenues totaled \$37.9 million, \$1.8 million or 5% higher than the prior fiscal year led by an increase in secured/unsecured property tax of approximately \$479,000, Transient Occupancy Tax (TOT) of approximately \$457,000, and sales tax of approximately \$297,000. The increase in property tax was primarily due to new units being added to the assessor's roll while the increase in TOT revenue was mainly due to the addition of the La Quinta hotel. Continued economic growth nationwide, specifically in the Bay Area has been the main cause in higher sales tax revenue. General Fund expenditures, including encumbrances, came in slightly under budget at 99%.

Community Development Fund revenues for the fiscal year totaled \$4.7 million, an increase of 16% from the prior fiscal year. Expenditures, including encumbrances, came in at \$5.1 million. Including encumbrances, the fund ended the fiscal year with an operating deficit of approximately \$0.4 million and a fund balance of approximately \$2.7 million or 50% of adopted FY17-18 appropriation. Though it is still in excess of the Council's 30% reserve level policy, the fund is forecasted to continue to be structurally imbalanced requiring significant use of reserves in subsequent years. To address this issue, the Community Development Department is in the process of finalizing an updated fee study.

Enterprise Fund revenues which comprised of Water and Sewer totaled \$27.3 million, \$4.3 million or 14% lower than a year ago primarily due to lower collection of development impact fees. Water Operations ended the fiscal year with an operating deficit of approximately \$0.3 million, significantly better than budgeted deficit of approximately \$1.4 million due to increased water consumption and conservative spending.

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. Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. June 2017 Financial Statement Analysis
2. June 2017 Financial and Investment Report

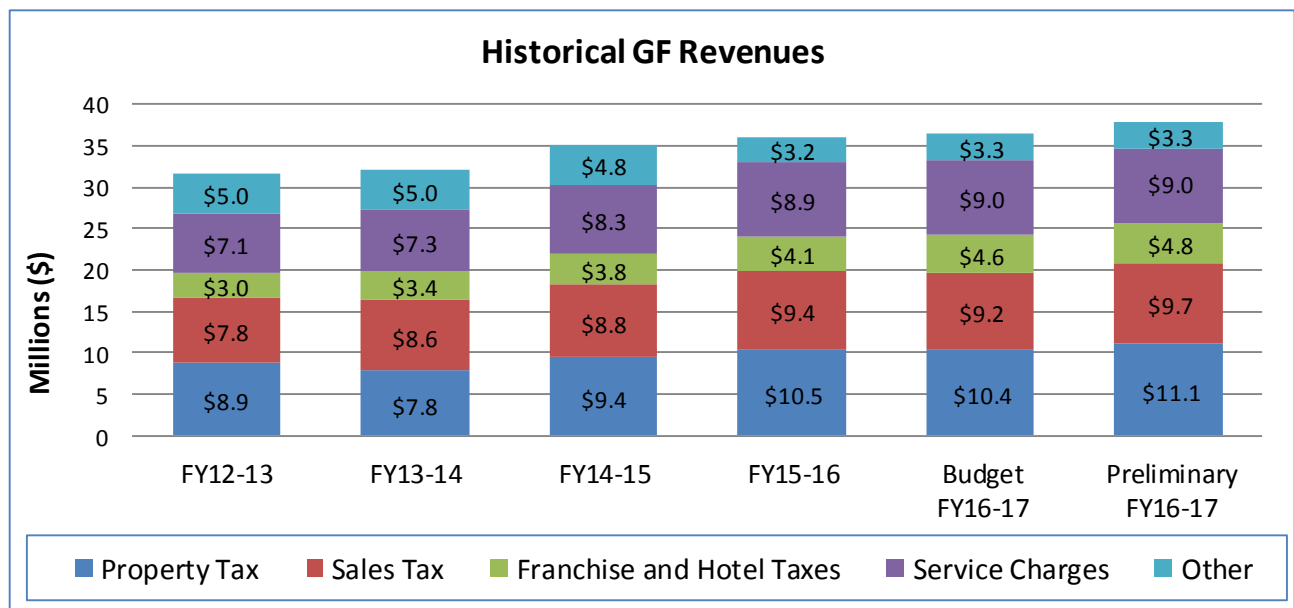


CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2016-17 UNAUDITED
FOR THE MONTH ENDED JUNE 2017 – 100% OF YEAR COMPLETE

- **General Fund** – The preliminary total revenues for the fiscal year exceeded the adopted budget by approximately \$1.4 million. The biggest contributors for the increase came from all major revenue categories except recreation services which came in slightly under budget: property tax, sales tax, and Transient Occupancy Tax (TOT). Property tax, excluding property transfer tax, received for the fiscal year of approximately \$10.7 million, exceeded the budgeted amount by approximately \$0.7 million, and is 7% or about \$665,000 more than prior fiscal year. The increase is primarily due to new housing units and restoration of Prop 8 temporary reduction. Sales tax, including public safety sales tax received for the fiscal year is approximately \$9.7 million, an all-time high for the city, and is 3% or about \$297,000 more than last fiscal year.

For the TOT (hotel tax), the amount received through twelve months ended June 30, 2017 of about \$2.7 million, also an all-time high for the city, exceeds prior year amount by approximately \$457,000. The increase in TOT was mainly due to the addition of La Quinta hotel.

The chart below shows historical General Fund revenues by major revenue category from FY12-13 through FY15-16 Actual, FY16-17 Budget, and Preliminary FY16-17 Actual.

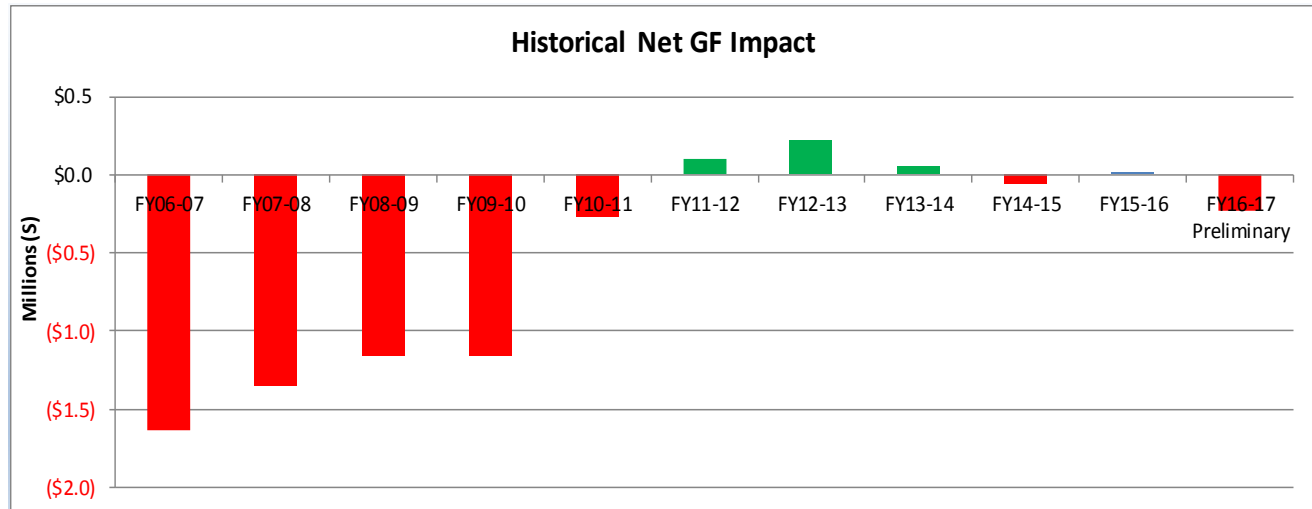


Preliminary year end General Fund expenditures and encumbrances came in slightly under budget, totaling \$39.4 million, or 99% of budgeted appropriations.

- **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 \$588,000 for the fiscal year. The amount is better than the budgeted net impact to the general fund of approximately \$829,000 primarily due to conservative spending which came in at 96% of the budget, including the encumbrances. 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.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2016-17 UNAUDITED
FOR THE MONTH ENDED JUNE 2017 – 100% OF YEAR COMPLETE



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** – Preliminary revenues for the fiscal year totaled \$4.7 million, an increase of 16% or approximately \$647,000 from the prior fiscal year. Expenditures, including encumbrances, came in at \$5.1 million. Including encumbrances, the fund ended the fiscal year with an operating deficit of approximately \$0.4 million, significantly better than budgeted deficit of approximately \$1.0 million, partially due to conservative spending. The preliminary fiscal year end fund balance is approximately \$2.7 million or 50% of adopted FY17-18 appropriation.
- Debt Service Funds** – Preliminary expenditures for the fiscal year totaled \$681,350. The first half of the year payment includes both interest and principal, while the second half of the year the payment 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. The General Fund's portion of the annual debt service payments is approximately \$200,000, less than one percent of the General Fund's budgeted revenues.
- Sewer Operations** – The preliminary results of the Sewer Operations show the fund operated at a breakeven for the fiscal year as both revenues and expenditures, excluding encumbrances, came in below budget. Revenues totaled approximately \$9.7 million. Expenditures and outstanding encumbrances totaled \$9.8 million or 92% of the budget. The table below shows historical Sewer Operations revenues and expenditures from FY12-13 through FY15-16 Actual, FY16-17 Budget, and Preliminary FY16-17 Actual.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2016-17 UNAUDITED
FOR THE MONTH ENDED JUNE 2017 – 100% OF YEAR COMPLETE

(amount in millions)	FY12-13	FY13-14	FY14-15	FY15-16	Budget FY16-17	Preliminary FY16-17
Revenues	9.7	9.4	10.3	10.2	10.4	9.7
Expenditures	9.0	8.6	8.8	12.0	10.6	9.8
Operating Margin	0.7	0.8	1.5	(1.8)	(0.2)	(0.1)
Operating Margin without Encumbrances	0.7	0.8	1.5	(1.8)	(0.2)	(0.0)

- Water Operations** – Water Operations includes Utility Billing, Water Conservation, and Water Operations. Preliminary revenues from Water Operations for the fiscal year totaled \$10.9 million, approximately \$2.4 million more than a year ago. Revenues for the fiscal year were budgeted at approximately 16% more than the prior fiscal year primarily due to the Water Revenue Adjustment approved by Council in January 2016. Expenditures, including outstanding encumbrances, totaled \$11.2 million. Including encumbrances, Water Operations ended the fiscal year with an operating deficit of approximately \$0.3 million, significantly better than budgeted deficit of approximately \$1.4 million due to increased water consumption and conservative spending. The table below shows Water Operations revenues and expenditures from FY12-13 through FY15-16 Actual, FY16-17 Budget, and Preliminary FY16-17 Actual.

(amount in millions)	FY12-13	FY13-14	FY14-15	FY15-16	Budget FY16-17	Preliminary FY16-17
Revenues	10.2	12.2	8.8	8.5	10.0	10.9
Expenditures	9.1	12.1	9.3	9.7	11.4	11.2
Operating Margin	1.1	0.1	(0.5)	(1.2)	(1.4)	(0.3)
Operating Margin without Encumbrances	1.1	0.1	(0.5)	(1.2)	(1.1)	(0.1)

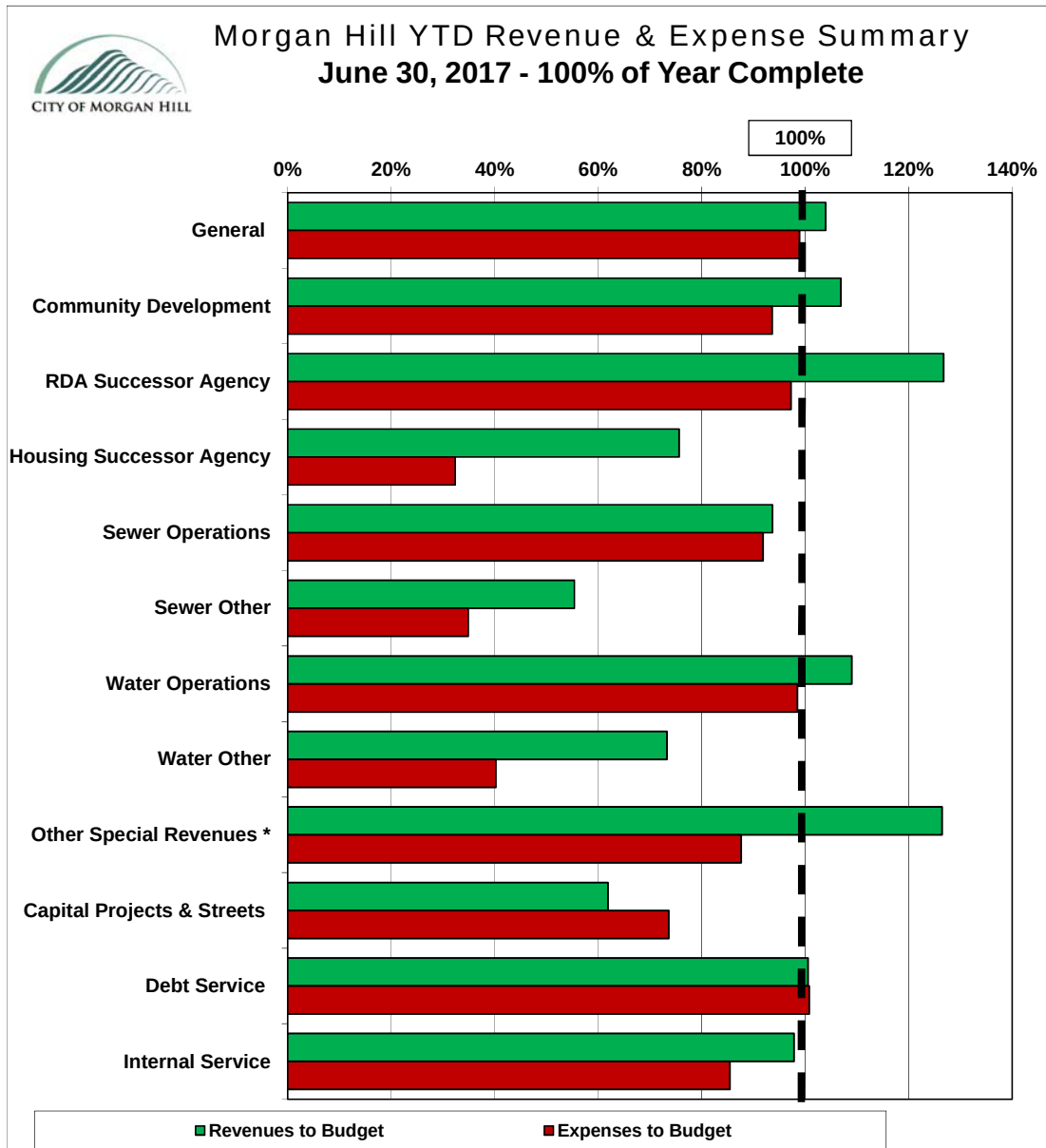
- Investments** – One purchase was made during the month of June 2017. Total interest earnings received on investments were \$45,000 during the month.

CITY OF MORGAN HILL
Monthly Financial and Investment Reports
June 30, 2017 - 100% of Year Complete



CITY OF MORGAN HILL

Prepared by:
FINANCE DEPARTMENT



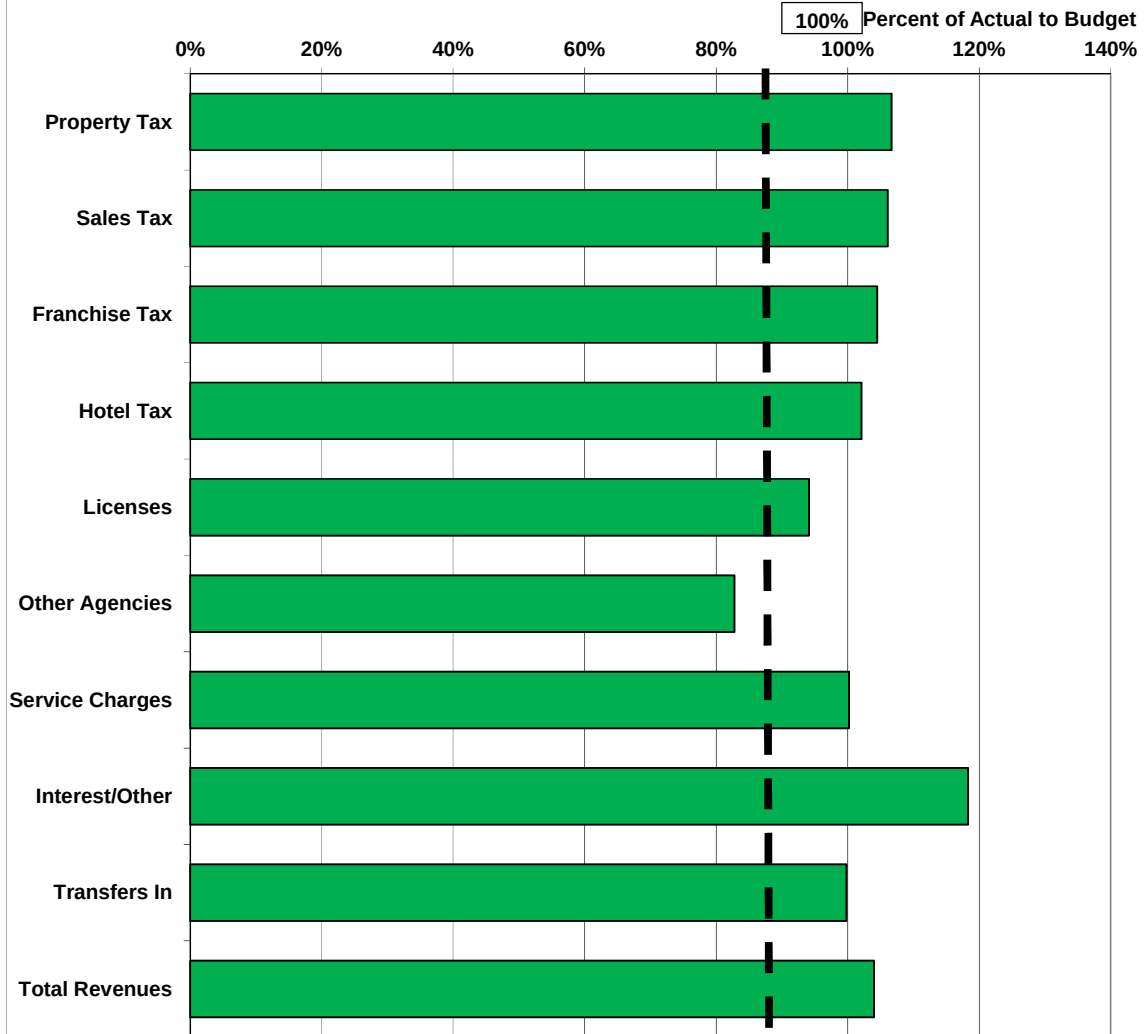
FUND NAME	REVENUES		EXPENSES	
	ACTUAL	% OF BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET
General	\$ 37,859,543	104%	\$ 39,350,242	99%
Community Development	4,679,808	107%	5,069,996	94%
RDA Successor Agency	9,308,080	127%	8,640,069	97%
Housing Successor Agency	946,553	76%	904,009	32%
Sewer Operations	9,743,933	94%	9,778,259	92%
Sewer Other	4,662,987	55%	6,530,739	35%
Water Operations	10,898,147	109%	11,190,161	98%
Water Other	2,026,237	73%	8,149,870	40%
Other Special Revenues *	4,446,606	126%	5,243,871	88%
Capital Projects & Streets	11,213,619	62%	18,732,238	74%
Debt Service	682,931	101%	681,350	101%
Internal Service	9,841,040	98%	10,655,237	85%
TOTAL FOR ALL FUNDS	\$ 106,309,486	94%	\$ 124,926,043	82%

* Includes all Special Revenue Funds except Community Development, Street Funds, and RDA and Housing Successor Agencies.

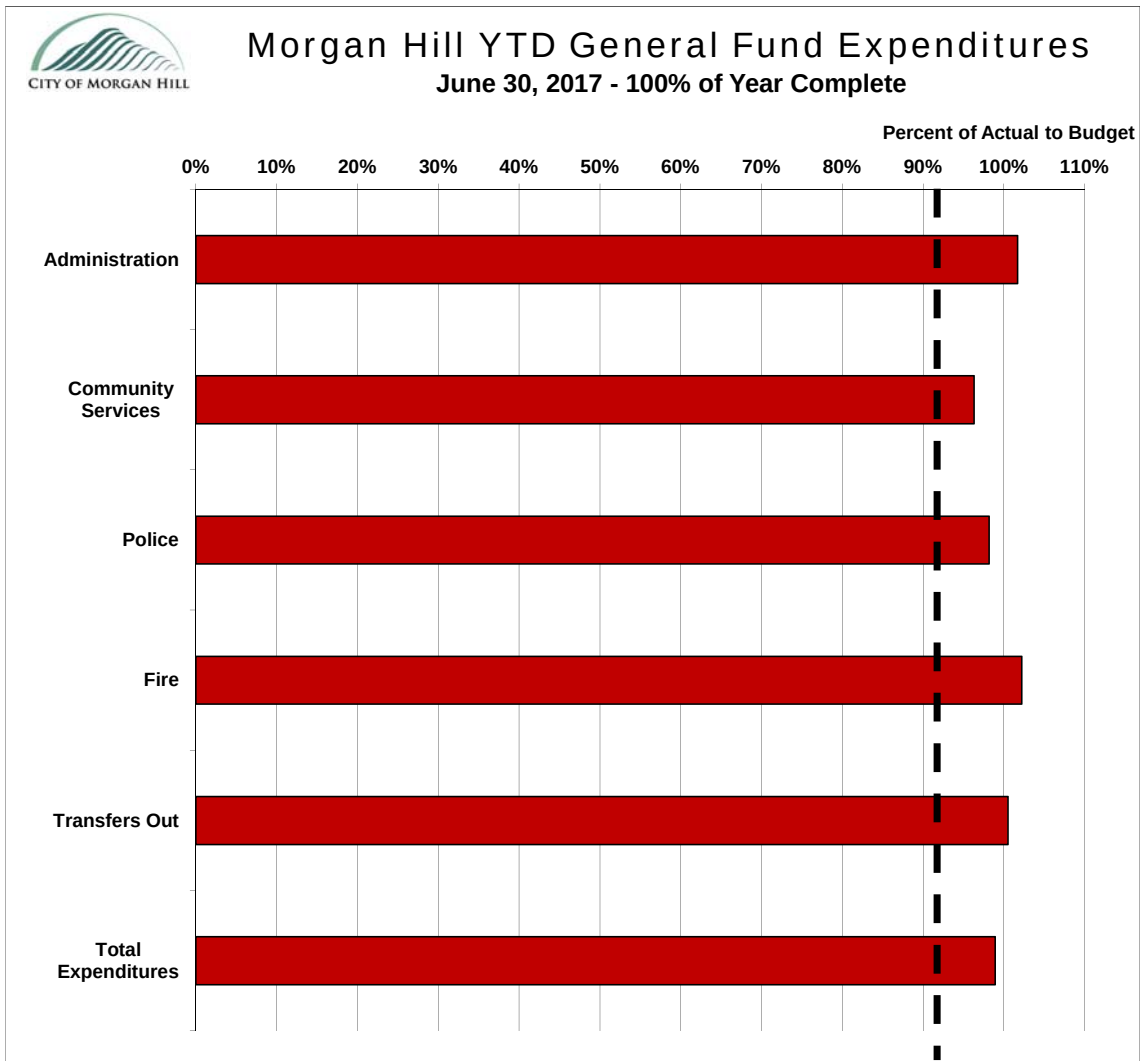


Morgan Hill YTD General Fund Revenues

June 30, 2017 - 100% of Year Complete



REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Property Tax	\$10,430,000	\$11,127,422	107%	\$ 10,472,469	6%
Sales Tax	9,170,767	9,734,686	106%	9,437,549	3%
Franchise Tax	1,927,359	2,014,469	105%	1,789,864	13%
Hotel Tax	2,684,700	2,741,623	102%	2,284,543	20%
Licenses	206,474	194,247	94%	198,342	-2%
Other Agencies	641,506	531,285	83%	502,006	6%
Service Charges	8,953,220	8,973,615	100%	8,873,736	1%
Interest/Other	775,597	917,668	118%	838,526	9%
Transfers In	1,627,581	1,624,528	100%	1,622,261	0%
TOTAL REVENUES	\$36,417,204	\$37,859,543	104%	\$ 36,019,296	5%



EXPENDITURE CATEGORY	BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Administration	\$ 6,440,898	\$ 6,550,254	102%	\$ 4,539,861	44%
Community Services	10,506,921	10,117,202	96%	9,055,405	12%
Police	15,339,657	15,059,788	98%	14,262,497	6%
Fire	5,428,841	5,548,880	102%	5,046,730	10%
Transfers Out	2,064,119	2,074,118	100%	1,863,301	11%
TOTAL EXPENDITURES	\$ 39,780,436	\$ 39,350,242	99%	\$ 34,767,794	13%

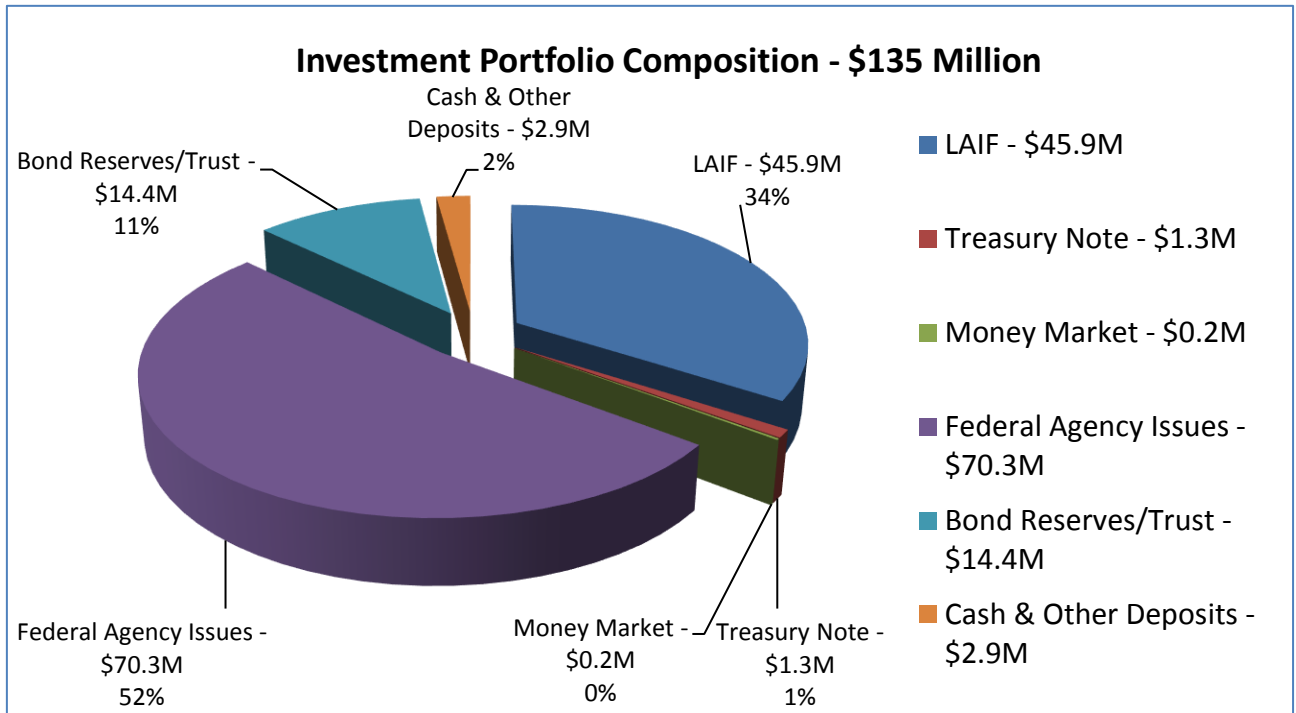


**City of Morgan Hill
Recreation Report - Fiscal Year 2016-17
For the Month and Twelve Months Ended June 30, 2017
100% of Year Complete**

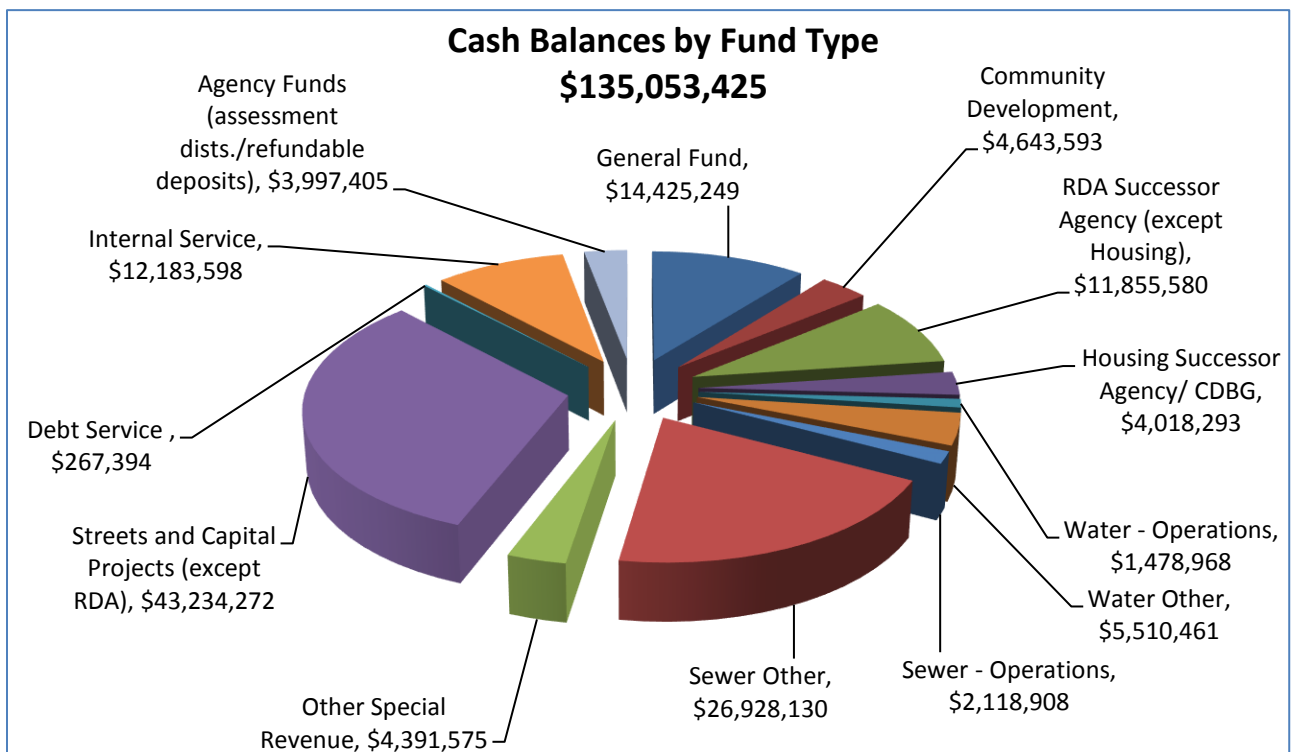
	<u>Budget</u>	<u>June 2017</u>	<u>YTD</u>	<u>% of Budget</u>
Revenues				
Membership Services & Rec Programs	\$ 5,702,573	\$ 532,149	\$ 5,650,459	
Facility Rentals	874,020	26,699	873,593	
Community Services	152,915	38,207	157,010	
Transfers in	75,000	6,250	75,000	
Total Revenues	<u>\$ 6,804,508</u>	<u>\$ 603,305</u>	<u>\$ 6,756,062</u>	99%
Less: Expenditures				
Membership & Program Services	\$ 5,622,544	\$ 429,013	\$ 5,079,987	
Facility Rentals	1,292,223	112,500	1,262,550	
Community Services	719,212	54,156	648,121	
Total Expenditures	<u>\$ 7,633,980</u>	<u>\$ 595,668</u>	<u>\$ 6,990,658</u>	92%
Net Impact without encumbrances	<u>\$ (829,472)</u>	<u>\$ 7,636</u>	<u>\$ (234,596)</u>	
Encumbrances	-	-	353,463	
Net Impact with encumbrances	<u>\$ (829,472)</u>	<u>\$ 7,636</u>	<u>\$ (588,059)</u>	

City of Morgan Hill Monthly Investment Report - June 30, 2017

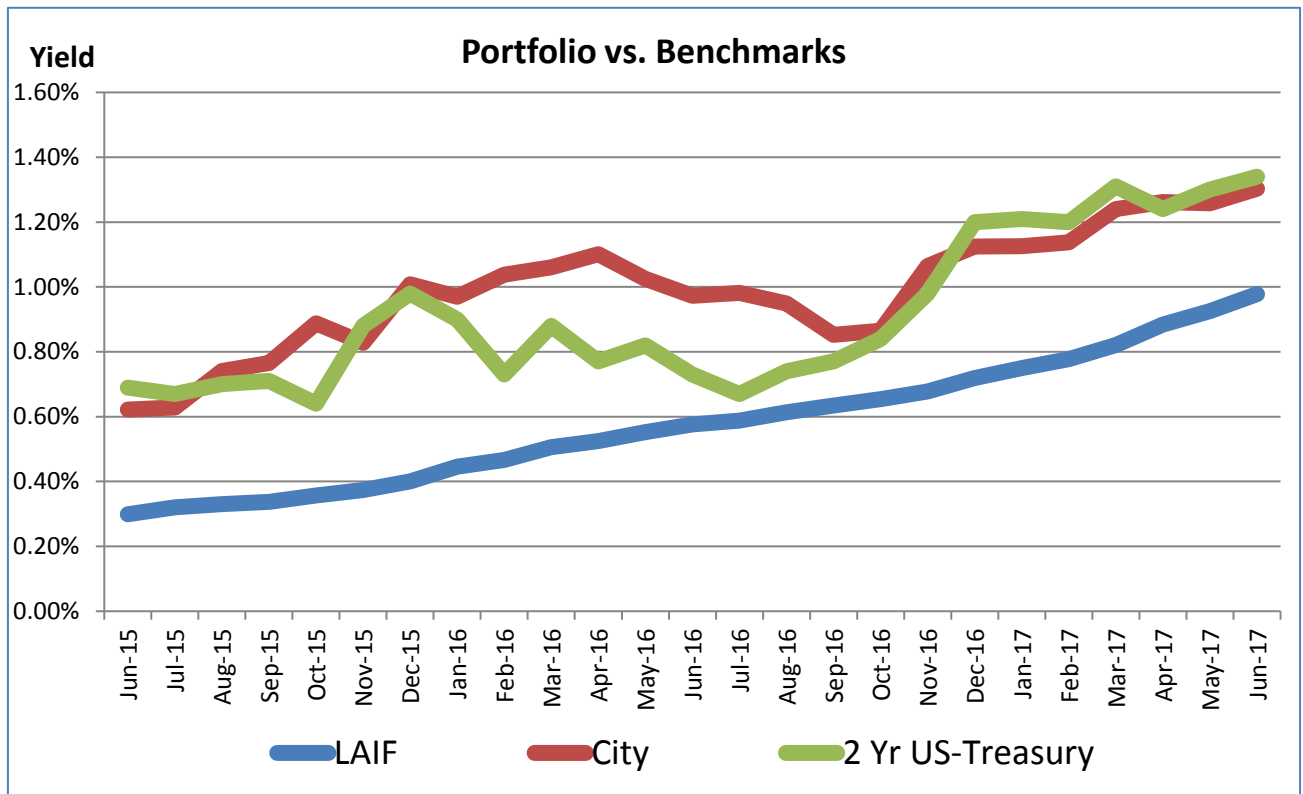
The following are the snapshots of City's investment portfolio as of June 30, 2017. The first chart shows the portfolio composition by investment type:



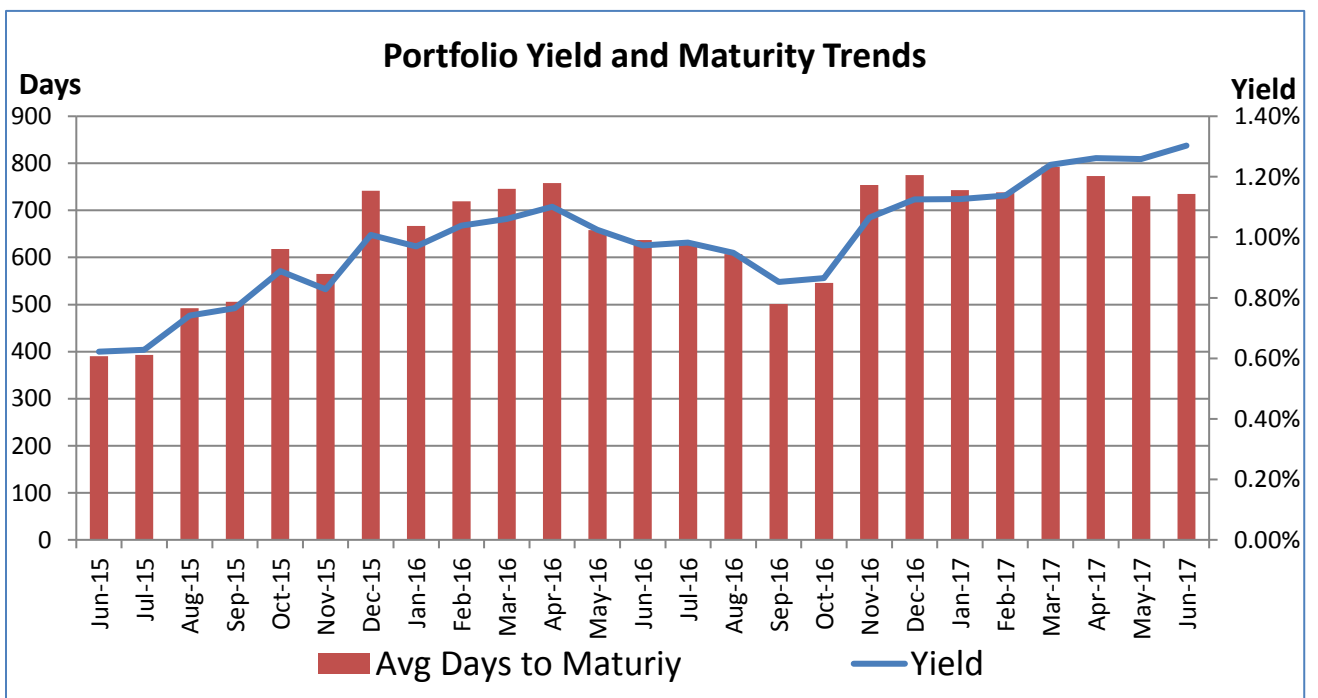
The chart below shows cash balances by fund type reconciled to City's financial system:



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 June 30, 2017

Investment Type	Settlement Date	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
LAIF		\$ 45,980,790	34.05%	\$ 45,932,081	0.98%		
City Managed							
Fed Home Loan Bank	12/3/2012	\$ 2,000,296	1.48%	\$ 1,999,700	0.93%	9/20/2017	9/20/2017
Fed Home Loan Mortgage	1/31/2013	499,314	0.37%	498,840	1.01%	1/12/2018	1/12/2018
Fed Home Loan Mortgage	8/12/2013	997,793	0.74%	998,520	1.36%	12/12/2017	12/12/2017
Treasury Note	12/15/2014	752,139	0.56%	751,883	1.01%	10/31/2017	10/31/2017
Federal Farm Credit Bank	5/28/2015	1,000,742	0.74%	999,190	0.99%	2/20/2018	2/20/2018
Treasury Note	6/12/2015	500,111	0.37%	499,000	1.06%	3/31/2018	3/31/2018
Fed Nat'l Mortgage Assn	6/12/2015	498,870	0.37%	498,145	1.10%	2/28/2018	2/28/2018
Fed Home Loan Mortgage	7/2/2015	999,383	0.74%	997,410	0.97%	3/7/2018	3/7/2018
Fed Home Loan Mortgage	8/31/2015	999,946	0.74%	999,560	0.79%	8/25/2017	8/25/2017
Fed Home Loan Bank	9/30/2015	1,000,420	0.74%	997,760	0.95%	4/24/2018	4/24/2018
Fed Home Loan Bank	9/30/2015	511,072	0.38%	510,607	0.80%	10/12/2017	10/12/2017
Fed Home Loan Bank	10/19/2015	4,000,000	2.96%	3,975,200	1.70%	10/19/2017	10/19/2020
Fed Home Loan Bank	6/30/2016	4,000,000	2.96%	3,913,680	1.50%	6/30/2021	6/30/2021
Fed Nat'l Mortgage Assn	8/25/2016	4,000,000	2.96%	3,912,960	1.40%	8/25/2017	8/25/2021
Fed Home Loan Mortgage	9/29/2016	2,000,000	1.48%	1,979,940	1.65%	9/29/2017	9/29/2021
Fed Nat'l Mortgage Assn	9/29/2016	4,000,000	2.96%	3,910,760	1.60%	9/29/2017	9/29/2021
Fed Home Loan Mortgage	10/27/2016	4,000,000	2.96%	3,892,480	1.60%	7/27/2017	10/27/2021
Fed Nat'l Mortgage Assn	10/28/2016	2,000,000	1.48%	1,948,980	1.55%	7/28/2017	10/28/2021
Fed Home Loan Mortgage	10/28/2016	4,000,000	2.96%	3,890,800	1.65%	7/28/2017	10/28/2021
Fed Home Loan Bank	11/15/2016	4,000,000	2.96%	3,923,200	1.55%	11/15/2021	11/15/2021
Fed Home Loan Bank	11/23/2016	4,000,000	2.96%	3,910,840	1.65%	7/23/2017	11/23/2021
Fed Home Loan Bank	11/23/2016	3,000,000	2.22%	2,948,400	1.63%	7/23/2017	11/23/2021
Fed Home Loan Mortgage	11/30/2016	4,000,000	2.96%	3,964,120	1.88%	7/26/2017	11/26/2021
Fed Home Loan Mortgage	3/29/2017	5,000,000	3.70%	5,000,600	2.38%	9/29/2017	3/29/2022
Fed Home Loan Mortgage	6/29/2017	1,300,000	0.96%	1,289,743	2.15%	9/29/2017	6/29/2022
Sub Total/Average		\$ 59,060,089	43.73%	\$ 58,212,317	1.59%		
Money Market		\$ 150,742	0.11%	\$ 150,742	0.01%		
Total City Managed/Average		\$ 105,191,621	77.89%	\$ 104,295,140	1.03%		
City Managed - HighMark							
Fed Nat'l Mortgage Assn	8/18/2016	\$ 749,285	0.55%	\$ 745,073	1.06%	1/25/2019	1/25/2019
Fed Nat'l Mortgage Assn	8/18/2016	749,566	0.56%	743,190	1.18%	1/26/2019	7/26/2019
Fed Nat'l Mortgage Assn	8/23/2016	749,946	0.56%	744,488	1.25%	8/23/2017	8/23/2019
Fed Home Loan Mortgage	8/31/2016	750,000	0.56%	746,288	1.25%	8/15/2019	8/15/2019
Fed Home Loan Mortgage	9/13/2016	750,000	0.56%	747,135	1.10%	9/13/2017	9/3/2018
Fed Home Loan Bank	9/15/2016	750,000	0.56%	747,023	1.00%	9/15/2017	6/15/2018
Fed Home Loan Bank	9/21/2016	749,816	0.56%	747,855	1.12%	9/21/2017	9/21/2018
Fed Home Loan Mortgage	10/7/2016	749,747	0.56%	744,180	1.29%	9/12/2017	9/12/2019
Fed Nat'l Mortgage Assn	10/11/2016	749,782	0.56%	746,198	1.22%	8/23/2017	5/23/2019
Fed Home Loan Mortgage	10/24/2016	739,054	0.55%	734,302	1.03%	7/30/2018	1/30/2019
Fed Nat'l Mortgage Assn	10/24/2016	749,942	0.56%	744,105	1.25%	9/30/2017	9/30/2019
Federal Farm Credit Bank	11/1/2016	749,549	0.56%	745,463	1.02%	11/1/2017	11/1/2018
Fed Home Loan Mortgage	12/13/2016	1,007,571	0.75%	1,006,740	1.35%	5/30/2019	5/30/2019
Fed Home Loan Bank	12/13/2016	999,688	0.74%	997,970	1.27%	1/16/2019	1/16/2019
Fed Home Loan Mortgage	12/29/2016	746,796	0.55%	746,633	1.37%	4/15/2019	4/15/2019
Fed Nat'l Mortgage Assn	12/29/2016	745,154	0.55%	744,862	1.39%	6/20/2019	6/20/2019
Money Market		86,272	0.06%	86,272	0.01%		
Sub Total/Average		\$ 12,572,171	9.31%	\$ 12,517,773	1.19%		
Bond Reserve Accounts - Held By Trustees		\$ 13,195,057	9.77%	\$ 13,118,290			
Cash/Deposits		\$ 2,907,173	2.15%	\$ 2,907,173			
PARS Trust		\$ 1,187,404	0.88%	\$ 1,310,113			
GRAND TOTAL/AVERAGE		\$ 135,053,425	100.00%	\$ 134,148,489			

Attachment: June 2017 Financial and Investment Report (1407 : June 2017 Financial and Investment Report)



CITY OF MORGAN HILL CASH AND INVESTMENT REPORT
FOR THE MONTH OF JUNE 30, 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	0.98%	\$ 37,756,813	27.96%	\$ 37,716,816
2014 Water Rev Bonds - Water Impact	Water Fund	0.98%	517,989	0.38%	517,441
2014 Water Rev Bonds - Water CIP	Water Fund	0.98%	1,078,573	0.80%	1,077,431
2015 Wastewater Rev Bonds - CIP	Wastewater Fund	0.98%	6,627,414	4.91%	6,620,393
Federal Issues	All Funds Pooled	1.30%	70,293,737	52.05%	69,392,936
US Treasury Notes	All Funds Pooled	1.06%	1,252,250	0.93%	1,250,883
Dreyfus Treas Cash Management Acct	All Funds Pooled	0.01%	237,014	0.18%	237,014
	SUBTOTAL		\$ 117,763,791	87.20%	\$ 116,812,913
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					
Blackrock Liq Fund	Debt Service	0.61%	17	0.00%	17
Zions Bank - MH Police Facility Lease Revenue Bonds					
Blackrock Liq Fund	Debt Service	0.61%	22	0.00%	22
BNY - RDA Bonds					
Dreyfus Cash Mgmt 521	Successor Fund	0.00%	161,825	0.12%	161,825
US Treasury Notes	Successor Fund	1.53%	11,910,268	8.82%	11,833,501
Zions Bank - MH Ranch 2015					
Blackrock Liq Funds Fed Fund -DI -2015	Agency Fund	0.61%	563,471	0.42%	563,471
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015					
Blackrock Liquidity Temp Fund-2015	Agency Fund	0.61%	550,240	0.41%	550,240
	SUBTOTAL		13,195,057	9.77%	13,118,290
Other Cash/Deposits					
General Checking	All Funds		2,870,673	2.13%	2,870,673
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	0.51%	772,841
PARS - PENSION Trust			500,000	0.37%	537,272
	SUBTOTAL		4,094,577	3.03%	4,217,286
Total Cash and Investments			\$ 135,053,425	100.00%	\$ 134,148,489

CASH ACTIVITY SUMMARY
FY 2016-17

Fund Type	07/01/16 Balance	Change in Cash Balance	6/30/2017 Balance
General Fund	\$ 13,201,659	\$ 1,223,590	\$ 14,425,249
Community Development	4,543,600	99,993	4,643,593
RDA Successor Agency (except Housing)	12,256,697	(401,117)	11,855,580
Housing Successor Agency/ CDBG	3,985,770	32,523	4,018,293
Water - Operations	1,060,105	418,863	1,478,968
Water Other	10,255,589	(4,745,128)	5,510,461
Sewer - Operations	1,945,525	173,383	2,118,908
Sewer Other	27,868,909	(940,779)	26,928,130
Other Special Revenue	4,863,862	(472,288)	4,391,575
Streets and Capital Projects (except RDA)	42,728,700	505,572	43,234,272
Debt Service	264,719	2,675	267,394
Internal Service	11,679,121	504,476	12,183,598
Agency Funds (assessment dists./refundable deposits)	4,278,419	(281,013)	3,997,405
Total	\$ 138,932,675	\$ (3,879,250)	\$ 135,053,425

Note: See Investment Portfolio Detail for maturities of "Investments." Market values are obtained from the City's investment brokers' monthly reports.

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

Attachment: June 2017 Financial and Investment Report (1407 : June 2017 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2016-17
For the Twelve Months Ended June 30, 2017
100% 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							
<u>TAXES</u>							
Property Tax - Secured/Unsecured	\$ 8,566,000	\$ 8,566,000	\$ 8,901,569	104%	\$ 8,422,370	\$ 479,199	6%
Property Tax - RPTTF Residual Distribution	1,233,000	1,233,000	1,520,408	123%	1,361,923	158,485	12%
Property Tax - Supplemental Roll	162,000	162,000	263,132	162%	236,249	26,883	11%
Sales Tax	8,819,767	8,819,767	9,399,838	107%	9,113,554	286,284	3%
Public Safety Sales Tax	351,000	351,000	334,848	95%	323,995	10,853	3%
Transient Occupancy Taxes	2,684,700	2,684,700	2,741,623	102%	2,284,543	457,080	20%
Franchise (Refuse ,Cable ,PG&E)	1,927,359	1,927,359	2,014,469	105%	1,789,864	224,605	13%
Property Transfer Tax	469,000	469,000	442,313	94%	451,927	(9,614)	-2%
TOTAL TAXES	24,212,826	24,212,826	25,618,199	106%	23,984,425	1,633,774	7%
<u>LICENSES/PERMITS</u>							
Business License	198,900	198,900	190,177	96%	190,756	(579)	0%
Other Permits	7,574	7,574	4,070	54%	7,586	(3,516)	-46%
TOTAL LICENSES/PERMITS	206,474	206,474	194,247	94%	198,342	(4,095)	-2%
<u>FINES AND PENALTIES</u>							
Parking Enforcement	12,000	12,000	8,838	74%	14,024	(5,186)	-37%
Bails & Fines	64,000	64,000	82,760	129%	55,159	27,601	50%
Administrative Citations	-	-	1,250	n/a	1,170	80	7%
TOTAL FINES AND PENALTIES	76,000	76,000	92,848	122%	70,353	22,415	32%
<u>OTHER AGENCIES</u>							
Motor Vehicle in-Lieu	17,194	17,194	19,552	114%	16,857	2,695	16%
Other Revenue - Other Agencies	525,550	641,506	531,285	83%	502,006	29,279	6%
TOTAL OTHER AGENCIES	542,744	658,700	550,838	84%	518,863	31,975	6%
<u>CHARGES CURRENT SERVICES</u>							
Police False Alarm Charge	32,000	32,000	51,560	161%	44,157	7,403	17%
Business License Application Review	35,914	35,914	42,910	119%	42,647	263	1%
Membership Services & Rec Programs	5,702,573	5,702,573	5,650,459	99%	5,582,853	67,606	1%
Facility Rentals	874,020	874,020	873,593	100%	911,275	(37,682)	-4%
Community Services	152,915	152,915	157,010	103%	147,125	9,885	7%
General Administration Overhead	1,260,075	1,260,075	1,257,420	100%	1,197,539	59,881	5%
Other Charges Current Services	895,723	895,723	940,664	105%	948,140	(7,476)	-1%
TOTAL CURRENT SERVICES	8,953,220	8,953,220	8,973,615	100%	8,873,736	99,879	1%
<u>OTHER REVENUE</u>							
Use of money/property	269,133	269,133	342,275	127%	276,442	65,833	24%
Other Revenues	312,558	413,270	462,994	112%	474,874	(11,881)	-3%
TOTAL OTHER REVENUE	581,691	682,403	805,268	118%	751,316	53,952	7%
<u>TRANSFERS IN</u>							
Public Safety	100,000	100,000	138,192	138%	162,029	(23,837)	-15%
Streets	762,581	762,581	721,336	95%	714,414	6,922	1%
Sewer Operations	345,000	345,000	345,000	100%	249,195	95,805	38%
Water Operations	345,000	345,000	345,000	100%	436,623	(91,623)	-21%
Park Development	75,000	75,000	75,000	100%	60,000	15,000	25%
TOTAL TRANSFERS IN	1,627,581	1,627,581	1,624,528	100%	1,622,261	2,267	0%
TOTAL GENERAL FUND	36,200,536	36,417,204	37,859,543	104%	36,019,296	1,840,247	5%
SPECIAL REVENUE FUNDS							
<u>202 STREET MAINTENANCE</u>							
Gas Tax 2105 - 2107.5	761,458	761,458	720,826	95%	700,732	20,094	3%
Interest / Other Revenue/Other Charges	60	60	1,117	1861%	1,680	(563)	-34%
202 STREET MAINTENANCE	761,518	761,518	721,943	95%	702,412	19,531	3%

Attachment: June 2017 Financial and Investment Report (1407 : June 2017 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2016-17
For the Twelve Months Ended June 30, 2017
100% 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	363	137%	431	(68)	-16%
Police Grant/SLEF/JAG	100,000	100,000	129,324	129%	119,251	10,073	8%
205 PUBLIC SAFETY TRUST	100,265	100,265	129,687	129%	119,682	10,005	8%
206 COMMUNITY DEVELOPMENT							
Building Fees	2,507,862	2,507,862	2,652,798	106%	2,375,816	276,982	12%
Planning Fees	1,117,358	1,117,358	744,127	67%	888,359	(144,232)	-16%
Engineering Fees	741,563	741,563	1,029,646	139%	726,985	302,661	42%
Other Revenue/Current Charges	11,840	11,840	253,237	2139%	41,224	212,013	514%
206 COMMUNITY DEVELOPMENT	4,378,623	4,378,623	4,679,808	107%	4,032,384	647,424	16%
207 GENERAL PLAN UPDATE	658,035	658,035	743,600	113%	876,529	(132,929)	-15%
215 and 216 HCD BLOCK GRANT							
HCD allocation	70,000	70,000	-	0%	68,170	(68,170)	-100%
Interest Income/Other Revenue	278	278	29,507	10614%	6,190	23,317	377%
215 and 216 HCD BLOCK GRANT	70,278	70,278	29,507	42%	74,360	(44,853)	-60%
225 ASSET SEIZURE	167	167	69,337	41519%	24,546	44,791	182%
229 LIGHTING AND LANDSCAPE	185,810	185,810	184,421	99%	183,650	771	0%
230 COMMUNITY FACILITIES DISTRICT	41,999	41,999	40,651	97%	40,312	339	1%
232 ENVIRONMENTAL PROGRAMS	382,640	382,640	373,135	98%	294,619	78,516	27%
234 MOBILE HOME PARK RENT STAB.	3,831	3,831	5,839	152%	9,383	(3,544)	-38%
235 SENIOR HOUSING	1,089	1,089	2,157	198%	1,856	301	16%
236 HOUSING MITIGATION	1,601,328	1,601,328	2,840,250	177%	1,847,968	992,282	54%
240 EMPLOYEE ASSISTANCE	30,298	30,298	26,565	88%	24,235	2,330	10%
247 ENVIRONMENT REMEDIATION	736	736	1,458	198%	1,254	204	16%
250 COMH-SUCCESSOR AGENCY-MHRDA	7,343,954	7,343,954	9,308,080	127%	10,774,266	(1,466,186)	-14%
255 HOUSING SUCCESSOR AGENCY	1,251,430	1,251,430	946,553	76%	1,650,060	(703,507)	-43%
TOTAL SPECIAL REVENUE FUNDS	16,812,002	16,812,002	20,102,990	120%	20,657,516	(554,526)	-3%
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	1,850,595	3,358,695	2,133,694	64%	2,301,732	(168,038)	-7%
302 PARK MAINTENANCE	1,038,123	1,038,123	963,131	93%	1,389,597	(426,466)	-31%
303 LOCAL DRAINAGE	1,624,857	1,624,857	1,314,260	81%	1,611,116	(296,856)	-18%
304 LOCAL DRAINAGE/NON AB1600	84,735	84,735	170,786	202%	109,701	61,085	56%
306 AGRICULTURE & OPEN SPACE PRESERVATI	1,943,781	1,943,781	255,061	13%	1,474,831	(1,219,770)	-83%
308 STREET CIP	2,731,146	2,731,146	1,421,493	52%	1,596,794	(175,301)	-11%
309 TRAFFIC MITIGATION	1,360,910	1,360,910	752,729	55%	1,183,008	(430,279)	-36%
311 POLICE MITIGATION	272,506	272,506	114,215	42%	343,975	(229,760)	-67%
313 FIRE MITIGATION	139,152	139,152	134,979	97%	99,060	35,919	36%
346 PUBLIC FACILITIES NON-AB1600	786,626	786,626	787,910	100%	1,452,621	(664,711)	-46%
347 PUBLIC FACILITIES	182,245	182,245	75,662	42%	245,092	(169,430)	-69%
348 LIBRARY	813,403	813,403	381,573	47%	1,038,553	(656,980)	-63%
350 UNDERGROUNDING	1,104,276	1,104,276	897,524	81%	2,915	894,609	30690%
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	666,766	666,766	856,122	128%	237,633	618,489	260%
360 COMMUNITY/REC IMPACT FUND	1,249,999	1,249,999	232,536	19%	37,447	195,089	521%
TOTAL CAPITAL PROJECTS FUNDS	15,849,120	17,357,220	10,491,677	60%	13,124,075	(2,632,398)	-20%
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	301,123	301,123	299,905	100%	497,349	(197,444)	-40%
441 POLICE FACILITY BOND	378,121	378,121	382,916	101%	577,976	(195,060)	-34%
545 COCHRANE BUSINESS PARK	56	56	111	198%	95	16	16%
TOTAL DEBT SERVICE FUNDS	679,300	679,300	682,931	101%	1,075,420	(392,489)	-36%

Attachment: June 2017 Financial and Investment Report (1407 : June 2017 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2016-17
For the Twelve Months Ended June 30, 2017
100% 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	9,315,205	91%	9,822,570	(507,365)	-5%
Interest Income/Transfers	32,807	32,807	20,980	64%	47,565	(26,585)	-56%
Other Revenue/Current Charges	179,543	179,543	407,748	227%	285,151	122,597	43%
640 SEWER OPERATION	10,403,329	10,403,329	9,743,933	94%	10,155,286	(411,353)	-4%
641 SEWER EXPANSION							
Interest Income	62,457	62,457	140,466	225%	121,151	19,315	16%
Development Impact Fee	5,670,371	5,670,371	1,756,309	31%	4,807,040	(3,050,731)	-63%
Transfers/Other	-	-	600	0%	1,825	(1,225)	-67%
641 SEWER EXPANSION	5,732,828	5,732,828	1,897,375	33%	4,930,016	(3,032,641)	-62%
642 SEWER RATE STABILIZATION	9,237	9,237	60,919	660%	1,224,978	(1,164,059)	-95%
643 SEWER-CAPITAL PROJECT	2,670,698	2,670,698	2,704,692	101%	4,113,282	(1,408,590)	-34%
TOTAL SEWER FUNDS	18,816,092	18,816,092	14,406,920	77%	20,423,562	(6,016,642)	-29%
650 WATER OPERATION							
Water Sales	8,972,175	8,972,175	9,639,081	107%	7,373,635	2,265,446	31%
Meter Install & Service	154,700	154,700	145,274	94%	162,852	(17,578)	-11%
Transfers-In / Interest Income	407,582	407,582	416,444	102%	352,620	63,824	18%
Other Revenue/Current Charges	464,152	464,152	697,349	150%	572,265	125,084	22%
650 WATER OPERATION	9,998,609	9,998,609	10,898,147	109%	8,461,372	2,436,775	29%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	8,340	8,340	36,199	434%	31,882	4,317	14%
Development Impact Fee	1,301,089	1,301,089	518,209	40%	1,599,637	(1,081,428)	-68%
651 WATER EXPANSION	1,309,429	1,309,429	554,408	42%	1,631,519	(1,077,111)	-66%
652 Water Rate Stabilization	501,248	501,248	502,753	100%	314	502,439	160013%
653 Water Capital Project	953,461	953,461	969,076	102%	1,137,155	(168,079)	-15%
TOTAL WATER FUNDS	12,762,747	12,762,747	12,924,384	101%	11,230,360	1,694,024	15%
TOTAL ENTERPRISE FUNDS	31,578,839	31,578,839	27,331,304	87%	31,653,922	(4,322,618)	-14%
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	1,592,348	1,592,348	1,606,526	101%	1,271,263	335,263	26%
740 BUILDING MAINTENANCE	3,014,227	3,014,227	3,101,517	103%	3,234,502	(132,985)	-4%
741 BUILDING REPLACEMENT	450,969	450,969	478,456	106%	447,422	31,034	7%
745 CIP ADMINISTRATION	1,820,194	1,820,194	1,354,996	74%	1,595,437	(240,441)	-15%
760 UNEMPLOYMENT INSURANCE	831	831	1,680	202%	1,596	84	5%
770 WORKERS COMPENSATION	735,723	735,723	765,974	104%	628,698	137,276	22%
790 EQUIPMENT REPLACEMENT	994,315	994,315	1,050,358	106%	911,533	138,825	15%
791 EMPLOYEE BENEFITS	593,659	593,659	617,508	104%	470,227	147,281	31%
793 CORPORATION YARD COMMISSION	-	-	2,144	0%	2,445	(301)	-12%
795 GENERAL LIABILITY INSURANCE	854,937	854,937	861,882	101%	1,131,104	(269,222)	-24%
TOTAL INTERNAL SERVICE FUNDS	10,057,203	10,057,203	9,841,040	98%	9,694,227	146,813	2%
TOTAL FOR ALL FUNDS	\$ 111,177,000	\$ 112,901,768	\$ 106,309,486	94%	\$ 112,224,456	\$ (4,018,504)	-4%

Attachment: June 2017 Financial and Investment Report (1407 : June 2017 Financial and Investment Report)



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2016-17
For the Month and Twelve Months Ended June 30, 2017
100% 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	\$ 55,513	\$ 342,142	\$ 327,026	\$ 21,500	\$ 348,526	102%	\$ 261,000
	CITY ATTORNEY	87,428	724,002	700,082	104,083	804,165	111%	760,000
	CITY ATTORNEY LOAN	-	835,000	835,000	-	835,000	100%	-
	CITY MANAGER	85,739	1,488,581	856,110	649,399	1,505,509	101%	690,000
	HUMAN RESOURCES	76,724	721,806	686,544	47,955	734,499	102%	570,000
	COUNCIL SVCS & RECORDS MGMT							
	Council Svcs & Records Mgmt	55,005	577,125	562,668	-	562,668	97%	570,000
	Elections	1,461	165,522	136,026	-	136,026	82%	40,000
	COUNCIL SVCS & RECORDS MGMT	56,466	742,647	698,695	-	698,695	94%	610,000
	FINANCE	145,306	1,586,721	1,620,922	2,939	1,623,860	102%	1,390,000
	TOTAL ADMINISTRATION	507,176	6,440,898	5,724,379	825,875	6,550,254	102%	4,310,000
II. COMMUNITY SERVICES								
	Membership Services & Rec. Programs	429,013	5,622,544	5,079,987	333,809	5,413,796	96%	5,050,000
	Recreation Facility Rentals	112,500	1,292,223	1,262,550	-	1,262,550	98%	1,170,000
	Community Services	54,156	719,212	648,121	19,655	667,776	93%	490,000
	Solid Waste Management	13,920	275,796	177,286	-	177,286	64%	280,000
	Street Maintenance	271,568	2,095,917	2,060,566	94,563	2,155,129	103%	1,850,000
	Downtown Maintenance	40,519	242,063	199,028	10,720	209,748	87%	40,000
	Cable Television	1,611	48,258	26,375	-	26,375	55%	30,000
	COMMUNITY SERVICES	923,287	10,296,013	9,453,913	458,746	9,912,660	96%	8,940,000
	CODE COMPLIANCE	12,139	135,689	123,476	-	123,476	91%	-
	CONGESTION MANAGEMENT	6,317	75,219	81,067	-	81,067	108%	70,000
	TOTAL COMMUNITY SERVICES	941,744	10,506,921	9,658,456	458,746	10,117,202	96%	9,010,000
III. PUBLIC SAFETY								
	POLICE							
	PD Administration	86,387	1,157,010	1,150,174	21,812	1,171,986	101%	1,240,000
	Field Operations	712,215	7,596,138	7,477,369	1,815	7,479,184	98%	6,940,000
	Support Services	188,917	2,065,701	2,046,219	3,500	2,049,719	99%	1,980,000
	Emergency Services/Haz Mat	20,222	195,542	185,407	-	185,407	95%	170,000
	Special Operations	254,879	2,685,665	2,621,016	-	2,621,016	98%	2,470,000
	Dispatch Services	145,080	1,639,601	1,552,476	-	1,552,476	95%	1,400,000
	POLICE	1,407,701	15,339,657	15,032,661	27,127	15,059,788	98%	14,220,000
	FIRE	505,575	5,428,841	5,536,962	11,918	5,548,880	102%	4,990,000
	TOTAL PUBLIC SAFETY	1,913,275	20,768,497	20,569,623	39,045	20,608,668	99%	19,210,000
IV. TRANSFERS								
	Other	145,078	2,064,119	2,074,118	-	2,074,118	100%	1,860,000
	TOTAL TRANSFERS	145,078	2,064,119	2,074,118	-	2,074,118	100%	1,860,000
	TOTAL GENERAL FUND	3,507,273	39,780,436	38,026,576	1,323,666	39,350,242	99%	34,410,000

Attachment: June 2017 Financial and Investment Report (1407 : June 2017 Financial and Investment Report)



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2016-17
For the Month and Twelve Months Ended June 30, 2017
100% 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	193,161	764,507	723,268	-	723,268	95%	71%
205	PUBLIC SAFETY/SUPP.LAW	25,000	100,000	138,192	-	138,192	138%	16%
206	COMMUNITY DEVELOPMENT FUND							
	Planning	218,983	2,355,225	2,000,773	142,712	2,143,484	91%	2,39%
	Building	241,067	1,863,218	1,780,820	3,640	1,784,460	96%	1,64%
	Engineering	104,013	1,196,172	1,021,759	120,293	1,142,052	95%	91%
206	COMMUNITY DEVELOPMENT FUND	564,062	5,414,615	4,803,352	266,645	5,069,996	94%	4,94%
207	GENERAL PLAN UPDATE	110,696	1,086,553	620,347	319,053	939,399	86%	69%
215/216	CDBG	538	78,830	28,636	14,976	43,612	55%	6%
229	LIGHTING AND LANDSCAPE	36,458	205,192	184,449	22,399	206,848	101%	16%
230	COMMUNITY FACILITIES DISTRICT	1,141	50,850	16,959	1,689	18,649	37%	4%
232	ENVIRONMENT PROGRAMS	31,106	331,143	537,207	-	537,207	162%	23%
234	MOBILE HOME PARK	68	840	816	-	816	97%	1%
236	HOUSING MITIGATION	309,454	3,337,298	3,297,021	25,921	3,322,942	100%	1,84%
240	EMPLOYEE ASSISTANCE	5,557	41,188	36,206	-	36,206	88%	2%
250	COMH-SUCCESSOR AGENCY-MHRDA	29,252	8,881,727	8,616,179	23,890	8,640,069	97%	26,28%
255	HOUSING SUCCESSOR AGENCY	25,579	2,792,194	891,788	12,220	904,009	32%	75%
TOTAL SPECIAL REVENUE FUNDS		1,332,072	23,084,937	19,894,421	686,792	20,581,214	89%	35,91%
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	3,169,062	8,785,319	4,477,761	3,362,841	7,840,602	89%	5,89%
302	PARK MAINTENANCE	107,130	950,987	940,894	-	940,894	99%	91%
303	LOCAL DRAINAGE	999	27,808	20,911	-	20,911	75%	6%
304	LOCAL DRAIN. NON-AB1600	1,278	54,922	20,776	-	20,776	38%	15%
306	AGRICULTURE & OPEN SPACE PRESERVATION	30,994	1,904,843	858,526	93,684	952,210	50%	7%
308	STREET CIP	420,427	4,292,802	559,351	2,328,466	2,887,817	67%	1,59%
309	TRAFFIC MITIGATION	200,410	2,040,440	1,300,065	341,098	1,641,163	80%	41%
311	POLICE MITIGATION	5,939	270,999	274,480	-	274,480	101%	22%
313	FIRE MITIGATION	105	26,316	1,334	-	1,334	5%	1%
346	PUBLIC FAC.NON AB1600	305,199	3,003,479	941,389	576,790	1,518,179	51%	47%
347	PUBLIC FACILITIES	77	431,177	1,245	-	1,245	0%	4%
348	LIBRARY IMPACT	94,917	629,913	450,675	272,764	723,439	115%	27%
350	UNDERGROUNDING	43	1,094,900	715,448	-	715,448	65%	5%
355	SCHOOL PEDESTRIAN & TRAFFIC SAFETY	183,452	1,162,543	212,583	256,669	469,251	40%	58%
360	COMM/REC CENTER IMPACT	7	-	1,219	-	1,219	0%	5%
TOTAL CAPITAL PROJECTS FUNDS		4,520,041	24,676,448	10,776,659	7,232,311	18,008,970	73%	10,83%
DEBT SERVICE FUNDS								
420	CIVIC CENTER DEBT	539	298,643	297,892	-	297,892	100%	42%
441	POLICE FACILITY BOND DEBT	757	377,578	383,457	-	383,457	102%	51%
TOTAL DEBT SERVICE FUNDS		1,296	676,221	681,350	-	681,350	101%	94%

Attachment: June 2017 Financial and Investment Report (1407 : June 2017 Financial and Investment Report)



City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2016-17
 For the Month and Twelve Months Ended June 30, 2017
 100% 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	830,228	10,643,452	9,674,054	104,205	9,778,259	92%	11,961
641	SEWER CAPITAL EXPANSION	204,280	11,195,314	2,178,192	803,704	2,981,896	27%	7,621
642	SEWER RATE STABILIZATION	310	3,714	3,720	-	3,720	100%	-
643	SEWER-CAPITAL PROJECTS	139,447	7,505,173	3,389,613	155,510	3,545,123	47%	1,191
TOTAL SEWER FUND(S)		1,174,265	29,347,653	15,245,580	1,063,419	16,308,999	56%	20,781
WATER								
	Water Operations	2,206,003	10,357,562	10,135,832	183,533	10,319,366	100%	8,651
	Utility Billing	68,272	811,093	705,466	5,169	710,635	88%	631
	Water Conservation	19,363	191,935	118,567	41,595	160,161	83%	431
650	WATER OPERATIONS	2,293,638	11,360,589	10,959,865	230,297	11,190,161	98%	9,721
651	WATER CAPITAL EXPANSION	547,149	5,267,930	1,933,631	186,940	2,120,571	40%	1,961
652	WATER RATE STABILIZATION	48	632	576	-	576	91%	-
653	WATER-CAPITAL PROJECTS	991,711	6,137,249	4,387,382	1,641,342	6,028,724	98%	3,071
TOTAL WATER FUND(S)		3,832,546	22,766,400	17,281,453	2,058,578	19,340,032	85%	14,771
TOTAL ENTERPRISE FUNDS		5,006,811	52,114,054	32,527,034	3,121,997	35,649,031	68%	35,551
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	204,821	1,747,198	1,345,733	322,799	1,668,532	95%	1,201
740	BUILDING MAINTENANCE	435,910	3,154,554	3,158,700	103,732	3,262,432	103%	3,291
741	BUILDING REPLACEMENT	13,016	1,155,566	889,026	158,655	1,047,681	91%	191
745	CIP ADMINISTRATION	120,981	1,820,194	1,363,457	3,080	1,366,537	75%	1,621
760	UNEMPLOYMENT	770	20,000	14,713	-	14,713	74%	11
770	WORKERS COMPENSATION	29,266	792,948	475,880	-	475,880	60%	701
790	EQUIPMENT REPLACEMENT	-	2,236,123	1,293,324	119,828	1,413,152	63%	841
791	EMPLOYEE BENEFITS FUND	17,384	537,056	497,379	-	497,379	93%	611
793	CORP YARD COMMISSION	1,267	-	7,633	-	7,633	0%	11
795	GEN. LIABILITY INSURANCE	46,005	1,008,256	901,298	-	901,298	89%	841
TOTAL INTERNAL SERVICE FUNDS		869,419	12,471,894	9,947,142	708,095	10,655,237	85%	9,341
REPORT TOTAL		\$ 15,236,912	\$ 152,803,990	\$ 111,853,181	\$ 13,072,862	\$ 124,926,043	82%	\$ 127,001

Attachment: June 2017 Financial and Investment Report (1407 : June 2017 Financial and Investment Report)

City of Morgan Hill Fund Activity Summary - Fiscal Year 2016-17 For the Twelve Months Ended June 30, 2017 100% 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			
010	GENERAL FUND	\$ 17,398,147	104%	\$ 37,859,543	104%	\$ 38,026,576	96%	\$ (167,033)	\$ 1,323,666	\$ 15,907,448
TOTAL GENERAL FUND		\$ 17,398,147	104%	\$ 37,859,543	104%	\$ 38,026,576	96%	\$ (167,033)	\$ 1,323,666	\$ 15,907,448
202	STREET MAINTENANCE	1,662	95%	721,943	95%	723,268	96%	(1,326)	\$ -	\$ 336
205	PUBLIC SAFETY/SUPPL. LAW	25,185	129%	129,687	129%	138,192	85%	(8,505)	-	16,680
206	COMMUNITY DEVELOPMENT	2,778,585	107%	4,679,808	107%	4,803,352	89%	(123,544)	266,645	2,388,397
207	GENERAL PLAN UPDATE	1,045,698	113%	743,600	113%	620,347	57%	123,253	319,053	849,898
210	COMMUNITY REC CENTERS START-UP	298	0%	-	0%	-	0%	-	-	298
215 / 216	CDBG	67,727	42%	29,507	42%	28,636	0%	871	14,976	53,622
225	ASSET SEIZURE	66,884	41519%	69,337	41519%	-	0%	69,337	-	136,221
229	LIGHTING AND LANDSCAPE	160,501	99%	184,421	99%	184,449	90%	(28)	22,399	138,073
230	COMMUNITY FACILITIES DISTRICT	36,575	97%	40,651	97%	16,959	0%	23,692	1,689	58,578
232	ENVIRONMENTAL PROGRAMS	323,595	98%	373,135	98%	537,207	162%	(164,072)	-	159,523
234	MOBILE HOME PK RENT STAB.	35,998	152%	5,839	152%	816	97%	5,023	-	41,021
235	SENIOR HOUSING	218,348	198%	2,157	198%	-	0%	2,157	-	220,505
236	HOUSING MITIGATION	2,632,682	177%	2,840,250	177%	3,297,021	99%	(456,771)	25,921	2,149,990
240	EMPLOYEE ASSISTANCE	43,179	88%	26,565	88%	36,206	88%	(9,641)	-	33,538
247	ENVIRONMENT REMEDIATION	147,550	198%	1,458	198%	-	0%	1,458	-	149,008
250	COMH-SUCCESSOR AGENCY-MHRDA	3,958,263	127%	9,308,080	127%	8,616,179	97%	691,900	12,095,983	(7,445,819)
255	HOUSING SUCCESSOR AGENCY	3,901,936	76%	946,553	76%	891,788	32%	54,764	2,525,495	1,431,205
TOTAL SPECIAL REVENUE FUNDS		\$ 15,444,667	120%	\$ 20,102,990	120%	\$ 19,894,421	86%	\$ 208,569	\$ 15,272,160	\$ 381,075
301	PARK DEV. IMPACT FUND	7,162,036	64%	2,133,694	64%	4,477,761	51%	(2,344,067)	\$ 3,362,841	\$ 1,455,128
302	PARK MAINTENANCE	5,404,028	93%	963,131	93%	940,894	99%	22,236	-	5,426,264
303	LOCAL DRAINAGE	7,080,630	81%	1,314,260	81%	20,911	75%	1,293,349	-	8,373,979
304	LOCAL DRAINAGE/NON-AB1600	1,150,352	202%	170,786	202%	20,776	38%	150,011	-	1,300,362
306	AGRICULTURE AND OPEN SPACE PRESERV	6,612,245	13%	255,061	13%	858,526	0%	(603,465)	93,684	5,915,096
308	STREET CIP	955,386	1,421,493	52%	559,351	52%	862,142	2,328,466	(510,938)	
309	TRAFFIC IMPACT FUND	5,109,589	55%	752,729	55%	1,300,065	64%	(547,336)	341,098	4,221,155
311	POLICE IMPACT FUND	44,712	42%	114,215	42%	274,480	101%	(160,265)	-	(115,553)
313	FIRE IMPACT FUND	3,681,468	97%	134,979	97%	1,334	5%	133,645	-	3,815,113
346	PUBLIC FACILITIES NON-AB1600	1,272,644	100%	787,910	100%	941,389	31%	(153,479)	-	1,119,165
347	PUBLIC FACILITIES IMPACT FUND	268,285	42%	75,662	42%	1,245	0%	74,417	272,764	69,938
348	LIBRARY IMPACT FUND	2,171,424	47%	381,573	47%	450,675	72%	(69,102)	-	2,102,322
350	UNDERGROUNDING	318,891	81%	897,524	81%	715,448	65%	182,076	256,669	244,297
355	SCHOOL PEDESTRIAN/TRAFFIC SFTY	998,252	128%	856,122	128%	212,583	18%	643,540	-	1,641,791
360	COMM/REC CTR IMPACT FUND	37,257	19%	232,536	19%	1,219	0%	231,317	-	268,574
TOTAL CAPITAL PROJECT FUNDS		\$ 42,267,197	60%	\$ 10,491,677	60%	\$ 10,776,659	44%	\$ (284,982)	\$ 6,655,521	\$ 35,326,694
420	CIVIC CENTER DEBT	159,200	100%	299,905	100%	297,892	100%	2,013	\$ 17	\$ 161,196
441	POLICE FACILITY BOND DEBT	94,402	101%	382,916	101%	383,457	102%	(542)	22	93,838
545	COCHRANE BUSINESS PARK	11,196	198%	111	198%	-	0%	111	-	11,307
TOTAL DEBT SERVICE FUNDS		\$ 264,797	101%	\$ 682,931	101%	\$ 681,350	101%	\$ 1,582	\$ 39	\$ 266,340

		 CITY OF MORGAN HILL City of Morgan Hill Fund Activity Summary - Fiscal Year 2016-17 For the Twelve Months Ended June 30, 2017 100% 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	94%	\$ 9,743,933	94%	\$ 9,674,054	91%	\$ 69,879	104,205	3,102,848
641	SEWER IMPACT FUND*	14,119,765	33%	1,897,375	33%	2,178,192	19%	(280,817)	803,704	13,035,244
642	SEWER RATE STABILIZATION	2,478,572	660%	60,919	660%	3,720	100%	57,199	-	2,535,771
643	SEWER-CAPITAL PROJECTS	9,630,531	101%	2,704,692	101%	3,389,613	45%	(684,921)	164,724	8,780,886
650	WATER OPERATIONS	1,593,089	109%	10,898,147	109%	10,959,865	96%	(61,717)	230,297	1,301,075
651	WATER IMPACT FUND*	4,540,130	42%	554,408	42%	1,933,631	37%	(1,379,223)	186,940	2,973,967
652	WATER RATE STABILIZATION	36,701	100%	502,753	100%	576	91%	502,177	-	538,878
653	WATER -CAPITAL PROJECT	4,050,727	102%	969,076	102%	4,387,382	71%	(3,418,306)	1,641,342	(1,008,921)
TOTAL ENTERPRISE FUNDS		\$ 39,586,690	\$ 27,331,304	87%	\$ 32,527,034	62%	\$ (5,195,729)	\$ 3,131,211	\$ 31,259,750	

730	INFORMATION SERVICES	\$ 384,159	101%	\$ 1,606,526	101%	\$ 1,345,733	77%	\$ 260,793	322,799	\$ 322,153
740	BUILDING MAINTENANCE	209,188	103%	3,101,517	103%	3,158,700	100%	(57,183)	103,732	48,273
741	BUILDING REPLACEMENT	2,472,241	106%	478,456	106%	889,026	77%	(410,570)	158,655	1,903,016
745	CIP ENGINEERING	34,049	74%	1,354,996	74%	1,363,457	75%	(8,461)	3,080	22,507
760	UNEMPLOYMENT	177,459	202%	1,680	202%	14,713	74%	(13,033)	-	164,426
770	WORKERS COMPENSATION	1,357,898	104%	765,974	104%	475,880	60%	290,094	30,000	1,617,992
790	EQUIPMENT REPLACEMENT	4,348,478	106%	1,050,358	106%	1,293,324	58%	(242,965)	119,828	3,985,684
791	EMPLOYEE BENEFITS FUNDS	464,099	104%	617,508	104%	497,379	93%	120,129	-	584,228
793	CORP YARD COMMISSION	(3,934)	0%	2,144	0%	7,633	0%	(5,489)	-	(9,423)
795	GEN. LIABILITY INSURANCE	990,072	101%	861,882	101%	901,298	89%	(39,417)	-	950,655
TOTAL INTERNAL SERVICE FUNDS		\$ 10,433,709	\$ 9,841,040	98%	\$ 9,947,142	80%	\$ (106,102)	\$ 738,095	\$ 9,589,512	

SUMMARY BY FUND TYPE

GENERAL FUND GROUP	\$ 17,398,147	\$ 37,859,543	104%	\$ 38,026,576	96%	\$ (167,033)	1,323,666	\$ 15,907,448
SPECIAL REVENUE GROUP	15,444,667	20,102,990	120%	19,894,421	86%	208,569	15,272,160	381,075
DEBT SERVICE GROUP	264,797	682,931	101%	681,350	101%	1,582	39	266,340
CAPITAL PROJECTS GROUP	42,287,197	10,491,677	60%	10,776,659	44%	(284,982)	6,655,521	35,326,694
ENTERPRISE GROUP	39,586,690	27,331,304	87%	32,527,034	62%	(5,195,729)	3,131,211	31,259,750
INTERNAL SERVICE GROUP	10,433,709	9,841,040	98%	9,947,142	80%	(106,102)	738,095	9,589,512
TOTAL ALL GROUPS	\$ 125,395,207	\$ 106,309,486	94%	\$ 111,853,181	73%	\$ (5,543,695)	\$ 27,120,693	\$ 92,730,819

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: September 27, 2017

PREPARED BY: Scott Creer, Deputy Director of Engineering
APPROVED BY: City Manager

APPROVE AMENDMENT TO FY 2017-18 CAPITAL IMPROVEMENT PROGRAM

RECOMMENDATION(S)

Adopt resolution amending the City's FY 2017-2018 Capital Improvement Program Budget to include the Rehabilitation of Sutter Boulevard (from Cochrane Road to Serene Drive).

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2017 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

Senate Bill 1 (SB 1), which is known as the Road Repair and Accountability Act of 2017 was signed into law this year. The bill provides for a tax that will form the Road Maintenance and Rehabilitation Account (RMRA) that is intended to fund basic road maintenance and rehabilitation needs on the local street and road systems within the State. Prior to receiving RMRA funds in a fiscal year, the City must submit to the California Transportation Commission (CTC) a project list pursuant to an adopted budget. The project list must include the following information for each project: project description, project location, project schedule, and estimated useful life (Streets and Highways Code Section 2034(a)).

For Fiscal Year 2017-18, the CTC is requiring that for the first round of projects to be funded with RMRA dollars, cities must submit proposed projects no later than October 16, 2017. In order to satisfy this requirement, the attached resolution has been prepared that amends the City's FY 2017-18 Capital Improvement Program budget to include the rehabilitation of Sutter Boulevard between Cochrane Road and Serene Drive as a project within the Pavement Rehabilitation Program (Project No. 51900) for Fiscal Year 2017-18. The proposed Resolution is expected satisfy the CTC requirement that the project is included in our CIP budget pursuant to Council action.

COMMUNITY ENGAGEMENT Inform

Affected businesses and/or property owners will be notified of the work in their area.

ALTERNATIVE ACTIONS:

The Council could direct staff to submit a funding request for an alternative project.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 15, 2016, the City Council approved the FY2016-17 through 2021-22 Capital Improvement Program.

FISCAL AND RESOURCE IMPACT:

An increase to the City's CIP Pavement Rehabilitation Program (Fund 308 Street CIP and Project No. 519000) for FY2017-18 budget in the amount of \$246,598 will be offset by the RMRA funding.

CEQA (California Environmental Quality Act):

Categorical Exemption

The activities described in this Staff Report are categorically exempt under CEQA, specifically pursuant to Section 15301 of the CEQA Guidelines (Existing Facilities), as the subject work involves the repair, maintenance, or minor alteration of existing City facilities involving negligible or no expansion of use of those facilities. Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. RMRA Reso
2. Exhibit A - Budget Scorecard

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL AMENDING THE FY 2017-18
CAPITAL IMPROVEMENT PROGRAM BUDGET TO
INCLUDE THE SUTTER BOULEVARD
REHABILITATION PROJECT FUNDED BY SB 1 THE
ROAD REPAIR AND ACCOUNTABILITY ACT**

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

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

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

WHEREAS, the City is anticipated to receive an estimated \$246,598 in RMRA funding in Fiscal Year 2017-18 from SB 1; and

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted FY2017-18 Capital Improvement Program Budget, as set forth on Exhibit A to this Resolution, to appropriate the requisite funds to implement the actions authorized by this Resolution; and

WHEREAS, the City used a Pavement Management System to develop the SB 1 project list to ensure revenues are being used on the most high-priority and cost-effective projects that also meet the communities' priorities for transportation investment; and

WHEREAS, the funding from SB 1 will help the City rehabilitate Sutter Boulevard and of similar projects into the future; and

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

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. The City's FY 2017-18 Capital Improvement Program Budget is amended to incorporate the following list of projects planned to be funded with Road Maintenance and Rehabilitation Account revenues:

- a. Project Description: The removal and replacement of failed pavement sections, a 2" asphalt concrete overlay and the restriping of existing bike lanes, legends, crosswalks and lane lines.
- b. Project Location: Sutter Boulevard between the intersections of Cochrane Road and Serene Drive.
- c. Estimated Useful Life: The City's Pavement Management System calculates a new useful life of 10 years for this repaired roadway.
- d. Anticipated Year of Construction: Release notice inviting bids to contractors Spring 2018, complete construction by Fall 2018.

Section 3. The City's previously adopted FY2017-18 Capital Improvement Program 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.

Section 4. 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 27th day of September 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 September 27, 2017.

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

DATE: _____

Irma Torrez, CITY CLERK

Attachment: RMRA Reso [Revision 1] (1413 : Amendment to FY2017-18 Capital Improvement Program budget)

AGENDA BUDGET SCORECARD

FISCAL YEAR 2017-18

ADJUSTMENT #

011

FUND:

DEPARTMENT:

OBJECT:

308	Street CIP
8050	Street CIP
86360	CONSTRUCTION

AGENDA DATE:

AGENDA ITEM TITLE:

09/27/17
Senate Bill 1 (SB1)

	07/01/17 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/18 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	1,817,528	1,357,235	1,356,211	1,818,552
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION	-	246,598	246,598	-
RESULT OF RECOMMENDED ACTION	<u>1,817,528</u>	<u>1,603,833</u>	<u>1,602,809</u>	<u>1,818,552</u>



CITY COUNCIL STAFF REPORT

MEETING DATE: September 27, 2017

PREPARED BY: Jennifer Carman, Community Development Director

APPROVED BY: City Manager

CONSIDERATION OF REVISED DEVELOPMENT SERVICES FEE SCHEDULE- TO BE CONTINUED TO OCTOBER 18, 2017

RECOMMENDATION(S)

Open the public hearing to consider adoption of a resolution establishing revised development services user fees and continue the item to a date certain of October 18, 2017.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

Request to Delay Adoption for 30 days

In response to public noticing, on September 15, 2017, the City received a request from Dennis Martin of Building Industry Association (BIA) Bay Area to request a month-long continuance of this potential fee increase. The BIA has reviewed the fee results and the fee methodology report but would like to see additional information regarding fee levels. In light of this request, staff recommends City Council continue this public hearing until October 18th.

LINKS/ATTACHMENTS:

City of Morgan Hill

Complete Streets Policy Resolution

City Council

September 27, 2017

Agenda Item #15

November 8, 2016

Santa Clara County Voters approved Measure B:
a 30-year, 1/2 cent sales tax measure supporting
transportation projects and services.



Measure B contains the following nine program categories:

- Local Streets and Roads;
- BART Phase II;
- Bicycle and Pedestrian;
- Caltrain Grade Separations;
- Caltrain Corridor Capacity Improvements;
- Highway Interchanges;
- County Expressways;
- SR 85 Corridor;
- and Transit Operations.

- Measure B requires "the cities and the County [to] apply Complete Streets best practices in order to improve bicycle and pedestrian elements of the street system."
- VTA Staff recommended expanding the Complete Streets requirement to apply to all capital program categories in 2016 Measure B.
- Applying Complete Streets best practices to projects funded by 2016 Measure B will assist member agencies in implementing bicycle and pedestrian projects identified in local plans.
- VTA adopted Measure B Complete Streets Reporting Requirements on June 1, 2017.

In order to be eligible for Measure B funding, all member agencies must adopt a resolution which contains the nine (9) Complete Streets Principles listed below:

- Serve all Users
- Context Sensitivity
- Complete Streets in all Departments
- All Projects/Phases Implementation
- Plan Consultation
- Street Network/Connectivity
- Local Bicycle and Pedestrian Advisory Committee Consultation
- Evaluation
- Exemption Process

VTa's approach is to keep design decisions local, while increasing the transparency of these decisions.

Morgan Hill 2035 General Plan contains goals and policies encouraging Complete Streets.

GOAL TR-1 A balanced, safe, and efficient circulation system for all segments of the community, meeting local needs and accommodating projected regional and sub-regional traffic while protecting neighborhoods.

GOAL TR-2 A system designed for a healthy, active community based on complete streets, smart growth, and Sustainable Communities strategies; reflecting a balanced, safe, multimodal transportation system for all users, especially in Downtown where pedestrian, bicycle, and transit facilities will be emphasized along with vehicular facilities.

Recommendation:

**Adopt a Resolution Adopting a Complete
Streets Policy to Maintain the City's Eligibility for Regional
Transportation Funding**

City of Morgan Hill California

Preliminary FY2016-17 Financial Report



Preliminary FY2016-17 Financial Report

- Ongoing Priorities
 - Maintaining fiscal responsibility
 - Preserving and cultivating public trust
- City Council's Expectation
 - Maintain high level of transparency
 - Responsible stewards of public funds



General Fund

- Revenues exceeded both budget and mid-cycle revised estimates
- Key GF revenues:

Category	Budget	Preliminary FY16-17	FY15-16
Property Tax	\$10,430,000	\$11,127,422	\$10,472,469
Sales Tax	9,170,767	9,734,686	9,437,549
Svc Charges	8,953,220	8,973,615	8,873,736
Hotel Tax	2,684,700	2,741,623	2,284,543

- Expenditures including encumbrances:

Total Exp	\$39,780,436	\$39,350,242	\$34,767,794
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Community Development Fund

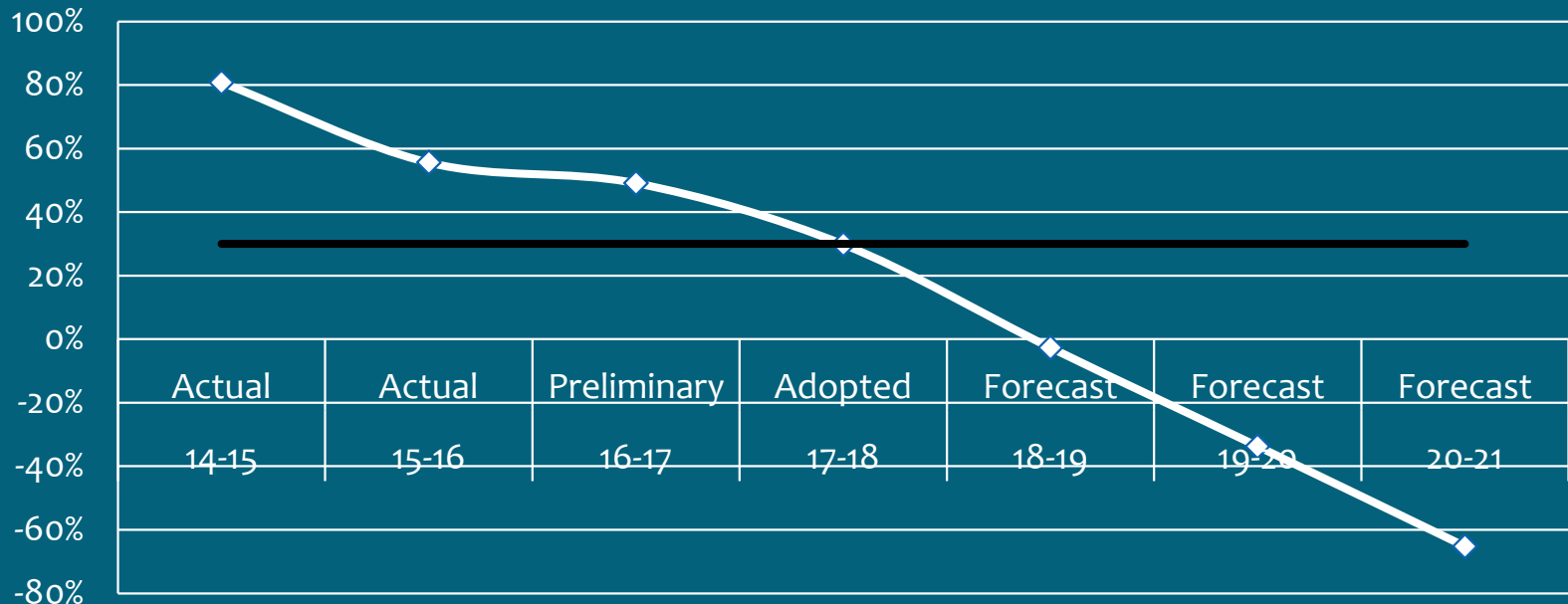
- Both Revenues and expenditures, including encumbrances came in better than budget and mid cycle revised estimates

Category	Budget	Preliminary FY16-17	FY15-16
Revenues	\$4,378,623	\$4,679,808	\$4,032,384
Expenditures	5,414,615	5,069,996	4,949,040



Community Development Fund (cont'd)

- CD fund balance forecast:



◆ Community Development Fund Balance

— Fund Balance Goal of 30% of Expenditures



Enterprise Funds

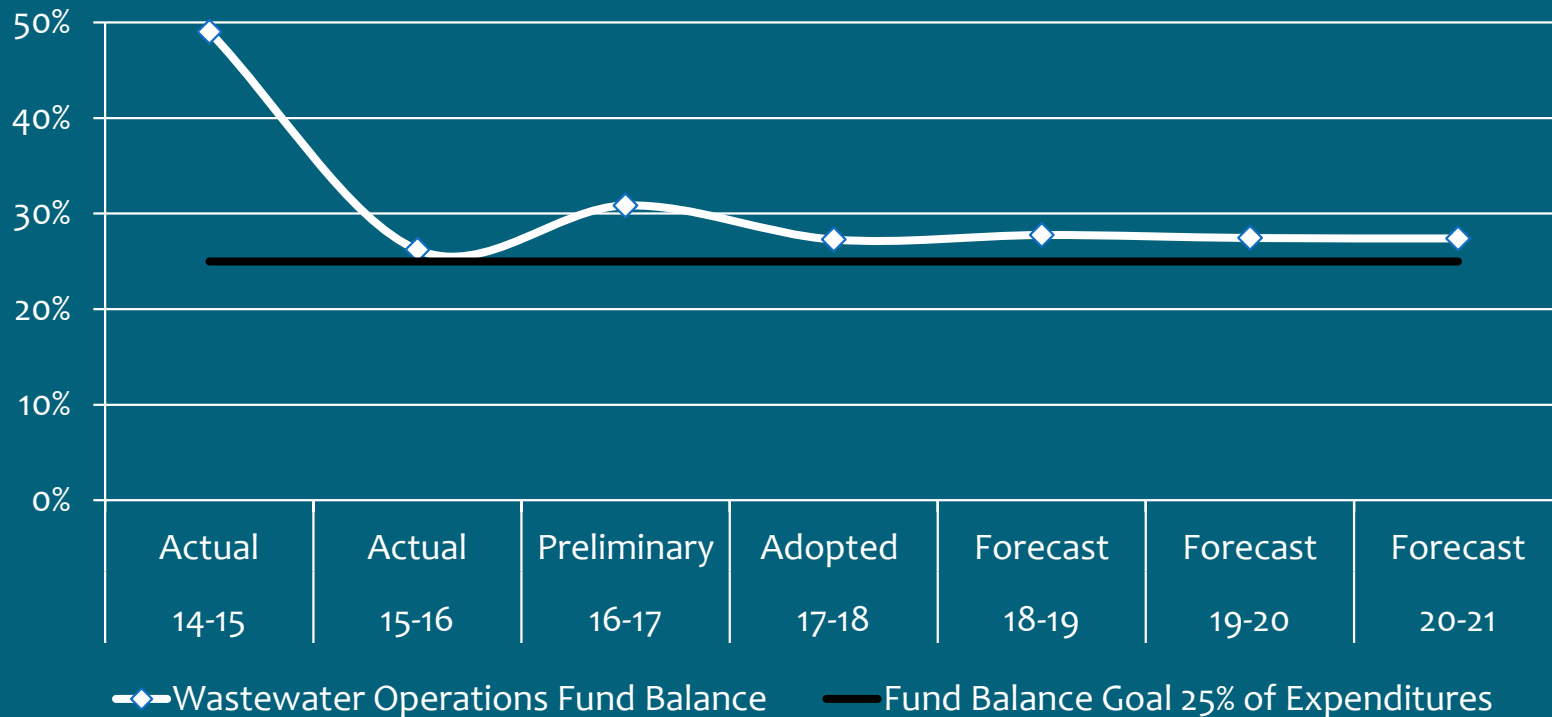
- Sewer Operations

Category	Budget	Preliminary FY16-17	FY15-16
Revenues	\$10,403,329	\$9,743,933	\$10,155,286
Expenditures	10,643,452	9,778,259	11,962,558
Net	(\$240,123)	(\$34,326)	(\$1,807,272)



Enterprise Funds – cont'd

- Sewer Op fund balance forecast



Enterprise Funds – cont'd

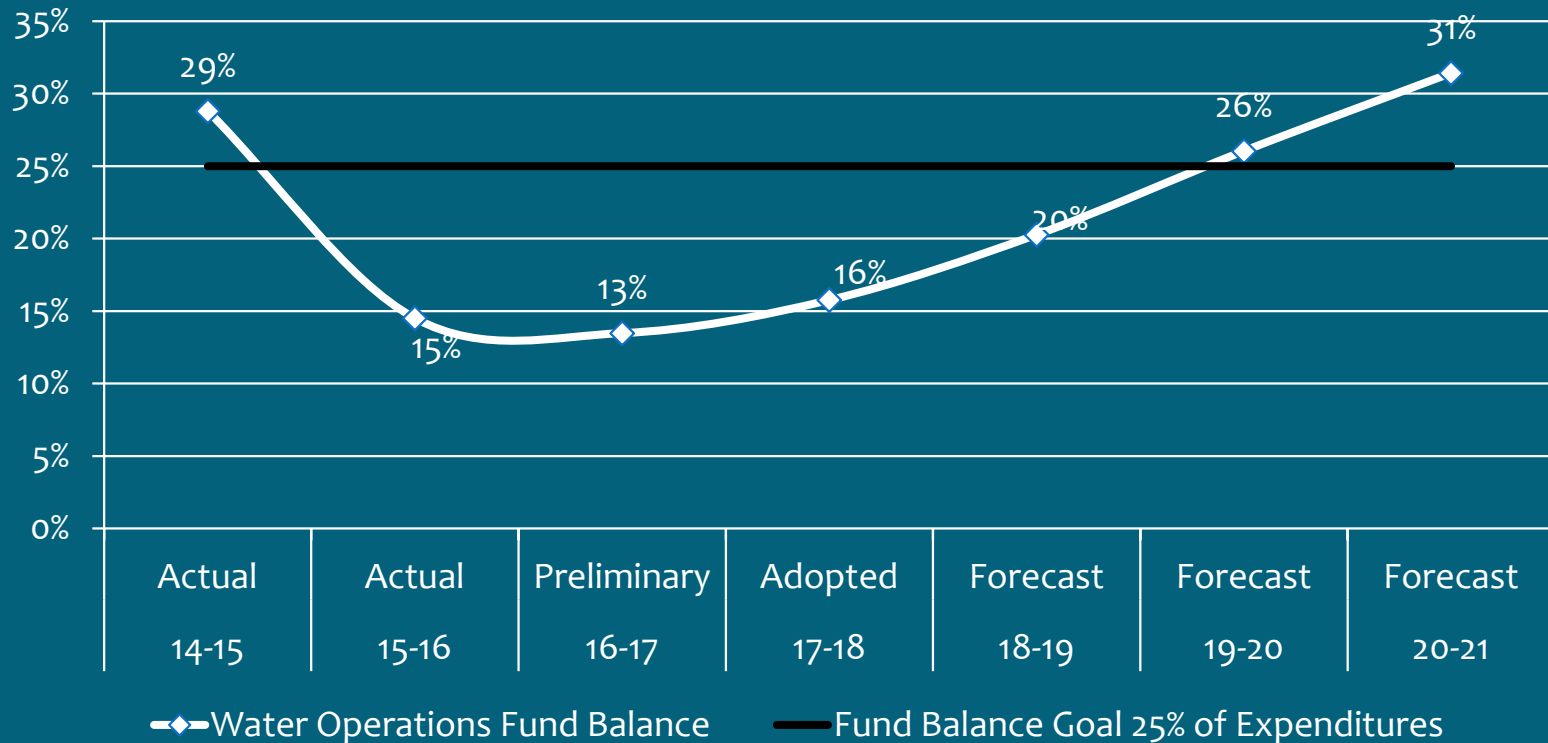
- Water Operations

Category	Budget	Preliminary FY16-17	FY15-16
Revenues	\$ 9,998,609	\$10,898,147	\$8,461,372
Expenditures	11,360,589	11,190,161	9,726,968
Net	(\$1,361,980)	(\$292,014)	(\$1,265,596)



Enterprise Funds – cont'd

- Water Op fund balance forecast



Items # 2, 7, 9, 15, & 17

AGENDA DATE: 09/27/17

SUPPLEMENTAL # 1

From: D. Muirhead
To: [Angie Gonzalez](#); [Michelle Wilson](#)
Subject: Morgan Hill City Council Meeting September 27, 2017 comment on Items 2, 7, 9, 15, 17
Date: Sunday, September 24, 2017 12:53:28 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 September 27, 2017
Item #2: Rotary Donation for Downtown Parks
Item #7: Grant Application for Improvements at Lake Silveira
Item #9: Consultant Agreement for Development Impact Fee Study
Item #15: Adopt Complete Streets Policy
Item #17: Amend FY 2017-18 CIP to include Rehab of Sutter Boulevard

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#2: Rotary Donation for Downtown Parks

Report Narrative: City staff has developed an agreement
for Rotary's donation.

Comment: Would it not be better to have an established donation
process rather than dealing with these on a case-by-case basis?

Since we are counting on donations (and grants) to fund much
of our desired improvements in the Bikeways, Trails, Parks and
Recreation Master Plan, I looked in that Plan for our approach
to donations. The only encouragement is
Chapter 4: Policies, Actions and Projects
Recommendations: Community Services
CS2-5. Develop a sponsorship and donation program that will
support growth of the Senior Support Endowment Fund.
We do consider Donations (DN) for potential sources for funding
but it appears only once
Chapter 5: Implementation and Action Plan
Recommended Priority Projects
Inclusive Playground:

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#7: Grant Application for Improvements at Lake Silveira and Installation of Southern Segment of West Little Llagas Creek Interpretive Wildlife Trail Project

Report Narrative: Phase 1 of the project includes restoration
of Lake Silveira to a wetland area. Phase 1 of the Flood Protection
Project will begin in Spring 2018 and is expected to take two years.

Comment: Staff does not indicate if the Habitat Conservation Fund (HCF)
grant must be used within a specific time period. Staff notes, under
Prior Actions, that the City received a Transportation Fund for Clean
Air (TFCA) grant for \$135,000. Staff does not note that the award was
cancelled in November 2016 because the project was not completed

within the two-year time limit.

Staff also does not note that Council in September 2016 was asked to adopt a resolution to allow submission of a similar HCF grant application.

I believe that you manage expectations by telling people what they will get and what they *will not* get. While the West Little Llagas Creek Trail Reach 7a extension from Watsonville to Lake Silveira has been in the City CIP for years, no mention is made of Water District Resolution 82-30 (May 25, 1982) declaring a policy that the Water District shall neither make nor permit any use whatever for public access for park, trails, or recreation on lands for the Upper and Lower Llagas Creek Watershed projects as long as the adjacent lands are designated Resource Conservation Areas in the Santa Clara County General Plan. The Board discussed this issue in January 2017 but staff has not returned with a proposal.

A second impediment to commencing Reach 7a is receiving one last permit from the U.S. Army Corps of Engineers. In early August 2017, District Director Hsueh, Chair of the CIP Committee, provided this information:

The COE permit status for Upper Llagas Creek is dependent upon District acquiring Lake Silveira from County for mitigation.

However, the acquisition is intertwined with the negotiation of the Master Reservoir Lease between the two agencies.

While members from each Board have been appointed to the Joint County/Water District Task Force, no meeting has yet been scheduled.

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#9: Consultant Agreement with Willdan Financial Services for Development Impact Fee Study

Report Narrative: The RFP was issued on August 1, 2017. A total of 7 firms submitted a proposal by the deadline of August 18, 2017.

An evaluation committee, consisting of staff from various departments reviewed the proposals for qualifications, experience, understanding of the scope, and the City's goals. As a result, 3 firms were selected to further interview and reference check.

While all responding firms meet the minimum qualifications to do the work, based on the review of the proposals received and the interviews conducted, Willdan Financial Services illustrated the best qualifications experience, understanding of the scope and the City's goals. Staff recommends the award of consultant contract to Willdan Financial Services for a total cost of \$74,320. The contract anticipates the work to take 6 months.

Comment: In an interview with California State Controller Betty Yee (California Constitutionals with Betty Yee, December 12, 2016, www.calchannel.com), she talked about the many audits of local government done by her office. She feels that a significant number of problems found could have been avoided if residents and businesses paid attention to what their local government is doing.

But that requires information being available.

For this award, staff does not reveal the scoring of the initial 7 firms nor of the 3 finalists. To form an independent assessment, our residents are given only an assurance that staff prefers Willdan Financial Services to receive \$74,000 of public money.

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#15: Complete Streets Policy to Maintain the City's Eligibility

for Regional Transportation Funding

Report Narrative: In order to be eligible for Measure B funding, all member agencies must adopt a resolution which contains the nine (9) Complete Streets elements:

1. Serve all Users
2. Context Sensitivity
3. Complete Streets in all Departments
4. All Projects/Phases Implementation
5. Plan Consultation
6. Street Network/Connectivity
7. Local Bicycle and Pedestrian Advisory Committee Consultation
8. Evaluation
9. Exemption Process

Comment: To help educate the public, and perhaps even some decision makers, on what Complete Streets encompasses, I strongly recommend that staff provide you with the draft

2016 Measure B Complete Streets Reporting: Capital Project Checklist presented to VTA TAC and BPAC on September 13, 2017.

A few categories from the checklist:

PART 4: PROJECT USERS: Mode of Travel, User Groups

PART 5: EXISTING INFRASTRUCTURE: A: Pedestrian, B: Bicycle, C: Transit, D: Motor Vehicles and Trucks/Freight, E: Traffic Operations and Lighting Systems, F: Green Infrastructure and Storm Water Management Systems, G: Access, H: Planning Guides and Design Manuals

PART 6: SAFETY: A: Collisions

PART 7: PLANNING CONTEXT: A. Local Plans/Studies, B. VTA Plans/Studies

PART 8: PUBLIC INPUT

PART 9: BUILT ENVIRONMENT: A: Land Use, B: Major Trip Generators:

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#17: Amend FY 2017-18 CIP to include Rehab of Sutter Boulevard

Report Narrative: Amend the City's FY 2017-2018 Capital Improvement Program Budget to include the Rehabilitation of Sutter Boulevard (from Cochrane Road to Serene Drive). Affected businesses and/or property owners will be notified of the work in their area.

From the Resolution:

- a. Project Description: The removal and replacement of failed pavement sections, a 2" asphalt concrete overlay and the restriping of existing bike lanes, legends, crosswalks and lane lines.

Comment: You can adopt a policy, but how does it become embedded in the City culture? In seeking funds from the Road Maintenance and Rehabilitation Account (RMRA) from the California Transportation Commission (CTC) to augment Pavement Rehabilitation Program, where are the Complete Streets elements? "restriping of existing bike lanes" seems rather inadequate for

3. Complete Streets in all Departments

approach every relevant project, program, and practice as an opportunity to improve streets and the transportation network for all categories of users, and work in coordination with others ... to maximize opportunities for Complete Streets

4. All Projects/Phases Implementation

all planning, funding, design, approval, and implementation processes for any construction, reconstruction, retrofit, maintenance, operations, alteration, or repair of streets

7. Local Bicycle and Pedestrian Advisory Committee Consultation

Input will be solicited from a public advisory group regarding bicycling and pedestrian needs early in the planning and design stage of transportation projects.

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Thank you for your consideration, Doug Muirhead, Morgan Hill

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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, September 27, 2017 5:30 PM

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

SPECIAL/REGULAR MEETING

(5:30 P.M. Workshop/ 7:00 P.M. Regular Meeting)

SPECIAL MEETING

A Special meeting is called for the purpose of conducting a workshop.

5:30 P.M.

CALL TO ORDER

(Mayor Tate)

ROLL CALL ATTENDANCE

(Deputy City Clerk Wilson)

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
(Deputy City Clerk Wilson)

WORKSHOP

The purpose of the workshop is to discuss cannabis related policies.

REGULAR MEETING

7:00 P.M.

The City Council has adopted a policy that regular meetings shall not continue beyond 11:00 p.m. unless extended by a majority of the City Council.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Spring

CITY ATTORNEY'S REPORT

OTHER REPORTS

PRESENTATIONS

Donation for Downtown Parks from Rotary Club of Morgan Hill

Donation for the Community Park tennis courts from the Morgan Hill Tennis Club

YAC Presentation Asset #6 - Parent Involvement in Schooling

PROCLAMATIONS

Proclaiming Sunday, October 22, 2017 as the Bicentennial Birthday of Bahá'u'lláh

CITY MANAGER'S REPORT

PUBLIC COMMENT

Members of the public are entitled to address the City Council concerning any item within the Morgan Hill City Council's subject matter jurisdiction. Public comments are limited to no more than three minutes. Except for certain specific exceptions, the City Council is prohibited from discussing or taking action on any item not appearing on the posted agenda. (See additional noticing at the end of this agenda)

ADOPTION OF AGENDA

OTHER BUSINESS

1. APPOINTMENT OF CITY MANAGER

Recommendation:

1. Appoint Christina Turner as City Manager for the City of Morgan Hill;
2. Approve the Employment Agreement; and
3. Authorize the Mayor to execute the agreement on behalf of the City.

Estimated Time: 5 Minutes

OATH OF OFFICE

Incoming City Manager Christina Turner

ADJOURN TO RECEPTION

RECONVENE

CONSENT CALENDAR

Items appearing on the Consent Calendar are considered routine and may be approved by one motion. Pursuant to City Council Policies and Procedures (CP 97-01), any member of the Council or public may request to have an item removed from the Consent Calendar for comment and action.

Time Estimate for Consent Calendar: 1 - 10 Minutes

2. ROTARY DONATION FOR DOWNTOWN PARKS

Recommendation:

1. Accept donation of \$100,000 from the Rotary Club of Morgan Hill in support of elements of the Downtown Parks Project; and
2. Authorize the City Manager to execute and administer a donation agreement with the Rotary Club of Morgan Hill.

3. ACCEPT DONATION FROM THE MORGAN HILL TENNIS CLUB AND MAKE RELATED ADJUSTMENTS TO THE FISCAL YEAR 2017-18 BUDGET

Recommendation:

Adopt resolution accepting a \$11,000 donation from the Morgan Hill Tennis Club for court lighting improvements and amending the City's Adopted Fiscal Year 2017-18 Budget to reflect the increased revenues and expenses associated with the project.

4. APPROVE PROPOSAL FOR RAILROAD PARK SOUND WALL MURAL

Recommendation:

Approve art proposal for Railroad Park sound wall mural by Pamela Mossing.

5. CITY POSITION ON PENDING LEGISLATION AB 726 AND AB 813

Recommendation:

Receive legislative correspondence in opposition of AB 726 (Holden) Energy and AB 813 (Holden) Electricity: Independent System Operator: California Renewable Portfolio Standard Program: procurement.

6. AMEND AGREEMENT WITH ASSET PROTECTION GROUP PRIVATE SECURITY, INC.

Recommendation:

Approve the First Amendment to Consultant Agreement with Asset Protection Group Private Security Inc., increasing the contract amount from \$44,500 to \$65,500.

**7. GRANT APPLICATION FOR IMPROVEMENTS AT LAKE SILVEIRA AND
INSTALLATION OF THE SOUTHERN SEGMENT OF THE WEST LITTLE LLAGAS
CREEK INTERPRETIVE WILDLIFE TRAIL PROJECT**

Recommendation:

Adopt resolution authorizing the submission of a grant application to the State of California Habitat Conservation Fund (HCF) Program and the execution of grant documents if the grant application is successful.

**8. SERVICES AGREEMENT WITH WATERSMART SOFTWARE FOR CUSTOMER
ENGAGEMENT SERVICES**

Recommendation:

Authorize the City Manager to execute an agreement for \$228,062 with WaterSmart Software for customer engagement services for a 57-month program.

**9. CONSULTANT AGREEMENT WITH WILLDAN FINANCIAL SERVICES FOR
DEVELOPMENT IMPACT FEE STUDY**

Recommendation:

Approve consultant agreement with Willdan Financial Services to provide professional consulting services for a Development Impact Fee Study for \$74,320.

10. FINAL MAP APPROVAL OF DUNNE HILL MEADOWS - TRACT NO. 10378

Recommendation:

1. Approve the Final Map;
2. Authorize the City Manager to execute the Subdivision Improvements Agreement with Hanalei Land Co. 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, Subdivision Improvements Agreement, and the Stormwater BMP Operation and Maintenance Agreement.

**11. ADOPT ORDINANCE 2260, NEW SERIES, AN ORDINANCE OF THE CITY OF MORGAN
HILL RENAMING CHAPTER 12.20 (CITY PARKS AND RECREATION BUILDINGS) AND
SECTION 12.20.020 (PARK USE – GENERAL PROVISIONS) AND AMENDING
SECTIONS 12.20.010 (DEFINITIONS) AND 12.20.060 (CONDUCT IN PARKS –
GENERALLY) AND 12.20.80 (ACTIVITIES OR ACTIONS REQUIRING PRIOR
APPROVAL FROM THE CITY) AND ADDING SECTIONS 12.20.062 (CONDUCT IN
PUBLIC BUILDINGS AND FACILITIES), 12.20.064 (CONDUCT IN CITY PUBLIC
PARKING LOTS AND FACILITIES), AND 12.20.067 (CONDUCT ON PUBLIC STREETS
AND SIDEWALKS)**

Recommendation:

Waive the reading, adopt Ordinance No. 2260, 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.

12. ADOPT ORDINANCE 2261, NEW SERIES, AN ORDINANCE OF THE CITY OF MORGAN HILL REPEALING ORDINANCE NO. 1398 ENTITLED “FLOOD DAMAGE PREVENTION ORDINANCE” IN ITS ENTIRETY AND CREATING A NEW CHAPTER 15.80 UNDER TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE MORGAN HILL MUNICIPAL CODE ENTITLED “FLOOD DAMAGE PREVENTION”

Recommendation:

Waive the reading, adopt Ordinance No. 2261, 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.

13. APPROVE THE SEPTEMBER 6, 2017 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

14. ADOPT FLAG RAISING POLICY

Recommendation:

Adopt City Council policy establishing criteria and procedures for raising flags at City facilities.

Estimated Time: 10 Minutes

15. COMPLETE STREETS POLICY TO MAINTAIN THE CITY'S ELIGIBILITY FOR REGIONAL TRANSPORTATION FUNDING

Recommendation:

Adopt resolution approving a Complete Streets Policy.

Estimated Time: 10 Minutes

16. JUNE 2017 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

Estimated Time: 10 Minutes

PUBLIC HEARING

17. APPROVE AMENDMENT TO FY 2017-18 CAPITAL IMPROVEMENT PROGRAM

Recommendation:

Adopt resolution amending the City's FY 2017-2018 Capital Improvement Program Budget to include the Rehabilitation of Sutter Boulevard (from Cochrane Road to Serene Drive).

Estimated Time: 15 Minutes

18. CONSIDERATION OF REVISED DEVELOPMENT SERVICES FEE SCHEDULE- TO BE CONTINUED TO OCTOBER 18, 2017

Recommendation:

Open the public hearing to consider adoption of a resolution establishing revised development services user fees and continue the item to a date certain of October 18, 2017.

Estimated Time: 10 Minutes

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.

City of Morgan Hill Cannabis Policy Workshop



About HdL

- Serves:
 - 303 cities
 - 48 counties
 - 108 transaction districts
- Partnered with over 75 local agencies to develop cannabis policies
- Team consists of former policymakers, law enforcement and cannabis regulators
- HdL staff has experience conducting over 11,000 cannabis compliance reviews in Colorado, California and Nevada

What's Legal?



California Cannabis Laws

2015

2016

2017

Medical Cannabis
Regulation and Safety
Act (MCRSA)

Proposition 64
Adult Use of Marijuana
Act (AUMA)

Trailer Bill SB 94:
Medical & Adult Use
Cannabis
Regulation and
Safety Act



Proposition 64 Election Results

- ▶ Statewide – passed with 56% of the vote; 44% opposed
- ▶ Santa Clara County– 58.29% of the voters supported; 41.71% opposed
- ▶ City of Morgan Hill- 57.30% of the voters supported; 42.70% opposed

Trailer Bill SB 94: Medicinal & Adult Use Cannabis Regulation and Safety Act



Local Contact

Requires local agency to establish local contact for their jurisdiction



Notification

The State must notify local jurisdictions when it receives a commercial cannabis application.



Unified Regulatory System

Merging medicinal and adult-use regulations together

SB 94 Local Control Authority

- Local agencies shall have the right to ban any or all commercial cannabis businesses activity in the City.
- The law shall not limit local jurisdictions to adopt and enforce local ordinances to regulate businesses from local zoning and land use requirements.
- The law does not supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances.



SB 94 Other Key Changes to Regulations

- Starting on January 1, 2018 temporary permits may be issued up to 4 months until permanent licenses are either approved or denied.
- Vertical integration will now be permitted except for testing labs
- There will no longer be a transportation license issued
- Local Regulatory Ordinances will not be subject to CEQA until July 1, 2019
- Establishes a Non-Store Front License



Why Should Your City Care?



City of Morgan Hill Community Priorities



Public Safety



Environmental
Protection



Neighborhood
and Land Use
Protection



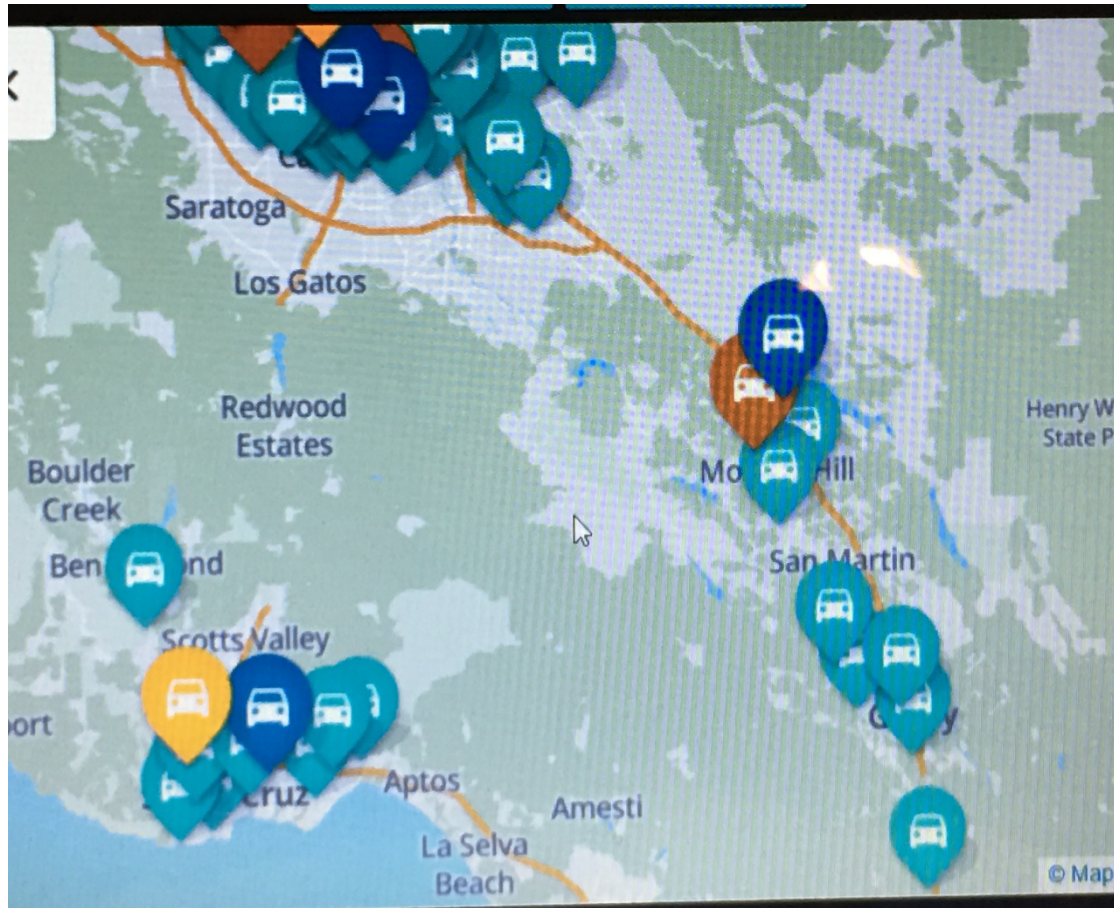
Access by Youth

Personal Use

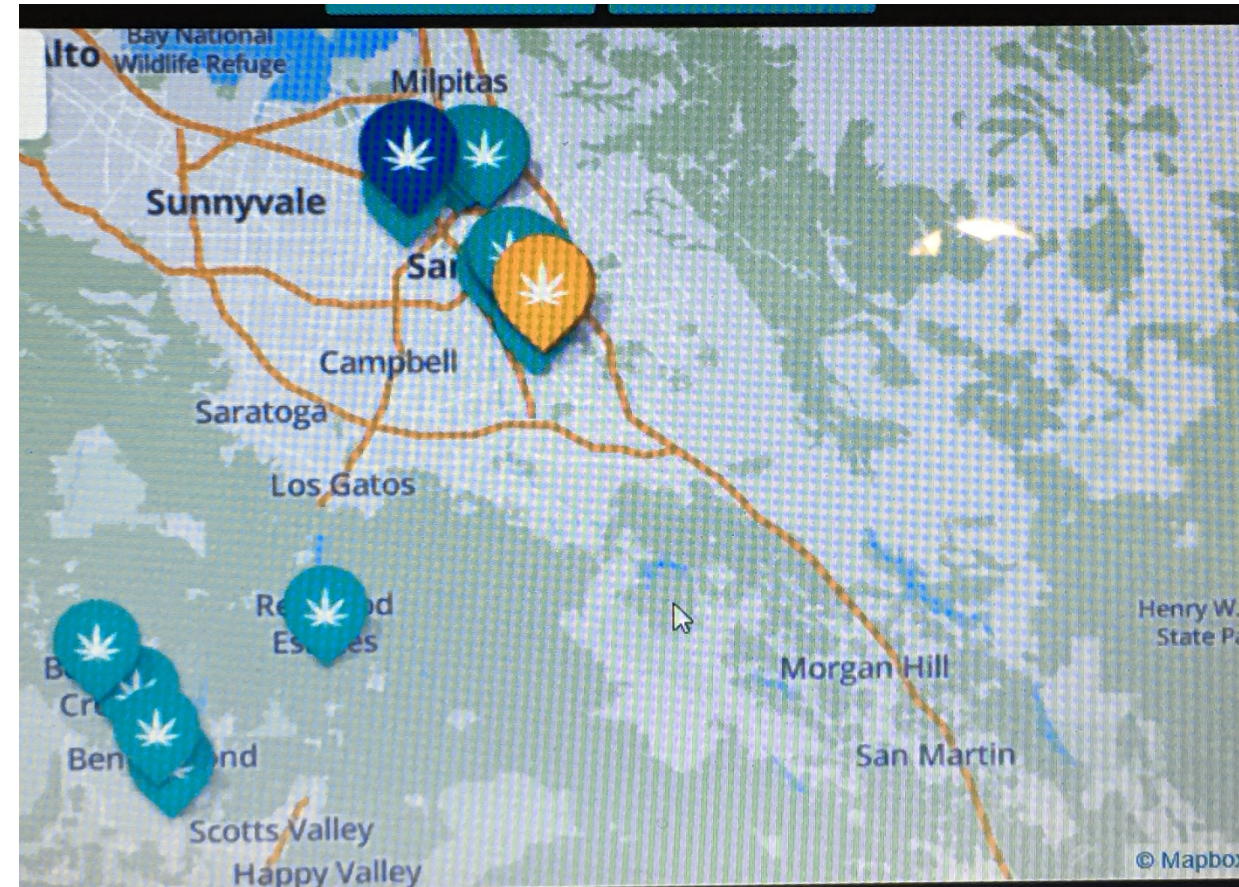
- Grants person right to cultivate (indoor) up to six plants
- Can be subject to reasonable local regulations
- Can prohibit outdoor cultivation
- The primary use of the property must be for a residence
- Must comply with building and construction code
- Use of gas products or generators for cultivation are prohibited
- Any structure used must be secure and fully enclosed
- Must have written consent of the property owner



Where is the Cannabis Industry in the Region



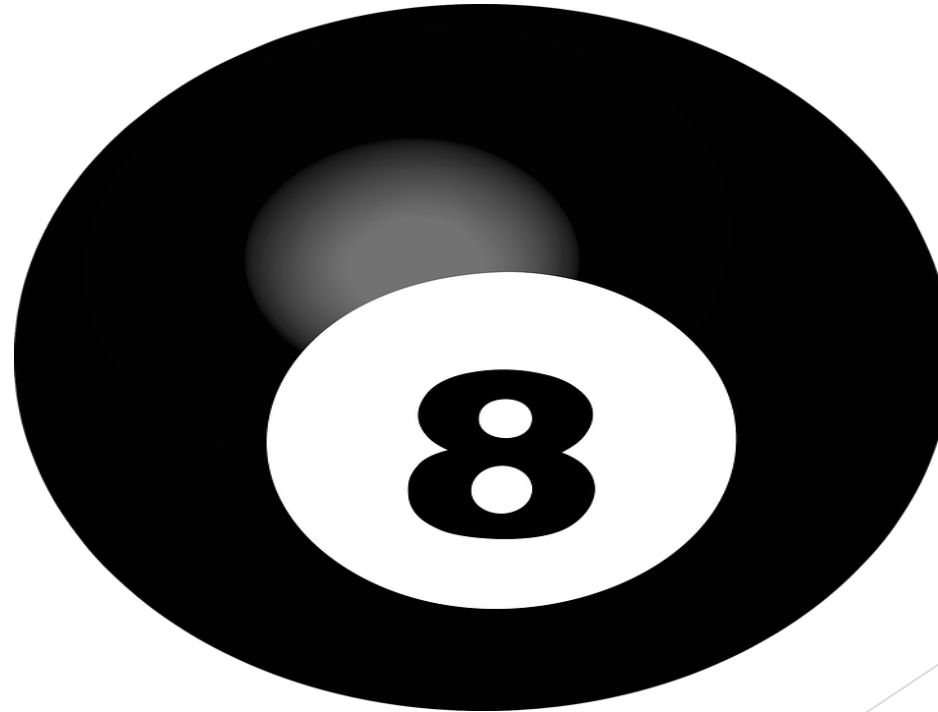
Delivery locations



Dispensary locations

Status of Other Local Agencies in the Region

- City of Campbell
- City of Hollister
- City of Salinas
- City of San Jose
- City of Santa Clara
- City of Watsonville



Key Policy Issues of Concern

- Federal Regulations
- Colorado Initiative 64
- Access to Youth & Role of Prop 64
- Public Consumption
- City of Lemon Grove Citizen Initiative
- Banking and Cash Handling Issues
- Adequate staffing and resources



Experience of Other Local Agencies

- City of Greenfield
- City of Marysville
- City of Salinas
- City of Union City
- City of Watsonville
- County of Monterey



Potential Public Concerns





Regulated commercial cannabis

- Police Department oversight
- Cost recovery through fees
- Generates new general fund revenues through taxes
- City controls who, what, when, where
- Discourages black market



Unregulated commercial cannabis

- Demand for cannabis remains the same
- Accessibility from delivery services and neighboring jurisdictions
- Pushes local market underground
- Cost to City increases without resources to pay for it



Public safety concerns

- Bad actors
- Youth exposed to grow sites in residential property
- Black market diversion/inversion
- Illegal cultivation activities
- Illegal business activities
- Driving while impaired
- Increased traffic from Retailers



Public health concerns

- Bad odors
- Pollutants/Air Quality
- Overdose Response Calls
- Access by youth in homes/illegal sales

Starting Now is Important Because:



Addressing Public Concerns Through Regulations



A Regulatory System Can:

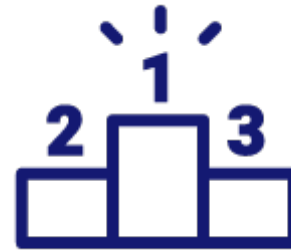
- ✓ Give the local agency authority and control over licensing
- ✓ Require applicants to comply with robust requirements
- ✓ Enhance accountability for security and product safety
- ✓ Reduce intervention from the Federal Government by complying with the Cole Memo and other state laws

A Regulatory Ordinance Can Include:

- Limited number of business licenses
- Access control requirements
- Police access
- Police background checks
- Record reporting/retention requirements
- Investigation and inspection protocols
- Good neighbor policy mitigation
- Suspension, fines, and permit revocation



Application Process



Merit based process selection for applicants that includes:

- ▶ Applicants meeting specified regulatory standards
- ▶ Proposed location is properly zoned
- ▶ Completion of background check
- ▶ Payment of application fees
- ▶ Ongoing payment to City to recover cost

Policy Decision

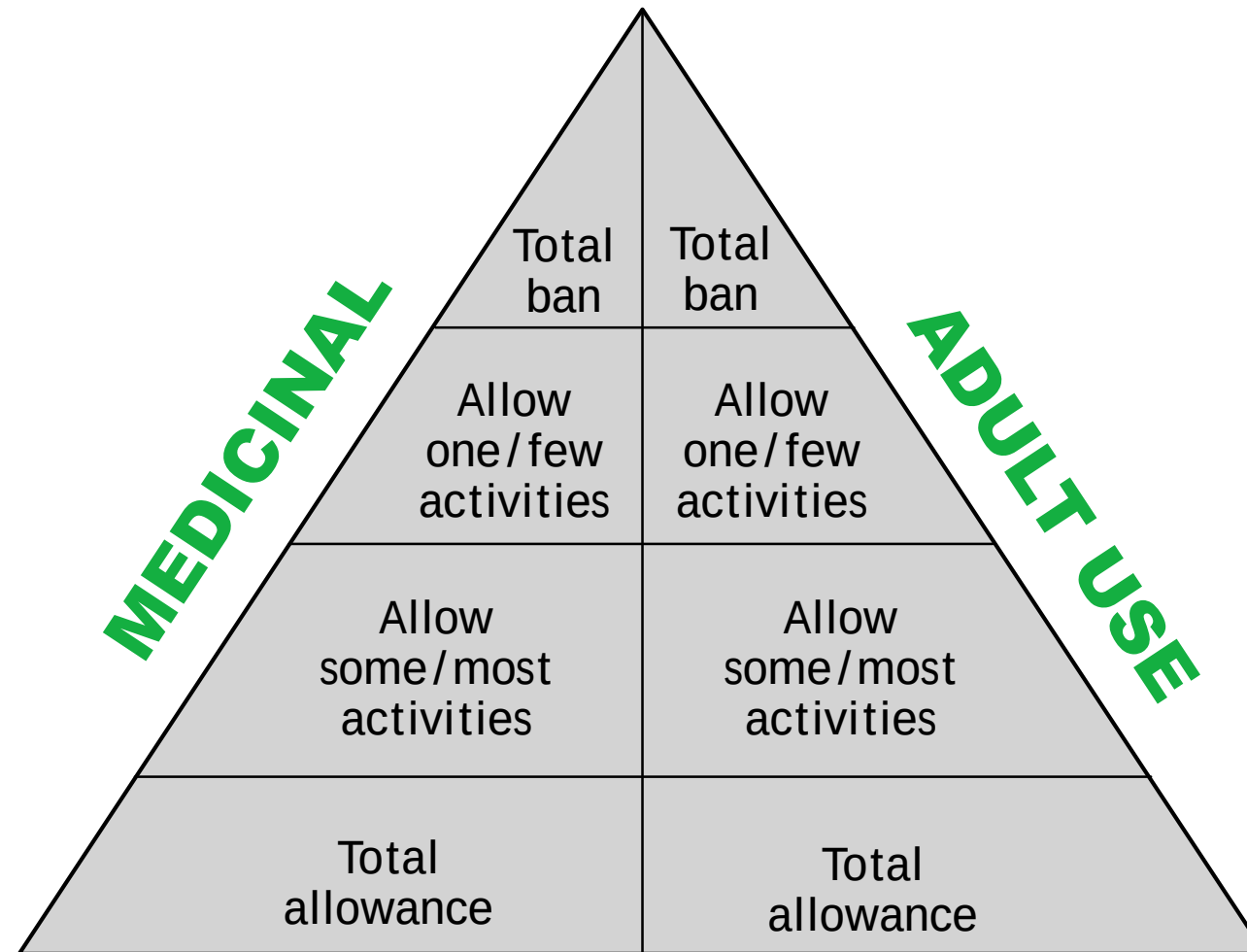


MARIJUANA POLICY DEVELOPMENT

“Policies designed today will help shape how your industry looks tomorrow.”

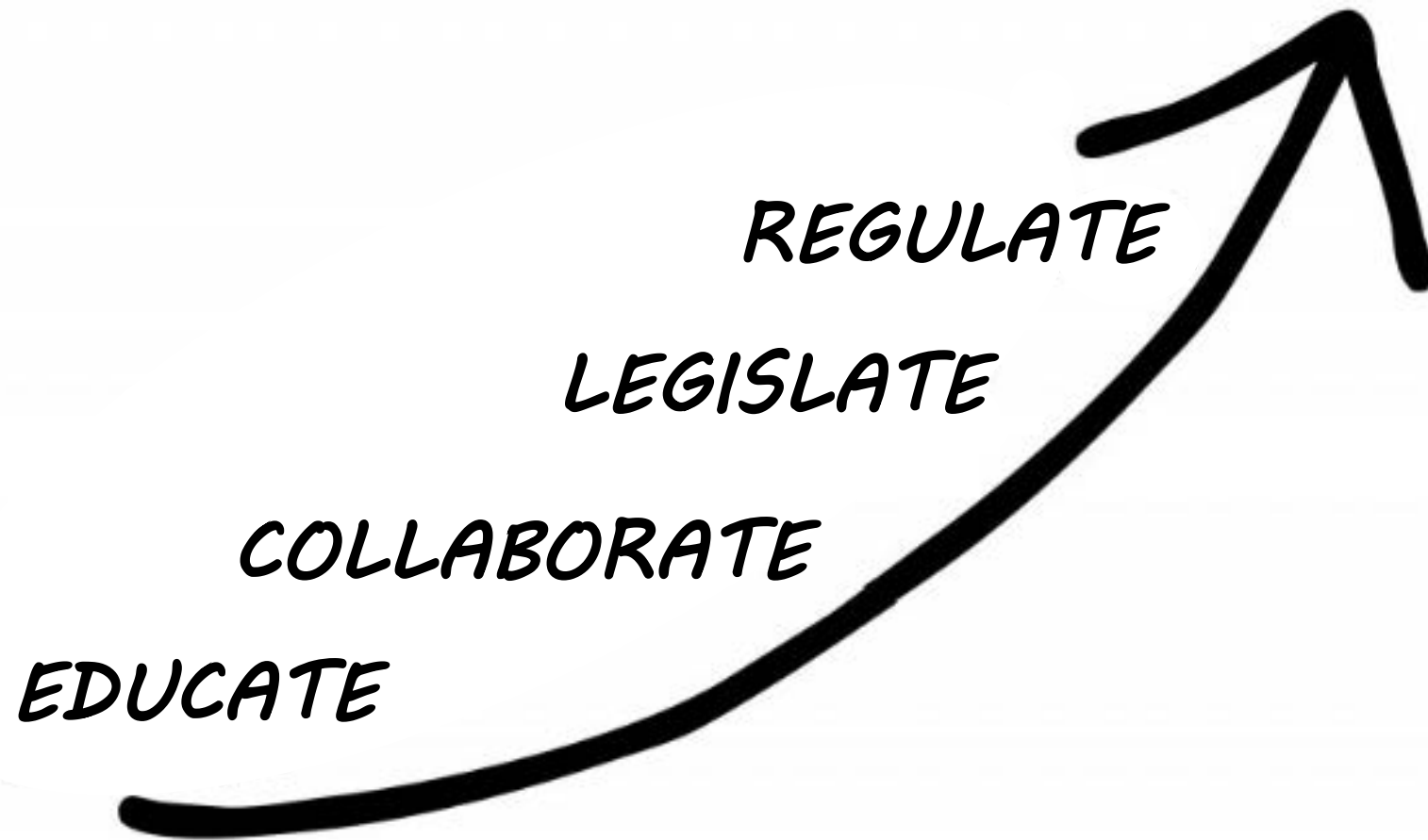
-HdL Companies

REGULATORY OPTIONS



PATH TO SUCCESS

SUCCESS



City Council Sets Cannabis Regulatory Policies on:

- Cultivation
- Microbusiness
- Manufacturing
- Testing Labs
- Delivery/Non Store Front Retailer
- Retail-Medicinal/Adult-Use
- Distribution Facilities



Public Safety Risk Assessment

Regulating cannabis allows police to:

- Monitor business practices
- Conduct background checks
- Audit customer transactions
- Approve security plans
- Offset resource cost for staffs time
- Regulate time, place, and manner requirements

Unregulated illegal sales of cannabis:

- Reduces police power due to limited search and seizure laws under Prop 64
- Makes it difficult to gather intelligence information
- Encourages black market sales
- Creates a reliance on public safety resources with no mechanism for cost recovery
- Results in violent crimes/property theft
- No control regarding sales to youth

Planning Department Process

- ✓ Allows you to be business friendly, nimble and expeditious
- ✓ Establishes one process
- ✓ Requires compliance with operational standards
- ✓ Amendments to Zoning Ordinance needed to accommodate cannabis businesses



Process For Successful Regulatory Framework Development



- ✓ Educate the community
- ✓ Conduct community survey/stakeholder meeting
- ✓ Draft a regulatory framework
- ✓ Develop a cost recovery plan

01

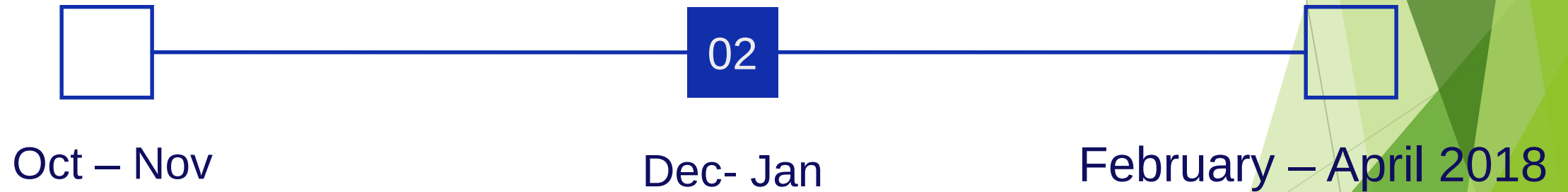
Oct – Nov

Dec - Jan

February – April 2018

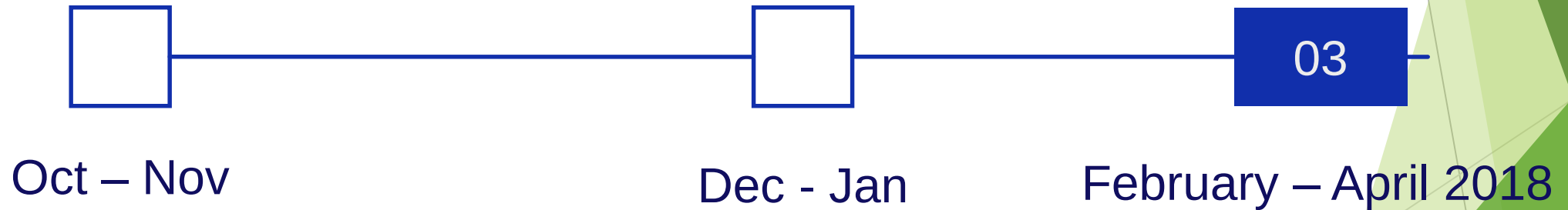


- ✓ Conduct study session & public hearings on any regulatory and zoning ordinance revisions
- ✓ Adopt a resolution approving a cost recovery plan and application procedures or Banning Cannabis Use





- ✓ Develop a tax policy
- ✓ Adopt a resolution placing a tax measure on the Nov 2018 ballot



Tax & Fee Revenues



November 8, 2016 Ballot Measures

63 local cannabis measures to
legalize, tax and set boundaries

39 cannabis tax measures on the
ballot of which only one failed-
Colfax

83% passing rate in Northern CA

76% passing rate in Southern CA



Revenue Generating Strategies



Standard fee to
recover City costs



General tax to be
considered by voters in
November 2018;
50% +1;
Tax to general fund



Cannabis Economic Trends

Cannabis industry set to generate \$7.6 billion in California by 2020

Local communities are looking to benefit financially from commercial companies

Creates jobs in the community directly and indirectly

Misconceptions of sales/use tax exemption H&S 11362.71

Health Benefits and Negative Impacts

LOCAL TAX REVENUE PROJECTIONS

Emerging market makes it difficult to assess with total accuracy

Annual Revenue Estimates:

- ▶ Very Conservative (2.5%): \$675,000
- ▶ Moderate (4%): \$1,080,000
- ▶ Aggressive (6%): \$1,620,000
 - ▶ *Assumes 2 cultivation facilities with 10,000 sq. feet each of canopy space generating \$4 million gross receipts annually.*
 - ▶ *Assumes 2 manufacturers with an average of \$3 million in gross receipts.*
 - ▶ *Assumes 2 retailers with an average of \$2.5 million in gross receipts.*
 - ▶ *Assumes 2 testing labs with an average of \$2 million in gross receipts.*
 - ▶ *Assumes 2 distribution facilities with an average of \$2 million in gross receipts.*

THE DECISION IS YOURS



CATEGORIES OF USES

	MEDICINAL	ADULT-USE
Cultivation	YES / NO	YES / NO
Manufacturing	YES / NO	YES / NO
Testing (Quality Control)	YES / NO	YES / NO
Retailer/Non-Store Front Retailer (Dispensary/Delivery Services)	YES / NO	YES / NO
Distribution Facility	YES / NO	YES / NO
Microbusiness	YES / NO	YES / NO

City Council can choose from the following:

Option 1	Option 2
Ban cannabis uses in the City of Morgan Hill; Minimal modifications to Muni Code to address Prop 64 changes except for indoor personal use	Allow for conditional or discretionary permit; Establish a licensing process for cannabis uses

Thank you!

name

email

phone

David McPherson,
Cannabis Compliance Director

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Matt Eaton,
Cannabis Compliance Manager

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September

Developmental Asset

Asset #6

Parent Involvement In Schooling

Parent(s) are actively involved in helping youth succeed in school and making sure that their child knows the importance of education.

Ways Parents Can Get Involved

- ❖ Be aware of your child's academic responsibilities
- ❖ Tutor and assist your children when they need help with homework or find the help they need.
- ❖ Get involved in your child's school
 - ❖ Ex: PTA meetings, parent/teacher conferences



Complementary Development Asset

Asset #21

Achievement Motivation

Young person is motivated to do well in school

Ways to Motivate Children at School

- ❖ Recognize your child's successes
- ❖ Help them overcome their mistakes
- ❖ Create a healthy environment for your children to discover their passions



YAC Storytime

