



**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, December 6, 2017 6:15 PM

**Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037**

SPECIAL/REGULAR MEETING

(6:15 P.M. Closed Session/ 7:00 P.M. Regular Meeting)

A special meeting of the City Council is called at 6:15 p.m. for the purpose of conducting a closed session.

SPECIAL MEETING

6:15 P.M.

CALL TO ORDER

(Mayor Tate)

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
(Deputy City Clerk Wilson)

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

CLOSED SESSION ANNOUNCEMENT

ADJOURN TO CLOSED SESSION

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Authority: Government Code 54957(b)(1)

Title: City Attorney

RECONVENE

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 MANAGER'S REPORT

CITY ATTORNEY'S REPORT

OTHER REPORTS

OATHS OF OFFICE

Community Emergency Response Team (CERT) Oaths of Office

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

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

1. ACCEPT DONATION FROM ANYTIME FITNESS FUNDRAISING EVENT FOR POLICE PROGRAMS

Recommendation:

Adopt resolution approving an amendment to the City's Fiscal Year 2017-18 budget to accept \$4,250 in donations from a fundraiser held by Anytime Fitness to benefit the Police Department and appropriate \$4,250 for expenditures for the Police Explorers, Range, and K-9 programs.

2. LEADERSHIP MORGAN HILL 2017 PUPS IN NEED - ADDITIONAL DONATION

Recommendation:

Adopt resolution accepting a final donation of \$2,370 from the Leadership Morgan Hill Class of 2017 for the Pups in Need - Morgan Hill Police Department Kennel Makeover.

3. APPROVE SERVICE AGREEMENT FOR DESIGN PROFESSIONALS WITH WESTON MILES ARCHITECTS, INC. FOR DESIGN AND CONSTRUCTION SUPPORT SERVICES FOR THE CENTENNIAL RECREATION CENTER EXPANSION PROJECT

Recommendation:

1. Authorize the City Manager to execute and administer an agreement with Weston Miles Architects, Inc. for design and construction support services for the Centennial Recreation Center Expansion Project in an amount not to exceed \$225,400; and
2. Adopt resolution appropriating an additional \$65,400 to the project from the Recreation Center Impact Fund.

4. APPROVE AGREEMENT FOR CRC CONCESSIONS

Recommendation:

Approve a Concessionaire License Agreement with Sycamore Concessions Company for the operation of a concession food and beverage station at the Centennial Recreation Center and authorize the City Manager to execute all associated documents and agreements.

5. AWARD OF OUTDOOR SPORTS CENTER ARTIFICIAL TURF PROJECT

Recommendation:

1. Correct the award of contract for the Outdoor Sports Center Artificial Turf Project to reflect the proper entity, Valley Precision Grading, Inc. in the amount of \$1,475,437;
2. Authorize expenditure of construction contingency funds not to exceed \$51,000; and
3. Authorize the City Manager to execute and administer the construction contract with Valley Precision Grading, Inc.

6. AWARD CONTRACT FOR LANDSCAPE MAINTENANCE: PARK MOWING, MEDIANS, AND DOWNTOWN

Recommendation:

Authorize the City Manager to execute and administer a Maintenance Services Agreement with Brightview Landscape Services for \$261,552 to service Group 1: City Parks Mowing, Group 3: Medians, and Group 6: Downtown for two years.

7. ADOPT RESOLUTION SETTING PUBLIC HEARING DATE FOR 2018 HAZARDOUS VEGETATION PROGRAM

Recommendation:

Adopt resolution declaring weeds and brush to be a nuisance and setting the hazardous vegetation public hearing on February 7, 2018.

8. GRANT APPLICATION TO THE SANTA CLARA VALLEY OPEN SPACE AUTHORITY FOR THE WEST LITTLE LLAGAS CREEK INTERPRETIVE WILDLIFE TRAIL PROJECT

Recommendation:

Adopt resolution approving the submission of a grant application to the Santa Clara Valley Open Space Authority, authorizing the City Manager to execute grant documents if the grant application is successful.

9. ACCEPTANCE OF SUBDIVISION PUBLIC IMPROVEMENTS - VILLAGE CENTER - TRACT NO. 10219

Recommendation:

1. Accept the subdivision public improvements for Village Center – Tract No. 10219;
2. Authorize the Deputy Director of Engineering or his designee to sign a Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the Recorder of Santa Clara County.

10. ACQUISITION OF PORTIONS OF PROPERTY (TRAN/DO) APN'S 767-03-039, -041, & -042 FOR THE HALE AVENUE EXTENSION PROJECT

Recommendation:

1. Adopt resolution approving the property purchase for portions of property on APN's 767-03-039, -041, -042 for \$1,142,000 plus escrow and closing costs from Luc Van Tran and Hong Phuoc Thi Do, as Trustees of the Tran/Do Family Trust for the Hale Avenue Extension Project; and
2. Authorize the City Manager to execute all documents and make minor modifications as necessary in order to consummate the transaction.

11. ACQUISITION OF PROPERTY (GIANCOLA) APN 767-05-037 FOR THE HALE AVENUE EXTENSION PROJECT

Recommendation:

1. Adopt resolution approving the property purchase of APN 767-05-037 for \$36,400 plus escrow and closing costs from John A. Giancola & Sons, Inc. for the Hale Avenue Extension Project, and
2. Authorize the City Manager to execute all documents and make minor modifications as necessary in order to consummate the transaction.

12. NINTH SEMI-ANNUAL REPORT ON POST-ISSUANCE COMPLIANCE FOR TAX ADVANTAGED BONDS

Recommendation:

Receive and accept report.

13. COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2017

Recommendation:

Accept the City's Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2017.

14. RECEIVE AND FILE THE ANNUAL SB 165 REPORT FOR COMMUNITY FACILITIES DISTRICT NO. 2014-1 (FISHER CREEK)

Recommendation:

Receive and file the report.

15. AB 1600 DEVELOPMENT IMPACT FEE REPORT FOR FISCAL YEAR 2016-17

Recommendation:

Adopt resolution making findings for unexpended development impact fees and accept the annual development impact fee report.

16. "CITY COUNCIL TERM LIMIT" INITIATIVE PETITION

Recommendation:

Receive report.

17. ADOPT AN UNCODIFIED ORDINANCE OF THE CITY OF MORGAN HILL ALLOWING EXISTING RESIDENTIAL DEVELOPMENT PROJECTS WITH A COMMENCEMENT OF CONSTRUCTION REQUIREMENT TO UTILIZE THE EXERCISE OF ALLOTMENT PROVISION PROVIDED WITHIN THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) ORDINANCE SECTION 18.78.160 OF THE MORGAN HILL MUNICIPAL CODE

Recommendation:

Waive the reading, adopt Ordinance No. 2264, 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.

18. ADOPT ORDINANCE ADDING A NEW CHAPTER 15.38 (“WAGE THEFT PREVENTION”) TO TITLE 15 (“BUILDINGS AND CONSTRUCTION”) OF THE MORGAN HILL MUNICIPAL CODE

Recommendation:

Waive the reading, adopt Ordinance No. 2265, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

OTHER BUSINESS

19. DOWNTOWN SPECIAL EVENTS AND STREET CLOSURES

Recommendation:

Approve the proposed revised Downtown Special Events Street Closure Policy.

Estimated Time: 15 Minutes

20. ESTABLISHMENT OF ADMINISTRATIVE PROCESS TO CONSIDER HAZARDOUS VEGETATION PROGRAM CHARGES

Recommendation:

Direct staff to prepare an ordinance establishing an administrative process for hazardous vegetation abatement program charges.

Estimated Time: 15 Minutes

21. ANIMAL SERVICES UPDATE

Recommendation:

1. Receive report; and
2. Direct City staff to explore alternative regional approach to animal services.

Estimated Time: 30 Minutes

22. SEPTEMBER 2017 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

Estimated Time: 5 Minutes

23. APPROVE CITY MANAGER HOME LOAN

Recommendation:

1. Adopt resolution approving a housing loan to the City Manager in the amount not to exceed \$1,300,000 and authorizing the Mayor to sign all necessary loan documents; and
2. Amend the budget up to a maximum of \$1,300,000.

Estimated Time: 5 Minutes

PUBLIC HEARING

24. GENERAL PLAN AMENDMENTS, GPA2017-0001 AND -0002: CITY OF MORGAN HILL. AMENDMENTS TO THE MORGAN HILL 2035 GENERAL PLAN TO CORRECT MISCELLANEOUS LAND USE MAP AND TEXT ERRORS

Recommendation:

Adopt resolution approving amendments to the Morgan Hill 2035 General Plan.

Estimated Time: 30 Minutes

25. PURCHASE AND SALE AGREEMENT BETWEEN CITY OF MORGAN HILL AND GRANARY LLC, FOR THE GRANARY BUILDING EXPANSION PROJECT

Recommendation:

Adopt resolution approving Purchase and Sale Agreement by and between the City of Morgan Hill and Granary LLC, for the Granary Building Expansion Project and directing the City Manager to take all actions required to execute the Agreement.

Estimated Time: 15 Minutes

26. WA2017-0001 DIANA - GROSSWEILER- PETITION TO CANCEL WILLIAMSON ACT CONTRACT FOR PROPERTY, IDENTIFIED BY ASSESSOR PARCEL NUMBER 726-09-002

Recommendation:

1. Open/close public hearing; and
2. Adopt resolution.

Estimated Time: 15 Minutes

27. ZONING AMENDMENT, ZA2017-0009: EAST DUNNE - YOUNG: A REQUEST TO AMEND THE ZONING DESIGNATION ON A 3.49-ACRE PARCEL LOCATED ON THE NORTH SIDE OF EAST DUNNE AVENUE APPROXIMATELY 610 FEET WEST OF WALNUT GROVE DRIVE FROM THE R-2 3,500 TO R-3 MEDIUM DENSITY ZONING DISTRICT

Recommendation:

1. Open/close public hearing;
2. Waive first and second reading of the ordinance; and
3. Introduce ordinance approving amendment to the City zoning map.

Estimated Time: 10 Minutes

28. ZA2017-0008: MONTEREY-DOBKIN: REQUEST FOR A ZONING MAP AMENDMENT FROM THE ML - LIGHT INDUSTRIAL ZONING DISTRICT TO THE R-3 MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A 5.66 GROSS ACRE SITE IDENTIFIED BY ASSESSOR PARCEL NUMBER 726-25-006 LOCATED ON THE EAST SIDE OF MONTEREY ROAD OPPOSITE THE SOUTHERLY TERMINUS OF OLD MONTEREY ROAD

Recommendation:

1. Open/close public hearing;
2. Waive the first and second reading of Ordinance approving zoning amendment; and
3. Introduce Ordinance.

Estimated Time: 30 Minutes

29. ZA2017-0005, EA2017-007: WATSONVILLE - BLACKROCK-ZONING AMENDMENT FROM RE 40,000-RPD TO RE 40,000 FOR PROPERTY IDENTIFIED BY ASSESSOR PARCEL NUMBER 779-02-023 LOCATED AT WATSONVILLE ROAD AND SANTA TERESA BOULEVARD.

Recommendation:

1. Open/close public hearing;
2. Adopt resolution denying Zoning Amendment ZA2017-0005;
OR
2. Waive the first and second reading of the ordinance approving the rezone; and
3. Introduce the ordinance.

Estimated Time: 30 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: December 6, 2017

PREPARED BY: Margarita Balagso, Police Analyst
APPROVED BY: City Manager

ACCEPT DONATION FROM ANYTIME FITNESS FUNDRAISING EVENT FOR POLICE PROGRAMS

RECOMMENDATION(S)

Adopt resolution approving an amendment to the City's Fiscal Year 2017-18 budget to accept \$4,250 in donations from a fundraiser held by Anytime Fitness to benefit the Police Department and appropriate \$4,250 for expenditures for the Police Explorers, Range, and K-9 programs.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community

REPORT NARRATIVE:

On September 14, 2017, Anytime Fitness located in Madrone Village Shopping Center held a fundraiser to benefit Police Department Programs. The fundraising event raised \$4,250 to benefit the following programs:

- 1) Police Explorer Program
- 2) K9 Officer
- 3) Firearm Range Program

The Police Department wishes to utilize these funds to purchase additional equipment not included in the Fiscal Year (FY) 2017-18 operating budget to enhance these programs.

The donation will be used to purchase leather scratch pants and a new protection sleeve for the K-9 Program (\$817), and the Police Explorer Program will purchase an enclosed 5'x8' enclosed trailer (\$2,692) plus customized decals (\$500). The trailer is used to transport equipment for Explorer competitions. The remaining \$241 in funds will be allocated to the Firearm Range Program for the purchase of new steel targets.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the donation and recommended expenditures.

ALTERNATIVE ACTIONS:

If Council chooses not to approve this donation, the three programs will not receive funds that will enhance the Explorer, K-9, and Firearms Range programs through the purchase of equipment. The current FY 2017-18 Police Department operating budget did not include funds to purchase additional equipment. Therefore, these programs would remain at the same funding level as appropriated.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

The recommended action includes recognizing \$4,250 as revenue towards Police Donations (010.37517) and appropriating a maximum of \$4,250 in Field Patrol Other Supplies (010.3210.42248) for purchase of equipment for these programs.

The activities associated with the purchase and deployment of new equipment will not require additional staff time.

CEQA (California Environmental Quality Act):

Not a Project -- Government fiscal activities that do not involve any commitment to a specific project that may result in physical environmental impacts.

LINKS/ATTACHMENTS:

1. Resolution
2. Exhibit A to Reso - Budget Scorecard

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2017-18 BUDGET ACCEPTING A DONATION OF \$4,250 IN PROCEEDS FROM THE ANYTIME FITNESS FUNDRAISER AND APPROPRIATING \$4,250 FOR THE PURCHASE OF EQUIPMENT 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 purchase described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled "Donation from Anytime Fitness Fundraising Event for Police Programs" submitted for City Council consideration at its meeting of December 6, 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 Annual 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 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 is in support of the purchase of equipment for the Explorers K-9 and Range programs to further public safety and security; 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 the City; and
- d. That the City Manager is hereby delegated authority to and is authorized to take all other ministerial actions that may be necessary or appropriate to implement the provisions of 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 6th day of December 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 December 6, 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 #

019

FUND:

DEPARTMENT:

OBJECT:

010	General Fund
3210	Police-Patrol
42248	OTHER SUPPLIES

AGENDA DATE:

AGENDA ITEM TITLE:

12/06/17
Anytime Fitness Police Donation

	07/01/17 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/18 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	17,066,150	37,137,688	39,033,006	15,170,832
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	63,745	64,745	(1,000)
RECOMMENDED ACTION	-	4,250	4,250	-
RESULT OF RECOMMENDED ACTION	<u>17,066,150</u>	<u>37,205,683</u>	<u>39,102,001</u>	<u>15,169,832</u>



CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2017

PREPARED BY: John Lang, Economic Development Coordinator
APPROVED BY: City Manager

LEADERSHIP MORGAN HILL 2017 PUPS IN NEED - ADDITIONAL DONATION

RECOMMENDATION(S)

Adopt resolution accepting a final donation of \$2,370 from the Leadership Morgan Hill Class of 2017 for the Pups in Need - Morgan Hill Police Department Kennel Makeover.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

2017 Strategic Priorities

Inclusiveness

REPORT NARRATIVE:

On August 23, 2017, the City Council approved a resolution accepting a donation from Leadership Morgan Hill in the amount of \$7,000 for the 2017 class project named "Pups in Need - Morgan Hill Police Department Kennel Makeover."

At the time City Council approved the resolution all donations had been reconciled and accounted for related to the 2017 class project. Subsequently, additional donations were received by Leadership Morgan Hill in support of the project after Council's action. Due to delays in online donation submissions, total donations were not fully reconciled for the project until the September 30, 2017.

The Leadership Morgan Hill Class of 2017 officially completed their project on September 14, 2017.

The Leadership Morgan Hill Board of Directors recognized and approved any donations for the Pups in Need project received through September 30, 2017 that would be put towards the project.

The recommended action in accordance with the City of Morgan Hill's Administrative policies and procedures V009, Donation Policy, is for the City Council to approve a resolution to accept the remaining "Pups In Need" cash donations of \$2,370 to be added to the special deposit account for facility needs of the Morgan Hill Police Department Kennel.

COMMUNITY ENGAGEMENT: Involve

In addition to improving the Animal Impound Facility, the class project also involved raising awareness within the pet community of the importance of microchipping and other healthy programs for pets in Morgan Hill.

ALTERNATIVE ACTIONS:

None

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On August 23, 2017, City Council approved a resolution accepting donations of materials and fixtures and cash totaling \$7,000. The breakdown of the donation was \$5,000 in material and fixtures installed at the Kennel facility and \$2,000 in cash to be deposited into a special account specifically supporting the Kennel facility.

City Council approved the concept for the Pups in Need - Morgan Hill Police Department Kennel Makeover at its meeting on April 19, 2017.

FISCAL AND RESOURCE IMPACT:

In addition to \$2,000 already deposited for future facility needs of the Morgan Hill Police Department Kennel as part of the August 2017 City Council action, the recommended action would provide an additional \$2,370 to be added to the special deposit account bringing the combined donation from the Leadership Morgan Hill class to \$9,370.

CEQA (California Environmental Quality Act):

Categorically Exempt: As a minor alteration of an existing facility, this project is categorically exempt from CEQA. CEQA Guideline §15301.

LINKS/ATTACHMENTS:

1. Resolution

RESOLUTION NO. 17-XXX**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ACCEPTING A FINAL DONATION OF \$2,370 FROM THE 2017 LEADERSHIP MORGAN HILL CLASS FOR THE MORGAN HILL POLICE DEPARTMENT ANIMAL IMPOUND FACILITY**

WHEREAS, the Leadership Morgan Hill is a not for profit organization dedicated to training and developing future leaders to community service; and

WHEREAS, Leadership Morgan Hill Class of 2017 worked to raise funds for the purchase of materials and fixtures to provide greater comfort and well-being to animals detained in the facility; and

WHEREAS, Leadership Morgan Hill Class of 2017 raised sufficient funds for the purchase of fixtures and materials for the animal impound facility; and

WHEREAS, the City of Morgan Hill accepted an initial donation of \$7,000 from Leadership Morgan Hill Class of 2017 on August 23, 2017; and;

WHEREAS, Leadership Morgan Hill wishes to donate the remaining funds collected as part of the class project to the City of Morgan Hill to further enhance the animal impound facility; and

WHEREAS, the City wishes to accept the donation from Leadership Morgan Hill for this project.

THEREFORE, BE IT RESOLVED by the City Council of the City of Morgan Hill that:

Section 1. The recitals, findings and determinations set forth above are true and correct and are incorporated by reference herein.

Section 2. The City Council hereby accepts the final donation of cash to be deposited in a special account for the animal impound facility valued at \$2,370 from Leadership Morgan Hill.

Section 3. If any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this resolution is, for any reason, held to be invalid by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this resolution and each section, subsection, subdivision, sentence, clause, phrase, word or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivision, sentences, clauses, phrases, words, or portions thereof be declared invalid.

Section 4. This Resolution shall become effective immediately upon adoption.

City of Morgan Hill
 Resolution No.
 Page 2 of 2

PASSED AND ADOPTED by the City Council of Morgan Hill at the meeting held on this 6th day of December 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.XXX X, adopted by the City Council at the meeting held on December 6, 2017.

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

DATE: _____

 Irma Torrez, CITY CLERK

Attachment: Resolution (1496 : Leadership Morgan Hill 2017 Pups in Need Kennel Makeover)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2017

PREPARED BY: Nick Calubaquib, Recreation Manager
APPROVED BY: City Manager

APPROVE SERVICE AGREEMENT FOR DESIGN PROFESSIONALS WITH WESTON MILES ARCHITECTS, INC. FOR DESIGN AND CONSTRUCTION SUPPORT SERVICES FOR THE CENTENNIAL RECREATION CENTER EXPANSION PROJECT

RECOMMENDATION(S)

1. Authorize the City Manager to execute and administer an agreement with Weston Miles Architects, Inc. for design and construction support services for the Centennial Recreation Center Expansion Project in an amount not to exceed \$225,400; and
2. Adopt resolution appropriating an additional \$65,400 to the project from the Recreation Center Impact Fund.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community

REPORT NARRATIVE:

The Centennial Recreation Center (CRC) opened in October 2006 and is operated in partnership with the City of Morgan Hill and the YMCA of the Silicon Valley. At that time it was anticipated that the facility was anticipated to accommodate 2,250 membership units. By the end of June 2009, the facility had nearly 3,200 membership units equaling over 10,000 memberships. Then in the Spring of 2010 the CRC Fitness Center was expanded providing over 2,000 additional square feet of useable fitness space and a variety of additional fitness equipment. Since this expansion was completed in May 2010, facility membership has grown by 2,000 units (approximately 6,000 individuals) to a current membership base of 5,100 units and approximately 16,000 members, with an average of over 700 daily users.

While creative programming has been used, the facility is near capacity. This project will expand the facility accommodating future programming needs and membership growth. In 2015, the City Council reestablished its Recreation Center Impact Fee. Due to the overwhelming popularity of the CRC and it serving as the hub of recreation programs for the community, this project was identified as the top priority in the needs assessment for the impact fee study. The project also remained a top priority through the recently completed Bikeways, Trails, Parks and Recreation Master Plan Update. This expansion

project is funded by the Recreation Center Impact Fund and is included in the Capital Improvement Program (CIP) for Fiscal Years 2017-2018 (design), and 2018-2019 (construction).

From June through August 2017, staff conducted a needs assessment to determine the expansion areas of health, wellness, and recreation. Staff collected feedback on the proposed expansion from facility users and staff, using several data points:

- **Customer Comment Cards** – CRC staff receives several hundred written comment cards per year. An analysis of comment cards received from 2016-2017 revealed the need for additional space to conduct group exercise classes and the need to expand the Fitness Center.
- **Annual SEER Customer Satisfaction Survey** - Each spring, CRC members, along with members of YMCAs across the nation, are asked to participate in an online customer satisfaction survey. The CRC receives an average response rate of 15%. The survey provides an opportunity for respondents to leave open ended comments. An analysis of these comments from the 2016 and 2017 surveys revealed members' desire for additional space for group exercise, fitness center, and parking (in order of frequency of mentions).
- **Online Survey for Member Use and Expansion** – In July 2017, CRC members were asked to complete a survey providing feedback on their use of the facility and their thoughts on which area(s) were most in need of expansion. The survey received a 6.5% response rate. The most highly rated areas cited, in order of most needing expansion, were the fitness center, parking, then group exercise.
- **Focus Groups** – Three separate focus groups were conducted with the following stakeholders: CRC members, CRC staff, and the Morgan Hill Youth Action Council. In all three of these focus groups, more space for group exercise classes was the most prominent need identified.

On October 2, 2017, staff issued a Request for Proposals (RFP) to firms for architectural design services to expand the CRC. The RFP stated that the City was interested in receiving proposals from architectural firms that have demonstrated expertise in successfully completing facility expansion and renovation projects.

On October 27, 2017, the City received proposals from Noll & Tam Architects and Weston Miles Architects. A review panel consisting of the Community Services Director, Deputy Director for Engineering, Senior Project Manager, Recreation Manager, Maintenance Manager, Associate Executive Director for the YMCA, and a Parks and Recreation Commissioner reviewed the proposals and asked the two firms, Noll & Tam and Weston Miles, to come in for an interview. The goal of the panel was to determine the most qualified firm for this specific project. Proposals were scored using the following criteria:

- Demonstrated professional quality with similar projects
- Experience of personnel/sub-consultants assigned to the project
- Past experience
- Review of references
- Quality of the proposal
- Ability to meet all aspects of the scope of work

- Ability to design a wide aspect of facility features
- Demonstrated flexibility in design experience and design processes
- Fee proposal

See Attachment A for a summary of proposal scores.

After scoring the proposals and factoring in the follow-up interviews, Weston Miles' cumulative score was 0.5 points higher than Noll & Tam's. After reviewing these scores, the panel opened the sealed fee proposals for both firms. The total proposed costs were as follows:

Firm	Fee Proposal Amount
Noll & Tam	\$539,894
Weston Miles	\$196,000

Upon reviewing the fee proposals and the 0.5 point margin between the firms' cumulative scores, the panel determined that the proposal from Weston Miles Architects best met the City's needs for this project. The team concluded that Weston Miles has a strong design team and that they demonstrated an understanding of City processes, procedures, and local building code requirements. Further, Weston Miles has vital experience with expansion and renovation of existing buildings. They have successfully designed and provided construction support services for the CRC's fitness expansion, Friendly Inn renovation, and the City Council Chambers renovation projects and are currently working on the Library expansion project.

Staff has followed the RFP process as defined in Municipal Code Section 3.04.250 and recommends award of the contract to Weston Miles. The recommended fee amount of \$225,400 was negotiated to ensure the community's needs would be met in the most effective and cost-efficient manner and include a 15% design contingency. The scope of work includes a review of the overall expansion needs with the stakeholders, preparing a schematic design, cost estimates, design development and construction documents, project management, and construction support services. The scope also includes meetings for the general public, with the Parks and Recreation Commission, and check-ins with the City Council. The approach taken with this proposed agreement is that Weston Miles will provide concept design for identified expansion needs with more accurate cost estimates. At that point, staff will bring to the Council a recommendation for moving forward with design development drawings that meet the identified budget. The current construction budget in the approved CIP is \$1.8 million.

Should City Council award the contract at this time, it is anticipated that the project design will be completed by December 2018 with construction anticipated to begin in the spring of 2019. Staff will return to Council with conceptual designs and then again with designs and cost estimates to confirm the final scope and budget.

COMMUNITY ENGAGEMENT: Involve

From June through August 2017, staff conducted a needs assessment to determine the expansion areas of health, wellness, and recreation. Staff collected feedback on the proposed expansion from facility users and staff, using four data points: review of

customer comment cards, results of the annual SEER customer satisfaction survey, online survey for member use and expansion, and staff and member focus groups.

ALTERNATIVE ACTIONS:

City Council could reject staff's recommendations to hire Weston Miles and direct staff to negotiate with another consultant or provide alternate direction on the project.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council previously approved several actions leading to the 2006 construction and the 2010 expansion of the Centennial Recreation Center. On July 19, 2017, the City Council adopted the current Bikeways, Trails, Parks and Recreation Master Plan with the CRC Expansion as a priority project.

FISCAL AND RESOURCE IMPACT:

If approved, the total service agreement amount would be \$225,400, which includes a 15% contingency. Of this amount, \$160,000 in Community Center Impact Funds (360) was approved in the FY 2017-18 Capital Improvement Program for design and construction support services for the CRC Expansion Project (CIP No. 138016). A budget scorecard is attached to increase this allocation by \$65,400. Although this cost is greater than originally allocated, staff believes that this is the best path forward in finding a qualified firm at this price.

CEQA (California Environmental Quality Act):

Categorical Exemption

The Service Agreement for Design professionals in itself is not a project and therefore does not require CEQA. The project itself will likely be categorically exempt from CEQA as the minor alteration of existing public structures, including additions to existing structures of less than 10,000 square feet when the project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and the area in which the project is located is not environmentally sensitive, falls within the CEQA categorical exemption of Class 1, Existing Facilities.

LINKS/ATTACHMENTS:

1. Attachment A - Score Summary
2. Attachment B - Resolution for Budget Adjustment CRC Expansion
3. 021-CRC Design Expansion
4. Attachment C - Agreement

ATTACHMENT A

CRC Expansion Project

Final Scoring Sheet

Firm: Noll & Tam

Scorer: Summary of 7 Panelists

Date: 11/16/17

1. Firm Qualifications

Is the firm qualified to perform the design work identified in the scope? Assuming they are, did they demonstrate in their proposal that they are qualified? Qualification issues to consider:

1. Has the firm done this type of engineering work before? Did they demonstrate in their proposal that they have?
2. Are they committing experienced engineers to the project.
3. What sub-consultants are they using and what are their qualifications?

Score (1 – 10) 60 (Total Score of 7 Raters)

Notes:

- Large, experienced firm
- Completed original design for the CRC
- Experience completing several expansion/renovation projects
- Experienced Project Manager and sub-consultants, some of whom worked on the original CRC design

2. Understanding and Meeting RFP Objectives

Did the firm meet the objectives stated in the RFP? Does their proposal address all of the issues stated in the RFP? For extra credit: Did the firm do its homework by digging deeper for information not contained in the RFP or by visiting the site?

Score (1 – 10) 51.5 (Total Score of 7 Raters)

Notes:

- Demonstrated understanding of issues presented in RFP
- Presented several initial design solutions

3. Other Factors

Did the firm present a good case that they understand what the City needs to exceed?

Did the firm present additional scope items not considered in the RFP but vital to the success of the design?

Another strong consideration is the schedule they propose to get the work done.

How well will they work with City staff? Are they familiar with Morgan Hill?

Score (1 – 10) 56 (Total Score of 7 Raters)

Notes:

- Provided several options for potential expansion
- Understanding of needs of public recreation facilities
- Designed the CRC

Overall Score: 167.5 (Total Scores of 7 Raters)

Strengths of Proposal:

- Many years of experience with design for new construction and renovation
- Good understanding of project and issues
- Demonstrated effort in offering several expansion options

Weaknesses of Proposal:

- Written proposal was generic

CRC Expansion Project Final Scoring Sheet

Firm: Weston Miles

Scorer: Summary of 7 Panelists

Date: 11/16/17

1. Firm Qualifications

Is the firm qualified to perform the design work identified in the scope? Assuming they are, did they demonstrate in their proposal that they are qualified? Qualification issues to consider:

1. Has the firm done this type of engineering work before? Did they demonstrate in their proposal that they have?
2. Are they committing experienced engineers to the project.
3. What sub-consultants are they using and what are their qualifications?

Score (1 – 10) 60 (Total Score of 7 Raters)

Notes:

- Completed first expansion design for the CRC
- Experience completing several City expansion/renovation projects
- Experienced Project Manager and sub-consultants who have worked on previous City projects

2. Understanding and Meeting RFP Objectives

Did the firm meet the objectives stated in the RFP? Does their proposal address all of the issues stated in the RFP? For extra credit: Did the firm do its homework by digging deeper for information not contained in the RFP or by visiting the site?

Score (1 – 10) 49 (Total Score of 7 Raters)

Notes:

- Demonstrated understanding of issues presented in RFP
- Presented initial design solutions, however, did not do as much prep work
- No ideas presented on solution for parking
- Understanding of limited project budget and getting the most out of funds

3. Other Factors

Did the firm present a good case that they understand what the City needs to exceed?

Did the firm present additional scope items not considered in the RFP but vital to the success of the design?

Another strong consideration is the schedule they propose to get the work done.

How well will they work with City staff? Are they familiar with Morgan Hill?

Score (1 – 10) 59 (Total Score of 7 Raters)

Notes:

- Expanded on use of existing facility to keep costs down
- Designed the first CRC expansion. Have worked on several City expansion/renovation projects.

Overall Score: 168 (Total Scores of 7 Raters)

Strengths of Proposal:

- Many years of experience with design for new construction and renovation
- Have worked on several City renovation projects, including CRC expansion
- Understanding of budget constraints

Weaknesses of Proposal:

- Written proposal was generic
- Addressed solution for expanding aerobics studio, but not parking or other needs

RESOLUTION NO.

A RESOLUTION APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2017-18 BUDGET IN THE RECREATION CENTER IMPACT FUND (FUND NO. 360) TO APPROPRIATE SIXTY-FIVE THOUSAND FOUR HUNDRED DOLLARS (\$65,400)

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 do not constitute a project under the provisions of California Environmental Quality Act of 1970; 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 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
- 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 2017-18 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 6th day of December 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 December 6, 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 #

021

FUND:

DEPARTMENT:

OBJECT:

360	Com. Rec. Centers Impact Fund
8065	Com/Rec Center Impact
86360	CONSTRUCTION

AGENDA DATE:

AGENDA ITEM TITLE:

12/06/17
CRC Design Expansion

	07/01/17 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/18 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	268,766	985,274	160,000	1,094,040
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	84,000	(84,000)
RECOMMENDED ACTION	-	-	65,400	(65,400)
RESULT OF RECOMMENDED ACTION	268,766	985,274	309,400	944,640

Attachment: 021-CRC Design Expansion (1531 : CRC Expansion Design)

SERVICE AGREEMENT FOR DESIGN PROFESSIONALS WESTON MILES ARCHITECTS, INC.

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

1. **City Authority.** This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until December 31, 2019 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be to design the overall expansion program, prepare schematic design, cost estimates, meetings, design development and construction documents, project management, and provide construction support services, for expanding the Centennial Recreation Center as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$225,400.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Two Hundred and Twenty-Five Thousand, Four 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 an 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 on a monthly basis unless otherwise specified in Exhibit B. 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 a 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.**

- 9.1. 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.

- 9.2. **Compliance with Wage and Hour Laws:** Consultant, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

Final Judgments, Decisions, and Orders: For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time to appeal has expired. Relevant investigatory government agencies include: the federal Department of Labor, the California Division of Labor Standards Enforcement, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

Prior Judgments against CONSULTANT and/or its Subcontractors: BY SIGNING THIS AGREEMENT, CONSULTANT AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING – IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT – THAT CONSULTANT OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONSULTANT FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH – OR HAS REACHED AGREEMENT WITH THE CITY REGARDING THE MANNER IN WHICH IT WILL SATISFY – ANY SUCH JUDGMENTS, DECISIONS OR ORDERS.

Judgments or Decisions During Term of Contract: If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that CONSULTANT or an subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or CONSULTANT learns of such a judgment, decision, or order that was not previously disclosed, CONSULTANT shall inform the City Attorney, no more than fifteen (15) days after the judgment, decision or order becomes final or of learning of the final judgment, decision or order. CONSULTANT and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the City Attorney with documentary evidence of compliance with the final judgment, decision or order within five (5) days of satisfying the final judgment, decision or order. The City reserves the right to require CONSULTANT to enter into an agreement with the City regarding the manner in which any such final judgment, decision, or order will be satisfied.

City's Right to Withhold Payment: Where CONSULTANT or any subcontractor it employs to perform work under this Agreement has been found in violation of any applicable wage and hour law by a final judgment, decision or order of a court or government agency, the City reserves the right to withhold payment to CONSULTANT until such judgment, decision or order has been satisfied in full.

Material Breach: Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

Notice to City Related to Wage Theft Prevention: Notice provided to the City Attorney as required under this Section shall be addressed to: City Attorney, City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, CA 95037. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

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:

Lesley Miles, A.I.A.
Weston Miles Architects
17500 Depot Street, STE #120, Morgan Hill, CA 95037

Address of CITY is as follows:

Chris Ghione, Director of	with a copy to:
Community Services	City Clerk
City of Morgan Hill	City of Morgan Hill
17575 Peak Avenue	17575 Peak Avenue
Morgan Hill, CA 95037	Morgan Hill, CA 95037

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

15. **Maintenance of Records.**

15.1. **Maintenance.** CONSULTANT shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. CONSULTANT shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3-year period, then CONSULTANT shall retain said records until such action is resolved.

15.2. **Access to and Audit of Records.** The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONSULTANT and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to

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

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

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

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

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

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

20. **Defense and Indemnification.**

20.1. **Defense and Indemnification for Design Professional Services.** Consistent with California Civil Code Section 2782.8, for design professional services to be performed under this agreement by a design professional, as that term is defined under said Section 2782.8, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors in performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement ("CLAIM").

20.2. **Defense and Indemnification for Non-Design Professional Services.** For all services performed under this agreement not covered by Section 20.1 above, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").

- 20.3. **Exceptions.** CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence, active negligence or willful misconduct of the CITY.
- 20.4. **Not limited by insurance.** The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMs alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.
- 20.5. **Right to Offset.** CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (20) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 20.6. **Interpretation.** This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.
21. **Entire Agreement; Modification; Conflicting Provisions.** This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by a subsequent mutual written agreement executed by CITY and CONSULTANT. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.
22. **Governing Law and Venue.** This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.
23. **Interpretation.** This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.
24. **Preservation of Agreement.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.
25. **Binding Agreement.** Notwithstanding the provisions of Section 18 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of CONSULTANT in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Wilson
 Print Name

Christina J. Turner
 Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

Weston Mile Architects

City Attorney

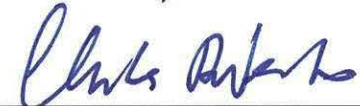
By: 

Donald A. Larkin
 Print Name

Title: Wesley L. Miles, PRESIDENT
 Print Name and Title of Signer.
 If Corporate: Chairman, President or Vice President

Date: _____

Date: 11/29/17

By: 

Title: Secretary / CHARLES D. WESTON
 Print Name and Title of Signer.
 If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 11/29/17

EXHIBIT A SCOPE OF SERVICES

Task 1 Project Initiation

An organization and scoping meeting will be held with City staff:

1. Introduce the City Design Team to the Consultant Design Team
2. Review objectives of the project
3. Confirm overall Project Budget
4. Review scope of services
5. Confirm project areas/boundaries
6. Collect available data and published material
7. Establish meeting and presentation schedule
8. Establish communication channels with all parties involved
9. Review and list all applicable design and planning standards
10. Coordinate with City departments and other agencies.

Changes to the Scope of Work will be made (if necessary) at the conclusion of this effort, and an amended Scope and Schedule will be published.

Task 2 Space Plan and Site Analysis Review

Analyze existing and built elements within the proposed expansion areas to guide design.

1. Natural Site Elements
 - a. Topographic Survey: The design consultant is responsible to have a topographic survey performed for the expansion areas, including potential parking expansion. Survey to provide information of grades to the nearest 0.1 ft., boundary lines, easements, existing vegetation, utility lines, manholes, valve cans, fences, curbs, sidewalks, street lights, and other site elements that could impact the design.
 - b. Geotechnical Report: The design consultant is responsible to have a soils report produced for the expansion areas and update the previous survey from the 2006 construction of the facility.
2. Built Site Elements
 - a. Existing Building Structure: Investigate and determine appropriate and potential areas of expansion based on the existing building and surrounding structure.
 - b. Existing Infrastructure: Investigate and plan for all needed changes to existing building infrastructure (HVAC, water, sewer, drainage, electrical, fire sprinkler, security systems, etc.).
 - c. Permits, agreements and easements: Investigate all requirements for construction. Create a checklist of all permits required and impacts to schedule related to these permits.
3. Develop design program based on meetings with City staff during Task 1.
 - a. Develop space programming based on project priorities, existing site elements and anticipated construction costs.
 - b. Evaluate and discuss site alternatives with City staff.
 - c. Discuss design approach in moving forward with multiple concepts for Task 3.

Task 3 Develop Concept Designs

Develop at least three concept designs for building expansion, based on the most effective and efficient expansion area in terms of space programming, existing room adjacencies, and cost. Concept designs will take into consideration the program and construction elements of the existing building and make recommendations on an expansion that enhances the overall features of the community center. It is anticipated that during this task that there will be multiple meetings with the Design Team. Finalized concept/schematic designs will include at minimum the following items:

1. Site layouts and renderings.
2. Budget level cost estimates itemized costs for budgeting purposes.
3. Finalize schedules and Project milestones including bidding and construction schedules.
4. Based upon a mutually agreed-upon program for space allocation, define schedule and construction of budget requirements, produce schematic level site plan, floor plan, elevations, sections, diagrams and narratives to describe structural, mechanical, and electrical designs.
5. Consultant shall review, analyze and identify environmental impacts, including but not limited to, removing and removal of vegetation, demolishing curb, gutter and pavement areas, visual, tree canopy, parking, lighting and construction impacts.
6. Prepare selected concept for review by City Commissions.
 - a. Upon selection of final concept by the City staff the consultant shall update and prepare final concept designs. City will pay for printing costs of renderings directly to printing vendor.
 - b. Renderings of the final concept shall be prepared for and presented to Centennial Recreation Center members.
 - c. Renderings of the final concept shall be prepared for and presented to the Parks and Recreation Commission.
 - d. Exterior renderings of the final concept shall be prepared for the Planning Commission.
 - e. Adjustments to the concepts shall be made in coordination with staff after the following the two previously listed meetings.
 - f. Final concept designs, exterior renderings, and a concept level cost estimate shall be prepared and presented to the City Council.
7. Prepare all necessary documents for the start of an environmental review.

Task 4 Design Development

Facility Design Documents - 60% Submittal. The design consultant is to prepare construction plans, estimates and specifications for the project. Plans to meet all ADA requirements and include all structural details and specifications for proposed work.

Construction Package to include:

1. Existing Site Survey Plan
2. Demolition and Tree Protection Plan
3. Grading & Drainage Plan & Details
4. Street and Sidewalk Improvement Plan
5. Layout Plan
6. Site and Architectural Review
7. Environmental Review

8. All manufacturer's specifications, where required
9. HVAC Plan & Details
10. Lighting Plan and Details
11. Electrical Plan and Details
12. Fire Sprinkler Plan
13. Alarm Plan and Details
14. Irrigation Plan & Details
15. Planting Plan & Details (including any impacts to existing trees)
16. Parking and Lighting Plan & Details
17. Security Camera Plan & Details
18. Storm Water Pollution Prevention Plan
19. Written specification Package
20. Construction cost estimate

The design consultant is to prepare a construction cost estimate base on the cost analysis prepared in Task 3.5 and value engineering to ensure the project remains within the construction budget. The cost estimate shall include a 15% contingency. Consultant shall revise the project schedule to identify milestones.

At completion of this phase the plans may return to the Parks and Recreation Commission and then the City Council. This will depend on the significance of changes from the concept designs previously presented. Following these meetings, the consultant will be required to develop a phasing plan to budget requirements.

The design consultant shall submit 60% plans to the City for a Site and Architectural Review. All comments from the Site and Architectural Review shall be incorporated to the 90% submittal.

Task 5 Construction Documents

Construction Documents Phase – 90% and 100% Submittals

1. Confer with City staff to respond to and address City and Community comments on Design Development phase drawings.
2. Revise and complete the construction documents (drawings and specifications) to a 90% submittal stage, based on the City's comments on the Design Development submittal. This submittal will be reviewed for final plan check by City staff and should include, the 90% and 100% complete construction plans, specifications and estimates, all appurtenant information and design analyses required for building permits, if required, such as final structural calculations and technical information for any equipment or furnishings not previously reviewed. With the exception of printing and binding, the 90% complete construction documents, from a content viewpoint, should be ready for bidding with all technical specifications for site improvements, equipment and furnishings, value engineering, final cost estimate and phasing plan, 100% complete.

Final Statement of Probable Costs. A final statement of probable construction cost shall be submitted, including a 10% contingency not to exceed the established construction budget. This estimate shall be used as the City's Engineer's Estimate for bid comparisons and to establish the Construction Budget.

Construction Documents Phase – 100% Submittal/Bid Documents

1. Considering final review and plan check comments from City Staff, revise the construction documents, and furnish signed reproducible copies of the 100% complete construction documents (Plans, Estimates & Technical Specifications) ready for reproduction and binding for bidding by the City. City staff will prepare and include the Notice Inviting Bids, Proposal Requirements and Instruction to Bidders, all required Proposal and Bond forms, and Conditions of the Contract.
2. Prepare or review bid schedule(s) in consultation with City staff.
3. Support the bidding process by the City supporting responses to requests for information.
4. Allow for one additional public meetings or presentation if necessary during this phase.

Task 6 Basic Construction Observation and Contract Administration Services

This works shall consist of construction observation and administration of the construction contract through the period of construction.

1. Consultant shall attend the City's construction conferences with the contractors at a minimum of twice per month.
2. Consultant shall visit the site, attend job meetings and prepare meeting notes for the City at appropriate intervals for the purpose of becoming generally familiar with, and to keep the City informed about, the progress and quality of the completed portion of the work, and to determine in general if the work will be in accordance with the Contract Documents when completed. The consultant shall neither have control over or charge of, nor be responsible for, the construction, means, methods, techniques, sequences or procedures, or the safety precautions and program relating to the work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

Consultant shall report to the City on any deviations from the Contract Documents and on the progress of the Project.

3. Consultant shall review and take appropriate action upon contractor's requests for Information and submittals such as Shop Drawing, Product Data, and Samples, for the purpose of checking for visual design concept and conformance in a timely manner to enable construction to proceed on schedule.
4. Consultant shall review and approve all shop drawings or materials submittals.
5. Consultant may authorize minor changes in the work that are consistent with the intent of the contract documents and do not involve an adjustment in the contract price and/or an extension of the contract time.
6. Consultant shall generate supplemental drawings and clarification, if required, as a basic service.
7. Consultant shall provide all necessary architectural and other design services as required by the General Conditions of Contract for this Project, including submittal and shop drawing review, responding to Contractor requests for information, attendance at construction progress

meetings, Project close-out, and other tasks that are referred to in the General Conditions of Contract for this Project.

8. Consultant shall perform an inspection with the City, when requested by the Contractor, for the purpose of preparing a punch list of incomplete and/or unacceptable for the City's review. Upon receiving advice from the Contractor that the punch list items are completed, consultant shall make a final inspection of the Project with the City for the purpose of signing off the completed punch list items in accordance with the requirements of the construction documents.

Weston Miles Architects
 Fee for CRC addition and remodel
 October 27, 2017

Project	Construction Cost	Fee Schedule	Amount	Design
Architectural, Structural, Mechanical and Electrical and Landscape Design	\$ 1,600,000.00	10%	\$ 160,000.00	
		Architectural Fee		\$ 160,000.00
* The Civil engineering fee is difficult to determine at this point based on the initial analysis that is required to determine the onsite retention design. It may be less dependent on the final first phase analysis.		Civil Engineering *	\$32,500.00	\$ 32,500.00
		Parking lot grading design		\$ -
		and storm water		\$ -
		calculations and design		\$ -
		(Dependent on overall design approach)		\$ -
				\$ 32,500.00
		Phases		\$ 192,500.00
		Programming and Schematic	15%	\$ 28,875.00
		Design Development	20%	\$ 38,500.00
		Construction Documents	40%	\$ 77,000.00
			\$ -	
	Bidding	5%	\$ 9,625.00	
	Construction Administration	18%	\$ 34,650.00	
	Close-Out	2%	\$ 3,850.00	
		100%	\$ 192,500.00	
	Estimated Reimbursable Expenses		\$ 3,500.00	
	Reimbursable Expenses billed @ cost plus 10%			
	Time and Materials NTE	TOTAL		\$ 196,000.00
	Design Contingency @ 15%		\$	29,400
	TOTAL		\$	225,400

EXHIBIT B
 SCHEDULE OF COMPENSATION RATES

EXHIBIT C SCHEDULE OF PERFORMANCE

Scheduling and Hour Specifics

Program Review

Estimated Duration:
12/1/17 - 1/1/18

An update to the existing Program is proposed to ensure that the original program is valid

Personnel	Hrs.	%
Lesley Miles	20	50%
Katarina Schriener	20	50%
Estimated Total Hours:	40	

Schematic Design

Estimated Duration:
1/1/18- 3/1/18

An update to Schematic Design is proposed to ensure that any changes are incorporated

Personnel	Hrs.	%
Lesley Miles	30	21%
Charles Weston	25	17%
Katarina Schriener	60	41%
Sharon Morris	30	21%
Estimated Total Hours:	145	

Design Development

Estimated Duration:
3/1/18-5/1/18

Selection of specific phasing, final design and material selection

Personnel	Hrs.	%
Lesley Miles	100	31%
Charles Weston	80	25%
Katarina Schriener	100	31%
Robin Blair	40	13%
Estimated Total Hours:	320	

Construction Documents

Estimated Duration:
5/1/18- 7/1/18

Complete project drawings and detailing and final phasing document

Personnel	Hrs.	%
Lesley Miles	80	13%
Charles Weston	180	29%
Katarina Schriener	200	32%
Sharon Morris	40	7%
Robin Blair	120	19%
Estimated Total Hours:	620	

City Processing

Estimated Duration:
7/1/18- 9/1/18

Provide comments and responses

Personnel	Hrs.	%
Lesley Miles	20	19%
Charles Weston	30	27%
Katarina Schriener	30	27%
David Vrabel	30	27%
Estimated Total Hours:	110	

Bidding

Estimated Duration:
9/1/18 -10/1/18

Personnel	Hrs.	%
Lesley Miles	30	30%
Katarina Schriener	30	30%
David Vrabel	40	40%
Estimated Total Hours:	100	

Construction Administration

Estimated Duration:
10/1/18- 10/1/19

Personnel	Hrs.	%
Sam Carlson	520	46%
Lesley Miles	300	26%
David Vrabel	200	18%
Robin Blair	120	10%
Estimated Total Hours:	1140	

Close Out

Estimated Duration:
10/1/19

Personnel	Hrs.	%
Lesley Miles	40	29%
David Vrabel	80	57%
Robin Blair	20	14%
Estimated Total Hours:	140	

Note that dependent on LEED certification and the level of certification the hours may be increased



CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2017

PREPARED BY: Nick Calubaquib, Recreation Manager

APPROVED BY: City Manager

APPROVE AGREEMENT FOR CRC CONCESSIONS

RECOMMENDATION(S)

Approve a Concessionaire License Agreement with Sycamore Concessions Company for the operation of a concession food and beverage station at the Centennial Recreation Center and authorize the City Manager to execute all associated documents and agreements.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community

REPORT NARRATIVE:

Since opening the Centennial Recreation Center (CRC) in October 2006, staff have consistently received requests from members for food and beverage sales in the CRC lobby.

On February 3, 2010, November 20, 2013, and again on December 2, 2015, the City Council approved concessionaire agreements with local business to manage a food and beverage cart in the CRC lobby. In April 2016, the most recent concessionaire, Julie's Juice and Java, informed the City that it would no longer be able to continue operating the concession cart effective the end of May 2016. Concessions services at the CRC have not been offered since then.

In April 2017, the Council approved a Concessionaire Agreement with Sycamore Concessions to provide concessions services at the Morgan Hill Aquatics Center during the summer recreation swim season. Sycamore Concessions has submitted a proposal to assume operation of concessions operations in the CRC lobby. Given its success at operating concessions at the Aquatics Center this past summer, staff believes that Sycamore will be able to provide this requested service at the CRC and expand hours of operations and menu options, thus satisfying members' requests and providing the City with additional revenue.

Key points to the agreement include:

- Sycamore Concessions to pay for all capital and startup expenses (Food station, food service equipment, required permits, etc.)

- City to receive 5% of gross sales for the first six months and 10% for the remainder of the agreement
- A term ending in May 2019 to match the termination date of the Aquatics Center Concessionaire License Agreement

COMMUNITY ENGAGEMENT: Involve

CRC Members and guests continue to request the availability of concessions in the CRC lobby.

ALTERNATIVE ACTIONS:

The Council could elect to not approve this Concessionaire License Agreement. City staff would then search for another concessionaire unless Council provided alternate direction.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- February 3, 2010 – The Council approved a Concessionaire License Agreement with Cara Mia for operation of a concessions cart in the CRC lobby.
- November 20, 2013 - The Council adopted a resolution approving a Concessionaire License Agreement with the Coffee Shack for operation of a concessions cart in the CRC lobby.
- December 2, 2015 - The Council adopted a resolution approving a Concessionaire License Agreement with Julie's Juice and Java for operation of a concessions cart in the CRC lobby.

FISCAL AND RESOURCE IMPACT:

During the five months that Julie's Juice and Java operated concessions in the CRC lobby (January-May 2016), reported net sales after tax were \$5,260. The City received \$263 (5%). The concession cart operated approximately 25 hours per week netting Julie's Juice and Java approximately \$10 per hour of operation. It is anticipated that Sycamore Concessions will pay the City \$1,000 annually for the operation of concessions at the CRC.

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. Sycamore Signed Agreement

**CITY OF MORGAN HILL
AND
SYCAMORE CONCESSIONS CORPORATION
CONCESSIONAIRE LICENSE AGREEMENT**

This CONCESSIONAIRE LICENSE AGREEMENT ("AGREEMENT") is made this day of January 1, 2018 ("Effective Date"), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and SYCAMORE CONCESSIONS CORPORATION, a California Corporation ("CONCESSIONAIRE " or "Sycamore").

RECITALS

The following recitals are a substantive part of this Agreement:

- A. CITY currently operates the Centennial Recreation Center ("FACILITY").
- B. CONCESSIONAIRE is an experienced food and beverage concessionaire with operations in the City of Berkeley, California and Sonora, California and is the current Concessionaire for the Morgan Hill Aquatics Center.
- C. CONCESSIONAIRE desires to license from CITY and CITY desires to license to CONCESSIONAIRE the right to use certain portions of the FACILITY for the purpose of providing food and beverage concession services.

NOW THEREFORE, the parties agree as follows:

AGREEMENT

1. Parties.

A. CITY is the City of Morgan Hill, with its principal contact for the purposes of this AGREEMENT as follows: Director of Community Services, 17575 Peak Avenue, Morgan Hill, CA 95037, phone:408-779-7271.

B. CONCESSIONAIRE is Sycamore Concession Corporation, a California corporation, with its principal contact for purposes of this AGREEMENT as follows: President, 3060 El Cerrito Plaza #274, El Cerrito, CA 94530, phone: 510-715-0217.

2. Term and Renewal.

A. The "Term" of this AGREEMENT shall commence on the Effective Date and shall terminate on MAY 5, 2019, unless earlier terminated as provided in Section 18 of this AGREEMENT, or unless extended by mutual written agreement. CONCESSIONAIRE's obligation to make final payment and the CITY's right to audit that payment shall extend beyond the termination date.

B. In November 2018, and each November upon renewal, both parties will meet to review the AGREEMENT terms and determine if a one-year option to renew will be exercised. Any such renewal shall be by mutual written agreement. This AGREEMENT

may be additionally renewed for two (2) one-year terms; the maximum term of this Agreement is four years from the Effective Date.

3. Compensation.

A. On or before the 15th day of each month following the Effective Date of this Agreement, CONCESSIONAIRE shall pay to CITY without notice or demand, the following percentages of "Net Income" as defined below collected by CONCESSIONAIRE from its operations at the FACILITY during the preceding month ("Base Payment").

Time Period	Percentage of Net Income
January 1, 2018 to June 30, 2018	5%
July 1, 2018 to May 5, 2019	10%

For the purposes of this AGREEMENT, "Net Income" shall mean amounts received by CONCESSIONAIRE from any source relating to the license described in Section 4 less sales taxes paid on those revenues. Each payment shall be accompanied by a report reflecting gross sales totals for each day of operation included in payment, sales tax paid/due and the total due to CITY.

B. Within 10 days after written notice, CONCESSIONAIRE shall provide the CITY with all financial books. Records and receipts requested by the CITY for verifying the amount of CONCESSIONAIRE's revenues and the accuracy of CONCESSIONAIRE's calculation of the amount of compensation due to the CITY under this AGREEMENT. If an underpayment is determined based upon such review, CONCESSIONAIRE shall remit the balance owed within 30 days of notification by the CITY of its findings.

4. License.

CITY hereby licenses to CONCESSIONAIRE and CONCESSIONAIRE hereby licenses from CITY for the term, at the price, and upon the covenants and conditions set forth herein, the right to provide food and beverage concession services in the FACILITY main lobby area.

5. Premises.

The parties agree that the rights provided by CITY to CONCESSIONAIRE create a license and do not create any tenancy, leasehold or possessory interest in the FACILITY. CITY agrees that CONCESSIONAIRE, upon payment of the fees and charges specified herein, and upon observing and keeping the required terms, conditions and covenants of this AGREEMENT, shall lawfully use the area designated as the "Premises" as specified in Exhibit "A" during the term of this AGREEMENT for the uses granted.

In carrying out its concession right on the Premises, CONCESSIONAIRE shall not interfere or obstruct the operation of the FACILITY or the public enjoyment and use of the FACILITY. The concession rights herein granted shall be carried on at the FACILITY solely within the limits and confines of the Premises. No temporary stands or other places of operation shall be allowed during any other time without the express written permission of the Community Services Director. In the case of disputes, during the life of this AGREEMENT, over any conditions which may impede upon CONCESSIONAIRE's quiet enjoyment of the concession Premises, the Community Services Director shall have final determination of any solution to such dispute. His or her final determination shall be binding upon all parties in such dispute.

CONCESSIONAIRE shall not use or allow the Premises to be used, in whole or in part, during the term of this AGREEMENT, for any use in violation of any present or future laws, ordinances, rules, and regulations at any time applicable thereto of any public or governmental authority or agencies, departments or officers thereof, including CITY. These ordinances, rules, and regulations include those which relate to sanitation, public health and safety.

CITY reserves the right to further develop or improve the Premises as it sees fit; provided that the CITY will use its best efforts to minimize interference on the operation of the concession. At any time during the term of this AGREEMENT, the CITY may, by appropriate resolution fully setting forth the reason therefore, require CONCESSIONAIRE to surrender any portion of the Premises. Should CITY impose such a requirement on CONCESSIONAIRE to surrender, CITY shall provide comparable space at the FACILITY for the continued operation of the concession.

6. Use.

The Premises shall be used and occupied by CONCESSIONAIRE as a concessionaire for the preparation and sale of food and beverages for sale to and consumption by visitors and for no other purposes without the CITY'S prior approval.

7. Equipment, Furnishings and Supplies.

- A. CONCESSIONAIRE shall supply and furnish portable vending cart or other agreed upon equipment for use at the FACILITY.
- B. CITY and CONCESSIONAIRE mutually agree to the location of the portable vending cart and equipment outlined in Exhibit A.
- C. CONCESSIONAIRE shall be solely responsible for the purchase of all food, beverages, paper products, and supplies, including office supplies to be used in its operations.
- D. CITY shall provide access to a two 110-volt outlet, wash basin and sink.

8. Common Areas.

- A. Definition of Common Areas. The term "Common Areas" as used herein means all areas and facilities outside the Premises and within the exterior boundary line of the FACILITY.
- B. CONCESSIONAIRE 's Rights in Common Areas. CITY hereby grants to CONCESSIONAIRE, for the benefit of CONCESSIONAIRE and its employees, suppliers, shippers, customers, and invitees, during the Term of this AGREEMENT, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by CITY under the terms hereof. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas.

- C. **Changes.** CITY shall have the right, in CITY's sole discretion, so long as it will not unreasonably interfere with CONCESSIONAIRE 's use of the Premises and the accessibility of the public to the Premises, to make changes to or temporarily close the Common Areas.

9. Maintenance and Repairs.

A. **CITY's Obligations.** CITY shall, at its own expense, keep in good condition and repair the building's roof, foundations, windows, doors and interior and exterior walls, structural condition of interior bearing walls of the Premises, and air conditioning, electrical, steam, heating, ventilating, mechanical, plumbing systems and appliances as well as the parking lots, walkways, driveways, landscaping, fences, signs, and utility installations of the Common Areas and all parts thereof (collectively the "CITY Obligations"). CITY shall not be liable for damages or loss of any kind or nature by reason of CITY's failure to furnish any Common Area services when such failure is caused by accident, breakage, repairs, strikes, lockout, or other labor disturbances or disputes of any character, or by any other cause beyond the reasonable control of CITY.

B. **CONCESSIONAIRE's Obligations.** CONCESSIONAIRE shall at its own expense, keep in good order and condition: CONCESSIONAIRE's equipment and the Premises, and every part thereof including, equipment within the Premises, fixtures, interior walls and interior surfaces of exterior walls, and ceilings. CONCESSIONAIRE shall consult with CITY and complete all maintenance work expeditiously in a first class and workmanlike manner using high quality new materials. CONCESSIONAIRE shall be responsible for emptying trash bins within the Premises in the appropriate trash dumpster and cleaning and removing trash, including the clean-up of spilled food or beverages, from that portion of the Common Area located within twenty (20) feet of the Premises. CONCESSIONAIRE shall closely monitor that portion of the Common Area that it is required to maintain and immediately clean-up spilled food or drinks. CONCESSIONAIRE shall also be responsible for collecting all CONCESSIONAIRE supplies and trash from throughout the Common Area at the end of each business day.

C. **CITY and CITY's agents** shall have the right to enter the Premises at reasonable times for the purpose of inspecting the same.

D. **If CONCESSIONAIRE fails to perform** CONCESSIONAIRE 's maintenance and repair obligations, CITY may enter upon the Premises after ten (10) days' prior written notice to CONCESSIONAIRE (except in the case of emergency, in which case no notice shall be required), perform such obligations on CONCESSIONAIRE's behalf and put the Premises in good order and condition and the cost thereof together with interest thereon at the maximum rate then allowable by law shall be due and payable as additional rent to CITY together with CONCESSIONAIRE 's next monthly compensation payment to the CITY.

E. **On the last day of the Term hereof, or on any sooner termination,** CONCESSIONAIRE shall surrender the Premises to CITY in the same condition as received, ordinary wear and tear excepted, clean and free of debris. Any damage or deterioration of the Premises shall not be deemed ordinary wear and tear if the same could have been prevented by good maintenance practices. CONCESSIONAIRE shall repair any damage to the Premises occasioned by the installation or removal of trade fixtures, alterations, furnishings, and equipment made by CONCESSIONAIRE.

10. Alterations and Additions.

A. CONCESSIONAIRE shall not, without CITY's prior written consent, make any alterations, improvements, additions, or Utility Installations in, on, or about the Premises, or the FACILITY during the Term of this AGREEMENT, nor shall CONCESSIONAIRE make any change or alteration to the exterior of the Premises or the exterior of any buildings which are part of the FACILITY. For purposes of this AGREEMENT, "Utility Installation" shall mean carpeting, window coverings, air lines, power panels, electrical distribution systems, lighting fixtures, space heaters, air conditioning, and plumbing. In the event that CITY consents to any alteration, improvement, addition, or Utility Installation, if CITY so elects, CITY may require that CONCESSIONAIRE remove any or all of said alterations, improvements, additions, or Utility Installations at the expiration of the term, and restore the Premises to their prior condition. CITY may require CONCESSIONAIRE to provide CITY, at CONCESSIONAIRE's expense, a lien and completion bond in an amount equal to one and one-half times the estimated cost of such improvements, to insure CITY against any liability for mechanics' and material supplier's liens and to insure completion of the work. Should CONCESSIONAIRE make any alterations, improvements, additions, or Utility Installations without the prior written approval of CITY, CITY may, at any time during the Term of this AGREEMENT, require that CONCESSIONAIRE remove any or all of the same. All work with respect to any alteration or addition must be performed in a good and workmanlike manner.

B. Any alterations, improvements, additions, or Utility Installations in or about the Premises that CONCESSIONAIRE shall desire to make and which require the consent of CITY shall be presented to CITY in written form with proposed detailed plans. If CITY shall give its consent, the consent shall be deemed conditioned upon CONCESSIONAIRE acquiring any necessary permits from appropriate governmental agencies, the furnishing of copies thereof to CITY prior to the commencement of the work, and the compliance by CONCESSIONAIRE with all conditions of said permits in a prompt and expeditious manner.

11. Utilities and Services.

A. CITY shall furnish provide heating and air conditioning to the lobby area where the portable vending cart is located. CITY shall provide access to electric current for cart operations. CITY shall provide access to water basin and domestic water.

B. Without the prior written consent of CITY, Sycamore shall not use any apparatus or device in the Premises that will in any way increase the amount of electricity, gas or water to be provided by CITY.

C. CITY reserves the right to temporarily stop the service of the air conditioning, plumbing, electrical, or other mechanical systems or facilities in any building when necessary by reason of accident or emergency, or for repairs, alterations, replacements, or improvements, that, in the reasonable judgment of CITY, are desirable or necessary, until such repairs, alterations, replacements, or improvements shall have been completed. CITY supports conservation efforts and, to that end, may cooperate with the efforts of national, state, or local governmental agencies or utilities in reducing energy or other natural resource consumption. In connection therewith, CITY reserves the right to limit,

restrict, or ration on a reasonably nondiscriminatory basis the use of water, electricity, or any other form of energy or any other service or utility serving the Premises or any building.

12. Menus.

A. CONCESSIONAIRE shall submit to CITY for approval a proposed menu of all food and beverage items and their prices prior to offering of any items for sale at the FACILITY. No food or beverage items shall be offered for sale without CITY's prior approval.

B. CONCESSIONAIRE shall offer a reasonably priced menu that contains popular, healthy, freshly prepared items and pre-packaged snacks, and may expand/vary the menu offerings from time to time with the mutual agreement of the City. The menu shall comply with the City's Healthy Food and Beverage guidelines as they apply to concessionaires.

C. CONCESSIONAIRE shall not sell any non-food or non-beverage items without express written consent of CITY.

D. CONCESSIONAIRE shall not sell any alcohol or tobacco products without prior written consent of CITY.

E. Sycamore shall furnish and post professionally printed menus and signs on the Premises and other mutually agreed upon locations.

F. For purposes of this Section 12, the Community Services Director is authorized to provide CITY's consent.

13. Permits.

CONCESSIONAIRE shall, at its own expense, comply with all licenses and/or permit requirements of any governmental agency applicable to CONCESSIONAIRE's operations.

14. Signs.

CONCESSIONAIRE shall not place any sign on any part of the FACILITY without CITY's prior written consent. CONCESSIONAIRE shall not install any advertising medium, which may be heard or seen at the FACILITY without CITY's prior written consent.

15. Displays.

With the exception of food or beverage carts located in areas of the Common Area previously approved in writing by the CITY, CONCESSIONAIRE may not display or sell merchandise outside of the defined exterior walls and permanent doorways of the Premises. CONCESSIONAIRE shall not install any exterior lighting, amplifiers, or similar devices or use in or about the Premises any advertising medium which may be heard or seen outside the Premises, such as flashing lights, searchlights, loudspeakers, phonographs, or radio broadcasts. CONCESSIONAIRE shall not install any window displays without prior approval of the CITY.

16. Hours of Operation.

CONCESSIONAIRE shall, during the Term, keep the portable vending cart open for business during hours approved by the City.

17. Minimum Requirements for CONCESSIONAIRE Employees.

- A. CONCESSIONAIRE shall provide its own employees to manage and conduct its concession operations at the FACILITY.
- B. CONCESSIONAIRE shall not permit any CONCESSIONAIRE employee to work at the FACILITY, unless CONCESSIONAIRE has, within 90 days prior to said employee commencing work at the FACILITY, conducted a criminal background check of such employee using Live Scan fingerprint services, and said check discloses no criminal conviction for any felony or misdemeanor involving moral turpitude.
- C. CONCESSIONAIRE shall not permit any CONCESSIONAIRE employee to work at the FACILITY, unless CONCESSIONAIRE has on file with the city or county a certificate showing that within the last two years the person has been examined and has been found to be free of communicable tuberculosis. CONCESSIONAIRE shall comply with the requirements of Public Resources Code § 5163.
- D. CONCESSIONAIRE's employees shall wear approved apparel and be properly groomed.

18. Termination.

- A. This AGREEMENT may be terminated before the end of the Term as follows:
 - (a) The abandonment of food and beverage service operations at the FACILITY for three (3) consecutive months.
 - (b) The failure by CONCESSIONAIRE to make any payment when due where such failure continues for a period of three (3) days after written notice thereof from the CITY to CONCESSIONAIRE.
 - (c) Except as otherwise provided in this AGREEMENT, the failure by CONCESSIONAIRE to observe or perform any of the covenants, conditions, or provisions of this AGREEMENT to be observed or performed by CONCESSIONAIRE where such failure shall continue for a period of fifteen (15) days. CONCESSIONAIRE shall not be deemed to be in default if CONCESSIONAIRE diligently pursues a cure within said fifteen (15) day period.
 - (d) The making by CONCESSIONAIRE of any general arrangement or general assignment for the benefit of creditors: (i) CONCESSIONAIRE becoming a debtor as defined in Section 101 of Title 11 of the United States Code or any successor statute thereto, or any action taken or suffered by CONCESSIONAIRE under any insolvency, bankruptcy, reorganization, moratorium, or other debtor relief statute, whether now existing or hereinafter amended or enacted; (ii) the appointment of a trustee or receiver to take possession of substantially all of CONCESSIONAIRE's assets located at the FACILITY or of CONCESSIONAIRE's interest in this AGREEMENT, where possession is not restored to CONCESSIONAIRE within thirty (30) days; or (iii) the attachment, execution, or other judicial seizure of substantially all of CONCESSIONAIRE's assets located at the FACILITY or of CONCESSIONAIRE's interest in this AGREEMENT, where such seizure is not

discharged within thirty (30) days. In the event that any provision of this Section 18 A(d) is contrary to any applicable law, such provision shall be of no force and effect.

B. In the event of any such material default by CONCESSIONAIRE, CITY may at any time thereafter, with or without notice or demand and without limiting CITY in the exercise of any right or remedy which CITY may have by reason of such default:

(a) Terminate CONCESSIONAIRE's right to use the FACILITY by any lawful means, in which case this AGREEMENT shall terminate and CONCESSIONAIRE shall discontinue its use of the FACILITY.

(b) Pursue any remedy now or hereafter available to CITY under the laws of judicial decisions of the state wherein the FACILITY is located. Any unpaid monetary obligations of CONCESSIONAIRE under the terms of this AGREEMENT shall bear interest from the due date at the maximum rate then allowable by law.

19. Late Charges.

CONCESSIONAIRE hereby acknowledges that late payment by CONCESSIONAIRE to CITY of any sums due hereunder will cause CITY to incur costs not contemplated by this AGREEMENT, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any sum due from CONCESSIONAIRE shall not be received by CITY or CITY's designee within ten (10) days after such amount shall be due, then without any requirement for notice to CONCESSIONAIRE, CONCESSIONAIRE shall pay to CITY a late charge equal to ten percent (10%) of such overdue amount. The parties hereby agree that such late charges represent a fair and reasonable estimate of costs CITY will incur by reason of late payment by CONCESSIONAIRE.

20. Insurance Requirements.

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

A. Insurance Types and Amounts.

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

- (b) Automobile Liability. Sycamore shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if Sycamore does not own automobiles, then Sycamore shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to Sycamore under Sycamore's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- (c) Workers' Compensation Insurance and Employer's Liability. Sycamore shall maintain Workers Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Sycamore under Sycamore's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If Sycamore is self-insured, Sycamore shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

B. Endorsements. Sycamore shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

- (a) General Liability.
 - i. The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;
 - ii. the insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and,
 - iii. insurance shall be primary non-contributing.
- (b) Workers Compensation. The insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

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

D. Certificates. Sycamore shall furnish CITY of Morgan Hill with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the Sycamore's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY.

Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

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

21. Non-Liability of Officials and Employees of the CITY.

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

22. Compliance with Law.

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

23. Independent Contractor.

Sycamore is an independent contractor and not an agent or employee of CITY.

24. Conflict of Interest and Reporting.

Sycamore shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

25. Notices.

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

Address of Sycamore is as follows:	
Address of CITY is as follows:	with a copy to:
City of Morgan Hill	City Clerk
17575 Peak Avenue	City of Morgan Hill
Morgan Hill, CA 95037	17575 Peak Avenue
	Morgan Hill, CA 95037

26. Licenses, Permits and Fees.

Sycamore shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.

27. Maintenance of Records.

A. Maintenance. Sycamore shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. Sycamore shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3-year period, then Sycamore shall retain said records until such action is resolved.

B. Access to and Audit of Records. The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the Sycamore and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

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

28. Familiarity with Work.

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

29. Time of Essence.

Time is of the essence with respect to the obligations to be performed under this AGREEMENT.

30. No Assignment.

Neither this Agreement nor any portion shall be assigned by Sycamore, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.

31. Attorney Fees.

In any legal action, proceeding, or arbitration arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees, costs and expenses incurred.

32. Defense and Indemnification.

A. Defense and Indemnification. Sycamore shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature,

including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by Sycamore, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").

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

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

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

E. Interpretation. This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the Sycamore to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

33. Entire Agreement; Modification; Conflicting Provisions.

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

34. Governing Law and Venue.

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

35. Interpretation.

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

36. Preservation of Agreement.

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

37. Binding Agreement.

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

38. Authority to Execute.

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager
Christina Turner

Michelle Wilson
Print Name

Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

Sycamore Concessions Corporation

City Attorney

By: *Queen Kwame*

Donald A. Larkin
Print Name

Title: *President*

Print Name and Title of Signer.
If Corporate: Chairman, President or
Vice President

Date: _____

Date: *11/27/17*

Attachment: Sycamore Signed Agreement (1525 : CRC Concessions)


Alan J. Korman
By: _____

CFO
On Title: President

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

Date: 11/27/17

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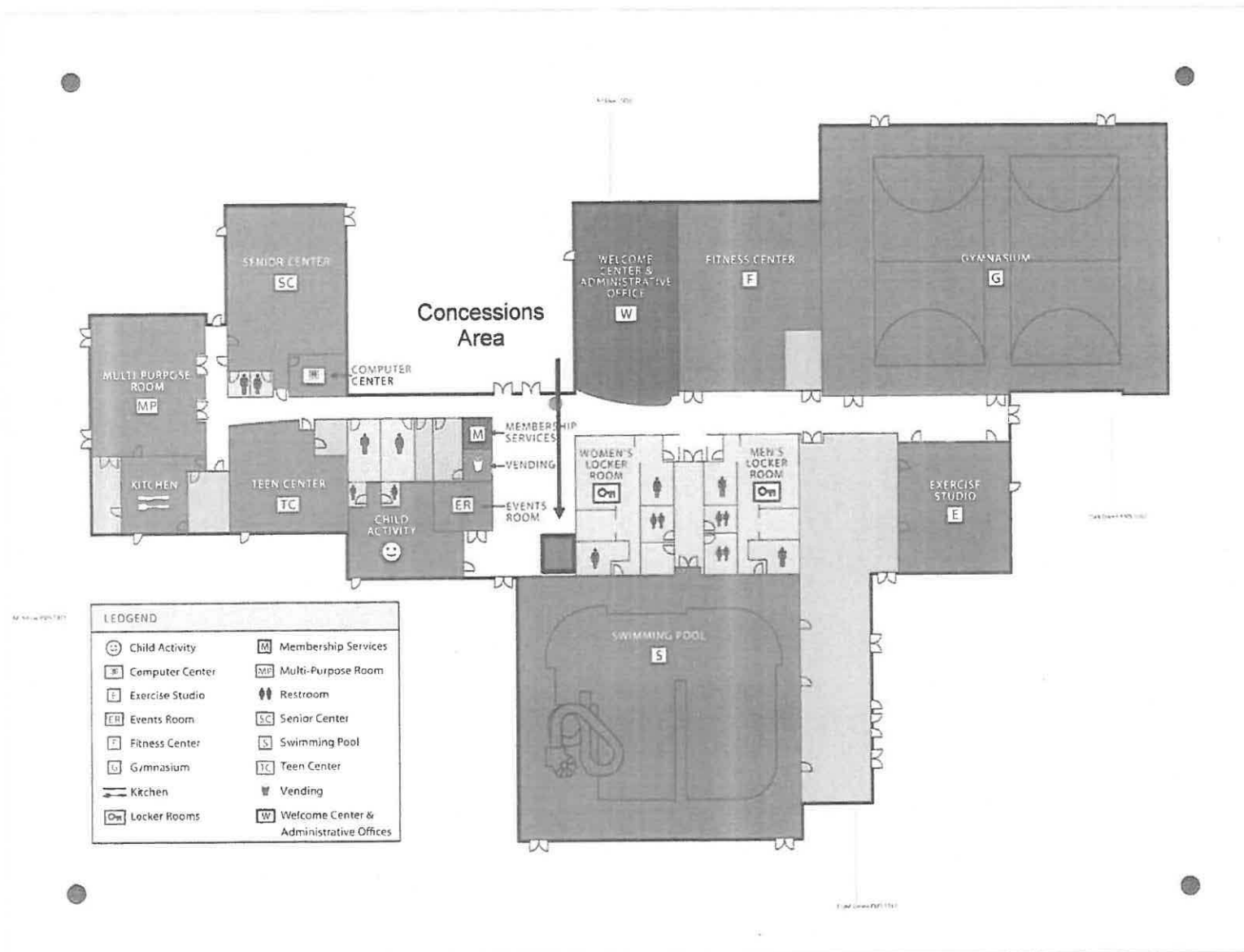


EXHIBIT A



CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2017

PREPARED BY: Yat Cho, Senior Project Manager
APPROVED BY: City Manager

AWARD OF OUTDOOR SPORTS CENTER ARTIFICIAL TURF PROJECT

RECOMMENDATION(S)

1. Correct the award of contract for the Outdoor Sports Center Artificial Turf Project to reflect the proper entity, Valley Precision Grading, Inc. in the amount of \$1,475,437;
2. Authorize expenditure of construction contingency funds not to exceed \$51,000; and
3. Authorize the City Manager to execute and administer the construction contract with Valley Precision Grading, Inc.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community

2017 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

On November 15, 2017, City Council approved the award of the Outdoor Sports Center Artificial Turf Replacement Project to Astroturf USA, Inc. During the contract execution process, staff realized that while Astroturf USA, Inc. is the material supplier for the project, the bid was prepared for installation by the contractor completing the work, Valley Precision Grading, Inc. Rather than Astroturf USA, the contract should have been awarded to Valley Precision Grading, Inc.

Valley Precision Grading is identified as the installer in the Astroturf proposal. The proposed Council action has no impact on scope, material, or previously approved pricing. The purpose of this action is to correct the award of the contract to the actual contracting entity, Valley Precision Grading, Inc.

COMMUNITY ENGAGEMENT: Not Applicable

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On November 15, 2017, City Council awarded the Outdoor Sports Center Artificial Turf Replacement Project to Astroturf USA, Inc.

FISCAL AND RESOURCE IMPACT:

There is no additional fiscal impact based upon this Council action, as a contract for \$1,475,437 with contingency funds not to exceed \$51,000 was previously approved by

the City Council. Funding for the project was allocated from the Park Maintenance Fund (302).

CEQA (California Environmental Quality Act):

The planned maintenance and management of City facilities falls within the CEQA categorical exemption of Class 1, existing facilities.

LINKS/ATTACHMENTS:

1. 20171122094111797

CONTRACT

This public works contract ("Contract") is entered into by and between the City of Morgan Hill ("City") and Valley Precisions Grading, Inc. ("Contractor") for work on the Morgan Hill Outdoor Sports Center Project ("Project").

The parties agree as follows:

1. **Award of Contract.** In response to the Request for Proposals, Contractor has submitted a Proposal to perform work on the Project, and on November 15, 2017, City authorized award of this Contract to Contractor for the amount of Contractor's proposal for alternate number 2. This contract is awarded pursuant to the contract dated June 1, 2017 with AstroTurf Corporation procured through the National IPA Cooperative Purchasing Network Contract Number R162201 for Sports Surfaces, Installation and Related Material, in which Valley Precision Grading, Inc. is listed as an office/service center.
2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the following:
 - 2.1 Request for Proposal;
 - 2.2 Addendum #1;
 - 2.3 Proposal and attachments thereto;
 - 2.4 Contract;
 - 2.5 Payment and Performance Bonds;
 - 2.6 General Conditions;
 - 2.7 Project Drawings and Specifications contained in the RFP and all Addenda thereto;
 - 2.8 Change Orders, if any;
 - 2.9 Notice of Award;
 - 2.10 Notice to Proceed;
 - 2.11 And the following:
Master Agreement, including all attachments, dated June 1, 2017 between AstroTurf Corporation and Region 4 Education Service Center procured through the Cooperative Purchasing Network (TCPN).
3. **Contractor's Obligations.** Contractor agrees to perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor one million four hundred seventy-five thousand and four hundred thirty-seven Dollars (\$1,475,437) (the "Contract Price"), in accordance with the payment provisions in the General Conditions. The Contract Price includes all applicable federal, state, and local taxes.
5. **Time for Completion.** Contractor will fully complete the Work for the Project within fifty three (53) calendar days from the commencement date given in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.
6. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of five hundred Dollars (\$500.00) for each day of unexcused delay in completion, and the Contract Price will be reduced accordingly.
7. **Labor Code Compliance.**
 - 7.1 **General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance.
 - 7.2 **Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.
 - 7.3 **DIR Registration.** City will not enter into the Contract with a bidder, without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions.
8. **Workers' Compensation Certification.** Under Labor Code Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."
9. **Notice.** Any notice, billing, or payment required by the Contract Documents must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

City:

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Phone: (409) 779-7259
Attn: City Clerk
Email: michelle.wilson@morganhill.ca.gov
Copy to: Yat.Cho@morganhill.ca.gov

Contractor:

Name: Valley Precision Grading, Inc.
Address: 3330 Luyung Drive
City/State/Zip: Rancho Cordova, CA 95742
Phone: 1-916-638-8800
Attn: Kip Olson
Email: kip@vpgrading.com
Copy to: dberarducci@astroturf.com

10. General Provisions.

- 10.1 Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's successors and permitted assigns.
- 10.2 Third Party Beneficiaries.** There are no intended third-party beneficiaries to this Contract except as expressly provided in the General Conditions or Special Conditions.
- 10.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Superior Court of Santa Clara County, and no other place.
- 10.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 10.5 Integration; Severability.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor. If any provision of the Contract Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.

- 10.6 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two (2) officers of the corporation are required pursuant to California Corporation Code Section 313.

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.

The parties agree to this Contract as witnessed by the signatures below:

CITY OF MORGAN HILL:

 Christina J. Turner
 City Manager

Date: _____

Attest:

 Michelle Wilson
 Deputy City Clerk

Date: _____

Approved as to Form:

 Donald A. Larkin
 City Attorney

Date: _____

CONTRACTOR:

Valley Precision Grading, Inc.

 Kip Olson, President

Date: 11/22/17

Corporate entities must provide a second signature:

 Kristofer Olson, Secretary

Name/Title [print]

Date: 11/22/17

783244
 Contractor's License Number(s)

8/31/18
 Expiration Date(s)

Seal:

1000002356
 DIR Registration Number

10/30/18
 Expiration Date(s)

END OF CONTRACT

Attachment: 20171122094111797 (1533 : Award of Outdoor Sports Center Artificial Turf Project)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2017

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

AWARD CONTRACT FOR LANDSCAPE MAINTENANCE: PARK MOWING, MEDIANS, AND DOWNTOWN

RECOMMENDATION(S)

Authorize the City Manager to execute and administer a Maintenance Services Agreement with Brightview Landscape Services for \$261,552 to service Group 1: City Parks Mowing, Group 3: Medians, and Group 6: Downtown for two years.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

The purpose of this item is to provide the City Council with an opportunity to consider awarding a landscape maintenance agreement to Brightview Landscape Services for park mowing, street median maintenance, and downtown landscape maintenance.

In September 2017, a Request for Proposal (RFP) was released for Landscape Maintenance Services for Group 1 (Park Mowing), Group 3 (Medians), and Group 6 (Downtown). In soliciting bids for the Project, the City advertised in the Morgan Hill Times newspaper and two online services, Public Purchase and Online Plan Service, whose subscribers include several northern California Builders Exchanges. The following three contractors responded to the RFP: Brightview Landscape Services, New Image Landscape, and Mike Davis Landscape Service.

The proposals were reviewed in a two-step process. In the first step, the contractors' responses to technical questions and description of its customer service and communication systems were evaluated and scored by three reviewers. This analysis reviewed previous experience in providing a superior level of service to like-sized public and/or private projects and assessed the contractor's work quality, performance, and working relationships with current and recent clients. There were 40 points available for the narrative responses to technical questions. In order to compete in the second part of the RFP process, contractors needed to score at least 30 out of 40 points in this section. The final point scores for this section were:

Brightview Landscape	36 points
New Image Landscape	32 points
Mike Davis Landscape	24 points

Since Mike Davis Landscape did not score the minimum 30 out of 40 points, its proposal was eliminated and not included in the second step of the RFP process, which was the cost proposal evaluation. In the second step of the evaluation, the contractors' cost proposals for each group of work are compared and the contractor with the lowest priced proposal for each group is recommended to be awarded the contract for that group.

The bids received from the remaining two proposers for annual service were:

	Brightview	New Image
Group 1: Parks	\$33,852	\$39,576
Group 3: Medians	\$36,828	\$30,033
Group 6: Downtown	\$106,200	\$31,790

After reviewing the bid results after they were received, Brightview noticed that their Group 6 bid was substantially misaligned with the other bidders. They re-opened their spreadsheet and notified the City that they had found a calculation error and that their bid amount was supposed to actually be \$30,096 for Group 6. Since this revision was received after the bid opening date and after they had seen the bids of other companies, staff notified Brightview that it would not be fair nor ethical to consider the revised number in the process.

Based upon the above pricing, staff was prepared to recommend that Group 1 be awarded to Brightview Landscape Services in the annual amount of \$33,852 and that Groups 3 and 6 be awarded to New Image Landscape in the total annual amount of \$61,823. However, after learning that they were scheduled to be awarded Groups 3 and 6, but not Group 1, New Image re-evaluated their interest in the work and withdrew from the process. Their withdrawal left Brightview as the sole remaining bidder in the process. Since fairness was no longer a concern, staff notified Brightview that their revised bid would be accepted and that staff was now recommending that they be awarded Groups 1, 3, and 6.

Staff recommends that the Council authorize the City Manager to execute a Maintenance Services Agreement with Brightview in the amount of \$261,552 for Groups 1, 3, and 6. The recommended amount of the contract is \$30,000 per year higher than the bid amount needed to solely fund weekly services for the two-year term of the contract as shown in the table above. This increased amount allows for additional services to be provided above and beyond the normal weekly services. Examples of these services include irrigation valve replacements, exceptional tree trimming, and the rejuvenation of a landscape area. The contract specifies that these additional services are only to be provided with the prior approval of the City's contract manager.

COMMUNITY ENGAGEMENT: Inform

Staff will continue to post landscape maintenance updates on the City's website, Next Door Morgan Hill, Facebook, and Twitter to inform residents of any landscape maintenance work done by the contractor that will affect right of way or pedestrian access to facilities and services. Engagement also occurs informally through resident discussion with Community Services Department team members.

ALTERNATIVE ACTIONS:

An alternative action would be to reject all proposals and release another Request for Proposal in an attempt to obtain more proposals.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City has contracted out for landscape maintenance services for over a decade. The agreements for these work groups were last awarded in June 2014 by the City Council.

FISCAL AND RESOURCE IMPACT:

Brightview's bids of \$33,852 for the Parks Mowing, \$36,828 for Street Medians and \$30,096 for Downtown were all within the budgeted amounts for Park Maintenance 302.8030.42231, Street Maintenance 010.6100.42231, and Downtown Maintenance 010.5460.42231. The \$30,000 in additional annual costs included in the contract total is within the amounts set aside for this work in the City's Adopted Budget. Administering landscape maintenance agreements is an activity included in the work program of the Community Services Department.

CEQA (California Environmental Quality Act):

Categorical Exemption

Maintaining existing landscapes is 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.

LINKS/ATTACHMENTS:

1. RFP for Landscape Maint Groups
2. Landscape Bid Results Groups 1 3 6
3. Executed Brightview Groups 1 3 6 Contract



CITY OF MORGAN HILL

Request for Proposals
Landscape Maintenance Services (Groups 1,3, & 6)
for
Park Mowing, Median, Streetscape, Parking Lot, Downtown and
Misc. Landscaping Work

The City of Morgan Hill is requesting proposals from qualified contractors to provide professional landscape maintenance services for Morgan Hill's Park Mowing, Median, Streetscape, Parking Lots, Downtown and Miscellaneous Landscape work.

Proposals are due on Monday, October 23, 2017 @ 11:00 a.m. at the City of Morgan Hill City Hall located at 17575 Peak Avenue in Morgan Hill, 95037.

Non-Mandatory Prebid Meeting on Tuesday, October 3, 2017 at 1:00 p.m. at the City of Morgan Corporation Yard located at 100 Edes Court in Morgan Hill.

REQUEST FOR PROPOSAL INFORMATION

SECTION 1 – General Instructions and Information for Contractors

SECTION 2 – Technical Specifications

SECTION 3 – Bid Proposal and Bid Schedule (Use Exhibit H: 2017-2019 Landscape Services Costs Proposal), Subcontractor List, Non-collusion Affidavit , Technical Qualifications Response Form, Written Response to RFP Narrative Questions

EXHIBITS

A-City of Morgan Hill Landscape Standards

B-City of Morgan Hill Landscape Inspection Rating Form

C-Site Maps for Group 1

D- Site Maps for Group 3

E – Site Maps for Group 6

F- Sample Maintenance Services Agreement

Attachment: RFP for Landscape Maint Groups (1483 : Landscape Maintenance Groups 1 3 6 Award)

G- Non-Collusion Affidavit

H- 2017-2019 Landscape Services Costs Proposal

I - Subcontractors List

J – Integrated Pest Management (IPM) Plan

Section 1 – General Instructions and Information for Contractors

Proposal Submission. Deliver sealed proposals to the Community Services Department, City of Morgan Hill City Hall, located at 17575 Peak Avenue, Morgan Hill, California, by 11:00 a.m. on Monday, October 23, 2017. Proposals must be addressed to the Community Services Department, and labeled as **“Response to RFP for Landscape Maintenance Services Groups 1,3, & 6.”** Proposals will be publicly opened at 11:00 a.m. at 17575 Peak Avenue, Morgan Hill, CA. Contractor is to complete the following bid documents and include in the bid package:

1. Bid Proposal (Section 3)
2. Landscape Services Cost Proposal (Bid Schedule) (Exhibit H)
3. Subcontractors List (Section 3 & Exhibit I)
4. Non-collusion Affidavit (Section 3 & Exhibit G)
5. Technical Qualifications Response Form (Section 3)
6. Written Response to RFP Narrative Questions (Section 3)

Examination of Contract Documents and Project Site(s). Each bidder is solely responsible for thorough review of the Request for Proposal (RFP) Documents and the examination of Project site(s) prior to submitting a Bid Proposal. Note that any areas and quantities noted are for information only. Bidders are responsible for inspecting the work locations and making their own area and quantity estimates.

Addenda. Any addenda issued prior to Bid Time shall constitute part of the Contract Documents. The City reserves the right to issue addenda prior to Bid Time.

Brand Designations and “Or Equal” Substitutions. Any specification designating a material, product, thing, or service by specific brand or trade name, followed by the words “or equal,” is intended only to indicate quality and type of item desired, and bidders may request use of any equal material, product, thing, or service. All data substantiating the proposed substitute as an “equal” item must be submitted with a written request for substitution.

License. The successful bidder and any subcontractor(s) must possess a current and valid California contractor’s license(s) in the classification(s) required by law to perform the work as well as a City of Morgan Hill Business License. (C-27 Landscape Contractor License)

City Representative and Request for Information (RFIs). The designated City representative for this procurement process is Cynthia Iwanaga, Management Analyst at cynthia.iwanaga@morganhill.ca.gov. Please submit all questions regarding this bid to cynthia.iwanaga@morganhill.ca.gov no later than Monday, October 16th at 5:00 p.m. An addendum with the answers to all questions submitted in writing will be issued on Tuesday, October 17th.

Insurance

No later than ten days following issuance of the notice of award, Contractor 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 Contractor and its Subcontractors relating to or arising from the performance of the Work, and must remain in full force and effect at all times during the period covered by the Contract until the date of recordation of the notice of completion. **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 Contractor fails to provide any of the required coverage in full compliance with the requirements of the Contract Documents, Owner may, at its sole discretion, purchase such coverage at Contractor’s expense and deduct the cost from payments due to Contractor, or terminate the Contract for default. **Contractor further understands that the City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days’ notice provided to Contractor, at any time as deemed necessary to protect the interests of the City.**

(A) **Policies and Limits.** The following insurance policies and limits are required for this Contract unless otherwise specified in the Special Conditions:

- (1) **Commercial General Liability Insurance (“CGL”):** Contractor shall maintain CGL and shall include coverage for liability arising from Contractor’s or its Subcontractor’s acts or omissions in the performance of the Work 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 Contractor under Contractor’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:** Contractor 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 Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If Contractor is self-insured, Contractor must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

- (3) **Automobile Liability:** Contractor shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if Contractor does not own automobiles, then Contractor 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 Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- (4) **Pollution (Environmental) Liability:** Because the performance of Contractor'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, Contractor 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 Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(B) Required Endorsements. Contractor 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, with the exception of Builder's Risk and Professional Liability, must include an endorsement providing that the carrier agrees to waive any right of subrogation it may have against the City of Morgan Hill and the City's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

- (2) General Liability:
- a. "Additionally Insured" - The City of Morgan Hill, 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.** Contractor must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 4.3, with respect to its performance of Work on the Project, including those requirements related to the additional insureds and waiver of subrogation.

(D) **Qualification of Insurers.** All insurance required pursuant to this Contract 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 "VIII" or better.

(E) **Certificates.** Contractor shall furnish City with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the Contractor's agreement with the 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 Owner. 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

DIR Registration: Per the California Labor Code, bids can only be accepted from bidders who are registered public works contractors (PWC), registered subcontractors and suppliers who are registered with the California Department of Industrial Relations pursuant to Labor Code section 1725.5. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations."

Prevailing Wages. Each worker performing Work under this Contract shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor

Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. Contractor shall post a copy of the applicable prevailing rates at the Worksite.

This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes.

These prevailing rates are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to work on the Project. The schedule of per diem wages is based upon a working day of eight hours. The rate for holiday and overtime work must be at least time and one-half.

The Contract will be subject to compliance monitoring and enforcement by the California Department of Industrial Relations, under Labor Code Section 1771.4.

A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request, to The City, or to the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations, and as further provided by the Labor Code.

Additive or Deductive Items. If this bid solicitation includes additive or deductive items, the method to be used to determine the lowest bid is **"The lowest bid will be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items"**.

Owner retains the right to add to or deduct from the Contract any of the additive or deductive alternates included in the Bid Proposal.

Bid Protest. Any bid protest must be in writing and received by the City Attorney's Office at 17575 Peak Avenue, Morgan Hill, CA, (Fax: (408) 779-1592), before 5:00 p.m. no later than two (2) working days following bid opening (the "Bid Protest Deadline") and must comply with the following requirements:

Only a bidder who has actually submitted a Bid Proposal is eligible to submit a bid protest against another bidder. Subcontractors are not eligible to submit bid protests. A bidder may not rely on the bid protest submitted by another bidder, but must timely pursue its own protest.

The bid protest must contain a complete statement of the basis for the protest and all supporting documentation. Material submitted after the Bid Protest Deadline will not be considered. The protest must refer to the specific portion or portions of the Contract Documents upon which the protest is based. The protest must include the name, address and telephone number of the person representing the protesting bidder if different from the protesting bidder.

A copy of the protest and all supporting documents must also be transmitted by fax or by e-mail, by or before the Bid Protest Deadline, to the protested bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest

The protested bidder may submit a written response to the protest, provided the response is received by Owner before 5:00 p.m., within two (2) working days after the Bid Protest Deadline or after receipt of the bid protest, whichever is sooner (the "Response Deadline"). The response must include all supporting documentation. Material submitted after the Response Deadline will not be considered. The response must include the name, address and telephone number of the person representing the protested bidder if different from the protested bidder.

A copy of the protest and all supporting documents must also be transmitted by fax or by e-mail, by or before the Bid Protest Deadline, to the protested bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest

The procedure and time limits set forth in this section are mandatory and are the bidder's sole and exclusive remedy in the event of bid protest. The bidder's failure to comply with these procedures shall constitute a waiver of any right to further pursue a bid protest, including filing a Government Code Claim or initiation of legal proceedings.

Rejection of Bids and Award of Contract. City reserves the right, acting in its sole discretion, to waive non-substantive bid irregularities, the right to accept or reject any and all bids, or to abandon the work entirely. The Contract will be awarded, if at all, within sixty (60) calendar days after opening of Bids, to the responsible bidder submitting the lowest responsive bid.

Section 2: Technical Specifications

LANDSCAPE MAINTENANCE SERVICES (GROUPS 1, 3, & 6)

CITY OF MORGAN HILL PARKS MOWING, MEDIANS, STREETScape, PARKING LOTS, DOWNTOWN, AND MISCELLANEOUS LANDSCAPING

INCLUDING:

PROPOSAL INFORMATION FOR CONTRACTORS

GENERAL CONDITIONS

SPECIAL PROVISIONS

CITY OF MORGAN HILL LANDSCAPE STANDARDS

SITE MAPS

SAMPLE CONTRACT

COST PROPOSAL FORM

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- K. INTEGRATED PEST MANAGEMENT (IPM) PLAN

SECTION 3

PROPOSAL INFORMATION FOR CONTRACTORS

Attachment: RFP for Landscape Maint Groups (1483 : Landscape Maintenance Groups 1 3 6 Award)

Bid Proposal

Landscape Maintenance Services

Groups 1, 3 and 6

_____ (“Bidder”) hereby submits this Bid Proposal to the City of Morgan Hill (“The City”) for the above-referenced project (“Project”) in response to the Notice Inviting Bids and in accordance with the Contract Documents referenced therein.

1. **Base Bid.** Bidder proposes to perform and fully complete the Work for the Project as specified in the Contract Documents, within the time required for full completion of the Work, for the following price (“Base Bid”): _____ Dollars (\$ _____).

1a. **Bid Alternate.** Bidder proposes to perform and fully complete the Work for the Project as specified in the Contract Documents, within the time required for full completion of the Work, for the following price (“Bid Alternate”):

_____ Dollars (\$ _____).

2. **Addenda.** Bidder acknowledges receipt of the following addenda:

Addendum:	Date Received:	Addendum:	Date Received:
#01	_____	#05	_____
#02	_____	#06	_____
#03	_____	#07	_____
#04	_____	#08	_____

3. **Bidder’s Warranties.** By signing and submitting this Bid Proposal, Bidder warrants the following:

3.1 Bidder has thoroughly examined the Contract Documents, and represents that, to the best of Bidder's knowledge there are no errors, omissions, or discrepancies in the Contract Documents.

3.2 Bidder has had the opportunity to examine the Worksite and local conditions at the Project location.

3.3 Bidder is fully qualified to perform the Work.

3.4 Bid has carefully reviewed this Bid Proposal and is solely responsible for any errors or omissions contained in its completed Bid.

4. **Award of Contract.** By signing and submitting this Bid Proposal, Bidder agrees that if Bidder is awarded the Contract for the Project, that within ten (10) days following issuance of the notice of award to Bidder, Bidder shall:

4.1 Enter into a Contract with The City in accordance with the terms of this Bid Proposal, by signing and submitting to The City the Contract form included with the Contract Documents; and

4.2 Submit to The City the insurance certificate(s) and endorsement(s) as required by the Contract Documents.

This Bid Proposal is hereby submitted on _____, 20__:

s/ _____

Name and Title [print]

Company Name

License # and Classification

Address

Phone

City, State, Zip

Fax

Email

State of California Dept. of Industrial Relations (DIR) PW Contractor Registration #

REQUIRED ATTACHMENTS:

1. Landscape Services Cost Proposal (Bid Schedule)
2. Subcontractors' List
3. Non-collusion Affidavit
4. Technical Qualifications Response Form
5. Written Response to RFP Narrative Questions

THIS FORM MUST BE USED WHEN SUBMITTING PROPOSAL

SUBCONTRACTOR LIST

or each Subcontractor who will perform a portion of the Work in an amount in excess of one-half of 1% of the Bidder's total Contract Price,¹ the bidder must list a description of the work, the name of the Subcontractor, its California contractor license number, the location of its place of business, and DIR registration number. **Bidders: Please print legibly. Illegible forms may be rejected.**

DESCRIPTION OF WORK	SUBCONTRACTOR NAME	CALIFORNIA CONTRACTOR LICENSE NUMBER	DIR REG. NO.	LOCATION OF BUSINESS	LOCAL VENDOR ² YES/NO

END OF SUBCONTRACTOR LIST

THIS FORM MUST BE USED WHEN SUBMITTING PROPOSAL

¹ For street or highway construction this requirement applies to any subcontract of \$10,000 or more.

² A Subcontractor is considered local if its principle place of business is within the city limits of Morgan Hill.

NONCOLLUSION AFFIDAVIT

(To be executed by bidder and submitted with bid)

State of California	)	SS.
	)	
County of _____	)	

_____, being first duly sworn, deposes and says that he

or she is _____ of _____ ("Contractor"), the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

I certify under penalty of perjury that the foregoing is true and correct.

s/ _____ Date: _____

Name and Title [print]

State of _____

THIS FORM MUST BE USED WHEN SUBMITTING PROPOSAL

Attachment: RFP for Landscape Maint Groups (1483 : Landscape Maintenance Groups 1 3 6 Award)

County of _____

On _____ before me, _____

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacities, 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.

WITNESS my hand and official seal.

Signature of Notary Public

THIS FORM MUST BE USED WHEN SUBMITTING PROPOSAL

City of Morgan Hill Community Services Department

RFP for Landscape Maintenance Services Groups 1, 3 & 6

Technical Qualifications Response Form

(40 Total Points Possible)

Name of Company:

Section 1: Previous Experience in providing a superior level of service on like-sized public and/or private projects: (Up to 15 points)

Please answer the following:

1. How many years has your company been in business under its present business name?
2. Describe your previous experience providing landscape maintenance and repair services for like-sized public agencies and/or private companies.
3. **Describe your systems approach for managing irrigation systems.**
4. Describe management personnel's experience with accounts of similar size and scope, company structure, and staff assigned to the resulting agreement.
5. State any and all instances of being disqualified, removed, or otherwise prevented from completing the terms of any previous contracts over the past five (5) years. Give names, street addresses, and phone numbers and explain the circumstances.

Attachment: RFP for Landscape Maint Groups (1483 : Landscape Maintenance Groups 1 3 6 Award)

Name of Company:

Section 2: Assessment of Work Quality, Performance and Working Relationships with Current and Recent Clients: (Up to 15 points)

1. List three (3) like-sized customers that you have provided landscape maintenance and repair services to within the last three (3) years. Provide the following information for each contact:
 - a. Customer Name
 - b. Customer Contact Name
 - c. Phone Number
 - d. Number of years Contractor has provided landscape maintenance and repair services to Customer.
 - e. Names of facilities/locations where services have been provided.

Name of Company:

Section 3: Well organized communication systems and reporting capabilities that demonstrate an ability to complete tasks efficiently and effectively and do not require constant supervision by the City. (Up to 10 points)

1. Describe the systems your company uses to communicate between supervisors, office staff and field staff. Also describe the systems you use to assign, track, and evaluate work performed by your employees.
2. Describe how you track and report problems in the field to your clients?
3. Describe how you would provide invoices to the City that will show work accomplished, labor hours and parts consumed by site.

1-1 TENTATIVE SCHEDULE OF ACTIVITIES

The tentative schedule of key milestones related to the City of Morgan Hill Request for Proposal (RFP) for Facility, Park and Median Landscape Maintenance Services is as follows:

1. **Non-Mandatory Pre-bid Conference with Site Visits:** *Tuesday, October 3, 2017 @ 1:00 p.m. to be held at Morgan Hill Corporation Yard, 100 Edes Court, Morgan Hill, CA*
2. **Written Questions Submitted to City Staff:** *Deadline Thursday, October 12th @ 5:00 p.m.*
3. **City Response to Written Questions:** *Tuesday, October 17th @ 5:00 p.m.*
4. **Proposals' Due Date:** *Monday, October 23rd @ 11:00 a.m.*
5. **Interviews (as needed):** *Monday, October 30th or Tuesday, October 31st*
6. **Anticipated Contract Award by City Council:** *Wednesday, November 15th*
7. **Commencement of Contract:** *January 1, 2018*

1-2 SCOPE AND LOCATION OF WORK

The City is requesting landscape maintenance services for Landscape Service Groups 1,3, & 6. Contractors are encouraged to bid on one, two or all three groups although there is no requirement to bid on more than one group. Each specific group will be awarded to the qualified contractor with the highest score for that group. Extra work pricing must be provided for each group.

This Landscape Maintenance Service Agreement ("Contract") is an outcome based contract where the City has established specific landscape standards as outcomes. The Contractor is responsible for developing a base bid necessary to maintain the expected outcome standards. The bid is to be presented with the total cost for each service group for a two-year period. The City will inspect the work of the Contractor against the stated standards to determine compliance and payment.

The work to be performed under the Contract consists of the furnishing of all labor, insurance, materials, and equipment needed for complete landscape maintenance services in the following service groups:

Group 1 Park Mowing and Edging

Group 3 Median, Streetscape, Parking Lot & Miscellaneous Facility Landscape Maintenance

Group 6 Downtown

Extra Work All Locations

1-3 EXAMINATION OF CONTRACT DOCUMENTS

Each Contractor shall thoroughly examine and be familiar with the terms of this RFP, the sample contract attached as Exhibit F, legal and procedural documents, general conditions, specifications, and addenda (if any), which will constitute the Contract Documents. Submission of a proposal shall constitute acknowledgment, upon which Morgan Hill may rely, that the Contractor has thoroughly examined and is familiar with the Contract Documents. Failure or neglect of a Contractor to receive or examine any of the

Contract Documents shall in no way relieve the Contractor of any obligation with respect to their proposal or to the Contract. No claim for additional compensation will be allowed which is based upon a lack of knowledge of any Contract Documents.

Submission of a proposal is entirely voluntary. No compensation is offered for any work related to the proposal or selection process.

1-4 INTERPRETATION OF CONTRACT DOCUMENTS

No oral representation or interpretations will be made to any Contractor as to the meaning of the Contract Documents after the mandatory bidder's conference. Requests for interpretation shall be made in writing to the Maintenance Management Analyst by Thursday, October 12, 2017 @ 5:00 p.m. All requests for information (RFIs) should be directed to Cynthia Iwanaga, Maintenance Management Analyst via e-mail at cynthia.iwanaga@morganhill.ca.gov

No other individuals are to be contacted in this regard. All requests for interpretation and answers will then be answered via addendum on www.publicpurchase.com and the City of Morgan Hill website. Bidders are responsible for checking either www.publicpurchase.com or the City of Morgan Hill website for all addendums issued. The final addendum will be issued no later than Tuesday, October 17th at 5:00 p.m.

1-5 PROPOSALS

Proposals shall be in written form and must include, at a minimum, the information requested by the City. Additional pages may be attached to the proposal, as supplemental, but not as replacement pages. All proposals shall give all information requested therein, and shall be signed by the Contractor and/or authorized with legal authority to bind the Contractor, with their address and contact information. Contractors must prepare and submit all required documents. Unauthorized conditions, omissions, limitations or provisos attached to a proposal will render the proposal non-responsive and may cause its rejection.

Each proposal shall be enclosed in a sealed envelope, labeled "RESPONSE TO RFP: LANDSCAPE MAINTENANCE SERVICES GROUPS 1, 3 & 6," and delivered to the City of Morgan Hill Community Services Department, 17575 Peak Ave., Morgan Hill, California, 95037 by Monday, October 23, 2017 at 11:00 a.m. (the "deadline date"). Contractors are warned against making erasures or alterations of any kind, without initialing each and every such change. Proposals that contain erasures or irregularities of any kind, without such initialing, or omissions, may be rejected.

No oral, email, telegraphic, or telephone (including facsimile) proposals or modifications will be considered.

Proposal forms received after the deadline date will not be accepted. Postmarks will not be accepted.

No Contractor may withdraw its proposal for a period of ninety (90) days after the date set for the opening of proposals.

Morgan Hill reserves the right to reject any or all proposals, to make any awards or any rejections in what it alone considers to be in the best interest of Morgan Hill, and waive any informalities or irregularities in the proposals.

Written Response to RFP Narrative Questions:

Proposals must include, a written narrative statement with the following information in the below order:

- A. Introduction:** Introduce the firm's proposal, including a statement of Contractor's approach for providing Landscape Maintenance Services to the City of Morgan Hill. Provide the name of the company submitting the proposal, the mailing address, telephone number, fax number, address, and the name of the contact person.
- B. Statement of Qualifications:** Describe management personnel's experience with accounts of similar size and scope, company structure, and staff assigned to the resulting agreement. Include a detailed description of your company, employee position categories and current number of employees in each category. Include an outline of any experience your company has had in meeting the needs of other governmental organizations. Detail any involvement, past or current, relative to litigation or other disputes, if any, concerning your performance with any clients to whom your company has provided services. List all contracts canceled or not extended. State any and all instances of being disqualified, removed, or otherwise prevented from completing the terms of any previous contracts over the past five (5) years.
- C. Financial Stability:** The City wants to ensure that the successful Contractor has the necessary facilities, ability, experience, and financial resources to provide the services specified herein in a satisfactory and timely manner. Please list and explain any pending bankruptcies, liens, stop notices, judgments, lawsuits and foreclosures, or any such actions filed or resolved in the past seven (7) years. Also, furnish a statement of financial resources demonstrating that the proponent has the ability to maintain a staff of regular employees or contractors adequate to insure continuous work, and demonstrating that the equipment for the work contemplated is sufficient, adequate and suitable.
- D. Resources and Service Description:** Include a comprehensive description of the resources and methodology that will be used to complete each element of the requested services. Special emphasis should be placed on how your company will "partner" with the City to provide innovative approaches and techniques in both the services provided today and in the way it will respond to future needs in this community. Include how you can build trust into the relationship between your company and the City.
- E. Staffing Process:** Include a work plan of how you will staff and supervise each area. Include the estimated hours needed to maintain each district, listing each district separately. Provide a monthly calendar indicating staffing and work strategies throughout all seasons of the year. Discuss how you will adhere to all maintenance schedules.
- 1-1 Provide a complete overview of all training programs provided.
- 1-2 Detail your company's employee retention program and philosophy. Include a complete overview of your company's employee benefits package for ALL employee categories to be assigned to this contract, include supervisors, full time line staff and part time line staff for each area in the bid.

1-3 List the full or part time status of each employee that will be assigned to this Contract as well as a complete organizational chart for your company.

1-4 Describe the designated on-site supervisor's role in delivery of contract services and availability of on-site supervisor and contingency plans when not available. Describe the line staff's role in the delivery of exceptional service. Describe the designated on-site irrigation staff's role in the delivery of exceptional service.

1-5 Include resumes for all account on-site staff and all irrigation staff assigned to this Contract.

- F. Liability Issues:** Discuss how your company handles damage or theft claims.
- G. Logistics:** Describe how your company will make available the equipment and supplies machinery, signs, cones, tools, chemicals, etc. needed to perform all work, where your company is based and where your company will store equipment.
- H. Chemicals:** List the chemicals proposed for use in this Contract. Describe how each will be used and methods used to comply with the Department of Pesticide Regulation.
- I. Equipment:** Attach an equipment inventory listing all equipment and vehicles to be used for this Landscape Maintenance Services Agreement. Indicate equipment that currently exists in your fleet and equipment that would need to be procured if this Contract is awarded to your company.
- J. Communication:** Describe the systems your company uses to communicate between supervisors, office staff and field staff. Also describe the systems you use to assign, track, and evaluate work performed by your employees.
- K. Technology:** Discuss any technology tools your company uses to stay innovative and responsive to the needs of the services you provide and will allow your staff to utilize City systems.
- L. Irrigation:** Describe your company's plan and strategy for maintaining irrigation systems and preventative measures taken to assure maximum efficiency and water conservation. Discuss experience with any and all centralized irrigation systems and specifically Rain Master Eagle. Include any strategies used in designating responsibilities of Contractor and owners and how it differs between centrally and non-centrally controlled systems.
- M. Invoicing:** Describe your company's invoicing and accounting system, as it will relate to this Contract. Describe your capability to customize invoices to meet the City of Morgan Hill's needs. Attach samples of your company's billing forms and invoices.
- N. Reports:** Discuss management reports and quality assurance methods and their frequency. Emphasize how you would customize reports for the City that will show work accomplished, labor hours, materials consumed, and equipment utilized by site. Attach sample reports.
- O. Fertilizer/Pest Control Plan:** Develop an annual fertilization and/or weed/pest control plan that your company feels would produce a cost-effective approach that results in maximum savings to the City, per service level, while still providing high quality results. This plan is a guide for evaluation purposes and does not indicate acceptance or approval by the City.

P. Service Philosophy: Discuss what your company believes to be the most important component of the landscape services you provide and explain why.

Q. Customer Service and Quality: Discuss your company's vision of customer service and quality. Describe the steps your company takes to insure each person's role in your organization is understood as it relates to exceptional customer service and quality not only to the City of Morgan Hill but to the residents and visitors of Morgan Hill.

R. Acceptance Statement: The proposal shall include an acceptance statement regarding the Park and Landscape Maintenance company's acceptance of the City's requirements for service agreements including but not limited to insurance requirements, indemnification, licensing requirements, representations, warranties, and certificates that are presented herein. The Landscape Maintenance company shall clearly state any and all exceptions. A principal, officer or owner of the company with authority to bind the Landscape Maintenance Company, shall sign this acceptance statement.

S. Base Bid Prices: Base bid prices shall include everything necessary for the completion of and fulfillment of the Contract, including but not limited to, furnishing all transportation, materials, equipment, and all management, supervision, permits, labor and services, to comply with the designated Maintenance Standard, for each area, unless otherwise identified as "Extra Work" within this document. The prices should be listed by yearly lump sums by site. The basis of payment shall be on a monthly fixed price basis or as otherwise agreed to in writing by the City. Proposal prices shall include all applicable federal, state, and local taxes. The City reserves the right to award individual work locations to different contractors and/or negotiate cost proposals. Additionally, the City reserves the right to readjust the current grouping of locations and to add or subtract from each grouping.

The Contractor must agree to perform the described work in its proposal and markup stipulated in the Agreement or as negotiated by City for a period of up to six (6) years. The initial proposed pricing must be in effect for two years based on the two-year time period of the initial contract. At the request of the Contractor, City and Contractor will meet and revise prices to be effective for the next year (Jan. 1-Dec. 30) in September of each year. This increase shall not exceed 5% in any one year, including any extensions in the term of the Agreement. City also agrees to adjust payments to reflect changes in work quantities and to pay for new work assigned to Contractor at the contract rates then in effect. Adjustments to quantities may be requested by either party and is subject to field verification by City.

T. Material and Supply Pricing: The proposal shall include the Contractor's percentage mark up on materials and supplies over its cost. This percentage should be included in the Contractor's "Extra Work" pricing sheet. The City reserves the right to purchase, and supply to the Contractor, all materials and supplies.

U. Conflict of Interest: Contractors submitting a proposal in response to this RFP must disclose any actual, apparent, direct, indirect, or potential conflicts of interest that may exist with respect to the Contractor or the Contractor's management or employees relative to the services to be provided to the City. Conflict of interest issues may require consultation with legal counsel. If a Contractor has no conflicts of interest, a statement to that effect must be included in the proposal.

1-6 AWARD OF CONTRACT

The award of contract, if any, will be made within approximately thirty (30) calendar days after the proposal opening as outlined in the Selection Process. Each Proposal, as submitted, shall remain in effect for ninety (90) calendar days after the date the proposals are opened. No Contractor may withdraw its proposal during this time period. Comparing and evaluating the proposals based on the Selection Criteria below shall determine the Contractor(s) selected by the City. Morgan Hill reserves the right to reject any and all proposals or to waive any irregularities or informalities in any proposal or in the RFP procedures.

The selected Contractor will be required to execute a standard City Maintenance Services Agreement. Exhibit F contains a sample of the agreement that the Contractor will need to execute if selected.

The award of the maintenance services agreement, if any, will be for a period of two (2) years commencing on January 1, 2018 and expiring on December 31, 2019. Contractor shall be bound to the prices on the proposal form for the two-year duration of the contract term. Thereafter, if the contract is extended and at the request of the Contractor, City and Contractor will meet and revise prices to be effective for the next calendar year (January 1 -December 31st) in September of the prior year. This increase shall not exceed 5% in any one year. An exception to this limit can be made by the City in the event of unforeseen and uncontrollable circumstances such as but not limited to: Fuel Pricing, Workers' Compensation Rates, Prevailing Wage changes, etc.

1-7 EXTENSION OF CONTRACT

The Contract shall include the option for two (2) two-year extensions. Extensions will be exercised if both the City and the Contractor mutually agree to continue the relationship. Annual pricing adjustments will continue as outlined in Section 4 Item S (Pricing) and Section 5 (Award of Contract).

1-8 PREVAILING WAGES, CERTIFIED PAYROLL RECORDS AND CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS REGISTRATION

Prevailing Wages. Each worker performing Work under this Contract shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>.

Certified Payroll Records. Contractor shall comply with the provisions of Labor Code Sections 1776 and 1812, which are incorporated by reference herein.

A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request, to Owner, or to the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations, and as further provided by the Labor Code.

DIR Registration. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the California Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)]. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

1-9 PARK AND LANDSCAPE MAINTENANCE COMPANY MINIMUM STANDARDS AND SELECTION CRITERIA

The City will first evaluate and rank proposals based on selection criteria listed below in the "Narrative Scoring" Section. Proposals that are rated at less than 30% (of total 40% possible) will be eliminated. The winning proposal will be selected, based on lowest cost, from those ranked 30% and above.

Any proposal may be rejected if it is conditional, incomplete or contains irregularities. Minor or immaterial irregularities in a proposal may be waived at the City's sole discretion. Waiver of an irregularity shall in no way modify the Request for Proposals nor affect recommendation for award of the Contract. The criteria for the selection of the Landscape Maintenance company are listed in relative order of importance.

Scoring

Narrative Scoring: (40%)

- 15% Previous Experience Providing Superior Level of Service on Like-Sized Public or Private Projects
- 15% Assessments of work quality, performance and working relationships by current and recent clients that indicate high levels of satisfaction and effectiveness.
- 10% Well organized communication systems and electronic reporting capabilities that demonstrate an ability to complete tasks efficiently and effectively and do not require constant supervision by the City.

Bid Schedule Scoring: (60%)

- 60% Bid Schedule Amounts

1-10 MODIFICATION OF PROPOSAL

Modification of a proposal already received will be considered only if the modification is received prior to the deadline date for receiving proposals. All modifications shall be made in writing, executed, and submitted in the same form and manner as the original Proposal.

1-11 PROPOSAL POSTPONEMENT AND AMENDMENT

The City reserves the right to postpone or cancel this RFP at any time. In addition, the City reserves the right to revise or amend the RFP or specifications up to the time set for opening of the proposals. Such revisions and amendments, if any, shall be announced as amendments to this RFP. Copies of such amendments shall be furnished to all prospective proponents. Prospective proponents are defined as those proponents who have attended the pre-bid conference and provided email contact information. If revisions and amendments require changes in quantities, prices or scope of work, the date set for opening of the proposals may be postponed by such number of days as in the opinion of the City shall enable proponents to revise their proposals. Proposals which fail to acknowledge a substantive addendum to the RFP, as determined by the City Attorney, on the City supplied addendum form will be rejected as non-responsive.

1-12 AFFIDAVIT

Contractors shall submit as part of their proposal a properly filled out and executed "Noncollusion Affidavit" conforming to the City's "Noncollusion Affidavit" which is attached to this RFP as Exhibit I.

1-13 REJECTION OF PROPOSALS FOR NONRESPONSIVENESS

City reserves the right to reject any proposals as nonresponsive which are incomplete, obscure, or irregular; any proposals which omit any one or more items for which proposals are required; any proposals which omit unit prices if unit prices are required; any proposals in which unit prices are unbalanced in the opinion of City; and any proposals which are conditional or alter the scope of work.

1-14 COMPLETING AND SIGNING FORMS

The Contractor's attention is directed to the forms included in the Contract Documents, which must be completed and signed. Failure to properly complete and sign any forms may be cause for rejection of a Proposal.

1-15 IDENTIFICATION OF SUBCONTRACTORS

Contractor(s) may use subcontractors for various functions or may put together a full-service proposal, utilizing subcontractors to supplement functions not provided directly by the lead contractor. All subcontractors whom the Contractor proposes to subcontract portions of the work in an amount in excess of one-half of one percent (0.5%) must be identified by company name, license number, and address. Each subcontractor's work responsibility as well as the percentage of total work to be performed by the subcontractor must be clearly called out.

1-16 ADDITIONAL AND EXTRA WORK

City has the authority to direct additional and extra work including, but not limited to, work for vandalism, City initiated improvements, various repair and maintenance functions, and the addition of new sites with the understanding that the contractor is entitled to additional compensation. Additional and extra work outside the Scope of Services will require written approval from City prior to the commencement of work. Costs for additional work completed by the Contractor prior to receiving written approval from the City shall be the responsibility of the Contractor.

1-17 CHANGES IN CONTRACT PRICE

Other provisions of the Contract Documents notwithstanding, the Contract Price may be changed only by an amendment duly authorized by the City Manager or his or her designee. The value of any work covered by an amendment or of any claim for increase or decrease in the Contract Price shall be determined by one or more of the following methods in the order of precedence listed below:

- A. Unit price previously approved.
- B. An agreed lump sum.

Unless an amendment has been so executed, it shall be conclusively presumed that all work performed is included in the Contract Price.

1-18 INSURANCE

Contractor shall, at no cost to Morgan Hill, obtain and maintain during the term of the Contract those insurance amounts listed in the attached Standard Consultant Agreement attached hereto as Exhibit H.

1-19 ADDITIONAL EXTRA WORK

The City recognizes the inherent complexity of "maintenance", "standards", and building an agreement that covers every potential scenario. Below is a list of additional items that the City will deem as "extra work". Items may be added or deleted through the negotiation process.

The following shall be treated as "extra work:

Renovations (thatching, overseedings, drainage installation, irrigation upgrades, etc.)

Landscape Conversions

Fence Repair

Repair of significant vandalism

Bid requests for hourly rates, unit costs, markups, etc. can be found in the bid form.

1-20 OUTCOME-BASED CONTRACT AND INSPECTION PROBLEM RESOLUTION PROCESS

City will regularly inspect the Contractor's work and rate it according to the maintenance standards attached as Exhibit A. Contractor shall operate and maintain an e-mail address at which the City may send inspection reports largely consisting of photos taken of areas that the Service Provider maintains. The e-mail address must have sufficient capacity to accept numerous inspection reports from the City without delay or rejection.

The Contractor will be paid for work rated as "meets standards". Contractor will not be paid for work rated as "below standard" until conditions improve and rate as "meet standards" if the below standard work is attributed to neglect on the part of the Contractor. If an area does not meet City standards, it will be considered "below standard". Contractor will not be paid additional amounts for remedial work required to improve "below standard" areas if the below standard work is attributed to neglect on the part of the Contractor. City staff will work closely with Contractor's representatives to achieve the results described in the standards and inspection criteria. However, responsibility for meeting standards rests with the Contractor.

The Contractor shall be responsible for maintaining landscapes as described in this document and per the maintenance standards outlined in Exhibits A. The cost of maintaining the areas shall be included in the base bid unless otherwise called out as "extra work" in this Request for Proposals.

During the first three (3) months of the contract, the Contractor will receive one hundred percent (100%) of the monthly contract payment. During this period, Contractor will inspect the sites at least monthly and will discuss inspections with City. This process and time frame will allow the Contractor time to become familiar with the individual locations. Following this period, the Contractor shall perform quality assurance inspections a minimum of every month, or more frequently if deemed necessary by the Contractor.

The Contractor will provide electronic versions of the monthly inspections to the City by the 10th of the following month as to each site's compliance with City standards. An action plan with deadlines must be provided to the City to indicate when corrections will be made if an area is deemed "below standard". Failure to turn in inspections by the deadline will result in a monthly payment being withheld until inspections are turned in, and one hundred dollar (\$100) deduction from their monthly payment.

There will be a financial impact to the Contract if any scheduled use, (including, but not limited to, special events or recreation programs) of City facilities are impacted by neglect on the Contractor's part. Any costs associated with re-scheduling the event/activity/program may be the responsibility of the Contractor for staffing and costs, including, but not limited to lost revenue, staff salaries and alternate contractor costs, etc.

The City will perform weekly inspection reports, which will be e-mailed to the Contractor. The first time a site fails to meet City Standards as a result of these inspections the Contractor will have two (2) weeks to bring the site back into compliance. For Group 6 – Downtown, the Contractor will have one (1) week to bring the site back into compliance. If the same site is not in compliance for the same standard at any time after the first warning, no warning will be given and penalties will be incurred. If a site is not brought back into compliance within the allotted timeframe the following penalties will occur:

1. **First Penalty:** Contractor to receive warning.
2. **Second Penalty:** At the same site within twelve (12) months of the First Penalty Assessment, the Contractor will be assessed a \$25 monthly deduction per deficiency.
3. **Third Penalty:** At the same site within (12) months of the First Penalty Assessment, the Contractor will be assessed a \$75 monthly deduction per deficiency.

The parties will observe the following progressive problem resolution process:

1. Written notice of the problem.
2. Field conference with City inspector and Contractor's field representative to identify problem and agree on solution as presented by Contractor.
3. Conference between City's representative and Contractor's principal.
4. Imposition of penalties and/or correcting defect at Contractor's cost.
5. Termination of Contract.

1-21 INSPECTION OF SITE WORK

Contractors are required to inspect the site of the work in order to satisfy themselves, by personal examination or by such other means as they may prefer, of the location of the proposed work and the actual conditions of and at the site. Contractors may apply to the City for additional information and explanation before submitting proposals. However, no supplemental information requested or furnished shall vary the terms of the Contract Documents or affect the Contractor's sole responsibility to satisfy itself as to the conditions of the work to be performed. No claim for additional compensation will be allowed which is based upon a lack of knowledge of the actual conditions or location of the work.

Submission of a proposal by a Contractor shall constitute acknowledgment that the Contractor has relied, and is relying, on its own examination of: (a) the site of the work; (b) access to the site; (c) all other data, matters, and things requisite to the fulfillment of the work and, on his/her own knowledge of existing facilities on and in the vicinity of the site of the work and not on any representation or warranty of the lack of knowledge of the above items.

1-22 PROPOSALS ARE PUBLIC RECORDS

Each Contractor is hereby informed that upon submittal of a proposal to the City in accordance with this RFP, the proposal is the property of the City.

A. The City shall consider each proposal subject to the public disclosure requirements of the California Records Act (California Government Code sections 6250, et seq.) unless there is a legal exception to public disclosure.

B. If a Contractor believes that any portion of his/her proposal is subject to a legal exception to public disclosure, the Contractor shall: (1) clearly mark the relevant portions of its proposal as "Confidential" and (2) upon request from the City, identify the legal basis for exception from disclosure under the Public Records Act. The City Attorney's Office will determine if the information is in fact confidential, based on state and federal law. Note that under California law, a price proposal to a public agency is not a trade secret. The Contractor shall defend, indemnify and hold harmless the City regarding any claim by any third party for the public disclosure of the "Confidential" portion of the proposal.

1-23 COMPLETING AND SIGNING FORMS

The Contractor's attention is directed to the forms included in the Contract Documents, which must be completed and signed. FAILURE TO PROPERLY COMPLETE AND SIGN ANY FORMS MAY BE CAUSE FOR REJECTION OF A PROPOSAL.

1-24 SUBMITTAL REQUIREMENTS

The Contractor shall submit the proposal for the **City of Morgan Hill Landscape Maintenance Services RFP for Groups 1, 3 and 6** to:

City of Morgan Hill
Attention: Community Services Dept.
17575 Peak Avenue
Morgan Hill, CA 95037

The City of Morgan Hill's Community Services Dept. will accept proposals for the Landscape Maintenance Groups 1, 3, & 6 RFP until 11:00 a.m. on Monday, October 23, 2017. Postmarks will not be accepted and late proposals will not be considered.

The City is not responsible for misdelivered proposals, and the Contractor is strictly liable for its chosen method of delivery. It is the Contractor's sole responsibility to make sure that proposals arrive at the proper location. Any proposals which do not actually arrive in the City Clerk's Office by the due date and time will be rejected as non-responsive, even if properly addressed or delivered to another City department.

2-1 NORMAL HOURS AND DAYS OF MAINTENANCE SERVICES

- A. For the Community & Cultural Center, Gavilan College & Morgan Hill Playhouse Parking Lots, unless otherwise specified, work hours shall be 7:00 am to 12:00 noon Monday through Friday.
- B. For the Third Street Creek Park and Nob Hill Trail Park work hours shall be every Monday and Thursday between 7:00am and 5:00 pm.
- C. At all other locations, the Contractor shall perform the required maintenance services between the hours of 7:00 a.m. and 5:00 pm Monday through Friday and on weekends with prior City approval.
- D. The Contractor shall conduct the work at all times in a manner which will not interfere with normal recreation programs, school programs, pedestrian traffic on adjacent sidewalks, or vehicular traffic on adjacent streets.
- E. Any modification in the hours and days of maintenance services as stated in the Contractor's service schedule is subject to approval by the City.

2-2 PERIODIC PROJECT INSPECTIONS

Upon request, the Contractor will walk the project with the City's representative to determine and confirm compliance with the specifications or to discuss required work. The Contractor's representative must be authorized to sign documents and make changes to the work.

2-3 PERFORMANCE DURING INCLEMENT WEATHER

During periods of excessive rainfall that hinders normal operations, the Contractor shall adjust its workforce to accomplish those activities that are not affected by weather. The prime factors in assigning work shall be the safety of the workforce and damage to parks and landscaping.

2-4 NOTICE TO PROCEED

As soon as practical after execution of the Contract, and after receipt of acceptable insurance certificates by City, a written Notice to Proceed will be mailed to the Contractor. The effective date of the Notice to Proceed will be the date stated as such in the Notice, provided that the effective date will not be earlier than the day following the issuance of the Notice to Proceed.

2-5 ACCEPTANCE

- A. Acceptance by the City of any services furnished under the Contract shall occur only subsequent to the final review of authorized employees of the City.
- B. The City shall reject and refuse to pay for, any and all non-conforming services.
- C. Nothing in this section shall limit or restrict the warranty and remedy obligations of the Contractor specified in the Standard Consultant Agreement.

2-6 LICENSES REQUIRED FOR DURATION OF CONTRACT

- C-27 Landscape Contractor License
- City of Morgan Hill Business License
- Qualified Applicator License (includes Santa Clara County Registration)
- Registered with the California Dept. of Industrial Relations as a Public Works Contractor (PWC)

SAFETY

Safety provisions shall conform to Cal-OSHA Safety Orders, and all other applicable federal, state, county, and local laws, ordinances, codes, and regulations in performing the work under this Contract.

Where any of these are in conflict, the more stringent requirement shall be followed. The Contractor's failure to thoroughly familiarize themselves with the aforementioned safety provisions shall not relieve them from compliance with the obligations and penalties set forth therein.

The Contractor shall develop and maintain for the duration of the Contract, a safety program that will effectively incorporate and implement all required safety provisions. The Contractor shall appoint an employee who is qualified and authorized to supervise and enforce compliance with the safety program.

2-7 RESPONSE

Contract supervision shall be immediately available at all times when Contractor employees are working on sites, must be available from 7:00 am to 10:00 pm each day via telephone, and must respond to an emergency situation/major discrepancy in the Contract within two (2) hours of initial contact.

2-8 QUALIFIED CONTRACTOR SUPERVISION

All of Contractor's supervisors must be qualified, proficient in English, trained and capable of providing adequate supervision and direction to all Contractors' employees and must demonstrate verbal and written communication skills sufficient for the work required herein.

2-9 CONTRACTOR'S EMPLOYEES

This Contract is intended to be a "partnership" between the City and the Contractor. The Contractor and his/her employees are agents of the City of Morgan Hill and represent the City in the performance of their work. Only Contractor's employees or subcontractors are allowed on City premises where work is being performed. The City shall have the right to have Contractor remove from assignment to City facilities such Contractor and/or subcontractor employees as shall be deemed incompetent, careless, insubordinate, or in any way objectionable, or any personnel whose actions may be contrary to the public interest or inconsistent with the best interest of the City. Contractor's employees and subcontractors shall not smoke tobacco on any City property.

2-10 EMPLOYER PROVIDED UNIFORMS

The Contractor shall provide each of its employees with uniforms. Uniform apparel shall be kept neat, clean, and in good repair. All uniforms shall include the Contractor's name and logo. Contractor and subcontractor personnel shall wear uniforms at all times.

2-11 CONTRACTOR'S EQUIPMENT

The on-site supervisor shall ensure that all contractor-supplied equipment is in good working order. Any damaged equipment or equipment in need of repair shall be removed from the site. Contractor shall be responsible for any damage to the work sites, City or private property, or any injuries caused by Contractor's equipment or personnel.

2-12 LOCKS AND KEYS

The Contractor shall be responsible for the series of keys assigned to it and shall assign these keys to its personnel for use in maintaining the facilities. The Contractor shall properly use and keep safe all keys or locks issued by the City to the Contractor.

The Contractor shall report all lost or stolen keys or locks to the City within twenty-four (24) hours of discovery. The Contractor shall reimburse the City for the total cost of replacement keys and/or locks that have been lost.

Upon termination or cancellation of the Contract, the Contractor shall immediately return all keys, cards, remotes, etc., to the City. The Contractor shall reimburse the City for the total cost of lost items.

2-13 VANDALISM AND ACCIDENTAL DAMAGE

City assumes responsibility for the cost of repairing or replacing appurtenances significantly damaged by persons other than the Contractor or its agents. Vandalism or accidental damage repair costs shall be based on unit costs submitted by Contractor in the proposal or on time and materials quotes for work not called out in the proposal. Contractor shall be responsible for reporting damage to City and repairing or replacing all appurtenances damaged by Contractor or Contractor's agents.

2-14 WATER MANAGEMENT PROGRAM

Monthly, from March through November, the Landscape Maintenance Contractor must provide to the City a report of irrigation controller settings for the current month in electronic format. This report will include the following information:

- A. All irrigation programs set on controllers.
- B. Irrigation schedule start times for each irrigation program.
- C. Irrigation run days for each irrigation program.
- D. Irrigation cycle length, in minutes for each station in an irrigation program.
- E. Number of repeat cycles for each station in an irrigation program.

All required scheduling and operation of the automatic irrigation controllers reflecting weather changes and water needs will be covered under this Contract. Contractor shall make all adjustments and setting of automatic controllers to establish frequency and length of watering periods. Any malfunction of controllers must be reported to the City along with a proposal for correction with costs.

All systems shall be programmed as needed to maintain plants in a healthy, vigorous condition. The irrigation controller program is to be sufficient to keep the plant material healthy without excessive water use.

- A. Controller programs shall incorporate the following conditions: Meet City Water Management requirements
- B. Program around Park and Facility use and events
- C. Reflect actual evapotranspiration (E.T.) requirements
- D. Reflect actual requirements of soil and plants
- E. Eliminate runoff onto streets, sidewalks, and other non-target areas

The Water Management Program is designed to optimize park and landscape water usage through field testing and irrigation schedule development. Soil moisture levels can be compared to irrigation schedules and plant water requirements to assist in responsible management of each park and landscape irrigation valve zone.

- A. Irrigation Schedule Analysis:

Monthly during irrigation season (March through November), the Contractor will provide the City with the current month's irrigation schedules and monthly report on the required system check no later than the 10th day of the month. The irrigation schedules are analyzed by comparing the minutes of irrigation run time, plant water requirement and the level of environmental demand (evapotranspiration). Valve areas appearing to be over or under watered are to be further tested by the Contractor as outlined below.

B. Soil Moisture Testing:

Valve areas suspected to be over or under watered should be tested between May and October by the Contractor by removing a soil sample and testing the moisture content. Soil probing is conducted to determine soil moisture levels for automated overhead irrigation circuits.

C. Irrigation Base Schedule Development:

A monthly irrigation base schedule is developed based upon current controller settings and the feedback of moisture probing results. Adjustments are made at the controller either up or down where soil is found to be too dry or too wet. Once the Contractor has the correct run times for any given month, the starting "base schedule" is acquired. Adjustments to the "base schedule" shall occur throughout the month to accommodate changes in area use and/or environmental changes to individual sites.

D. Drought Impact on Irrigation:

The Contractor shall comply with all water use regulations and restrictions. In addition, Contractor shall comply with City directed changes in irrigation in response to drought conditions.

E. Irrigation System Evaluation:

Annually the City will turn off all landscape water accounts November through March (if warmed than expected weather occurs this might be altered). When accounts are turned back on in March each year the Contractor shall perform a complete system check of every irrigation system. The Contractor shall supply the City with a written report of every system as it is completed. Needed repairs shall occur throughout that same time period, and with the approval of the City, to ensure a fully operational system at the beginning of each spring. System evaluations of head, valves, quick couplers, etc. shall also occur monthly, at a minimum, March through November.

For any controller schedule or system check report not supplied by the 10th day of the current month by Contractor in any month, a \$50.00 penalty per controller will be assessed.

City will provide all the water and electricity necessary for the Contractor to perform the services except instances where excessive costs are incurred by the City due to waste or negligence by the Contractor. If the City determines that excessive utility costs due to waste or negligence have occurred and are a result of Contractor's actions, the City may withhold from payment to Contractor those funds necessary to reimburse the City for these additional costs. If there is a difference of opinion between the City and the Contractor as to the whether or not there has been waste due to the negligence of the Contractor, the opinion of the City will prevail.

Irrigation system repair shall occur and be compensated as stated below.

- A. Irrigation system repair will be the responsibility of the Contractor. All replacement materials are to be with new original types and models, unless a substitute is approved by the City. The Contractor shall implement repairs in accordance with all effective warranties, and no separate payment shall be made for repairs on equipment covered by warranties.
- B. Maintenance, repair, and replacement of malfunctioning sprinkler heads and quick couplers, including risers, swing joints, shall be included in the Contractor's base bid. The Contractor shall provide labor for the above items at no extra charge and shall bill the City for the required parts with a maximum mark up of 10% over cost.
- C. Maintenance and repair of valves, filters, valve boxes, batteries and wiring shall be covered in the Contractor's base bid. The Contractor shall provide labor for the above items at no extra charge and shall bill the City for the required parts with a maximum mark up of 10% over cost.
- D. Replacement of valves, filters, valve boxes, and wiring shall be considered "extra work" in their entirety. Decisions regarding repair verses replacement will be made by the Contractor and the City jointly. In the event that there is a disagreement with regards to how to proceed, the City's choice will prevail.
- E. Repair and replacement of lateral lines, main lines, check valves, and controllers shall be considered "extra work" in their entirety.
- F. Repairs and replacements of any irrigation component or property damaged by the Contractor or as a result of negligence, error, or omission by the Contractor shall not be submitted to the City for payment and are the responsibility of the Contractor.
- G. Repair and replacement of any irrigation components or property that is a result of vandalism, or unintentional damage, caused by the public shall be considered "extra work" in its entirety. All vandalized components must be presented to the City within one working day of the repair or replacement in order for the Contractor to be compensated for the repair or replacement. If the vandalized components are not presented within one working day the Contractor will be paid based on the above stated criteria for repair and replacement.
- H. When the Contractor observes or is notified of water waste due to excessive overspray, overwatering for irrigation system malfunction, he/she shall respond within 24 hours. Repairs/adjustments shall be completed promptly to prevent damage to the landscape.

2-15 PLANT LOSS

It is one of the Contractor's prime responsibilities to prevent loss of plants caused by pests, diseases, insects, soil conditions, nutrient, micro-climatic conditions, improper planting, or problems in irrigation. Contractor agrees to be continuously alert in locating and defining problems and agrees to exercise prompt and proper corrective action. A preliminary written report shall be submitted for major corrective problems not covered in the Contract along with the costs.

Contractor agrees to replace, at the Contractor's cost, any dead, stunted, or damaged that are the result primarily of the Contractor's negligence including, but not limited to, irrigation malfunctions that are not addressed within a reasonable amount of time based on environmental conditions. Plants lost from Contractor's negligence shall be replaced, at the Contractor's expense, within thirty (30) days of discovery. Replacement plants shall be comparable in size to the lost plant up to a maximum size of a thirty-six (36) inch box, or if smaller, the size shall be approved by the City.

The Contractor shall not be held responsible for plant losses due to maladies beyond the Contractor's control; this includes, but is not limited to, disease or insect attack for which there is no legal

recommended control, acts of vandalism, earthquakes, fires, storms, freezing/frost, and related events. Contractor shall report all such conditions to the City in writing within seventy-two (72) hours of occurrence, and submit a proposal for the work or repairs along with the costs. The Contractor shall obtain City's written permission/direction or authorization prior to proceeding with the work. Failure to notify the City within seventy-two (72) hours of occurrence will result in replacement at the Contractor's cost as if the cause was Contractor negligence.

The City shall approve all replacement plants that differ in species. However, it is agreed that replacing plants shall not be used by the Contractor as a substitute for proper care. The City will consider Contractor negligence a major breach of contract with full responsibility for costs and losses.

Dead plants and those in a state of decline shall be brought to the City's attention immediately and before removal. The City shall pay labor and material for plant replacement not caused by Contractor negligence, as deemed by the City, on an actual time and material basis.

All new plant material and irrigation installations or repairs shall be guaranteed for a period of ninety (90) days for unhealthy plant installation and/or poor workmanship. Exceptions include damage or death of plant material due to wind or storm, or vandalism, theft, or other willful acts over which the Contractor has no control. Existing plants shall be replaced by Contractor if they die due to Contractor's negligence. All replacement plants and materials shall be inspected and approved by City prior to installation.

At the end or termination of the Contract, the City reserves the sole right to withhold final payment(s) in the amount necessary to replace any damaged or dying plant material that is a result of Contractor negligence or to restore any site which is in a condition that is worse than when the Contract was executed.

2-16 TURF AERATION

The Contractor shall perform core aerations of turf (no mow areas excluded) as part of the base bid. Two (2) aerifications are required in all turf areas each year. Aeration plugs shall be properly destroyed so as to not pose a safety issue or interfere with the use of parks and facilities. The aeration schedule shall be coordinated with the City during the first month of the contract period. Additional turf aerations may be proposed, as "extra work" by the Contractor, in order to meet the designated standard. All proposals, and costs, must be approved by the City prior to additional turf aerations occurring.

2-17 FERTILIZATION

The Contractor will be responsible for performing all fertilizations of turf and landscape and shall be included in the base bid. The fertilization schedule shall be coordinated with the City during the first month of the contract period.

All turf areas (excluding no-mow) shall receive fertilizer applications four times per year. Approximate dates of these are April 1, June 1, September 1, and November 1. Turf is to be maintained in good condition with horticultural acceptable growth and color, and additional fertilization may be required as extra work. Variations to these dates may be required under individual circumstances. All fertilizer shall be approved by the City prior to application.

All shrub, groundcover and no-mow turf areas shall receive fertilizer applications two times per year. Approximate dates of these are March 1 and September 1. Intent is to maintain plants in good condition with horticultural acceptable growth and color. Variations to these dates may be required under individual circumstances. All fertilizer shall be approved by the City prior to application.

2-18 BARK AND MULCH

The Contractor will be responsible for notifying the City when areas are in need of new bark or mulch. The City reserves the right to have the bark installed in any manner that it sees fit and by whomever it sees fit. In the event that the City requests that new bark mulch be added by the Contractor, it will be considered "extra work" in its entirety.

2-19 TREE PRUNING

The Contractor shall prune trees for clearance as part of the base bid. Pedestrian clearance shall be eight feet (8') and vehicular clearance shall be fifteen feet (15'). Responsibility for structural grid pruning, weight reduction pruning, etc. shall not be contained in the base bid and will be considered "extra work". The City reserves the right to perform this work in any manner that it deems appropriate.

2-20 MOWING AND EDGING

Lawn mowing and edging shall be performed as needed to meet the City landscape standards. When lawns cannot be cut on the scheduled day due to rain, they must be cut as soon as weather and ground conditions permit. This trimming shall include cutting all grass along walls, fences, foundations, curbs, sidewalks, shrubs, tree basins, poles, guy wires, irrigation & utility boxes, and any other object within or immediately adjacent to the lawn areas. Turf and plantings around sprinkler heads shall be trimmed to provide maximum water coverage. Trimming shall be done by power edgers or by hand, but in no case will herbicides be permitted without prior written approval. Clippings shall be removed from all adjacent walkways and other paved surfaces immediately after each mowing/edging.

Seed heads on no-mow turf shall be removed on an annual basis. No-mow turf shall be edged as needed to keep from encroaching on walls, fences, sidewalks, etc.

2-21 REFUSE DISPOSAL

All refuse and recycling materials are to be placed in the trash dumpsters and recycling containers located at the Morgan Hill Corporation Yard. Green waste is to be placed in bins provided by the City at the Bus Yard across the street from the Corporation Yard.

2-22 TRAFFIC CONTROL

Traffic control shall conform to the latest Caltrans Standards to ensure safe flow of traffic and safety of workers in traffic zones. All traffic control costs shall be included in the prices paid for the various contract items of work and no additional compensation will be allowed therefore.

The Maintenance Manager shall be notified prior to any road closures. No traffic lanes on Dunne Avenue, Cochrane Road, Butterfield Blvd., Tennant Ave., or Monterey Road may be closed before 9:00 a.m. or after 3:00 p.m. without written permission from the Maintenance Manager. Access to driveways shall be maintained at all times.

When entering or leaving roadways which bear public traffic, the Contractor's equipment, whether empty or loaded, shall in all cases yield to public traffic.

The provisions in this section may be modified or altered if, in the opinion of the Maintenance Manager, public traffic will be better served and work expedited. Such modifications or alterations shall not be adopted until approved in writing by the Maintenance Manager.

2-24 FINGERPRINTING AND BACKGROUND CHECKS

All Contractor staff who will be working on City facilities during business hours must pass a background check a State of California Department of Justice Criminal Records Check. The Record Check may be performed at the Morgan Hill Police Department located at: 16200 Vineyard Boulevard, Morgan Hill, CA 95037.

The Contractor is responsible for maintaining and updating background check information for their employees.

LOCATIONS AND SERVICES REQUIRED

3-1 GROUP 1 – Parks Mowing and Edging:

In Group 1 the contractor shall provide complete turf mowing and edging services only at the following locations:

Group 1 Locations	Location	Frequency
Community Park	171 W Edmundson Ave	Weekly (March thru Oct.); Bi-Weekly (Nov. thru Feb.)
Galvan Park	17666 Crest Ave	Weekly (March thru Oct.); Bi-Weekly (Nov. thru Feb.)
Paradise Park	La Crosse Ave & Calle Enrique	Weekly (March thru Oct.); Bi-Weekly (Nov. thru Feb.)
Diana Park	505 Diana Ave	Weekly (March thru Oct.); Bi-Weekly (Nov. thru Feb.)
Howard Weichert Park	860 Via Del Castille	Weekly (March thru Oct.); Bi-Weekly (Nov. thru Feb.)
Nordstrom Park	E Dunne Ave & Murphy Ave	Weekly (March thru Oct.); Bi-Weekly (Nov. thru Feb.)
Jackson Park	16695 Trail Drive	Weekly (March thru Oct.); Bi-Weekly (Nov. thru Feb.)

3-2 GROUP 3 – Arterial Medians and Miscellaneous Sites

In Group 3 the contractor shall provide complete landscape maintenance services as described in this document for the locations shown below. Minimum frequencies for trash & recycling material removal, litter removal, pavement and site furnishing cleaning frequencies are shown:

Group 3 Locations	Year Round Frequency
Arterial medians	Biweekly**
East Dunne Avenue at Peppertree Dr. and Pine Way Medians	Biweekly**
Friendly Inn and parking lot	Weekly
El Toro Youth Center	Weekly
El Dorado	Biweekly**
Sunrise Meadows	Biweekly**

** Every two weeks

3-3 GROUP 6 – Downtown

Group 6 Locations	Year Round Frequency	Add Alternate
3 rd Street Landscape Areas (btwn Monterey Road and Depot Street)	Weekly	Biweekly (M/Th)
4 th Street Landscape Areas (btwn Monterey Road and Depot Street)	Weekly	Biweekly (M/Th)
County Courthouse/Community Garden	Weekly	
Parking Lots	Weekly	Biweekly (M/Th)
Train Station (West of Tracks)	Weekly	Biweekly (M/Th)
Third Street Creek Park	Biweekly (M/Th)	
Nob Hill Trail Park	Biweekly (M/Th)	
Depot Street Park	Weekly	Biweekly (M/Th)

3-4 Extra Work

Extra work pricing must be provided for each group.

Extra Work Categories	Hourly Rates
<u>Labor with truck/tools</u>	
Common Labor	
Skilled Technician	
Supervisor	
Emergency/After Hour Response	
Other (describe)	
<u>Equipment</u>	
Spray equipment	
Tractor with implements	
Slit seeder	
Mower	
<u>Supplies</u>	
% Mark up over cost	

EXHIBITS

- Exhibit A: City of Morgan Hill Landscape Maintenance Standards
- Exhibit B: City of Morgan Hill Landscape Inspection Rating Form
- Exhibit C: Site Maps for Group 1
- Exhibit D: Site Maps for Group 3
- Exhibit E: Site Maps for Group 6
- Exhibit F: Sample Maintenance Services Agreement
- Exhibit G: Non-Collusion Affidavit***
- Exhibit H: 2017-2019 Landscape Services Cost Proposal***
- Exhibit I: Subcontractors List
- Exhibit J: Integrated Pest Management (IPM) Plan

***Exhibits G and H must be submitted as part of the bid package.**

Exhibit A

City of Morgan Hill Landscape Maintenance Standards

All landscaped areas shall be maintained to have a neat and well- tended appearance and to provide a safe environment for the general public at all times.

1. Turf

1.1. General Use Standard

- 1.1.1. All turf areas will support their designed uses
- 1.1.2. Turf will be healthy with an even and uniform surface, color, and soil moisture that benefits the plant without disrupting the user's experience. Turf will not exhibit bare spots. Turf will be pest-free. Shall be maintained in accordance with Turf Maintenance Section, Irrigation and Disease and Pest Control Section standards.

1.2. Turf Maintenance

1.2.1. Mowing

- 1.2.1.1. Maintained Turf Height 2.5-3 inches

- 1.2.2. Edging - Complete site edging of trees, curbs, sidewalks, beds, buildings, sprinklers, valve boxes, meter boxes, etc., shall be performed to ensure that the site looks groomed and neat at all times.

- 1.2.3. Aeration - As needed to maintain standard. Minimum of two times per year.

- 1.2.4. Weeds - Turf will be weed free. (Excluding Group 2 Park Mowing)

- 1.2.5. Reseeding or Sod Replacement - Reseeding or sod replacement shall be done on an as needed basis to meet standards.

1.2.6. Fertilizer

- 1.2.6.1. Fertilizer shall be applied to turf four (4) times per year. Additional applications may be required to maintain standard based on soil conditions.
- 1.2.6.2. Fertilizer analysis will be determined based on plant needs.

2. Irrigation

2.1. General

- 2.1.1. Irrigation systems shall be checked as needed at each site to meet standards and conform to the City's conservation efforts and all applicable ordinances, regulations, and laws. All systems will comply with State and local laws regarding prevention and protection of the public water system. All controllers that are on the central system shall be used to their fullest programming capability.

- 2.1.2. Irrigation preventative maintenance system checks shall be done as needed; all zones will be checked for operation, and repairs made immediately. General inspections of turf and plant materials shall be done routinely for sign of stress or damage. Contractors must provide the City with a monthly irrigation schedule for all controllers including verification that the controllers are on the central irrigation system. Repairs must be initiated within twenty-four (24) hours of discovery.

2.1.3. Water Usage & Scheduling

- 2.1.3.1. Irrigation systems will deliver optimum water to each plant type at the lowest cost with maximum resource conservation.

2.1.3.2. Water will be delivered primarily during non-use hours and not between 8:00 am and 5:00 pm.

2.1.3.3. Each station shall be adjusted to meet the needs of the specific area unless authorized by the City, as well as, adjusted due to weather conditions.

2.1.3.4. Supplemental day-time watering shall be performed as needed to maintain standard

3. Disease and Pest Control

3.1. Turf, trees and landscaping shall be disease and pest free. Any signs of stress or damage to trees, turf or planting materials and/or safety concern shall be addressed using an Integrated Pest Management Approach. Contractor's work shall be in compliance with the City's Integrated Pest Management Program. (Exhibit I)

4. Shrubs, Ground Cover Areas

4.1. General Standard

4.1.1. Fertilization, irrigation and cultivation (when applicable) shall be adjusted to serve the requirements of the plant species.

4.1.2. Shall be maintained in healthy, attractive condition that lends variety and interest to the landscape.

4.1.3. Bark mulch shall be placed around and between plants and maintained on an as needed basis.

4.1.4. Removal and Replacement - All failed or damaged plant materials shall be removed and replaced, after City inspection, within thirty (30) days of notice. Replacement plant material shall be the same size and species as the damaged or failed plants, if possible. The City shall approve replacement of plant materials not meeting these specifications.

4.1.5. Litter and Debris Removal - All areas shall be maintained free of trash and debris.

4.1.6. Weed Control - Plant beds shall be free of weeds. Beds shall be weeded as needed to meet standard.

4.1.7. Trimming All shrubs shall be pruned as needed to meet the intent of the landscape design and have a neat appearance. Ground covers shall be edged as needed to keep plant growth from extending beyond curbs, onto sidewalks, buildings, and turf areas. Ground cover in medians shall not be allowed to extend beyond the curb or sidewalk. Pruning shall occur three (3) times per year or as plant material growth dictates to meet standard.

4.1.8. All hedge and shrub heights along fences and walls will be maintained at the height of the fence line or at an approved height.

5. Rose and Flower Beds

5.1. Shall be maintained in accordance with the standards listed in Shrubs, Ground Cover, and Mulch Areas.

5.2. Flowering plants shall be dead headed and trimmed on an ongoing basis so that wilted blossoms and other defects do not detract from the decorative nature of the plantings

5.3. Irrigation timers shall be coordinated with scheduled use, and maintained in compliance with Irrigation standards.

6. Trees

6.1. General Standards

6.1.1. Shall provide shade, wind breaks, sound attenuation, and otherwise enhance the park or landscape setting. Trees shall conform to the general shape and height of the species: significantly deformed specimens shall be removed after authorization.

- 6.1.2. Weed Control - Mechanical grass trimming around trees shall be accomplished in a way that will not scar the trunk in any way.
- 6.1.3. Trimming - Tree limbs shall be kept at a safe height for the users anticipated in the vicinity: Eight feet (8') for pedestrian clearance (including over turf areas) and fifteen feet (15') for vehicular street clearance.
- 6.1.4. Trees shall not exhibit broken or cracked limbs or other structural damage, and all suckers shall be removed.
- 6.1.5. Staking - Young trees shall be properly staked to assist in support until roots are firmly established, especially in wind prone areas. Once firmly established, stakes shall be removed with no protrusion above ground. Trees must be straight. Ties on the stakes shall be checked periodically to ensure they are adjusted properly. Tight or damaged ties or stakes shall be replaced or repaired.
- 6.1.6. Removal and Replacement - All damaged trees shall be removed and replaced, after authorization, and within thirty (30) days of notice. All replacement trees shall be the same size and species of tree as the damaged tree up to 36" box tree. If the tree cannot be matched, the City will determine an appropriate replacement species.
- 7. Paved Surfaces
 - 7.1. Paved surfaces include areas topped with asphalt, concrete, brick and pavers.
 - 7.2. Pathways, parking lots, tennis courts and other paved areas shall be free of sand, debris, leaves and litter so at no time it detracts from the look or safety of the area.
 - 7.3. Sand and decomposed gravel shall be removed from sidewalks.
 - 7.4. All surfaces shall be weed free.
 - 7.5. No standing water from irrigation shall be permitted on pathways.
 - 7.6. Surfaces shall be cleaned of all spills, gum, paint, chalk, dirt & debris.
- 8. Unpaved Walkways, Other Unplanted Areas
 - 8.1. Unpaved surfaces include designated paths and trails with porous surfacing.
 - 8.1.1. All unpaved surfaces shall be free of weeds, debris, and litter so at no time it detracts from the look or safety of the area.
 - 8.1.2. No standing water from irrigation shall be permitted on pathways.
 - 8.1.3. Unpaved walkways shall be maintained in a safe, level, and smooth manner
 - 8.2. Fencing, Walls - Notify City of any vandalism, defects, safety items within twenty-four (24) hours of discovery.
- 9. Playground Maintenance
 - 9.1. Playgrounds shall be maintained two (2) times per week to ensure an even distribution of material across the surface.
 - 9.2. Organic and non-organic debris shall be removed from all play areas immediately upon discovery.
 - 9.3. The City shall be notified of any vandalism, defects, safety items as soon as possible and no more than within twenty-four (24) hours of discovery.
- 10. Litter Removal and Trash & Recycle Container Servicing
 - 10.1. Trash and recycling containers shall be emptied as needed when they are half full or more or have a foul odor at the time of service.
 - 10.2. Site shall be free of all litter after each landscape service.
- 11. Site Furnishings (Benches, Tables, Trash Containers, Fountains, etc)
 - 11.1. Site furnishings such as benches, tables, trash containers, drinking fountains, water features, bollards, etc. shall be inspected on a monthly basis for condition and defects.

- 11.2. Site furnishings shall be pressure washed and/or cleaned as needed to maintain in clean condition.
- 11.3. Hazardous debris shall be removed immediately upon discovery.
- 11.4. The City shall be notified of any vandalism, defects, and/or safety items within twenty-four (24) hours of discovery.

EXHIBIT B**LANDSCAPE INSPECTION RATING FORM****SAMPLE**

SITE: Community Park

Category	Meets Standards Y/N	Notes
Turf maintenance		
Irrigation maintenance		
Shrubs, groundcovers, mulch areas, roses		
Tree maintenance		
Paved & unpaved surface maintenance		
Litter, trash and recycled material		
Site furnishing maintenance		

NOTE: If any category does not meet City standards, monthly payment for the specific site(s) will be withheld until the site is back in conformance.

Attachment: RFP for Landscape Maint Groups (1483 : Landscape Maintenance Groups 1 3 6 Award)

EXHIBIT C: SITE MAPS GROUP 1-Park Mowing and Edging

EXHIBIT D: SITE MAPS GROUP 3-Arterial Medians

EXHIBIT E: SITE MAPS GROUP 6-Downtown

EXHIBIT F**SAMPLE MAINTENANCE SERVICES AGREEMENT**

Attachment: RFP for Landscape Maint Groups (1483 : Landscape Maintenance Groups 1 3 6 Award)

MAINTENANCE SERVICE AGREEMENT

THIS AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and _____ a California Choose an item. ("SERVICE PROVIDER") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

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

Attachment: RFP for Landscape Maint Groups (1483 : Landscape Maintenance Groups 1 3 6 Award)

additional compensation to SERVICE PROVIDER. The City Manager is authorized to terminate this AGREEMENT on behalf of CITY.

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

7. **Hazardous Materials.** Without limiting any other requirement or obligation of SERVICE PROVIDER under this Agreement, if SERVICE PROVIDER needs to use any material or chemical considered to be a hazardous material under any federal, state or local law, regulation or policy, SERVICE PROVIDER agrees to fully and timely abide by and comply with all laws, regulations and policies pertaining to the use, transport, removal, handling, disposal or other activity related to any and all such materials or chemicals. Prior to commencement of work or services under this Agreement, SERVICE PROVIDER shall provide CITY with a complete list of the hazardous materials SERVICE PROVIDER reasonably anticipates it may need to use to provide the services of SERVICE PROVIDER under this Agreement, together with the reasonably anticipated quantities thereof, if requested by CITY.

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

8.1. **Insurance Types and Amounts.**

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

8.1.2. **Automobile Liability.** SERVICE PROVIDER shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if SERVICE PROVIDER does not own automobiles, then SERVICE PROVIDER shall maintain Hired/Non-owned Automobile

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

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

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

8.1.5. Professional Liability.

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

8.1.5.2. If the performance of SERVICE PROVIDER's work or service under this Agreement relates to Information Technology or related services (examples include, but are not limited to computer programmers, software designers, hardware engineers, or other systems consultants), SERVICE PROVIDER shall procure and maintain a claims made Errors and Omission liability insurance, including Cyber Liability and Data Breach, in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim,

or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

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

8.2.1. **General Liability.**

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

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

8.2.1.3. insurance shall be primary non-contributing.

8.2.2. **Workers Compensation.**

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

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

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

Certificate Holder address:

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

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

10. **Compliance with Law.**

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

10.2. Without limiting the provisions of Section 10.1 above, each worker performing work under this Agreement shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite. Pursuant to Labor Code Section 1775, SERVICE PROVIDER and any Subcontractor shall forfeit to CITY as a penalty up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. SERVICE PROVIDER shall also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.

10.3. DIR Registration. CITY will not accept a Bid Proposal from or enter into a contract with a SERVICE PROVIDER, without first receiving proof to the satisfaction of CITY that SERVICE PROVIDER and its subcontractors are registered with the California Department of Industrial Relations to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions. Under Labor Code section 1771.4, this Agreement is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

11. **Independent Contractor.** SERVICE PROVIDER is an independent contractor and not an agent or employee of CITY.

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

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

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

Address of SERVICE PROVIDER is as follows:

Address of CITY is as follows:

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

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

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

16. **Maintenance of Records.**

16.1. **Maintenance.** SERVICE PROVIDER shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. SERVICE PROVIDER shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3 year period, then SERVICE PROVIDER shall retain said records until such action is resolved.

16.2. **Access to and Audit of Records.** CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of SERVICE PROVIDER and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of CITY or as part of any audit of CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

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

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

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

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

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

21. **Defense and Indemnification.**

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

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

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

21.4. **Right to Offset.** CITY shall have the right to offset against any compensation due SERVICE PROVIDER under this Agreement any amount due CITY from SERVICE PROVIDER as a result of SERVICE PROVIDER's failure to pay CITY promptly any indemnification arising under this Section (21) and any amount due CITY from SERVICE PROVIDER arising from SERVICE PROVIDER's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

21.5. **Interpretation.** This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of SERVICE PROVIDER to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

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

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

24. **Interpretation.** This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to,

California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.

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

26. **Binding Agreement.** Notwithstanding the provisions of Section 19 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of SERVICE PROVIDER in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

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Attachment: RFP for Landscape Maint Groups (1483 : Landscape Maintenance Groups 1 3 6 Award)

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

 City Clerk/Deputy City Clerk

 City Manager

 Michelle Wilson
 Print Name

 Steve Rymer
 Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

 City Attorney

 By:

 Donald A. Larkin
 Print Name

Title: _____

 Print Name and Title of Signer.
 If Corporate: Chairman, President or
 Vice President

Date: _____

Date: _____

 By:

Title: _____

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

Date: _____

 Contractor's License Number(s) (if applicable)

 Expiration Date(s) _____

Seal:

**EXHIBIT A
SCOPE OF SERVICES**

Attachment: RFP for Landscape Maint Groups (1483 : Landscape Maintenance Groups 1 3 6 Award)

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

Attachment: RFP for Landscape Maint Groups (1483 : Landscape Maintenance Groups 1 3 6 Award)

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

Attachment: RFP for Landscape Maint Groups (1483 : Landscape Maintenance Groups 1 3 6 Award)

EXHIBIT G**NONCOLLUSION AFFIDAVIT***(To be executed by bidder and submitted with bid)*

State of California	)	ss.
	)	
County of _____	)	

_____, being first duly sworn, deposes and says that he

or she is _____ of _____ ("Contractor"), the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

I certify under penalty of perjury that the foregoing is true and correct.

s/ _____ Date: _____

Name and Title [print]

State of _____

THIS FORM MUST BE USED WHEN SUBMITTING PROPOSAL

Attachment: RFP for Landscape Maint Groups (1483 : Landscape Maintenance Groups 1 3 6 Award)

EXHIBIT H
Landscape Services Group 1 Cost Proposal

Park Mowing & Edging

GROUP 1: Park Mowing & Edging	Landscape Maintenance (Irrigation excluded)	Irrigation Maintenance	Total Annual Cost
Community Park			\$
Galvan Park			\$
Paradise Park			\$
Diana Park			\$
Howard Weichert Park			\$
Nordstrom Park			\$
Jackson Park			\$
TOTAL GROUP 1			\$

THIS FORM MUST BE USED WHEN SUBMITTING PROPOSAL

Attachment: RFP for Landscape Maint Groups (1483 : Landscape Maintenance Groups 1 3 6 Award)

Exhibit H (Continued)

Landscape Services Group 3 Cost Proposal

Medians and Misc. Sites

GROUP 3: Arterial Medians and Misc. Sites	Landscape Maintenance (Irrigation excluded)	Irrigation Maintenance	Annual Cost
Arterial medians	\$	\$	\$
East Dunne Ave. at Peppertree Dr. & at Pine Way Medians	\$	\$	\$
Friendly Inn & Parking Lot	\$	\$	\$
El Toro Youth Center	\$	\$	\$
El Dorado	\$	\$	\$
Sunrise Meadows	\$	\$	\$
TOTAL GROUP 3	\$	\$	\$

THIS FORM MUST BE USED WHEN SUBMITTING PROPOSAL

Attachment: RFP for Landscape Maint Groups (1483 : Landscape Maintenance Groups 1 3 6 Award)

Exhibit H (Continued)

Landscape Services Group 6 Cost Proposal

Downtown

GROUP 6: Downtown	Landscape Maintenance (Irrigation excluded)	Irrigation Maintenance	Annual Cost (Weekly)
3 rd Street Landscape Areas btwn Monterey Road and Depot Street	\$	\$	\$
4 th Street Landscape Areas btwn Monterey Road and Depot Street	\$	\$	\$
County Courthouse/ Community Garden	\$	\$	\$
Train Station (West of Tracks)	\$	\$	\$
Third Street Creek Park	\$	\$	\$
Nob Hill Trail Park	\$	\$	\$
Railroad Park	\$	\$	\$
Downtown Parking Lots			
TOTAL GROUP 6	\$	\$	\$

THIS FORM MUST BE USED WHEN SUBMITTING PROPOSAL

Attachment: RFP for Landscape Maint Groups (1483 : Landscape Maintenance Groups 1 3 6 Award)

Exhibit H (Continued)

Landscape Services Cost Proposal

Extra Services

Extra Work – All Locations	Hourly Cost
<u>Labor including work truck/tools</u>	
Common Labor	\$
Skilled Technician	\$
Supervisor	\$
Emergency/After Hour Response	\$
Other (describe)	\$
<u>Equipment</u>	
Spray equipment	\$
Tractor with implements	\$
Slit seeder	\$
Mower	\$
Other (describe)	\$
<u>Supplies</u>	
Materials mark up over cost	_____ %

THIS FORM MUST BE USED WHEN SUBMITTING PROPOSAL

Exhibit H (Continued)

Landscape Services Cost Proposal

Add Alternate: Group 6: Downtown

Add Alternate: GROUP 6: Downtown	Landscape Maintenance (Irrigation excluded)	Irrigation Maintenance	Annual Cost Biweekly (M/Th)**
3 rd Street Landscape Areas between Depot and Monterey	\$	\$	\$
4 th Street Landscape Areas between Depot and Monterey			
Downtown Parking Lots	\$	\$	\$
Railroad Park	\$	\$	\$
Train Station (West of Train Tracks)	\$	\$	\$
TOTAL Add Alternate: GROUP 6	\$	\$	\$

****Every two weeks**

THIS FORM MUST BE USED WHEN SUBMITTING PROPOSAL

Attachment: RFP for Landscape Maint Groups (1483 : Landscape Maintenance Groups 1 3 6 Award)

EXHIBIT I**SUBCONTRACTOR LIST**

For each Subcontractor who will perform a portion of the Work in an amount in excess of one-half of 1% of the Bidder's total Contract Price,² the bidder must list a description of the work, the name of the Subcontractor, its California contractor license number, the location of its place of business, and DIR registration number.

Bidders: Please print legibly. Illegible forms may be rejected.

DESCRIPTION OF WORK	SUBCONTRACTOR NAME	CALIFORNIA CONTRACTOR LICENSE NUMBER (CSLB)	DIR REG. NUMBER	LOCATION OF BUSINESS	LOCAL VENDOR YES/NO

END OF SUBCONTRACTOR LIST

THIS FORM MUST BE USED WHEN SUBMITTING PROPOSAL

² For street or highway construction this requirement applies to any subcontract of \$10,000 or more.

² A Subcontractor is considered local if its principle place of business is within the city limits of Morgan Hill.

EXHIBIT J

City of Morgan Hill Integrated Pest Management Plan

Attachment: RFP for Landscape Maint Groups (1483 : Landscape Maintenance Groups 1 3 6 Award)



City of Morgan Hill

Integrated Pest Management

Plan for Facilities, Parks, Streets and Public Open Space

Attachment: RFP for Landscape Maint Groups (1483 : Landscape Maintenance Groups 1 3 6 Award)

City of Morgan Hill
Integrated Pest Management Plan for Facilities, Parks, Streets and Open Space

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Attachment: RFP for Landscape Maint Groups (1483 : Landscape Maintenance Groups 1 3 6 Award)

City of Morgan Hill

Integrated Pest Management Plan for Facilities, Parks, Streets and Open Space

I. IPM Definition and Plan Goals

The goal of the City of Morgan Hill IPM Plan is to align city maintenance practices in public buildings, parks, landscaped grounds, public right of way and open space areas with the Integrated Pest Management (IPM) approach to pest control.

Integrated Pest Management, per the California Healthy Schools Act of 2000 (Assembly Bill 2260), is "a pest management strategy that focuses on long-term prevention or suppression of pest problems through a combination of techniques such as monitoring for pest presence and establishing treatment threshold levels, using nonchemical practices to make the habitat less conducive to pest development, improving sanitation, and employing mechanical and physical controls. Pesticides that pose the least possible hazard and are effective in a manner that minimizes risks to people, property, and the environment, are used only after careful monitoring indicates they are needed according to pre-established guidelines and treatment thresholds."

Through use of a combination of preventive and suppressive pest control methods, IPM optimizes pest control effectiveness and reduces problems that can result from reliance on a single method. The IPM method does not usually include eradication as a practical or cost effective goal.

This Plan applies to all city facilities and all maintenance activities except for water quality and sewer line maintenance operations.

II. Legal Requirements, Environmental and Health Concerns

Many federal and state agencies have jurisdiction over pest control activities related to: use of pesticides, vegetation management, worker safety, hazardous material disposal, impacts of pesticide use on air and water quality and on wildlife. Primary pesticide regulation is by the US Environmental Protection Agency (EPA) with additional regulation and enforcement by the California Environmental Protection Agency. The California Department of Pesticide Regulation (DPR) is the regulatory arm of California EPA. Local enforcement of pesticide regulations performed by the Santa Clara County Department of Agriculture. Additional agencies with involvement in pesticide use include:

- US Occupational Safety and Health Administration
- US Fish and Wildlife Service
- California Division of Occupational Safety and Health Administration
- CA Department of Fish and Game
- CA Air Resources Control Board and Regional Air Pollution Control Districts
- CA Water Resources Control Board and Regional Water Quality Control Boards

In 2007, California AB 2865 extended the Healthy Schools Act to child care centers including public child care centers. The law requires that early childhood care and education providers designate an IPM coordinator, notify parents of pesticide use, maintain a registry

City of Morgan Hill

Integrated Pest Management Plan for Facilities, Parks, Streets and Open Space

of parents and staff, post warning signs and keep written records of pesticide use. Use of pesticides around children requires extra precautions since children are typically more vulnerable to the effects of pesticides in their environment than adults.

III. Management Policy Statement

The City of Morgan Hill will carry out pest management operations using Integrated Pest Management techniques to control pests effectively and also minimize the use of pesticides. Whenever feasible, non-toxic alternative pest control methods will be used. The City will seek new technology, best management practices and least toxic approaches to address all pest control issues. The City will educate staff and the public about its commitment to and implementation of IPM practices.

IV. IPM Implementation Responsibilities

- a. Implementation of a successful IPM Plan relies on the coordinated efforts of employees across the organization. To ensure necessary employee communication, training, contractor selection and public coordination, the City Manager will designate a City IPM Plan Administrator. The IPM Plan Administrator will be responsible for IPM implementation, staff training, annual reporting, public outreach and updating of the IPM Plan when needed. The IPM Plan Administrator will assist site IPM coordinators as needed in developing specific pest control plans, will track citywide pesticide usage and trends, and will research new IPM strategies to address the City's pest issues.
- b. Department managers shall designate site IPM Coordinators for major facilities and locations including:
 - Civic Center (County Library excluded)
 - Community and Cultural Center
 - Centennial Recreation Center
 - Aquatics Center
 - Corporation Yard
 - Water and Wastewater facilities
 - Public right of way
 - City owned parks and trails
 - City owned open space
 - Other City owned properties

The IPM Coordinators shall be responsible for developing plans (Attachment A) to address specific pest problems at assigned location(s). Site IPM implementation shall include: identifying key pests, monitoring, establishing action threshold levels, overseeing pest prevention and suppression measures, documenting and reporting actions taken.

IPM Coordinators will report, on a monthly basis, all pesticide use by staff and by contractors, at assigned facilities, to the City IPM Plan Administrator (Attachment B).

City of Morgan Hill

Integrated Pest Management Plan for Facilities, Parks, Streets and Open Space

The IPM Coordinator at each child care facility shall also document compliance with the requirements of the CA Healthy Schools Act.

Structural pest problems will be managed by Building Department staff.

V. Citywide IPM Requirements

- a. All staff and city contractors working for the City of Morgan Hill will adhere to the City IPM Plan as well as plans developed by site IPM coordinators to address specific pest problems.
- b. No pesticides shall be purchased by city staff or contractor application authorized without prior approval from the City IPM Plan Administrator.
- c. Contractors hired to perform pest control of any kind shall be familiar with IPM and shall use IPM methods in their work for the City.
- d. Prohibited Pesticides - No federal or state restricted materials, or pesticides labeled with signal words "Danger" or "Warning" will be used for routine maintenance by staff or by city contractors.

VI. Staff Training

- a. All staff who manage pest problems and who apply pesticides as part of their job must be trained according to the CA Department of Pesticide Regulations requirements.
- b. The IPM Plan Administrator will inform all city staff on an annual basis about the City's IPM Plan, restrictions on pesticide usage and appropriate procedures for controlling pests.
- c. The IPM Plan Administrator will document staff training.

VII. IPM Resources

Statewide IPM Plan information for dealing with specific pests, training and general information about IPM is available at: <http://www.ipm.ucdavis.edu/>. California School IPM requirements and detailed information about school IPM, including IPM at child day care facilities, is available at: <http://apps.cdpr.ca.gov/schoolipm/>.

VIII. Record Keeping and Annual Report

The IPM Plan Administrator will compile monthly pesticide usage reports from site IPM Coordinators into a single annual IPM Plan report. The report shall be provided to the City Manager, City Council and made available to the public by the end March of each year. The report is to include:

- General overview of the city's IPM Plan
- Pest problem trends
- Pesticides used during the past year, quantities used of each chemical, general locations where they were applied and target pests

City of Morgan Hill

Integrated Pest Management Plan for Facilities, Parks, Streets and Open Space

- Nontoxic solutions used
- New technologies, strategies tried during the year
- Overview of staff training and public outreach accomplished
- Goals for the coming year

IX. Public Outreach

- a. The City will use appropriate opportunities (booths at special events, utility bill inserts, city website, email blasts, etc.) to communicate with the public about the IPM approach to pest management and its benefits in the home and in the workplace.
- b. When applying pesticides for seasonal weed abatement in parks or on City Streets and right of ways adjacent to schools or daycare facilities, public notification will be provided by posting signs at the entrances to the parks, or at the ends of the area to be treated on roadways and right of ways. The signs will be of a size no smaller than 11" X 17" and will be installed no later than three (3) days prior to the application and will be removed no earlier than 1 day after the area is safe to enter. The signs will be in English and Spanish, and will contain the following information:
 - i. The date of the posting
 - ii. The name of the pesticide being applied
 - iii. The active ingredient(s)
 - iv. The purpose for the pesticide
 - v. The date(s) the area will be treated
 - vi. When the area will be safe to enter
 - vii. A contact name and phone number for concerns or questions.
 1. The contact must be able to provide copies of the SDS (or MSDS) for any pesticide being applied

City of Morgan Hill
Integrated Pest Management Plan for Facilities, Parks, Streets and Open Space

Attachment A
Site Specific Integrated Pest Management Plan

IPM Coordinator	
Site	
Specific Location (provide map if needed)	
Pest	
Date identified	
Monitoring frequency	
Threshold for action	
Prevention methods: (inspections, housekeeping, altering environment, barriers, etc.)	
Nonchemical control methods: (traps, mechanical removal, etc.)	
Pesticides used - only if no other effective measures are available:	
Evaluation of current method(s) used/Notes	
Suggestions for future improvements/actions needed to deter pests	

Attachment: RFP for Landscape Maint Groups (1483 : Landscape Maintenance Groups 1 3 6 Award)

City of Morgan Hill
Integrated Pest Management Plan for Facilities, Parks, Streets and Open Space

Attachment B
Monthly Pesticide Use Report*

IPM Coordinator	
Month/Year	
Site/Location(s)	
Pesticide Name (commercial name and chemical)	
Quantity used in month	
Pest to be controlled	
Reason nonchemical methods were not used	
Pesticide Name (commercial name and chemical)	
Quantity used in month	
Pest to be controlled	
Reason nonchemical methods were not used	
Pesticide Name (commercial name and chemical)	
Quantity used in month	
Pest to be controlled	
Reason nonchemical methods were not used	

* send to IPM Plan Administrator

City of Morgan Hill
Integrated Pest Management Plan for Facilities, Parks, Streets and Open Space

Document Control

Revision	Date of Revision	Changes from Previous
CMH.IPM.2015.a	8/21/2015	Added footer to include revision name, revision date and total pages. Added "Document Control" table (this table). Added "End of Document" statement.

End of Document

Narrative Evaluation

Contractor	MM	MC	MA
Brightview	33	38	38
New Image	30	33	34
Mike Davis	22	24	26

Cost Proposal

	Brightview	New Image	
Parks	33,852.00	39,576.00	Lowest (Winning) Proposals Highlit
Medians	\$36,828.00	\$30,033.00	
Downtown	\$106,200.00	\$31,790.00	
	\$30,096.00		

(corrected Downtown
bid received after
deadline)

Total Contractor Scores	Average of all 3 reviewers	
109	36	received qualifying score of 30
97	32	received qualifying score of 30
72	24	did not receive qualifying score of 30

MAINTENANCE SERVICE AGREEMENT Brightview Landscape Services, Inc.

THIS AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Brightview Landscape Services, Inc. a California corporation ("SERVICE PROVIDER") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until December 31, 2019 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be landscape maintenance and irrigation services as further described in **Exhibit A**.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$261,552.00. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed Two Hundred sixty-one thousand five hundred and fifty-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 SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to SERVICE PROVIDER during the initial term of this Agreement.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit B. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product

or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER. The City Manager is authorized to terminate this AGREEMENT on behalf of CITY.

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

7. **Hazardous Materials.** Without limiting any other requirement or obligation of SERVICE PROVIDER under this Agreement, if SERVICE PROVIDER needs to use any material or chemical considered to be a hazardous material under any federal, state or local law, regulation or policy, SERVICE PROVIDER agrees to fully and timely abide by and comply with all laws, regulations and policies pertaining to the use, transport, removal, handling, disposal or other activity related to any and all such materials or chemicals. Prior to commencement of work or services under this Agreement, SERVICE PROVIDER shall provide CITY with a complete list of the hazardous materials SERVICE PROVIDER reasonably anticipates it may need to use to provide the services of SERVICE PROVIDER under this Agreement, together with the reasonably anticipated quantities thereof, if requested by CITY.

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

8.1. **Insurance Types and Amounts.**

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

8.1.2. **Automobile Liability.** SERVICE PROVIDER shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if SERVICE PROVIDER does not own

automobiles, then SERVICE PROVIDER shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

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

8.1.5. Professional Liability.

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

8.1.5.2. If the performance of SERVICE PROVIDER's work or service under this Agreement relates to Information Technology or related services (examples include, but are not limited to computer programmers, software designers, hardware engineers, or other systems consultants), SERVICE PROVIDER shall procure and maintain a claims made Errors and Omission liability insurance, including Cyber Liability and Data

Breach, in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

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

8.2.1. **General Liability.**

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

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

8.2.1.3. insurance shall be primary non-contributing.

8.2.2. **Workers Compensation.**

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

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

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

Certificate Holder address:

City of Morgan Hill
Attn: Risk Management
17575 Peak Avenue

Morgan Hill, CA 95037

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

10. **Compliance with Law.**

- 10.1. SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. SERVICE PROVIDER and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.
- 10.2. Without limiting the provisions of Section 10.1 above, each worker performing work under this Agreement shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite. Pursuant to Labor Code Section 1775, SERVICE PROVIDER and any Subcontractor shall forfeit to CITY as a penalty up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. SERVICE PROVIDER shall also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.
- 10.3. DIR Registration. CITY will not accept a Bid Proposal from or enter into a contract with a SERVICE PROVIDER, without first receiving proof to the satisfaction of CITY that SERVICE PROVIDER and its subcontractors are registered with the California Department of Industrial Relations to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions. Under Labor Code section 1771.4, this Agreement is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.
- 10.4. Compliance with Wage and Hour Laws: SERVICE PROVIDER, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

Final Judgments, Decisions, and Orders: For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time to appeal has expired. Relevant investigatory government agencies include: the federal Department of Labor, the California Division of Labor Standards Enforcement, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

Prior Judgments against SERVICE PROVIDER and/or its Subcontractors: BY SIGNING THIS AGREEMENT, SERVICE PROVIDER AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING – IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT – THAT SERVICE PROVIDER OR ITS SUBCONTRACTOR(S) HAS

VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. SERVICE PROVIDER FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH – OR HAS REACHED AGREEMENT WITH THE CITY REGARDING THE MANNER IN WHICH IT WILL SATISFY – ANY SUCH JUDGMENTS, DECISIONS OR ORDERS.

Judgments or Decisions During Term of Contract: If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that SERVICE PROVIDER or any subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or SERVICE PROVIDER learns of such a judgment, decision, or order that was not previously disclosed, SERVICE PROVIDER shall inform the City Attorney, no more than fifteen (15) days after the judgment, decision or order becomes final or of learning of the final judgment, decision or order. SERVICE PROVIDER and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the City Attorney with documentary evidence of compliance with the final judgment, decision or order within five (5) days of satisfying the final judgment, decision or order. CITY reserves the right to require SERVICE PROVIDER to enter into an agreement with CITY regarding the manner in which any such final judgment, decision, or order will be satisfied.

City's Right to Withhold Payment: Where SERVICE PROVIDER or any subcontractor it employs to perform work under this Agreement has been found in violation of any applicable wage and hour law by a final judgment, decision or order of a court or government agency, CITY reserves the right to withhold payment to SERVICE PROVIDER until such judgment, decision or order has been satisfied in full.

Material Breach: Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

Notice to City Related to Wage Theft Prevention: Notice provided to the City Attorney as required under this Section shall be addressed to: City Attorney, City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, CA 95037. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

11. **Independent Contractor.** SERVICE PROVIDER is an independent contractor and not an agent or employee of CITY.
12. **Confidentiality.** All data, documents, or other information received by SERVICE PROVIDER from CITY or prepared in connection with SERVICE PROVIDER'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by SERVICE PROVIDER without prior written consent by CITY.
13. **Conflict of Interest and Reporting.** SERVICE PROVIDER shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
14. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of SERVICE PROVIDER is as follows:

Brightview Landscape Services, Inc.
450 Phelan Avenue
San Jose, CA 95112

Address of CITY is as follows:

Chris Ghione, CS Director	with a copy to:
City of Morgan Hill	City Clerk
17575 Peak Avenue	City of Morgan Hill
Morgan Hill, CA 95037	17575 Peak Avenue
	Morgan Hill, CA 95037

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

16. **Maintenance of Records.**

16.1. **Maintenance.** SERVICE PROVIDER shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. SERVICE PROVIDER shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3-year period, then SERVICE PROVIDER shall retain said records until such action is resolved.

16.2. **Access to and Audit of Records.** CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of SERVICE PROVIDER and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of CITY or as part of any audit of CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

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

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

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

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

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

21. **Defense and Indemnification.**

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

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

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

21.4. **Right to Offset.** CITY shall have the right to offset against any compensation due SERVICE PROVIDER under this Agreement any amount due CITY from SERVICE PROVIDER as a result of SERVICE PROVIDER's failure to pay CITY promptly any indemnification arising under this Section (21) and any amount due CITY from SERVICE PROVIDER arising from SERVICE PROVIDER's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

21.5. **Interpretation.** This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of SERVICE PROVIDER to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

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

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

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

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

26. **Binding Agreement.** Notwithstanding the provisions of Section 19 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of SERVICE PROVIDER in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

 City Clerk/Deputy City Clerk

 City Manager

 Michelle Wilson

 Christina J. Turner

 Print Name

 Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

BRIGHTVIEW LANDSCAPE SERVICES, INC.

 City Attorney

By: _____

 Donald A. Larkin

Title: President, Landscape Services

 Print Name

 Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

Date: 11/27/2017

By: _____

Title: CFO - Landscape Services

 Print Name and Title of Signer.

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

Date: 11/20/2017

 Contractor's License Number(s) (if applicable)

 Contractor's DIR Registration Number(s) (if applicable)

Expiration Date(s) _____

Expiration Date(s) _____

Seal:

U:\Legal Forms\Consultant Agreements\City Maintenance Service Agreement.Docx

EXHIBIT A SCOPE OF SERVICES

The scope of work is the City of Morgan Hill's Landscape Groups 1, 3 and 6. Group 1 is Park Mowing and Edging, Group 3 is Street Medians and Group 6 is the Downtown Landscape Maintenance.

The City will regularly inspect the Contractor's work and rate it according to the maintenance standards in the Request for Proposals. Contractor shall operate and maintain an e-mail address at which the City may send inspection reports largely consisting of photos taken of areas that the Service Provider maintains. The e-mail address must have sufficient capacity to accept numerous inspection reports from the City without delay or rejection.

The Contractor will be paid for work rated as "meets standards". Contractor will not be paid for work rated as "below standard" until conditions improve and rate as "meet standards" if the below standard work is attributed to neglect on the part of the Contractor. If an area does not meet City standards, it will be considered "below standard". Contractor will not be paid additional amounts for remedial work required to improve "below standard" areas if the below standard work is attributed to neglect on the part of the Contractor. City staff will work closely with Contractor's representatives to achieve the results described in the standards and inspection criteria. However, responsibility for meeting standards rests with the Contractor.

The Contractor shall be responsible for maintaining landscapes as described in this document and per the maintenance standards outlined in Exhibits A. The cost of maintaining the areas shall be included in the base bid unless otherwise called out as "extra work" in this Request for Proposals. During the first three (3) months of the contract, the Contractor will receive one hundred percent (100%) of the monthly contract payment. During this period, Contractor will inspect the sites at least monthly and will discuss inspections with City. This process and time frame will allow the Contractor time to become familiar with the individual locations. Following this period, the Contractor shall perform quality assurance inspections a minimum of every month, or more frequently if deemed necessary by the Contractor.

The Contractor will provide electronic versions of the monthly inspections to the City by the 10th of the following month as to each site's compliance with City standards. An action plan with deadlines must be provided to the City to indicate when corrections will be made if an area is deemed "below standard". Failure to turn in inspections by the deadline will result in a monthly payment being withheld until inspections are turned in, and one hundred dollar (\$100) deduction from their monthly payment.

There will be a financial impact to the Contract if any scheduled use, (including, but not limited to, special events or recreation programs) of City facilities are impacted by neglect on the Contractor's part. Any costs associated with re-scheduling the event/activity/program may be the responsibility of the Contractor for staffing and costs, including, but not limited to lost revenue, staff salaries and alternate contractor costs, etc.

The City will perform weekly inspection reports, which will be e-mailed to the Contractor. The first time a site fails to meet City Standards as a result of these inspections the Contractor will have two (2) weeks to bring the site back into compliance. For Group 6 – Downtown, the Contractor will have one (1) week to bring the site back into compliance. If the same site is not in compliance for the same standard at any time after the first warning, no warning will be given and penalties will be

incurred. If a site is not brought back into compliance within the allotted timeframe the following penalties will occur:

1. First Penalty: Contractor to receive warning.
2. Second Penalty: At the same site within twelve (12) months of the First Penalty Assessment, the Contractor will be assessed a \$25 monthly deduction per deficiency.
3. Third Penalty: At the same site within (12) months of the First Penalty Assessment, the Contractor will be assessed a \$75 monthly deduction per deficiency.

The parties will observe the following progressive problem resolution process:

1. Written notice of the problem.
2. Field conference with City inspector and Contractor's field representative to identify problem and agree on solution as presented by Contractor.
3. Conference between City's representative and Contractor's principal.
4. Imposition of penalties and/or correcting defect at Contractor's cost.
5. Termination of Contract.

1-21 INSPECTION OF SITE WORK

Contractors are required to inspect the site of the work in order to satisfy themselves, by personal examination or by such other means as they may prefer, of the location of the proposed work and the actual conditions of and at the site. Contractors may apply to the City for additional information and explanation before submitting proposals. However, no supplemental information requested or furnished shall vary the terms of the Contract Documents or affect the Contractor's sole responsibility to satisfy itself as to the conditions of the work to be performed. No claim for additional compensation will be allowed which is based upon a lack of knowledge of the actual conditions or location of the work.

Submission of a proposal by a Contractor shall constitute acknowledgment that the Contractor has relied, and is relying, on its own examination of: (a) the site of the work; (b) access to the site; (c) all other data, matters, and things requisite to the fulfillment of the work and, on his/her own knowledge of existing facilities on and in the vicinity of the site of the work and not on any representation or warranty of the lack of knowledge of the above items.

2-1 NORMAL HOURS AND DAYS OF MAINTENANCE SERVICES

- A. For the Community & Cultural Center, Gavilan College & Morgan Hill Playhouse Parking Lots, unless otherwise specified, work hours shall be 7:00 am to 12:00 noon Monday through Friday.
- B. For the Third Street Creek Park and Nob Hill Trail Park work hours shall be every Monday and Thursday between 7:00am and 5:00 pm.
- C. At all other locations, the Contractor shall perform the required maintenance services between the hours of 7:00 a.m. and 5:00 pm Monday through Friday and on weekends with prior City approval.
- D. The Contractor shall conduct the work at all times in a manner which will not interfere with normal recreation programs, school programs, pedestrian traffic on adjacent sidewalks, or vehicular traffic on adjacent streets.
- E. Any modification in the hours and days of maintenance services as stated in the Contractor's service schedule is subject to approval by the City.

2-2 PERIODIC PROJECT INSPECTIONS

Upon request, the Contractor will walk the project with the City's representative to determine and confirm compliance with the specifications or to discuss required work. The Contractor's representative must be authorized to sign documents and make changes to the work.

2-3 PERFORMANCE DURING INCLEMENT WEATHER

During periods of excessive rainfall that hinders normal operations, the Contractor shall adjust its workforce to accomplish those activities that are not affected by weather. The prime factors in assigning work shall be the safety of the workforce and damage to parks and landscaping.

2-4 NOTICE TO PROCEED

As soon as practical after execution of the Contract, and after receipt of acceptable insurance certificates by City, a written Notice to Proceed will be mailed to the Contractor. The effective date of the Notice to Proceed will be the date stated as such in the Notice, provided that the effective date will not be earlier than the day following the issuance of the Notice to Proceed.

2-5 ACCEPTANCE

- A. Acceptance by the City of any services furnished under the Contract shall occur only subsequent to the final review of authorized employees of the City.
- B. The City shall reject and refuse to pay for, any and all non-conforming services.
- C. Nothing in this section shall limit or restrict the warranty and remedy obligations of the Contractor specified in the Standard Consultant Agreement.

2-6 LICENSES REQUIRED FOR DURATION OF CONTRACT

- C-27 Landscape Contractor License
- City of Morgan Hill Business License
- Qualified Applicator License (includes Santa Clara County Registration)
- Registered with the California Dept. of Industrial Relations as a Public Works Contractor (PWC)

SAFETY

Safety provisions shall conform to Cal-OSHA Safety Orders, and all other applicable federal, state, county, and local laws, ordinances, codes, and regulations in performing the work under this Contract. Where any of these are in conflict, the more stringent requirement shall be followed. The Contractor's failure to thoroughly familiarize themselves with the aforementioned safety provisions shall not relieve them from compliance with the obligations and penalties set forth therein.

The Contractor shall develop and maintain for the duration of the Contract, a safety program that will effectively incorporate and implement all required safety provisions. The Contractor shall appoint an employee who is qualified and authorized to supervise and enforce compliance with the safety program.

2-7 RESPONSE

Contract supervision shall be immediately available at all times when Contractor employees are working on sites, must be available from 7:00 am to 10:00 pm each day via telephone, and must respond to an emergency situation/major discrepancy in the Contract within two (2) hours of initial contact.

2-8 QUALIFIED CONTRACTOR SUPERVISION

All of Contractor's supervisors must be qualified, proficient in English, trained and capable of providing adequate supervision and direction to all Contractors' employees and must demonstrate verbal and written communication skills sufficient for the work required herein.

2-9 CONTRACTOR'S EMPLOYEES

This Contract is intended to be a "partnership" between the City and the Contractor. The Contractor and his/her employees are agents of the City of Morgan Hill and represent the City in the performance of their work. Only Contractor's employees or subcontractors are allowed on City premises where work is being performed. The City shall have the right to have Contractor remove

from assignment to City facilities such Contractor and/or subcontractor employees as shall be deemed incompetent, careless, insubordinate, or in any way objectionable, or any personnel whose actions may be contrary to the public interest or inconsistent with the best interest of the City. Contractor's employees and subcontractors shall not smoke tobacco on any City property.

2-10 EMPLOYER PROVIDED UNIFORMS

The Contractor shall provide each of its employees with uniforms. Uniform apparel shall be kept neat, clean, and in good repair. All uniforms shall include the Contractor's name and logo. Contractor and subcontractor personnel shall wear uniforms at all times.

2-11 CONTRACTOR'S EQUIPMENT

The on-site supervisor shall ensure that all contractor-supplied equipment is in good working order. Any damaged equipment or equipment in need of repair shall be removed from the site. Contractor shall be responsible for any damage to the work sites, City or private property, or any injuries caused by Contractor's equipment or personnel.

2-12 LOCKS AND KEYS

The Contractor shall be responsible for the series of keys assigned to it and shall assign these keys to its personnel for use in maintaining the facilities. The Contractor shall properly use and keep safe all keys or locks issued by the City to the Contractor.

The Contractor shall report all lost or stolen keys or locks to the City within twenty-four (24) hours of discovery. The Contractor shall reimburse the City for the total cost of replacement keys and/or locks that have been lost.

Upon termination or cancellation of the Contract, the Contractor shall immediately return all keys, cards, remotes, etc., to the City. The Contractor shall reimburse the City for the total cost of lost items.

2-13 VANDALISM AND ACCIDENTAL DAMAGE

City assumes responsibility for the cost of repairing or replacing appurtenances significantly damaged by persons other than the Contractor or its agents. Vandalism or accidental damage repair costs shall be based on unit costs submitted by Contractor in the proposal or on time and materials quotes for work not called out in the proposal. Contractor shall be responsible for reporting damage to City and repairing or replacing all appurtenances damaged by Contractor or Contractor's agents.

2-14 WATER MANAGEMENT PROGRAM

Monthly, from March through November, the Landscape Maintenance Contractor must provide to the City a report of irrigation controller settings for the current month in electronic format. This report will include the following information:

- A. All irrigation programs set on controllers.
- B. Irrigation schedule start times for each irrigation program.
- C. Irrigation run days for each irrigation program.
- D. Irrigation cycle length, in minutes for each station in an irrigation program.
- E. Number of repeat cycles for each station in an irrigation program.

All required scheduling and operation of the automatic irrigation controllers reflecting weather changes and water needs will be covered under this Contract. Contractor shall make all adjustments and setting of automatic controllers to establish frequency and length of watering periods. Any malfunction of controllers must be reported to the City along with a proposal for correction with costs.

All systems shall be programmed as needed to maintain plants in a healthy, vigorous condition. The irrigation controller program is to be sufficient to keep the plant material healthy without excessive water use.

- A. Controller programs shall incorporate the following conditions: Meet City Water Management requirements
- B. Program around Park and Facility use and events
- C. Reflect actual evapotranspiration (E.T.) requirements
- D. Reflect actual requirements of soil and plants
- E. Eliminate runoff onto streets, sidewalks, and other non-target areas

The Water Management Program is designed to optimize park and landscape water usage through field testing and irrigation schedule development. Soil moisture levels can be compared to irrigation schedules and plant water requirements to assist in responsible management of each park and landscape irrigation valve zone.

A. Irrigation Schedule Analysis:

Monthly during irrigation season (March through November), the Contractor will provide the City with the current month's irrigation schedules and monthly report on the required system check no later than the 10th day of the month. The irrigation schedules are analyzed by comparing the minutes of irrigation run time, plant water requirement and the level of environmental demand (evapotranspiration). Valve areas appearing to be over or under watered are to be further tested by the Contractor as outlined below.

B. Soil Moisture Testing:

Valve areas suspected to be over or under watered should be tested between May and October by the Contractor by removing a soil sample and testing the moisture content. Soil probing is conducted to determine soil moisture levels for automated overhead irrigation circuits.

C. Irrigation Base Schedule Development:

A monthly irrigation base schedule is developed based upon current controller settings and the feedback of moisture probing results. Adjustments are made at the controller either up or down where soil is found to be too dry or too wet. Once the Contractor has the correct run times for any given month, the starting "base schedule" is acquired. Adjustments to the "base schedule" shall occur throughout the month to accommodate changes in area use and/or environmental changes to individual sites.

D. Drought Impact on Irrigation:

The Contractor shall comply with all water use regulations and restrictions. In addition, Contractor shall comply with City directed changes in irrigation in response to drought conditions.

E. Irrigation System Evaluation:

Annually the City will turn off all landscape water accounts November through March (if warmed than expected weather occurs this might be altered. When accounts are turned back on in March each year the Contractor shall perform a complete system check of every irrigation system. The Contractor shall supply the City with a written report of every system as it is completed. Needed repairs shall occur throughout that same time period, and with the approval of the City, to ensure a fully operational system at the beginning of each spring. System evaluations of head, valves, quick couplers, etc. shall also occur monthly, at a minimum, March through November.

For any controller schedule or system check report not supplied by the 10th day of the current month by Contractor in any month, a \$50.00 penalty per controller will be assessed.

City will provide all the water and electricity necessary for the Contractor to perform the services except instances where excessive costs are incurred by the City due to waste or negligence by the Contractor. If the City determines that excessive utility costs due to waste or negligence have occurred and are a result of Contractor's actions, the City may withhold from payment to Contractor those funds necessary to reimburse the City for these additional costs. If there is a difference of opinion between the City and the Contractor as to the whether or not there has been waste due to the negligence of the Contractor, the opinion of the City will prevail.

Irrigation system repair shall occur and be compensated as stated below.

A. Irrigation system repair will be the responsibility of the Contractor. All replacement materials are to be with new original types and models, unless a substitute is approved by the City. The Contractor shall implement repairs in accordance with all effective warranties, and no separate payment shall be made for repairs on equipment covered by warranties.

B. Maintenance, repair, and replacement of malfunctioning sprinkler heads and quick couplers, including risers, swing joints, shall be included in the Contractor's base bid. The Contractor shall provide labor for the above items at no extra charge and shall bill the City for the required parts with a maximum mark up of 10% over cost.

C. Maintenance and repair of valves, filters, valve boxes, batteries and wiring shall be covered in the Contractor's base bid. The Contractor shall provide labor for the above items at no extra charge and shall bill the City for the required parts with a maximum mark up of 10% over cost.

D. Replacement of valves, filters, valve boxes, and wiring shall be considered "extra work" in their entirety. Decisions regarding repair verses replacement will be made by the Contractor and the City jointly. In the event that there is a disagreement with regards to how to proceed, the City's choice will prevail.

E. Repair and replacement of lateral lines, main lines, check valves, and controllers shall be considered "extra work" in their entirety.

F. Repairs and replacements of any irrigation component or property damaged by the Contractor or as a result of negligence, error, or omission by the Contractor shall not be submitted to the City for payment and are the responsibility of the Contractor.

G. Repair and replacement of any irrigation components or property that is a result of vandalism, or unintentional damage, caused by the public shall be considered "extra work" in its entirety. All vandalized components must be presented to the City within one working day of the repair or replacement in order for the Contractor to be compensated for the repair or replacement. If the vandalized components are not presented within one working day the Contractor will be paid based on the above stated criteria for repair and replacement.

H. When the Contractor observes or is notified of water waste due to excessive overspray, overwatering for irrigation system malfunction, he/she shall respond within 24 hours. Repairs/adjustments shall be completed promptly to prevent damage to the landscape.

2-15 PLANT LOSS

It is one of the Contractor's prime responsibilities to prevent loss of plants caused by pests, diseases, insects, soil conditions, nutrient, micro-climatic conditions, improper planting, or problems in irrigation.

Contractor agrees to be continuously alert in locating and defining problems and agrees to exercise prompt and proper corrective action. A preliminary written report shall be submitted for major corrective problems not covered in the Contract along with the costs.

Contractor agrees to replace, at the Contractor's cost, any dead, stunted, or damaged that are the result primarily of the Contractor's negligence including, but not limited to, irrigation malfunctions that are not addressed within a reasonable amount of time based on environmental conditions. Plants lost from Contractor's negligence shall be replaced, at the Contractor's expense, within thirty (30) days of discovery. Replacement plants shall be comparable in size to the lost plant up to a maximum size of a thirty-six (36) inch box, or if smaller, the size shall be approved by the City.

The Contractor shall not be held responsible for plant losses due to maladies beyond the Contractor's control; this includes, but is not limited to, disease or insect attack for which there is no legal recommended control, acts of vandalism, earthquakes, fires, storms, freezing/frost, and related events. Contractor shall report all such conditions to the City in writing within seventy-two (72) hours of occurrence, and submit a proposal for the work or repairs along with the costs. The Contractor shall obtain City's written permission/direction or authorization prior to proceeding with the work. Failure to notify the City within seventy-two (72) hours of occurrence will result in replacement at the Contractor's cost as if the cause was Contractor negligence.

The City shall approve all replacement plants that differ in species. However, it is agreed that replacing plants shall not be used by the Contractor as a substitute for proper care. The City will consider Contractor negligence a major breach of contract with full responsibility for costs and losses.

Dead plants and those in a state of decline shall be brought to the City's attention immediately and before removal. The City shall pay labor and material for plant replacement not caused by Contractor negligence, as deemed by the City, on an actual time and material basis.

All new plant material and irrigation installations or repairs shall be guaranteed for a period of ninety (90) days for unhealthy plant installation and/or poor workmanship. Exceptions include damage or death of plant material due to wind or storm, or vandalism, theft, or other willful acts over which the Contractor has no control. Existing plants shall be replaced by Contractor if they die due to Contractor's negligence. All replacement plants and materials shall be inspected and approved by City prior to installation.

At the end or termination of the Contract, the City reserves the sole right to withhold final payment(s) in the amount necessary to replace any damaged or dying plant material that is a result of Contractor negligence or to restore any site which is in a condition that is worse than when the Contract was executed.

2-16 TURF AERATION

The Contractor shall perform core aerations of turf (no mow areas excluded) as part of the base bid. Two (2) aerifications are required in all turf areas each year. Aeration plugs shall be properly destroyed so as to not pose a safety issue or interfere with the use of parks and facilities. The aeration schedule shall be coordinated with the City during the first month of the contract period. Additional turf aerations may be proposed, as "extra work" by the Contractor, in order to meet the designated standard. All proposals, and costs, must be approved by the City prior to additional turf aerations occurring.

2-17 FERTILIZATION

The Contractor will be responsible for performing all fertilizations of turf and landscape and shall be included in the base bid. The fertilization schedule shall be coordinated with the City during the first month of the contract period.

All turf areas (excluding no-mow) shall receive fertilizer applications four times per year. Approximate dates of these are April 1, June 1, September 1, and November 1. Turf is to be maintained in good condition with horticultural acceptable growth and color, and additional fertilization may be required as extra work. Variations to these dates may be required under individual circumstances. All fertilizer shall be approved by the City prior to application.

All shrub, groundcover and no-mow turf areas shall receive fertilizer applications two times per year. Approximate dates of these are March 1 and September 1. Intent is to maintain plants in good condition with horticultural acceptable growth and color. Variations to these dates may be required under individual circumstances. All fertilizer shall be approved by the City prior to application.

2-18 BARK AND MULCH

The Contractor will be responsible for notifying the City when areas are in need of new bark or mulch. The City reserves the right to have the bark installed in any manner that it sees fit and by whomever it sees fit. In the event that the City requests that new bark mulch be added by the Contractor, it will be considered "extra work" in its entirety.

2-19 TREE PRUNING

The Contractor shall prune trees for clearance as part of the base bid. Pedestrian clearance shall be eight feet (8') and vehicular clearance shall be fifteen feet (15'). Responsibility for structural grid pruning, weight reduction pruning, etc. shall not be contained in the base bid and will be considered "extra work". The City reserves the right to perform this work in any manner that it deems appropriate.

2-20 MOWING AND EDGING

Lawn mowing and edging shall be performed as needed to meet the City landscape standards. When lawns cannot be cut on the scheduled day due to rain, they must be cut as soon as weather and ground conditions permit. This trimming shall include cutting all grass along walls, fences, foundations, curbs, sidewalks, shrubs, tree basins, poles, guy wires, irrigation & utility boxes, and any other object within or immediately adjacent to the lawn areas. Turf and plantings around sprinkler heads shall be trimmed to provide maximum water coverage. Trimming shall be done by power edgers or by hand, but in no case will herbicides be permitted without prior written approval. Clippings shall be removed from all adjacent walkways and other paved surfaces immediately after each mowing/edging.

Seed heads on no-mow turf shall be removed on an annual basis. No-mow turf shall be edged as needed to keep from encroaching on walls, fences, sidewalks, etc.

2-21 REFUSE DISPOSAL

All refuse and recycling materials are to be placed in the trash dumpsters and recycling containers located at the Morgan Hill Corporation Yard. Green waste is to be placed in bins provided by the City at the Bus Yard across the street from the Corporation Yard.

2-22 TRAFFIC CONTROL

Traffic control shall conform to the latest Caltrans Standards to ensure safe flow of traffic and safety of workers in traffic zones. All traffic control costs shall be included in the prices paid for the various contract items of work and no additional compensation will be allowed therefore.

The Maintenance Manager shall be notified prior to any road closures. No traffic lanes on Dunne Avenue, Cochrane Road, Butterfield Blvd., Tennant Ave., or Monterey Road may be closed before 9:00 a.m. or after 3:00 p.m. without written permission from the Maintenance Manager. Access to driveways shall be maintained at all times.

When entering or leaving roadways which bear public traffic, the Contractor's equipment, whether empty or loaded, shall in all cases yield to public traffic.

The provisions in this section may be modified or altered if, in the opinion of the Maintenance Manager, public traffic will be better served and work expedited. Such modifications or alterations shall not be adopted until approved in writing by the Maintenance Manager.

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

Group 1: Park Mowing

		Monthly	# of months	Annual Amt.
Community Park	\$	1,560.00	12.00	\$ 18,720.00
Galvan Park	\$	390.00	12.00	\$ 4,680.00
Paradise Park	\$	390.00	12.00	\$ 4,680.00
Diana Park	\$	135.00	12.00	\$ 1,620.00
Howard Weicert	\$	203.00	12.00	\$ 2,436.00
Nordstrom Park	\$	65.00	12.00	\$ 780.00
Jackson Park	\$	78.00	12.00	\$ 936.00
GRAND TOTAL				\$ 33,852.00

Group 3: Medians and Misc. Sites

		Monthly Maintenance	Irrigation	Annual Amt.
Arterial Medians	\$	1,870.00	\$ 224.00	\$ 25,128.00
East Dunne at Peppertree	\$	236.00	\$ 24.00	\$ 3,120.00
Friendly Inn & Lot	\$	228.00	\$ 32.00	\$ 3,120.00
El Toro Youth Center	\$	115.00	\$ 15.00	\$ 1,560.00
El Dorado	\$	50.00	\$ 15.00	\$ 780.00
Sunrise Meadows	\$	215.00	\$ 45.00	\$ 3,120.00
GRAND TOTAL	\$	2,714.00	\$ 355.00	\$ 36,828.00

Group 6: Downtown

		Monthly Maintenance	Irrigation	Annual Amt.
3rd Street Landscape btwn Monterey and Depot	\$	240.00	\$ 29.00	\$ 3,228.00
4th Street Landscape btwn Monterey and Depot	\$	80.00	\$ 10.00	\$ 1,080.00
County Courthouse	\$	240.00	\$ 29.00	\$ 3,228.00
Train Station West of Tracks	\$	160.00	\$ 19.00	\$ 2,148.00
Third Street Creek Park	\$	320.00	\$ 38.00	\$ 4,296.00
Nob Hill Trail Park	\$	320.00	\$ 38.00	\$ 4,296.00
Railroad Park	\$	320.00	\$ 38.00	\$ 4,296.00
Downtown Parking	\$	240.00	\$ 29.00	\$ 3,228.00
Depot Street btwn East Dunne and Main	\$	358.00	\$ -	\$ 4,296.00
GRAND TOTAL	\$	2,278.00	\$ 230.00	\$ 30,096.00

ANNUAL GRAND TOTAL FOR CONTRACTED SERVICES \$ 100,776.00

In addition to the contracted monthly charges referred to above, Extra Services Labor and Materials Costs will be charged for additional work as pre-authorized by the City's Contract Manager. The maximum annual amount allocated for Extra Services is 30,000.00 per year or \$60,000.00 for the two year term of contract:

TWO-YEAR CONTRACT AMOUNT \$ 261,552.00

Attachment: Executed Brightview Groups 1 3 6 Contract (1483 : Landscape Maintenance Groups 1 3 6 Award)

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

Work to be scheduled per Exhibit A above in coordination with Maintenance Manager, Maintenance Coordinator or Maintenance Specialist.

Attachment: Executed Brightview Groups 1 3 6 Contract (1483 : Landscape Maintenance Groups 1 3 6 Award)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2017

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

ADOPT RESOLUTION SETTING PUBLIC HEARING DATE FOR 2018 HAZARDOUS VEGETATION PROGRAM

RECOMMENDATION(S)

Adopt resolution declaring weeds and brush to be a nuisance and setting the hazardous vegetation public hearing on February 7, 2018.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Maintaining Fiscal Responsibility

REPORT NARRATIVE:

Under Government Code section 39561, cities may adopt a resolution declaring weeds and dry brush to be a public nuisance and order their abatement.

Weed and brush abatement services constitute the City's hazardous vegetation program and are key to reducing fire risk and protecting public safety. The City of Morgan Hill has contracted with Santa Clara County for weed and brush abatement services since 1996. In the last several years, City and County staff have successfully worked together to streamline program administration and improve communications with Morgan Hill property owners. The County's Department of Agriculture and Environmental Management - Weed Abatement Division manages the program.

As in prior years, staff has combined the initial resolution (attached) for both the weed and brush abatement programs. Staff proposes that the abatement program commencement hearing take place on February 7, 2018. Once the attached resolution is adopted, County staff will notify the affected property owners of the February 7th public hearing and of their obligations to abate hazardous vegetation before the deadline. In response to the City's past request for more notification to the property owners, the County will also be mailing a courtesy notice out to affected property owners in the early Spring to further remind them of their obligations.

The City's Fire Department and the County's Weed Abatement Division are continuing to integrate their efforts and communication methods to enhance customer service. The improvements instituted have eliminated customer complaints about receiving conflicting information from the two programs.

COMMUNITY ENGAGEMENT: Empower

The hazardous vegetation abatement program relies on a full range of community engagement approaches. Much of it begins when the County Program or City Fire Department informs a property owner that a hazardous situation has been observed on their property. The owner is given several months during which he or she may consult and work together with program staff to understand the situation and the needed remedies. Ultimately, each property owner is invited and empowered to remedy the situation themselves in order to minimize their program charges while maintaining public safety. In addition, many of the properties on the original list get onto the list as a result of a complaint from a community member about a hazardous situation.

ALTERNATIVE ACTIONS:

The Council could choose to not act or delay action on this resolution. Not declaring weeds and brush to be a nuisance would potentially compromise community fire safety. Delaying action would ultimately provide the affected property owners with less notice and time to plan for abating their hazardous vegetation.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

While this will be the first Council action addressing hazardous vegetation for the 2018 fire season, the recommended approach is consistent with the actions taken by the Council for over a decade.

FISCAL AND RESOURCE IMPACT:

The Hazardous Vegetation Program is designed to be user fee supported. The per-lot assessment includes costs for doing the weed and brush control work plus overhead county costs to administer the program. Based on the recent amendment to the City's agreement with the County, the City may need to ultimately contribute to the program's costs if user fee revenues do not completely cover all of the County's costs. Administering this program is an activity anticipated in the Community Services and Departments work programs and budgets.

CEQA (California Environmental Quality Act):

Categorical Exemption

These activities are categorically exempt from environmental review under the California Environmental Quality Act pursuant to California Code of Regulations, Title 21, Section 15304(i) (Minor Alterations to Land – Fuel Management Activities)

LINKS/ATTACHMENTS:

1. Initial Resolution

RESOLUTION NO. XXX**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DECLARING CERTAIN HAZARDOUS VEGETATION GROWING IN THE CITY OF MORGAN HILL TO BE A PUBLIC NUISANCE, DESCRIBING PROPERTIES WHERE SUCH NUISANCE EXISTS; ORDERING ABATEMENT AND SETTING A PUBLIC HEARING THEREON**

WHEREAS, the City Council finds that certain weeds and brush are growing in the City of Morgan Hill upon the various streets, alleys, sidewalks, and upon private property, which said weeds and brush bear seeds of a wingy or downy nature, or may attain such growth as to become, when dry, a fire menace, or which are otherwise noxious and dangerous; and

WHEREAS, the City Council further finds and declares that said weeds and brush constitute a public nuisance.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Morgan Hill authorizes as follows:

1. That the weeds as described in the above recital constitute and will continue to constitute a public nuisance, and it is ordered that this public nuisance be abated in the manner provided in Title 8, Chapter 8.20 of the Morgan Hill Municipal Code.
2. That the nuisance exists upon all streets, alleys, sidewalks, and private property within said City as shown, described and delineated on the several maps of the property in the City, which are recorded in the Office of the County Recorder of the County of Santa Clara, reference in each instance for the description of any particular street, alley, or private property being hereby made to the several maps mentioned, and in the event of there being several subdivision maps on which lots are shown, reference is hereby made to the latest subdivision map.
3. That it is ordered that Wednesday, the 7th day of February 2018, at 7:00 p.m., in the Council Chambers of the City Council of the City of Morgan Hill is hereby fixed as the time and place when objections to the proposed destruction of removal of weeds shall be heard and be given due consideration.
4. That the City Clerk of the City of Morgan Hill is hereby ordered and directed to cause notice of the adoption of this Resolution and notice of hearing to be given to property owners pursuant to Section 39562.1 of the Government Code.

PASSED AND ADOPTED by the City Council of Morgan Hill on this 6th day of December 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 its meeting held on December 6, 2017.

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

DATE: _____

Irma Torrez, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2017

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

GRANT APPLICATION TO THE SANTA CLARA VALLEY OPEN SPACE AUTHORITY FOR THE WEST LITTLE LLAGAS CREEK INTERPRETIVE WILDLIFE TRAIL PROJECT

RECOMMENDATION(S)

Adopt resolution approving the submission of a grant application to the Santa Clara Valley Open Space Authority, authorizing the City Manager to execute grant documents if the grant application is successful.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

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 Santa Clara Valley Open Space Authority (Authority) for the construction of the West Little Llagas Creek Trail and related features.

The Santa Clara Valley Water District (District) 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. The Flood Protection Project includes the construction of a maintenance road that would begin at Watsonville Road and travel southward to Lake Silveira. The Flood Protection Project does not include funding for making the maintenance road, which aligns with the current end of the City's Wildlife Trail, open to the public – nor funding to install recreational or interpretive features that would allow the community to enjoy and learn about the newly restored Lake Silveira.

The Authority is currently accepting grant applications for trails that provide new access to open space. If adopted, the attached resolution will authorize the City to submit a grant application to the program to garner partial funding for the project.

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 several different grants related to the project.

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 the entire trail project from the installation of a safe pedestrian crossing at Watsonville Road all the way around Lake Silveira will cost approximately \$998,800. For the total project, \$229,500 is being sought from a State grant, \$200,000 is being sought from a District Grant, and now an additional grant application of \$100,000 is being recommended for submission to the Authority. Remaining project funds would be provided by park impact funds and/or Measure B 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 installation of the West Little Llagas Creek Interpretive Wildlife Trail is 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. OSA Grant Resolution

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL APPROVING THE APPLICATION FOR
GRANT FUNDS UNDER THE SANTA CLARA VALLEY
OPEN SPACE AUTHORITY'S MEASURE Q URBAN OPEN
SPACE GRANT PROGRAM**

WHEREAS, in accordance with the voter-approved Measure Q Expenditure Plan, the Santa Clara Valley Open Space Authority (Authority) has established a competitive Urban Open Space Grant Program (Program) for projects that provide healthy and safe open space and park areas within and near urban areas of Santa Clara County; and

Whereas, the City of Morgan Hill has identified the West Little Llagas Creek Interpretive Wildlife Trail Project (Project) as a priority project; and

Whereas, the City of Morgan Hill believes that the Project meets the criteria for the Authority's Measure Q Urban Open Space Grant Program; and

Whereas, the total project cost for the implementation of the Project is estimated to be \$998,800; and

Whereas, the Authority's Program requires applicants to provide at least 33% match of project cost; and

Whereas, the City of Morgan Hill will secure \$898,800 from park impact fees, Measure B taxes, other sources, and other grants submitted to the State of California and the Santa Clara Valley Water District; and

Whereas, if implemented, the City of Morgan Hill will operate and maintain the Project; and

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

1. Truth of Recitals. That the forgoing recitations are true and correct.
2. Authorization. The City Manager of the City of Morgan Hill is hereby authorized to submit an application for funding to the Authority's Program in the amount of \$100,000 for the West Little Llagas Creek Interpretive Wildlife Trail Project.
3. Measure Q Consistency. That the Project is consistent with the Measure Q Expenditure Plan.
4. Operation and Maintenance. The City of Morgan Hill has or will have available sufficient funds to operate and maintain the project, if awarded funding.
5. Program Guidelines. The City of Morgan Hill has reviewed, understands, and agrees to the provisions contained in the Program Guidelines.
6. Legal Compliance. The City of Morgan Hill acknowledges that if the Project is funded, it will be required to comply with all federal, state and local laws.

7. Matching Funds. Certifies that the City has or will have sufficient matching funds to operate and maintain the Project(s).
8. Delegation of Authority. 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.

Approved and Adopted the 6th day of December, 2017.

I, the undersigned, hereby certify that the foregoing resolution number _____ was duly adopted by the City Council following a roll call 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 December 6, 2017.

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

DATE: _____

Irma Torrez, CITY CLERK



CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2017

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

ACCEPTANCE OF SUBDIVISION PUBLIC IMPROVEMENTS - VILLAGE CENTER - TRACT NO. 10219

RECOMMENDATION(S)

1. Accept the subdivision public improvements for Village Center – Tract No. 10219;
2. Authorize the Deputy Director of Engineering or his designee to sign a Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the Recorder of Santa Clara County.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

REPORT NARRATIVE:

Village Center - Tract 10219 is a 110-unit subdivision located at the southwest corner Main Avenue and Butterfield Boulevard (see attached site map). The subdivision improvements have been completed in accordance with the requirements of the Subdivision Improvements Agreement between the City of Morgan Hill and William Lyon Homes, Inc. dated July 23, 2014 and as specifically set forth in the plans and specifications approved by the City.

The total length of streets previously accepted by the City is 127.31 miles.

There are no new streets to be accepted as part of this development. Public improvements being accepted are in-tract public water mains and frontage public improvements along Main Avenue and Butterfield Boulevard.

The value of the public improvements being accepted is \$424,986.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the project acceptance.

ALTERNATIVE ACTIONS: Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council approved the Final Map and Subdivision Improvements Agreement for Village Center – Tract No. 10219 on February 5, 2014.

FISCAL AND RESOURCE IMPACT:

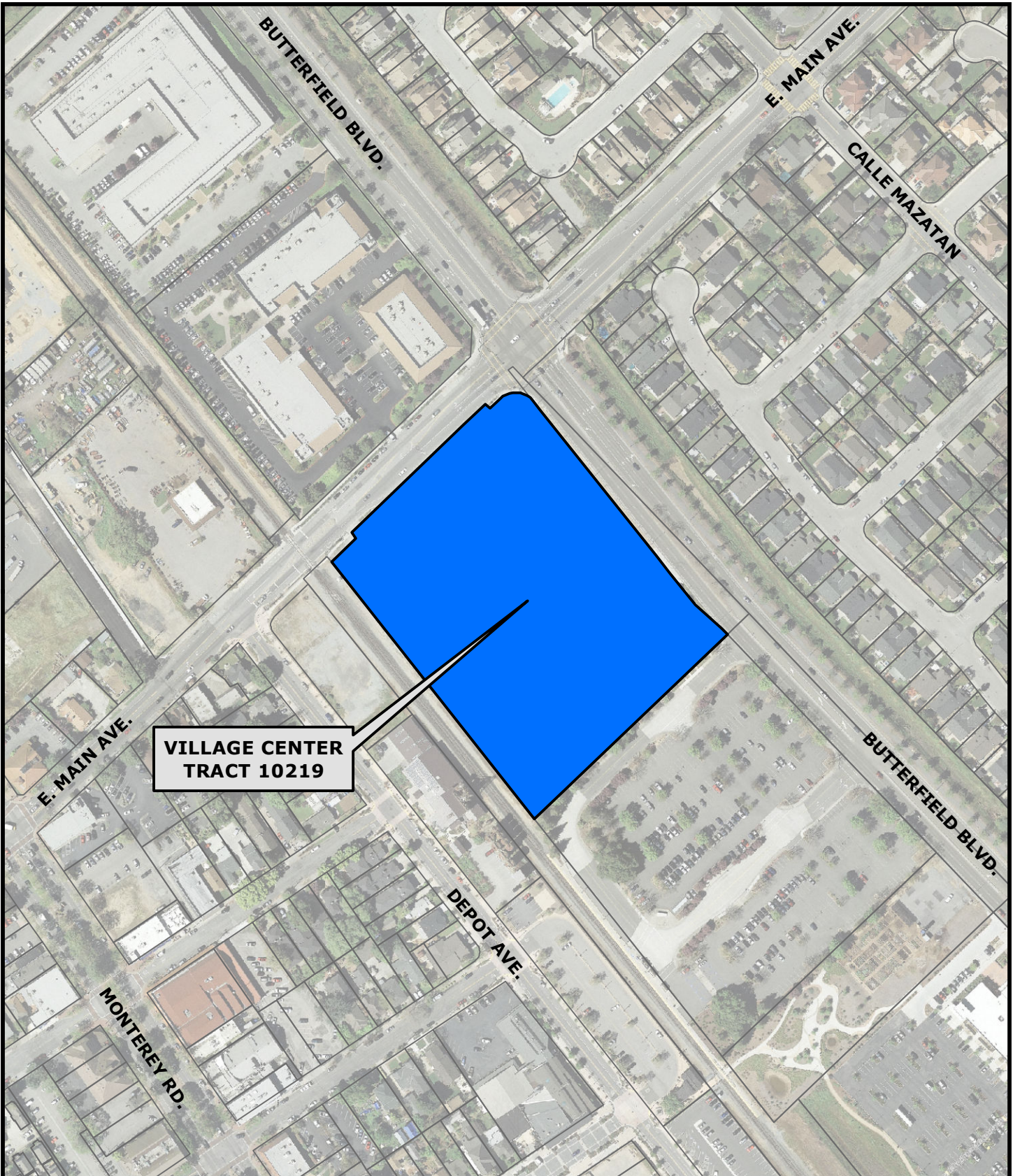
Staff time for this project was paid by the developer's land development fees.

CEQA (California Environmental Quality Act):

Mitigated Negative Declaration was adopted on July 18, 2007.

LINKS/ATTACHMENTS:

1. Site Map - Tract 10219
2. Notice of Completion



CITY OF MORGAN HILL
Engineering Division
Community Development Agency

G:\R-14\Proj\GIS\John\Charlie_VillageCenterTract10219_FinalMap.mxd

SITE MAP
TRACT 10219
VILLAGE CENTER

0 100 200 400 600 800
 Feet



Record at the Request of
and When Recorded Mail to:

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

Record at No Fee Pursuant to
Government Code Section 27383

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN, pursuant to Civil Code Section 3093, that:

1. On **July 23, 2014**, the City of Morgan Hill, a Municipal Corporation, entered into a subdivision improvements agreement with **William Lyon Homes, Inc.** for the **Village Center – Tract No. 10219** subdivision project located on the southwest corner of **Main Avenue and Butterfield Boulevard**.
2. The owner of the subdivision public improvements is the City of Morgan Hill, a Municipal Corporation, located at 17575 Peak Avenue, Morgan Hill, CA 95037.
3. The contractor is **William Lyon Homes, Inc., 4000 Executive Parkway, Suite 250, San Ramon, CA 94583**.
4. The surety is held under **International Fidelity Insurance Company**.
5. The project was completed on **November 6, 2017** and accepted by the City Council of the City of Morgan Hill on **December 6, 2017**.

CITY OF MORGAN HILL, a Municipal Corporation

By _____
Scott Creer
Deputy Director of Engineering

I, the undersigned, declare that I am the Deputy Director of Engineering for the City of Morgan Hill. I have read the forgoing Notice of Completion and know and understand the contents thereof and that the facts stated therein are true and correct. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____, at Morgan Hill, California.

Scott Creer
Deputy Director of Engineering



CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2017

PREPARED BY: David Gittleson, Associate Engineer
APPROVED BY: City Manager

ACQUISITION OF PORTIONS OF PROPERTY (TRAN/DO) APN'S 767-03-039, -041, & -042 FOR THE HALE AVENUE EXTENSION PROJECT

RECOMMENDATION(S)

1. Adopt resolution approving the property purchase for portions of property on APN's 767-03-039, -041, -042 for \$1,142,000 plus escrow and closing costs from Luc Van Tran and Hong Phuoc Thi Do, as Trustees of the Tran/Do Family Trust for the Hale Avenue Extension Project; and
2. Authorize the City Manager to execute all documents and make minor modifications as necessary in order to consummate the transaction.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2017 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

The Hale Avenue Extension project will be constructed as a two-lane roadway with medians, bike lanes, and a pedestrian walkway in conformance with the City's multi-modal arterial standards and the recently adopted "Complete Streets" policy. The limits of the Hale Avenue Extension project are between Main Avenue at the north end and Spring Avenue at the south end. This reach of roadway has been a planned arterial in the City's General Plan since the 1960's. The City Council confirmed the need for the project and directed staff to proceed with the design at its February 16, 2011 meeting.

The Hale Avenue Extension Project is on the Santa Clara Valley Transportation Authority's (VTA) list of Tier 1 projects to receive Measure B funds. Although it is unknown at this time when the Measure B funds will be available to the City, it is in the City's best interest to move the project forward to be in a "shovel ready" mode so that when the funds do become available, the City is in a good position to receive those funds ahead of other projects.

The project design is nearing completion with the environmental impact report and mitigation and monitoring program complete and recently certified by City Council. A key component and possibly the determining driver on the overall schedule for the completion of the project is the acquisition of the necessary right-of-way. The City Council approved an agreement with Associated Right of Way Services on December 7, 2016 to assist staff with acquiring property from willing land owners. On January 23,

2017, staff in conjunction with Associated Right of Way Services, notified the Tran/Do Family that their property was needed for the Hale Avenue Extension Project. Subsequently, an appraisal was prepared and an offer made to the Tran/Do Family for the appraised value of \$1,142,000 for 1.09 acre slope easement and 0.60 acre of fee property. The Tran/Do Family accepted this offer and a Property Purchase Agreement was prepared by staff and reviewed by the City Attorney's Office (see attached). Staff recommends purchasing the property, as the owner is a willing seller and the parcel will need to be purchased in order to construct the new roadway. Acquiring this parcel will further the Council's goal of completing the Hale Avenue Extension Project. The escrow and closing costs are estimated at \$4,495, bringing the total purchase price to \$1,146,495. The appraisal valuation summary prepared by Associated Right of Way Services is also attached.

In 2016, the City acquired a needed parcel from a willing seller (Hosseinpour), APN 767-06-001 for \$183,000 plus escrow fees. Thus, with the Tran/Do Family acquisition, ten parcels remain to be acquired. Staff, in conjunction with Associated Right of Way Services, will continue to pursue the acquisition of the remaining properties for the project.

COMMUNITY ENGAGEMENT: Inform

The Hale Avenue Extension Project has been in the City's General Plan since the 1960's and continues to be an important north/south arterial gap fill project. Numerous community engagement and design meetings were held throughout the early planning and design phases. The City hired David J. Powers and Associates to prepare a Final Environmental Impact Report (FEIR) for the project. This process solicited input from the community regarding environmental impacts from the project as required by the California Environmental Quality Act (CEQA) process. Additional community notifications will be necessary when the project nears construction.

ALTERNATIVE ACTIONS:

City Council could decide to not move forward with the property purchase at this time and direct staff to acquire the property when the project becomes fully funded. However, delaying the right of way acquisition could increase costs, delay the project and possibly jeopardize the City's chances of receiving Measure B funds due to not being "shovel ready".

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- February 16, 2011, City Council heard a report on the community engagement and provided direction for moving forward with the project.
- March 23, 2011, City Council awarded a Professional Services Agreement to Mark Thomas & Company for \$788,000 to prepare civil design documents for the Hale Avenue Extension Project.
- August 24, 2011, City Council approved the intersection design concepts for the Hale Avenue Extension project.
- July 20, 2016, City Council approved the purchase of property (Hosseinpour) APN 767-06-001 for \$183,000 plus escrow fees for the Hale Avenue Extension Project.

- December 7, 2016, City Council approved a consulting agreement with Associated Right of Way Services for \$70,000 to begin negotiations with willing property owners for land required by the project, preparing appraisals, and preparing legal documents/agreements.
- January 18, 2017, City Council awarded a service agreement for design professionals for the Hale Avenue Extension Project to Mark Thomas & Associates for \$401,873 to complete the design.
- July 19, 2017, City Council approved a first amendment with Associated Right of Way Services for \$145,000 to continue acquisition services for the Hale Avenue Extension project.
- August 23, 2017, City Council adopted a resolution certifying that the Final Environmental Impact Report for the Hale Avenue Extension Project and Santa Teresa Corridor Widening and Realignment Project is found to be complete, correct, and in substantial compliance with the requirements of the California Environmental Quality Act (CEQA), including the adoption of the Mitigation and Monitoring Program.

FISCAL AND RESOURCE IMPACT:

Sufficient funds for the \$1,142,000 property acquisition plus escrow and closing costs (\$4,495) for a total amount of \$1,146,495 have been budgeted for the project. The project is budgeted in the Fiscal Year 2017-18 Capital Improvement Program under CIP #546007 with \$2,985,000 from the Traffic Impact Fund (309).

CEQA (California Environmental Quality Act): Project

A Final Environmental Impact Report was prepared by David J. Powers & Associates for the Hale Avenue Extension and Hale Avenue Plan Line Projects. City Council certified the Final Environmental Impact Report (FEIR) and adopted a Mitigation and Monitoring Program (MMRP) for construction of the Hale Avenue Extension Project ("Project") by Resolution No. 17-070 adopted on August 23, 2017.

The Environmental Impact Report concluded that implementation of the Project could result in a number of significant effects on the environment and identified mitigation measures that would mitigate all of those significant effects to a less than significant level.

The City Council determined that the project is within the scope of the FEIR, as further modified and approved pursuant to the Mitigation and Monitoring Report.

LINKS/ATTACHMENTS:

1. Tran Resolution
2. Property Purchase Agreement-Tran-Staff Report 12-6-17
3. Certificate of Acceptance-Tran
4. Tran - Appraisal Summary Statement - 8.23.17
5. Property Location Map

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A PROPERTY PURCHASE AGREEMENT FOR PORTIONS OF PROPERTY ON APN'S 767-03-039, -041, -042 FROM LUC VAN TRAN & HONG PHUOC THI DO, AS TRUSTEES OF THE TRAN/DO FAMILY TRUST, FOR THE HALE AVENUE EXTENSION PROJECT

WHEREAS, the Hale Avenue Extension Project is included in the Fiscal Years 2016-17 through 2021-22 Capital Improvement Program under CIP#546007 with funding budgeted for design services and purchasing right of way. The subject property and slope easements from Luc Van Tran and Hong Phuoc Thi Do, as Trustees of the Tran/Do Family Trust, are required in order to construct the project, and therefore in the public's interest to acquire the real property and slope easements for the public Project (Hale Avenue Extension Project); and

WHEREAS, on January 23, 2017, the City of Morgan Hill notified Luc Van Tran and Hong Phuoc Thi Do, as Trustees of the Tran/Do Family Trust, that the City was interested in purchasing portions of their property for the Hale Avenue Extension Project from willing sellers; and

WHEREAS, on March 8, 2017, the City of Morgan Hill sent Luc Van Tran and Hong Phuoc Thi Do, as Trustees of the Tran/Do Family Trust, a letter of Notice of Decision to Appraise the subject property; and

WHEREAS, on August 24, 2017, the City of Morgan Hill made an offer to purchase portions of property from Luc Van Tran and Hong Phuoc Thi Do, as Trustees of the Tran/Do Family Trust, for the appraised value of \$1,142,000 from a state certified MAI appraiser; and

WHEREAS, on October 20, 2017, the property owners, Luc Van Tran and Hong Phuoc Thi Do, as Trustees of the Tran/Do Family Trust, signed the Property Purchase Agreement in the amount of \$1,142,000; and

NOW, THEREFORE, City Council of the City of Morgan Hill, based upon the foregoing and all documents, statements and facts known to City Council, does hereby resolve:

SECTION 1. Approval of Property Purchase Agreement. City Council approves the Property Purchase Agreement to acquire real property and slope easements for a total amount of \$1,142,000 plus \$4,495 in escrow and closing costs from Luc Van Tran and Hong Phuoc Thi Do, as Trustees of the Tran/Do Family Trust, see Attachment A. The Settlement amount of \$1,142,000 plus the estimated \$4,495 in escrow and closing costs are hereby approved.

SECTION 2. Authority to City Manager. City Council authorizes the City Manager to execute the Agreement and all documents necessary to consummate the transactions contemplated therein, including without limitation, accepting the Grant Deed. City Council further authorizes the City Manager to make minor modifications to the foregoing described documents which may be necessary to consummate the transactions.

SECTION 3. CEQA. The City Council certified the Final Environmental Impact Report (FEIR) and adopted a Mitigation and Monitoring Program (MMRP) for construction of the Hale Avenue Extension Project ("Project") by Resolution No. 17-070 adopted on August 23, 2017.

The Final Environmental Impact Report concluded that implementation of the Project could result in a number of significant effects on the environment and identified mitigation measures that would mitigate all of those significant effects to a less than significant level.

The City Council finds and determines that the project that is the subject of this Resolution is within the scope of the FEIR, as further modified and approved pursuant to the Mitigation and Monitoring Report.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 6th day of December 2017 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

○ 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 December 6, 2017.

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

DATE: _____

IRMA TORREZ, City Clerk

City of Morgan Hill PROPERTY PURCHASE AGREEMENT

In consideration of the terms and conditions set forth in this Property Purchase Agreement (the "Agreement") Luc Van Tran & Hong Phuoc Do, as Trustees of the Tran/Do Family Trust, U.D.T. ("Under Declaration of Trust") dated May 19, 1998, as to an undivided 50% interest and Lieu Van Tran and Ngan Thi Tran Trustee(s) of The Lieu and Ngan Tran Living Trust Dated 01-22-2003 as to an undivided 50% Interest ("GRANTOR") shall deposit in an escrow designated by the City of Morgan Hill ("City"), a Grant Deed and Easement Deeds both suitable for recordation and conveying from GRANTOR to CITY a *fee simple and slope easement* title as indicated in Exhibits "A, A-1, A-2 & B," incorporated herein by this reference, covering the property particularly described therein (collectively "Subject Property").

CITY and GRANTOR acknowledge and agree that the property being acquired by CITY is for public use and is necessary for the construction, operation and maintenance of the Hale Avenue Extension Project, a public project.

In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:

1. Entire Agreement

The parties have herein set forth the whole of their agreement. The performance of this Agreement constitutes the entire consideration for the Grant Deed and Easement Deeds, and shall relieve CITY of all further obligations or claims on this account or on account of the location, grade, construction or operation of the proposed public improvement.

2. CITY shall

- A. Pay the sum of **ONE MILLION ONE HUNDRED AND FORTY-TWO THOUSAND DOLLARS (\$1,142,000.00)** for the Subject Property identified in Exhibits "A, B, A-1, B-1, A-2 & B-2" attached hereto and made a part hereof, to the following title company: Old Republic Title Company "ORTC", for the account of the GRANTOR, Escrow No. 9625008288-LC conditioned upon the Subject Property vesting in CITY free and clear of all liens, leases, encumbrances, (*recorded or unrecorded*), assessments and taxes except any exceptions to title which are acceptable to CITY as said exceptions are identified in the title report relating to the Subject Property issued by the above Title Company bearing the escrow number shown in Clause 2A and dated May 3, 2017, and updates thereof. Clearing of any title exceptions not acceptable to CITY is the responsibility of GRANTOR.
- B. Pay all escrow, recording and title insurance charges, if any, incurred in this transaction.
- C. Prior to the close of escrow, have the authority to deduct and pay from the amount shown in Clause 2A herein any amount necessary to satisfy any liens, bond demands and delinquent taxes due, together with penalties and interest thereon, and/or delinquent and unpaid non delinquent taxes and assessments,

which may have become a lien at the close of escrow. Taxes for the tax year in which this escrow closes shall be cleared and paid in the manner required by Section 5086 of the Revenue and Taxation Code if unpaid at the close of escrow. Close of escrow for this transaction shall be contingent upon the title company receiving deeds of reconveyance from any deed of trust or mortgage holder trustees and beneficiaries.

- D. The consideration set forth in Clause 2A herein shall include payment in full for the following improvements: All buildings, structures and other improvements affixed to the land which are owned by GRANTOR as owner or tenant of the real property proposed to be acquired will also be conveyed unless other disposition of these improvements has been made. The real property interest(s) proposed to be acquired are: *fee simple and sloping easement* respectively, as described in Exhibits "A, B, A-1, B-1, A-2 & B-2."

3. CITY Performed Work

All work done under this Agreement shall conform to all applicable building, fire and sanitary laws, ordinances, and regulations relating to such work, and shall be done in a good and workmanlike manner. All structures, improvements or other facilities, when removed, and relocated, or reconstructed by CITY, shall be left in as good condition as found.

4. Payment of Deed of Trust

If this property is secured by a mortgage(s) or deed(s) of trust, GRANTOR is responsible for payment of any demand under authority of said mortgage or deed of trust out of GRANTOR'S proceeds. Such amounts may include, but not be limited to, payments of unpaid principal and interest.

5. Escrow Instructions

GRANTOR hereby authorizes CITY to prepare and file escrow instructions in accordance with this Agreement on behalf of both parties.

6. Hazardous Wastes

The acquisition price of the Subject Property being acquired in this transaction reflects the fair market value of the Subject Property without the presence of contamination. If the Subject Property being acquired is found to be contaminated by the presence of hazardous waste which requires mitigation under Federal or State law, the CITY may elect to recover its clean-up costs from those who caused or contributed to the contamination. GRANTOR shall further indemnify, defend, save and hold harmless the CITY from any and all claims, costs and liability, including reasonable attorney's fees, for any damage, injury or death to persons or property arising directly or indirectly from or connected with the existence of toxic or hazardous material on the Subject Property, save and except claims, costs or litigation arising through the sole willful misconduct of the CITY, its agents or employees.

7. Right of Possession and Use

It is agreed and confirmed by the parties hereto that, notwithstanding the other provisions in this Agreement, the right of possession and use of the Subject Property by CITY, and/or its designees or assignees including the right to remove and dispose of improvements, and install and connect utilities shall commence on close of escrow, whichever occurs first, and that the amount shown in Clause 2A herein includes, but is not limited to, full payment for such possession and use, including interest and damages if any, from said date.

8. Binding on Successors and Assigns

This Agreement shall be binding on and inure to the benefit of the respective heirs, successors and assigns of the parties to this Agreement.

9. No Leases

GRANTOR warrants that there are no oral or written leases on all or any portion of the Subject Property exceeding a period of one month, and GRANTOR further agrees to hold CITY harmless and reimburse CITY for any and all of its losses and expenses occasioned by reason of any lease of said Subject Property held by any tenant of GRANTOR for a period exceeding one month.

10. Quitclaim Deeds

If any lessee interests are identified in Clause 9 herein, as a condition precedent to approval of this Agreement by the CITY Council, Quitclaim Deeds or similar releases sufficient to clear any possessory rights from the Subject Property will be required. GRANTOR agrees to assist CITY in securing said Quitclaim Deeds or releases.

11. Release of Claims

GRANTOR, for itself, its agents, assigns, successors in interest, and any related or affiliated entities, hereby fully releases and discharges CITY, its agents, employees, officers, directors, divisions, attorneys, accountants, insurers, successors, and other representatives, and any and all related or affiliated private or public agencies or entities, from any and all causes of action, actions, judgments, liens, indebtedness, obligations, losses, claims, damages, liabilities and demands, including without limitation any claim arising out of or pertaining, directly or indirectly, to the acquisition of the Subject Property described in this Agreement and the construction of any improvements thereon, including without limitation, inverse condemnation, nuisance, severance damages, relocation benefits, reestablishment benefits, the cost or value of any equipment or fixtures, attorneys' fees and costs, loss of goodwill, construction-related dust, noise, traffic and other related construction activity, and lost rentals or business associated with construction of any improvements, and any other types of related losses or damages.

GRANTOR acknowledges that it may hereafter discover facts or law different from, or in addition to that which it now believes to be true with respect to his/her release of claims as set forth in this Agreement, and understands that by executing this Agreement it is waiving any rights of claims for any other or future benefits or damages to which it might be entitled which are not specifically exempted herein. In giving this release,

GRANTOR expressly waives the protection of Civil Code Section 1542, which statute provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

12. Approval of CITY

GRANTOR understands that this Agreement is subject to the approval of CITY. Further, that this Agreement shall have no force or effect unless and until said CITY approval has been obtained.

13. Authority to Sign

GRANTOR and the signatories represent and warrant that the signatories to this Agreement are authorized to enter into this Agreement to convey real property and that no other authorizations are required to implement this Agreement on behalf of GRANTOR.

14. Integrity of Property

Except as otherwise provided herein or by express written permission granted by CITY, GRANTOR shall not, after the date of execution of this Agreement and the close of escrow, alienate, lien, encumber or other transfer of the Subject Property or any portion thereof or allow the same to occur, cause or allow any physical changes on the Subject Property, or enter into any lease or contract with respect to the Subject Property or any portion thereof which would survive the close of escrow and impair CITY's use of the Subject Property. GRANTOR shall maintain the Subject Property in its current condition and shall make, at GRANTOR's expense, all repairs necessary to maintain the Subject Property in such condition.

15. Counterparts Signature

This Agreement may be executed in counterparts, each of which shall be an original, but all counterparts shall constitute one agreement.

16. Specific Performance and Other Remedies

The parties understand that the interests and rights being conveyed by this Agreement are unique and for that reason, among others, the parties will be irreparably damaged in the event that this Agreement is not specifically enforced. Accordingly, in the event of any controversy concerning the obligations under this Agreement, such obligation shall be enforceable by a decree of specific performance or by injunction. Such remedies and all other rights and remedies set forth herein shall be cumulative and not exclusive, and shall be in addition to any and all other remedies which the parties may have hereunder at law or in equity.

(As used above, the term, "GRANTOR" shall include the plural as well as the singular number.)

GRANTOR: LUC VAN TRAN
PROJECT NAME: HALE AVENUE EXTENSION PROJECT

APN: 767-03-039, -041, -042

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written herein below.

CITY:

City of Morgan Hill
A Municipal Corporation

GRANTOR:

Luc Van Tran & Hong Phuoc Do, as
Trustees of the Tran/Do Family Trust,
U.D.T. ("Under Declaration of Trust") dated
May 19, 1998, as to an undivided 50%
interest and Lieu Van Tran and Ngan Thi
Tran Trustee(s) of The Lieu and Ngan Tran
Living Trust Dated 01-22-2003 as to an
undivided 50% Interest

BY: _____
Christina Turner

Title: City Manager

Date: _____

By: [Signature]
Luc Van Tran (Trustee)

Date: 10/20/2017

By: [Signature]
Hong Phuoc Do (Trustee) Hong Phuoc Th

Date: 10/20/2017

By: [Signature]
Lieu Van Tran (Trustee)

APPROVED AS TO FORM:

By: _____
Donald Larkin

Title: City Attorney

Date: _____

Date: 10 - 20 - 2017

By: [Signature]
Ngan Tran NGAN THI TRAN

Date: 10/20/2017

NO OBLIGATION OTHER THAN SET FORTH HEREIN WILL BE RECOGNIZED

Attachment: Property Purchase Agreement-Tran-Staff Report 12-6-17 (1495 : Acquisition of Portions of Property (Tran) for the Hale Avenue

EXHIBIT "A"

LEGAL DESCRIPTION

All that real property situate in a portion of Rancho Ojo de Agua de la Coche, in the City of Morgan Hill, County of Santa Clara, State of California, being a portion of LOT 2 as shown on the PARCEL MAP, filed April 9, 1985 in Book 541 of Maps, Page 29, Santa Clara County Records, more particularly described as:

Commencing at the southwesterly corner of said LOT 2, also being a point on the northerly right of way line of West Dunne Avenue, as shown on said PARCEL MAP; thence along said northerly right of way line, North 69°05'28" East, a distance of 100.30 feet to the **Point of Beginning**; thence continuing along said northerly right of way line, North 69°05'28" East, a distance of 147.29 feet to the most southwest corner of the STREET EASEMENT DEED, recorded October 25, 2010, in Document Number 20924585, Official Records of Santa Clara County; thence leaving said northerly right of way line and along the most westerly line of said STREET EASEMENT DEED, North 20°54'32" West, a distance of 1.00 foot to the most northwest corner of said STREET EASEMENT DEED, also being a line parallel with and lying 1.00 feet northwesterly of said northerly right of way line; thence along said parallel line, South 69°05'28" West, a distance of 96.34 feet to the southeast corner of the GRANT DEED, to the CITY OF MORGAN HILL, recorded April 8, 1994 in Book N388, Page 483, Official Records of Santa Clara County; thence along the westerly line of said GRANT DEED, the following two (2) courses:

1. North 3°16'33" East, a distance of 354.02 feet; thence
2. North 15°24'14" West, a distance of 213.10 feet; thence

leaving said westerly line the following six (6) courses, curves, and distances:

1. South 3°11'11" West, a distance of 191.12 feet to the beginning of a tangent curve concave to the east, having a radius of 775.50 feet and a chord bearing South 3°51'49" East, a distance of 190.37 feet; thence
2. Southerly through a central angle of 14°06'01", a distance of 190.85 feet along said curve; thence

GRANTOR: LUC VAN TRAN
PROJECT NAME: HALE AVENUE EXTENSION PROJECT

APN: 767-03-039, -041, -042

3. South 10°54'50" East, a distance of 54.94 feet; thence
4. South 25°57'22" West, a distance of 87.99 feet; thence
5. South 33°16'44" East, a distance of 27.80 feet to the beginning of a tangent curve concave to the west, having a radius of 37.00 feet and a chord bearing South 00°18'20" West, a distance of 40.93 feet; thence
6. Southerly through a central angle of 67°10'08", a distance of 43.38 feet along said curve to the Point of Beginning.

Containing 25,989 square feet or 0.60 acres, more or less.

Subject to a 10' Public Service Easement to the CITY OF MORGAN HILL, as shown on said PARCEL MAP, filed April 8, 1985 in Book 541 of Maps, Page 29, Santa Clara County Records.

Assessor's Parcel Number: 767-03-041

This real property description has been prepared at Mark Thomas, by me, or under my direction, in conformance with the Professional Land Surveyors Act.



Travis Timothy Bohan

Travis Timothy Bohan, LS 8965

AUG. 22, 2017

Date

GRANTOR: LUC VAN TRAN
PROJECT NAME: HALE AVENUE EXTENSION PROJECT

APN: 767-03-039, -041, -042

EXHIBIT "B"

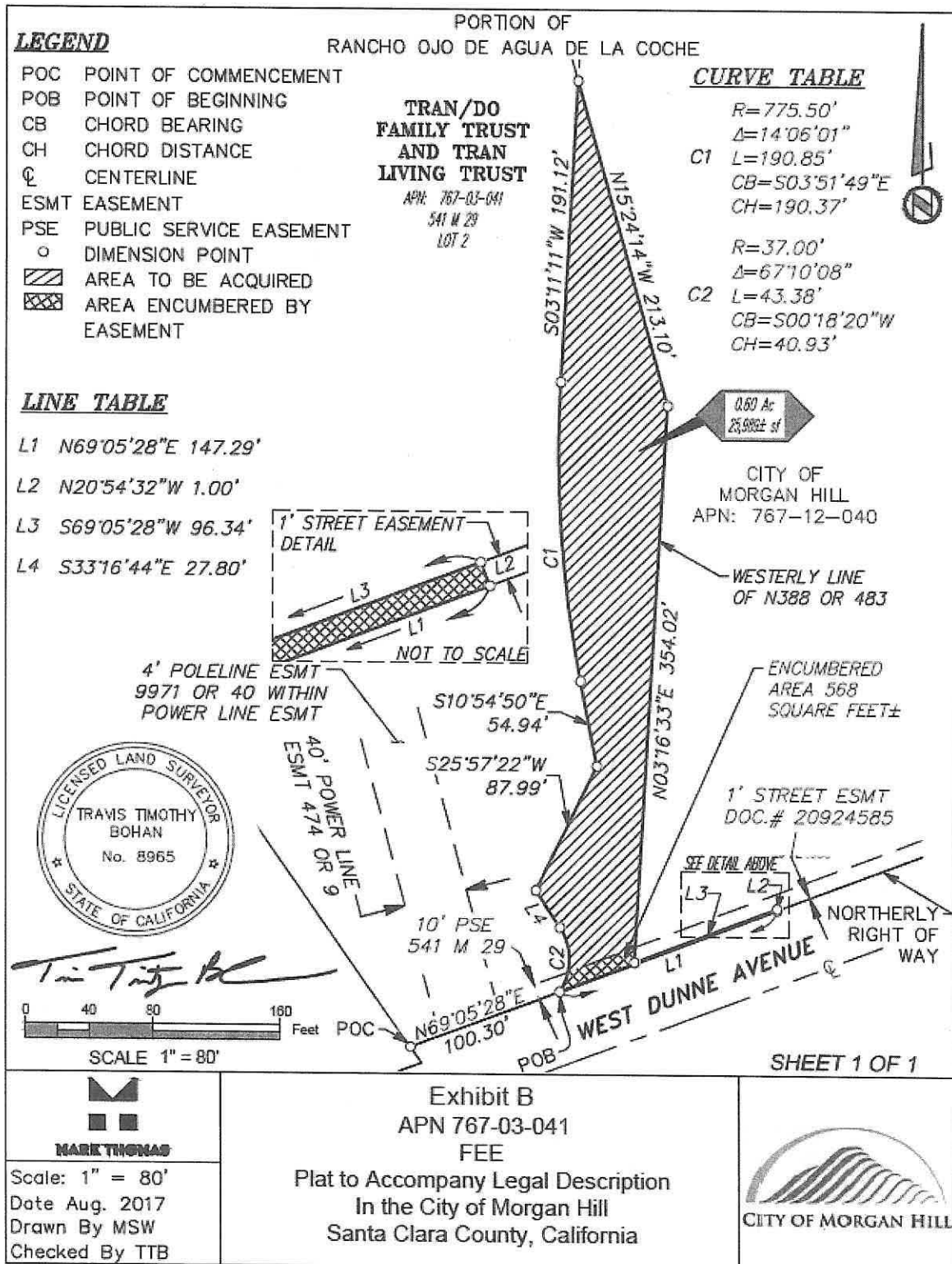


Exhibit A-1

LEGAL DESCRIPTION

All that real property situate a portion of Rancho Ojo de Agua de la Coche, Morgan Hill, County of Santa Clara, State of California, being a portion of LOT 2, as shown on the PARCEL MAP, filed April 9, 1985, in Book 541 of Maps, Page 29, Santa Clara County Records, more particularly described as:

Commencing at a point on the northerly line LOT 1, as shown on said PARCEL MAP, which bears South 55°06'29" West, a distance of 51.56 from the most northerly corner of said LOT 1, said point also being the most northerly corner of the GRANT DEED granted to the CITY OF MORGAN HILL, recorded April 8, 1994 in Book N388, Page 483, Official Records of Santa Clara County; thence along the easterly line of said GRANT DEED, South 15°24'14" East, a distance of 186.50 feet to the intersection with the line coincident to said LOT 1 and LOT 2, also being the beginning of a non-tangent curve concave to the northeast, having a radius of 2004.94 feet and a chord bearing South 24°08'50" East, a distance of 102.27 feet, and the Point of Beginning; thence leaving said easterly line and along said coincident line, southeasterly through a central angle of 2°55'22", a distance of 102.28 feet along said curve to the beginning of a non-tangent reverse curve concave to southwest, having a radius of 828.86 feet and a chord bearing South 24°44'47" East, a distance of 52.26 feet; thence continuing along said coincident line, southeasterly through a central angle of 3°36'48", a distance of 52.27 feet along said curve; thence leaving said coincident line, South 17°12'22" West, a distance of 12.74 feet; thence South 13°44'04" West, a distance of 24.95 feet; thence South 6°09'22" West, a distance of 13.76 feet to a point on said easterly line and the beginning of a non-tangent curve concave to the west, having a radius of 1046.00 feet and a chord bearing North 15°08'33" West, a distance 9.55 feet; thence along said easterly line, northerly through a central angle of 0°31'23", a distance 9.55 feet along said curve; thence continuing along said easterly line, North 15°24'14" West, a distance of 188.43 feet to the Point of Beginning.

GRANTOR: LUC VAN TRAN
PROJECT NAME: HALE AVENUE EXTENSION PROJECT

APN: 767-03-039, -041, -042

Containing 2,271 square feet or 0.05 acres, more or less.

Assessor's Parcel Number: 767-03-039

This real property description has been prepared at Mark Thomas, by me, or under my direction, in conformance with the Professional Land Surveyors Act.



A handwritten signature in black ink, appearing to read "Travis Bohan", written over a horizontal line.

Travis Timothy Bohan, LS 8965

AUG. 22, 2017

Date

GRANTOR: LUC VAN TRAN
PROJECT NAME: HALE AVENUE EXTENSION PROJECT

APN: 767-03-039, -041, -042

EXHIBIT B-1

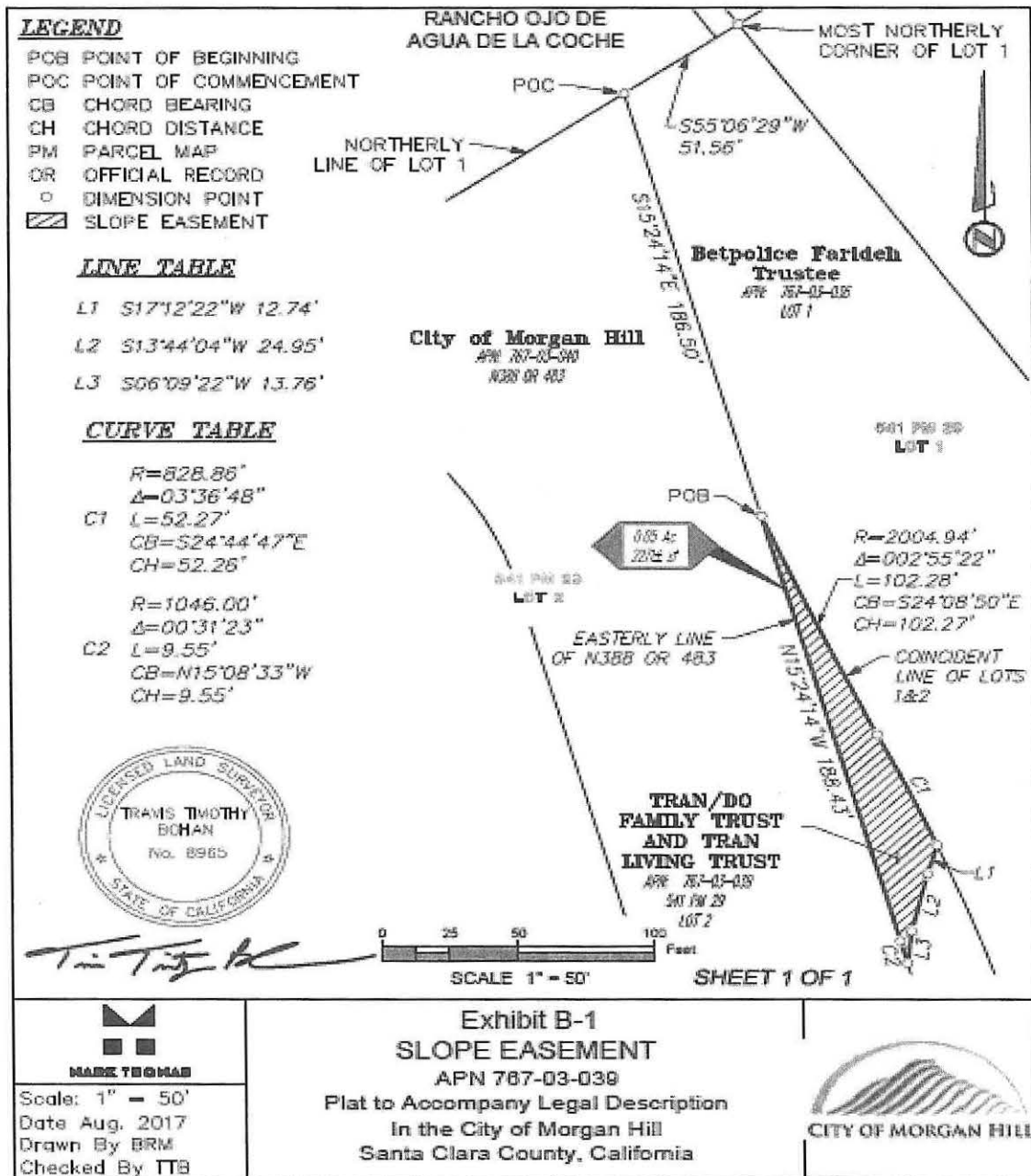


Exhibit A-2

LEGAL DESCRIPTION

All that real property situate in a portion of Rancho Ojo de Agua de la Coche, in the City of Morgan Hill, County of Santa Clara, State of California, being a portion of LOT 2 as shown on the PARCEL MAP, filed April 9, 1985 in Book 541 of Maps, Page 29, Santa Clara County Records, more particularly described as:

Commencing at the Intersection of the northerly right of way line of West Dunne Avenue with the southerly prolongation of the westerly line of the GRANT DEED, to the CITY OF MORGAN HILL, recorded April 8, 1994 in Book N388, Page 483, Official Records of Santa Clara County; thence along said westerly line and the prolongation thereof, the following two (2) courses:

1. North 3°16'33" East, a distance of 355.12 feet; thence
2. North 15°24'14" West, a distance of 213.10 feet to the Point of Beginning;

thence leaving said westerly line the following thirty four (34) courses, curves, and distances:

1. South 3°11'11" West, a distance of 191.12 feet to the beginning of a tangent curve concave to the east, having a radius of 775.50 feet and a chord bearing South 3°51'49" East, a distance of 190.37 feet; thence
2. southerly through a central angle of 14°06'01", a distance of 190.85 feet along said curve; thence
3. South 10°54'50" East, a distance of 54.94 feet; thence
4. South 25°57'22" West, a distance of 87.99 feet; thence
5. South 33°16'44" East, a distance of 9.22 feet; thence
6. South 74°52'12" West, a distance of 13.03 feet; thence
7. North 44°48'05" West, a distance of 72.04 feet; thence
8. North 44°47'10" West, a distance of 70.46 feet; thence
9. North 34°33'54" West, a distance of 4.74 feet; thence

GRANTOR: LUC VAN TRAN
PROJECT NAME: HALE AVENUE EXTENSION PROJECT

APN: 767-03-039, -041, -042

10. North 47°11'38" East, a distance of 13.23 feet; thence
11. North 03°50'49" West, a distance of 65.50 feet; thence
12. North 70°54'50" West, a distance of 18.38 feet; thence
13. North 15°36'34" East, a distance of 14.62 feet; thence
14. North 29°31'25" East, a distance of 37.03 feet; thence
15. North 31°47'25" East, a distance of 2.64 feet; thence
16. North 31°47'17" East, a distance of 33.06 feet; thence
17. North 30°47'37" East, a distance of 33.49 feet; thence
18. North 26°28'49" East, a distance of 30.81 feet; thence
19. North 22°16'26" East, a distance of 22.13 feet; thence
20. North 19°11'57" East, a distance of 5.99 feet; thence
21. North 17°14'54" East, a distance of 25.56 feet; thence
22. North 14°18'00" East, a distance of 25.17 feet; thence
23. North 10°15'01" East, a distance of 13.48 feet; thence
24. North 07°22'04" East, a distance of 11.08 feet; thence
25. North 03°58'18" East, a distance of 24.71 feet; thence
26. North 00°03'52" West, a distance of 24.71 feet; thence
27. North 02°15'13" West, a distance of 25.03 feet; thence
28. North 01°59'31" West, a distance of 25.33 feet; thence
29. North 02°51'31" East, a distance of 19.37 feet; thence
30. North 05°47'50" East, a distance of 5.59 feet; thence
31. North 06°41'21" East, a distance of 22.93 feet; thence
32. North 08°12'13" East, a distance of 23.13 feet; thence
33. North 07°59'32" East, a distance of 23.21 feet; thence
34. North 05°51'25" East, a distance of 12.56 feet to a point on said westerly line and the beginning of a non-tangent curve concave to the southwest, having a radius of 135.00 feet and a chord bearing South 26°10'58" East, a distance of 50.49 feet; thence

GRANTOR: LUC VAN TRAN
PROJECT NAME: HALE AVENUE EXTENSION PROJECT

APN: 767-03-039, -041, -042

along said westerly line, southeasterly through a central angle of $21^{\circ}33'28''$, a distance of 50.79 feet along said curve; thence continuing along said westerly line, South $15^{\circ}24'14''$ East, a distance of 55.03 feet to the **Point of Beginning**.

Containing 45,492 square feet or 1.04 acres, more or less.

Subject to a 40' Electric Transmission Line Easement, granted to the Sierra and San Francisco Power Company, recorded July 10, 1929 in Book 474, Page 9, Official Records of Santa Clara County.

Subject to a 4' Poleline Easement, granted to the WESTERN CALIFORNIA TELEPHONE CO., recorded August, 1972, Book 9971, Page 40, Official Records of Santa Clara County.

Assessor's Parcel Number: 767-03-042

This real property description has been prepared at Mark Thomas, by me, or under my direction, in conformance with the Professional Land Surveyors Act.



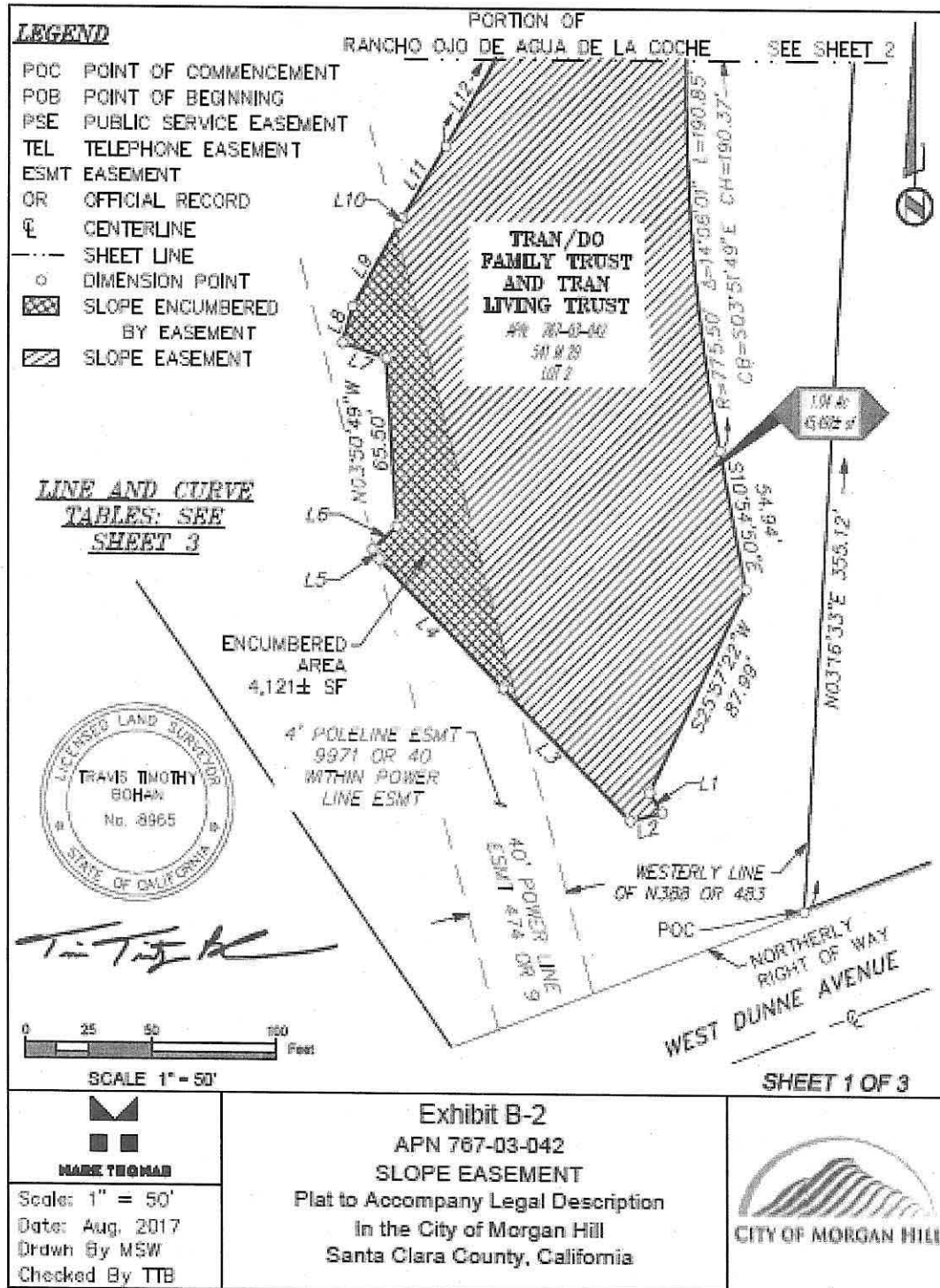

Travis Timothy Bohan, LS 8965

AUG. 22, 2017
Date

GRANTOR: LUC VAN TRAN
PROJECT NAME: HALE AVENUE EXTENSION PROJECT

APN: 767-03-039, -041, -042

EXHIBIT B-2



Attachment: Property Purchase Agreement-Tran-Staff Report 12-6-17 (1495 : Acquisition of Portions of Property (Tran) for the Hale Avenue

GRANTOR: LUC VAN TRAN
PROJECT NAME: HALE AVENUE EXTENSION PROJECT

APN: 767-03-039, -041, -042

EXHIBIT B-2

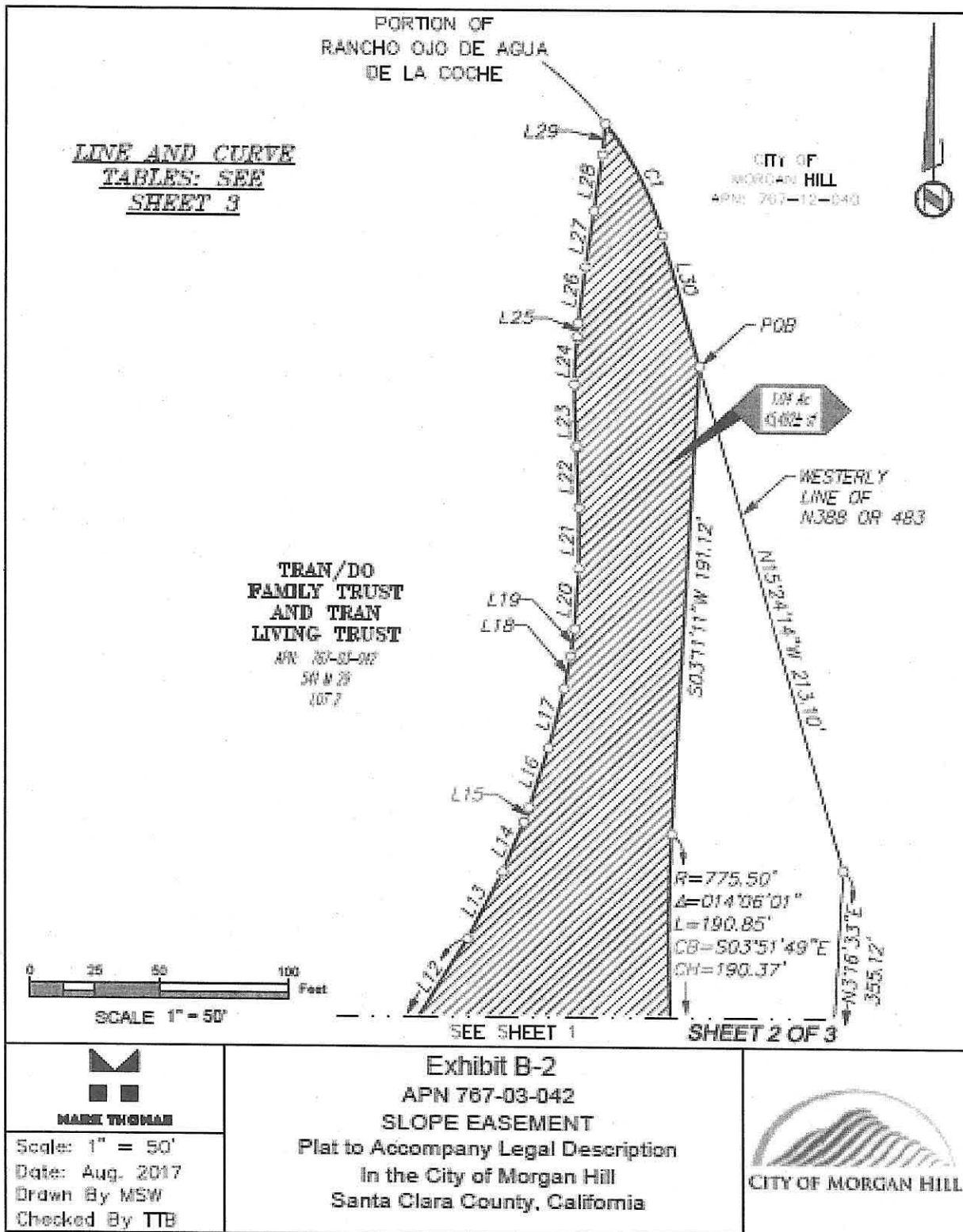


EXHIBIT B-2

LINE TABLE

L1 S33°16'44"E 9.22'
L2 S74°52'12"W 13.03'
L3 N44°48'05"W 72.04'
L4 N44°47'10"W 70.46'
L5 N34°33'54"W 4.74'
L6 N47°11'38"E 13.23'
L7 N70°54'50"W 18.38'
L8 N15°36'34"E 14.62'
L9 N29°31'25"E 37.03'
L10 N31°47'25"E 2.64'
L11 N31°47'17"E 33.06'
L12 N30°47'37"E 33.49'
L13 N26°28'49"E 30.81'
L14 N22°16'26"E 22.13'
L15 N19°11'57"E 5.99'
L16 N17°14'54"E 25.56'
L17 N14°18'00"E 25.17'
L18 N10°15'01"E 13.48'

LINE TABLE

L19 N07°22'04"E 11.08'
L20 N03°58'18"E 24.71'
L21 N00°03'52"W 24.71'
L22 N02°15'13"W 25.03'
L23 N01°59'31"W 25.33'
L24 N02°51'31"E 19.37'
L25 N05°47'50"E 5.59'
L26 N06°41'21"E 22.93'
L27 N08°12'13"E 23.13'
L28 N07°59'32"E 23.21'
L29 N05°51'25"E 12.56'
L30 S15°24'14"E 55.03'

CURVE TABLE

R=135.00'
Δ=021°33'28"
CI L=50.79'
CB=S26°10'58"E
CH=50.49'

SHEET 3 OF 3

 MARK THOMAS Scale: NONE Date: Aug. 2017 Drawn By MSW Checked By TT8	Exhibit B-2 APN 767-03-042 SLOPE EASEMENT Plat to Accompany Legal Description In the City of Morgan Hill Santa Clara County, California	 CITY OF MORGAN HILL
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CERTIFICATE OF ACCEPTANCE

(Pursuant to Government Code §27281)

THIS IS TO CERTIFY that the interest in real property conveyed by Luc Van Tran & Hong Phuoc Do, as Trustees of the Tran/Do Family Trust, U.D.T. ("Under Declaration of Trust") dated May 19, 1998, as to an undivided 50% interest and Lieu Van Tran and Ngan Thi Tran Trustee(s) of the The Lieu and Ngan Tran & Ngan Thi Tran Living Trust Dated 01-22-2003 as to an undivided 50% Interest (Grantor), to the City of Morgan Hill a Municipal Corporation (Grantee) for slope easement purposes is hereby accepted by the undersigned officer pursuant to authority conferred by Resolution

No. _____, adopted by the City of Morgan Hill on _____ and the Grantee consents to recordation thereof by its duly authorized representative.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____ 20____.

City of Morgan Hill a Municipal Corporation

By: _____

By: _____

RECORDING REQUESTED BY:

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

WHEN RECORDED MAIL TO:

City Clerk's Office
 City of Morgan Hill
 17575 Peak Avenue
 Morgan Hill, CA 95037-4128

Attn: City Clerk

SPACE ABOVE FOR RECORDER'S USE

APN: 767-03-041 (Portion)

This document is exempt from the payment of a recording fee pursuant to Government Code § 27383 and §6103, and exempt from Documentary Transfer Tax pursuant to California Revenue and Taxation Code Section 11922 (Governmental Agency acquiring title).

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

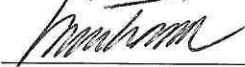
Luc Van Tran & Hong Phuoc Do, as Trustees of the Tran/Do Family Trust, U.D.T. ("Under Declaration of Trust") dated May 19, 1998, as to an undivided 50% interest and Lieu Van Tran and Ngan Thi Tran Trustee(s) of the The Lieu and Ngan Tran & Ngan Thi Tran Living Trust Dated 01-22-2003 as to an undivided 50% Interest, (GRANTOR)

HEREBY GRANT(S) TO

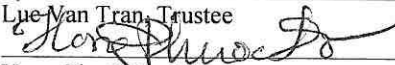
CITY OF MORGAN HILL, A MUNICIPAL CORPORATION, (GRANTEE)

That certain property in the County of Santa Clara, State of California, more particularly described in Exhibits "A" and "B", attached hereto and by this reference incorporated herein.

Luc Van Tran & Hong Phuoc Do, as Trustees
of the Tran/Do Family Trust, U.D.T. ("Under
Declaration of Trust") dated May 19, 1998, as to
an undivided 50% interest and Lieu Van
Tran and Ngan Thi Tran Trustee(s) of The
Lieu and Ngan Tran & Ngan Thi Tran Living
Trust Dated 01-22-2003 as to an undivided 50%
Interest (Grantors)

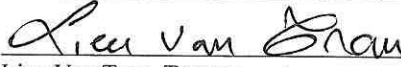


Luc Van Tran, Trustee



Hong Phuoc Do, Trustee

Date: 10-20-2017



Lieu Van Tran, Trustee



Ngan Thi Tran, Trustee

Date: 10/20/2017

NOTARY ACKNOWLEDGMENT ATTACHED

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 October 20, 2017, before me, Rosalyn M. Zeigler, a Notary Public, personally appeared Luc Van Tran, Hong Phuoc Do, Lieu Van Tran, Ngan Thi Tran, 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

Rosalyn M. Zeigler

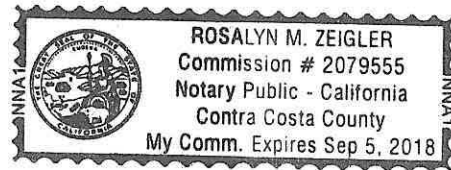


EXHIBIT "A"
LEGAL DESCRIPTION

All that real property situate in a portion of Rancho Ojo de Agua de la Coche, in the City of Morgan Hill, County of Santa Clara, State of California, being a portion of LOT 2 as shown on the PARCEL MAP, filed April 9, 1985 in Book 541 of Maps, Page 29, Santa Clara County Records, more particularly described as:

Commencing at the southwesterly corner of said LOT 2, also being a point on the northerly right of way line of West Dunne Avenue, as shown on said PARCEL MAP; thence along said northerly right of way line, North 69°05'28" East, a distance of 100.30 feet to the **Point of Beginning**; thence continuing along said northerly right of way line, North 69°05'28" East, a distance of 147.29 feet to the most southwest corner of the STREET EASEMENT DEED, recorded October 25, 2010, in Document Number 20924585, Official Records of Santa Clara County; thence leaving said northerly right of way line and along the most westerly line of said STREET EASEMENT DEED, North 20°54'32" West, a distance of 1.00 foot to the most northwest corner of said STREET EASEMENT DEED, also being a line parallel with and lying 1.00 feet northwesterly of said northerly right of way line; thence along said parallel line, South 69°05'28" West, a distance of 96.34 feet to the southeast corner of the GRANT DEED, to the CITY OF MORGAN HILL, recorded April 8, 1994 in Book N388, Page 483, Official Records of Santa Clara County; thence along the westerly line of said GRANT DEED, the following two (2) courses:

1. North 3°16'33" East, a distance of 354.02 feet; thence
2. North 15°24'14" West, a distance of 213.10 feet; thence

leaving said westerly line the following six (6) courses, curves, and distances:

1. South 3°11'11" West, a distance of 191.12 feet to the beginning of a tangent curve concave to the east, having a radius of 775.50 feet and a chord bearing South 3°51'49" East, a distance of 190.37 feet; thence
2. Southerly through a central angle of 14°06'01", a distance of 190.85 feet along said curve; thence

3. South 10°54'50" East, a distance of 54.94 feet; thence
4. South 25°57'22" West, a distance of 87.99 feet; thence
5. South 33°16'44" East, a distance of 27.80 feet to the beginning of a tangent curve concave to the west, having a radius of 37.00 feet and a chord bearing South 00°18'20" West, a distance of 40.93 feet; thence
6. Southerly through a central angle of 67°10'08", a distance of 43.38 feet along said curve to the **Point of Beginning**.

Containing 25,989 square feet or 0.60 acres, more or less.

Subject to a 10' Public Service Easement to the CITY OF MORGAN HILL, as shown on said PARCEL MAP, filed April 8, 1985 in Book 541 of Maps, Page 29, Santa Clara County Records.

Assessor's Parcel Number: 767-03-041

This real property description has been prepared at Mark Thomas, by me, or under my direction, in conformance with the Professional Land Surveyors Act.



A handwritten signature in black ink, appearing to read "Tim T Bohan", written over a horizontal line.

Travis Timothy Bohan, LS 8965

AUG. 22, 2017

Date

LEGEND

POC POINT OF COMMENCEMENT
 POB POINT OF BEGINNING
 CB CHORD BEARING
 CH CHORD DISTANCE
 CL CENTERLINE
 ESMT EASEMENT
 PSE PUBLIC SERVICE EASEMENT
 ○ DIMENSION POINT
 AREA TO BE ACQUIRED
 AREA ENCUMBERED BY EASEMENT

PORTION OF
 RANCHO OJO DE AGUA DE LA COCHE

**TRAN/DO
 FAMILY TRUST
 AND TRAN
 LIVING TRUST**

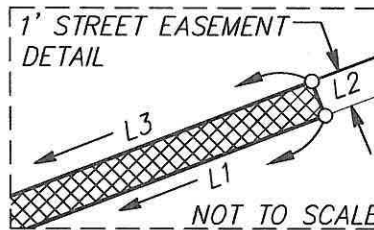
APN: 767-03-041
 541 M 29
 LOT 2

CURVE TABLE

$R=775.50'$
 $\Delta=14^{\circ}06'01''$
 C1 $L=190.85'$
 $CB=S03^{\circ}51'49''E$
 $CH=190.37'$
 $R=37.00'$
 $\Delta=67^{\circ}10'08''$
 C2 $L=43.38'$
 $CB=S00^{\circ}18'20''W$
 $CH=40.93'$

**LINE TABLE**

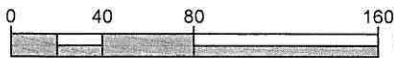
L1 $N69^{\circ}05'28''E$ 147.29'
 L2 $N20^{\circ}54'32''W$ 1.00'
 L3 $S69^{\circ}05'28''W$ 96.34'
 L4 $S33^{\circ}16'44''E$ 27.80'



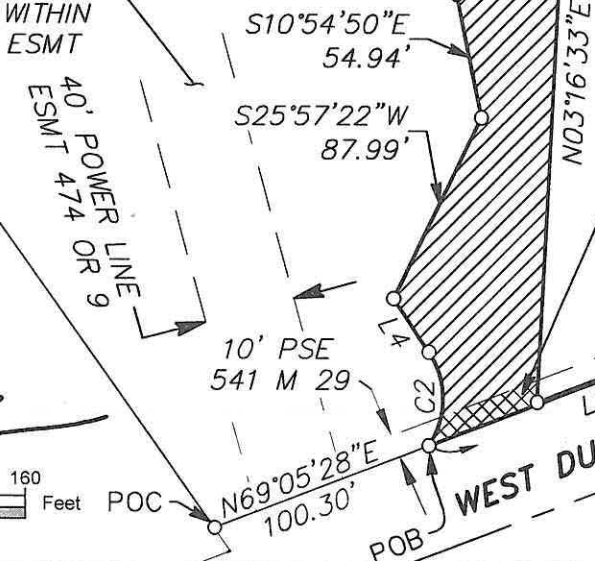
4' POLELINE ESMT
 9971 OR 40 WITHIN
 POWER LINE ESMT



Travis Timothy Bohan



SCALE 1" = 80'



0.60 Ac
 25,989± sf

CITY OF
 MORGAN HILL
 APN: 767-12-040

WESTERLY LINE
 OF N388 OR 483

ENCUMBERED
 AREA 568
 SQUARE FEET±

1' STREET ESMT
 DOC.# 20924585

SEE DETAIL ABOVE

NORTHERLY
 RIGHT OF
 WAY

WEST DUNNE AVENUE

SHEET 1 OF 1



MARK THOMAS

Scale: 1" = 80'
 Date Aug. 2017
 Drawn By MSW
 Checked By TTB

Exhibit B
 APN 767-03-041
 FEE

Plat to Accompany Legal Description
 In the City of Morgan Hill
 Santa Clara County, California



CERTIFICATE OF ACCEPTANCE

(Pursuant to Government Code §27281)

THIS IS TO CERTIFY that the interest in real property conveyed by Luc Van Tran & Hong Phuoc Do, as Trustees of the Tran/Do Family Trust, U.D.T. ("Under Declaration of Trust") dated May 19, 1998, as to an undivided 50% interest and Lieu Van Tran and Ngan Thi Tran Trustee(s) of the The Lieu and Ngan Tran & Ngan Thi Tran Living Trust Dated 01-22-2003 as to an undivided 50% Interest (Grantor), to the City of Morgan Hill a Municipal Corporation (Grantee) for slope easement purposes is hereby accepted by the undersigned officer pursuant to authority conferred by Resolution No. _____, adopted by the City of Morgan Hill on _____ and the Grantee consents to recordation thereof by its duly authorized representative.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____ 20____.

City of Morgan Hill a Municipal Corporation

By: _____

By: _____

RECORDING REQUESTED BY:

City of Morgan Hill
 17575 Peak Avenue
 Morgan Hill, CA 95037-4128

WHEN RECORDED MAIL TO:

City Clerk's Office
 City of Morgan Hill
 17575 Peak Avenue
 Morgan Hill, CA 95037-4128

ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:
 SAME AS ABOVE

The undersigned grantee hereby declares this instrument to be exempt from Recording Fees (Govt. Code §6103 and §27383) and Documentary Transfer Tax (Revenue and Taxation Code §11922).
Government Agency Acquiring Property.

APN #: 767-03-042 (portion)

EASEMENT FOR SLOPE PURPOSES

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Luc Van Tran & Hong Phuoc Do, as Trustees of the Tran/Do Family Trust, U.D.T. ("Under Declaration of Trust") dated May 19, 1998, as to an undivided 50% interest and Lieu Van Tran and Ngan Thi Tran Trustee(s) of the The Lieu and Ngan Tran & Ngan Thi Tran Living Trust Dated 01-22-2003 as to an undivided 50% Interest

hereby Grant(s) to the

CITY OF MORGAN HILL "GRANTEE", a Municipal Corporation

a permanent easement for the purpose of lateral support for an embankment slope and the right and privilege to maintain said embankment slope, as the Grantee may see fit, inclusive of all necessary fences, protective barriers and fixtures for use in connection therewith or appurtenant thereto, as well as the privilege and right to plant and maintain grass, plants and trees on said slope for the protection and beautification of same, in, under, over, along, upon and across said easement described as follows:

**FOR LEGAL DESCRIPTION
 SEE EXHIBIT "A" AND EXHIBIT "B"
 ATTACHED HERETO AND MADE A PART HEREOF**

This deed is hereby accepted by the City of Morgan Hill as disclosed by the attached Certificate of Acceptance by its City Council and attested thereto by the City Clerk.

Attachment: Certificate of Acceptance-Tran (1495 : Acquisition of Portions of Property (Tran) for the Hale Avenue Extension Project)

Easement for Slope Purposes

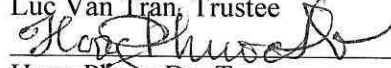
APN # 767-03-042 (portion)

Page 2

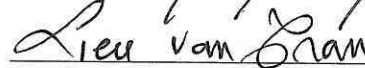
Luc Van Tran & Hong Phuoc Do, as Trustees of the Tran/Do Family Trust, U.D.T. ("Under Declaration of Trust") dated May 19, 1998, as to an undivided 50% interest and Lieu Van Tran and Ngan Thi Tran Trustee(s) of the The Lieu and Ngan Tran & Ngan Thi Tran Living Trust Dated 01-22-2003 as to an undivided 50% Interest



Luc Van Tran, Trustee



Hong Phuoc Do, Trustee

Date: 10/20/2017


Lieu Van Tran, Trustee



Ngan Thi Tran, Trustee

Date: 10/20/2017

Attachment: Certificate of Acceptance-Tran (1495 : Acquisition of Portions of Property (Tran) for the Hale Avenue Extension Project)

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 October 20, 2017, before me, Rosalyn M. Zeigler, a Notary Public, personally appeared Luc Van Tran, Hong Phuoc Do, Lieu Van Tran, Ngan Thi Tran, 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

Rosalyn M. Zeigler

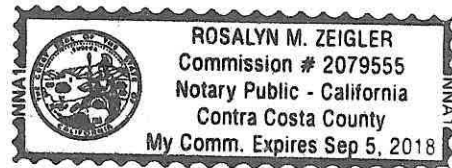


EXHIBIT "A"
LEGAL DESCRIPTION

All that real property situate in a portion of Rancho Ojo de Agua de la Coche, in the City of Morgan Hill, County of Santa Clara, State of California, being a portion of LOT 2 as shown on the PARCEL MAP, filed April 9, 1985 in Book 541 of Maps, Page 29, Santa Clara County Records, more particularly described as:

Commencing at the Intersection of the northerly right of way line of West Dunne Avenue with the southerly prolongation of the westerly line of the GRANT DEED, to the CITY OF MORGAN HILL, recorded April 8, 1994 in Book N388, Page 483, Official Records of Santa Clara County; thence along said westerly line and the prolongation thereof, the following two (2) courses:

1. North $3^{\circ}16'33''$ East, a distance of 355.12 feet; thence
2. North $15^{\circ}24'14''$ West, a distance of 213.10 feet to the Point of Beginning;

thence leaving said westerly line the following thirty four (34) courses, curves, and distances:

1. South $3^{\circ}11'11''$ West, a distance of 191.12 feet to the beginning of a tangent curve concave to the east, having a radius of 775.50 feet and a chord bearing South $3^{\circ}51'49''$ East, a distance of 190.37 feet; thence
2. southerly through a central angle of $14^{\circ}06'01''$, a distance of 190.85 feet along said curve; thence
3. South $10^{\circ}54'50''$ East, a distance of 54.94 feet; thence
4. South $25^{\circ}57'22''$ West, a distance of 87.99 feet; thence
5. South $33^{\circ}16'44''$ East, a distance of 9.22 feet; thence
6. South $74^{\circ}52'12''$ West, a distance of 13.03 feet; thence
7. North $44^{\circ}48'05''$ West, a distance of 72.04 feet; thence
8. North $44^{\circ}47'10''$ West, a distance of 70.46 feet; thence
9. North $34^{\circ}33'54''$ West, a distance of 4.74 feet; thence

10. North 47°11'38" East, a distance of 13.23 feet; thence
11. North 03°50'49" West, a distance of 65.50 feet; thence
12. North 70°54'50" West, a distance of 18.38 feet; thence
13. North 15°36'34" East, a distance of 14.62 feet; thence
14. North 29°31'25" East, a distance of 37.03 feet; thence
15. North 31°47'25" East, a distance of 2.64 feet; thence
16. North 31°47'17" East, a distance of 33.06 feet; thence
17. North 30°47'37" East, a distance of 33.49 feet; thence
18. North 26°28'49" East, a distance of 30.81 feet; thence
19. North 22°16'26" East, a distance of 22.13 feet; thence
20. North 19°11'57" East, a distance of 5.99 feet; thence
21. North 17°14'54" East, a distance of 25.56 feet; thence
22. North 14°18'00" East, a distance of 25.17 feet; thence
23. North 10°15'01" East, a distance of 13.48 feet; thence
24. North 07°22'04" East, a distance of 11.08 feet; thence
25. North 03°58'18" East, a distance of 24.71 feet; thence
26. North 00°03'52" West, a distance of 24.71 feet; thence
27. North 02°15'13" West, a distance of 25.03 feet; thence
28. North 01°59'31" West, a distance of 25.33 feet; thence
29. North 02°51'31" East, a distance of 19.37 feet; thence
30. North 05°47'50" East, a distance of 5.59 feet; thence
31. North 06°41'21" East, a distance of 22.93 feet; thence
32. North 08°12'13" East, a distance of 23.13 feet; thence
33. North 07°59'32" East, a distance of 23.21 feet; thence
34. North 05°51'25" East, a distance of 12.56 feet to a point on said westerly line and the beginning of a non-tangent curve concave to the southwest, having a radius of 135.00 feet and a chord bearing South 26°10'58" East, a distance of 50.49 feet; thence

along said westerly line, southeasterly through a central angle of $21^{\circ}33'28''$, a distance of 50.79 feet along said curve; thence continuing along said westerly line, South $15^{\circ}24'14''$ East, a distance of 55.03 feet to the **Point of Beginning**.

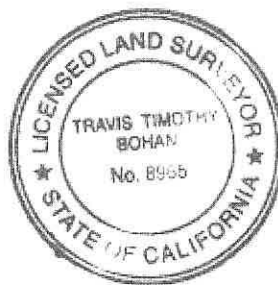
Containing 45,492 square feet or 1.04 acres, more or less.

Subject to a 40' Electric Transmission Line Easement, granted to the Sierra and San Francisco Power Company, recorded July 10, 1929 in Book 474, Page 9, Official Records of Santa Clara County.

Subject to a 4' Poleline Easement, granted to the WESTERN CALIFORNIA TELEPHONE CO., recorded August, 1972, Book 9971, Page 40, Official Records of Santa Clara County.

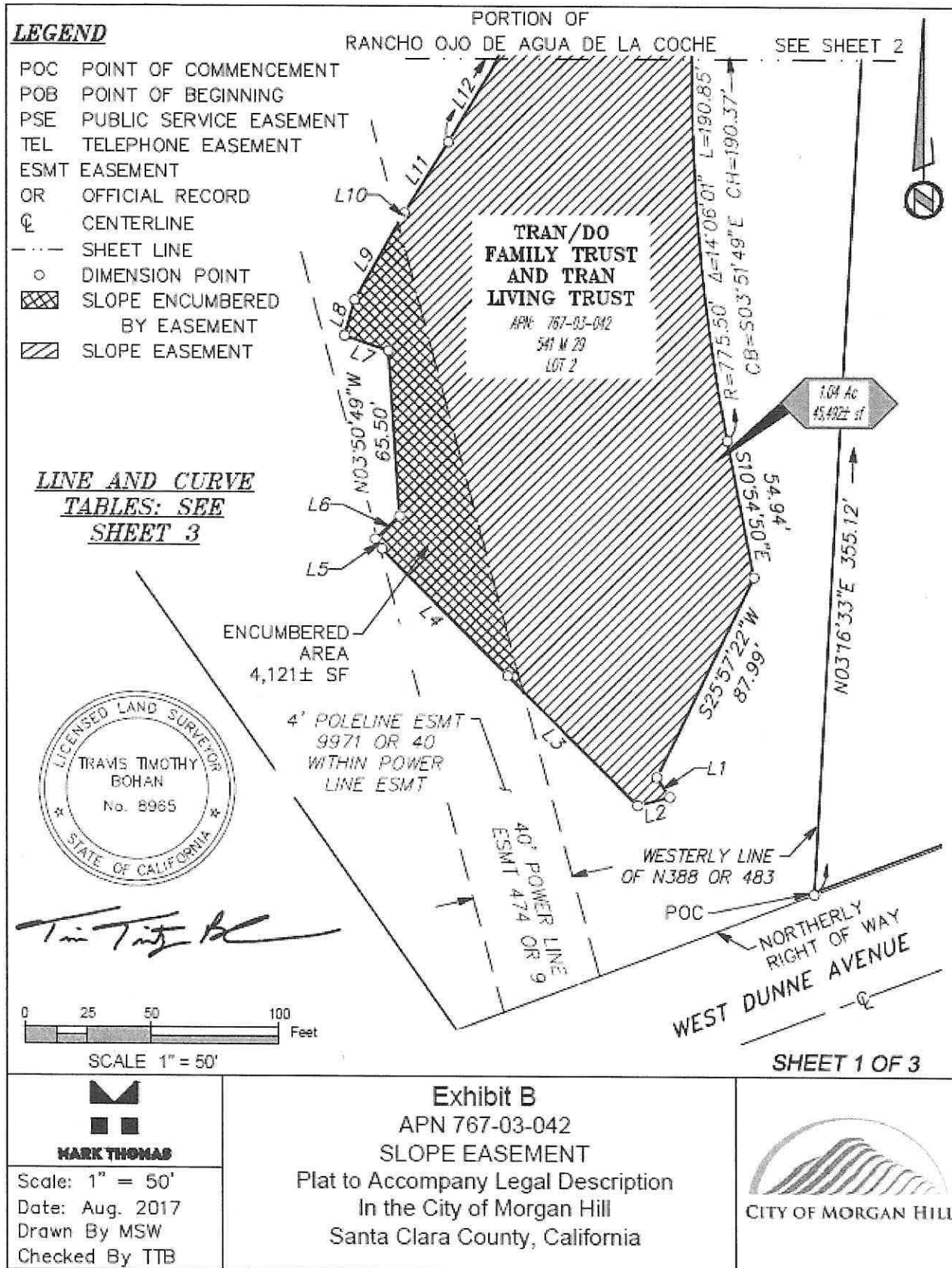
Assessor's Parcel Number: 767-03-042

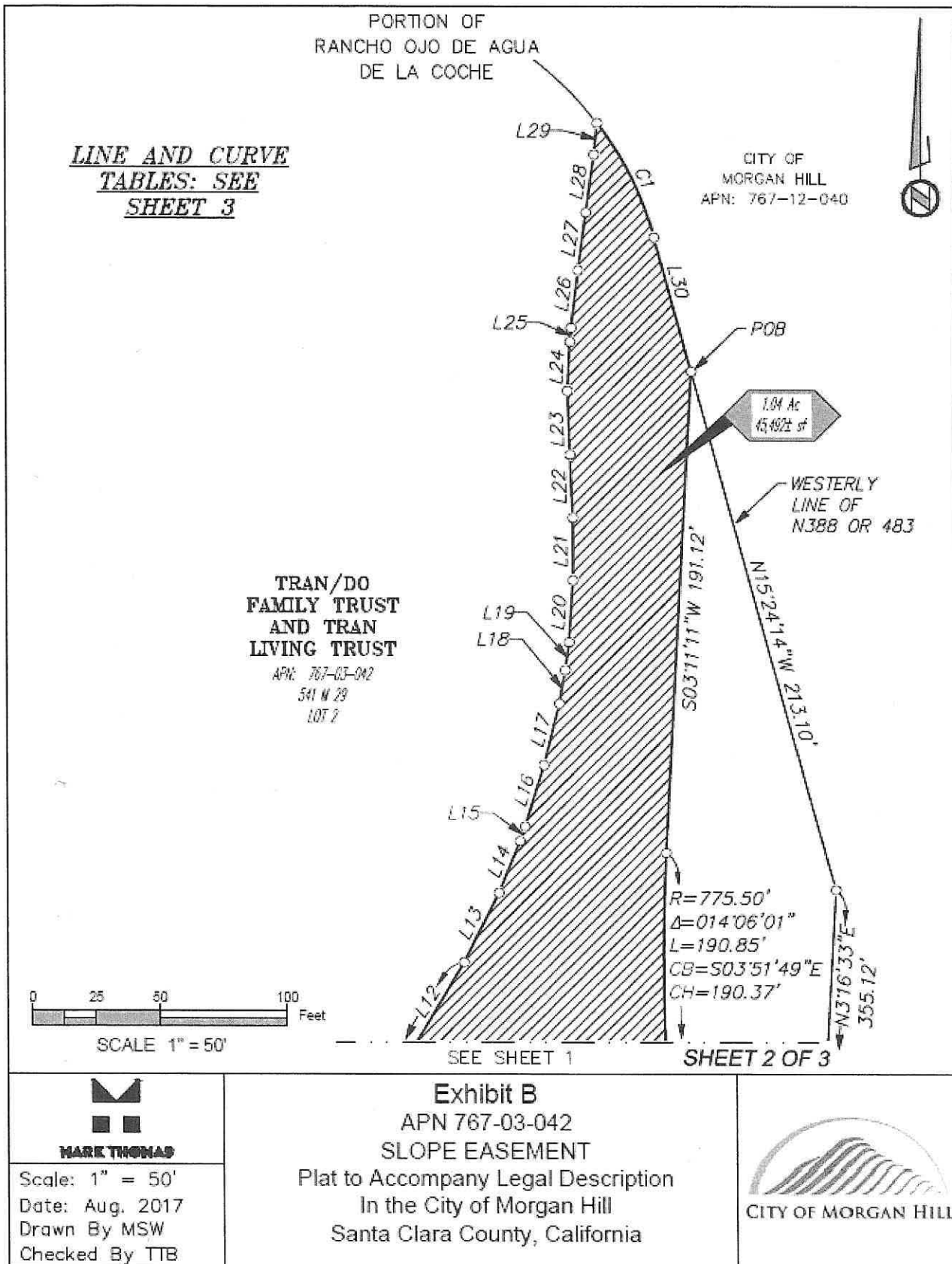
This real property description has been prepared at Mark Thomas, by me, or under my direction, in conformance with the Professional Land Surveyors Act.




Travis Timothy Bohan, LS 8965

AUG. 22, 2017
Date





LINE TABLE

L1 S33°16'44"E 9.22'
 L2 S74°52'12"W 13.03'
 L3 N44°48'05"W 72.04'
 L4 N44°47'10"W 70.46'
 L5 N34°33'54"W 4.74'
 L6 N47°11'38"E 13.23'
 L7 N70°54'50"W 18.38'
 L8 N15°36'34"E 14.62'
 L9 N29°31'25"E 37.03'
 L10 N31°47'25"E 2.64'
 L11 N31°47'17"E 33.06'
 L12 N30°47'37"E 33.49'
 L13 N26°28'49"E 30.81'
 L14 N22°16'26"E 22.13'
 L15 N19°11'57"E 5.99'
 L16 N17°14'54"E 25.56'
 L17 N14°18'00"E 25.17'
 L18 N10°15'01"E 13.48'

LINE TABLE

L19 N07°22'04"E 11.08'
 L20 N03°58'18"E 24.71'
 L21 N00°03'52"W 24.71'
 L22 N02°15'13"W 25.03'
 L23 N01°59'31"W 25.33'
 L24 N02°51'31"E 19.37'
 L25 N05°47'50"E 5.59'
 L26 N06°41'21"E 22.93'
 L27 N08°12'13"E 23.13'
 L28 N07°59'32"E 23.21'
 L29 N05°51'25"E 12.56'
 L30 S15°24'14"E 55.03'

CURVE TABLE

R=135.00'
 Δ=021°33'28"
 C1 L=50.79'
 CB=S26°10'58"E
 CH=50.49'

SHEET 3 OF 3



MARK THOMAS

Scale: NONE
 Date: Aug. 2017
 Drawn By MSW
 Checked By TTB

Exhibit B
 APN 767-03-042
 SLOPE EASEMENT
 Plat to Accompany Legal Description
 In the City of Morgan Hill
 Santa Clara County, California



CERTIFICATE OF ACCEPTANCE

(Pursuant to Government Code §27281)

THIS IS TO CERTIFY that the interest in real property conveyed by Luc Van Tran & Hong Phuoc Do, as Trustees of the Tran/Do Family Trust, U.D.T. ("Under Declaration of Trust") dated May 19, 1998, as to an undivided 50% interest and Lieu Van Tran and Ngan Thi Tran Trustee(s) of the The Lieu and Ngan Tran & Ngan Thi Tran Living Trust Dated 01-22-2003 as to an undivided 50% Interest (Grantor), to the City of Morgan Hill a Municipal Corporation (Grantee) for slope easement purposes is hereby accepted by the undersigned officer pursuant to authority conferred by Resolution No. _____, adopted by the City of Morgan Hill on _____ and the Grantee consents to recordation thereof by its duly authorized representative.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____ 20____.

City of Morgan Hill a Municipal Corporation

By: _____

By: _____

RECORDING REQUESTED BY:

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037-4128

WHEN RECORDED MAIL TO:

City Clerk's Office
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037-4128

ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:
SAME AS ABOVE

The undersigned grantee hereby declares this instrument to be exempt from Recording Fees (Govt. Code §6103 and §27383) and Documentary Transfer Tax (Revenue and Taxation Code §11922).
Government Agency Acquiring Property.

APN #: 767-03-039 (portion)

EASEMENT FOR SLOPE PURPOSES

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Luc Van Tran & Hong Phuoc Do, as Trustees of the Tran/Do Family Trust, U.D.T. ("Under Declaration of Trust") dated May 19, 1998, as to an undivided 50% interest and Lieu Van Tran and Ngan Thi Tran Trustee(s) of the The Lieu and Ngan Tran & Ngan Thi Tran Living Trust Dated 01-22-2003 as to an undivided 50% Interest

hereby Grant(s) to the

CITY OF MORGAN HILL "GRANTEE", a Municipal Corporation

a permanent easement for the purpose of lateral support for an embankment slope and the right and privilege to maintain said embankment slope, as the Grantee may see fit, inclusive of all necessary fences, protective barriers and fixtures for use in connection therewith or appurtenant thereto, as well as the privilege and right to plant and maintain grass, plants and trees on said slope for the protection and beautification of same, in, under, over, along, upon and across said easement described as follows:

FOR LEGAL DESCRIPTION
SEE EXHIBIT "A" AND EXHIBIT "B"
ATTACHED HERETO AND MADE A PART HEREOF

This deed is hereby accepted by the City of Morgan Hill as disclosed by the attached Certificate of Acceptance by its City Council and attested thereto by the City Clerk.

Attachment: Certificate of Acceptance-Tran (1495 : Acquisition of Portions of Property (Tran) for the Hale Avenue Extension Project)

Easement for Slope Purposes

APN # 767-03-041 (portion)

Page 2

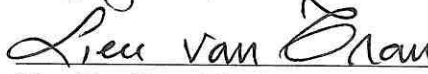
Luc Van Tran & Hong Phuoc Do, as Trustees of the Tran/Do Family Trust, U.D.T. ("Under Declaration of Trust") dated May 19, 1998, as to an undivided 50% interest and Lieu Van Tran and Ngan Thi Tran Trustee(s) of the The Lieu and Ngan Tran & Ngan Thi Tran Living Trust Dated 01-22-2003 as to an undivided 50% Interest



Luc Van Tran, Trustee



Hong Phuoc Do, Trustee



Lieu Van Tran, Trustee



Ngan Thi Tran, Trustee

Date: 10/20/2017

Attachment: Certificate of Acceptance-Tran (1495 : Acquisition of Portions of Property (Tran) for the Hale Avenue Extension Project)

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 _____, before me, _____, a Notary Public, 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 _____

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 October 20, 2017, before me, Rosalyn M. Zeigler, a Notary Public, personally appeared Luc Van Tran, Hong Phuoc Do, Lieu Van Tran, Ngan Thi Tran, 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

Rosalyn M. Zeigler

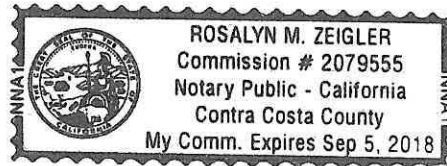


EXHIBIT "A"
LEGAL DESCRIPTION

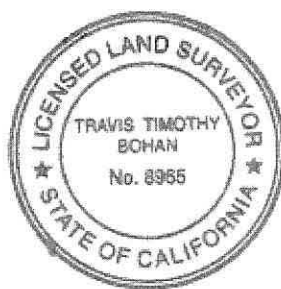
All that real property situate a portion of Rancho Ojo de Agua de la Coche, Morgan Hill, County of Santa Clara, State of California, being a portion of LOT 2, as shown on the PARCEL MAP, filed April 9, 1985, in Book 541 of Maps, Page 29, Santa Clara County Records, more particularly described as:

Commencing at a point on the northerly line LOT 1, as shown on said PARCEL MAP, which bears South 55°06'29" West, a distance of 51.56 from the most northerly corner of said LOT 1, said point also being the most northerly corner of the GRANT DEED granted to the CITY OF MORGAN HILL, recorded April 8, 1994 in Book N388, Page 483, Official Records of Santa Clara County; thence along the easterly line of said GRANT DEED, South 15°24'14" East, a distance of 186.50 feet to the intersection with the line coincident to said LOT 1 and LOT 2, also being the beginning of a non-tangent curve concave to the northeast, having a radius of 2004.94 feet and a chord bearing South 24°08'50" East, a distance of 102.27 feet, and the Point of Beginning; thence leaving said easterly line and along said coincident line, southeasterly through a central angle of 2°55'22", a distance of 102.28 feet along said curve to the beginning of a non-tangent reverse curve concave to southwest, having a radius of 828.86 feet and a chord bearing South 24°44'47" East, a distance of 52.26 feet; thence continuing along said coincident line, southeasterly through a central angle of 3°36'48", a distance of 52.27 feet along said curve; thence leaving said coincident line, South 17°12'22" West, a distance of 12.74 feet; thence South 13°44'04" West, a distance of 24.95 feet; thence South 6°09'22" West, a distance of 13.76 feet to a point on said easterly line and the beginning of a non-tangent curve concave to the west, having a radius of 1046.00 feet and a chord bearing North 15°08'33" West, a distance 9.55 feet; thence along said easterly line, northerly through a central angle of 0°31'23", a distance 9.55 feet along said curve; thence continuing along said easterly line, North 15°24'14" West, a distance of 188.43 feet to the Point of Beginning.

Containing 2,271 square feet or 0.05 acres, more or less.

Assessor's Parcel Number: 767-03-039

This real property description has been prepared at Mark Thomas, by me, or under my direction, in conformance with the Professional Land Surveyors Act.



A handwritten signature in black ink, appearing to read "Travis Bohan", written over a horizontal line.

Travis Timothy Bohan, LS 8965

AUG. 23, 2017

Date

**CITY OF MORGAN HILL
HALE AVENUE EXTENSION PROJECT
APPRAISAL SUMMARY STATEMENT**

APN: 767-03-039, -767-03-041,
767-03-042

BASIC PROPERTY DATA

OWNER:	Lieu Van Tran & Ngan Thi Tran
PROJECT:	Hale Avenue Extension
PROPERTY ADDRESS:	North Side of West Dunne Ave and East end of Noble Court, Morgan Hill, CA
DATE PROPERTY ACQUIRED BY OWNER:	More than five (5) years
ZONING:	R1-20,000, Single-Family Residential and RFD
GENERAL PLAN:	Residential Estate Up to 1 DU/Acre, Residential Attached Low 6-16 DU/Acre and Residential Attached Medium Density 16-24 DU/Acre
PRESENT USE:	Vacant
HIGHEST AND BEST USE®:	Residential subdivision development
TOTAL PROPERTY AREA:	215, 621 square feet – 4.95 acres
PROPERTY RIGHTS PROPOSED TO BE ACQUIRED:	Fee simple: 25,994 square feet (0. acres); Slope Easement 1: 45,492 square feet Slope Easement 2: 2,271 square feet or (0. acres)
DATE OF THIS VALUATION:	March 21, 2017

BASIS OF VALUATION

The just compensation being offered by the City of Morgan Hill (City) is not less than the Agency's approved appraisal of the fair market value of the property. The fair market value of the property proposed for acquisition is based on a fair market value appraisal prepared according to accepted appraisal procedures. Where appropriate, sales of comparable properties and income data are utilized. Principal transactions of comparable properties, where evaluated, are included herein (Page 6). The appraiser has given full and careful consideration to the highest and best use for development of the property and to all features inherent in the property, including, but not limited to, zoning, development potential and the income the property is capable of producing.

California Code of Civil Procedure Section 1263.320 defines Fair Market Value as follows:

- a.) The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being

**CITY OF MORGAN HILL
HALE AVENUE EXTENSION PROJECT
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APN: 767-03-039, -767-03-041,
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ready, willing and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

- b.) The fair market value of property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable.

Value of the entire Property (land only) \$3,381,279

Land Value of the Subject Parcel: Before Condition					
	Estimated Value \$/Sq. Ft.		% of Fee Remaining Due to Pre-Existing Easement	Land Area Sq. Ft.	Estimated Value
Whole Property - Before (land only)					
Total Land Area				215,621	
Fee Simple Interest:	\$16.00	x	100.0%	x 211,115	= \$3,377,840
1-Foot Strip	Nominal		N/A	x 207	= Nominal
Public Street Easement	\$16.00		5.0%	x 4,299	= \$3,439
Concluded Fair Market Value of the Subject Land					\$3,381,279

Value of the Property Rights proposed to be acquired:

A. Fee Simple Land and included Improvements: \$415,904.00

Proposed Fee Simple Interest Parcel: Updated				
Property Rights Required	Estimated Value \$/Sq. Ft.		Land Area Sq. Ft.	Estimated Value
Fee Simple Parcel:	\$16.00	x	25,994	= \$415,904

B. Site Improvements: \$ 0.00

C. Permanent Easement: \$725,997.00

Property Rights Appraised	Estimated Value \$/Sq. Ft.		New Easement % Diminution in Value		Land Area Sq. Ft.	Estimated Value
Slope Easement 1	\$16.00	x	95%	x	45,492	= \$691,478
Slope Easement 2	\$16.00	x	95%	x	2,271	= \$34,519
Total Slope Easements Value:					47,763	\$725,997

D. Temporary Construction Easement (TCE): \$ 0.00

**CITY OF MORGAN HILL
HALE AVENUE EXTENSION PROJECT
APPRAISAL SUMMARY STATEMENT**

APN: 767-03-039, -767-03-041,
767-03-042

Damages^③: \$ None
Benefits^④: \$ Not Quantified

The amount of any other compensation: \$ 0.00

ESTIMATED APPRAISED VALUE:

The estimated fair market value of the proposed acquisition parcels required from the subject property and the recommended Just Compensation are summarized as follows:

Land:
Fee Simple Parcel: \$415,904.00
Total Slope Easements Value: \$725,997.00
Damages: \$None
Benefits: \$ Not quantified

Total Value: Recommended Appraised Value: \$ 1,141,901.00

Rounded To: \$ 1,142,000.00

CONSTRUCTION CONTRACT WORK (CCW)

There is no known construction contract work required.

SUMMARY OF THE BASIS FOR JUST COMPENSATION

Narrative summary of the valuation process supporting compensation:

Site Description

The subject property is located on the north side of West Dunne Avenue and the east end of Noble Court in the City of Morgan Hill in Santa Clara County.

The property is gently sloping nearest the Nobel Court northerly portion to moderately sloping up from West Dunne Avenue at the southerly portion. West Dunne Avenue is a two-lane, two- direction arterial that runs east and west between DeWitt Avenue and Monterey Road where it turns into East Dunne Avenue, continuing across U.S. 101 and east into the hills in eastern Morgan Hill. The street is improved with curb, gutter and sidewalk and includes a center turn lane. Noble Court is partly a two-lane, two direction roadway up to the parking lot of the adjacent convalescent facility then narrows to an unfinished roadway leading to the subject's north end. Surrounding uses are primarily residential in character and include vacant land, a single-family house and townhouses to the east and a convalescent care facility and a single-family house to the west. Opposite West Dunne Avenue is vacant land owned by the City of Morgan Hill intended for the extension of Hale Avenue to the south, a single-family house, a new single-family residential attached subdivision development and the Masonic meeting hall.

**CITY OF MORGAN HILL
HALE AVENUE EXTENSION PROJECT
APPRAISAL SUMMARY STATEMENT**

APN: 767-03-039, -767-03-041,
767-03-042

The subject property is reportedly comprised of a single legal parcel comprised of three Assessor's Parcels located on the North Side of West Dunne Avenue and at the east end of Noble Court. According to information provided by the Planner interviewed with the City of Morgan Hill, the subject is a single legal parcel of record. According to the Assessor's Parcel Data, the subject site consists of 215,621 square feet (4.95 acres) of land area. The subject site is irregular in shape and includes a hillside slope toward the middle of the property to about the northerly boundary. The property is generally comprised of two sections connected by a one-foot wide strip along the southerly boundary. Between the two east and west sections is the right of way for the future extension of Santa Teresa Boulevard, now known as the Hale Avenue extension. According to public records, the City of Morgan Hill acquired the future right-of-way for the Hale Avenue extension more than 20 years ago. The easterly portion of the subject is long in relation to its width and consists of approximately 28,749 square feet, inclusive of a portion of the one-foot connector strip, according to the Assessor's data and an easement deed for the existing public street easement improved with a driveway to the adjacent property. The widest portion of this section is about 70 feet in width at the southerly end nearest the street frontage and narrows to a point at the northerly boundary. Additionally, this parcel slopes up slightly toward the northerly boundary. This portion is also encumbered by a previously acquired public street easement intended for shared access to the east side of the subject parcel and the adjacent property improved with a single-family house. The westerly portion of the subject is comprised of two Assessor's parcels totaling approximately 186,872 square feet, inclusive of a portion of the one-foot connector strip. This area of the subject is also irregular in shape and partially sloping upward toward the northerly boundary where the land is gently sloping near the Noble Court access point. Direct access to both the east and west portions is from West Dunne Avenue. Additionally, alternative access is from Noble Court to the north that currently ends at the northwest corner of the subject property. The owner indicated that the City would require access be extended from Noble Court in order to develop the subject property. The westerly portion of the subject has approximately 160 feet of frontage on West Dunne Avenue. The easterly portion has about 40 feet of frontage on West Dunne Avenue. The two sections are connected by a one-foot wide strip about 207 feet in length that crosses the future Hale Avenue right of way. All public utilities are available to the subject property. The subject is within walking distance to downtown and a variety of desirable amenities as well as the Civic Center that includes the public library. The Santa Clara County Assessor has identified the subject property as APNs: 767-03-039, -041 and -042.

Zoning and General Plan of the Larger Parcel

The zoning category for the subject is R1-20,000, – Single-Family Residential and RPD, Residential Planned Development.

According to the zoning ordinance, "The R-1, Single-Family Low Density Residential District is intended to promote and encourage a suitable environment for family life on medium size parcels of land. The R-1 single-family low density districts are to be used only for suburban single-family detached dwellings, residential care facilities, manufactured homes, small and large family day care homes, secondary dwelling units and duplexes or two single-family attached dwellings on corner lots". Additional uses are permitted with a condition use permit that include public and quasi-public buildings, community clubs, noncommercial recreation areas and facilities, hospitals and medical facilities and nursery schools.

The General Plan land use designation for the subject is a mix of Residential Estate Up to 1 DU/Acre, Residential Attached Low 6-16 DU/Acre and Residential Attached Medium Density 16-24 DU/Acre. A little more than half of the subject land has the General Plan designation for Residential Attached Medium Density which allows for residential development with a density ranging from 16 to 24 dwelling units per acre. This portion is most of the northwesterly portion nearest Noble Court. The southerly

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HALE AVENUE EXTENSION PROJECT
APPRAISAL SUMMARY STATEMENT**

APN: 767-03-039, -767-03-041,
767-03-042

portions of both the east and west sides have a General Plan designation of Residential Attached Low Density which allows for a density range from 6 to 16 dwelling units per acre. The overall average density for the subject is estimated to be about 13.5 dwelling units per acre, assuming the middle of the range for each of the density ranges depicted in the General Plan and recognizing only a very small portion has a General Plan designation allowing only up to one dwelling unit per acre.

Compliance

The subject is vacant land suitable for residential development with varied levels of density. As vacant land, the subject appears to conform to all aspects of the applicable zoning ordinance which is consistent with the General Plan.

As Vacant

The subject property consists of a 4.95-acre site suitable for development of residential dwelling units ranging in density from 1 to 24 dwelling units per acre based on the General Plan designations reported by the City of Morgan Hill Planning Department. Only a very small portion has the lowest density range and the majority of the property has a density range from 6 to 16 dwelling units per acre and 16 to 24 dwelling units per acre. Access to the site is from West Dunne Avenue and the east end of Noble Court. According to the property owner, the main access for a new any development would be from Noble Court at the north end of the property.

The property is of sufficient size and in part in shape and topography to achieve the maximum permitted density that appears to be physically possible for portions of the site that are not encumbered by the power lines and towers and/or too narrow to accommodate a house. Based on current market conditions and the high demand for housing, residential development is concluded to be financially feasible and the maximum productive use of the subject land. With Measure S being recently passed by voters to extend the slow growth initiative of Measure C, the timing of any new development is unknown. However, based on the number of properties under construction and the number of land sales that sold without Measure S allotments, this factor does not appear to be a significant deterrent in investing in residential land in Morgan Hill and/or developing vacant land for a similarly allowed use. Therefore, the highest and best use of the subject property is concluded to be for a residential subdivision development.

As Improved

The subject property is vacant land and there are no improvements.

Property to be Acquired:

Fee Simple Interest Parcel

The proposed fee simple interest parcel is located along the west side of the proposed Hale Avenue extension. The fee parcel is long in relation to its width and runs north and south from West Dunne Avenue to about three-quarters of the distance to the north property line. This parcel is intended for a section of the Hale Avenue roadway extension. The land area required consists of 25,994 square feet.

Slope Easement Parcels

Two permanent slope easements are required from the subject property. The proposed slope easement on the west side of the Hale Avenue extension roadway is located to the immediate west of the proposed fee parcel and extends north and south between West Dunne Avenue and near the north property line, extending west up the existing hillside. The easement is intended for a cut-and-face of the existing hillside to be supported by a new retaining wall. This easement area had been revised and now

**CITY OF MORGAN HILL
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consists of 45,492 square feet. The other proposed slope easement is located on the east side of the proposed Hale Avenue extension roadway and now consists of 2,271 square feet. This easement is also intended for a hillside cut-and-face supported by a retaining wall to make way for the new roadway.

No permanent structures will be permitted in the slope easement areas and the land areas will be sliced and cut off from the remainder parcels and separated by retaining walls eliminating any remaining surface use of the easement land area. Therefore, the slope easements are considered to cause a significant diminution in value of 95% of the fee value. There are no known site improvements located in the proposed acquisition areas.

Since the proposed acquisition parcels will include only land, the value of the land has been estimated by applying the Sales Comparison Approach. The prices paid for land with similar development potential as the subject provide a basis for estimating the value of the subject by comparison. The concluded unit value has been used to value the proposed acquisition parcels. The income and cost approaches are not considered applicable to this assignment since these approaches do not typically apply to the valuation of land.

Sales Comparison Approach

Research was conducted to find comparable land sales in the subject's market area. The following table displays a summary of the selected sales, which are judged to be most representative of current market conditions for the subject larger parcel. The most comparable land sales reflecting the actions of buyers and sellers in the marketplace are summarized below.

Sales Data Summary

Residential Land Sales Data

No.	Address City APN	Recording Date	Site Size (Ac.) (Sq. Ft.)	Zoning General Plan	Density Entitlements	Sale Price	\$ / Sq. Ft.
RL-01	605 E. Main Avenue Morgan Hill, CA 726-20-081 thru 092 Previously: 726-20-053	3/24/2017	3.64 158,558	R1-7,000, RPD, Single-Family District, Residential Planned Development Overlay Residential Detached Medium, up to 7 DU/Acre	3.3 DU/Acre Sale included final map approval, 12-lot subdivision & Measure C allotments processed by seller.	\$4,640,899	\$29.27
RL-02	9475 Monterey Road Gilroy, CA 790-06-044 portion	10/21/2016	13.52 588,931	ND, Neighborhood District Neighborhood District	Cal. 4.1 DU/Acre; 4,000 SF Lots Fully entitled at sale, processed by seller.	\$4,000,000 (+\$10.4 Million in land development costs)	\$6.79
RL-03	North Side Laurel Road Morgan Hill, CA 726-01-008	9/28/2016	6.50 283,140 Net usable	PUD, Planned Unit Development Residential Attached Low, 6-16 DU/Acre	10.0 DU/Acre Buyer processed entitlements prior to close of escrow.	\$6,150,000	\$21.72
RL-04	NEC E. Dunne Avenue & Hill Road Morgan Hill, CA 728-11-026	2/5/2016	1.62 70,567	R1-7,000, RPD, Single-Family District, Residential Planned Development Overlay Residential Detached Medium, up to 7 DU/Acre	3.7 DU/Acre None	\$1,350,000	\$19.13
RL-05	Royal Way Gilroy, CA 799-44-093 thru 098, -101, - 109 & -110	1/22/2016	3.36 146,362	R3, Medium Density Residential District Medium Density Residential 8- 16 DU/Acre	15.2 DU/Acre None	\$1,854,000	\$12.67
Subject	North Side of W. Dunne Avenue & East End of Nobel Court Morgan Hill, CA 767-03-039, -041 & -042	DOV 3/21/2017	4.95 215,621	R1-20,000 - Single-Family District & RPD, Residential Planned Development Overlay Residential Estate up to 1 DU/Ac, Residential Attached Low 6-16 DU/Ac & Attached Medium 16-24 DU/Ac	Estimated at 5-10 DU/Acre None	N/A	N/A

**CITY OF MORGAN HILL
HALE AVENUE EXTENSION PROJECT
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APN: 767-03-039, -767-03-041,
767-03-042

Damages

Damages generally occur when the acquisition of a portion of a property results in the remaining property having less value after the acquisition and construction of the project in the manner proposed than it had as part of the original property prior to the taking. Stated another way, after the acquisition of a portion of the property and construction of the project in the manner proposed, the value of the remaining property is less than it was as part of the entire property before the taking.

In the before condition, the subject property consists of 4.95 acres or 215,621 square feet of vacant land comprised of one legal parcel and identified as three Assessor's Parcel Numbers.

After the proposed acquisitions, the size of the property is reduced by the area of the proposed fee simple interest parcel for a remainder area of 189,627 square feet or 4.35 acres with portions encumbered with the two new slope easements intended for retaining walls to support the cut and sliced hillsides on either side of the proposed Hale Avenue roadway. The unencumbered remainder property will have generally similar utility and access as in the before condition and the highest and best use will remain the same. Therefore, the Appraiser has concluded that there are no damages as a result of the proposed acquisitions or from the construction of the project as proposed.

There are three (3) generally recognized approaches considered in the valuation of real property. These are: the Cost Approach, Sales Comparison Approach, and Income Capitalization Approach. The type and age of the property and the quantity and quality of the available data affect the applicability of each approach in a specific appraisal situation.

The unit values of the subject land have been estimated utilizing the Sales Comparison Approach. This approach to value is based on the comparison of similar properties that have recently sold to the subject. The comparison is made following adjustments for characteristics of an inferior or superior nature. A fee simple unit value was concluded for the subject land based on the comparable sales found. The Cost and Income Approaches to value were not utilized since they were not considered reliable in estimating the value of the subject land in the subject market area.

Benefits

In the after condition, the subject remainder will be bisected by an improved roadway and retaining walls as opposed to an unimproved planned right-of-way. In addition, circulation in the area will be improved with a roundabout at the intersection of West Dunne Avenue and the new Hale Avenue extension to provide improved circulation at controlled speeds. However, since no permanent damages were found to accrue to the subject remainder as a result of the proposed project, any specific benefits that may or may not occur for the subject property remainder have not been quantified. On the other hand, there will be general benefits to the properties in the subject neighborhood and the Morgan Hill community as a result of the project.

**CITY OF MORGAN HILL
HALE AVENUE EXTENSION PROJECT
APPRAISAL SUMMARY STATEMENT**

APN: 767-03-039, -767-03-041,
767-03-042

DEFINITIONS*

① Highest and Best Use Analysis

Highest and best use is defined as the reasonably probable use of land which is legally permissible, physically possible, and financially feasible that results in the highest value. Highest and best use analysis is used in the appraisal process to identify comparable properties and, where applicable, to determine whether the existing improvements should be retained, renovated, or demolished.

② Improvements Pertaining to the Realty (if any)

Machinery, Fixtures and Equipment identified here were separately valued as improvements pertaining to the realty. Prior to escrow close, owner and lessee must agree (and confirm in writing) as to ownership of said improvements pertaining to the realty.

③ Severance Damages (Applies to Proposed Partial Acquisitions)

The appraisal also determines whether or not the City's proposed acquisition results in damages to the remaining property. The basis for this determination is whether or not the value of the remainder is diminished by reason of the anticipated acquisition of the property interest being acquired and the construction of the improvement in the manner proposed. Severance Damages may be mitigated or entirely eliminated by estimating the cost to cure the damages. (Cost to Cure)

④ Benefits (Applies to Proposed Partial Acquisitions)

Benefit to the remainder is the benefit, if any, caused by the construction and use of the project for which the property is acquired in the manner proposed.

* *These definitions are general and provided to assist in the discussion related to the proposed acquisition. They are not intended to be legal definitions.*

An owner-occupant of a residential property containing four (4) units or less has a right to review the appraisal on which the written offer to purchase is based.

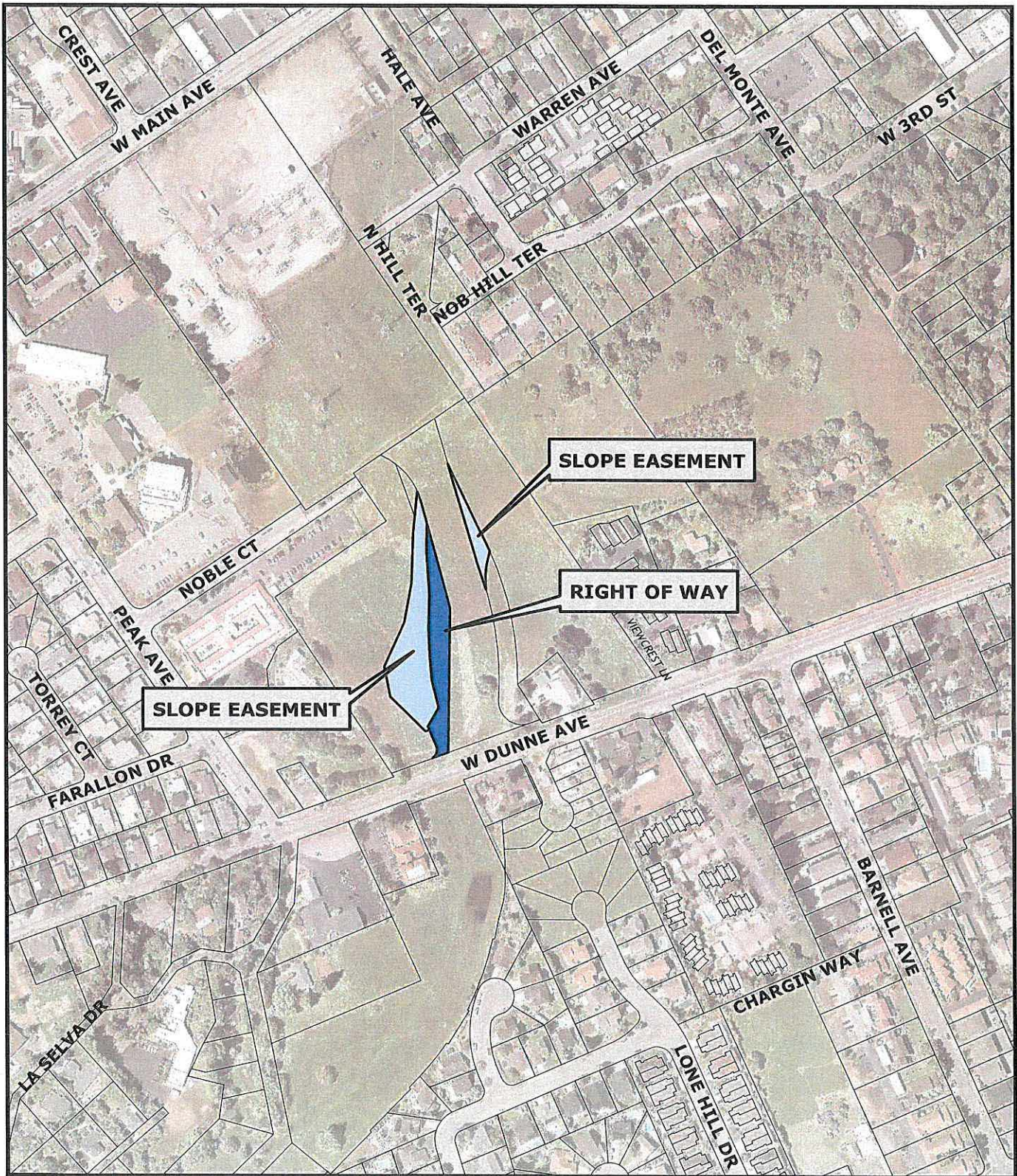
**Appraisal Summary and Appraised Value
Authorized and Approved for Presentation:**

City of Morgan Hill

By: _____

Title: _____

Date: _____



CITY OF MORGAN HILL

Department of Public Works
Engineering and Utilities Division

G:\R-14\Proj\GIS\John\Dave_767_03_039.mxd

**SITE MAP
LANDS OF TRAN
APN 767-03-039,
767-03-041 & 767-03-042**



0 125 250 500 750 1,000
Feet

Attachment: Property Location Map (1495 : Acquisition of Portions of Property (Tran) for the Hale Avenue Extension Project)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2017

PREPARED BY: David Gittleson, Associate Engineer
APPROVED BY: City Manager

ACQUISITION OF PROPERTY (GIANCOLA) APN 767-05-037 FOR THE HALE AVENUE EXTENSION PROJECT

RECOMMENDATION(S)

1. Adopt resolution approving the property purchase of APN 767-05-037 for \$36,400 plus escrow and closing costs from John A. Giancola & Sons, Inc. for the Hale Avenue Extension Project, and
2. Authorize the City Manager to execute all documents and make minor modifications as necessary in order to consummate the transaction.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2017 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

Staff with the assistance of Associated Right of Way Services, is actively pursuing the right of way needed for the Hale Avenue Extension project. The required right-of-way needs to be obtained prior to commencement of construction on the project.

On January 23, 2017, staff notified John A. Giancola that his property was needed for the Hale Avenue Extension Project. Subsequently, an appraisal was prepared and an offer made to the property owner for the appraised value of \$36,400 for the entire parcel (APN 767-05-037), which consists of 0.497 acres of Fee property (see attached appraisal summary statement). Mr. Giancola accepted the offer and a Property Purchase Agreement was prepared by staff and signed by the property owner (see attached). Staff recommends purchasing the property, as the owner is a willing seller and the parcel is needed in order to construct the new roadway. The escrow and closing costs are estimated at \$1,105, bringing the total purchase price to \$37,505.

With the acquisition of the Giancola property, nine properties remain to be acquired by the City for the project. Staff is close to reaching settlements with two other affected property owners and will continue to pursue the acquisition of the remaining properties for the project.

COMMUNITY ENGAGEMENT: Inform

The Hale Avenue Extension Project has been in the City's General Plan since the 1960's and continues to be an important north/south arterial gap fill project. Numerous

community engagement and design meetings were held throughout the early planning and design phases. The City hired David J. Powers and Associates to prepare a Final Environmental Impact Report (FEIR) for the project. This process solicited input from the community regarding environmental impacts from the project as required by the California Environmental Quality Act (CEQA) process. Additional community notifications will be necessary when the project nears construction.

ALTERNATIVE ACTIONS:

City Council could decide to not move forward with the property purchase at this time and direct staff to acquire the property when the project becomes fully funded. However, delaying the right of way acquisition would increase costs, delay the project and possibly jeopardize the City's chances of receiving Measure B funds due to not being "shovel ready."

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- February 16, 2011, City Council heard a report on the community engagement and provided direction for moving forward with the project.
- March 23, 2011, City Council awarded a Professional Services Agreement to Mark Thomas & Company for \$788,000 to prepare civil design documents for the Hale Avenue Extension Project.
- August 24, 2011, City Council approved the intersection design concepts for the Hale Avenue Extension project.
- July 20, 2016, City Council approved the purchase of property (Hosseinpour) APN 767-06-001 for \$183,000 plus escrow fees for the Hale Avenue Extension Project.
- December 7, 2016, City Council approved a consulting agreement with Associated Right of Way Services for \$70,000 to begin negotiations with willing property owners for land required by the project, preparing appraisals, and preparing legal documents/agreements.
- January 18, 2017, City Council awarded a service agreement for design professionals for the Hale Avenue Extension Project to Mark Thomas & Associates for \$401,873 to complete the design.
- July 19, 2017, City Council approved a first amendment with Associated Right of Way Services for \$145,000 to continue acquisition services for the Hale Avenue Extension project.
- August 23, 2017, City Council adopted a resolution certifying that the Final Environmental Impact Report for the Hale Avenue Extension Project and Santa Teresa Corridor Widening and Realignment Project is found to be complete, correct, and in substantial compliance with the requirements of the California Environmental Quality Act (CEQA), including the adoption of the Mitigation and Monitoring Program.

FISCAL AND RESOURCE IMPACT:

Sufficient funds for the \$36,400 property acquisition plus escrow and closing costs (\$1,105) for a total amount of \$37,505 have been budgeted for the project. The project is budgeted in the Fiscal Year 2017-18 Capital Improvement Program under CIP #546007 with \$2,985,000 from the Traffic Impact Fund (309).

CEQA (California Environmental Quality Act):
Project

A Final Environmental Impact Report was prepared by David J. Powers & Associates for the Hale Avenue Extension and Hale Avenue Plan Line Projects. City Council certified the Final Environmental Impact Report (FEIR) and adopted a Mitigation and Monitoring Program (MMRP) for construction of the Hale Avenue Extension Project ("Project") by Resolution No. 17-070 adopted on August 23, 2017.

LINKS/ATTACHMENTS:

1. Resolution-Giancola
2. Property Purchase Agreement-Giancola
3. Grant Deed-Giancola
4. Appraisal Summary Statement-Giancola
5. Project Location Map-Giancola

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A PROPERTY PURCHASE AGREEMENT FOR PROPERTY (APN 767-05-037) FROM JOHN A. GIANCOLA & SONS, INC., FOR THE HALE AVENUE EXTENSION PROJECT

WHEREAS, the Hale Avenue Extension Project is included in the Fiscal Years 2016-17 through 2021-22 Capital Improvement Program under CIP#546007 with funding budgeted for design services and purchasing right of way. The subject property from John A. Giancola & Sons, Inc., is required in order to construct the project, and therefore in the public's interest to acquire the real property for the public Project (Hale Avenue Extension Project); and

WHEREAS, on January 23, 2017, the City of Morgan Hill notified John A. Giancola & Sons, Inc., that the City was interested in purchasing portions of their property for the Hale Avenue Extension Project from willing sellers; and

WHEREAS, on March 8, 2017, the City of Morgan Hill sent John A. Giancola & Sons, Inc., a letter of Notice of Decision to Appraise the subject property; and

WHEREAS, on August 23, 2017, the City of Morgan Hill made an offer to purchase the property from John A. Giancola & Sons, Inc. for the appraised value of \$36,400 from a state certified MAI appraiser; and

WHEREAS, on October 20, 2017, the property owner, John A. Giancola & Sons, Inc., signed the Property Purchase Agreement in the amount of \$36,400; and

NOW, THEREFORE, City Council of the City of Morgan Hill, based upon the foregoing and all documents, statements and facts known to City Council, does hereby resolve:

SECTION 1. Approval of Property Purchase Agreement. City Council approves the Property Purchase Agreement to acquire real property for a total amount of \$36,400 from John A. Giancola & Sons, Inc., see Attachment A. The Settlement amount of \$36,400 plus the estimated \$1,105 escrow and closing costs are hereby approved.

SECTION 2. Authority to City Manager. City Council authorizes the City Manager to execute the Agreement and all documents necessary to consummate the transactions contemplated therein, including without limitation, accepting the Grant Deed. City Council further authorizes the City Manager to make minor modifications to the foregoing described documents which may be necessary to consummate the transactions.

SECTION 3. CEQA. The City Council certified the Final Environmental Impact Report (FEIR) and adopted a Mitigation and Monitoring Program (MMRP) for construction of the Hale Avenue Extension Project ("Project") by Resolution No. 17-070 adopted on August 23, 2017.

The Final Environmental Impact Report concluded that implementation of the Project could result in a number of significant effects on the environment and identified mitigation measures that would mitigate all of those significant effects to a less than significant level.

The City Council finds and determines that the project that is the subject of this Resolution is within the scope of the FEIR, as further modified and approved pursuant to the Mitigation and Monitoring Report.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 6th day of December 2017 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

⌋ 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 December 6, 2017.

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

DATE: _____

IRMA TORREZ, City Clerk

City of Morgan Hill PROPERTY PURCHASE AGREEMENT

In consideration of the terms and conditions set forth in this Property Purchase Agreement (the "Agreement") John A. Giancola & Sons Inc., a California Corporation ("GRANTOR") shall deposit in an escrow designated by the City of Morgan Hill ("City"), a Grant Deed suitable for recordation and conveying from GRANTOR to CITY a *fee simple* title as indicated in Exhibit "A" incorporated herein by this reference, covering the property particularly described therein (collectively "Subject Property").

In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:

1. Entire Agreement

The parties have herein set forth the whole of their agreement. The performance of this Agreement constitutes the entire consideration for the Grant Deed and shall relieve CITY of all further obligations or claims on this account or on account of the location, grade, construction or operation of the proposed public improvement.

2. CITY shall

- A. Pay the sum of **THIRTY SIX THOUSAND AND FOUR HUNDRED DOLLARS (\$36,400.00)** for the Subject Property identified in Exhibit "A" attached hereto and made a part hereof, to the following title company: Old Republic Title Company "ORTC", for the account of the GRANTOR, Escrow No.0625008294-BP conditioned upon the Subject Property vesting in CITY free and clear of all liens, leases, encumbrances, (*recorded or unrecorded*), assessments and taxes except any exceptions to title which are acceptable to CITY as said exceptions are identified in the title report relating to the Subject Property issued by the above Title Company bearing the escrow number shown in Clause 2A and dated *April 21, 2017*, and updates thereof. Clearing of any title exceptions not acceptable to CITY is the responsibility of GRANTOR.
- B. Pay all escrow, recording and title insurance charges, if any, incurred in this transaction.
- C. Prior to the close of escrow, have the authority to deduct and pay from the amount shown in Clause 2A herein any amount necessary to satisfy any liens, bond demands and delinquent taxes due, together with penalties and interest thereon, and/or delinquent and unpaid non delinquent taxes and assessments, which may have become a lien at the close of escrow. Taxes for the tax year in which this escrow closes shall be cleared and paid in the manner required by Section 5086 of the Revenue and Taxation Code if unpaid at the close of escrow. Close of escrow for this transaction shall be contingent upon the title company receiving deeds of reconveyance from any deed of trust or mortgage holder trustees and beneficiaries.

3. CITY Performed Work

All work done under this Agreement shall conform to all applicable building, fire and sanitary laws, ordinances, and regulations relating to such work, and shall be done in a good and workmanlike manner. All structures, improvements or other facilities, when removed, and relocated, or reconstructed by CITY, shall be left in as good condition as found.

4. Payment of Deed of Trust

If this property is secured by a mortgage(s) or deed(s) of trust, GRANTOR is responsible for payment of any demand under authority of said mortgage or deed of trust out of GRANTOR'S proceeds. Such amounts may include, but not be limited to, payments of unpaid principal and interest.

5. Escrow Instructions

GRANTOR hereby authorizes CITY to prepare and file escrow instructions in accordance with this Agreement on behalf of both parties.

6. Hazardous Wastes

The acquisition price of the Subject Property being acquired in this transaction reflects the fair market value of the Subject Property without the presence of contamination. If the Subject Property being acquired is found to be contaminated by the presence of hazardous waste which requires mitigation under Federal or State law, the CITY may elect to recover its clean-up costs from those who caused or contributed to the contamination. GRANTOR shall further indemnify, defend, save and hold harmless the CITY from any and all claims, costs and liability, including reasonable attorney's fees, for any damage, injury or death to persons or property arising directly or indirectly from or connected with the existence of toxic or hazardous material on the Subject Property, save and except claims, costs or litigation arising through the sole willful misconduct of the CITY, its agents or employees.

7. Right of Possession and Use

It is agreed and confirmed by the parties hereto that, notwithstanding the other provisions in this Agreement, the right of possession and use of the Subject Property by CITY, and/or its designees or assignees including the right to remove and dispose of improvements, and install and connect utilities shall commence on close of escrow and that the amount shown in Clause 2A herein includes, but is not limited to, full payment for such possession and use, including interest and damages if any, from said date.

8. Binding on Successors and Assigns

This Agreement shall be binding on and inure to the benefit of the respective heirs, successors and assigns of the parties to this Agreement.

9. No Leases

GRANTOR warrants that there are no oral or written leases on all or any portion of the Subject Property exceeding a period of one month, and GRANTOR further agrees to hold CITY harmless and reimburse CITY for any and all of its losses and expenses occasioned by reason of any lease of said Subject Property held by any tenant of GRANTOR for a period exceeding one month.

10. Release of Claims

GRANTOR, for itself, its agents, assigns, successors in interest, and any related or affiliated entities, hereby fully releases and discharges CITY, its agents, employees, officers, directors, divisions, attorneys, accountants, insurers, successors, and other representatives, and any and all related or affiliated private or public agencies or entities, from any and all causes of action, actions, judgments, liens, indebtedness, obligations, losses, claims, damages, liabilities and demands, including without limitation any claim arising out of or pertaining, directly or indirectly, to the acquisition of the Subject Property described in this Agreement and the construction of any improvements thereon, including without limitation, inverse condemnation, nuisance, severance damages, relocation benefits, reestablishment benefits, the cost or value of any equipment or fixtures, attorneys' fees and costs, loss of goodwill, construction-related dust, noise, traffic and other related construction activity, and lost rentals or business associated with construction of any improvements, and any other types of related losses or damages.

GRANTOR acknowledges that it may hereafter discover facts or law different from, or in addition to that which it now believes to be true with respect to his/her release of claims as set forth in this Agreement, and understands that by executing this Agreement it is waiving any rights of claims for any other or future benefits or damages to which it might be entitled which are not specifically exempted herein. In giving this release, GRANTOR expressly waives the protection of Civil Code Section 1542, which statute provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

11. Approval of CITY

GRANTOR understands that this Agreement is subject to the approval of CITY. Further, that this Agreement shall have no force or effect unless and until said CITY approval has been obtained.

12. Authority to Sign

GRANTOR and the signatories represent and warrant that the signatories to this Agreement are authorized to enter into this Agreement to convey real property and that no other authorizations are required to implement this Agreement on behalf of GRANTOR.

13. Integrity of Property

Except as otherwise provided herein or by express written permission granted by CITY, GRANTOR shall not, after the date of execution of this Agreement and the close of escrow, alienate, lien, encumber or other transfer of the Subject Property or any portion thereof or allow the same to occur, cause or allow any physical changes on the Subject Property, or enter into any lease or contract with respect to the Subject Property or any portion thereof which would survive the close of escrow and impair CITY's use of the Subject Property. GRANTOR shall maintain the Subject Property in its current condition and shall make, at GRANTOR's expense, all repairs necessary to maintain the Subject Property in such condition.

14. Casualty or Loss

If, prior to the close of escrow, GRANTOR becomes aware that all or any material portion of the Subject Property has been destroyed, or substantially damaged, GRANTOR shall promptly give CITY written notice of the event, and CITY, at its option, may, on or before the close of escrow, elect to terminate this Agreement by giving GRANTOR written notice of termination, in which event the parties shall be relieved and released of and from any further duties, obligations, rights, or liabilities hereunder. If CITY elects to complete the transactions contemplated in this Agreement, the Agreement shall remain in full force and effect and the purchase contemplated herein shall be consummated with no further adjustment or modification, and at the close of escrow, GRANTOR shall assign, transfer, and set over to CITY all of the right, title, and interest of GRANTOR in and to any insurance proceeds resulting from any casualty or any awards that have been or may thereafter be made. Such set over may be made at close of escrow by crediting the amounts of any such proceeds and/or awards against the amounts by CITY for the property acquisition under this Agreement.

15. Counterparts Signature

This Agreement may be executed in counterparts, each of which shall be an original, but all counterparts shall constitute one agreement.

16. Specific Performance and Other Remedies

The parties understand that the interests and rights being conveyed by this Agreement are unique and for that reason, among others, the parties will be irreparably damaged in the event that this Agreement is not specifically enforced. Accordingly, in the event of any controversy concerning the obligations under this Agreement, such obligation shall be enforceable by a decree of specific performance or by injunction. Such remedies and all other rights and remedies set forth herein shall be cumulative and not exclusive, and shall be in addition to any and all other remedies which the parties may have hereunder at law or in equity.

(As used above, the term, "GRANTOR" shall include the plural as well as the singular number.)

GRANTOR: JOHN A. GIANCOLA & SONS, INC.
PROJECT NAME: HALE AVENUE EXTENSION PROJECT

APN: 767-05-037

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written herein below.

CITY:

City of Morgan Hill
A Municipal Corporation

BY: _____
Steve Rymer
Title: City Manager

Date: _____

GRANTOR:

John A. Giancola & Sons Inc.
A California Corporation

By: John A. Giancola
John A. Giancola

Title: PPRS

Date: 11-15-2017

APPROVED AS TO FORM:

By: _____

Title: _____

Date: _____

NO OBLIGATION OTHER THAN SET FORTH HEREIN WILL BE RECOGNIZED

Attachment: Property Purchase Agreement-Giancola (1510 : Acquisition of Property (Giancola) for the Hale Avenue Extension Project)

GRANTOR: JOHN A. GIANCOLA & SONS, INC.
PROJECT NAME: HALE AVENUE EXTENSION PROJECT

APN: 767-05-037

ORDER NO. : **0625008294**

EXHIBIT A

The land referred to is situated in the County of Santa Clara, City of Morgan Hill, State of California, and is described as

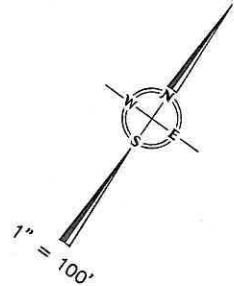
follows: Parcel 1:

As delineated upon that certain Map entitled "Parcel Map", filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on July 11th, 1991 in Book 628 of Maps, at Page 38

APN: 767-05-037
ARB: 770-07-051

Attachment: Property Purchase Agreement-Giancola (1510 : Acquisition of Property (Giancola) for the Hale Avenue Extension Project)

BOOK 767	PAGE 5
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Packet Pg. 254

RECORDING REQUESTED BY:

City of Morgan Hill
 17575 Peak Avenue
 Morgan Hill, CA 95037-4128

WHEN RECORDED MAIL TO:

City of Morgan Hill
 17575 Peak Avenue
 Morgan Hill, CA 95037-4128

Attn: City Clerk

SPACE ABOVE FOR RECORDER'S USE

APN: 767-05-037

This document is exempt from the payment of a recording fee pursuant to Government Code § 27383 and §6103, and exempt from Documentary Transfer Tax pursuant to California Revenue and Taxation Code Section 11922 (Governmental Agency acquiring title).

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

JOHN A. GIANCOLA & SONS INC., A CALIFORNIA CORPORATION

HEREBY GRANT(S) TO

CITY OF MORGAN HILL (GRANTEE), a Municipal Corporation

That certain property in the County of Santa Clara, State of California, more particularly described in Exhibits A and B, attached hereto and by this reference incorporated herein.

**JOHN A. GIANCOLA & SONS INC.,
 A CALIFORNIA CORPORATION**

By: _____

John A. Giancola

Title: _____

PARS

Date: _____

11-15-2017

NOTARY ACKNOWLEDGMENT ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

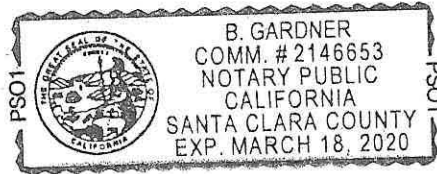
STATE OF CALIFORNIA
COUNTY OF Santa Clara

On this 15th day of NOVEMBER, 20 17, before me, B. GARDNER, a
Notary Public in and for the State of California, personally appeared
John A. Giancola 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 the day and year first above written.

B. Gardner
NOTARY PUBLIC



Attachment: Grant Deed-Giancola (1510 : Acquisition of Property (Giancola) for the Hale Avenue Extension Project)

CERTIFICATE OF ACCEPTANCE
(Pursuant to Government Code §27281)

THIS IS TO CERTIFY that the interest in real property conveyed by JOHN A. GIANCOLA, A MARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY (Grantor), to the City of Morgan Hill a Municipal Corporation (Grantee), is hereby accepted by the undersigned officer pursuant to authority conferred by Resolution No. _____, adopted by the City of Morgan Hill on _____ and the Grantee consents to recordation thereof by its duly authorized representative.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____ 20____.

By: _____

ORDER NO. : 0625008294**EXHIBIT A**

The land referred to is situated in the County of Santa Clara, City of Morgan Hill, State of California, and is described as follows: Parcel

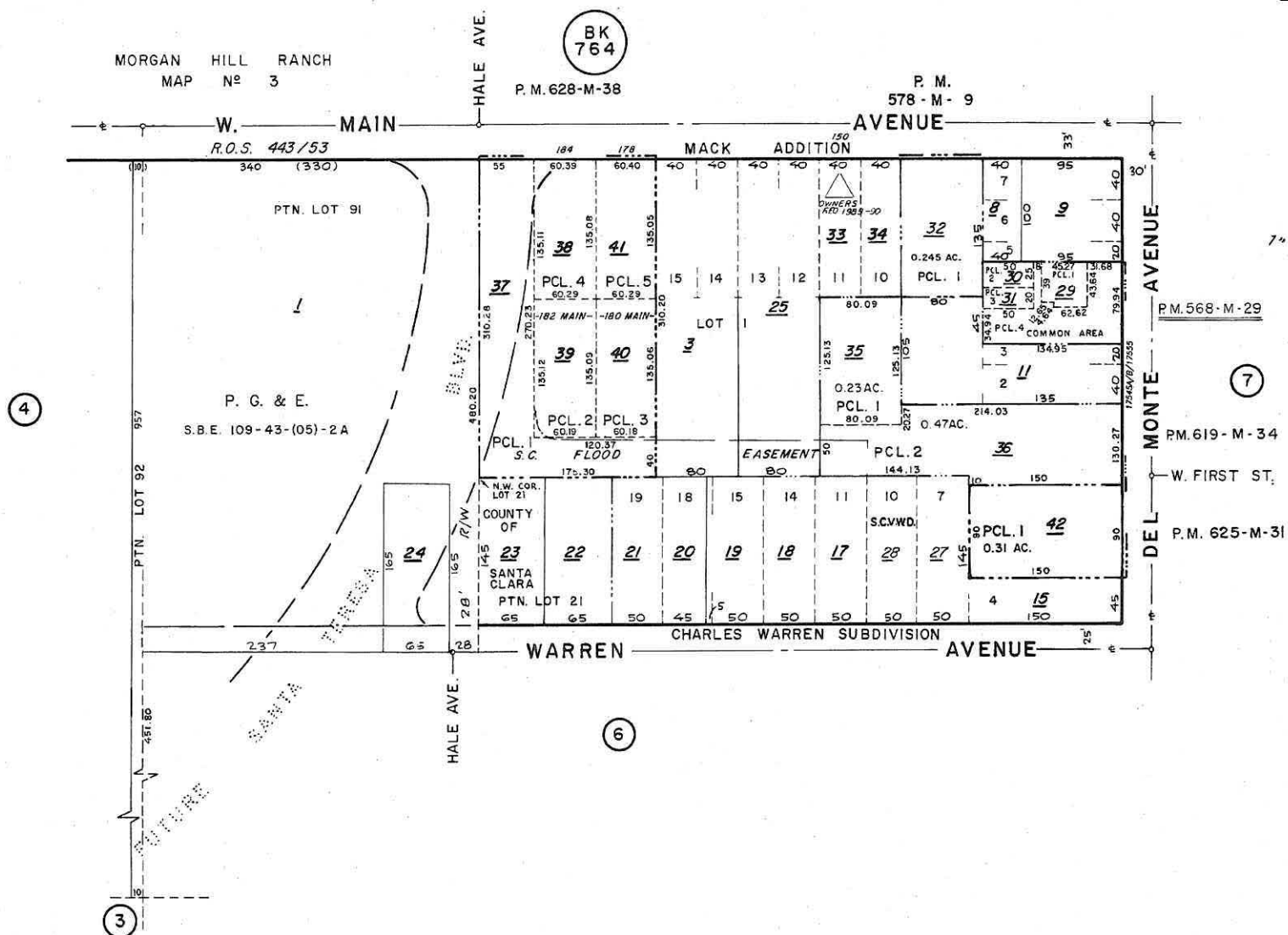
1:

As delineated upon that certain Map entitled "Parcel Map", filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on July 11th, 1991 in Book 628 of Maps, at Page 38

APN: 767-05-037

ARB: 770-07-051

Attachment: Grant Deed-Giancola (1510 : Acquisition of Property (Giancola) for the Hale Avenue Extension Project)



LAWRENCE E. STONE - ASSESSOR
Cadastral map for assessment purposes only.
Compiled under R. & T. Code, Sec. 327.
Effective Roll Year 2016-2017

**CITY OF MORGAN HILL
HALE AVENUE EXTENSION PROJECT
APPRAISAL SUMMARY STATEMENT**

APN: 767-05-037

BASIC PROPERTY DATA

OWNER:	John A. Giancola, a married man as his sole and separate property
PROJECT:	Hale Avenue Extension
PROPERTY ADDRESS:	10500 Foothill Avenue, Gilroy, CA 95020
DATE PROPERTY ACQUIRED BY OWNER:	Over 5 years
ZONING:	R-2, 3,500, Medium-Density Residential and CC-R, Central Commercial/Residential District
GENERAL PLAN:	Residential Attached Low 6-16 DU/Acre
PRESENT USE:	Residential development
HIGHEST AND BEST USE®:	As Vacant: Residential development As Improved: Not applicable - vacant
TOTAL PROPERTY AREA:	21,641 square feet; or 0.497 acre
PROPERTY RIGHTS PROPOSED TO BE ACQUIRED:	Fee simple: 2,690 square feet or 0.06 acre; Slope easement: 327 square feet or 0.007 acre; Uneconomic Remnant: 18,951 square feet or 0.435 acres
DATE OF THIS VALUATION:	March 21, 2017

BASIS OF VALUATION

The fair market value being offered by the City of Morgan Hill (City) is not less than the City's approved appraisal of the fair market value of the property. The fair market value of the property proposed for acquisition is based on a fair market value appraisal prepared according to accepted appraisal procedures. Where appropriate, sales of comparable properties and income data are utilized. Principal transactions of comparable properties, where evaluated, are included herein (Page 7). The appraiser has given full and careful consideration to the highest and best use for development of the property and to all features inherent in the property, including, but not limited to, zoning, development potential and the income the property is capable of producing.

California Code of Civil Procedure Section 1263.320 defines Fair Market Value as follows:

- a.) The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

**CITY OF MORGAN HILL
HALE AVENUE EXTENSION PROJECT
APPRAISAL SUMMARY STATEMENT**

APN: 767-05-037

- b.) The fair market value of property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable.

Value of the entire Property \$36,357

Land Value of the Subject Parcel: Before Condition						
	Estimated Value \$/Sq. Ft.		% of Fee Remaining Due to Pre-Existing Easement & Creek/Ditch		Land Area Sq. Ft.	Estimated Value
Whole Property - Before (land only)						
Total Land Area					21,641	
Unencumbered Area	N/A	x	N/A	x	0	= \$0
SCVWD Flood Control Easement & Creek/Ditch	\$28.00	x	6.0%	x	21,641	= \$36,357
Concluded Fair Market Value of the Subject Land						\$36,357
					<i>Rounded To:</i>	<i>\$36,400</i>

Value of the Property Rights proposed to be acquired:

A. Fee Simple Land and included Improvements: \$ 4,519.00

Proposed Fee Simple Interest Parcel: Updated						
Property Rights Required	Estimated Value \$/Sq. Ft.		% of Fee Remaining Due to Pre-Existing Easement & Creek/Ditch		Land Area Sq. Ft.	Estimated Value
Fee Simple Interest Parcel					2,690	
Unencumbered Area	N/A	x	N/A	x	0	= N/A
Encumbered Area: SCVWD Easement & Creek/Ditch	\$28.00	x	6%	x	2,690	= \$4,519
Fee Simple Parcel:						\$4,519

B. Slope easement \$ 173.00

Proposed Slope Easement: Updated

	Estimated Value \$/Sq. Ft.	x	% of Fee Remaining Due to Pre-Existing Easement & Creek/Ditch	x	New Slope Easement % Diminution in Value	x	Land Area Sq. Ft.	=	Estimated Value
Property Rights Appraised									
Slope Easement:	\$28.00	x	6%	x	25%	x	327	=	\$137
Total Slope Easement Value:							327		\$137

C. Site Improvements: \$ 0.00

**CITY OF MORGAN HILL
HALE AVENUE EXTENSION PROJECT
APPRAISAL SUMMARY STATEMENT**

APN: 767-05-037

D. Damages③: \$31,700.00

Uneconomic Remnant Parcels - Fully Damaged - Updated							
Fee Simple Interest	Estimated Value \$/Sq. Ft.	x	% of Fee Remaining Due to Pre-Existing Easement & Creek/Ditch	x	% of Fee Remaining Due to New Slope Easement	x	Land Area (Sq. Ft.) = Estimated Value
Total Remainder Area:							18,951
No Access in After Condition:							
Existing Flood Control Creek/Ditch Easement	\$28.00	x	6%	x	N/A	x	18,624 = \$31,288
New Slope Easement + Existing Easement	\$28.00	x	6%	x	75%	x	327 = \$412
Total Fair Market Value of Uneconomic Remnant							18,951 \$31,700

Benefits: \$ 0.00

The amount of any other compensation: \$ 0.00

ESTIMATED FAIR MARKET VALUE:

Land:
 Fee Simple Parcel: \$ 4,519.00
 Slope Easement: \$ 137.00
 Damages: Uneconomic Remnant Parcel: \$31,700.00
 Benefits: \$ 0.00

Total Value: Recommended Appraised Value: \$36,356.00

Rounded To: \$36,400.00

CONSTRUCTION CONTRACT WORK (CCW)

There is no known construction contract work required since the proposed fee and slope easement acquisitions and the construction of the project in the manner proposed result in a full acquisition of the entire subject property, considering the remainder portion was concluded to be an uneconomic remnant in the after condition.

Benefits

The construction of a new roadway is intended to provide traffic relief and an alternative circulation route to local residents and visitors. However, the subject remainder parcel will have no feasible or physical access from a public roadway due to the construction of the project in the manner proposed as well as the located of the existing creek/ditch that runs through the subject remainder parcel. Therefore, the remainder parcel was judged to be uneconomic in the after condition and no benefits were found to off-set these damages.

Attachment: Appraisal Summary Statement-Giancola (1510 : Acquisition of Property (Giancola) for the Hale Avenue Extension Project)

SUMMARY OF THE BASIS FOR FAIR MARKET VALUE

Narrative summary of the valuation process supporting compensation:

As Vacant

The subject property consists of a 21,641 square foot lot, otherwise suitable for the development of a single-family residential house or duplex as allowed under the General Plan designation and the zoning for a majority of the subject parcel. The Appraiser estimated that only about 20% of the land is zoned for the commercial/residential combined use which is not completely consistent with the residential use General Plan designation. In addition, market research indicates that residential lots sell for a greater unit price than similar commercially zoned land. For these reasons, the most likely use for the subject is concluded to be for a residential use. However, the subject property is encumbered with an existing flood control easement and a creek/ditch runs through the property precluding the use of the site for residential use. Additionally, access to the site is from West Main Avenue and the site's "L" shape further limits its physical utility.

The property is otherwise sufficient in size to accommodate a single-family house or duplex similar to the four houses on the adjacent parcels to the east. Based on current market conditions and the high demand for housing, the development of a single-family house or duplex is concluded to be financially feasible and the maximum productive use of the subject land. With Measure S being recently passed by voters to extend the slow growth initiative of Measure C, the timing of any new development is unknown. However, based on the number of properties under construction and the number of land sales that sold without Measure S allotments, this factor does not appear to be a significant deterrent in investing in residential lots in Morgan Hill and/or developing vacant land for a similarly allowed use. Therefore, the highest and best use of the subject property, assuming it were physically possible and legally permissible to develop, is concluded to be for the development of a single-family house or duplex similar to the four houses on the lots to the immediate east.

However, based on the pre-existing flood control easement that covers the entire property and the physical encumbrance of the creek that runs through the property and any required creek setback requirements, a significant discount will be applied to the residential lot value concluded for the subject, as unencumbered, to account for these pre-existing legal and physical conditions that preclude any development on the site.

As Improved

The subject property is vacant land and there are no improvements.

Fee Simple Interest Parcel

The proposed fee simple interest parcel is a strip of land located along most of the West Main Avenue frontage and extending about half-way down the west side of the property. The fee parcel is an elongated triangle that flares out to the east along the street frontage. The fee parcel consists of approximately 2,690 square feet. The fee parcel is intended for a portion of the Hale Avenue extension roadway.

There are no site improvements located in the proposed acquisition area with the exception of some minor chain-link fencing that appears to be installed for safety purposes near the creek. An Appraisal Map showing the right-of-way needs for the project was provided to the Appraiser for use in determining the proposed acquisition area.

**CITY OF MORGAN HILL
HALE AVENUE EXTENSION PROJECT
APPRAISAL SUMMARY STATEMENT**

APN: 767-05-037

Compliance

The subject is vacant land, otherwise, suitable for the development of a single-family house or duplex similar to the improved four-lots adjacent to the subject. However, the existing flood control easement and creek on the property preclude the use of the land for development of a single-family house or duplex. As vacant land, the subject appears to conform to all aspects of the applicable zoning ordinance which is consistent with the General Plan.

Valuation Methodology

There are three generally recognized approaches considered in the valuation of real property. These are the cost approach, sales comparison approach, and income approach. The type and age of the property and the quantity and quality of the available data affect the applicability of each approach in a specific appraisal situation.

The **Cost Approach** estimates, through support sources, the cost of constructing the subject improvements. Accrued depreciation from all causes is estimated and deducted from the estimates of cost new of the improvements. The market value of the land is added to this depreciated cost estimate to indicate the value of the subject property by the cost approach. The **Land Value Estimate** in the valuation process is usually a separate step, which is generally accomplished through the application of the sales comparison approach. The land value conclusion is then incorporated into the cost approach.

The **Sales Comparison Approach** involves a search for recent sales of properties similar to the subject. The prices paid for these properties provide the basis for estimating the value of the subject by comparison. Adjustments are made for the differences in the properties as they compare to the subject. A correlation of the data provides a value estimate for the subject. This is the most used, and considered the most reliable, approach to estimating the value of land.

The **Income Approach** looks at the relationship between a property's income producing ability and the value buyers and sellers assign to the income. An estimate is made of the market rent to indicate an annual gross income. Estimated fixed and variable operating expenses are deducted from the annual gross income to provide an annual net operating income. An indicated value of the subject is derived through direct capitalization of the indicated net income by a market derived overall rate or through the use of the discounted cash flow technique.

Reconciliation involves consideration of the relevance and influence of each approach in relation to the actions of typical users and investors of properties and particularly the subject property. The three indications of value are discussed and reconciled into a final conclusion of market value. The City of Morgan Hill has requested an appraisal of the current market value of the proposed partial acquisition parcel required from the subject larger parcel.

Since the proposed acquisition parcel will include only land, the value of the land has been estimated by applying the Sales Comparison Approach. The prices paid for land with otherwise similar development potential as the subject, assuming it were physically and legally developable, provide a basis for estimating the value of the subject by comparison. In the case of the subject property that is fully encumbered by an existing flood control easement and includes a creek that runs through the property, a significant discount will be applied to the concluded residential lot value to account for the fact that the subject has no development potential due to the pre-existing legal and

**CITY OF MORGAN HILL
HALE AVENUE EXTENSION PROJECT
APPRAISAL SUMMARY STATEMENT**

APN: 767-05-037

physical conditions on the site. The concluded discounted unit value has been used to value the proposed acquisition parcel.

The City of Morgan Hill has requested an appraisal of the current market value of the proposed partial acquisition parcel required from the subject larger parcel.

Since the proposed acquisition parcel will include only land, the value of the land has been estimated by applying the Sales Comparison Approach. The prices paid for land with otherwise similar development potential as the subject, assuming it were physically and legally developable, provide a basis for estimating the value of the subject by comparison. In the case of the subject property that is fully encumbered by an existing flood control easement and includes a creek that runs through the property, a significant discount will be applied to the concluded residential lot value to account for the fact that the subject has no development potential due to the pre-existing legal and physical conditions on the site. The concluded discounted unit value has been used to value the proposed acquisition parcel.

The income and cost approaches are not considered applicable to this assignment since these approaches do not typically apply to the valuation of land.

Fee Simple Acquisition Parcel

The City of Morgan Hill requires one parcel from the subject property in fee simple interest for the Hale Avenue Extension Project. The fee simple parcel is located along the east side of the proposed Hale Avenue extension road right-of-way at the northwest corner of the subject parcel and is intended for roadway purposes. According to the revised Right-of-Way Needs Map provided, the area required is an elongated triangle that extends east along a portion of the front of the subject parcel and consists of approximately 2,690 square feet.

Based on the concluded fee simple value of the subject parcel of \$28.00 per square foot, assuming the site is a developable residential lot, multiplied by the 6% remaining fee value as a result of a pre-existing flood control easement and the creek/ditch that runs through the subject parcel, the proposed fee simple acquisition area is valued as illustrated on page 2 of this summary.

Slope Easement Acquisition

One permanent slope easement has been added to the right of way needs required from the subject property. The proposed slope easement is located to the immediate south of the southerly tip of the proposed fee parcel along a portion of the westerly property line. The easement is intended for earthwork and grading to match the grades between two parcels (typically a 3:1 slope, 3 feet horizontal to every 1 foot of vertical), according to the description provided by the City. The proposed slope easement is located adjacent to the proposed Hale Avenue extension roadway. The easement area consists of approximately 327 square feet.

No permanent structures will be permitted in the slope easement area. However, grading work to conform to the adjacent proposed Hale Avenue roadway is judged to have only a minor impact on the subject parcel, in the before condition. Thus, a diminution in value toward the lower end of the probable range an easement can diminish the use of a property is judged to be appropriate.

Thus, a diminution in value of 25% of the fee value is judged to be warranted. The land value has been previously determined to be \$28.00 per square foot, assuming the land was not preencumbered with an existing flood control easement and the physical encumbrance of a creek/ditch that runs through the

Attachment: Appraisal Summary Statement-Giancola (1510 : Acquisition of Property (Giancola) for the Hale Avenue Extension Project)

**CITY OF MORGAN HILL
HALE AVENUE EXTENSION PROJECT
APPRAISAL SUMMARY STATEMENT**

APN: 767-05-037

property. The remaining fee value, in the before condition, was previously concluded to be 6% of the underlying fee value. The table on page 2 of this summary indicates the estimated fair market value of the proposed slope easement required from the subject property.

Sales Comparison Approach

Research was conducted to find comparable land sales in the subject's market area. The following table displays a summary of the selected sales, which are judged to be most representative of current market conditions for the subject underlying land parcel. The most comparable land sales reflecting the actions of buyers and sellers in the marketplace are summarized below:

The Comparable Sales used are listed below:

Residential Lot Sales Data

No.	Address City APN	Recording Date	Site Size (Ac.) (Sq. Ft.)	Zoning General Plan	Density Entitlements	Sale Price	\$ / Sq. Ft.
RL-01	175 Lindo Lane Morgan Hill, CA 764-14-051	2/23/2017	0.17 7,440	R2-3,500, Medium Density Residential Residential Attached Low 6-16 DU/Acre	5.9 DU/Acre Sale included plans for a house and Title 24 was complete.	\$280,000	<u>\$37.63</u>
RL-02	17635 Peak Avenue Morgan Hill, CA 764-36-037	1/18/2017	0.30 12,900	R-1, 7,000 Single-Family Residential Residential Detached Medium, up to 7 DU/Acre	13.8 DU/Acre Site plan, architectural elevations, city development agreement and floor plans for site were included in the sale.	\$390,000	<u>\$30.23</u>
RL-03	7224 Church Street Gilroy, CA 799-09-042	12/1/2016	0.16 7,000	R-2, Two-Family Residential Low Density Residential 3-7.25 DU/Acre, 6,000-14,500 SF lots	Allows up to 7.25 DU/Acre None	\$156,100	<u>\$22.30</u>
RL-04	19095 Rose Lane Morgan Hill, CA 726-36-005	8/25/2016	0.75 32,700	R1-7,000, Single-Family District Residential Attached Low 6-16 DU/Acre	Allows up to 4.6 DU/Acre None	\$300,000	<u>\$9.17</u>
RL-05	395 East 8th Street Gilroy, CA 841-11-077	3/30/2016	0.18 8,000	R-2, Two-Family Residential Low Density Residential 3-7.25 DU/Acre, 6,000-14,500 SF lots	11.1 DU/Acre Plans included with lot sale.	\$175,000	<u>\$21.88</u>
Subject	South Side of West Main Avenue, East Side of Proposed Hale Avenue Morgan Hill, CA 767-05-037	DOV 3/21/2017	0.50 21,641	R-2, 3,500, Medium Density Residential & CC-R, Central Commercial/Residential District Residential Attached Low 6-16 DU/Acre	Property is 100% encumbered with a flood control easement. None	N/A	N/A

**CITY OF MORGAN HILL
HALE AVENUE EXTENSION PROJECT
APPRAISAL SUMMARY STATEMENT**

APN: 767-05-037

DEFINITIONS*

① Highest and Best Use Analysis

Highest and best use is defined as the reasonably probable use of land which is legally permissible, physically possible, and financially feasible that results in the highest value. Highest and best use analysis is used in the appraisal process to identify comparable properties and, where applicable, to determine whether the existing improvements should be retained, renovated, or demolished.

② Improvements Pertaining to the Realty (if any)

Machinery, Fixtures and Equipment identified here were separately valued as improvements pertaining to the realty. Prior to escrow close, owner and lessee must agree (and confirm in writing) as to ownership of said improvements pertaining to the realty.

③ Severance Damages (Applies to Proposed Partial Acquisitions)

The appraisal also determines whether or not the City's proposed acquisition results in damages to the remaining property. The basis for this determination is whether or not the value of the remainder is diminished by reason of the anticipated acquisition of the property interest being acquired and the construction of the improvement in the manner proposed. Severance Damages may be mitigated or entirely eliminated by estimating the cost to cure the damages. (Cost to Cure)

④ Benefits (Applies to Proposed Partial Acquisitions)

Benefit to the remainder is the benefit, if any, caused by the construction and use of the project for which the property is acquired in the manner proposed.

* *These definitions are general and provided to assist in the discussion related to the proposed acquisition. They are not intended to be legal definitions.*

An owner-occupant of a residential property containing four (4) units or less has a right to review the appraisal on which the written offer to purchase is based.

**Appraisal Summary and Offer of Fair Market Value
Authorized and Approved for Presentation:**

City of Morgan Hill

By: _____

Title: _____

Date: _____

Attachment: Appraisal Summary Statement-Giancola (1510 : Acquisition of Property (Giancola) for the Hale Avenue Extension Project)



APN
767-05-037

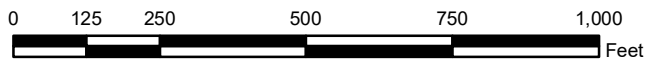


CITY OF MORGAN HILL

Department of Public Works
Engineering and Utilities Division

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**SITE MAP
LANDS OF GIANCOLA
APN 767-05-037**



Attachment: Project Location Map-Giancola (1510 : Acquisition of Property (Giancola) for the Hale Avenue Extension Project)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2017

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

NINTH SEMI-ANNUAL REPORT ON POST-ISSUANCE COMPLIANCE FOR TAX ADVANTAGED BONDS

RECOMMENDATION(S)

Receive and accept report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

At its regular meeting on April 17, 2013, the City Council adopted procedures for Finance staff to follow in administering tax-exempt bonds in accordance with the Internal Revenue Service. This report, Post-Issuance Compliance Report, is called for by Section 2C of those procedures. Post-Issuance compliance procedures include monitoring of tax-exempt bonds to ensure:

- Proceeds are used for qualified purposes
- Proceeds are spent in a timely manner, as allowed by the IRS
- Proceeds are invested within the allowable yield restrictions
- There is appropriate record keeping of the expenditures and;
- All required disclosures and qualified significant events are reported on the Electronic Municipal Market Access (EMMA) website, ultimately available to the investors.

During the past six months, City staff has executed the post-issuance compliance procedures, notably as such:

- Continued to emphasize, throughout the City organization, the importance of having a plan based on reasonable expectations at the time of issuance (and then actually following through post-issuance) to spend tax-advantaged bond proceeds in the time frame as required by the internal revenue code.
- Successfully engaged consultant to prepare the annual continuing disclosure report for the Refunding Revenue Bonds for the Former Redevelopment Agency, series 2013A and 2013B. The City, as the disseminating agent, filed the annual report on EMMA.
- Successfully engaged consultant to prepare and file the annual continuing disclosure report for the two refinanced Assessment Districts (Morgan Hill Ranch and Madrone Business Park), series 2015.

- Prepared and filed continuing disclosure reports for the Refinanced Lease Revenue Bonds, Public Library and Police Facility, series 2015, and Wastewater Bonds, series 2015.
- Received the annual arbitrage rebate analysis for the Morgan Hill Ranch and Madrone Business Park A, Series 2015. As expected by Finance staff, the report confirmed there is no arbitrage payment due to the Internal Revenue Service on either one of these bond issues, as both issues had a negative arbitrage.

The City Manager and the Engineering & Utilities staff continue to ensure the City has a plan with a reasonable expectation to spend the 85% of the tax-advantaged bond proceeds within 3 years of issuance, and 100% within 5 years. These spending plans are illustrated in the approved Capital Improvement Program Budget.

COMMUNITY ENGAGEMENT: Inform

This is an informational report, which assures the City staff has executed the post-issuance compliance procedures in the past six months. Staff expects the next semi-annual report to be issued in June 2018.

ALTERNATIVE ACTIONS:

There are no alternative actions recommended, as this is an information only report.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On April 17, 2013, the City Council adopted procedures for Finance staff to follow in administering tax-exempt bonds in accordance with the internal revenue code.

The City Council previously received such reports, in order, at the following meetings:

- 1st report: October 16, 2013
- 2nd report: April 16, 2014
- 3rd report: October 1, 2014
- 4th report: July 08, 2015
- 5th report: December 16, 2015
- 6th report: June 15, 2016
- 7th report: December 14, 2016
- 8th report: July 26, 2017

FISCAL AND RESOURCE IMPACT:

None for this report; carrying out post-issuance compliance procedures is part of the Finance work program each fiscal year.

CEQA (California Environmental Quality Act):

Not a Project as this is an administrative activity of government that will not result in direct or indirect physical changes in the environment.



CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2017

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

COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2017

RECOMMENDATION(S)

Accept the City's Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2017.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

REPORT NARRATIVE:

The Fiscal Year 2016-17 Comprehensive Annual Financial Report (CAFR) is presented for your review. Each year the City engages an independent firm to audit the books and accounts of the City's general ledger. Included in this audit are the review and verification of all finance processes. An annual audit is required by state law and by bond covenants.

The CAFR presents the operations and financial activity of all City's various funds, including the General Fund. It includes an unmodified audit opinion from Maze & Associates, the City's external auditors, stating that the financial statements present fairly the results of operations for the year ended June 30, 2017, in conformance with Generally Accepted Accounting Principles (GAAP). An auditor gives an Unmodified Opinion (or clean opinion) when he or she does not have any significant reservation in respect of matters contained in the Financial Statements.

A summary of significant highlights follows:

General Fund: The fund balance decreased by \$0.7 million as the City continued to strategically invest in the community. Actual revenues in the General Fund were \$0.6 million more than the final budget or \$1.6 million without the fair market value adjustment for the investments, mostly attributed to the increase in property, sales, and franchise & hotel taxes.

Community Development Fund: The fund balance amounted to \$2.6 million, all of which is restricted, a decrease of \$0.1 million or 5% from prior year.

Wastewater Enterprise Funds: The funds combined added \$1.3 million to its net position.

Water Enterprise Funds: The funds combined added \$1.7 million to its net position.

COMMUNITY ENGAGEMENT: Inform

Finance staff presents these audited reports in an effort to keep the City Council, 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 decisions.

ALTERNATIVE ACTIONS:

No alternative action is recommended, as this is an audited report on City transactions which have already occurred.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The audited comprehensive financial report is presented to Council each year for the prior fiscal year ending June 30.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact for the recommended action.

CEQA (California Environmental Quality Act):

Not a Project as this is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. Comprehensive Annual Financial Report, Year Ended June 30, 2017 (weblink)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2017

PREPARED BY: Dat Nguyen, Finance Director

APPROVED BY: City Manager

RECEIVE AND FILE THE ANNUAL SB 165 REPORT FOR COMMUNITY FACILITIES DISTRICT NO. 2014-1 (FISHER CREEK)

RECOMMENDATION(S)

Receive and file the report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

Preserving and Cultivating Public Trust

REPORT NARRATIVE:

The Local Agency Special Tax and Bond Accountability ("The Act") requires that any local special tax or local bond measure subject to voter approval contain a statement indicating the specific purposes of the special tax, require that the proceeds of the special tax be applied to those purposes, require the creation of an account into which the proceeds shall be deposited, and require an annual report containing specified information concerning the use of proceeds.

The Act was enacted by Senate Bill 165 and codified in the California Government Code Sections 53410 through 53412. The City's Community Facilities District (CFD) No. 2014-1 (Fisher Creek) falls within these reporting requirements and the attached annual report is intended to comply with the regulation.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the required reporting information for the CFD.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council receives and files the SB 165 Report for CFD No. 2014-1 (Fisher Creek) annually.

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. FY16-17 SB165

SENATE BILL 165

Senate Bill 165, filed with the Secretary of State on September 19, 2000, enacted the Local Agency Special Tax and Bond Accountability Act. This Act requires that any local special tax or local bond measure subject to voter approval contain a statement indicating the specific purposes of the special tax, require that the proceeds of the special tax be applied to those purposes, require the creation of an account into which the proceeds shall be deposited, and require an annual report containing specified information concerning the use of the proceeds. The Act only applies to any local special tax measure or local bond measure adopted on or after January 1, 2001 in accordance with Section 50075.1 or Section 53410 of the California Government Code.

Some of the requirements of the Act are handled at the formation of the Special Tax District and others are handled through annual reports. This Section of this report intends to comply with Section 50075.3 or Section 53411 of the California Government Code that states:

“The chief fiscal officer of the issuing local agency shall file a report with its governing body no later than January 1, 2002, and at least once a year thereafter. The annual report shall contain all of the following:

- (a) The amount of funds collected and expended.
- (b) The status of any project required or authorized to be funded as identified in subdivision (a) of Section 50075.1 or Section 53410.”

The requirements of the Act apply to the Funds for the following District:

City of Morgan Hill
Community Facilities District No. 2014-1 (Fisher Creek)
Formed September 17, 2014

Purpose of Special Tax

The District was formed to fund all or a portion of the costs of the maintenance and monitoring required by the San Francisco Bay Regional Water Quality Control Board for the realignment of Fisher Creek. The special tax funds the cost of maintenance, monitoring and reporting of the Fisher Creek Realignment project; pay for administrative expenses; pay for any amounts required to establish or replenish capital improvement funds, repair and contingency funds or reserve funds; and pay for reasonable anticipated delinquent special taxes.

Collections & Expenditures

Fund	7/1/2016 Balance	Total Amount Collected ⁽¹⁾	6/30/2017 Balance ⁽²⁾	Amount Expended ⁽³⁾	Service Status
Special Tax Fund	\$36,575.41	\$40,289.50	\$60,575.35	\$16,959.49	Ongoing

(1) Figure represents the total amount levied for Fiscal Year 2016/17, less County Collection Fees of 1.0% of the total levy amount and delinquencies.

(2) Includes interest earned.

(3) As reported by the City.



CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2017

PREPARED BY: Dat Nguyen, Finance Director

APPROVED BY: City Manager

AB 1600 DEVELOPMENT IMPACT FEE REPORT FOR FISCAL YEAR 2016-17

RECOMMENDATION(S)

Adopt resolution making findings for unexpended development impact fees and accept the annual development impact fee report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

Preserving and Cultivating Public Trust

REPORT NARRATIVE:

Government Code Section 66000 et seq. requires that any city imposing development impact fees must report certain information each year. In accordance with this requirement, staff is presenting the Annual Development Impact Fee Report, Attachment B, for the fiscal year ending June 30, 2017. The report includes a fee description, a schedule of impact fees for the reporting period as approved by City Council, and a report of the 2016-17 revenues and expenditures for each impact fee, along with the balance available for current and future projects. A description of the project that resources were used for is also included for each impact fee.

Section 66001(d) requires that for the fifth fiscal year following the collection of development fees, and every five years thereafter, the local agency shall make findings with respect to any portion of the fee collected remaining unexpended, whether committed or uncommitted. Staff identified \$1,450,849 from Storm Drain Impact Fee (Fund 303); \$440,836 from Traffic Impact Fee (Fund 309); and \$3,177,428 from Fire Impact Fee (Fund 313) in unexpended fees that were collected over five years ago. These unexpended fees have been or will be appropriated into existing and future capital improvement projects:

- 1) Storm Drain Impact Fee to fund drainage improvements identified in the City's Storm Drainage System Master Plan that feed into the Upper Llagas Creek Flood Protection Project and the West Little Llagas Creek watershed. A total of \$5,250,000 from Storm Drain Impact Fees has been allocated to this project in the adopted Fiscal Year 2016/17-2021/22 Capital Improvement Plan (CIP).

- 2) Traffic Impact Fee to fund the Hale Avenue Extension Project which will extend Hale Avenue from Main Avenue south to DeWitt Avenue. A total of \$4,050,000 from Traffic Impact Fee has been allocated to the project in the adopted Fiscal Year 2016/17-2021/22 CIP.
- 3) Fire Impact Fee to fund construction of the Fire Station on Butterfield Boulevard. Construction cost for the fire station project is estimated at \$3 million.

COMMUNITY ENGAGEMENT: Inform

Finance staff prepares this annual report in an effort to keep City Officials, Council, Community, and stakeholders informed on the financial status of each impact fee, which assists each one of the interested parties in making sound financial decisions

ALTERNATIVE ACTIONS:

No alternative action is recommended, as this is an annual report on City transactions which have already occurred.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The annual impact fee report is presented to Council each year for the prior fiscal year ending June 30.

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. Attachment A - Resolution
2. Attachment B - Development Impact Fee Report FY 2016-17

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL MAKING FINDINGS FOR UNEXPENDED DEVELOPMENT IMPACT FEES IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTION 66001 AND ACCEPTING THE ANNUAL DEVELOPMENT IMPACT FEE REPORT

WHEREAS, the Mitigation Fee Act, Government Code Section 66000 et seq., authorizes the City of Morgan Hill ("City") to impose, collect, and expend mitigation fees to offset the impacts of development within the City; and;

WHEREAS, among the procedural requirements mandated by the Mitigation Fee Act is a requirement that beginning with the fifth fiscal year following deposit of development fees into a designated account, and each fifth fiscal year thereafter, the City make specified findings regarding any portion of the fees that remain unexpended; and

WHEREAS, a portion of the fees currently deposited in the City's Storm Drain Impact Fee Fund, Traffic Impact Fee Fund, and Fire Impact Fee Fund were collected over five (5) years ago, and therefore the City wishes to make the findings required by Government Code Section 66001(d); and

WHEREAS, the City also wishes to review and accept reports required by the Mitigation Fee Act under the annual information disclosure requirements of Government Code Section 66006(b), including but not limited to the amount of the fee, the beginning and ending balance of the fee account or fund, and the interest earned thereon.

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

1. The City Council has considered the full record before it, which may include, but is not limited to, the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council finds that the Storm Drain Impact Fee Fund currently contains One Million Four Hundred Fifty Thousand Eight Hundred Forty Nine Dollars (\$1,450,849), Traffic Impact Fee Fund currently contains Four Hundred Forty Thousand Eight Hundred Thirty Six Dollars (\$440,836), and Fire Impact Fee Fund currently contains Three Million One Hundred Seventy Seven Thousand Four Hundred Twenty Eight Dollars (\$3,177,428) in unexpended fees that were collected over five (5) years ago.

3. In accordance with Government Code section 66001(d)(1), the City Council finds as follows:
 - a. The Unexpended Fees will be used to provide for the following projects:
 - (A) Storm Drain Impact Fee to fund Llagas Flood Control Project to address storm water conveyance that drains into the Upper Llagas Creek Flood Protection Project (ULCFPP) and the West Little Llagas watershed. The project would provide flood protection and mitigate the increased risk of flooding when the ULCFPP is completed;
 - (B) Traffic Impact Fee to fund the Hale Avenue Extension Project to construct Hale Avenue extension between Main Avenue and DeWitt Avenue. This projects will mitigate the increased traffic caused by the development and provide additional access; and
 - (C) Fire Impact Fee to fund construction of the Fire Station on Butterfield Boulevard. The project will address the need for a new fire station as the community grows.
 - b. There exists a reasonable relationship between the Unexpended Fees and the purpose for which they were charged as described above.
 - c. The current estimated costs that have been appropriated or will be appropriated for the Llagas Flood Control Project is approximately Five Million Two Hundred Fifty Thousand Dollars (\$5,250,000); Hale Avenue Extension Project is approximately Four Million Fifty Thousand Dollars (\$4,050,000); and Fire Station on Butterfield Boulevard is approximately Three Million Dollars (\$3,000,000). The City's funding sources will include the Unexpended Fees described above and future impact fees to be collected for these projects.
 - d. The Unexpended Fees have been deposited in the respective Impact Fee Funds, which are the appropriate funds to finance the projects described above.
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 6th day of December 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 December 6, 2017.

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

DATE: _____

Irma Torrez, CITY CLERK

City of Morgan Hill
Impact Fee Schedule Summary
Fiscal Year 2016-17

Description of Fee	Unit of Measure	Amount
Water Impact Fee	Single Family Dwelling Unit	3,751.00
	Multi Family Dwelling Unit	3,384.00
	Commercial/Industrial/Office per acre	10,648.00
Sewer Impact Fee	Single Family Dwelling Unit	14,680.00
	Multi Family Dwelling Unit	12,424.00
	Commercial/Industrial/Office per GPD	50.26
Storm Drain Impact Fee	Single Family Dwelling Unit	3,982.00
	Multi Family Dwelling Unit	2,071.00
	Commercial/Office per acre	43,364.00
	Industrial per acre	31,572.00
	Auto Dealership per acre	54,206.00
	Hotel per room	1,319.00
Park Impact Fee	Single Family Dwelling Unit-Sub	5,566.00
	Single Family Dwelling Unit-No Sub	4,047.00
	Multi Family Dwelling Unit-Sub	5,363.00
	Multi Family Dwelling Unit-No Sub	3,903.00
Traffic Impact Fee	Single Family Dwelling Unit	1,928.00
	Multi Family Dwelling Unit	1,196.00
	Commercial/Industrial/Office per PHT	1,928.00
Library Impact Fee	Single Family Dwelling Unit	2,044.00
	Multi Family Dwelling Unit	1,969.00
Police Impact Fee	Single Family Dwelling Unit	794.00
	Multi Family Dwelling Unit	767.00
	Commercial per acre	1,724.00
	Office per acre	2,062.00
	Industrial per acre	2,415.00
	Auto Dealership per acre	687.00
	Hotel per room	20.00
Fire Impact Fee	Single Family Dwelling Unit	122.00
	Multi Family Dwelling Unit	116.00
	Commercial/ Industrial per acre	1,604.00
	Office per acre	1,944.00
	Auto Dealership per acre	525.00
	Hotel per room	5.00
Public Facilities	Single Family Dwelling Unit	530.00
	Multi Family Dwelling Unit	510.00
	Commercial per acre	1,167.00
	Office per acre	1,387.00
	Industrial per acre	1,634.00
	Auto Dealership per acre	468.00
	Hotel per room	13.00

**City of Morgan Hill
AB 1600 Development Impact Fee Report
Fiscal Year 2016-17**

Impact Fee Fund Descriptions

Park Impact – This fund receives revenues from developers of properties and the fund may only be used for the design, development, maintenance, and construction of new parks within the City.

Storm Drain – This fund receives revenues from developers of properties to cover the costs of design and construction of new storm drain that benefit new customers residing within the City of Morgan Hill as a result of growth in population.

Traffic Impact – This fund receives revenues from developers when their projects have an adverse impact on traffic flows, etc. The funds collected may be expended on new streets, traffic signals and improvements of existing streets where they are impacted by new development.

Police Impact – Revenues are collected to finance the expansion of police facilities necessary to benefit, and to provide police services to new customers residing within the City of Morgan Hill as a result of growth in population.

Fire Impact – Revenues are collected to finance the expansion of fire facilities necessary to benefit, and to provide fire services to new customers residing within the City of Morgan Hill as a result of growth in population.

Community/Recreation Center Impact – Revenues are collected to finance the expansion of existing and construction of new recreation and community center facilities demanded by new development.

Public Facilities – Revenues are collected to finance the expansion of public facilities necessary to benefit new customers residing within the City of Morgan Hill as a result of growth in population.

Library Impact – Revenues are collected to finance the provision of future library space and materials necessary to benefit, and necessary to provide library services to, new residents residing in the City of Morgan Hill as a result of population growth.

Sewer Impact – Revenues are collected to finance the expansion of wastewater facilities necessary to benefit, and necessary to provide wastewater services to new customers residing in the service area within the City of Morgan Hill as a result of growth in population.

Water Impact – Revenues are collected to finance the expansion of water facilities necessary to benefit, and necessary to provide water services to, new customers residing in the service area within the City of Morgan Hill as a result of growth in population.

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2016-17

FUND 301 - PARKS IMPACT FEE	Project Number	FY 16-17 AB 1600		
<u>Revenue</u>				
Interest		\$ 84,070		
Development Impact Fees		567,717		
Project Reimbursement/Others		1,519,362		
Total Revenue		<u>\$ 2,171,149</u>		
			% from this Fund	Total Project Expenditures
<u>Revenue Expended For</u>				
Parks Land	110097	\$ 2,003,744	100.00%	2,003,744
Downtown Parks	135013	2,118,900	100.00%	2,118,900
Parks Master Plan Update	136014	231,695	100.00%	231,695
Inclusive Playground	137015	1,458	100.00%	1,458
CDBG Funded Projects (Galvan park)	247012	1,520	100.00%	1,520
General Plan Update		7,704	7.00%	110,000
RCSD Services		75,000	100.00%	75,000
Banking and Merchant Service Fees		2,970	100.00%	2,970
Taxes		11,592	100.00%	11,592
Administration		28,164	2.24%	1,257,416
Total Expenditures		<u>\$ 4,482,747</u>		
Revenue Less Expenditures		<u>\$(2,311,598)</u>		
Balance as of July 1, 2016		<u>7,162,036</u>		
Balance as of June 30, 2017		<u><u>\$ 4,850,438</u></u>		

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2016-17

FUND 303 - STORM DRAIN IMPACT FEE	Project Number	FY 16-17 AB 1600		
Revenue				
Interest		\$ 86,656		
Development Impact Fees		1,235,294		
Total Revenue		\$ 1,321,950		
			% from this Fund	Total Project Expenditures
Revenue Expended For				
Update Storm Drain Master Plan	423012	\$ 9,252	100.00%	9,252
General Plan Update		7,704	7.00%	110,000
Banking and Merchant Service Fees		30	100.00%	30
Administration		3,924	0.31%	1,257,416
Total Expenditures		\$ 20,910		
Revenue Less Expenditures		\$ 1,301,040		
Balance as of July 1, 2016		7,080,630		
Balance as of June 30, 2017		\$ 8,381,670		

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2016-17

FUND 309 - TRAFFIC IMPACT FEE	Project Number	FY 16-17 AB 1600		
REVENUE				
Interest		\$ 52,170		
Traffic Impact Fees		651,649		
Project Reimbursement/Others		52,000		
TOTAL REVENUE		\$ 755,819		
Revenue Expended For			% from this Fund	Total Project Expenditures
Hale Avenue Plan Line	501f14	\$ 67,282	100.00%	67,282
Hale Avenue Extension	546007	643,409	100.00%	643,409
Monterey Road Medians	561012	9,650	100.00%	9,650
DeWitt Ave "S" Curve Realignment	562012	558,162	100.00%	558,162
Intersection Capacity Analysis	575015	9,003	100.00%	9,003
General Plan Update		31,896	29.00%	110,000
Banking and Merchant Service Fees		1,175	100.00%	1,175
Administration		5,229	0.42%	1,257,416
Total Expenditures		\$ 1,325,806		
Revenue Less Expenditures		\$ (569,987)		
Balance as of July 1, 2016		5,109,588		
Balance as of June 30, 2017		\$ 4,539,601		

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2016-17

FUND 311 - POLICE IMPACT FEE		FY 16-17 AB 1600	
REVENUE			
Interest	\$ 520		
Police Impact Fees	113,695		
TOTAL REVENUE	\$ 114,215		
		% from this Fund	Total Project Expenditures
Revenue Expended For			
Police Facility Bond Debt service	\$ 202,731	44.59%	454,688
Banking and Merchant Service Fees	481	100.00%	481
Administration	900	0.07%	1,257,416
Total Expenditures	\$ 204,112		
Revenue Less Expenditures	\$ (89,897)		
Balance as of July 1, 2016	(688,297)		
Balance as of June 30, 2017	\$ (778,194)		

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2016-17

FUND 313 - FIRE IMPACT FEE	Project #	FY 16-17 AB 1600		
<u>REVENUE</u>				
Interest		\$ 40,120		
Fire Impact Fees		28,016		
TOTAL REVENUE		\$ 68,136		
<u>Revenue Expended For</u>			% from this Fund	Total Project Expenditures
Banking and Merchant Service Fees		\$ 74	100.00%	74
Administration		1,260	0.10%	1,257,416
Total Expenditures		\$ 1,334		
Revenue Less Expenditures		\$ 66,802		
Balance as of July 1, 2016		3,746,114		
Balance as of June 30, 2017		<u>\$ 3,812,916</u>		

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2016-17

FUND 347 - PUBLIC FACILITIES IMPACT FEE	Project Number	FY 16-17 AB 1600		
REVENUE				
Interest/Other		\$ 3,318		
Public Facilities Impact Fees		72,651		
TOTAL REVENUE		\$ 75,969		
			% from this Fund	Total Project Expenditures
Revenue Expended For				
Banking and Merchant Service Fees		321	100.00%	321
Administration		924	0.07%	1,257,416
Total Expenditures		\$ 1,245		
Revenue Less Expenditures		\$ 74,724		
Balance as of July 1, 2016		268,285		
Balance as of June 30, 2017		\$ 343,009		

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2016-17

FUND 348 - LIBRARY IMPACT FEE	Project Number	FY 16-17 AB 1600		
REVENUE				
Interest		\$ 23,022		
Library Impact Fees		228,543		
Library Lease		132,011		
TOTAL REVENUE		\$ 383,576		
Revenue Expended For			% from this Fund	Total Project Expenditures
Library Expansion	251015	\$ 236,174	88.32%	267,417
Civic Center Debt Service		212,532	62.97%	337,502
Banking and Merchant Service Fees		1,239	100.00%	1,239
Administration		1,416	0.11%	1,257,416
Total Expenditures		\$ 451,361		
Revenue Less Expenditures		\$ (67,785)		
Balance as of July 1, 2016		2,171,424		
Balance as of June 30, 2017		\$ 2,103,639		

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2016-17

FUND 360 - COMMUNITY/REC CENTERS IMPACT FEE	Project Number	FY 16-17 AB 1600		
REVENUE				
Interest/Others		\$ 1,510		
Com/Rec Centers Impact Fees		231,218		
TOTAL REVENUE		\$ 232,728		
Revenue Expended For			% from this Fund	Total Project Expenditures
Banking and Merchant Service Fees		1,219	100.00%	1,219
Total Expenditures		\$ 1,219		
Revenue Less Expenditures		\$ 231,509		
Balance as of July 1, 2016		37,257		
Balance as of June 30, 2017		\$ 268,766		

Attachment: Attachment B - Development Impact Fee Report FY 2016-17 (1502 : AB 1600 Development Impact Fee Report For FY 2016-17)

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2016-17

FUND 641 - SEWER IMPACT FEE	Project Number	FY 16-17 AB 1600		
REVENUE				
Interest		\$ 153,397		
Sewer Impact Fees		1,756,309		
Reimbursement of Expenses		600		
TOTAL REVENUE		\$ 1,910,306		
Revenue Expended For			% from this Fund	Total Project Expenditures
Sewer Plant Expansion	303093	\$ 2,011	100.00%	2,011
Sewer Plant Improvements	303a11	2,007,351	100.00%	2,007,351
Lift Station Rebuild J/K	304i15	3,222	100.00%	3,222
Lift Station Impvts F/D/W	304k15	2,389	3.29%	72,543
New Trunk Line	308a08	239,296	100.00%	239,296
Trunk Line-Segment 19 & 20	308b13	14,910	100.00%	14,910
Harding Ave Sewer Trunk Line	308c15	4,590	100.00%	4,590
Trunk Line -Highland to Cohansey	308e16	186,489	100.00%	186,489
Trunk Line -Cohansey to Renz	308f17	105,485	100.00%	105,485
General Plan Update		7,704	7.00%	110,000
Debt Service		96,815	5.00%	1,936,300
Banking and Merchant Service Fees		8,920	100.00%	8,920
Administration		13,284	1.06%	1,257,416
Total Expenditures		\$ 2,692,466		
Revenue Less Expenditures		\$ (782,160)		
Balance as of July 1, 2016		14,521,677		
Balance as of June 30, 2017		\$ 13,739,517		

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2016-17

FUND 651 - WATER IMPACT FEE	Project Number	FY 16-17 AB 1600		
REVENUE				
Interest		\$ 40,604		
Water Impact Fees		518,209		
TOTAL REVENUE		\$ 558,813		
Revenue Expended For			% from this Fund	Total Project Expenditures
Drilling of Four New Water Supply Wells	601t15	\$ 45,201	100.000%	45,201
Main Ave Well #3	601u15	3,733	100.000%	3,733
Water Supply Well Buildings	601v15	103,963	100.000%	103,963
E. Dunne Reservoir	602d15	132,671	100.000%	132,671
Dunne Hill Tank Water Main	603g15	680,165	100.000%	680,165
Oak Canyon Booster Station	607d14	280,649	100.000%	280,649
Update Water Master Plan	622012	12,607	100.000%	12,607
General Plan Update		7,704	7.004%	110,000
Debt Service		660,914	41.239%	1,602,626
Banking and Merchant Service Fees		2,255	100.000%	2,255
Administration		3,768	0.300%	1,257,416
Total Expenditures		\$ 1,933,630		
Revenue Less Expenditures		\$ (1,374,817)		
Balance as of July 1, 2016		4,528,662		
Balance as of June 30, 2017		\$ 3,153,845		



CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2017

PREPARED BY: Irma Torrez, City Clerk

APPROVED BY: City Manager

"CITY COUNCIL TERM LIMIT" INITIATIVE PETITION

RECOMMENDATION(S)

Receive report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

REPORT NARRATIVE:

Section 9201 of the Elections Code states that: "Any proposed ordinance may be submitted to the legislative body of the city by a petition filed with the elections official of the legislative body, in the manner hereinafter prescribed, after being signed by not less than the number of voters specified in this article. The petition may be in separate sections, providing that the petition complies with this article. The first page of each section shall contain the title of the petition and the text of the measure. The petition sections shall be designated in the manner set forth in Section 9020."

On May 11, 2017, Kirk Bertolet, Initiative Petition Proponent (Proponent) on "City Council Term Limits" submitted to the City Clerk (Elections Official) a Notice of Intent to circulate a petition along with the written text and the reasons for the proposed Initiative. The City Clerk forwarded a copy of the Notice of Intent to Circulate and the Summary of the Petition to the City Attorney in accordance with Section 9203 of the Elections Code. The City Attorney prepared and provided a ballot Title and Summary of the chief purpose and points of the proposed measure to the Proponent as follows:

TITLE

Ordinance Establishing Term-Limits for City Council and Limitations on Future Participation by Members Who Serve Ten Years on City Council.

SUMMARY

This Measure would prohibit any person from serving more than ten years as an elected member of the City Council (including time served as Mayor). Any person who serves a full ten years on the City Council

would be precluded from serving on the Planning Commission; Parks and Recreation Commission; Library, Culture and Arts Commission; or any other formal or informal panel created by the City Council, for a period of six years. No person who has served for ten years on the City Council is eligible to run for further election to the City Council, but a former City Council member who would otherwise be ineligible to run for election could be appointed to a vacant City Council seat, provided at least six years have passed since that person last served on the City Council.

The Proponent followed the necessary election code requirements to proceed with the gathering of signatures on the “City Council Term Limits” Initiative Petition. The Proponent had a deadline of November 20, 2017 to submit at least 10 percent of the 22,543 registered voters as reported by the Santa Clara County Registrar of Voters Office to the Secretary of State on February 10, 2017.

The City Clerk has been in contact with the Proponent at various times throughout the initiative petition process; including a phone contact on November 20, 2017. The Proponent indicates that the petitions would not be submitted by the November 20, 2017 deadline. Therefore, according to Section 9208 of the Elections Code, the petition is considered void.

COMMUNITY ENGAGEMENT: Inform

This report services to inform the community.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

No prior actions taken by the City Council or Commission(s) as the Initiative Petition Process is addressed by the State of California - Elections and Government Codes.

FISCAL AND RESOURCE IMPACT:

The time necessary to prepare this report is accommodated in the Administrative Services – Council Services & Records Manager’s Operating Budget.

CEQA (California Environmental Quality Act):

Not a Project. This is an administrative activity of government that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. Notice of Intent to Circulate Petition - Term Limits
2. Proposed Addition of 1.16.040 - City Council Term Limits
3. Request City Attorney Prepare Ballot Title & Summary
4. Ballot Title and Summary by City Attorney
5. Letter to Proponent

Notice of Intent to Circulate Petition

Notice is hereby given by the persons whose names appear hereon of their intention to circulate the petition within the City of Morgan Hill for the purpose of establishing term limits for the Mayor and Council members. A statement of the reasons of the proposed action as contemplated in the petition is as follows:

There are three reasons for term limits. One: It eliminates career politicians. Two: It promotes new ideas. Three: It fights the influence of special interests.

A term limit is a legal restriction that limits the number of terms an officeholder may serve. When term limits are imposed in presidential and semi-presidential systems they act as a method to curb the potential for a monopoly of power, where a leader effectively becomes "President for Life", as we are currently witnessing in some third world countries. In regards to the City of Morgan Hill and our elected officials for Council and Mayor, historically elected members have served on our council for periods that have approached twenty years. When we combine all the time these elected individuals have served on commissions, local school boards and panels, we can see that they have retained exclusive influence in the decision making in Morgan Hill politics for long periods of time. It is time for this situation to change.

People that serve on an elected body for long intervals of time stop being effective leaders in their elected position. They lose a certain willingness to listen to their constituency and feel they no longer have to mind the will of the people. This is because there is no longer anyone that can successfully challenge them in an election. They are susceptible to the influence of special interest that continually support their reelection and are less inclined to be responsive or accountable to the will of the people. Term Limits will create opportunities for other people to run and will bring in new leadership with fresh perspectives and visions to the governing body. More people will be encouraged to run.

Morgan Hill should adopt Term Limits for the positions of Mayor and Council Members. The proposed Term Limit measure places a cap of ten years for any person serving on the City Council. This will open the current positions that have historically become locked by long term incumbents. It is time that long term incumbents either move up to a higher elected office in the county or state political arenas or they step out of Morgan Hill politics for a six-year time interval.

This measure will afford a person the opportunity to serve a maximum time of ten years in any combination of office as either Mayor or Council Member. The person may serve two terms as Council Member (8 years) and one term as mayor (2 years). The person could serve one term as council member (4 years) and serve three terms as mayor (6 years). The person could serve five terms as mayor (10 years).

New people brings new ideas. The concept of citizen politicians is that our representatives in the community serve the people and then return to their former position in society to live and work under the laws and policies they have enacted. Term limits will ensure our representatives do not make a career out of politics.

Received
City of Morgan Hill

MAR - 9 2017

City Clerk

Dated: 3-9-2017



Kirk Bertholet

The People of the City of Morgan Hill do ordain as follows:

Morgan Hill Municipal Code, Title 1, Chapter 16 is amended to add a new section 1.16.040 "City Council Term Limits".

1.16.040: No person shall be elected to serve in the position as Mayor and/or Council member for more than ten years of cumulative service in any combination of Mayor or Council Member. Upon the completion of ten-years of aggregate service on the council as either Mayor and/or Council Member in any combination of years served, that person shall not serve on any commissions, boards or panels for the City of Morgan Hill or be appointed to a vacant council seat for a period of six years. This initiative shall be considered as adopted upon the date that the vote is declared by the City Council, and shall go into effect 10 days after that date.

Received
City of Morgan Hill

Attachment 3

5/11/2017

MAY 11 2017

City of Morgan Hill
Irma Torres, City Clerk
17575 Peak Avenue
Morgan Hill, CA 95037

Re: Proposed Term Limit Measure.

Dear Irma Torrez,

I am Kirk Bertolet, a resident of Morgan Hill. I am interested in the proposed term limit measure which I am submitting along with this letter. Also included is a Notice of Intent to Circulate Petition. I am requesting that you immediately transmit the proposed ballot measure and the Notice of Intent to Circulate Petition to the City Attorney. I hereby request the City Attorney to prepare a ballot title and a summary. I also request that the City Attorney give a true and impartial statement for the purpose of the proposed measure in such language that the ballot title shall neither be an argument, nor likely to create prejudice, for or against the proposed measure.

My address and phone number for receiving any correspondence or communication from you or the City Attorney is written below my signature. This letter was signed on May 11, 2017 in Morgan Hill, CA.

Sincerely,



Kirk Bertolet, Citizen of Morgan Hill
(408) 426 6893
17625 Peak Avenue
Morgan Hill, CA 95037

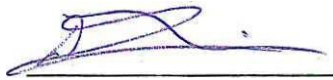
Attachment: Request City Attorney Prepare Ballot Title & Summary (1532 : Term Limit Initiative Petition update)

Initiative Measure to be Submitted Directly to the Voters

The City Attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

Ordinance Establishing Term-Limits for City Council and Limitations on Future Participation by Members Who Serve Ten Years on City Council.

This measure would prohibit any person from serving more than ten years as an elected member of the City Council (including time served as Mayor). Any person who serves a full ten years on the City Council would be precluded from serving on the Planning Commission; Parks and Recreation Commission; Library, Culture and Arts Commission; or any other formal or informal panel created by the City Council, for a period of six years. No person who has served for ten years on the City Council is eligible to run for further election to the City Council, but a former City Council member who would otherwise be ineligible to run for election could be appointed to a vacant City Council seat, provided at least six years have passed since that person last served on City Council.



Donald A. Larkin
City Attorney

Received
City of Morgan Hill

MAY 24 2017

1000000 • 7 • 69

**City Clerk's Office**

17575 Peak Avenue
Morgan Hill, CA 95037-4128
TEL: 408-779-7259
FAX: 408-779-3117
WWW.MORGAN-HILL.CA.GOV

November 29, 2017

Mr. Kirk Bertolet

Subject: Term Limits

Dear Mr. Bertolet:

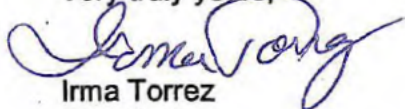
This letter is being sent to inform you that Section 9208 of the Elections Code of the State of California states that:

"Signatures upon petitions and sections of petitions shall be secured, and the petition, together with all sections of the petition, shall be filed within 180 days from the date of receipt of the title and summary, or after termination of any action for a writ of mandate pursuant to Section 9204, and, if applicable, after receipt of an amended title or summary or both, whichever occurs later. Petitions and sections thereof shall be filed in the office of the elections official during normal office hours as posted. If the petitions are not filed within the time permitted by this section, the petitions shall be void for all purposes."

The City of Morgan Hill provided you with a Title and Summary relating to "Term Limits" on May 24, 2017. The City of Morgan Hill did not receive your circulated petitions within 180 days (November 20, 2017) of receiving the Ballot Title and Summary. Therefore, according to Section 9208 of the Elections Code, your petition is considered void.

Please feel free to contact me at (408) 776-7380, should you have any questions.

Very truly yours,


Irma Torrez
City Clerk

cc: City Attorney
City Manager
City Council

Attachment: Letter to Proponent (1532 : Term Limit Initiative Petition update)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2017

PREPARED BY: Angie Gonzalez, Council Services Assistant
APPROVED BY: City Manager

ADOPT AN UNCODIFIED ORDINANCE OF THE CITY OF MORGAN HILL ALLOWING EXISTING RESIDENTIAL DEVELOPMENT PROJECTS WITH A COMMENCEMENT OF CONSTRUCTION REQUIREMENT TO UTILIZE THE EXERCISE OF ALLOTMENT PROVISION PROVIDED WITHIN THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDACS) ORDINANCE SECTION 18.78.160 OF THE MORGAN HILL MUNICIPAL CODE

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2264, 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
Preserving and Cultivating Public Trust

2017 Strategic Priorities

Inclusiveness

REPORT NARRATIVE:

On November 15, 2017, the City Council introduced Ordinance No. 2264 New Series, by the following roll call vote: AYES: Carr, Constantine, Spring, Robinett Jachimowicz, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

This ordinance allows allotments granted to a project under a previous Residential Development Control System (RDACS) (e.g., Measure C) to change when the allotments are considered exercised to be pursuant to Section 18.78.160.A of the RDACS Ordinance (Measure S). Under Measure S, an allotment is considered exercised with the recordation of a Final Map, issuance of a grading permit, or the commencement of construction if no Final Map or grading permit is required.

COMMUNITY ENGAGEMENT: Inform

The proposed ordinance was publicly noticed for the minimum 10-day period.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

A comprehensive update of the City of Morgan Hill RDCS was approved by voters on November 8, 2016 (Measure S) and became effective on March 1, 2017. City Council adopted a Competition Manual June 21, 2017 that established criteria and point values that the City will use to award allotments to competing residential projects as well as implementation policies for guiding the allocation and development process.

FISCAL AND RESOURCE IMPACT:

The recommended ordinance would be a more cost-effective use of City resources to process the amended language in a single ordinance rather than processing each project individually.

CEQA (California Environmental Quality Act):

An Environmental Impact Report (EIR) for the Morgan Hill 2035 Project, which included the Residential Development Control System (RDCS) Update, was prepared in accordance with the California Environmental Quality Act (CEQA) and certified by the Morgan Hill City Council on July 27, 2016. (SCH #2015022074)

LINKS/ATTACHMENTS:

1. 2264 RDCS Ordinance

ORDINANCE NO. 2264, NEW SERIES

**AN UNCODIFIED ORDINANCE OF THE CITY OF
MORGAN HILL ALLOWING EXISTING RESIDENTIAL
DEVELOPMENT PROJECTS WITH A COMMENCEMENT
OF CONSTRUCTION REQUIREMENT TO UTILIZE THE
EXERCISE OF ALLOTMENT PROVISION PROVIDED
WITHIN THE RESIDENTIAL DEVELOPMENT CONTROL
SYSTEM (RDCS) ORDINANCE SECTION 18.78.160 OF THE
MORGAN HILL MUNICIPAL CODE**

WHEREAS, a comprehensive update of the City of Morgan Hill Residential Development Control System (RDCS) was approved by voters on November 8, 2016 (Measure S) and became effective on March 1, 2017 and codified in Chapter 18.78 of Title 18 (Zoning) of the Morgan Hill Municipal Code; and

WHEREAS, Section 18.78.100 of the RDCS ordinance requires that the City Council adopt and maintain an RDCS Competition Manual that establishes criteria and point values that the City will use to award allotments to residential projects that participate in the competition; and

WHEREAS, the RDCS Competition Manual was considered by the City Council at its special and/or regular meetings of May 17, May 24, and June 7, 2017 and adopted by Ordinance 2248 and Resolution 17-053; and

WHEREAS, the RDCS Competition Manual contains policies to guide the implementation of the RDCS, including Implementation Policy J that defines how allotments are effectuated; and

WHEREAS, the RDCS Competition Manual provides for allotments granted to projects under the previous RDCS (e.g., Measure C) to change when the allotments are considered exercised pursuant to Section 18.78.160.A of the RDCS Ordinance (Measure S); and

WHEREAS, City staff determined that there are several existing projects with Development Agreements that would benefit from changing the exercise of allotment to the language in section 18.78.160.A;

WHEREAS, the City staff further determined that it would be a more cost-effective use of City resources to process the amended language in a single ordinance rather than processing each project individually;

WHEREAS, testimony received at a duly-noticed public hearing on the proposed Ordinance, along with exhibits and other materials have been considered in the review process.

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY
ORDAIN AS FOLLOWS:**

- SECTION 1.** This Ordinance is consistent with the policies included within the RDCS Manual and the General Plan.
- SECTION 2.** This Ordinance applies to any Development Agreement adopted under the Residential Development Control System before November 8, 2016 that has not commenced construction prior to the effective date of this Ordinance.
- SECTION 3.** In lieu of any Commencement of Construction provision in an applicable Development Agreement, a developer may, at his or her option, exercise available residential housing allotments as authorized under section 18.78.160 of the Morgan Hill Municipal Code.
- SECTION 4.** An Environmental Impact Report (EIR) for the Morgan Hill 2035 Project, which included the Residential Development Control System (RDCS) Update, was prepared in accordance with the California Environmental Quality Act (CEQA) and certified by the Morgan Hill City Council on July 27, 2016. (SCH #2015022074)
- SECTION 5.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.
- SECTION 6.** Effective Date; Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 15TH DAY OF NOVEMBER 2017, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 6TH DAY OF DECEMBER 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:

DATE:

STEVE TATE, Mayor

ATTEST:

DATE:

IRMA TORREZ, City Clerk

Effective Date: January 6, 2017

⌘ CERTIFICATE OF THE CITY CLERK ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2264, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 6th day of December 2017.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: 2264 RDCS Ordinance (1522 : Adopt Ordinance 2264 RDCS)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2017

PREPARED BY: Angie Gonzalez, Council Services Assistant
APPROVED BY: City Manager

ADOPT ORDINANCE ADDING A NEW CHAPTER 15.38 (“WAGE THEFT PREVENTION”) TO TITLE 15 (“BUILDINGS AND CONSTRUCTION”) OF THE MORGAN HILL MUNICIPAL CODE

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2265, 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
Supporting Our Youth
Seniors
and Entire Community
Preserving and Cultivating Public Trust

2017 Strategic Priorities

Inclusiveness
Regional Initiatives

REPORT NARRATIVE:

On November 15, 2017, the City Council introduced Ordinance No. 2265 New Series, by the following roll call vote: AYES: Carr, Constantine, Spring, Robinett Jachimowicz, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

This ordinance prevents wage theft by requiring project applicants to acknowledge up front the requirement to comply with the California Labor Code, and requires contractors to certify that they complied with Labor Code provisions regarding pay transparency.

COMMUNITY ENGAGEMENT: Consult

Staff consulted with advocates for wage theft prevention and provided a draft of the proposed ordinance to the Building Industry Association of the Bay Area for review.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 28, 2017, Council directed the City Attorney to develop a wage theft prevention policy that restricts the City’s ability to contract with companies that have committed wage theft. At the June 28, 2017 meeting, Council also asked the City Attorney to

research the feasibility of an ordinance to prevent wage theft on private construction projects.

On July 26, 2017, Council adopted a wage theft prevention policy, restricting the City's ability to contract with businesses that have engaged in wage theft. At the July 26, 2017 meeting, Council provided further direction regarding a potential ordinance preventing wage theft on private construction projects.

FISCAL AND RESOURCE IMPACT:

The proposed ordinance will require some additional staff time to review compliance with the certification requirements. Under the ordinance as proposed, the additional staff time required would be minimal.

CEQA (California Environmental Quality Act):

Categorical Exemption: Inspections to check for the performance of an operation, or for quality, health or safety of a project. (CEQA Guideline 15309).

LINKS/ATTACHMENTS:

1. 2265 Wage Theft Ordinance

ORDINANCE NO. 2265, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADDING A NEW CHAPTER 15.38 (“WAGE THEFT PREVENTION”) TO TITLE 15 (“BUILDINGS AND CONSTRUCTION”) OF THE MORGAN HILL MUNICIPAL CODE

WHEREAS, The City of Morgan Hill is committed to protecting the public health, safety and welfare of the people living and working in the City; and

WHEREAS, Local and national studies on wage theft report that wage theft is a pervasive and chronic problem; and

WHEREAS, Wage theft occurs when an employer fails to pay its workers the wages to which they are legally entitled. It is the crime of stealing earned wages from workers. There are numerous forms of wage theft involving violations of employment laws but all resulting in workers receiving less income than they are entitled to earn; and

WHEREAS, Most wage theft goes unreported. Despite the low reporting levels, according to a report issued by the Santa Clara County Wage Theft Coalition, “The San Jose office of the California Labor Commissioner handles approximately 300 enforcement claims from workers in the County each month.”

WHEREAS, The construction industry involves unique labor standards compliance challenges. Despite the best efforts of State enforcement officials, many employees in the construction industry continue to be victims of wage theft because they are unaware of their rights or the State lacks adequate resources to advocate on their behalf; and

WHEREAS, This Chapter will ensure that construction contractors doing business in Morgan Hill comply with the California Labor Code by making compliance a condition with State wage theft prevention laws a condition of approval for any building permit, and requiring compliance certification prior to issuance of a certificate of occupancy.

NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING, THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA DOES ORDAIN AND ENACT AS FOLLOWS:

SECTION 1: Chapter 15.38 (“Wage Theft Prevention”) of Title 15 (“Buildings and Construction”) is hereby added to read as follows:

“15.38 Wage Theft Prevention

15.38.010 Definitions. Whenever used in this Chapter, the following terms shall have the meanings set forth below:

- a. "Completion" means that construction is complete and the project is eligible for a certificate of occupancy.
- b. "Contractor" means the prime contractor on a construction project.
- c. "Owner" means the person or persons, firm, corporation, partnership or other legal entity exercising ownership of the Project.
- d. "Project" means new construction of greater than 15,000 square feet that is not subject to prevailing wage requirements and/or does not have a valid Project Labor or Community Workforce Agreement.
- e. "Representative" means a person authorized to legally bind the Owner and/or Contractor (for example; a corporate officer, general partner, or managing member of a limited liability company.)
- f. "Project Construction Employees" means employees of the contractor or subcontractor.

15.38.020 Acknowledgement of Responsibility. As a condition of approval for any building permit required for a Project, an applicant shall sign an acknowledgement that Owner, Contractor and any subcontractors are required to comply with all applicable provisions of the California Labor Code, including Labor Code section 2810.5.

15.38.030 Pay Transparency Certification. Prior to issuance of a certificate of occupancy, or other permit to occupy new construction, for each Contractor or subcontractor whose portion of the work exceeds \$100,000 or one percent (1%) of the value of the construction cost of the Project, whichever is greater, Owner shall provide to the City a Pay Transparency Certification ("Certification"), signed by a Representative of the Owner, the Contractor and any subcontractor under penalty of perjury under the laws of the State of California. The Certification required under this Section shall be in a form approved by the City and contain the following:

- a. A statement that Project Construction Employees of the contractor and any subcontractors received written notice of the employers pay practices as required by California Labor Code section 2810.5 and wage statements under Labor Code 226(a); or
- b. Project Construction Employees of the contractor and/or any subcontractors are covered by a valid collective bargaining agreement that expressly provides for the wages, hours of work, and working conditions of the employee, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage. (See Labor Code section 2810.5(c).)

15.38.040 Compliance Determination. Prior to issuing a certificate of occupancy, or other permit allowing occupancy of the Project, the City shall make a finding of compliance with this Chapter. Such a finding shall be issued if:

- a. The City determines after a review of the Certificate that Owner, Contractor and any subcontractors have complied with the provisions of this Chapter; and

- b. The City has not received any information that the Labor Commissioner of the State of California has found violations of Labor Code sections 226 or 2810.5 regarding construction work performed on the Project.

15.38.050 Bonds Required for Correction of Violation. If the City determines that the Owner, Contractor or any subcontractor has failed to comply with the provisions of this Chapter, or if the Labor Commissioner has found violations of Labor Code sections 226 or 2810.5, the City may issue a certificate of occupancy, only if the Owner or Contractor can provide evidence of the existence of a Labor Payment and/or Lien Release Bond, in a form and amount sufficient to ensure that any wage claims and penalties can be fully paid.

15.38.060 Private Right of Action. Nothing in this Chapter shall be interpreted to authorize a right of action against the City.

SECTION 2. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 3. Effective Date; Publication. 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 and the title thereof read at a regular meeting of the City Council of the City of Morgan Hill held on the day of 2017, and was finally adopted at a regular meeting of said Council on the day of 2017, and said ordinance was duly passed and adopted in accordance with law.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 15TH DAY OF NOVEMBER 2017, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 6TH DAY OF DECEMBER 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:

DATE:

STEVE TATE, Mayor

ATTEST:

DATE:

IRMA TORREZ, City Clerk

Effective Date: January 6, 2017

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2265, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 6th day of December 2017.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: 2265 Wage Theft Ordinance (1523 : Adopt Ordinance 2265 Wage Theft)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2017

PREPARED BY: Chris Ghione, Community Services Director

APPROVED BY: City Manager

DOWNTOWN SPECIAL EVENTS AND STREET CLOSURES

RECOMMENDATION(S)

Approve the proposed revised Downtown Special Events Street Closure Policy.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
 Maintaining Fiscal Responsibility
 Supporting Our Youth
 Seniors
 and Entire Community
 Preserving and Cultivating Public Trust

2017 Strategic Priorities

Inclusiveness

POLICY CONSIDERATIONS:

The City regularly closes streets within the Downtown area for special events. This practice has been in place for many years for both large scale festivals and smaller one-day events. With the recent Downtown investment made by the City, requests for event closures in Downtown and on Third Street, continue to increase. Closing streets for these events supports the City's Economic Blueprint, but can be inconvenient to Downtown residents living within event areas. Historically, the City and event organizers have worked with local residents and businesses to minimize the impact of events. More recently, residents on Third Street have communicated their continued concern with events limiting their vehicular access.

Due to the increased demand for Downtown events, it is now appropriate for the Council to consider establishing a policy that will provide the framework for staff, Downtown residents and businesses, and event organizers. The Council may want to discuss the following policy considerations during its review of the proposed Downtown Special Event Street Closure Policy (Attachment 1).

- ☐ Should there be specific criteria, such as attendance levels, established for street closures?
- Should parking needs for businesses and residents be taken into consideration?
- ☐ Should Third Street continue to be identified as a primary location for mid-size events downtown?

REPORT NARRATIVE:

The City Council received this item on October 4, 2017. After the October 4 Agenda was posted, but before the Council meeting, a resident of Third Street requested the item be rescheduled to allow the resident to attend the meeting and speak on the item. Council Members received the item and made several comments, including:

- A suggestion was made to limit the number of events during the “Peak Season” months – May through September.
- The vision for Third Street is to have a place for the community, but the City also needs to respect the residents and businesses there.
- Ensure the policy does not stifle events.
- There was discussion on the attendance number requirements within the policy. Ultimately there appeared to be some comfort level from the Council with the numbers after discussing the flexibility incorporated into the policy for new events and the opportunities for smaller events to be held with partial or no street closures.
- A request that the policy indicate that decisions could be appealed to the City Council.

Subsequently, staff has updated the policy to indicate decisions may be appealed to the City Council. No other changes have been made to the proposed policy since that meeting.

The City has long facilitated special events by allowing the closure of City streets to be used as event space. The vast majority of the special events requiring street closures are located in Downtown Morgan Hill. Many long-standing events such as the Taste of Morgan Hill, Fourth of July Parade, and Mushroom Mardi Gras attract tens of thousands of visitors, while some more recently started events have been attended by thousands.

Chapter 12.16 of the Morgan Hill Municipal Code, Events on Public Property, provides the framework for the use of public property for event purposes. The issuance of special event permits is coordinated by the City’s Community Services Department and approval of major events (including those with street closures) is made by the City Manager. The purpose of this item is to further obtain clarification from the City Council relating to street closures for special events in the Downtown area.

The recent City downtown placemaking investment has increased the viability of the Downtown as a desirable event venue. When Third Street was first renovated, it was designed to be an area where special events could be accommodated. The recent addition of the parking structure and adjacent plaza area have furthered this concept. Specific details of Third Street make it very conducive for special events, including: sidewalks even with the street, numerous power supply locations, and a standard traffic control/street closure plan that is easy to implement. Furthermore, the approved, future private development has been designed to allow for continued special event use on Third Street.

Third Street is home to five houses, several businesses, and in the near future, condos/townhomes. Business owners, property owners, and residents have expressed their concerns regarding the closures of Third Street that prevent them from accessing their homes via vehicle during the events. These concerns include convenience of access, safety, and health considerations. Accommodations have been made by event organizers (most notably, nearby resident parking) and the City's Fire Department has assured the residents of response in an emergency during events. However, residents expressed their desire to eliminate regular closures of Third Street.

In follow-up to the recent discussion with residents and businesses, City staff is recommending the Council approve the proposed Downtown Special Event Street Closure Policy. The policy would be designed to allow events to continue in the Downtown and specifically on Third Street, but also provide that specific criteria be met for those events, before a special event permit is considered. The proposed policy criteria include:

Attendance Levels:

1. Regularly occurring special events established prior to the development of this policy shall be allowed to continue in their currently used locations regardless of attendance levels provided they continue to meet requirements outlined in the Municipal Code and all health and safety requirements outlined in the special event permit process.
2. Proposed closures of Monterey Road through the Downtown will only be considered for events with anticipated attendance of over 1,000 and of major community significance as determined by the City Manager.
3. Proposed full street closures for other streets in Downtown shall only be considered for events with anticipated attendance of 500 or greater. First time events with anticipated attendance under 500, but with future growth planned over the next 5 years, may also be permitted at the discretion of the City Manager.
4. Partial closures of Third Street shall be permitted for uses with anticipated attendance less than 500 and of community significance as determined by the City Manager.

Street Closure Traffic Considerations:

1. Event permits shall not be issued for events that request full closure of Monterey Road during peak traffic hours, as determined by the City Engineer.
2. Event permits may be issued for events that request a closure of one side of Monterey Road during peak traffic hours, if it is the side of road that is reverse traffic, as determined by the City Engineer.
3. Staff will work with event organizers to develop event plans that take into consideration parking needs of residents and space needs of event organizers.

Third Street:

Full Third Street closure permits may only be issued for events that need the entire street area for event space, as determined by the City Manager. For events that do not need the entire area, a partial closure may be permitted for a portion of the space, allowing for resident only access via vehicle.

The components of the policy are designed to continue to support events in the Downtown area, while allowing for street closures only for events that bring larger numbers of people. The special event permit review process involving street closures is time intensive for City staff and has greater impact on Downtown businesses and residences. In recognizing this, the minimum attendance numbers in the policy were developed. In response to the previous direction from the City Council, staff has attempted to develop more flexibility in the criteria for full closures for smaller events and those only closing a portion of Third Street.

COMMUNITY ENGAGEMENT: Collaborate

City staff hosted a Community Meeting on August 16th, sent out emails to the Downtown area, and specifically to Third Street residents and event organizers. City staff also mailed letters to residents and businesses in the Downtown area. During the public engagement, several suggestions relating to special events in general were provided by residents and businesses. These general suggestions for process improvements were taken into consideration by staff and many will be utilized to improve the current process (Attachment 2).

Development of the Third Street area and adjacent plaza was discussed at length with the community prior to and during the recent construction downtown.

ALTERNATIVE ACTIONS:

The City Council may elect to make changes to the proposed policy or provide staff with additional direction. Should the Council elect to set a limit on the number of events per month or week on Third Street, it is recommended that the limit be no less than three full closures per week or seven closures per month to allow for one weekly event and two days of closure for a major event per month. It is also recommended that a limit only apply to events where a full closure eliminates vehicle access for residents.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council reviewed the proposed policy on October 4, 2017, but deferred making a decision per the request of a resident, who could not be present, but wanted to speak on the item. The City Council asked that the initial proposed policy presented on June 21, 2017 be revised. Prior to this, the City Council previously updated Chapter 12.16 of the municipal code, relating to special events, on June 16, 1999.

FISCAL AND RESOURCE IMPACT:

There is no direct fiscal impact associated with the proposed policy. Special events support the inclusiveness, tourism, and economic development goals of the City.

CEQA (California Environmental Quality Act):
Categorical Exemption

The policy for Downtown Street Closure is categorically exempt under CEQA, specifically pursuant to Section 15301 of the CEQA Guidelines (Existing Facilities), as the subject policy involves the operation and permitting of existing City facilities involving negligible or no expansion of use of those facilities.

LINKS/ATTACHMENTS:

1. Revision Draft Council Policy DT Events
2. Proposed SEP process enhancements

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP-17-XX

SUBJECT: DOWNTOWN STREET CLOSURES

EFFECTIVE DATE: October 4, 2017

ORIGINATING DEPARTMENT: *COMMUNITY SERVICES DEPARTMENT*

PURPOSE

Chapter 12.16 of the Morgan Hill Municipal Code, Events on Public Property, outlines requirements for special events and the associated permit process. The primary purpose of this policy is to provide guidance to staff in the issuance of special event permits that close streets in Downtown Morgan Hill.

POLICY

In recognition of the economic and community benefits of facilitating events in the Downtown area, while taking into consideration the residents whom which these events impact, the City Council establishes the following guidelines for use in the issuance of special event permits.

Attendance Levels

1. Regularly occurring special events established prior to the development of this policy shall be allowed to continue in their currently used locations regardless of attendance levels provided they continue to meet requirements outlined in the Municipal Code and all health and safety requirements outlined in the special event permit process.
2. Proposed closures of Monterey Road through the Downtown will only be considered for events with anticipated attendance of over 1,000 and of major community significance as determined by the City Manager.
3. Proposed full street closures for other streets in Downtown shall only be considered for events with anticipated attendance of 500 or greater. First time events with anticipated attendance under 500, but with future growth planned over the next 5 years may also be permitted.
4. Partial closures of Third Street shall be permitted for uses with anticipated attendance less than 500 and of community significance as determined by the City Manager.

Street Closure Traffic Considerations

1. Event permits shall not be issued for events that request full closure of Monterey Road during peak traffic hours, as determined by the City Engineer.
2. Event permits may be issued for events that request a closure of one side of Monterey Road during peak traffic hours, if it is the side of road that is reverse traffic, as determined by the City Engineer.
3. Staff will work with event organizers to develop event plans that take into consideration parking needs of residents and space needs of event organizers.

Third Street

Full Third Street closure permits may only be issued for events that need the entire street area for event space, as determined by the City Manager. For events that do not need the entire area, a partial closure may be permitted for a portion of the space, allowing for resident only access via vehicle.

Appeal

Issuance or non-issuance of special events in relation to this policy may be appealed to the City Council by providing written notice to the City Manager.

This policy shall remain in effect until modified or revoked by the City Council.

APPROVED:

STEVE TATE, MAYOR

Proposed Special Event Permit Process Enhancements

As a result of the feedback received from community members, residents, business owners, and event organizers, we have identified several items to enhance our current special events permitting process. Although many of these items are being done, they are not a formal part of the process. We anticipate all items to be implemented by July 2018.

Maintenance

- Formalize the maintenance and cleanup plan. Include locations and plan for trash/recycling, a contact for cleanup/follow up, and a map of area with garbage locations. This plan will not allow for City trash cans to be covered, unless the event trash can is placed next to the covered trash can. The event organizer will be responsible for the trash and recycling bins and litter within their event footprint and the surrounding area.
- Continue to schedule maintenance walk throughs the morning of the first business day following the event. Maintenance personnel will complete a check of the area and provide photos as needed for areas that do not meet cleanliness standards.
- Implement a maintenance deposit for all events in the downtown area or with major road closures. This fee will be in the amount of \$1,500. This would be refundable if the area is cleaned and maintained to the expectations of the City maintenance team. This deposit will be used to meet the expectations if the event organizer has not met those expectations after the event.
- Areas within the surrounding area of the event footprint that will require cleanup by the event organizer will be identified in the permit document.

Porta Potties

- Formalize the requirement for a Portable Restroom Plan. This would be required as a part of the permit document for any event taking place on a City street. This plan will include the locations of the portable restrooms and any ADA requirements.

Downtown Parks

- Downtown Parks are to remain open during events for public use.
- Park restrooms are to remain open to the public during the regular hours. These restrooms may not be relied on for use as an event restroom location.
- If the park falls within the event footprint area or the designated surrounding area, the event organizer is responsible for cleaning up the space, as is the case with the roadway, or other City facilities used for the event.

Parking Structure

- If the downtown parking structure falls within the event footprint area, the event organizer is responsible for cleaning up the space, as is the case with the roadway, or other City facilities used for the event.

- If parking spaces are requested to be reserved for the use of volunteers of the event, the event organizer will be required to provide security for this area. It is the event organizer's responsibility to ensure that the security personnel understand the procedures.
- No ADA spaces are to be blocked off at any time. They must remain open to the public.

Security

- Formalize the requirement for a Security Plan. This plan will be required as a part of the permit document for any event taking place on a City street. This plan will include the locations of the personnel as well as a contact person.

Conditional Approval and Notice to Impacted Area

- Event applications are required a minimum of 90 days prior to the event date. A late fee of \$200 will be applied to applications received after the 90 day deadline.
- For applications that are received 90 days or more before the event date, a conditional approval will be given once the rental contract is signed, SEP and rental fees are paid in full, and insurance has been approved by 60 days prior to the event.
- A letter of conditional approval will be sent to the event organizer. Once conditional approval has been provided, the event organizer must start working on the notification to the impacted area, with notification being provided a minimum of 30 days in advance of the event date.
- If the event organizer fails to provide the items necessary for the conditional approval within the designated time period the event may be cancelled, as determined by the City.

First-time Events

- Implement growth plan for first time events that intend to become annual events. This document will be included in the permit. This document will cover the anticipated attendance for the first year and a plan for growth over the next five years. This plan will also include the community benefit of the new event.



CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2017

PREPARED BY: Anthony Eulo, Program Administrator

APPROVED BY: City Manager

ESTABLISHMENT OF ADMINISTRATIVE PROCESS TO CONSIDER HAZARDOUS VEGETATION PROGRAM CHARGES

RECOMMENDATION(S)

Direct staff to prepare an ordinance establishing an administrative process for hazardous vegetation abatement program charges.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

Protecting the Environment

Maintaining Fiscal Responsibility

POLICY CONSIDERATIONS:

Should the City establish an administrative process to annually consider property owner charges for the City's hazardous vegetation abatement program or should it maintain the current system? If an administrative process is established, what form should it take?

REPORT NARRATIVE:

The City has long contracted with Santa Clara County to administer the hazardous vegetation abatement program. This program, which is primarily funded by charges placed upon properties in the program, has protected the community for over 20 years by reducing hazardous vegetation. The existing program comes to the City Council three times annually on the following schedule:

- *December:* An annual resolution declaring hazardous vegetation a nuisance and setting the public hearing for program commencement;
- *Late January/Early February:* A public hearing providing property owners with an opportunity to protest the inclusion of their property in the program; and
- *Late July/Early August:* A public hearing providing property owners with an opportunity to comment or protest the charges recommended to be imposed on their property and related resolutions approving the recommended charges.

At its July 2017 annual public hearing considering hazardous vegetation program charges, the City Council asked staff to evaluate if there are options available for an

administrative process that would work smoother than the current public hearing. Staff has consulted with County staff in developing the following options:

1. *County Administrative Hearing:* The County has already established an administrative hearing process for properties in the unincorporated area. The current Hearing Officer is a former member of the County Counsel's Office and is well acquainted with relevant law. The hearings are held in San Jose during the day and would operate similar to the existing City Council public hearing.
2. *Local Prehearing Before County Administrative Hearing:* In this model, staff from the County program and the City would meet with property owners interested in protesting or learning more about the program charges recommended for their property at a time established for the prehearing. At the prehearing, staff may determine that some or all the charges should be reduced or may merely provide information to the inquiring property owner about what the charges are and why they are imposed. Any property owners wishing to appeal the recommended charges would then attend the County administrative hearing as described above.
3. *Local Prehearing Before City Council Public Hearing:* This option is identical to #2 above except that property owners wishing to appeal the recommended charges would attend a City Council public hearing. The Council's public hearing would likely be a more organized hearing than the current public hearing because property owners would be more educated about the process before the hearing and staff would be prepared to present the photos and history related to the particular properties being appealed at the hearing.
4. *Local Administrative Hearing:* If desired, the City could establish a local administrative hearing process for this issue that would operate similar to the County's program.

After considering the identified four options, staff thinks that Option 2 is likely to provide the best outcome for the community. By still providing property owners with a local option to contest program charges, Option 2 provides a higher level of customer service than Option 1 alone - while still ultimately relying on an administrative hearing. Option 4 could provide a similar outcome, but would be less efficient administratively and would increase costs to the City.

Staff recommends that the City Council direct staff to prepare the ordinance needed to change the City's Municipal Code consistent with Option 2 and present the ordinance for Council adoption in early 2018.

COMMUNITY ENGAGEMENT: Inform

Staff will inform property owners about any changes in the process for the 2018 program.

ALTERNATIVE ACTIONS:

The Council could choose any of the other identified options, create an additional option, or direct staff to conduct additional research on options available. The current system would be maintained if the Council takes no action.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Considering hazardous vegetation program charges is an annual activity of the Council. After the Council's last public hearing, staff was asked to develop options for an administrative process.

FISCAL AND RESOURCE IMPACT:

There are no significant fiscal impacts anticipated from any of the options except Option 4 which would require the establishment of a new City-housed administrative hearing process. Administering the current program is included in the work program of the Community Services and Fire Departments. Convening a prehearing would create a small amount of additional workload that could be absorbed into the workloads of existing staff. Creating a new administrative hearing process would involve additional staff members not currently working in the program.

CEQA (California Environmental Quality Act):

Not a Project

Since this item relates solely to an administrative process of the City and will not impact nor result in physical changes to the environment, it is not a project in accordance with the CEQA Guidelines.



CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2017

PREPARED BY: Bill Norman, Police Sergeant

APPROVED BY: City Manager

ANIMAL SERVICES UPDATE

RECOMMENDATION(S)

1. Receive report; and
2. Direct City staff to explore alternative regional approach to animal services.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

Maintaining Fiscal Responsibility

2017 Strategic Priorities

Regional Initiatives

POLICY CONSIDERATION:

Should the City explore a regional approach to animal services in South County?

REPORT NARRATIVE:

The City Council has been engaged in an ongoing policy discussion about the level of services the City funds for housing stray or abandoned cats (\$11,000 annually) and providing financial assistance for Santa Clara County's (County) spay and neuter program (\$5,000 annually). The current agreement authorizes the County to charge the City for specific animal services. These services include the use of the shelter for animal disposition or holding, impound processing, sheltering, on-site medical treatment (stabilization), and if necessary, euthanasia. The agreement specifies the cost of the County services at \$110 per animal and specifies the City be billed monthly.

The purpose of this update report is to provide a follow-up from the previous animal services discussion and agreement regarding feral cats and explore the possibilities of a regional animal services approach. This is the fourth animal services assessment presented to City Council.

Since the beginning of the program, staff has closely monitored the cost of housing stray or abandoned cats that are brought to the San Martin Animal Shelter. While reviewing the initial billable invoices from the County, staff found that the City was billed erroneously for cats that were brought in by residents to be spayed/neutered even though the cat was released the same day. There were also several charges for cats brought in for spaying/neutering that were then housed because the caretaker chose not to care for the cat while it healed from the procedure. In addition, the City was billed for cats that were located or trapped outside our jurisdiction. Staff has found that the

oversight of the program is time intensive and burdensome to continue in its current practice.

The contract with the County states that the City will be billed monthly for animals brought to their facility. On two separate occasions, staff has had to contact the County and request the bills to ensure the spending remains within the budget. Upon receiving the documents, staff found the City was over billed for services once again. Since July 2017 staff has identified approximately \$1,320 in over billing by the County. These charges were contested by staff and ultimately reversed by the County. As of November 1, 2017, the City has spent nearly half of the funding granted for FY 2017-18 and anticipates having sufficient funds for the remainder of the fiscal year.

Due to the expense and on-going issues with the County, staff has started to research alternatives to animal services. Within the County of Santa Clara, there are several jurisdictions with similar demographics and city services. Staff has identified three similar cities (Campbell, Los Gatos, and Gilroy) to evaluate and identify how animal services are provided to each community.

The Town of Los Gatos currently contracts all their animal services with the City of San Jose. The City of San Jose created the Animal Care & Services (ACS) division in 2001 in response to the Humane Society Silicon Valley's notification that they could no longer continue providing shelter and field service contracts for Santa Clara County. With the completion of the City of San Jose's new Animal Care Center in 2004, the City of San Jose itself is now providing shelter and field services for San Jose residents and for residents of Los Gatos, Cupertino, Milpitas, and Saratoga. Animal Care and Services are divided into four units: Field Operations, Medical Operations, Shelter Operations, and Administration. Los Gatos has contracted with San Jose Animal Control for over 10 years and they provide all services including calls for service and animal complaints. All calls and service requests are handled by San Jose ACS employees. Los Gatos Police officers will respond to calls for service after hours and report the incident to San Jose for further investigation. Officers will also respond to criminal animal complaints and work together with San Jose Animal Control. The total cost for the Town of Los Gatos to contract with the City of San Jose is approximately \$215,000 annually.

The City of Campbell contracts all their animal services with Silicon Valley Animal Control Authority (SVACA). SVACA provides around the clock animal care and control services for the residents of Campbell, Monte Sereno, Mountain View, and Santa Clara. SVACA's services and programs include the care of sick, injured, lost, and abandoned companion animals, animal cruelty investigations, enforcement of animal laws, education and outreach programs, volunteer and foster programs. Field operations began on July 1, 2001 and cageless animal care center opened in 2006. The facility is also open to residents from throughout Santa Clara Valley and beyond who want to adopt animals, look for lost animals, or want to participate in educational programs. The 17,000-square-foot facility can accommodate more than 150 cats, 50 dogs, and assorted 'other' animals. Like Los Gatos, Campbell has had this contract in place for

many years and continues to serve the community effectively. All animal complaints and calls for service are handled by SVACA as part of the contract. The total cost of the animal service contract with SVACA for the City of Campbell is approximately \$309,000 annually.

The City of Gilroy has a Community Service Officer (CSO) assigned to animal services. The CSO is a civilian employee assigned to handle animal related calls for service and complaints. The designated CSO works a modified schedule that allows them to respond to calls for service and investigate complaints. Gilroy's kennel facility is outdated and in need of repair/replacement. The total cost of rebuilding the existing kennel would be expensive and time consuming. The City of Gilroy is currently in conversation with the County of Santa Clara to provide their animal services related to sheltering, processing, on site medical treatment, and euthanasia as necessary. The contract includes all dogs and cats. The proposed annual cost for these County sheltering services to the City of Gilroy is \$60,000.

Animal services for Morgan Hill include a full-time Animal Services Officer (approximately \$100,000), \$11,000 to the County for housing of stray or abandoned cats, \$5,000 for the spay and neuter program, \$1,400 for dog services, costs for veterinary bills and dog supplies, as well as the time Multi-Service Officers spend on animal services. Currently the Animal Services Officer is undergoing his initial training and is expected to complete it by the end of 2017.

The County has offered to provide unlimited services for an annual cost of \$30,000 (approximately \$15,000 more than the City is currently paying). As the City recommends exploring a regional approach to animal services in South County and as half of the FY 2017-18 County funding is remaining, the City could wait until the upcoming budget process to determine if the additional County services should be engaged.

If the Council directs staff to explore a regional approach, staff will work with the neighboring communities to determine if service levels can be enhanced and costs reduced through partnerships.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform and update the community on animal services and regional possibilities.

ALTERNATIVE ACTIONS:

1. Council could choose to maintain the current funding level as described.
2. Council could increase the annual contribution per year for the housing and intake of stray or abandoned cats.
3. Council could decrease the annual contribution per year for the housing and intake of stray or abandoned cats.
4. Council could direct staff to develop an agreement between the City of Morgan Hill and the County of Santa Clara for City Council consideration in which the City pays a fixed rate of \$30,000 for the City of Morgan Hill and its residents to bring

an unlimited number of domestic/feral animals to the shelter and provide spay/neuter services.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On November 18, 2015, Council heard a request during public comment asking the City to participate in Santa Clara County's Spay and Neuter Program.

On December 16, 2015, Council provided teammates direction to participate in the program by contributing \$5,000 a year.

On May 4, 2016, Council appropriated \$11,000 for FY 2016-17 for the housing of stray or abandoned cats at the San Martin Animal Shelter.

On August 23, 2017, Council continued to appropriate \$11,000 for FY 2017-18 for the housing of stray or abandoned cats at the San Martin Animal Shelter.

During the mid-cycle budget review Council appropriated \$100,000 to hire an Animal Services Officer.

FISCAL AND RESOURCE IMPACT:

No fiscal impact for the recommended actions.

The FY 2017-18 adopted budget includes: cost of the Animal Services Officer (approximately \$100,000), \$11,000 to the County for housing of stray or abandoned cats, \$5,000 for the spay and neuter program, \$1,400 for dog services, the cost for veterinary bills and dog supplies, as well as costs for Multi-Service Officer time.

CEQA (California Environmental Quality Act):

Not a Project. Organizational or other administrative activities of governments that will not result in direct or indirect physical changes to the environment.

LINKS/ATTACHMENTS:

1. August 23, 2017 City Council Staff Report (weblink)
2. May 4, 2016 City Council Staff Report (weblink)
3. December 16, 2015 City Council Staff Report (weblink)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2017

PREPARED BY: Dat Nguyen, Finance Director

APPROVED BY: City Manager

SEPTEMBER 2017 FINANCIAL AND INVESTMENT REPORT

RECOMMENDATION(S)

Accept and file report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

Preserving and Cultivating Public Trust

REPORT NARRATIVE:

As part of the City Council's expectation to maintain a high level of transparency and to be responsible stewards of public funds, attached are the Financial and Investment Reports for the three months ended September 30, 2017. Overall, the City received 22% of the budgeted revenues for all funds as there is typically a delay in remittances. However, the amount received year to date for all funds is approximately \$2.9 million or 12% higher than prior year at this time. The increase was primarily led by an increase in General Fund revenues of \$1.4 million, of which, approximately \$929,000 was due to the repayment of the former City Manager's home loan.

General Fund revenues totaled \$7.6 million, \$1.4 million or 22% higher than a year ago at this time mainly due to the repayment of the former City Manager's home loan as mentioned above. General Fund expenditures totaled \$10.2 million or 25% of the budget. Expenditures, including encumbrances amounted to \$12.9 million or 32% of the budget. The encumbrances represent commitments or contractual obligations that the City entered into with vendors or suppliers, such as Cal-West Lighting and Signal Maintenance for the City's streetlights and traffic signals, and the partnership agreement with the YMCA of Silicon Valley for the management and operation of the Community Recreation Center. The services from these vendors are expected to be utilized by the City and paid throughout the fiscal year.

Community Development Fund revenues totaled \$1.0 million, or approximately 27% of the budget. The amount received to date is approximately \$260,000 less than prior year. Expenditures and encumbrances totaled \$1.8 million, or approximately 34% of the budgeted appropriation. The Council recently approved the Community Development's User Fee Study and adopted the updated fee schedule at the November 1, 2017 meeting. The updated fees are to be gradually phased in over 12 months, with the first increase effective January 1, 2018.

Enterprise Funds revenues which comprised of Water and Sewer totaled \$8.6 million or 26% of the budget, an increase of \$1.3 million or 18% from a year ago at this time primarily due to higher development impact fees collected and water sales to date of approximately \$1.2 million. Expenditures, including encumbrances amounted to \$12.8 million or 28% of the budget.

COMMUNITY ENGAGEMENT: Inform

Finance staff prepares these financial 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 quarterly 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. September 2017 Financial Statement Analysis
2. September 2017 Financial and Investment Report

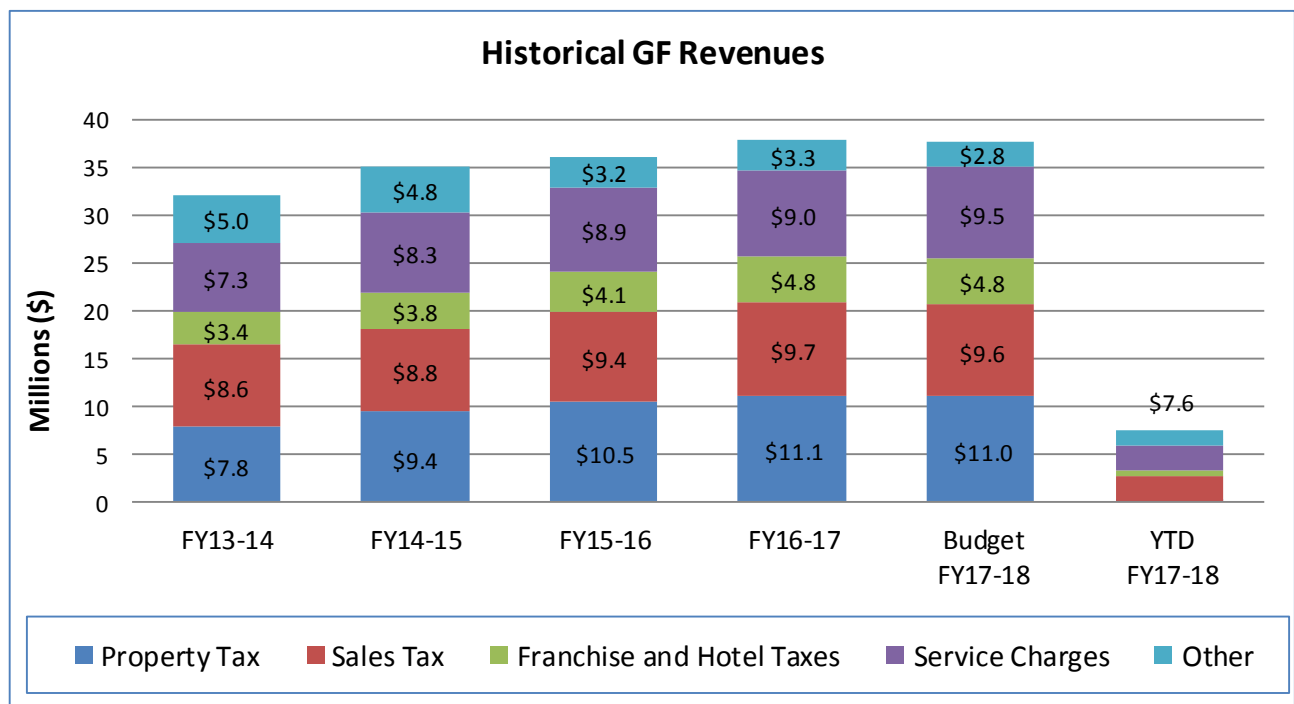


CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2017-18
FOR THE MONTH ENDED SEPTEMBER 2017 – 25% OF YEAR COMPLETE

- **General Fund** – Revenues through September totaled \$7.6 million, or 20% of the budgeted revenues as some of the major revenue categories such as property tax are received later in the fiscal year. With respect to the property tax revenue forecast, at the recent Cities Property Tax Meeting, County staff projected Morgan Hill property tax revenue, excluding the property transfer tax, at \$11.1 million for the fiscal year 2017-18, which is approximately \$500,000 more than the mid-cycle revised estimate. Property tax is the largest source of Morgan Hill's General Fund revenue. However, it accounts for only 28% of the approximately \$37.8 million General Fund revenue. Although property tax tends to be a more predictable revenue source, other major revenue categories such as sales tax and transient occupancy tax, which account for a large portion of the City's General Fund revenue, are more volatile and tend to fluctuate more with swings in the economy.

The small category of business licenses was already at 81% of the budgeted amount as annual business license renewal payments are usually received in July.

The chart below shows historical General Fund revenues by major revenue category from FY13-14 through FY16-17 Actual, FY17-18 Budget, and YTD as of September 30, 2017.



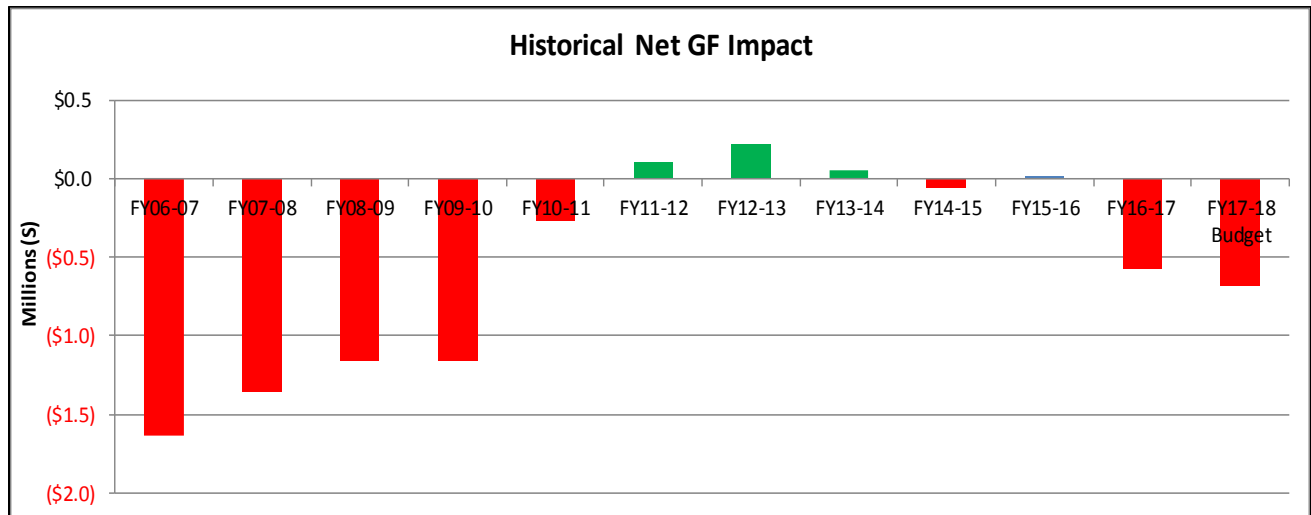
General Fund expenditures and encumbrances as of September 30, 2017 totaled \$12.9 million, of which approximately \$2.7 million is attributable to outstanding encumbrances.

- **Community Services** - The Community Services Department's recreation operations, as reflected in the schedule presented on page 4 of the Monthly Financial and Investments Reports, shows a negative impact to the General Fund of approximately \$1.4 million through the month of September. Without the carry-over encumbrances, year to date operations resulted in a much smaller negative impact to the general fund of approximately \$31,000. Any net impact from the recreation operations increases



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2017-18
FOR THE MONTH ENDED SEPTEMBER 2017 – 25% OF YEAR COMPLETE

(decreases) reserves in the General Fund. The following chart reflects the effect of Community Services activity on the General Fund.



Due to longstanding governmental accounting and budgeting convention, the City's recreation operations are not charged for indirect costs (known in Morgan Hill as "General Fund Administration") from the central services departments of City Attorney, City Manager, and Administrative Services. The City's other governmental funds, such as Community Development, and the proprietary funds, such as Water and Wastewater, and the Information Services Fund, are assessed such charges through the City's indirect cost allocation plan, prepared in compliance with the Federal government's OMB Circular No. A-87, which mandates certain calculation and cost allocation practices that must be followed in order to qualify for Federal grant funding, but which also represent best practice for non-grant funded City operations like utilities and information services.

- **Community Development Fund** – Revenues through September totaled \$1.0 million, or approximately 27% of the budget. The amount received to date is approximately \$260,000 less than prior year. Expenditures and encumbrances totaled \$1.8 million, or approximately 34% of the budgeted appropriation. Without the outstanding encumbrances, however, expenditures through the month of September amounted to \$1.2 million.
- **Debt Service Funds** – Expenditures through September totaled \$1,620. The debt service for the first half of the year includes both interest and principal, while the second half of the year will include interest only. Debt service payments were all scheduled when the bonds were issued, and are budgeted for in the months delineated in the underlying bond documents. 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** – Revenues from Sewer Operations through September totaled \$2.6 million. Expenditures and outstanding encumbrances totaled \$2.6 million or 24% of the budget. The table below shows historical Sewer Operations revenues and expenditures from FY13-14 through FY16-17 Actual, FY17-18 Budget, and YTD as of September 30, 2017.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2017-18
FOR THE MONTH ENDED SEPTEMBER 2017 – 25% OF YEAR COMPLETE

(amount in millions)	FY13-14	FY14-15	FY15-16	FY16-17	Budget FY17-18	YTD FY17-18
Revenues	9.4	10.3	10.2	9.7	10.8	2.6
Expenditures	8.6	8.8	12.0	9.8	10.8	2.6
Operating Margin	0.8	1.5	(1.8)	(0.1)	-	-
Operating Margin without Encumbrances	0.8	1.5	(1.8)	(0.0)	-	0.1

- Water Operations** – Water Operations includes Utility Billing, Water Conservation, and Water Operations. Revenues from Water Operations through September totaled \$3.8 million, approximately \$558,000 more than a year ago at this time. Water Operations expenditures, including outstanding encumbrances, through the month of September totaled \$3.1 million. Without the encumbrances, however, the expenditures amounted to \$2.4 million. The table below shows Water Operations revenues and expenditures from FY13-14 through FY16-17 Actual, FY17-18 Budget, and YTD as of September 30, 2017.

(amount in millions)	FY13-14	FY14-15	FY15-16	FY16-17	Budget FY17-18	YTD FY17-18
Revenues	12.2	8.8	8.5	10.9	12.2	3.8
Expenditures	12.1	9.3	9.7	10.8	12.1	3.1
Operating Margin	0.1	(0.5)	(1.2)	0.1	0.1	0.7
Operating Margin without Encumbrances	0.1	(0.5)	(1.2)	0.3	0.1	1.4

- Investments** – Two securities were called during the month of September 2017. Total interest earnings received on investments were \$135,000 during the month.

CITY OF MORGAN HILL
Monthly Financial and Investment Reports
September 30, 2017 - 25% of Year Complete

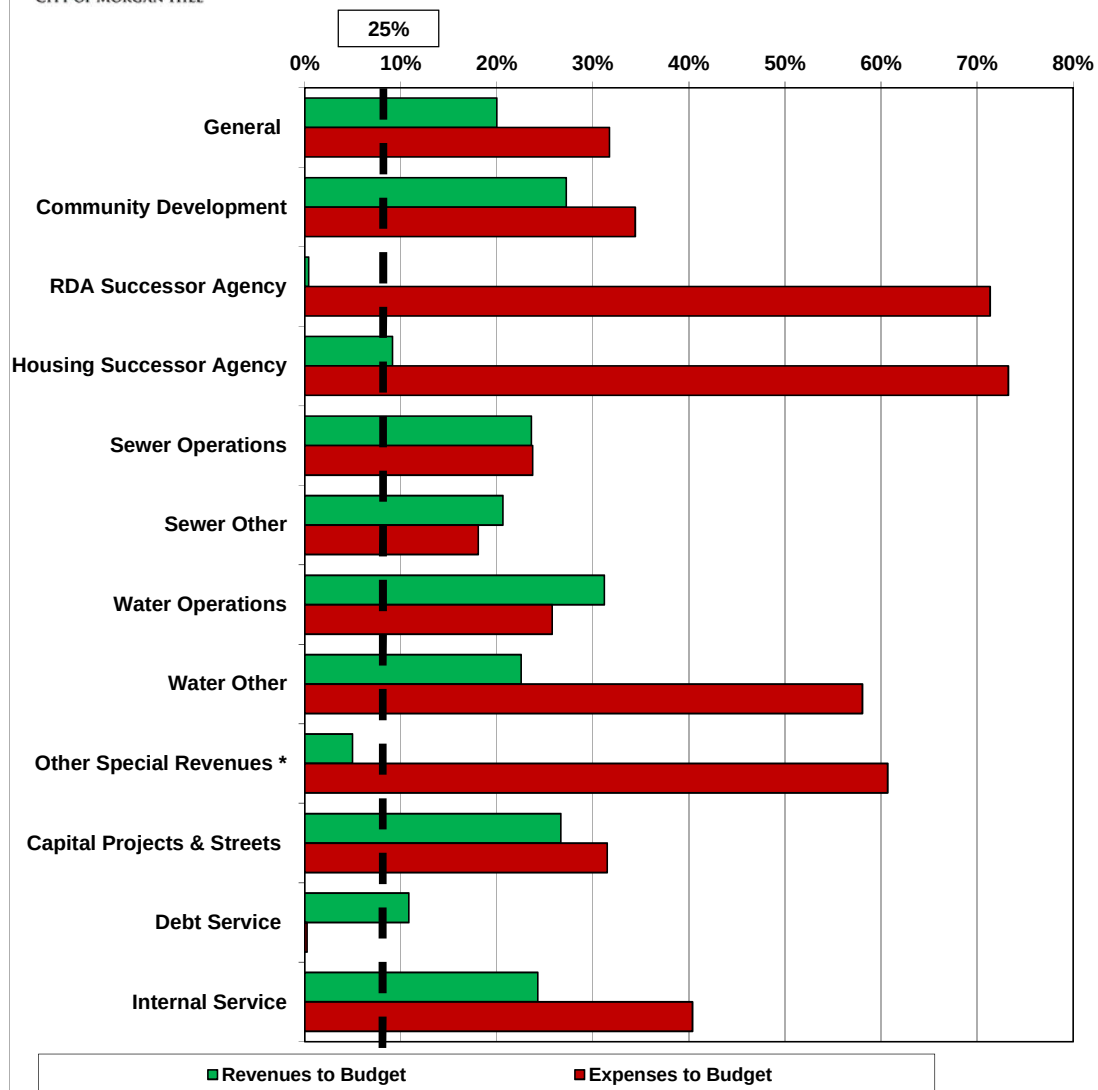


CITY OF MORGAN HILL

Prepared by:
FINANCE DEPARTMENT



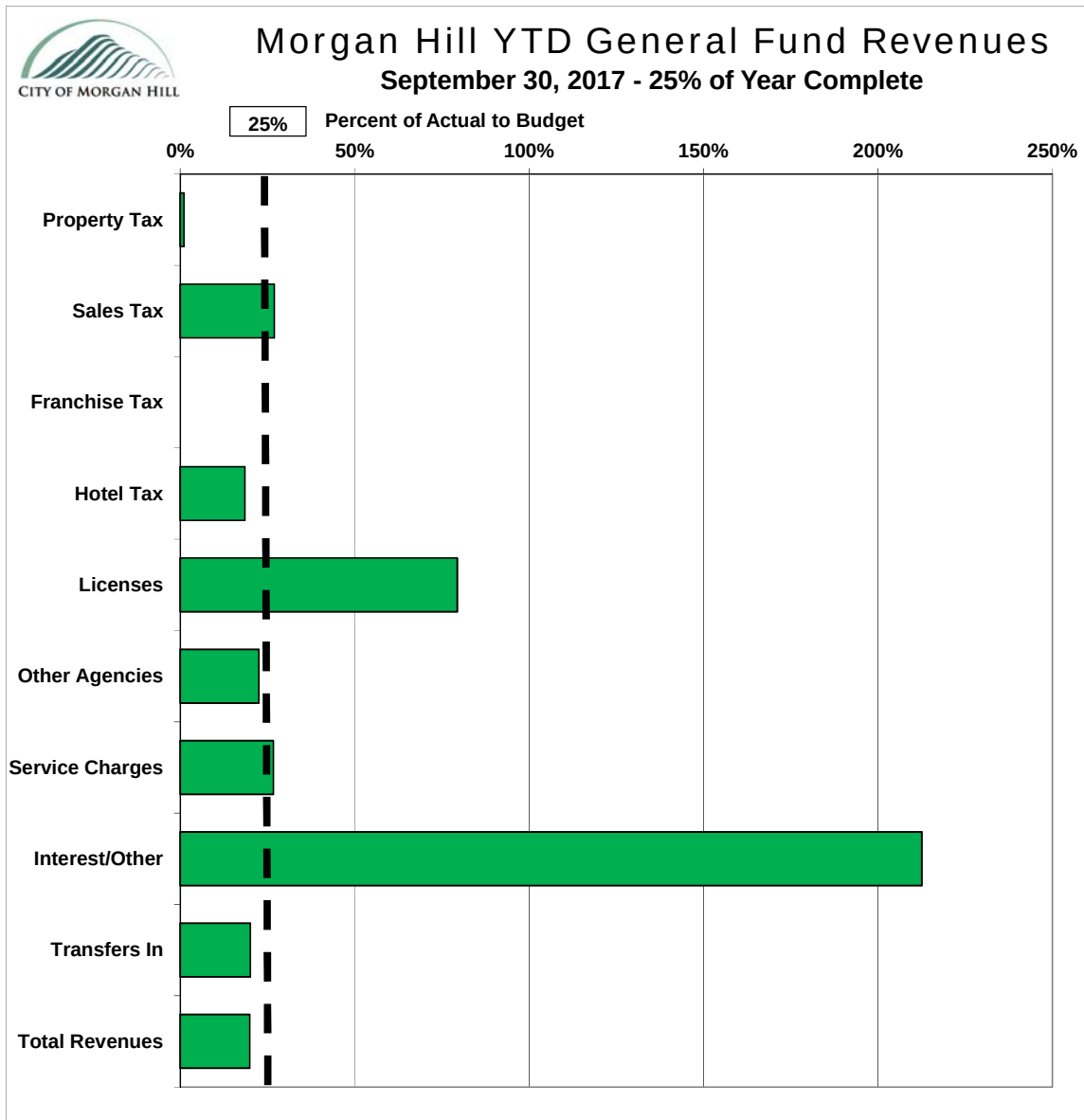
Morgan Hill YTD Revenue & Expense Summary September 30, 2017 - 25% of Year Complete



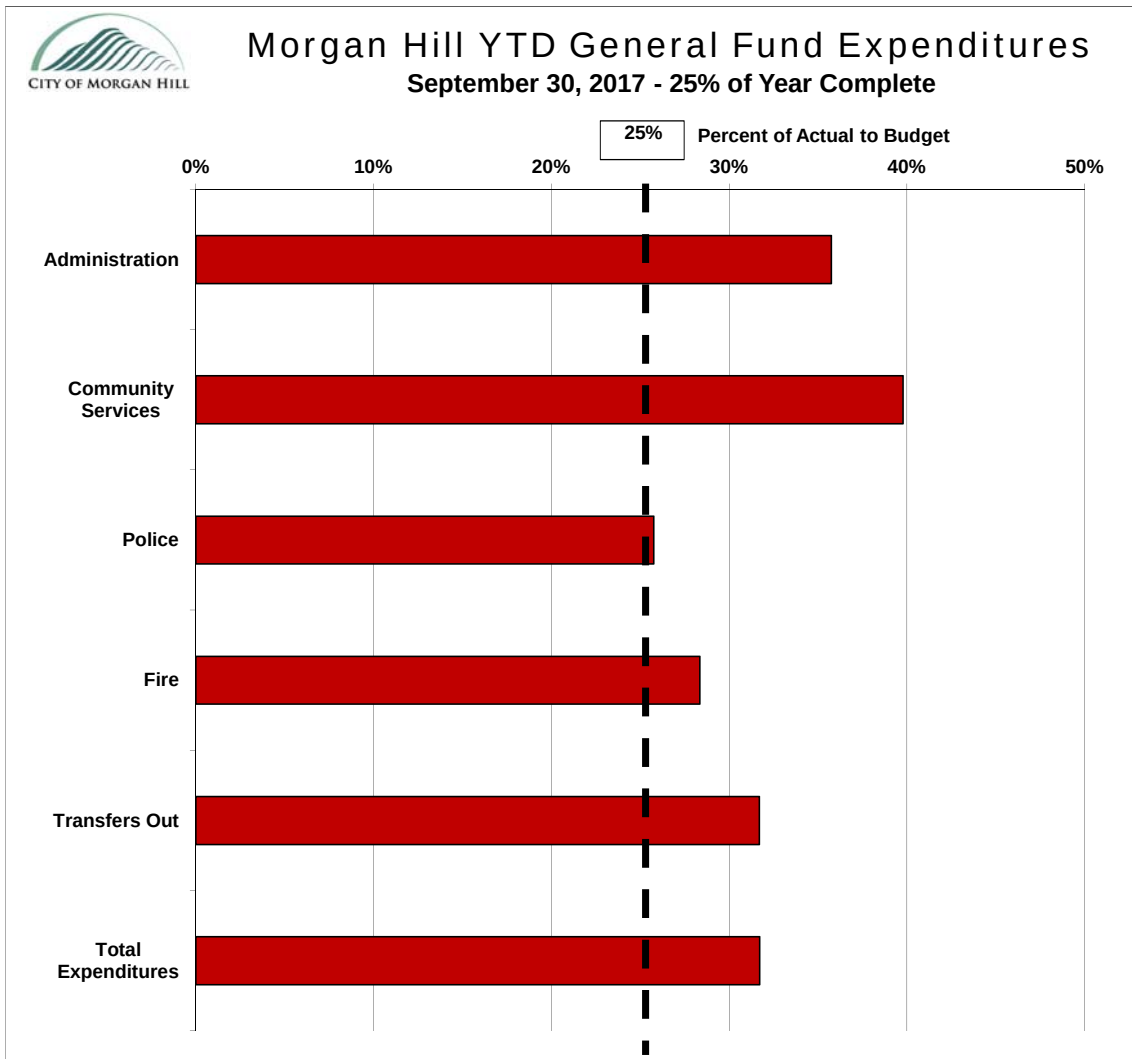
FUND NAME	REVENUES		EXPENSES	
	ACTUAL	% OF BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET
General	\$ 7,552,338	20%	\$ 12,883,574	32%
Community Development	1,001,972	27%	1,831,025	34%
RDA Successor Agency	30,422	0%	5,122,043	71%
Housing Successor Agency	117,533	9%	1,425,604	73%
Sewer Operations	2,557,249	24%	2,573,443	24%
Sewer Other	1,491,932	21%	3,361,207	18%
Water Operations	3,813,954	31%	3,105,720	26%
Water Other	688,704	23%	3,715,238	58%
Other Special Revenues *	388,131	5%	871,709	61%
Capital Projects & Streets	3,658,658	27%	8,214,407	31%
Debt Service	73,953	11%	1,620	0%
Internal Service	2,526,414	24%	4,301,872	40%
TOTAL FOR ALL FUNDS	\$ 23,901,260	22%	\$ 47,407,463	33%

* Includes all Special Revenue Funds except Community Development, Street Funds, and RDA and Housing Successor Agencies.

Attachment: September 2017 Financial and Investment Report (1521 : September 2017 Financial and Investment Report)



REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Property Tax	\$11,047,000	\$ 117,781	1%	\$ 210,921	-44%
Sales Tax	9,588,502	2,591,346	27%	2,422,390	7%
Franchise Tax	1,981,796	-	-	-	-
Hotel Tax	2,827,050	526,234	19%	582,362	-10%
Licenses	210,621	167,252	79%	157,722	6%
Other Agencies	319,875	72,393	23%	22,403	223%
Service Charges	9,536,644	2,545,615	27%	2,373,432	7%
Interest/Other	561,760	1,194,203	213%	235,258	408%
Transfers In	1,682,103	337,513	20%	191,250	76%
TOTAL REVENUES	\$37,755,351	\$ 7,552,338	20%	\$ 6,195,738	22%



EXPENDITURE CATEGORY	BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Administration	\$ 6,087,327	\$ 2,176,314	36%	\$ 2,346,115	-7%
Community Services	11,050,226	4,396,096	40%	4,189,526	5%
Police	15,794,165	4,068,561	26%	3,908,403	4%
Fire	5,785,389	1,639,684	28%	1,552,853	6%
Transfers Out	1,901,915	602,919	32%	768,419	-22%
TOTAL EXPENDITURES	\$ 40,619,022	\$ 12,883,574	32%	\$ 12,765,316	1%

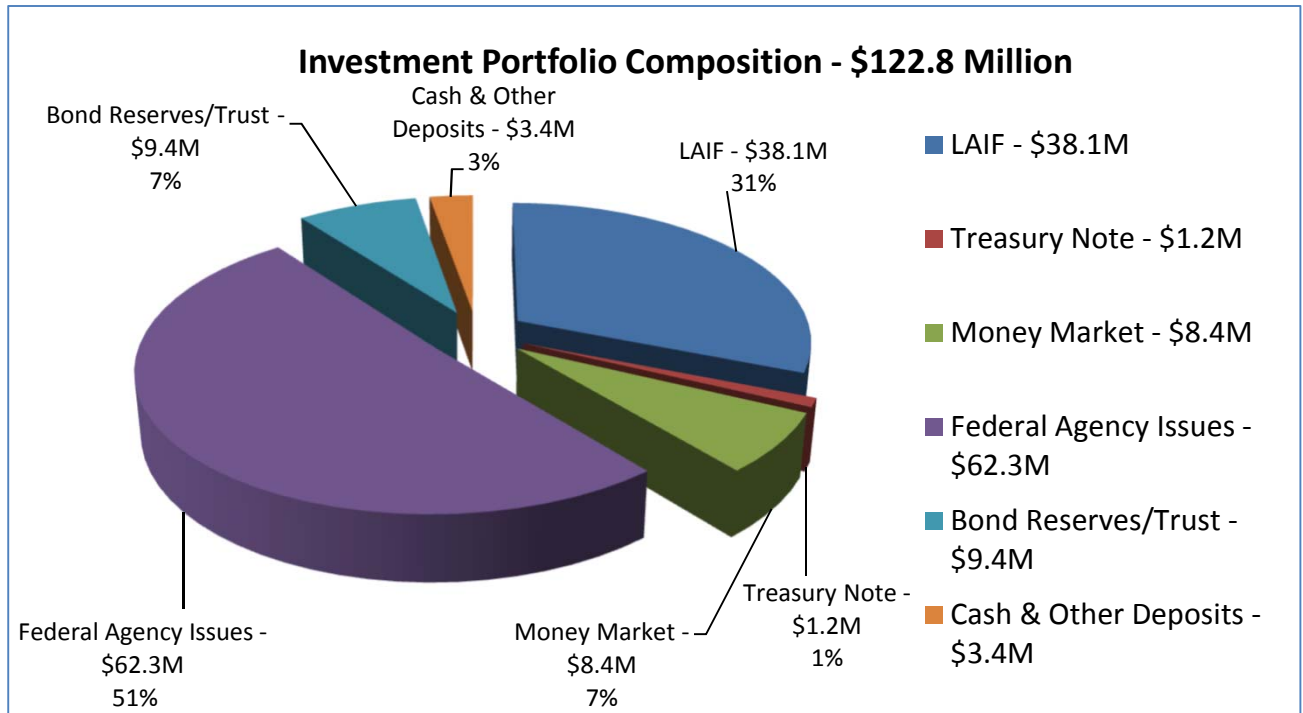


City of Morgan Hill
Recreation Report - Fiscal Year 2017-18
For the Month and Three Months Ended September 30, 2017
25% of Year Complete

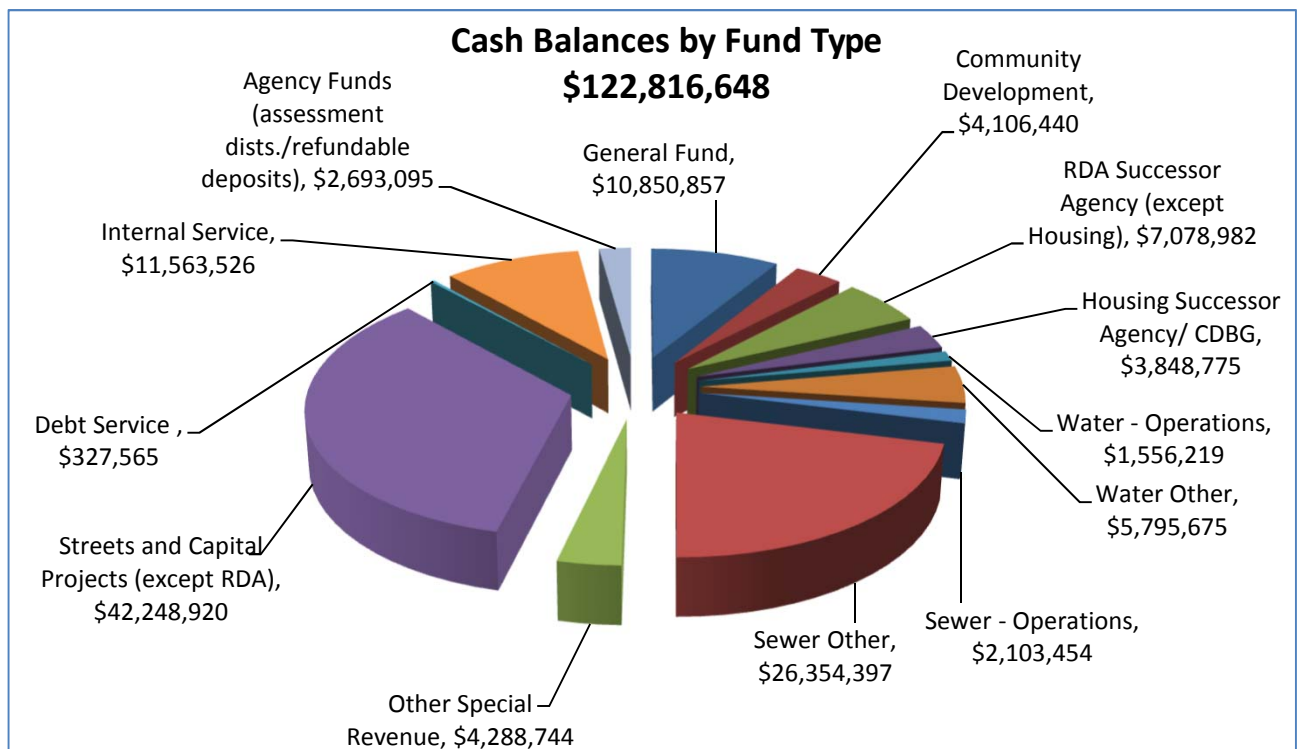
	<u>Budget</u>	<u>September 2017</u>	<u>YTD</u>	<u>% of Budget</u>
Revenues				
Membership Services & Rec Programs	\$ 6,197,036	\$ 455,106	\$ 1,764,022	
Facility Rentals	904,666	59,425	285,868	
Community Services	139,190	10,861	23,541	
Transfers in	75,000	6,250	18,750	
Total Revenues	\$ 7,315,892	\$ 531,643	\$ 2,092,181	29%
Less: Expenditures				
Membership & Program Services	\$ 5,914,430	\$ 400,818	\$ 1,594,782	
Facility Rentals	1,299,185	128,553	338,681	
Community Services	768,671	60,034	190,105	
Total Expenditures	\$ 7,982,287	\$ 589,404	\$ 2,123,567	27%
Net Impact without encumbrances	\$ (666,395)	\$ (57,761)	\$ (31,386)	
Encumbrances	-	-	1,330,271	
Net Impact with encumbrances	\$ (666,395)	\$ (57,761)	\$ (1,361,657)	

City of Morgan Hill Monthly Investment Report - September 30, 2017

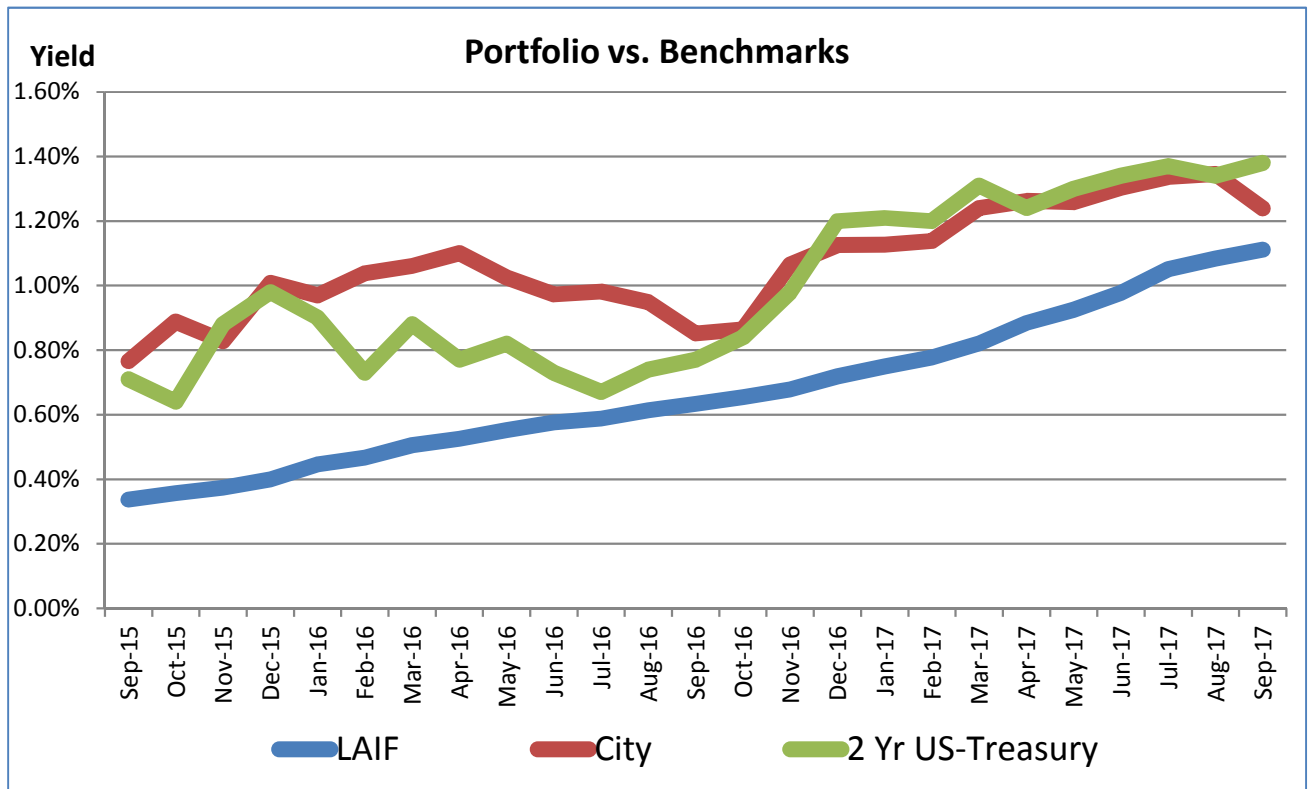
The following are the snapshots of City's investment portfolio as of September 30, 2017. The first chart shows the portfolio composition by investment type:



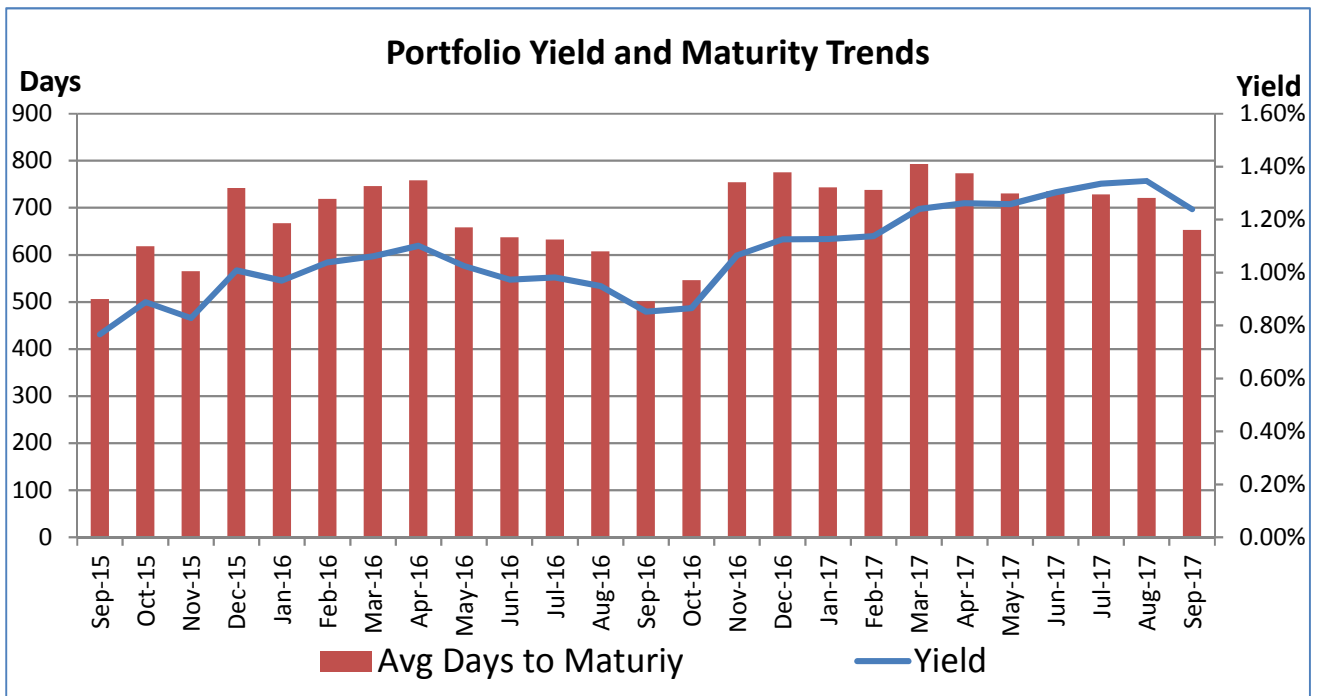
The chart below shows cash balances by fund type reconciled to City's financial system:



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 September 30, 2017**

Investment Type	Settlement Date	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
L A I F		\$ 38,083,932	31.01%	\$ 37,719,115	1.11%		
City Managed							
Fed Home Loan Mortgage	1/31/2013	499,636	0.41%	499,415	1.01%	1/12/2018	1/12/2018
Fed Home Loan Mortgage	8/12/2013	999,019	0.81%	999,530	1.36%	12/12/2017	12/12/2017
Treasury Note	12/15/2014	750,539	0.61%	750,480	1.01%	10/31/2017	10/31/2017
Federal Farm Credit Bank	5/28/2015	1,000,452	0.81%	999,690	0.99%	2/20/2018	2/20/2018
Treasury Note	6/12/2015	499,249	0.41%	498,850	1.06%	3/31/2018	3/31/2018
Fed Natn'l Mortgage Assn	6/12/2015	500,069	0.41%	499,805	1.10%	2/28/2018	2/28/2018
Fed Home Loan Mortgage	7/2/2015	999,608	0.81%	998,580	0.97%	3/7/2018	3/7/2018
Fed Home Loan Bank	9/30/2015	1,000,291	0.81%	998,480	0.95%	4/24/2018	4/24/2018
Fed Home Loan Bank	9/30/2015	510,126	0.42%	510,071	0.80%	10/12/2017	10/12/2017
Fed Home Loan Bank	10/19/2015	4,000,000	3.26%	3,987,120	1.70%	10/19/2017	10/19/2020
Fed Home Loan Bank	6/30/2016	4,000,000	3.26%	3,913,880	1.50%	6/30/2021	6/30/2021
Fed Natn'l Mortgage Assn	8/25/2016	4,000,000	3.26%	3,930,880	1.40%	8/25/2021	8/25/2021
Fed Home Loan Mortgage	9/29/2016	2,000,000	1.63%	1,978,240	1.65%	12/29/2017	9/29/2021
Fed Natn'l Mortgage Assn	9/29/2016	4,000,000	3.26%	3,909,960	1.60%	12/29/2017	9/29/2021
Fed Home Loan Mortgage	10/27/2016	4,000,000	3.26%	3,892,680	1.60%	10/27/2017	10/27/2021
Fed Natn'l Mortgage Assn	10/28/2016	4,000,000	3.26%	3,890,840	1.55%	10/28/2017	10/28/2021
Fed Home Loan Mortgage	10/28/2016	2,000,000	1.63%	1,948,860	1.65%	10/28/2017	10/28/2021
Fed Home Loan Bank	11/15/2016	4,000,000	3.26%	3,926,800	1.55%	11/15/2021	11/15/2021
Fed Home Loan Bank	11/23/2016	3,000,000	2.44%	2,946,840	1.65%	10/23/2017	11/23/2021
Fed Home Loan Bank	11/23/2016	4,000,000	3.26%	3,909,720	1.63%	10/23/2017	11/23/2021
Fed Home Loan Mortgage	11/30/2016	4,000,000	3.26%	3,960,680	1.88%	10/26/2017	11/26/2021
Fed Home Loan Mortgage	6/29/2017	1,300,000	1.06%	1,297,946	2.15%	3/29/2018	6/29/2022
Sub Total/Average		\$ 51,058,990	41.57%	\$ 50,249,347	1.55%		
Money Market		\$ 8,316,249	6.77%	\$ 8,316,249	0.08%		
Total City Managed/Average		\$ 97,459,171	79.35%	\$ 96,284,710	1.03%		
City Managed - HighMark							
Fed Natn'l Mortgage Assn	8/18/2016	\$ 749,399	0.61%	\$ 745,163	1.06%	1/25/2019	1/25/2019
Fed Natn'l Mortgage Assn	8/18/2016	749,619	0.61%	744,248	1.18%	1/26/2019	7/26/2019
Fed Natn'l Mortgage Assn	8/23/2016	749,953	0.61%	743,318	1.25%	8/23/2017	8/23/2019
Fed Home Loan Mortgage	8/31/2016	750,000	0.61%	745,688	1.25%	8/15/2019	8/15/2019
Fed Home Loan Mortgage	9/13/2016	750,000	0.61%	747,600	1.10%	9/13/2017	9/3/2018
Fed Home Loan Bank	9/15/2016	750,000	0.61%	747,870	1.00%	9/15/2017	6/15/2018
Fed Home Loan Bank	9/21/2016	749,854	0.61%	748,028	1.12%	9/21/2017	9/21/2018
Fed Home Loan Mortgage	10/7/2016	749,775	0.61%	743,798	1.29%	9/12/2017	9/12/2019
Fed Natn'l Mortgage Assn	10/11/2016	749,811	0.61%	745,785	1.22%	11/23/2017	5/23/2019
Fed Home Loan Mortgage	10/24/2016	739,203	0.60%	734,487	1.03%	7/30/2018	1/30/2019
Fed Natn'l Mortgage Assn	10/24/2016	749,949	0.61%	744,360	1.25%	9/30/2017	9/30/2019
Federal Farm Credit Bank	11/1/2016	749,633	0.61%	745,710	1.02%	11/1/2017	11/1/2018
Fed Home Loan Mortgage	12/13/2016	1,006,584	0.82%	1,004,350	1.35%	5/30/2019	5/30/2019
Fed Home Loan Bank	12/13/2016	999,739	0.81%	997,560	1.27%	1/16/2019	1/16/2019
Fed Home Loan Mortgage	12/29/2016	747,243	0.61%	746,190	1.37%	4/15/2019	4/15/2019
Fed Natn'l Mortgage Assn	12/29/2016	744,501	0.61%	743,286	1.39%	6/20/2019	6/20/2019
Money Market		126,685	0.10%	126,685	0.01%		
Sub Total/Average		\$ 12,611,949	10.27%	\$ 12,554,123	1.19%		
Bond Reserve Accounts - Held By Trustees		\$ 7,587,416	6.18%	\$ 7,563,111			
Cash/Deposits		\$ 3,370,709	2.74%	\$ 3,370,709			
PARS Trust		\$ 1,787,404	1.46%	\$ 1,956,934			
GRAND TOTAL/AVERAGE		\$ 122,816,648	100.00%	\$ 121,729,588			



CITY OF MORGAN HILL CASH AND INVESTMENT REPORT
FOR THE MONTH OF SEPTEMBER 30, 2017
FOR THE FISCAL YEAR OF 2017-18

	Invested in Fund	Yield	Book Value End of Month	% of Total	Market Value
Investments					
State Treasurer LAIF - City	All Funds Pooled	1.11%	\$ 29,839,722	24.30%	\$ 29,553,879
2014 Water Rev Bonds - Water Impact	Water Fund	1.11%	519,343	0.42%	514,368
2014 Water Rev Bonds - Water CIP	Water Fund	1.11%	1,081,706	0.88%	1,071,344
2015 Wastewater Rev Bonds - CIP	Wastewater Fund	1.11%	6,643,161	5.41%	6,579,524
Federal Issues	All Funds Pooled	1.31%	62,294,465	50.72%	61,427,455
US Treasury Notes	All Funds Pooled	1.04%	1,249,789	1.02%	1,249,330
Dreyfus Treas Cash Management Acct	All Funds Pooled	0.01%	8,442,934	6.87%	8,442,934
	SUBTOTAL		\$ 110,071,119	89.62%	\$ 108,838,834
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	0.69%	17	0.00%	17
Zions Bank - MH Police Facility Lease Revenue Bonds					
Blackrock Liq Fund	Debt Service	0.69%	22	0.00%	22
BNY - RDA Bonds					
Dreyfus Cash Mgmt 521	Successor Fund	1.79%	163,049	0.13%	163,049
US Treasury Notes	Successor Fund	1.28%	6,895,891	5.61%	6,871,586
Zions Bank - MH Ranch 2015					
Blackrock Liq Funds Fed Fund -DI -2015	Agency Fund	0.69%	255,981	0.21%	255,981
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015					
Blackrock Liquidity Temp Fund-2015	Agency Fund	0.69%	263,241	0.21%	263,241
	SUBTOTAL		7,587,416	6.18%	7,563,111
Other Cash/Deposits					
General Checking	All Funds		3,333,471	2.71%	3,333,471
Workers' Comp Administrators	Workers' Comp		30,000	0.02%	30,000
Petty Cash & Emergency Cash	General Fund		7,238	0.01%	7,238
PARS - OPEB Trust			987,404	0.80%	1,103,288
PARS - PENSION Trust			800,000	0.65%	853,646
	SUBTOTAL		5,158,113	4.20%	5,327,642
Total Cash and Investments			\$ 122,816,648	100.00%	\$ 121,729,588

CASH ACTIVITY SUMMARY
FY 2017-18

Fund Type	Unaudited 07/01/17 Balance	Change in Cash Balance	9/30/2017 Balance
General Fund	\$ 14,425,249	\$ (3,574,392)	\$ 10,850,857
Community Development	4,643,593	(537,153)	4,106,440
RDA Successor Agency (except Housing)	11,855,580	(4,776,598)	7,078,982
Housing Successor Agency/ CDBG	4,018,293	(169,517)	3,848,775
Water - Operations	1,478,968	77,251	1,556,219
Water Other	5,510,461	285,214	5,795,675
Sewer - Operations	2,118,908	(15,454)	2,103,454
Sewer Other	26,928,130	(573,733)	26,354,397
Other Special Revenue	4,391,575	(102,830)	4,288,744
Streets and Capital Projects (except RDA)	43,234,272	(985,352)	42,248,920
Debt Service	267,394	60,171	327,565
Internal Service	12,183,598	(620,072)	11,563,526
Agency Funds (assessment dists./refundable deposits)	3,997,405	(1,304,311)	2,693,095
Total	\$ 135,053,425	\$ (12,236,777)	\$ 122,816,648

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: September 2017 Financial and Investment Report (1521 : September 2017 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2017-18
For the Three Months Ended September 30, 2017
25% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
010 GENERAL FUND							
TAXES							
Property Tax - Secured/Unsecured	\$ 8,852,000	\$ 9,083,000	\$ -	0%	\$ -	\$ -	0%
Property Tax - RPTTF Residual Distribution	1,100,000	1,200,000	-	n/a	110,055	(110,055)	-100%
Property Tax - Supplemental Roll	162,000	283,000	24,641	9%	29,764	(5,123)	-17%
Sales Tax	9,151,500	9,226,502	2,528,633	27%	2,364,654	163,979	7%
Public Safety Sales Tax	362,000	362,000	62,713	17%	57,736	4,977	9%
Transient Occupancy Taxes	2,827,050	2,827,050	526,234	19%	582,362	(56,128)	-10%
Franchise (Refuse ,Cable ,PG&E)	1,981,796	1,981,796	-	0%	-	-	n/a
Property Transfer Tax	481,000	481,000	93,140	19%	71,102	22,038	31%
TOTAL TAXES	24,917,346	25,444,348	3,235,361	13%	3,215,673	19,688	1%
LICENSES/PERMITS							
Business License	202,878	202,878	164,516	81%	157,383	7,133	5%
Other Permits	7,743	7,743	2,736	35%	339	2,397	707%
TOTAL LICENSES/PERMITS	210,621	210,621	167,252	79%	157,722	9,530	6%
FINES AND PENALTIES							
Parking Enforcement	12,240	12,240	993	8%	1,372	(379)	-28%
Bails & Fines	65,280	65,280	7,253	11%	5,802	1,451	25%
Administrative Citations	-	-	5,750	n/a	100	5,650	5650%
TOTAL FINES AND PENALTIES	77,520	77,520	13,995	18%	7,274	1,071	15%
OTHER AGENCIES							
Motor Vehicle in-Lieu	17,538	17,538	-	0%	-	-	n/a
Other Revenue - Other Agencies	406,875	319,875	72,393	23%	22,403	49,990	223%
TOTAL OTHER AGENCIES	424,413	337,413	72,393	21%	22,403	49,990	223%
CHARGES CURRENT SERVICES							
Police False Alarm Charge	32,640	32,640	7,790	24%	3,880	3,910	101%
Business License Application Review	36,633	36,633	9,568	26%	10,905	(1,337)	-12%
Membership Services & Rec Programs	6,023,650	6,197,036	1,764,022	28%	1,670,099	93,923	6%
Facility Rentals	932,986	904,666	285,868	32%	236,594	49,274	21%
Community Services	139,190	139,190	23,541	17%	21,302	2,239	11%
General Administration Overhead	1,323,077	1,323,077	330,072	25%	314,355	15,717	5%
Other Charges Current Services	903,402	903,402	124,755	14%	116,297	8,458	7%
TOTAL CURRENT SERVICES	9,391,578	9,536,644	2,545,615	27%	2,373,432	172,183	7%
OTHER REVENUE							
Use of money/property	309,396	309,396	78,127	25%	68,199	9,928	15%
Other Revenues	151,306	157,306	1,102,082	701%	159,785	942,297	590%
TOTAL OTHER REVENUE	460,702	466,702	1,180,208	253%	227,984	952,224	418%
TRANSFERS IN							
One Time Transfer	-	26,595	-	0%	-	-	0%
Public Safety	100,000	100,000	16,000	16%	-	16,000	0%
Streets	761,458	761,458	123,000	16%	-	123,000	n/a
Police Impact	25,000	25,000	6,249	25%	-	6,249	n/a
Sewer Operations	347,025	347,025	86,757	25%	86,250	507	1%
Water Operations	347,025	347,025	86,757	25%	86,250	507	1%
Park Development	75,000	75,000	18,750	25%	18,750	-	n/a
TOTAL TRANSFERS IN	1,655,508	1,682,103	337,513	20%	191,250	146,263	76%
TOTAL GENERAL FUND	37,137,688	37,755,351	7,552,338	20%	6,195,738	1,356,600	22%
SPECIAL REVENUE FUNDS							
202 STREET MAINTENANCE							
Gas Tax 2105 - 2107.5	761,458	761,458	123,930	16%	116,190	7,740	7%
Interest / Other Revenue/Other Charges	72	72	190	263%	136	54	39%
202 STREET MAINTENANCE	761,530	761,530	124,120	16%	116,326	7,794	7%

Attachment: September 2017 Financial and Investment Report (1521 : September 2017 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2017-18
For the Three Months Ended September 30, 2017
25% 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	395	395	29	7%	44	(15)	-34%
Police Grant/SLEF/JAG	100,000	100,000	-	n/a	-	-	0%
205 PUBLIC SAFETY TRUST	100,395	100,395	29	0%	44	(15)	-34%
206 COMMUNITY DEVELOPMENT							
Building Fees	1,937,862	1,937,862	588,007	30%	385,037	202,970	53%
Planning Fees	1,131,051	1,131,051	151,216	13%	286,486	(135,270)	-47%
Engineering Fees	601,640	601,640	256,076	43%	582,788	(326,712)	-56%
Other Revenue/Current Charges	9,417	9,417	6,673	71%	7,404	(731)	-10%
206 COMMUNITY DEVELOPMENT	3,679,970	3,679,970	1,001,972	27%	1,261,715	(259,743)	-21%
207 GENERAL PLAN UPDATE	706,212	706,212	163,554	23%	211,104	(47,550)	-23%
215 and 216 HCD BLOCK GRANT							
HCD allocation	-	-	-	0%	1,049	(1,049)	-100%
Interest Income/Other Revenue	417	417	1,295	310%	-	1,295	n/a
215 and 216 HCD BLOCK GRANT	417	417	1,295	310%	1,049	246	23%
225 ASSET SEIZURE	250	250	238	95%	23,172	(22,934)	-99%
229 LIGHTING AND LANDSCAPE	187,321	187,321	242	0%	256	(14)	-6%
230 COMMUNITY FACILITIES DISTRICT	43,340	43,340	100	0%	60	40	67%
232 ENVIRONMENTAL PROGRAMS	382,164	382,164	118,557	31%	111,090	7,467	7%
234 MOBILE HOME PARK RENT STAB.	3,931	3,931	71	2%	64	7	12%
235 SENIOR HOUSING	1,633	1,633	384	24%	389	(5)	-1%
236 HOUSING MITIGATION	842,443	842,443	95,222	11%	950,250	(855,028)	-90%
240 EMPLOYEE ASSISTANCE	30,966	30,966	8,191	26%	5,932	2,259	38%
247 ENVIRONMENT REMEDIATION	1,104	1,104	248	22%	263	(15)	-6%
250 COMH-SUCCESSOR AGENCY-MHRDA	7,131,889	7,131,889	30,422	0%	1,143,738	(1,113,316)	-97%
255 HOUSING SUCCESSOR AGENCY	1,285,374	1,285,374	117,533	9%	139,951	(22,418)	-16%
TOTAL SPECIAL REVENUE FUNDS	15,158,940	15,158,940	1,662,178	11%	3,965,403	(2,303,225)	-58%
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	1,439,640	1,931,640	956,265	50%	130,151	826,114	635%
302 PARK MAINTENANCE	888,026	905,061	587,379	65%	298,564	288,815	97%
303 LOCAL DRAINAGE	1,822,884	1,822,884	728,622	40%	744,082	(15,460)	-2%
304 LOCAL DRAINAGE/NON AB1600	70,894	70,894	52,854	75%	60,969	(8,115)	-13%
306 AGRICULTURE & OPEN SPACE PRESERVATION	1,539,970	1,539,970	126,794	8%	86,031	40,763	47%
308 STREET CIP	1,357,235	1,357,235	297,893	22%	312,596	(14,703)	-5%
309 TRAFFIC MITIGATION	1,348,287	1,348,287	76,470	6%	191,400	(114,930)	-60%
311 POLICE MITIGATION	256,218	256,218	46,234	18%	28,936	17,298	60%
313 FIRE MITIGATION	94,577	94,577	13,627	14%	34,631	(21,004)	-61%
346 PUBLIC FACILITIES NON-AB1600	617,956	617,956	60,589	10%	486,280	(425,691)	-88%
347 PUBLIC FACILITIES	171,217	171,217	31,471	18%	19,778	11,693	59%
348 LIBRARY	1,250,509	1,250,509	122,618	10%	47,985	74,633	156%
350 UNDERGROUNDING	53,236	53,236	196,971	370%	347,525	(150,554)	-43%
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	544,341	544,341	47,600	9%	586,195	(538,595)	-92%
360 COMMUNITY/REC IMPACT FUND	985,274	985,274	189,150	19%	43,635	145,515	333%
TOTAL CAPITAL PROJECTS FUNDS	12,440,264	12,949,299	3,534,538	27%	3,418,758	115,780	3%
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	297,408	297,408	73,791	25%	75,003	(1,212)	-2%
441 POLICE FACILITY BOND	385,373	385,373	163	0%	143	20	14%
TOTAL DEBT SERVICE FUNDS	682,781	682,781	73,953	11%	75,146	(1,193)	-2%

Attachment: September 2017 Financial and Investment Report (1521 : September 2017 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2017-18
For the Three Months Ended September 30, 2017
25% 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	10,602,695	10,102,695	2,425,332	24%	2,379,326	46,006	2%
Interest Income/Transfers	48,461	48,461	3,832	8%	3,869	(37)	-1%
Other Revenue/Current Charges	183,354	683,354	128,084	19%	124,422	3,662	3%
640 SEWER OPERATION	10,834,510	10,834,510	2,557,249	24%	2,507,617	49,632	2%
641 SEWER EXPANSION							
Interest Income	59,474	59,474	25,847	43%	25,755	92	0%
Development Impact Fee	4,727,753	4,727,753	858,345	18%	318,397	539,948	170%
Transfers/Other	-	-	-	0%	600	(600)	-100%
641 SEWER EXPANSION	4,787,227	4,787,227	884,192	18%	344,752	539,440	156%
642 SEWER RATE STABILIZATION	15,702	15,702	4,429	28%	4,417	12	0%
643 SEWER-CAPITAL PROJECT	2,424,509	2,424,509	603,312	25%	664,919	(61,607)	-9%
TOTAL SEWER FUNDS	18,061,948	18,061,948	4,049,181	22%	3,521,705	527,476	15%
650 WATER OPERATION							
Water Sales	11,201,856	11,401,856	3,341,789	29%	2,777,752	564,037	20%
Meter Install & Service	120,575	120,575	75,728	63%	69,965	5,763	8%
Transfers-In / Interest Income	424,507	424,507	106,603	25%	102,992	3,611	4%
Other Revenue/Current Charges	475,784	275,784	289,835	105%	305,023	(15,188)	-5%
650 WATER OPERATION	12,222,722	12,222,722	3,813,954	31%	3,255,732	558,222	17%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	1,944	1,944	5,489	282%	3,319	2,170	65%
Development Impact Fee	1,196,984	1,196,984	218,739	18%	133,389	85,350	64%
651 WATER EXPANSION	1,198,928	1,198,928	224,228	19%	136,708	87,520	64%
652 Water Rate Stabilization	505,618	505,618	126,071	25%	125,190	881	1%
653 Water Capital Project	1,351,992	1,351,992	338,404	25%	236,388	102,016	43%
TOTAL WATER FUNDS	15,279,260	15,279,260	4,502,658	29%	3,754,018	748,640	20%
TOTAL ENTERPRISE FUNDS	33,341,208	33,341,208	8,551,839	26%	7,275,723	1,276,116	18%
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	1,592,812	1,592,812	401,875	25%	402,071	(196)	0%
740 BUILDING MAINTENANCE	3,066,615	3,149,985	772,296	25%	805,546	(33,250)	-4%
741 BUILDING REPLACEMENT	487,008	487,008	121,743	25%	123,859	(2,116)	-2%
745 CIP ADMINISTRATION	1,869,109	1,869,109	392,339	21%	356,793	35,546	10%
760 UNEMPLOYMENT INSURANCE	1,094	1,094	287	26%	304	(17)	-5%
770 WORKERS COMPENSATION	763,390	763,390	203,447	27%	207,297	(3,850)	-2%
790 EQUIPMENT REPLACEMENT	974,418	974,418	244,958	25%	283,635	(38,677)	-14%
791 EMPLOYEE BENEFITS	624,676	624,676	153,271	25%	173,101	(19,830)	-11%
793 CORPORATION YARD COMMISSION	-	-	1	0%	-	1	n/a
795 GENERAL LIABILITY INSURANCE	941,342	941,342	236,197	25%	214,267	21,930	10%
TOTAL INTERNAL SERVICE FUNDS	10,320,464	10,403,834	2,526,414	24%	2,566,873	(40,459)	-2%
TOTAL FOR ALL FUNDS	\$ 109,081,345	\$ 110,291,413	\$ 23,901,260	22%	\$ 23,497,641	\$ 2,858,706	12%

Attachment: September 2017 Financial and Investment Report (1521 : September 2017 Financial and Investment Report)



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2017-18
For the Month and Two Months Ended September 30, 2017
25% 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		\$ 53,403	\$ 400,865	\$ 94,802	\$ 41,500	\$ 136,302	34%	\$ 94,802
CITY ATTORNEY		82,596	836,813	199,387	95,902	295,289	35%	155,485
CITY ATTORNEY LOAN		-	-	-	-	-	n/a	83,613
CITY MANAGER		92,788	1,846,979	251,144	653,581	904,725	49%	200,000
HUMAN RESOURCES		99,573	757,742	200,634	14,040	214,674	28%	160,594
COUNCIL SVCS & RECORDS MGMT								
Council Svcs & Records Mgmt		58,553	601,195	144,418	-	144,418	24%	144,418
Elections		2,391	30,669	6,582	-	6,582	21%	6,582
COUNCIL SVCS & RECORDS MGMT		60,943	631,864	151,000	-	151,000	24%	144,418
FINANCE		161,097	1,613,065	403,956	70,368	474,324	29%	394,556
TOTAL ADMINISTRATION		550,400	6,087,327	1,300,923	875,391	2,176,314	36%	1,999,944
II. COMMUNITY SERVICES								
Membership Services & Rec. Programs		400,818	5,914,430	1,594,782	1,268,923	2,863,705	48%	1,500,000
Recreation Facility Rentals		128,553	1,299,185	338,681	-	338,681	26%	320,000
Community Services		60,034	768,671	190,105	61,348	251,453	33%	170,000
Solid Waste Management		20,389	277,104	49,263	-	49,263	18%	40,000
Street Maintenance		205,982	2,225,954	415,674	332,398	748,072	34%	400,000
Downtown Maintenance		22,546	296,241	53,839	37,181	91,020	31%	20,000
Cable Television		2,161	49,443	5,197	-	5,197	11%	10,000
COMMUNITY SERVICES		840,483	10,831,028	2,647,541	1,699,850	4,347,391	40%	2,490,000
CODE COMPLIANCE		13,748	141,628	29,441	-	29,441	21%	20,000
CONGESTION MANAGEMENT		8,242	77,570	19,264	-	19,264	25%	10,000
TOTAL COMMUNITY SERVICES		862,473	11,050,226	2,696,246	1,699,850	4,396,096	40%	2,520,000
III. PUBLIC SAFETY								
POLICE								
PD Administration		102,642	1,185,166	245,979	21,812	267,791	23%	230,000
Field Operations		823,060	7,864,431	1,984,961	130,029	2,114,990	27%	1,940,000
Support Services		188,631	2,089,756	512,532	3,536	516,068	25%	530,000
Emergency Services/Haz Mat		19,657	179,862	45,662	-	45,662	25%	40,000
Special Operations		287,108	2,779,972	703,084	-	703,084	25%	670,000
Dispatch Services		177,523	1,694,978	420,966	-	420,966	25%	400,000
POLICE		1,598,621	15,794,165	3,913,184	155,377	4,068,561	26%	3,830,000
FIRE		567,554	5,785,389	1,639,684	-	1,639,684	28%	1,530,000
TOTAL PUBLIC SAFETY		2,166,176	21,579,554	5,552,869	155,377	5,708,245	26%	5,360,000
IV. TRANSFERS								
Other		145,443	1,901,915	602,919	-	602,919	32%	760,000
TOTAL TRANSFERS		145,443	1,901,915	602,919	-	602,919	32%	760,000
TOTAL GENERAL FUND		3,724,492	40,619,022	10,152,957	2,730,617	12,883,574	32%	10,650,000

Attachment: September 2017 Financial and Investment Report (1521 : September 2017 Financial and Investment Report)



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2017-18
For the Month and Two Months Ended September 30, 2017
25% 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	126,169	763,480	123,507	-	123,507	16%	
205	PUBLIC SAFETY/SUPP.LAW	16,000	100,000	16,000	-	16,000	16%	
206	COMMUNITY DEVELOPMENT FUND							
	Planning	193,464	2,241,307	448,756	378,731	827,487	37%	48%
	Building	219,469	1,789,823	449,390	135,893	585,283	33%	43%
	Engineering	124,674	1,292,702	285,585	132,670	418,255	32%	25%
206	COMMUNITY DEVELOPMENT FUND	537,607	5,323,832	1,183,731	647,295	1,831,025	34%	1,17%
207	GENERAL PLAN UPDATE	93,562	988,643	180,350	246,655	427,005	43%	14%
215/216	CDBG	-	14,976	-	14,976	14,976	100%	0%
225	ASSET SEIZURE	-	26,595	-	-	-	0%	0%
229	LIGHTING AND LANDSCAPE	22,384	205,430	42,860	78,509	121,369	59%	3%
230	COMMUNITY FACILITIES DISTRICT	1,522	45,100	4,565	3,919	8,484	19%	4%
232	ENVIRONMENT PROGRAMS	29,718	345,422	81,539	22,100	103,639	30%	7%
234	MOBILE HOME PARK	71	880	213	-	213	24%	0%
236	HOUSING MITIGATION	46,798	1,320,091	120,901	55,819	176,719	13%	16%
240	EMPLOYEE ASSISTANCE	104	41,247	3,305	-	3,305	8%	1%
250	COMH-SUCCESSOR AGENCY-MHRDA	5,065,694	7,178,310	5,098,153	23,890	5,122,043	71%	6,53%
255	HOUSING SUCCESSOR AGENCY	868,278	1,945,760	1,013,384	412,220	1,425,604	73%	17%
TOTAL SPECIAL REVENUE FUNDS		6,807,907	18,299,766	7,868,507	1,505,382	9,373,889	51%	8,32%
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	1,068,974	6,728,249	1,636,497	2,088,871	3,725,368	55%	16%
302	PARK MAINTENANCE	86,814	2,467,188	212,718	40,667	253,385	10%	24%
303	LOCAL DRAINAGE	986	41,956	2,958	-	2,958	7%	0%
304	LOCAL DRAIN. NON-AB1600	7,463	155,141	8,251	-	8,251	5%	0%
306	AGRICULTURE & OPEN SPACE PRESERVATION	2,307	1,725,908	7,971	90,834	98,805	6%	1%
308	STREET CIP	11,630	3,931,275	13,813	2,321,496	2,335,309	59%	7%
309	TRAFFIC MITIGATION	75,046	3,372,406	162,990	292,436	455,426	14%	22%
311	POLICE MITIGATION	2,161	237,117	6,498	-	6,498	3%	1%
313	FIRE MITIGATION	110	623,735	332	-	332	0%	0%
346	PUBLIC FAC.NON AB1600	103,235	821,831	223,561	354,162	577,723	70%	39%
347	PUBLIC FACILITIES	81	9,481	253	-	253	3%	0%
348	LIBRARY IMPACT	30,108	3,824,836	90,004	272,764	362,767	9%	7%
350	UNDERGROUNDING	45	539	135	-	135	25%	8%
355	SCHOOL PEDESTRIAN & TRAFFIC SAFETY	62,312	1,131,267	113,769	149,851	263,620	23%	0%
360	COMM/REC CENTER IMPACT	-	244,000	69	-	69	0%	0%
TOTAL CAPITAL PROJECTS FUNDS		1,451,272	25,314,928	2,479,819	5,611,081	8,090,900	32%	1,32%
DEBT SERVICE FUNDS								
420	CIVIC CENTER DEBT	97	297,423	614	-	614	0%	0%
441	POLICE FACILITY BOND DEBT	198	383,610	1,006	-	1,006	0%	0%
TOTAL DEBT SERVICE FUNDS		295	681,033	1,620	-	1,620	0%	0%

Attachment: September 2017 Financial and Investment Report (1521 : September 2017 Financial and Investment Report)



City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2017-18
 For the Month and Two Months Ended September 30, 2017
 25% 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	519,761	10,846,377	2,465,358	108,085	2,573,443	24%	2,45
641	SEWER CAPITAL EXPANSION	187,933	12,344,978	241,475	725,741	967,216	8%	7
642	SEWER RATE STABILIZATION	325	3,900	975	-	975	25%	
643	SEWER-CAPITAL PROJECTS	1,610,641	6,243,443	1,634,932	758,085	2,393,016	38%	2,05
TOTAL SEWER FUND(S)		2,318,660	29,438,698	4,342,739	1,591,911	5,934,649	20%	4,58
WATER								
	Water Operations	1,077,612	11,005,629	2,150,907	608,343	2,759,249	25%	2,16
	Utility Billing	74,742	836,258	206,373	35,059	241,431	29%	19
	Water Conservation	8,073	212,502	19,907	85,133	105,040	49%	1
650	WATER OPERATIONS	1,160,427	12,054,389	2,377,186	728,534	3,105,720	26%	2,37
651	WATER CAPITAL EXPANSION	14,200	3,405,848	53,711	1,923,083	1,976,794	58%	18
652	WATER RATE STABILIZATION	51	662	153	-	153	23%	
653	WATER-CAPITAL PROJECTS	69,012	2,991,557	162,601	1,575,690	1,738,291	58%	46
TOTAL WATER FUND(S)		1,243,690	18,452,455	2,593,651	4,227,307	6,820,958	37%	3,02
TOTAL ENTERPRISE FUNDS		3,562,350	47,891,153	6,936,390	5,819,218	12,755,608	27%	7,61
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	125,538	1,796,307	669,468	34,268	703,736	39%	33
740	BUILDING MAINTENANCE	265,362	3,328,743	633,727	389,307	1,023,033	31%	64
741	BUILDING REPLACEMENT	-	515,155	109,729	147,518	257,247	50%	1
745	CIP ADMINISTRATION	151,009	1,872,190	392,329	19,743	412,073	22%	35
760	UNEMPLOYMENT	-	20,400	-	-	-	n/a	
770	WORKERS COMPENSATION	425,271	808,807	790,171	-	790,171	98%	26
790	EQUIPMENT REPLACEMENT	71,285	694,939	71,285	428,772	500,056	72%	71
791	EMPLOYEE BENEFITS FUND	13,373	558,538	78,337	-	78,337	14%	9
793	CORP YARD COMMISSION	102	-	2,954	1,903	4,857	0%	
795	GEN. LIABILITY INSURANCE	520,369	1,059,920	532,362	-	532,362	50%	65
TOTAL INTERNAL SERVICE FUNDS		1,572,310	10,655,000	3,280,361	1,021,511	4,301,872	40%	3,09
REPORT TOTAL		\$ 17,118,626	\$ 143,460,901	\$ 30,719,654	\$ 16,687,808	\$ 47,407,463	33%	\$ 31,01

Attachment: September 2017 Financial and Investment Report (1521 : September 2017 Financial and Investment Report)

City of Morgan Hill Fund Activity Summary - Fiscal Year 2017-18 For the Three Months Ended September 30, 2017 25% of Year Complete										
Fund No.	Fund	Fund Balance 06-30-17	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	\$ 16,830,617	\$ 7,552,338	20%	\$ 10,152,957	25%	\$ (2,600,619)	\$ 2,730,617	\$ 11,499,381	
TOTAL GENERAL FUND		\$ 16,830,617	\$ 7,552,338	20%	\$ 10,152,957	25%	\$ (2,600,619)	\$ 2,730,617	\$ 11,499,381	
202	STREET MAINTENANCE	440	\$ 124,120	16%	\$ 123,507	25%	\$ 613	\$ -	\$ 1,053	
205	PUBLIC SAFETY/SUPPL. LAW	16,702	29	0%	16,000	22%	(15,971)	-	731	
206	COMMUNITY DEVELOPMENT	2,646,685	1,001,972	27%	1,183,731	22%	(181,759)	647,295	1,817,631	
207	GENERAL PLAN UPDATE	1,170,077	163,554	23%	180,350	18%	(16,796)	246,655	906,626	
215 / 216	CDBG	95,752	1,295	310%	-	0%	1,295	14,976	82,071	
225	ASSET SEIZURE	136,345	238	95%	-	0%	238	-	136,583	
229	LIGHTING AND LANDSCAPE	160,594	242	0%	42,860	21%	(42,618)	78,509	39,467	
230	COMMUNITY FACILITIES DISTRICT	60,276	100	0%	4,565	0%	(4,465)	3,919	51,892	
232	ENVIRONMENTAL PROGRAMS	157,637	118,557	31%	81,539	24%	37,019	22,100	172,556	
234	MOBILE HOME PK RENT STAB.	41,059	71	2%	213	24%	(142)	-	40,917	
235	SENIOR HOUSING	220,710	384	24%	-	0%	384	-	221,094	
236	HOUSING MITIGATION	2,178,174	95,222	11%	120,901	9%	(25,679)	55,819	2,096,676	
240	EMPLOYEE ASSISTANCE	36,302	8,191	26%	3,305	8%	4,886	-	41,188	
247	ENVIRONMENT REMEDIATION	139,723	248	22%	-	0%	248	-	139,971	
250	COMH-SUCCESSOR AGENCY-MHRDA	4,650,153	30,422	0%	5,098,153	71%	(5,067,731)	7,082,831	(7,500,409)	
255	HOUSING SUCCESSOR AGENCY	3,956,700	117,533	9%	1,013,384	52%	(895,851)	2,925,495	135,354	
TOTAL SPECIAL REVENUE FUNDS		\$ 15,667,329	\$ 1,662,178	11%	\$ 7,868,507	43%	\$ (6,206,329)	\$ 11,077,597	\$ (1,616,598)	
301	PARK DEV. IMPACT FUND	4,850,439	\$ 956,265	50%	\$ 1,636,497	24%	\$ (680,232)	\$ 2,088,871	\$ 2,081,336	
302	PARK MAINTENANCE	5,431,371	587,379	65%	212,718	9%	374,661	40,667	5,765,365	
303	LOCAL DRAINAGE	8,381,669	728,622	40%	2,958	7%	725,664	-	9,107,333	
304	LOCAL DRAINAGE/NON-AB1600	1,301,563	52,854	75%	8,251	5%	44,603	-	1,346,166	
306	AGRICULTURE AND OPEN SPACE PRESERV	6,014,381	126,794	8%	7,971	0%	118,823	90,834	6,042,370	
308	STREET CIP	1,819,399	297,893	22%	13,813	5%	284,079	2,321,496	(218,018)	
309	TRAFFIC IMPACT FUND	4,539,601	76,470	6%	162,990	5%	(86,520)	292,436	4,160,645	
311	POLICE IMPACT FUND	(778,194)	46,234	18%	6,498	3%	39,736	-	(738,458)	
313	FIRE IMPACT FUND	3,818,916	13,627	14%	332	0%	13,295	-	3,832,211	
346	PUBLIC FACILITIES NON-AB1600	1,117,552	60,589	10%	223,561	27%	(162,972)	-	954,580	
347	PUBLIC FACILITIES IMPACT FUND	343,009	31,471	18%	253	3%	31,218	272,764	101,463	
348	LIBRARY IMPACT FUND	2,103,639	122,618	10%	90,004	2%	32,615	-	2,136,254	
350	UNDERGROUNDING	510,438	196,971	370%	135	25%	196,836	149,851	557,423	
355	SCHOOL PEDESTRIAN/TRAFFIC SFTY	1,640,864	47,600	9%	113,769	10%	(66,169)	-	1,574,695	
360	COMM/REC CTR IMPACT FUND	268,766	189,150	19%	69	0%	189,081	-	457,847	
TOTAL CAPITAL PROJECT FUNDS		\$ 41,363,413	\$ 3,534,538	27%	\$ 2,479,819	10%	\$ 1,054,719	\$ 5,256,919	\$ 37,161,213	
420	CIVIC CENTER DEBT	161,328	\$ 73,791	25%	\$ 614	0%	\$ 73,177	\$ 17	\$ 234,487	
441	POLICE FACILITY BOND DEBT	93,903	163	0%	1,006	0%	(843)	22	93,038	
TOTAL DEBT SERVICE FUNDS		\$ 255,231	\$ 73,953	11%	\$ 1,620	0%	\$ 72,333	\$ 39	\$ 327,526	

Fund No.	Fund	 City of Morgan Hill Fund Activity Summary - Fiscal Year 2017-18 For the Three Months Ended September 30, 2017 25% of Year Complete							
		Fund Balance 06-30-17	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	\$ 2,997,397	\$ 2,557,249	24%	\$ 2,465,358	23%	\$ 91,891	108,085	2,981,203
641	SEWER IMPACT FUND*	13,739,517	884,192	18%	241,475	2%	642,717	725,741	13,656,493
642	SEWER RATE STABILIZATION	2,538,125	4,429	28%	975	25%	3,454	-	2,541,579
643	SEWER-CAPITAL PROJECTS	8,964,265	603,312	25%	1,634,932	26%	(1,031,620)	767,299	7,165,346
650	WATER OPERATIONS	1,329,683	3,813,954	31%	2,377,186	20%	1,436,768	728,534	2,037,917
651	WATER IMPACT FUND*	3,153,845	224,228	19%	53,711	2%	170,518	1,923,083	1,401,280
652	WATER RATE STABILIZATION	539,303	126,071	25%	153	23%	125,918	-	665,221
653	WATER -CAPITAL PROJECT	613,123	338,404	25%	162,601	5%	175,803	1,575,690	(786,764)
TOTAL ENTERPRISE FUNDS		\$ 33,875,258	\$ 8,551,839	26%	\$ 6,936,390	14%	\$ 1,615,449	\$ 5,828,432	\$ 29,662,275

730	INFORMATION SERVICES	\$ 612,170	\$ 401,875	25%	\$ 669,468	37%	\$ (267,593)	\$ 34,268	\$ 310,309
740	BUILDING MAINTENANCE	126,409	772,296	25%	633,727	19%	138,569	389,307	(124,329)
741	BUILDING REPLACEMENT	2,063,612	121,743	25%	109,729	21%	12,014	147,518	1,928,107
745	CIP ENGINEERING	32,485	392,339	21%	392,329	21%	10	19,743	12,751
760	UNEMPLOYMENT	164,584	287	26%	-	-	287	-	164,871
770	WORKERS COMPENSATION	1,647,992	203,447	27%	790,171	98%	(586,724)	30,000	1,031,268
790	EQUIPMENT REPLACEMENT	4,110,874	244,948	25%	71,285	10%	173,673	428,772	3,855,775
791	EMPLOYEE BENEFITS FUNDS	584,228	153,271	25%	78,337	14%	74,935	-	659,163
793	CORP YARD COMMISSION	-	1	0%	2,954	0%	(2,953)	1,903	(4,856)
795	GEN. LIABILITY INSURANCE	1,106,814	236,197	25%	532,362	50%	(296,166)	-	810,648
TOTAL INTERNAL SERVICE FUNDS		\$ 10,449,167	\$ 2,526,414	24%	\$ 3,280,361	31%	\$ (753,947)	\$ 1,051,511	\$ 8,643,709

SUMMARY BY FUND TYPE

GENERAL FUND GROUP	\$ 16,830,617	\$ 7,552,338	20%	\$ 10,152,957	25%	\$ (2,600,619)	\$ 2,730,617	\$ 11,499,381
SPECIAL REVENUE GROUP	15,657,329	1,662,178	11%	7,868,507	43%	(6,206,329)	11,077,597	(1,616,598)
DEBT SERVICE GROUP	255,231	73,953	11%	1,620	0%	72,333	39	327,526
CAPITAL PROJECTS GROUP	41,363,413	3,534,538	27%	2,479,819	10%	1,054,719	5,256,919	37,161,213
ENTERPRISE GROUP	33,875,258	8,551,839	26%	6,936,390	14%	1,615,449	5,828,432	29,662,275
INTERNAL SERVICE GROUP	10,449,167	2,526,414	24%	3,280,361	31%	(753,947)	1,051,511	8,643,709
TOTAL ALL GROUPS	\$ 118,441,015	\$ 23,901,260	22%	\$ 30,719,654	21%	\$ (6,818,395)	\$ 25,945,115	\$ 85,677,505

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: December 6, 2017

PREPARED BY: Steve Tate, Mayor

APPROVED BY: City Manager

APPROVE CITY MANAGER HOME LOAN

RECOMMENDATION(S)

1. Adopt resolution approving a housing loan to the City Manager in the amount not to exceed \$1,300,000 and authorizing the Mayor to sign all necessary loan documents; and
2. Amend the budget up to a maximum of \$1,300,000.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

Fostering a Positive Organizational Culture

Preserving and Cultivating Public Trust

REPORT NARRATIVE:

Per the City Manager's approved employment agreement at the regular Council meeting on September 27, 2017, Ms. Turner is eligible for a housing loan from the City up to \$1,300,000 to purchase a residence and property within the City of Morgan Hill. It has been determined that the City could provide a housing loan (as it has for previous Council appointed officers) in a manner that:

1. Ensures that the City realizes a higher rate of return than it receives through its current investments
2. Limits the City's financial risk
3. Maintains public transparency

As a result, I am recommending that the City Council approve a housing loan to Ms. Turner according to the following terms:

- City agrees to loan Ms. Turner a maximum of One Million Three Hundred Thousand Dollars (\$1,300,000) to purchase a residence and property within the City of Morgan Hill.
- The loan proceeds shall be used to purchase Property within the Morgan Hill city limits and will be Ms. Turner's primary residence.
- The loan shall be evidenced by a Promissory Note made by Ms. 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 (0.25%) rounded to the nearest one eighth percent (0.125%) amortized over a thirty 30-year period and recalculated according to the same formula on the 10th and 20th anniversary dates of the loan.
- Ms. 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. 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.
- Ms. Turner agrees to a recourse loan to limit the City's financial risk (which means Ms. Turner will be personally responsible for the loan regardless of future home value).
- Ms. 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.

Attached to this report is a Promissory Note with a 10-year payment schedule based on a 30 year amortization and a budget scorecard. Also attached is the Deed of Trust.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the proposed City Manager home loan.

ALTERNATIVE ACTIONS:

There are no alternative actions.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

City Manager employment agreement was approved on September 27, 2017.

FISCAL AND RESOURCE IMPACT:

General Fund reserves will be the source of funds for the housing loan. The General Fund will realize annual revenue of approximately \$47,000 from Turner's principal and interest payroll deduction payments.

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. Resolution
2. Budget Scorecard - City Manager Home Loan
3. Promissory Note Christina Turner Morgan Hill 12-6-17
4. Deed of Trust Christina Turner Morgan Hill
5. Exhibit A 10-Yr Payment Schedule

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A HOUSING LOAN TO THE CITY MANAGER IN AN AMOUNT NOT TO EXCEED \$1,300,000, AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE ALL NECESSARY LOAN DOCUMENTS, AND APPROVING RELATED AMENDMENTS TO THE CITY'S FISCAL YEAR 2017-18 BUDGET IN THE GENERAL FUND TO APPROPRIATE GENERAL FUND RESERVES FOR, AND REVENUES IN THE GENERAL FUND RESULTING FROM, SAID LOAN

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

WHEREAS, the reasons supporting the approval of the loan and the entrance of the City into those certain agreements described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Mayor's Report entitled "City Manager Housing Loan" submitted for City Council consideration at its meeting of December 6, 2017, submitted to the City Council by the Mayor (the "Report"), the contents of which Report are incorporated herein by this reference; and

WHEREAS, the City Council previously approved an Employment Agreement for Christina Turner as the City Manager; 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 B to this Resolution, to appropriate the requisite funds to implement the actions authorized by 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 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 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 a housing loan to the City Manager, in accordance with and that meets the criteria and terms set forth in the Report, is hereby approved and the Mayor is hereby delegated the authority to and is authorized and directed to negotiate and execute the terms of all necessary loan documents; provided, specifically, that the total amount of the principal of said housing loan shall in no event exceed One Million Three Hundred Thousand Dollars (\$1,300,000.00); 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 B 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.
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 6th day of December 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 December 6, 2017.

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

DATE: _____

Irma Torrez, CITY CLERK

Attachment: Resolution (1530 : City Manager Home Loan)

AGENDA BUDGET SCORECARD

FISCAL YEAR 2017-18

ADJUSTMENT #

020

FUND:

DEPARTMENT:

OBJECT:

010	General Fund
2105	City Manager-Housing
86420	PROGRAM LOANS

AGENDA DATE:

AGENDA ITEM TITLE:

12/06/17
City Manager Home Loan

	07/01/17 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/18 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	16,830,617	37,137,688	39,033,006	14,935,299
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	67,995	68,995	(1,000)
RECOMMENDED ACTION	-	-	1,300,000	(1,300,000)
RESULT OF RECOMMENDED ACTION	<u>16,830,617</u>	<u>37,205,683</u>	<u>40,402,001</u>	<u>13,634,299</u>

Attachment: Budget Scorecard - City Manager Home Loan (1530 : City Manager Home Loan)

SECURED PROMISSORY NOTE

City Manager (Turner)
\$1,300,000.00

Morgan Hill, CA
December__, 2017

1. BORROWER'S PROMISE TO PAY

FOR VALUE RECEIVED, Christina Turner and Louis Zulaica (collectively, "BORROWER") hereby jointly and severally promise to timely pay to the CITY OF MORGAN HILL, a municipal corporation ("CITY" or "NOTE HOLDER") in lawful money of the United States of America, the principal sum of One Million Three Hundred Thousand Dollars (\$1,300,000.00) (the "PRINCIPAL"), together with interest on the outstanding PRINCIPAL amount, all in accordance with the terms and conditions set forth in this Secured Promissory Note ("NOTE").

The loan evidenced by this NOTE is a housing loan to BORROWER for the purchase of 17621 Calle Siena Court, Morgan Hill APN# 726-20-089, a residence in the City of Morgan Hill, which loan is hereinafter referred to as the "LOAN." The obligations under this NOTE are secured by a certain Deed of Trust and Assignment of Rents executed by BORROWER and CITY, as Trustor, in favor of that certain Lender identified in said Deed of Trust, as beneficiary (the "DEED OF TRUST") dated substantially concurrently herewith encumbering that certain real property more particularly described in said DEED OF TRUST (the "HOME") purchased in part with proceeds of the LOAN evidenced by this NOTE.

2. INTEREST RATE

A. Outstanding PRINCIPAL under this NOTE shall bear interest at the fixed interest rate equal to the 10-year Treasury Rate (at the rate as of the date of execution of this NOTE, or the date of the EMPLOYMENT AGREEMENT BETWEEN THE CITY OF MORGAN HILL AND CHRISTINA TURNER, whichever is lower), plus one quarter of a percent (.25%), rounded to the nearest one-eighth (1/8th) percent, with a 30-year amortization schedule and which interest rate shall be recalculated according to this same formula on the tenth (10th) and twentieth (20th) anniversary dates of the date of this NOTE.

B. Upon the occurrence of an EVENT OF DEFAULT defined herein, the interest rate shall increase to the interest rate in effect as of the date of the EVENT OF DEFAULT plus three percent (3%). BORROWER SHOULD CONSULT WITH BORROWER'S OWN TAX ADVISOR(s) REGARDING ANY TAX EFFECTS ON BORROWER OF THE INTEREST RATE.

3. MATURITY DATE; PAYMENTS

A. Maturity Date.

All outstanding PRINCIPAL and accrued interest thereon shall become due and payable

upon the earlier of the following events: (i) the date that is twelve (12) calendar months after the conclusion for any reason of Ms. Turner's employment by CITY (including without limitation retirement); (ii) the date that is thirty (30) years from the date of this NOTE; (iii) the sale or transfer or further encumbrance of BORROWER'S interest in the HOME; or (iv) BORROWER'S failure to occupy the HOME as BORROWER'S primary residence ("Maturity Date").

B. Payments.

- 1) BORROWER shall make payments of the LOAN in arrears, amortized over thirty (30) years, payable in bi-weekly installments. Payments on the loan shall be deferred until Ms. Turner closes escrow on the sale of her current home or six months from close of escrow on her new home, whichever comes first, and continuing thereafter until the earlier of 29 years, 11 months after the date listed immediately above or paid in full. Payments shall be sufficient to fully amortize PRINCIPAL and pay all interest accrued over thirty (30) years, except as described below. Upon a change in the interest rate, the bi-weekly payment amounts shall be appropriately adjusted.
- 2) BORROWER shall make payments equal to:
 - a. PRINCIPAL and interest due for the first fifty percent (50%) of the LOAN amount; and
 - b. Interest only due upon the LOAN for the remaining fifty percent (50%) of the LOAN amount, and
 - c. BORROWER shall pay to NOTE HOLDER any and all remaining PRINCIPAL due under this NOTE, including without limitation PRINCIPAL equal to fifty percent (50%) of the LOAN amount that is due during the period of time that BORROWER is making interest-only payments under this NOTE, on or before the Maturity Date.
- 3) Each payment made shall be applied first to outstanding PRINCIPAL due and then to the payment of interest accrued.
- 4) BORROWER'S payments under this NOTE shall be automatically deducted from Ms. Turner's weekly payroll check from CITY for so long as she is employed by CITY.
- 5) In instances where BORROWER and CITY first agree that payroll deduction is not available for a period of time, BORROWER shall make payments of the LOAN to CITY at the City Hall of Morgan Hill, presently located at 17575 Peak Avenue, Morgan Hill, CA 95037-4128, or such other address as CITY may notify BORROWER pursuant to the noticing provisions of this NOTE.
- 6) A schedule of payments to be paid to NOTE HOLDER under this NOTE is attached hereto and incorporated herein as Exhibit A. Note that this is an assumed rate of 2.5% which is the rate to be applied if the date of the EMPLOYMENT AGREEMENT BETWEEN THE CITY OF MORGAN HILL AND CHRISTINA TURNER is determined to be the lowest rate.

4. BORROWER'S RIGHT TO PREPAY

A. Payments of all or any portion of the PRINCIPAL may be made by BORROWER at any time before they are due (a "Prepayment") without additional charge or penalty. BORROWER will notify the NOTE HOLDER in writing of any Prepayment, but may not designate a payment as a Prepayment if any payments then due under this NOTE are past due.

B. NOTE HOLDER will use Prepayments to reduce the amount of PRINCIPAL owed under this NOTE, and BORROWER may elect in writing at the time a Prepayment is made to re-amortize the LOAN over the then-remaining term of this NOTE. Unless BORROWER makes such election, there will be no changes in the due date or in the amount of the bi-weekly payment (unless NOTE HOLDER expressly agrees in writing to such changes).

5. BORROWER'S FAILURE TO PAY AS REQUIRED

A. Late Charge for Overdue Payments.

Subject to NOTE HOLDER'S compliance with California Civil Code Section 2954.5, as amended or restated from time to time, if NOTE HOLDER has not received the full amount of any payment due under Section 3(B) within ten (10) calendar days after the date it is due, NOTE HOLDER may require BORROWER to pay a late charge to NOTE HOLDER. The amount of the charge will be five percent (5%) of the overdue payment of PRINCIPAL and interest, and the late charge must be paid within ten (10) days after written demand therefor.

B. Default.

If there is a failure to comply with the provisions of this NOTE or the DEED OF TRUST securing this NOTE, and such default is not cured within ten (10) days after written notice from NOTE HOLDER (an "Event of Default"), then NOTE HOLDER may demand that BORROWER pay all outstanding PRINCIPAL and accrued interest. Failure to pay accrued interest and outstanding PRINCIPAL on the Maturity Date shall also be an Event of Default. Upon the occurrence of an Event of Default, NOTE HOLDER may exercise its rights and remedies at law and in equity, including, without limitation, non-judicial foreclosure.

C. No Waiver By NOTE HOLDER.

Even if, at a time when there is an Event of Default, NOTE HOLDER does not require payment immediately in full as described above, NOTE HOLDER will still have the right to require a full payment at a later time.

D. Payment of NOTE HOLDER'S Costs and Expenses.

If NOTE HOLDER has required payment immediately in full as described above, NOTE HOLDER will have the right to be paid by BORROWER for all of its costs and expenses in enforcing this NOTE to the extent not prohibited by applicable law (i.e., BORROWER shall be responsible for collection costs with respect to collection from BORROWER). Those expenses include, for example, attorneys' fees actually incurred by NOTE HOLDER in connection with enforcing this NOTE.

6. GIVING OF NOTICES

All notices, requests, demands and other communication given or required to be given hereunder shall be in writing and personally delivered, sent by first class certified mail, postage prepaid, return receipt requested, or sent overnight by a nationally recognized courier service such as Federal Express, addressed to the parties as follows:

CITY:	City Clerk City of Morgan Hill 17575 Peak Avenue Morgan Hill, CA 95037-4128
BORROWER:	Ms. Christina Turner Most recent address on file in Ms. Turner's personnel file Held by City of Morgan Hill, Administrative Services Dept.

Delivery of any notice or other communication hereunder shall be deemed made on the date of actual delivery thereof to the address of the addressee, if personally delivered, and on the date indicated in the return receipt or courier's records as the date of delivery or as the date of first attempted delivery, if sent by certified mail or courier service. Any party may change its address for purposes of this Section by giving notice to the other party as herein provided.

7. SECURED RECOURSE LOAN

Notwithstanding anything to the contrary in this NOTE, the DEED OF TRUST or any other document relating to the LOAN, NOTE HOLDER'S recourse for repayment of the sums owed under this NOTE or under the DEED OF TRUST or any other document relating to the LOAN shall not be limited to the collateral described in the DEED OF TRUST, and BORROWER agrees that NOTE HOLDER may seek or obtain any appropriate relief or remedy, including a deficiency judgment against BORROWER.

8. WAIVERS

BORROWER and any other person who has obligations under this NOTE hereby waive the rights of "presentment" and "notice of dishonor". "Presentment" means the right to require NOTE HOLDER to demand payment of amounts due. "Notice of dishonor" means the right to require NOTE HOLDER to give notice to other persons that amounts due have not been

paid.

9. DUE ON TRANSFER OF INTEREST

The undersigned acknowledges the holding in *Wellenkamp v. Bank of America* (1978) 21 Cal. 3d 943. Notwithstanding that holding, the undersigned acknowledges that the LOAN evidenced by this NOTE is a special purpose loan in that it is specifically negotiated in connection with Ms. Turner's position and employment as City Manager for CITY, that the payroll deduction provisions of her employment with NOTE HOLDER act as security to the benefit of the NOTE HOLDER, and that the general aspects of NOTE HOLDER's employment relationship with Ms. Turner indicate that the LOAN is fashioned for and because of Ms. Turner and, therefore, shall not be assumable and shall be due and payable as provided above.

BORROWER:

Christina Turner

Date: _____

Louis Zulaica

Date: _____

CITY:

By: Steve Tate, Mayor

Date: _____

APPROVED AS TO FORM:

Donald A. Larkin
City Attorney

Date: _____

Promissory Note Christina Turner Morgan Hill 12-6-17

Attachment: Promissory Note Christina Turner Morgan Hill 12-6-17 (1530 : City Manager Home Loan)

EXHIBIT A: Schedule of Payments

Attachment: Promissory Note Christina Turner Morgan Hill 12-6-17 (1530 : City Manager Home Loan)

**RECORDING REQUESTED BY:
AND AFTER RECORDING MAIL TO:**

CITY OF MORGAN HILL
CITY CLERK'S OFFICE
17575 Peak Avenue
Morgan Hill, CA 95037

ATTN: Housing Services
Escrow No.:

**TO BE RECORDED WITHOUT FEE
AS PER GOVERNMENT CODE 27383**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SITUS: 17621 Calle Siena Court, Morgan Hill, CA 95037

APN: 726-20-089

DEED OF TRUST AND ASSIGNMENT OF RENTS

THIS DEED OF TRUST, made this ____ day of December, 2017, between Christina Turner and Louis Zulaica, wife and husband, herein collectively called TRUSTOR, whose address is 17621 Calle Siena Court, Morgan Hill, California, 95037, and First American Title, herein called TRUSTEE, and the City of Morgan Hill, a municipal corporation, herein called BENEFICIARY, Witnessed: That TRUSTOR IRREVOCABLY GRANTS, TRANSFERS, AND ASSIGNS TO TRUSTEE, IN TRUST, WITH POWER OF SALE, that property in the City of Morgan Hill, County of Santa Clara, California, described as: SEE ATTACHED EXHIBIT "A"

In the event Trustor, without the prior consent of the Beneficiary, sells, agrees to sell, transfers or conveys their interest in the real property or any part thereof or any interest therein, Beneficiary may at its option declare all sums secured hereby immediately due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require such consent to future or successive transactions. The terms "Trustor" and "Beneficiary" include their successors.

TOGETHER WITH the rents, issues and profits thereof, SUBJECT HOWEVER, to the right, power and authority given to and conferred upon Beneficiary by paragraph (10) of the provisions incorporated herein by reference to collect and enforce the same by any lawful means in the name of any party hereto.

For the purpose of securing: (1) Performance of each agreement of TRUSTOR incorporated by reference or contained herein; (2) Payment of the sum of \$ 1,300,000.00 (ONE MILLION THREE HUNDRED THOUSAND DOLLARS and 00/100s) with interest thereon according to the terms of a promissory note or notes of even date herewith made by Trustors, payable to order of Beneficiary, and extensions or renewals thereof; (3) Payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or their successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

To Protect the Security of This Deed of Trust, TRUSTOR Agrees: By the execution and delivery of this Deed of Trust and the note secured hereby, that provisions (1) to (14), inclusive, of the fictitious deeds of trust recorded in the office of County Recorders of the Counties of the State of California on October 25, 1973, in the book and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, viz.:

COUNTY	Book	Page	COUNTY	Book	Page	COUNTY	Book	Page	COUNTY	Book
Alameda	3540	89	Kings	1018	394	Placer	1528	440	Sierra	59
	439									
Alpine	18	753	Lake	743	552	Plumas	227	443	Siskiyou	697
	407									
Amador	250	243	Lassen	271	367	Riverside	1973	139405	Solano	1860
	581									
Butte	1870	678	Los Angeles	T8512	751	Sacramento	731025	59	Sonoma	2810
	973									
Calaveras	368	92	Madera	1176	234	San Benito	386	94	Stanislaus	2587
	332									
Colusa	409	347	Marin	2736	463	San Bernardino	8292	877	Sutter	817
	182									
Contra Costa	7077	178	Mariposa	143	717	San Francisco	B820	585	Tehama	630
	522									

Attachment: Deed of Trust Christina Turner Morgan Hill (1530 : City Manager Home Loan)

Del Norte	174	526	Mendocino	942	242	San Joaquin	3813	6	Trinity	161
	393									
El Dorado	1229	594	Merced	1940	361	San Luis Obispo	1750	491	Tulare	3137
	567									
Fresno	6227	411	Modoc	225	668	San Mateo	6491	600	Tuolumne	396
	309									
Glenn	565	290	Mono	160	215	Santa Barbara	2486	1244	Ventura	4182
	662									
Humboldt	1213	31	Monterey	877	243	Santa Clara	0623	713	Yolo	1081
	335									
Imperial	1355	801	Napa	922	303	Santa Cruz	2358	744	Yuba	564
	163									
Inyo	205	660	Nevada	665	303	Shasta	1195	293		
Kern	4809	2351	Orange	10961	398	San Diego	Series 2		Book 1961,	Page 1838

(which provisions, identical in all counties, are printed on the reverse hereof) hereby are adopted and incorporated herein and made a part hereof as fully as though set forth herein at length; that (s)he will observe and perform said provisions; and that the reference to property, obligations, and parties in said provisions shall be construed to refer to the property, obligations, and parties set forth in this Deed of Trust.

The undersigned TRUSTOR requests that a copy of any Notice of Default and any Notice of Sale hereunder be mailed to TRUSTOR at the address hereinabove set forth, being the address designated for the purpose of receiving such notice.

Signatures of Trustor(s)

CHRISTINA TURNER

Date: _____

LOUIS ZULAICA

Date: _____

Attachment: Deed of Trust Christina Turner Morgan Hill (1530 : City Manager Home Loan)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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 _____, 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/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 OF NOTARY PUBLIC

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Signer's Name: _____

Signer Is Representing: Himself/Herself/Themselves

Signer Is Representing: Himself/Herself/Themselves

Signer/s other than listed above: __

Attachment: Deed of Trust Christina Turner Morgan Hill (1530 : City Manager Home Loan)

EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): 726-20-089

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

LOT 9 AS SHOWN ON THE SUBDIVISION MAP OF TRACT NO. 10293 FILED FOR RECORD ON NOVEMBER 10, 2015, IN BOOK 888 OF MAPS AT PAGES 27 THROUGH 29, INCLUSIVE, IN THE OFFICIAL RECORDS OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA

Attachment: Deed of Trust Christina Turner Morgan Hill (1530 : City Manager Home Loan)

Exhibit A**City Manager Home Loan - Turner****10-Year Payment Schedule****Based on 30-Year Amortization at 2.5% Interest Rate**

Fiscal Year	Interest-only for \$650,000	Principal + Interest for \$650,000	Total
17-18	\$6,875	\$13,034	\$19,909
18-19	16,250	30,808	47,058
19-20	16,250	30,808	47,058
20-21	16,250	30,808	47,058
21-22	16,250	30,808	47,058
22-23	16,250	30,808	47,058
23-24	16,250	30,808	47,058
24-25	16,250	30,808	47,058
25-26	16,250	30,808	47,058
26-27	16,250	30,808	47,058
Total	\$153,125	\$290,305	\$443,430



CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2017

PREPARED BY: John Baty, Principal Planner/Development Services
APPROVED BY: City Manager

GENERAL PLAN AMENDMENTS, GPA2017-0001 AND -0002: CITY OF MORGAN HILL. AMENDMENTS TO THE MORGAN HILL 2035 GENERAL PLAN TO CORRECT MISCELLANEOUS LAND USE MAP AND TEXT ERRORS

RECOMMENDATION(S)

Adopt resolution approving amendments to the Morgan Hill 2035 General Plan.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

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

2017 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

The Morgan Hill 2035 General Plan, a comprehensive update of the City's 2001 General Plan, was adopted by City Council (Resolution 16-128) on July 27, 2016.

The purpose of the proposed City initiated General Plan Amendments is to correct several mapping and text errors that have been identified during the last 15 months of implementing the General Plan. The proposed amendments include corrections to maps/figures and/or text within Chapter 3 – City and Neighborhood Form and Chapter 8 – Natural Resources and Environment.

California Government Code Section 65358(b) and Morgan Hill City Council Policy CP-07-05 state that no mandatory element of the General Plan may be amended more frequently than four times per year and that each amendment may include more than one change. Chapter 3 – City and Neighborhood Form and Chapter 8 – Natural Resources and Environment of the Morgan Hill 2035 General Plan correspond to the mandatory general plan elements Land Use and Conservation, respectively.

If approved, the proposed amendments would be the first and only amendment of the General Plan in 2017.

Exhibit A from the attached Planning Commission Resolution recommending City Council approval of the proposed General Plan Amendments includes exhibits/information regarding the proposed map, figure, and text corrections that are described in more detail below.

GPA2017-0001: Land Use Map – Correct Various Types of Mapping Errors

The mapping errors and the proposed Land Use Map corrections are grouped into one of the following letter categories (A, B, C, D) and each proposed correction is numbered. The exhibits for each of the proposed corrections are labeled with the letter category and number.

A. Designation inadvertently changed

1. The General Plan Land Use Map designation for this site on the west side of Monterey Road northerly of Watsonville Road was inadvertently changed to all Open Space. The site should be changed back to a combination of Open Space (parcel owned by Water District), Residential Attached Medium (residential part under construction), and Commercial (undeveloped portion along Monterey Road that is zoned CG – General Commercial).
2. The Land Use designation for this undeveloped site on the east side of Condit Road northerly of East Dunne Avenue, in the unincorporated County and outside of the City's Urban Service Area was inadvertently changed to Open Space. This site should be changed back to Residential Detached Medium to match the adjacent parcels between Condit Road and Murphy Avenue, south of Diana Avenue.
3. to 6. The Open Space Land Use designation was inadvertently removed from portions of parcels that generally define the boundary of Tennant Creek in the Southeast Quadrant part of the City. These areas are all in unincorporated County and outside of the City's Urban Service Area and should be changed back to Open Space.

B. Designation does not reflect direction from General Plan Adoption hearing(s)

1. The Land Use designation(s) for this area at the northeast corner of West Dunne Avenue and Del Monte Avenue, located within the Downtown Specific Plan (DTSP), was the subject of discussions before the Planning Commission and City Council. The map as published for the City Council adoption hearings showed Residential Detached High as recommended by Planning Commission. The City Council ultimately decided to change the designation (back to) Residential Attached Low to better match existing development, proposed development, and the designation that existed for the area prior to adoption of the DTSP.
2. During the General Plan Update process, while reviewing the Draft Land Use

Map, several participants including members of the Planning Commission and City Council remarked that the map under-represented the amount of open space land that exists throughout the City, including private open space lands. Near the conclusion of the General Plan Update process, staff identified several areas that could be identified on the Land Use Map as Open Space. This neighborhood at the southwest corner of East Dunne Avenue and Hill Road was one of those areas. Only the larger open space (park) areas were identified during the General Plan Update process, but there are several other smaller areas that could also be shown as Open Space.

3. This site on the west side of Old Monterey Road near the new intersection with Monterey Road was, along with the adjacent City Ventures site, designated Mixed Use Flex on the published Draft Land Use Map during the General Plan adoption hearings. The City Council changed the City Ventures site back to Residential Attached Low to match the approved/under construction project and changed the site to Residential Detached Medium to more closely relate to the single-family detached homes of the City Ventures project and to the existing single-family detached neighborhood to the north.

C. Designation changed during the General Plan Update process, but does not reflect existing zoning and/or approved/under construction/built project. General Plan Land Use Designation should be changed back to:

1. Open Space to match the Open Space zoning.
2. Residential Attached Low to match the R-2 3,500 (PD) zoning and existing development of duets.
3. Residential Detached High to match the R-1 4,500 (PD) zoning.
4. Residential Downtown to match the R-4 zoning and approved/under construction multi-family project.
5. Residential Detached Low consistent with the existing County subdivision.
6. Residential Attached Low to match the R-2 3,500 (RPD) zoning and approved/under construction project.

D. Designation does not, and did not under previous General Plan, match existing zoning and/or approved/built project

1. These two parcels along the west side of Butterfield Boulevard north of Barrett Avenue are remnant parcels after the Butterfield extension. The Land Use designation for both should be changed to Commercial to reflect the commercial zoning, CS(PD) for the northwesterly parcel and CN for the southeasterly parcel.
2. This site has a commercial zoning and is developed with medical office. The Land Use designation should be changed from Residential Attached Low to Commercial to match the zoning and use.

3. These parcels on the west side of John Telfer Drive north of West Main Avenue are zoned RE 40,000 and mostly developed with single-family homes. The Land Use designation should be changed from Open Space to Residential Estate.
4. This parcel on the north side of Jackson Oaks Drive south of East Dunne Avenue is zoned Open Space. The Land Use Designation should be changed from Residential Detached Low to Open Space to match the zoning and use.
5. This is the site of the City of Morgan Hill Police Station on Vineyard Boulevard. The Land Use designation should be changed to Public Facilities to match the use.

GPA2017-0002: Text and Figure Corrections/Clarifications

The proposed text corrections/clarifications are limited to Chapter 3 – City and Neighborhood Form and Chapter 8 – Natural Resources and Environment.

E. Chapter 3 – City and Neighborhood Form

1. Page CNF-2 Figure CNF-1 City Boundaries. Update map to show 2014 approval of Monterey Road No. 6 Annexation and Monterey-South of Watsonville Urban Service Area Amendment for area at the southwest corner of Monterey Road and Watsonville Road.
2. Page CNF-5 Growth Management Section and CNF-6 Figure CNF-2 Downtown. Delete references to RDCS Measure F and A.
- 3.a Page CNF-10 Table CNF-2 Summary of Land Use Designations. Update table to match Land Use designation descriptions.
- 3.b Page CNF-11 Residential Designations. Change “Secondary” to “Accessory” dwelling units per recent change in state law. Consistently use “unit(s) per net acre”.
- 3.c Page CNF-13 and 14 Mixed Use and Non-Residential Designations. Following City Council direction from Resolution No. 15-219 adopted September 2015 to remove height references from General Plan, remove height references from Land Use designation descriptions. In Mixed Use Flex description change the word “process” to “proceed”.

F. Chapter 8 – Natural Resources and Environment

1. Add reference to Santa Clara Valley Habitat Plan in Stream Channel Protection Policy NRE-5.6.

COMMUNITY ENGAGEMENT: Inform

The proposed General Plan Amendments were publicly noticed (newspaper legal noticing) for the minimum 10-day period prior to the Planning Commission hearing on November 14, 2017 and prior to the City Council hearing on December 6, 2017.

Because the proposed map, figure, and text corrections do not represent a substantial amendment of the General Plan, the amendments were not referred to other entities (e.g., Santa Clara Valley Water District, Morgan Hill Unified School District, etc.) for review and comment.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

At its November 14, 2017 public hearing, the Planning Commission unanimously recommended the City Council adopt General Plan Amendments, GPA2017-0001 and -0002 to correct miscellaneous land use map and text errors.

FISCAL AND RESOURCE IMPACT:

The recommended actions do not have a fiscal impact.

CEQA (California Environmental Quality Act):

The project was reviewed and found to be consistent with California Environmental Quality Act (CEQA) Section 21083.3 and CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan or Zoning) in that the proposed General Plan Amendments to correct miscellaneous Land Use Map and text errors are consistent with the Morgan Hill 2035 General Plan for which an Environmental Impact Report (EIR) was prepared in accordance with CEQA and certified by the Morgan Hill City Council (Resolution No. 16-127) on July 27, 2016 (SCH#2015022074).

There are no new environmental effects peculiar to the project or subject parcel that were not analyzed as significant effects in the Morgan Hill 2035 EIR and no new information that would result in potentially significant off-site impacts, cumulative impacts, or more severe impacts than discussed in the Morgan Hill 2035 EIR.

LINKS/ATTACHMENTS:

1. Planning Commission Resolution No. 17-37
2. Draft City Council Resolution
3. Exhibit A - GPA2017-0001 and -0002

RESOLUTION NO. 17-37

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF GENERAL PLAN AMENDMENTS GPA2017-0001 AND GPA2017-0002 TO CORRECT MISCELLANEOUS LAND USE MAP, FIGURE AND TEXT ERRORS IN CHAPTER 3 – CITY AND NEIGHBORHOOD FORM AND ADD A TEXT CLARIFICATION IN CHAPTER 8 – NATURAL RESOURCES AND ENVIRONMENT IN THE MORGAN HILL 2035 GENERAL PLAN.

WHEREAS, such application was considered by the Planning Commission at their regular meeting of November 14, 2017 at which time the Planning Commission recommended approval of General Plan Amendment applications, GPA2017-0001 and GPA2017-0002: City of Morgan Hill; and

WHEREAS, the project was reviewed and found to be consistent with California Environmental Quality Act (CEQA) Section 21083.3 and CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan or Zoning) in that the proposed General Plan Amendments to correct miscellaneous Land Use Map, figure, and text errors are consistent with the Morgan Hill 2035 General Plan for which an Environmental Impact Report (EIR) was prepared in accordance with CEQA and certified by the Morgan Hill City Council (Resolution No. 16-127) on July 27, 2016 (SCH#2015022074) and there are no new environmental effects peculiar to the project that were not analyzed as significant effects in the Morgan Hill 2035 EIR and no new information that would result in potentially significant off-site impacts, cumulative impacts, or more severe impacts than discussed in the Morgan Hill 2035 EIR; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

SECTION 1. The proposed General Plan Amendments are found to be consistent with the policies and provisions of the Morgan Hill 2035 General Plan for which an Environmental Impact Report was prepared in accordance with the California Environmental Quality Act and certified by the Morgan Hill City Council on July 27, 2016.

SECTION 2. The Planning Commission recommends that the City Council approve the General Plan Amendments as described in the attached Exhibit “A”, and by this reference incorporated herein.

PASSED AND ADOPTED THIS 14th DAY OF NOVEMBER 2017, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS: MCKAY, DOWNEY, TANDA, MARTINEZ
BELTRAN, MUELLER, HABIB, MIGUEL
MUNOZ MORRIS

NOES: COMMISSIONERS: NONE

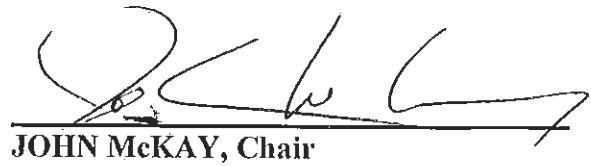
ABSTAIN: COMMISSIONERS: NONE

ABSENT: COMMISSIONERS: NONE

ATTEST:


JENNA LUNA, Deputy City Clerk

APPROVED:


JOHN MCKAY, Chair

Date: 11-30-17

F:\WP51\GPA\2017\GPA2017-0001_and_-0002\Resolution No. 17-37.docx

Attachment: Planning Commission Resolution No. 17-37 (1526 : General Plan Clean-up)

RESOLUTION NO. 17-0XX**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING GENERAL PLAN AMENDMENTS GPA2017-0001 AND GPA2017-0002 TO CORRECT MISCELLANEOUS LAND USE MAP, FIGURE AND TEXT ERRORS IN CHAPTER 3 – CITY AND NEIGHBORHOOD FORM AND ADD A TEXT CLARIFICATION IN CHAPTER 8 – NATURAL RESOURCES AND ENVIRONMENT IN THE MORGAN HILL 2035 GENERAL PLAN.**

WHEREAS, on July 27, 2016, the City Council adopted the General Plan entitled, “Morgan Hill 2035 General Plan”, by Resolution No. 16-128; and

WHEREAS, the City Council of the City of Morgan Hill is authorized by state law to adopt and, from time to time, amend the General Plan governing the physical development of the City of Morgan Hill; and

WHEREAS, such application was considered by the Planning Commission at its regular meeting of November 14, 2017 at which time the Planning Commission unanimously recommended approval of General Plan Amendment applications, GPA2017-0001 and GPA2017-0002: City of Morgan Hill; and

WHEREAS, the project was reviewed and found to be consistent with California Environmental Quality Act (CEQA) Section 21083.3 and CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan or Zoning) in that the proposed General Plan Amendments to correct miscellaneous Land Use Map, figure, and text errors are consistent with the Morgan Hill 2035 General Plan for which an Environmental Impact Report (EIR) was prepared in accordance with CEQA and certified by the Morgan Hill City Council (Resolution No. 16-127) on July 27, 2016 (SCH#2015022074) and there are no new environmental effects peculiar to the project that were not analyzed as significant effects in the Morgan Hill 2035 EIR and no new information that would result in potentially significant off-site impacts, cumulative impacts, or more severe impacts than discussed in the Morgan Hill 2035 EIR; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and other materials have been considered in the review process.

WHEREAS, the City Council is the decision-making body for adoption of the proposed amendments to the Morgan Hill 2035 General Plan.

NOW, THEREFORE, THE MORGAN HILL CITY COUNCIL DOES RESOLVE AS FOLLOWS:

SECTION 1. The proposed General Plan Amendments are found to be consistent with the policies and provisions of the Morgan Hill 2035 General Plan for which an Environmental Impact Report was prepared in accordance with the California Environmental Quality Act and certified by the Morgan Hill City Council on July 27, 2016.

SECTION 2. The proposed General Plan Amendments are described in the attached Exhibit "A", and by this reference incorporated herein.

PASSED AND ADOPTED THIS 6th DAY OF DECEMBER 2017, AT A REGULAR MEETING OF THE CITY COUNCIL BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

STEVE TATE, Mayor

DATE: _____

ATTEST:

IRMA TORREZ, City Clerk

DATE: _____

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No.17-XXX, adopted by the City Council at the meeting held on December 6, 2017.

Attachment: Draft City Council Resolution (1526 : General Plan Clean-up)

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Draft City Council Resolution (1526 : General Plan Clean-up)

EXHIBIT "A"

Morgan Hill 2035 General Plan

GPA2017-0001: Land Use Map Amendment

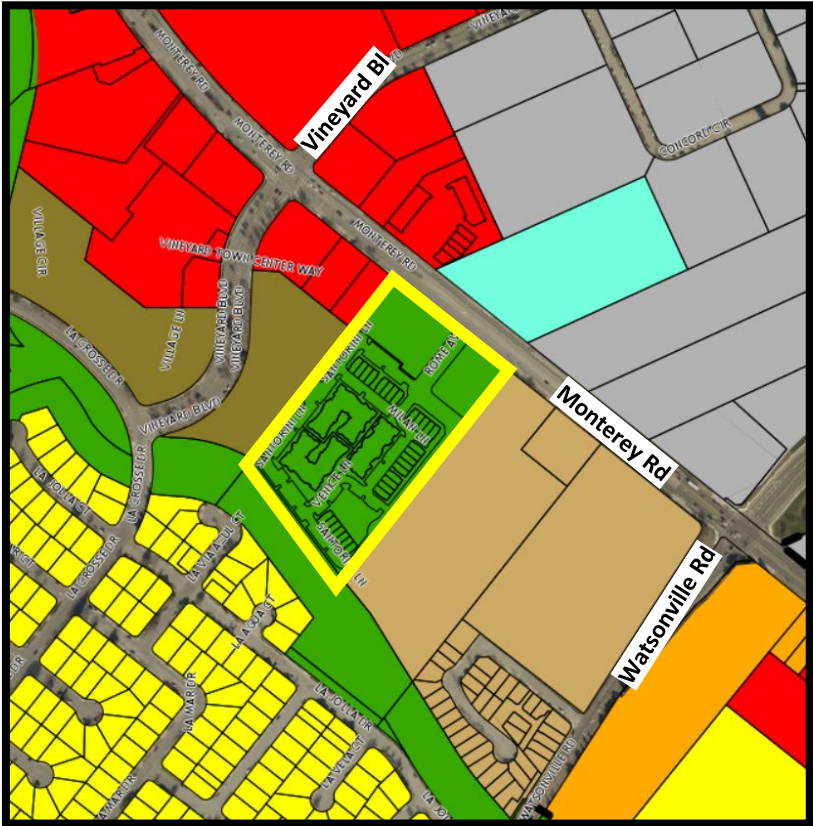
GPA2017-0002: Text Amendment

GPA2017-0001: Land Use Map

Correct Various Types of Mapping Errors:

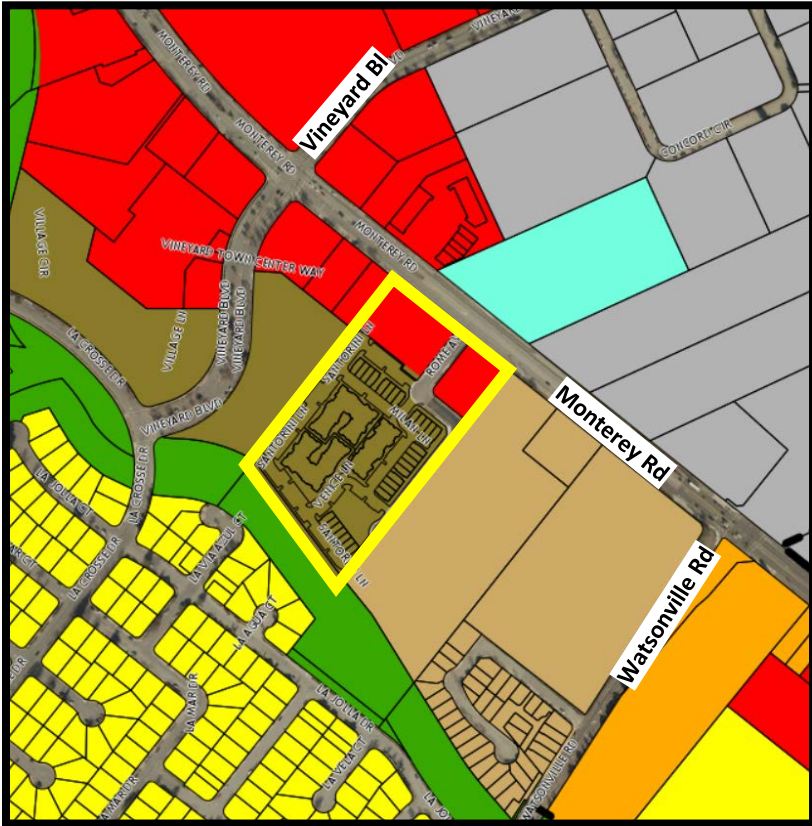
- A. Designation inadvertently changed
- B. Designation does not reflect recommendation from General Plan adoption hearings
- C. Designation changed during General Plan Update process, but does not reflect existing zoning and/or approved/under construction/built project.
- D. Designation does not, and did not under previous General Plan, match existing zoning and/or approved/built project.

General Plan Land Use Map
as Published July 26, 2016



Open Space

General Plan Land Use Map
with Proposed Correction

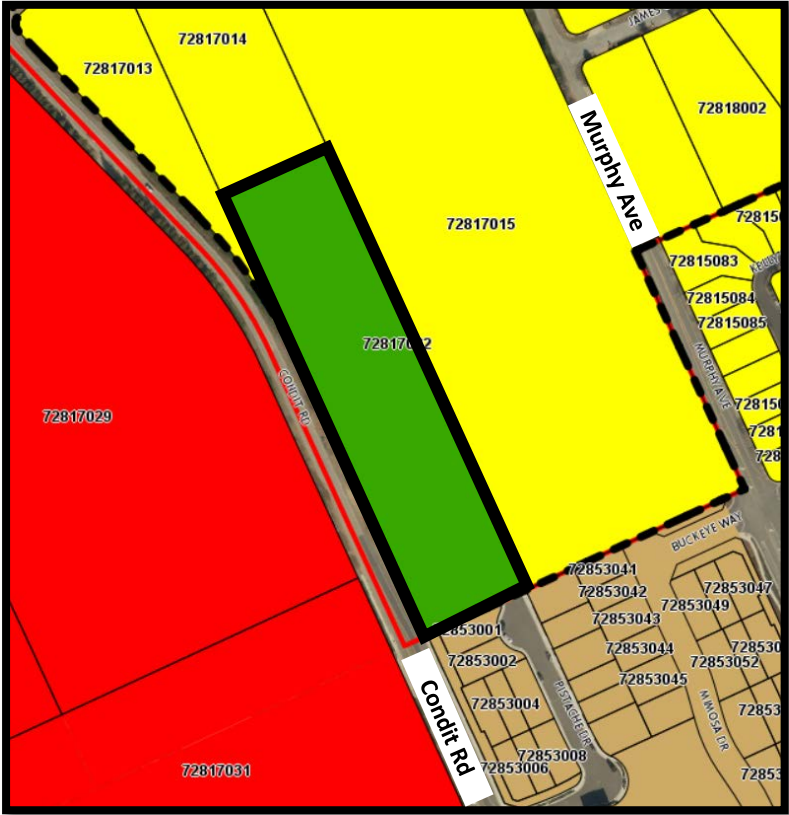


Open Space, Residential Attached Medium,
Commercial

767-23-028 Open Space (owned by SCVWD). 767-54-010 and -011 Commercial; remaining 767-54 Residential Attached Medium (under construction).

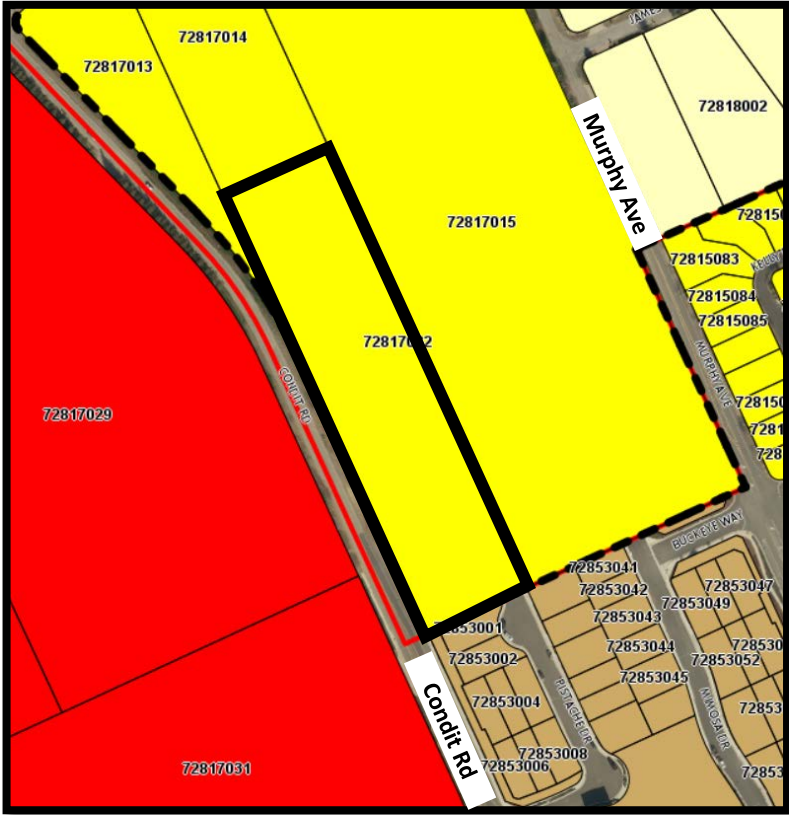
Attachment: Exhibit A - GPA2017-0001 and -0002 (1526 : General Plan Clean-up)

General Plan Land Use Map
as Published July 26, 2016



Open Space

General Plan Land Use Map
with Proposed Correction



Residential Detached Medium

APN 728-17-032. Unincorporated County, outside Urban Service Area.

Attachment: Exhibit A - GPA2017-0001 and -0002 (1526 : General Plan Clean-up)

General Plan Land Use Map
as Published July 26, 2016



Residential Detached Medium

General Plan Land Use Map
with Proposed Correction

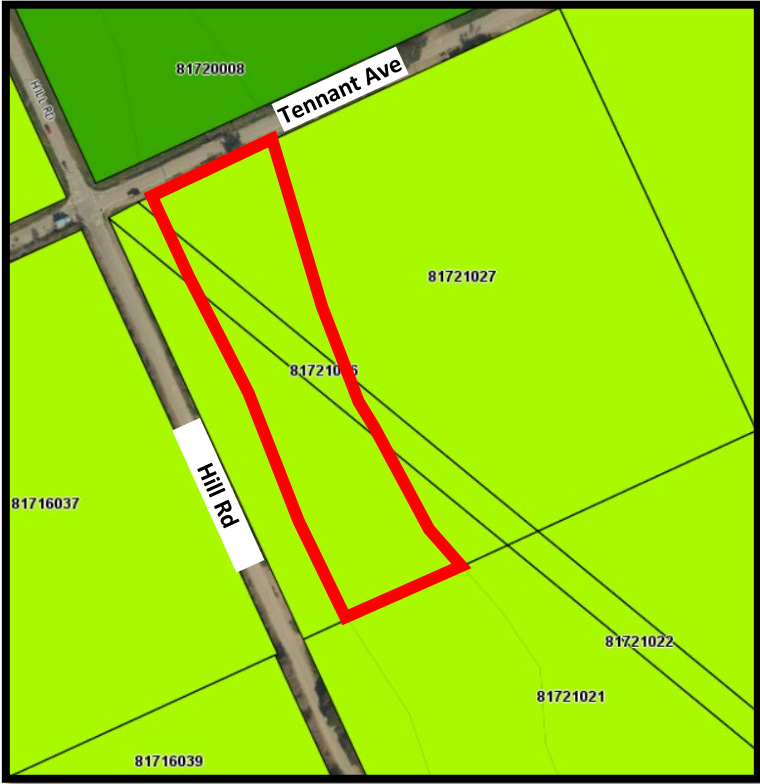


Open Space
(follows Tennant Creek)

APNs: 817-20-040 ptn. and -041 ptn. Unincorporated County, outside Urban Service Area. Follows Tennant Creek.

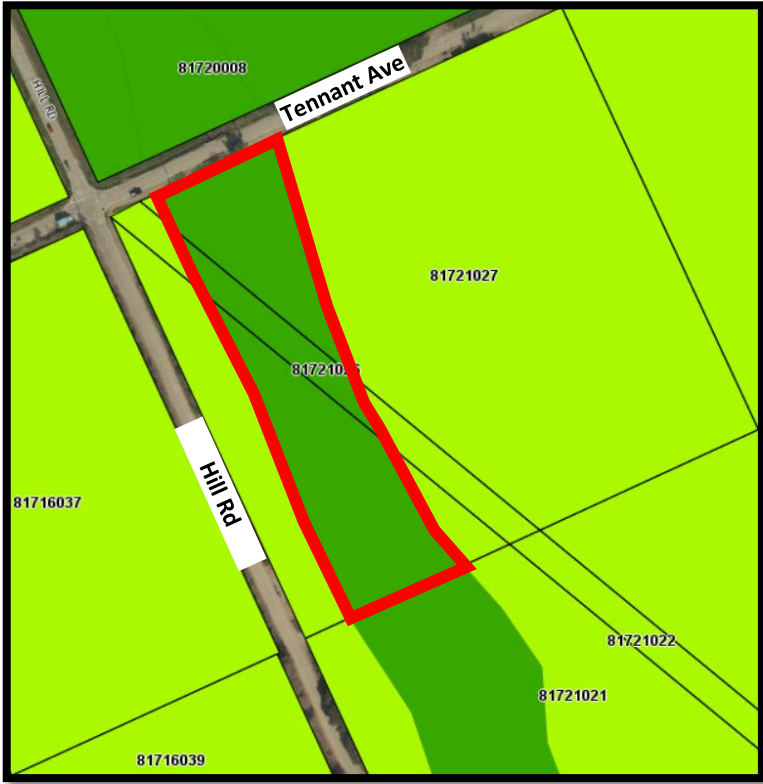
Attachment: Exhibit A - GPA2017-0001 and -0002 (1526 : General Plan Clean-up)

General Plan Land Use Map
as Published July 26, 2016



Rural County

General Plan Land Use Map
with Proposed Correction



Open Space
(follows Tennant Creek)

APNs: 817-21-026 ptn. and -027 ptn. Unincorporated County, outside Urban Service Area. Follows Tennant Creek.

Attachment: Exhibit A - GPA2017-0001 and -0002 (1526 : General Plan Clean-up)

General Plan Land Use Map
as Published July 26, 2016



Rural County

General Plan Land Use Map
with Proposed Correction



Open Space
(follows Tennant Creek)

APN 817-21-021 ptn. Unincorporated County, outside Urban Service Area. Follows Tennant Creek.

Attachment: Exhibit A - GPA2017-0001 and -0002 (1526 : General Plan Clean-up)

General Plan Land Use Map
as Published July 26, 2016



Rural County

General Plan Land Use Map
with Proposed Correction

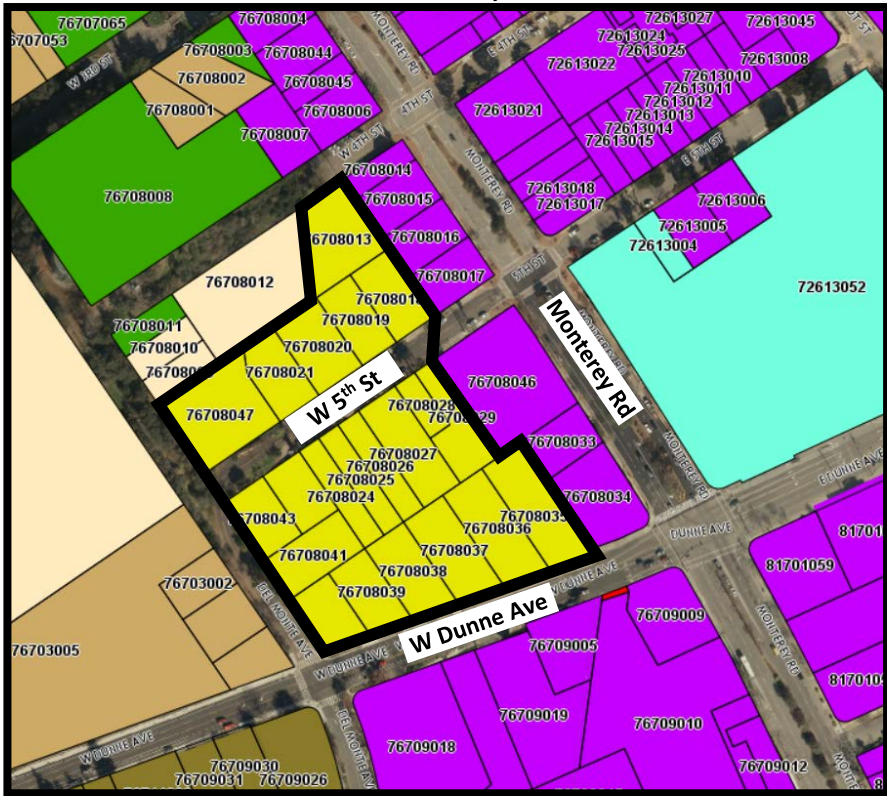


Open Space
follows Tennant Creek

APNs 817-21-001 ptn. and 817-15-014 ptn. and 817-15-011 ptn. Unincorporated County, outside Urban Service Area. Follows Tennant Creek.

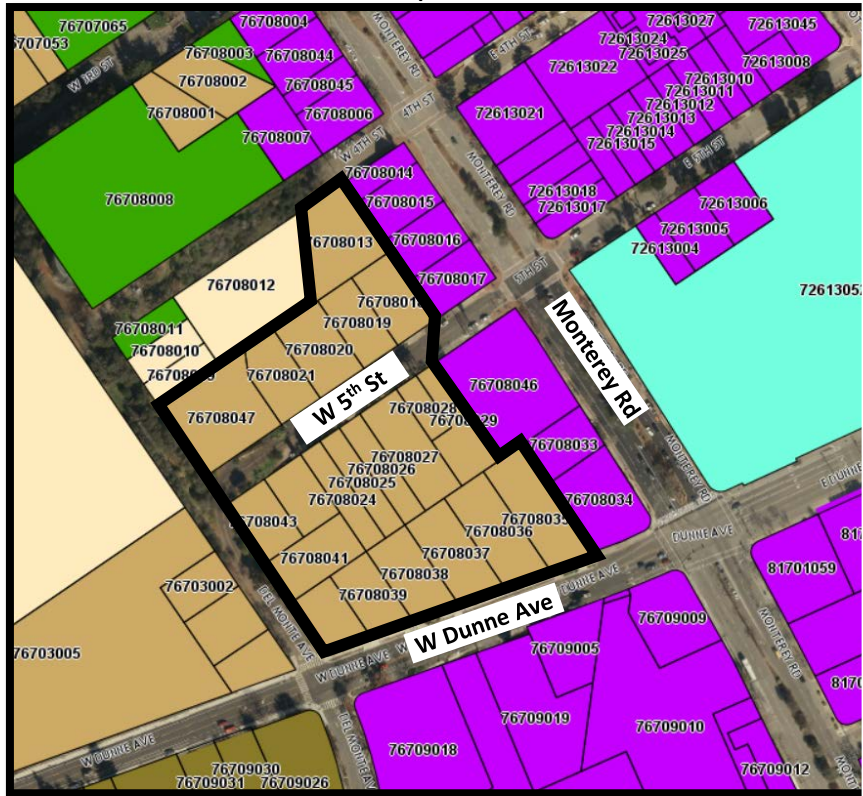
Attachment: Exhibit A - GPA2017-0001 and -0002 (1526 : General Plan Clean-up)

General Plan Land Use Map
as Published July 26, 2016



Residential Detached High

General Plan Land Use Map
with Proposed Correction



Residential Attached Low
(changed at July 2016 adoption hearing)

Residential Detached High was an option discussed with Planning Commission and City Council. Ultimately decision was to change (back to) Residential Attached Low, a designation that better matches existing and proposed development and was designation prior to DTSP changed area to Residential Attached Medium.
APNs: 767-08-013, -018 through -021, -047, -024 through -029, -035 through -043.

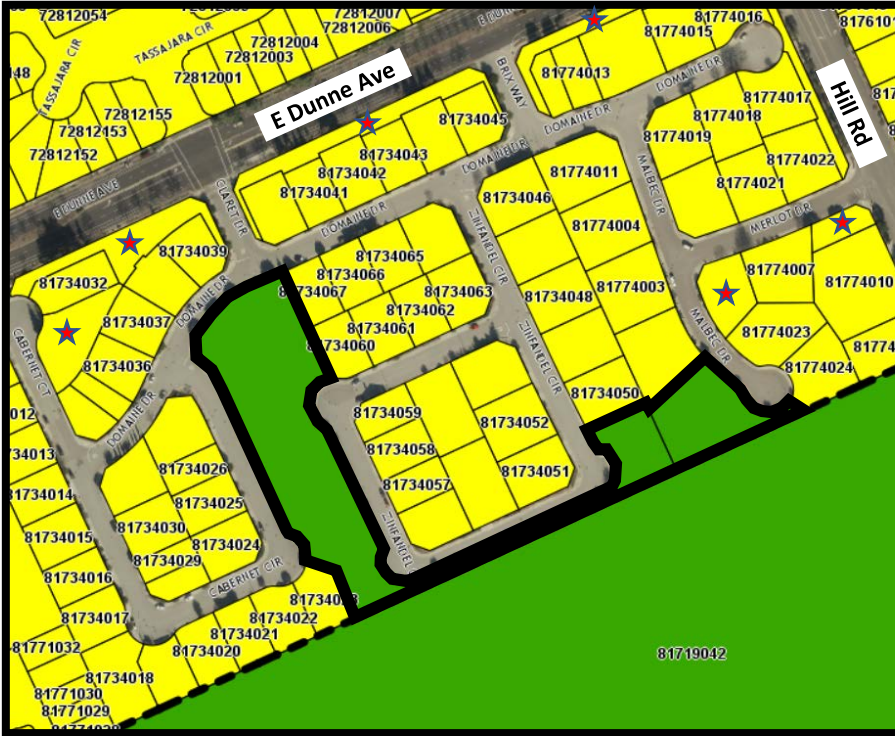
Attachment: Exhibit A - GPA2017-0001 and -0002 (1526 : General Plan Clean-up)

General Plan Land Use Map
as Published July 26, 2016



Residential Detached Medium

General Plan Land Use Map
with Proposed Correction



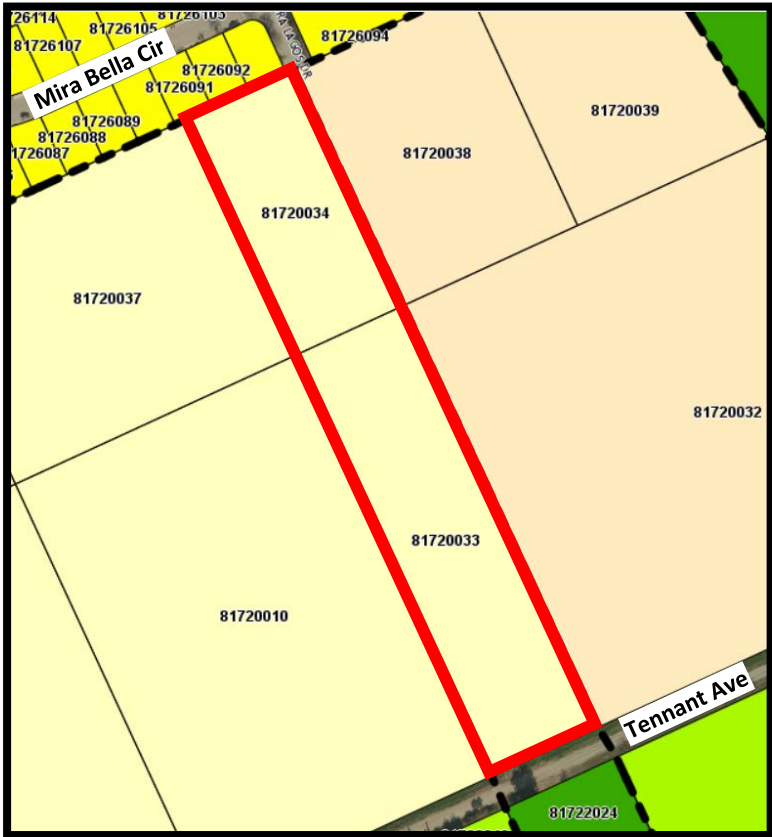
Open Space
(★ additional open space areas)

No APNs associated with parcels zoned/dedicated to open space. Stars indicate additional smaller open space areas that were not identified during General Plan Update process. Now or during a future clean-up these and other similar open space areas in other neighborhoods could be more appropriately shown as Open Space.

Attachment: Exhibit A - GPA2017-0001 and -0002 (1526 : General Plan Clean-up)

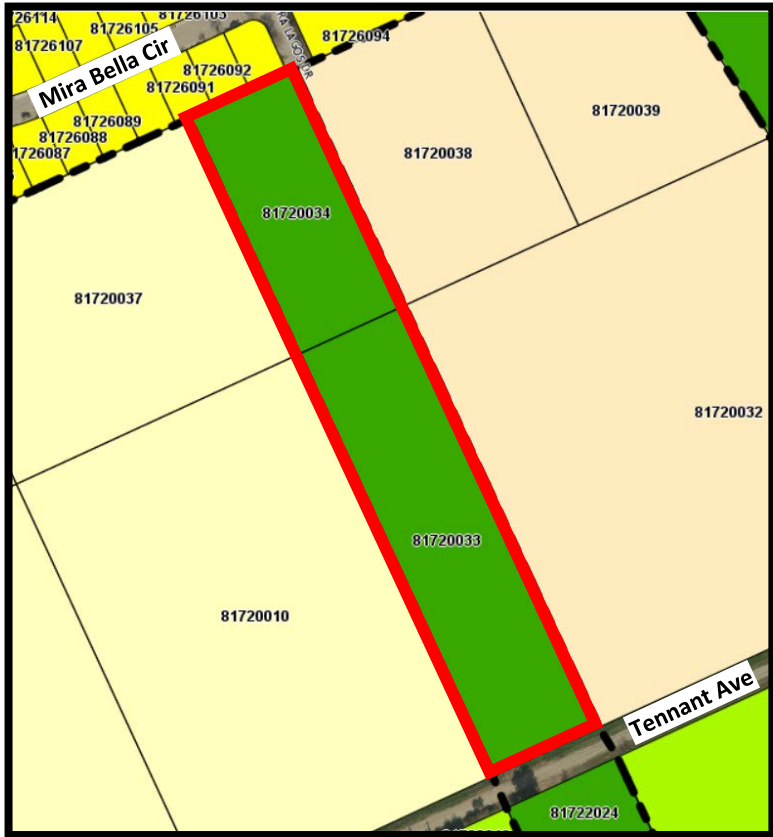
The City Council during the July adoption hearings changed the adjacent City Ventures site from Mixed Use Flex back to Residential Attached Low to match the approved/under construction project and changed the highlighted parcel to Residential Detached Medium to more closely relate to the adjacent single-family detached homes of the City Ventures project and the existing single-family detached neighborhood to the north.

General Plan Land Use Map
as Published July 26, 2016



Residential Detached Low

General Plan Land Use Map
with Proposed Correction

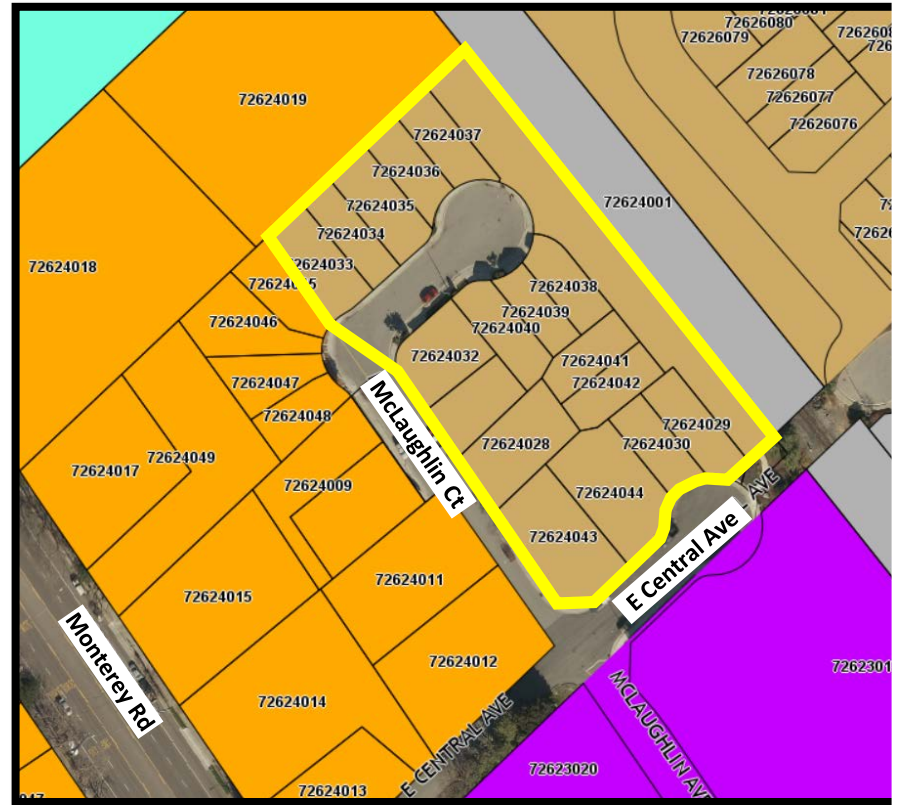


Open Space

APNs 817-20-033 and -034 zoned Open Space.

Attachment: Exhibit A - GPA2017-0001 and -0002 (1526 : General Plan Clean-up)

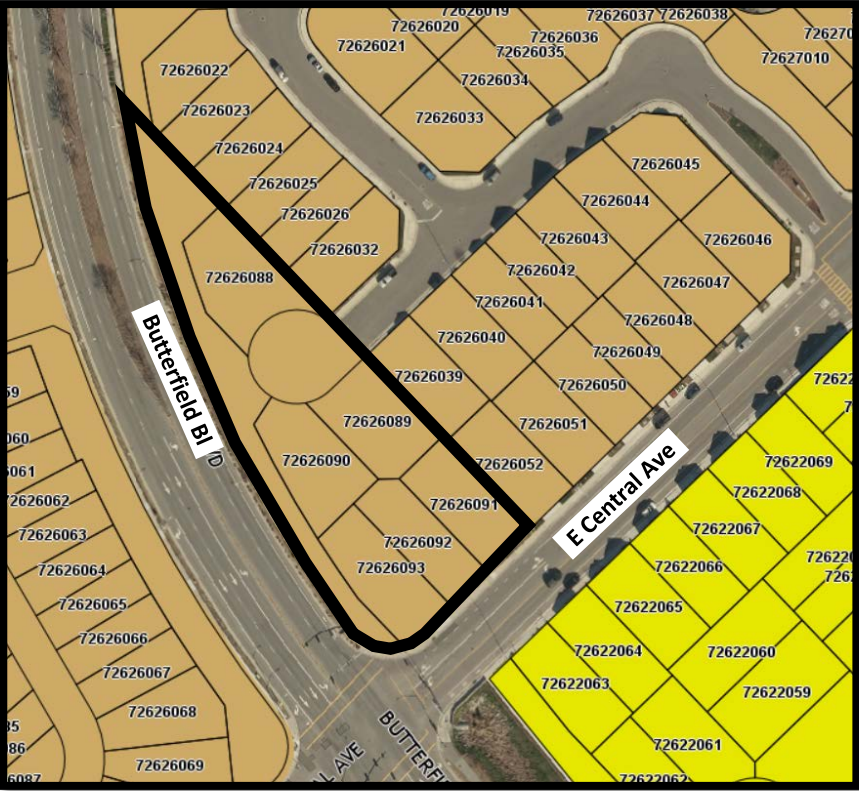
General Plan Land Use Map with Proposed Correction



Residential Attached Low

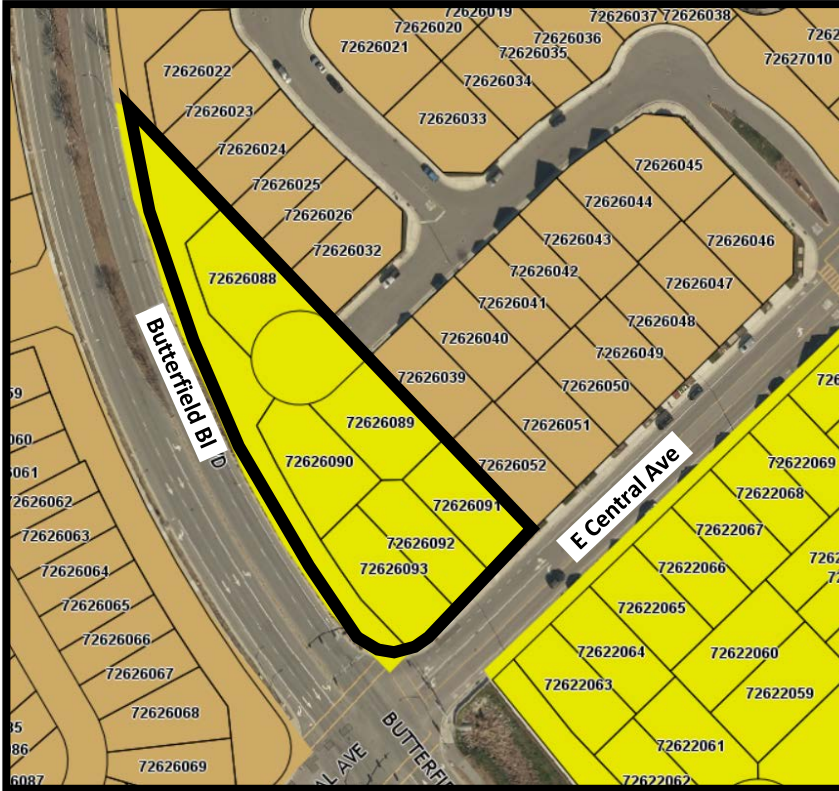
Attachment: Exhibit A - GPA2017-0001 and -0002 (1526 : General Plan Clean-up)

General Plan Land Use Map
as Published July 26, 2016



Residential Attached Low

General Plan Land Use Map
with Proposed Correction

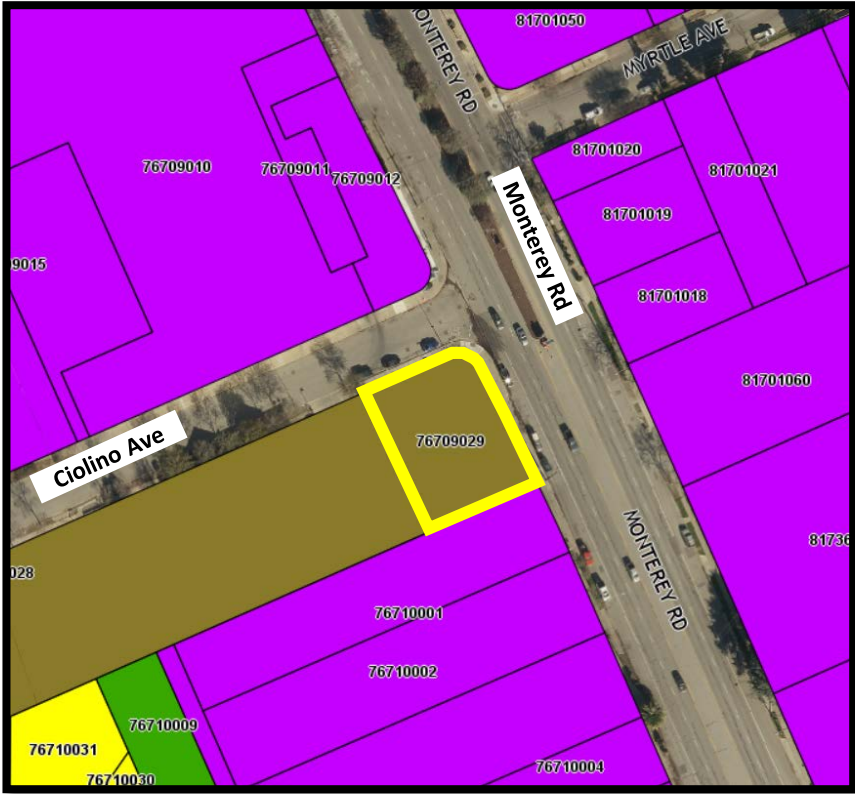


Residential Detached High

Zoned R-1 4,500 (PD). APNs: 726-26-088 through -093.

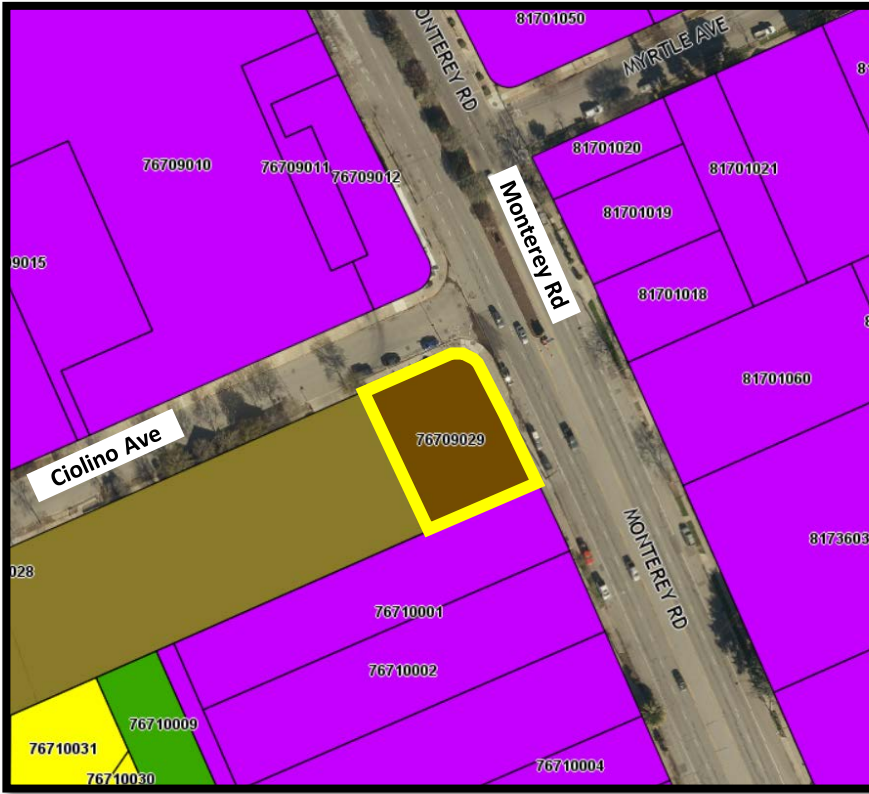
Attachment: Exhibit A - GPA2017-0001 and -0002 (1526 : General Plan Clean-up)

General Plan Land Use Map
as Published July 26, 2016



Residential Attached Medium

General Plan Land Use Map
with Proposed Correction

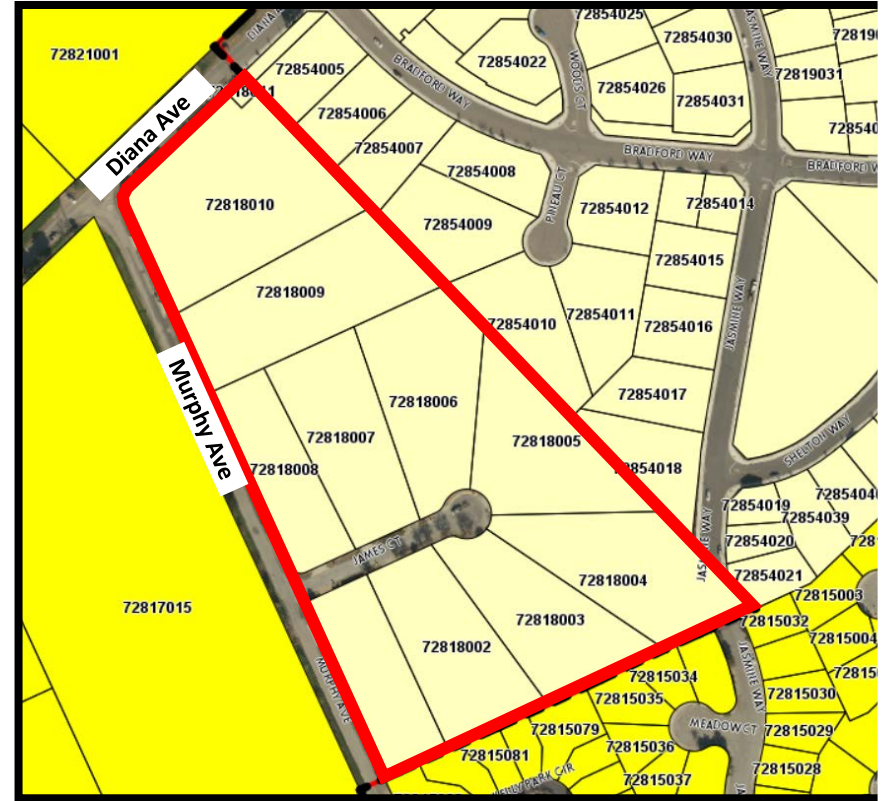


Residential Downtown
(GPA approved 10/1/14)

Zoned R-4, multi-family project approved and under construction. APN: 767-09-029.

Attachment: Exhibit A - GPA2017-0001 and -0002 (1526 : General Plan Clean-up)

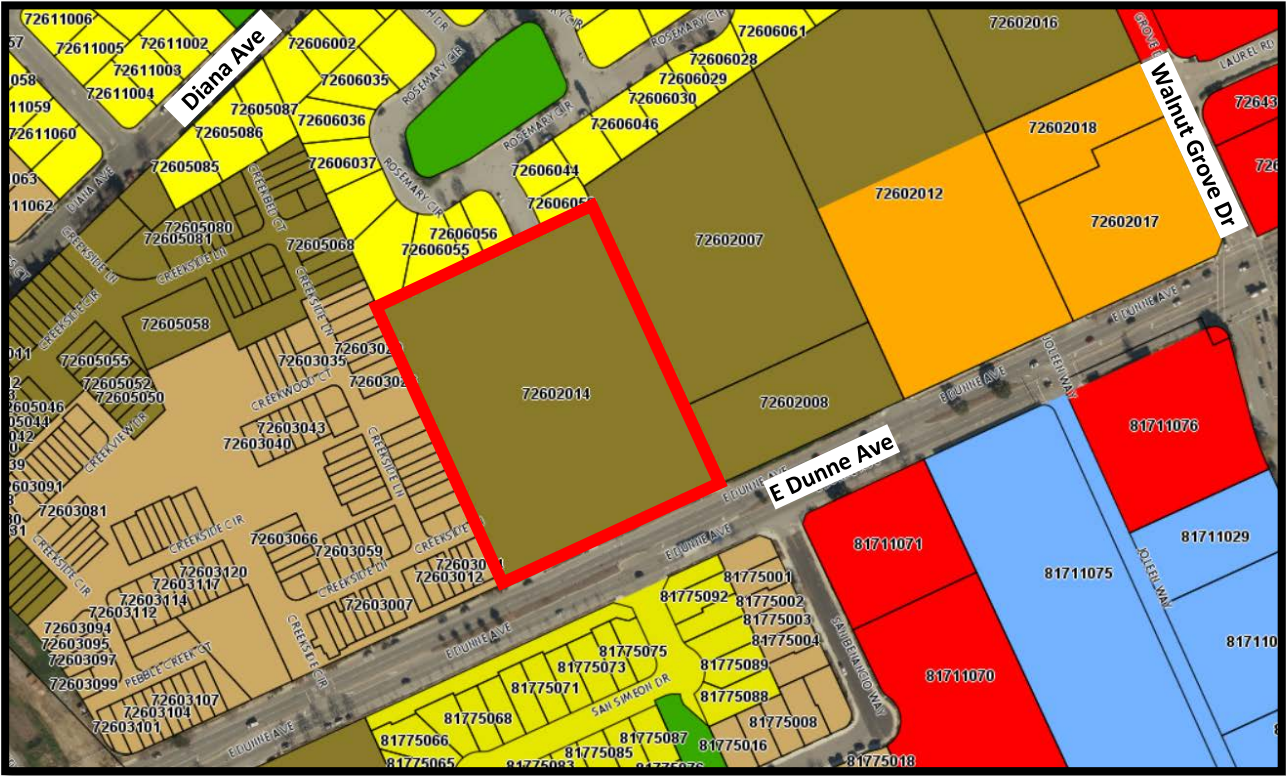
General Plan Land Use Map with Proposed Correction



Residential Detached Low
(existing County subdivision)

APNs: 728-18-001 through -010. Already fully developed. In Unincorporated County, outside Urban Service Area.

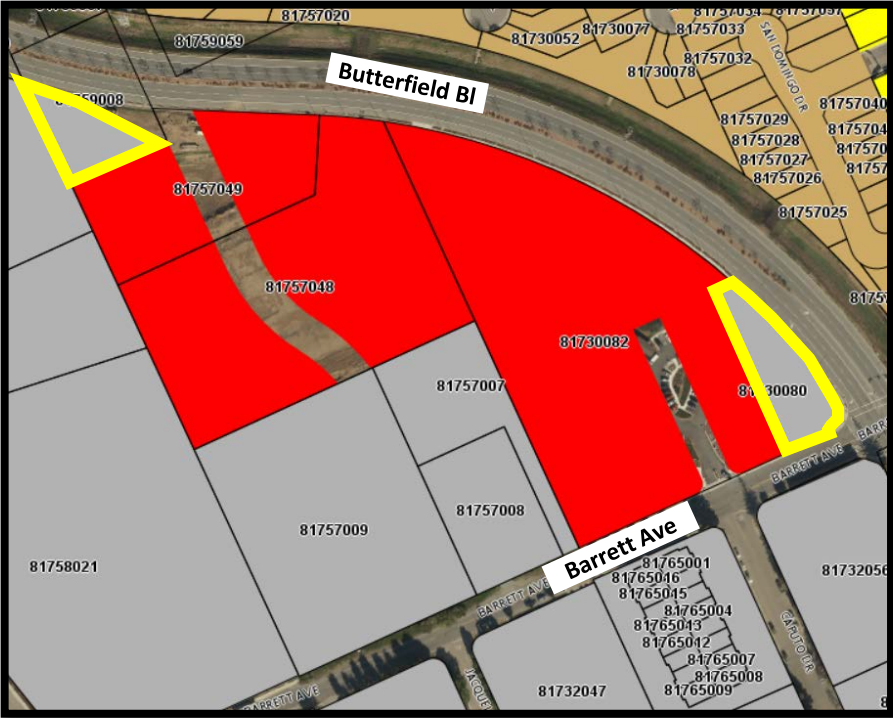
General Plan Land Use Map
as Published July 26, 2016



Residential Attached Medium back to Residential Attached Low
(matches approved project)

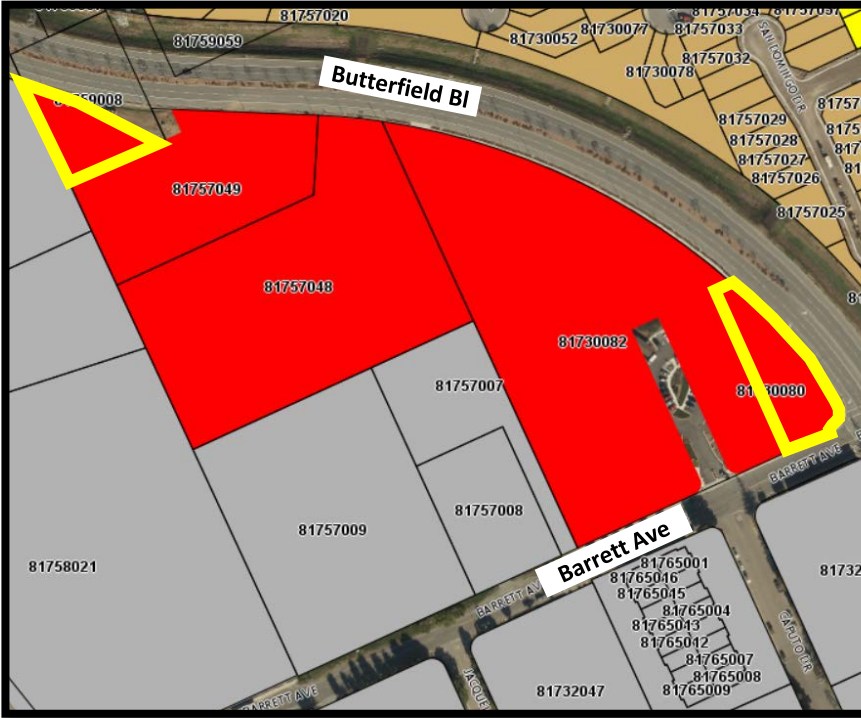
APN 726-02-014 Zoned R-2 3,500 (RPD). Under construction.

General Plan Land Use Map
as Published July 26, 2016



Industrial

General Plan Land Use Map
with Proposed Correction

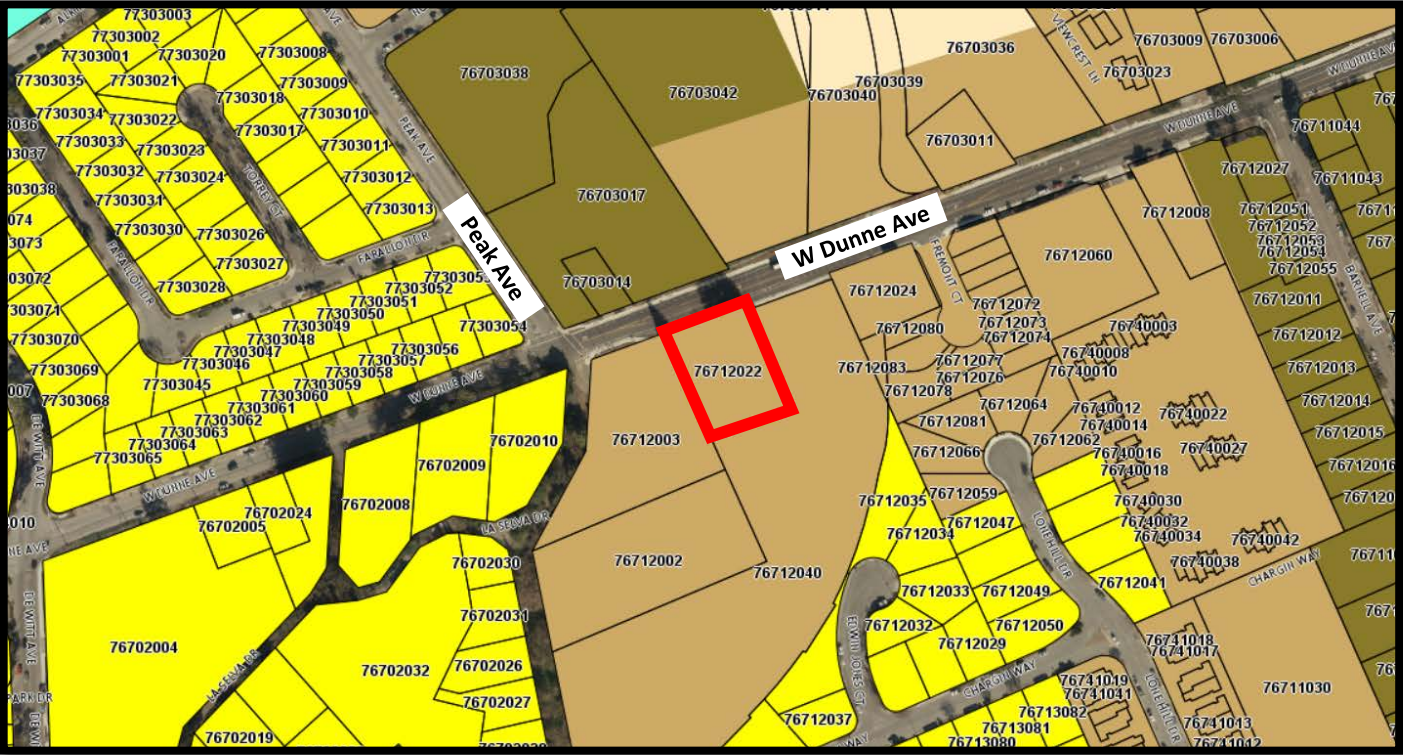


Commercial

Remnant parcels after Butterfield Blvd. extension. APN 817-59-008 (ptn.) Zoned CS (PD) under construction as Senior Congregate Care Facility. APN 817-30-080 Zoned CN Commercial Neighborhood.

Attachment: Exhibit A - GPA2017-0001 and -0002 (1526 : General Plan Clean-up)

General Plan Land Use Map
as Published July 26, 2016



Residential Attached Low to Commercial
(currently zoned Commercial Office; existing use Medical Office)

APN 767-12-022 Zoned CO Commercial Office, developed with medical office

Attachment: Exhibit A - GPA2017-0001 and -0002 (1526 : General Plan Clean-up)

General Plan Land Use Map
as Published July 26, 2016

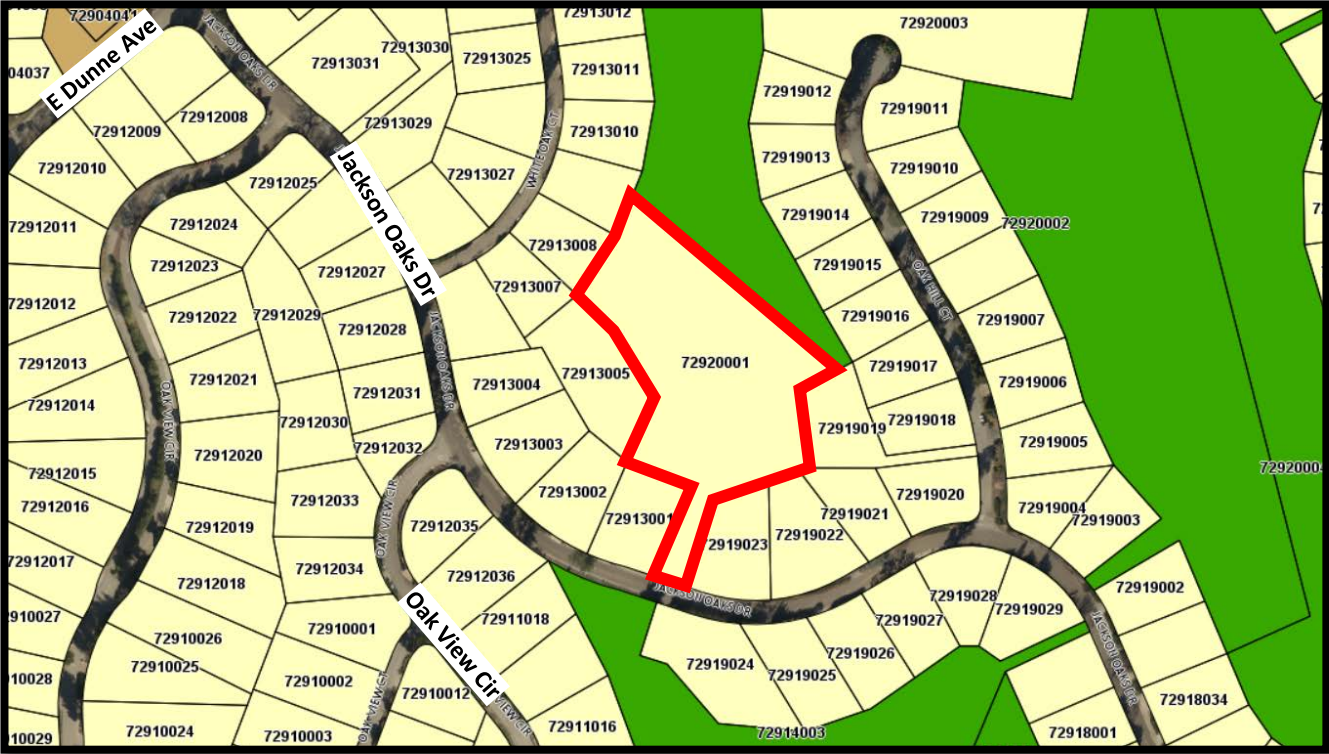


Open Space to Residential Estate
(currently zoned RE 40,000)

APNs 764-38-001, -002, -003, -005, -010, -012, -013, Zoned RE 40,000.
Several parcels developed with single-family homes.

Attachment: Exhibit A - GPA2017-0001 and -0002 (1526 : General Plan Clean-up)

General Plan Land Use Map
as Published July 26, 2016

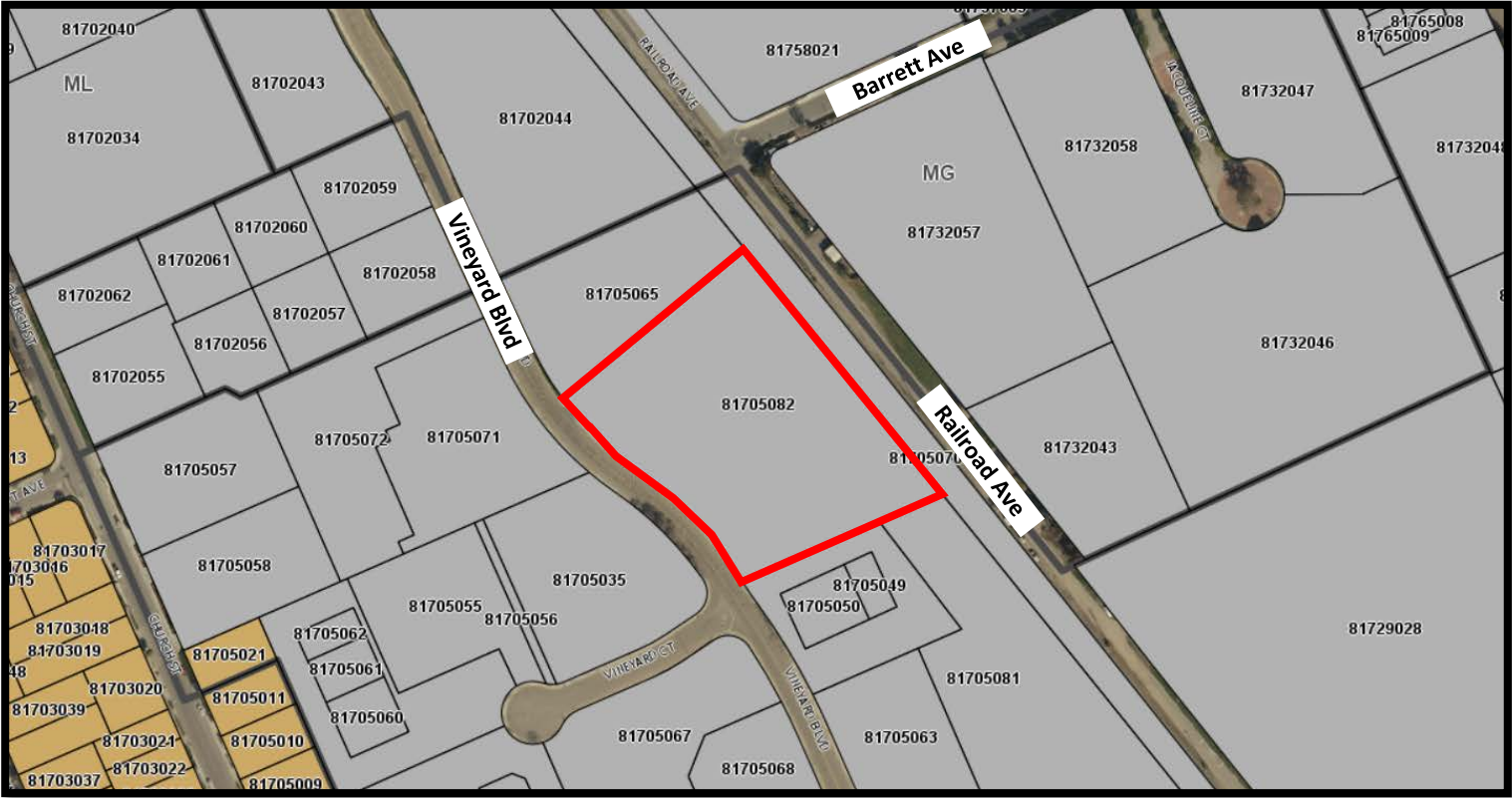


Residential Detached Low to Open Space
(currently zoned Open Space)

APN 729-20-001, Zoned Open Space, owned by City.

Attachment: Exhibit A - GPA2017-0001 and -0002 (1526 : General Plan Clean-up)

General Plan Land Use Map
as Published July 26, 2016



Industrial to Public Facilities

APN 817-05-082, City of Morgan Hill Police Station.

GPA2017-0002: Text

Text and Figure Corrections/Clarifications

E. Chapter 3 – City and Neighborhood Form

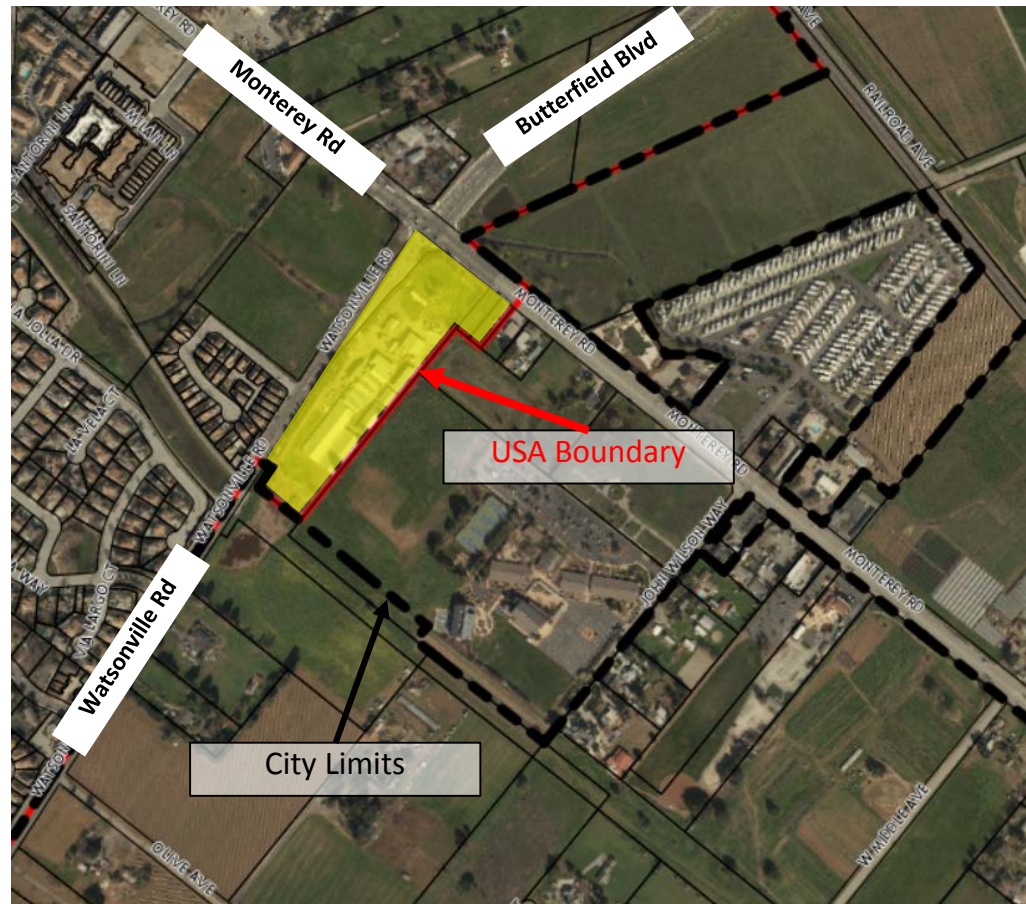
- 1) City Boundaries
- 2) Delete references to RDCS Measure F and A
- 3) Land Use Designations

F. Chapter 8 – Natural Resources and Environment

- 1) Stream Channel Protection

Page CNF-2: Figure CNF-1 City Boundaries

- *Update map to show 2014 approval of Monterey Road No. 6 Annexation / Monterey-South of Watsonville Urban Service Area Amendment (sw/c Monterey Road and Watsonville Road).*



General Plan Text

Page CNF-5: Growth Management Section

- *Delete reference to RDCS Measure F and Measure A; replaced by RDCS Measure S.*

Individual single-family homes, replacement of existing homes, secondary dwelling units, assisted living/nursing homes, and the conversion of an existing single-family home into a duplex are all exempt from the RDCS process. ~~In addition, there are two voter-approved exemptions to the RDCS; both are in the Downtown area. Measure F, approved by voters in November 2006, allows 100 residential unit allotments for projects up to 25 units within the Downtown. Measure A, passed in May 2009, allows up to 500 allotments for the 20 block area, as shown on Figure CNF-2.~~

Page CNF-6: Figure CNF-2 Downtown

- *Update map to remove references to Measure F Area and Measure A Area.*

General Plan Text

Page CNF-10: Table CNF-2 Summary of Land Use Designations

- *Update table to match land use designation descriptions.*

TABLE CNF-2 SUMMARY OF LAND USE DESIGNATIONS		
Designation	Primary Uses	Net Density Range
Commercial	Retail, office, services	0. 5 <u>6</u> FAR
Commercial-General <u>Commercial</u>	Retail, office, services	Comm. 0.5 FAR Ind. 0.6 FAR
Commercial/Industrial	Retail, office, services or warehouses, offices, manufacturing	<u>Comm.</u> 0.5 FAR <u>Ind.</u> 0.6 FAR
Industrial	Warehouse, offices, manufacturing	0. 2 <u>6</u> FAR

General Plan Text

Page CNF-11: Residential Designations

- *Change “Secondary dwelling units” to “Accessory dwelling units” per recent change in state law.*
- *Consistently use “unit(s) per net acre”.*

 **Residential Estate.** ...the Residential Estate designation allows single-family homes, ~~secondary~~ accessory dwelling units, appropriate agricultural uses, and associated community services and facilities. The maximum allowable density is 1 unit per net acre.

 **Residential Detached Low.** The Residential Detached Low designation is intended to accommodate families in suburban single-family homes, including manufactured homes on medium-sized parcels. ~~Secondary~~ Accessory dwelling units are allowed under this designation...

 **Residential Detached Medium.** Residential Detached Medium areas allow detached homes on smaller lots, including courtyard homes, manufactured homes, and small-lot single-family homes. ~~Secondary~~ Accessory dwelling units are allowed under this designation...

 **Residential Detached High.** The Residential Detached High designation is intended to accommodate detached single-family homes on small lots at a density of 6 to 12 ~~dwelling~~ units per net acre...

General Plan Text

Page CNF-13 and 14: Mixed Use Designations and Non-Residential Designations

- *Remove height from General Plan land use designation descriptions. City Council adopted Resolution No. 15-219 September 2, 2015 removing height references from General Plan; Zoning Code includes maximum heights.*
- *Last sentence of Mixed Use Flex, change “process” to “proceed”.*

-  **Mixed Use Flex.** The Mixed Use Flex designation... allows 7 to 24 units per acre and a maximum FAR of 0.5 ~~and a maximum commercial height of 35 feet~~...Commercial development may ~~process~~proceed without preparation of a block level master plan consistent with the Commercial designation.
-  **Commercial.** The Commercial designation... allows a maximum FAR of 0.5~~6~~~~and a~~
~~maximum building height of 30 feet~~.
-  **General Commercial.** This designation...allows a maximum FAR of 0.5~~and a maximum~~
~~building height of 35 feet~~.
-  **Commercial/Industrial.** ...This designation allows a maximum FAR of 0.5 ~~and a maximum~~
~~building height of 30 feet~~ for commercial uses and a maximum FAR of 0.6~~and a~~
~~maximum building height of 50 feet~~ for industrial uses.
-  **Industrial.** The Industrial designation...allows a maximum FAR of 0.6 ~~and a maximum~~
~~building height of 50 feet~~.
-  **Public Facilities.** ...This designation allows a maximum FAR of 0.5~~and a maximum~~
~~building height of 35 feet~~.
-  **Sports Recreation Leisure.** The Sports-Recreation Leisure designation...allows a maximum FAR of 0.4~~and a maximum building height of 40 feet~~.

General Plan Text

Page NRE-32: Biological Resources

- *Add reference to Santa Clara Valley Habitat Plan in Stream Channel Protection Policy.*

Policy NRE-5.6 Stream Channel Protection. Protect existing stream channels and riparian vegetation by requiring buffering or landscaped setbacks and storm runoff interception as specified in Table NRE-1 and consistent with the Santa Clara Valley Habitat Plan.



CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2017

PREPARED BY: Leslie Little, Assistant City Manager for Community Development
APPROVED BY: City Manager

PURCHASE AND SALE AGREEMENT BETWEEN CITY OF MORGAN HILL AND GRANARY LLC, FOR THE GRANARY BUILDING EXPANSION PROJECT

RECOMMENDATION(S)

Adopt resolution approving Purchase and Sale Agreement by and between the City of Morgan Hill and Granary LLC, for the Granary Building Expansion Project and directing the City Manager to take all actions required to execute the Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

2017 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

On August 5, 2015, the City Council was asked to consider selling or trading City-owned property located adjacent to the Granary District to Weston Miles Architects, the owners of the development. The City Council authorized staff to negotiate for the sale or exchange of the 10-space Depot parking lot with Weston Miles Architects, (Granary LLC) for the express purpose of the expansion of the Granary District project. At the time, the developer proposed to build 4,500 sf of retail/food uses on the 10-space parking lot, and place the private Granary Building parking lot into public parking use. Since that time, the development plan has been modified as reflected in the attachment to this report.

Weston Miles Architects are the developers and owners of the Granary District complex located just north of one of two, City-owned parking lots on Depot. The Granary Phase I, is a successful mixed-use project, containing offices, service tenants and a popular, high-volume restaurant. Weston Miles owns the adjacent private parking lot, which contains 14, full sized (1 handicapped) parking spaces. Phase II, is a mixed-use expansion now nearing completion, comprised of a 16-unit condominium complex and approximately 7,000 sf of retail/specialty food and drink space in three separate buildings located directly north of the main Granary Building, on the corner of Depot and Main Streets. This mixed-use expansion extended the Granary, to create a "district," completing the Depot block from the subject 10-space parking lot to Main Street.

Weston Miles proposes to add more retail/restaurant space to the south of the Granary Building extending the "district" to Second Street. In August 2015, Weston Miles

discussed swapping parking lot areas (taking Weston Miles' private lot and making it public in exchange for development of the 10-space lot), or facilitating the long-term lease/ out-right sale of the independent portion of the northern Depot parking lot, to accept the building and new construction. As the Granary Phase II, known as Barley Place, received early success, the developer investigated ways of expanding their retail footprint without removing the 10-space lot, and a re-design of their private parking lot - silo area of the site to accept and extend the retail vision, as well as increasing efficiency by relocating the existing trash enclosure and creating two new parking spaces. The conceptual site plan activates the historic silos and knits the silo and shoulder area into the master development with two new buildings. A building of approximately 1100 sf is proposed to occupy the shoulder area of the parking lot which is the subject of this Purchase and Sale Agreement.

With this design proposal, Weston Miles desires to purchase only the unused rear and shoulder area of the parking lot, immediately adjacent to their property and behind (east) the 10-space, small City lot, which is part of a larger City-owned, 63 space public parking lot. The larger lot was expanded from 52 to 63 spaces in 2016, when the City installed parallel parking along the drive aisle of the lot. The Granary parking lot will increase by two spaces as the trash enclosure will move to the street side of the parking lot, increasing the size of the lot from 10 to 12 regular spaces. This lot is also situated within 1 1/2 city blocks of the new public parking structure. The larger lot is anchored on the south by the "depot" building, currently home to Jonty's restaurant lot and the new, active children's park. The shoulder area, which is the subject of the transfer/sale, is not a legal lot, and would require Weston Miles to prepare a lot line adjustment to add the property to their adjacent site. As such, there is no other interest to which this property could be sold, and the property is less than 5,000 square feet and thus considered exempt surplus property; therefore, the property is not required to follow the state surplus property disposition guidelines which mandate that any surplus government property be offered first, to affordable housing providers for increasing the affordable housing supply. This action is also exempt from Government Code Section 65402 (a) determination of consistency with the General Plan, as this disposition applies to a remainder of a larger parcel acquired and used in part for street or other public access purposes.

The Morgan Hill Specific Plan encourages mixed use development on nearly all parcels Downtown. This development concept presents an opportunity to continue to expand the Downtown Core with a mix of buildings and uses supportive of the community's vision. The Granary District project is a special place, adding to the cachet and unique experiential opportunities which exist or are under development in Morgan Hill's Downtown. Allowing the activation of the unused parking shoulders and ultimately the Granary silos, would create a unique opportunity to capitalize on the distinct feature of these structures, and expand the retail fabric to the south, creating more connectivity to the live-work units under construction by City Ventures and the retail provided by the City Ventures and Sunsweet mixed-use projects. Centrally located, and proximate to a wealth of parking supply, the further intensification of the Granary has many positive benefits. Therefore, it is recommended that the City Council sell the approximately 2,200 square feet of land along the east shoulder of the lot to Granary LLC to facilitate

the further expansion of the Granary District. A Purchase and Sale Agreement has been prepared to facilitate the sale including anti-speculation terms which time the transfer/sale to require that all permits for construction of the new improvements be obtained prior to the sale of the property. A conceptual plan for the project(s) site is attached.

COMMUNITY ENGAGEMENT: Collaborate

The proposed purchase and sale agreement requires a public hearing. Subsequent reviews will include development site and architectural/design review.

ALTERNATIVE ACTIONS:

The alternative action would be to choose not to explore sale of the property and the expansion of the Granary.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On August 5, 2015, the City Council was asked to consider selling or trading City-owned property located adjacent to the Granary District to Weston Miles Architects, owners Charles Weston and Lesley Miles of the Granary LLC, the Managing Partners of the development. The City Council authorized staff to negotiate for the sale or exchange of the 10-space Depot parking lot with Weston Miles Architects, (Granary LLC) for the express purpose of the expansion of the Granary District project.

The public site in question was once owned by the Morgan Hill Redevelopment Agency (RDA). In the spring of 2011, after dissolution of California Redevelopment Agencies, and after the City's receipt of a Certificate of Compliance from the State Department of Finance, former RDA public assets were transferred to the City and or appropriate public agency, to be utilized for public purposes. This 10-space parking lot was transferred to the City of Morgan Hill for public purposes. The property was transferred without deed restriction, and therefore the City of Morgan Hill may use it for a myriad of public purposes or activities consistent with the land use regulations in place in Downtown.

FISCAL AND RESOURCE IMPACT:

The proposed agreement establishes the land sale price of \$35 per square foot, based upon an appraisal conducted by Valbridge/Hulberg Property Advisors. The sale will generate approximately \$77,000 from the land, but be based upon the actual square footage established by legal description. Since the land is not a legally existing lot, the City is obligated by the agreement to prepare a survey and/or legal description of the property to be conveyed. The cost of that legal description will not exceed \$3,000.

CEQA (California Environmental Quality Act):

Any development resulting from this authorization is expected to comport with the activities contemplated by the Master Environmental Impact Report (EIR) for the Morgan Hill Downtown Specific Plan (November 2009). This project is exempt from findings of General Plan consistency pursuant to Section 65402 (a) of the California Government Code.

LINKS/ATTACHMENTS:

1. Granary resolution - Purchase and Sale
2. Purchase and Sale Agreement

RESOLUTION NO.**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL
APPROVING, AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND
ADMINISTER A PURCHASE AND SALE AGREEMENT BY AND BETWEEN THE
CITY OF MORGAN HILL AND GRANARY LLC, FOR THE GRANARY BUILDING
EXPANSION PROJECT**

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 entrance of the City into that certain agreement described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled "Purchase and Sale Agreement between the City of Morgan Hill and Granary LLC for the Granary Expansion Project" submitted for City Council consideration at its meeting of December 6, 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, on August 5, 2015 the City Council authorized the negotiation for sale or exchange of property with Weston Miles Architects (Granary LLC) for the expansion of the Granary District; and

WHEREAS, the outcome of those negotiations has resulted in the preparation of the Purchase and Sale Agreement by and between the City of Morgan Hill and Granary LLC for the Expansion of the Granary District; and

WHEREAS, this property is exempt surplus land pursuant to Government Code section 54221(e)(2) because it is less than 5000 square feet, and is being sold to the owner of contiguous land; and

WHEREAS, the provisions of Government Code Section 65402 regarding disposition of the proposed 2,200 square foot residual property area which is the subject of the purchase and sale do not apply; and

WHEREAS, the proposed activity contemplated by this agreement is consistent with the General Plan and is expected to comport with the activities contemplated by the Master Environmental Impact Report for the Morgan Hill Downtown Specific Plan (November 2009); 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 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 Purchase and Sale Agreement by and between the City of Morgan Hill, a California municipal corporation and Granary LLC, a California Limited liability company regarding the Granary Building Expansion Project substantially in the form attached hereto as Exhibit A and incorporated herein by this reference (the "Agreement") is hereby approved.
- b. That the City Manager is hereby delegated authority to and is authorized and directed to execute, and subsequently administer including the authority to terminate as necessary or appropriate, the Agreement substantially in the form attached hereto as Exhibit A.

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 6th day of December 2017 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

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

DATE: _____

Steve Tate, MAYOR

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. _____, adopted by the City Council at the meeting held on December 6, 2017.

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

DATE: _____

Irma Torrez, CITY CLERK

Draft 12/1/17

PURCHASE AND SALE AGREEMENT

by and between the

CITY OF MORGAN HILL,

a California municipal corporation

and

GRANARY LLC,

a California limited liability company

regarding the

Granary Building Expansion Project

Dated: _____, 2017

Attachment: Purchase and Sale Agreement (1500 : Purchase and Sale Agreement Between City of Morgan Hill and Granary LLC.)

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LIST OF EXHIBITS

Exhibit A	Site Plan – Granary Expansion Property
Exhibit B	Granary Building Expansion Project Plans
Exhibit C	Form of Grant Deed
Exhibit D	Schedule of Performance
Exhibit E	Right of Entry Permit

PURCHASE AND SALE AGREEMENT

Granary Building Expansion Project

THIS PURCHASE AND SALE AGREEMENT ("**Agreement**") dated as of this ____ day of _____, 2017 ("**Date of Agreement**"), is entered into by and between the CITY OF MORGAN HILL, a California municipal corporation ("**City**"), and GRANARY LLC, a California limited liability company ("**Developer**"). City and Developer are sometimes referred to herein individually as a "**Party**" or collectively as the "**Parties**".

R E C I T A L S

The following Recitals are a substantive part of this Agreement; capitalized terms used herein and not otherwise defined are defined in Section 1.1 of this Agreement:

A. City owns real property located at 17300 Depot Street, Morgan Hill, California, designated as Assessor Parcel Number 726-14-061 ("**City Property**").

B. Developer owns the existing Granary Building ("**Development**") located at 17500 Depot Road, Morgan Hill, California, designated as Assessor Parcel Number 726-14-070 ("**Granary Property**"), which is directly adjacent to the City Property.

C. Developer desires to acquire a portion of the City Property approximating 2,200 square feet as depicted in the site plan attached hereto as Exhibit A and incorporated herein by this reference (the "**Granary Expansion Property**"), and City desires to sell the Granary Expansion Property to Developer in order to facilitate the expansion of the Development with an approximately 1,127 square foot food and/or retail use (the "**Project**"). The Granary Property and Granary Expansion Property, when combined pursuant to the Subdivision described in Recital F below, shall collectively be referred to herein as the "**Development Property**".

D. City and Developer now desire to enter into this Agreement to provide for (1) City's disposition of the Granary Expansion Property to Developer at fair market value and (2) Developer's redevelopment of the Granary Expansion Property with the Project as provided herein.

E. Developer shall purchase and redevelop the Granary Expansion Property with the Project in a manner consistent with the Morgan Hill Downtown Specific Plan ("**DSP**"), and in substantial conformance with the conceptual plans attached hereto as Exhibit B and incorporated herein by this reference ("**Project Plans**"), subject to such revisions and modifications as may be required by the City pursuant to the DSP Permits.

F. The Granary Expansion Property is located within Block 7 of the Morgan Hill Downtown Specific Plan, Central Business District ("**CBD**"). The Project contemplated by this Agreement will require application by Developer to City for a lot line adjustment to separate the Granary Expansion Property from the City Property and add it to the Granary Property and thereby create the Development Property ("**Subdivision**"), a Site

Development Permit and Conditional Use Permit (“**DSP Permits**”) in accordance with the DSP. Collectively, the Subdivision and DSP Permits are the “**Project Approvals**.”

G. The Project will further the DSP’s vision to transform the City’s downtown into a pedestrian-oriented urban district of high intensity development, with a mix of office, retail, restaurant, entertainment and service commercial businesses.

H. The disposition of the Granary Expansion Property from City to Developer is not required to comply with the requirements of the Surplus Land Act because, as provided by California Government Code Section 54220(e)(2)(A), land that is less than 5,000 square feet in size is exempt. Even if the Granary Expansion Property was 5,000 square feet or more in size, the City hereby finds that the Surplus Land Act is inapplicable because the Granary Expansion Property is necessary for use by the City for purposes of facilitating economic development. Accordingly, as provided by Government Code Section 37350, the City hereby finds and determines that the execution and performance of this Agreement is for the common benefit of the City and its residents, and is in accord with the provisions of applicable federal, state and local law.

A G R E E M E N T

NOW, THEREFORE, City and Developer hereby agree as follows:

1. DEFINITIONS; REPRESENTATIONS AND WARRANTIES; CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL.

1.1 Definitions.

“**Affiliate of Developer**” means an entity or entities in which Developer or Developer’s Principal retains more than fifty percent (50%) in the aggregate, directly or indirectly, of the ownership or beneficial interest therein and in which Developer or Developer’s Principal retains control of such entity or entities. For the purposes of this definition, “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity or a person, whether through the ownership of voting securities, by contract, or otherwise, and the terms “controlling” and “controlled” have the meanings correlative to the foregoing.

“**Agreed Extension of Performance**” is defined in Section 6.2.

“**Agreement**” means this Purchase and Sale Agreement between City and Developer.

“**Applicable Laws**” means, collectively: (i) all State and Federal laws and regulations applicable to the Granary Expansion Property and the Project as enacted, adopted and amended from time to time, including Environmental Laws; (ii) all City policies, standards and specifications set forth in this Agreement and the Project Approvals, including the specific conditions of approval adopted with respect to the Project Approvals; (iii) with respect to matters not addressed by this Agreement or the Project Approvals but governing permitted uses of the Granary Expansion Property,

building locations, sizes, densities, intensities, design and heights, site design, setbacks, lot coverage and open space, and parking, those City ordinances, rules, regulations, official policies, standards and specifications in force and effect on the Date of Agreement; and (iv) with respect to all other matters, including building, plumbing, mechanical and electrical codes, those City ordinances, rules, regulations, official policies, standards and specifications in force and effect as may be enacted, adopted and amended from time to time, including ordinances, resolutions, orders, rules, official policies, standards, specifications, guidelines or other regulations, which are promulgated or adopted by the City (including but not limited to any City agency, body, department, officer or employee) or its electorate (through the power of initiative or otherwise) after the Date of Agreement, except those in conflict with this Agreement.

“Approved Site Condition” is defined in Section 2.13.

“As-Is Condition” is defined in Section 2.12.

“CBD” is defined in Recital F.

“City” means the City of Morgan Hill, a California municipal corporation.

“City Conditions Precedent” is defined in Section 2.3.

“City Council” means the City Council of the City of Morgan Hill.

“City Party” or **“City Parties”** is defined in Section 2.12.

“City Property” is defined in Recital A.

“City’s Actual Knowledge” or words to such effect, shall mean the present, actual knowledge of Leslie Little, the City’s Assistant City Manager for Community Development, excluding constructive knowledge or duty of inquiry, existing as of the Date of Agreement.

“Claims” means liabilities, obligations, orders, claims, damages, governmental fines or penalties, and expenses of defense with respect thereto, including reasonable attorneys’ fees and costs.

“Close of Escrow” is defined in Section 2.6.

“Closing” is defined in Section 2.6.

“Closing Default” is defined in Section 5.2.2.

“Commence Construction”, “Commenced Construction”, or “Commencement of Construction” or similar phrases shall be deemed to have occurred when the Developer has commenced Initial Site Preparation for the Project on the Granary Expansion Property, and such date shall be memorialized in writing by the parties.

“Control” is defined in Section 1.3.2.

“Date of Agreement” means the date first set forth above.

“Day-to-Day Management” means active, day-to day-management responsibilities for the activities of Developer.

“Default” means the failure of a party to perform any action or covenant required by this Agreement and such failure continues beyond the applicable cure period following such defaulting party’s receipt of Notice of such failure.

“Developer” means Granary LLC, a California limited liability company.

“Developer Deposit”, as defined in Section 2.2, means the \$5,000 good faith deposit provided by Developer, to be credited against the Purchase Price at the Closing.

“Developer Conditions Precedent” is defined in Section 2.4.

“Developer’s Principal” or **“Principal”** is Lesley Miles or Charles Weston.

“Development” is defined in Recital B.

“Development Property” is defined in Recital C.

“Documents” is defined in Section 2.11.

“Downtown Specific Plan” or **“DSP”** is defined in Recital E.

“DSP Permits” is defined in Recital F.

“Environmental Laws” means, collectively: (i) the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601, *et seq.*, (ii) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, *et seq.*, (iii) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, *et seq.*, (iv) the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, *et seq.*, (v) the Clean Air Act, as amended, 42 U.S.C. § 7401, *et seq.*, (vi) the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601, *et seq.*, (vii) the Clean Water Act, as amended, 33 U.S. Code § 1251, *et seq.*, (viii) the Oil Pollution Act, as amended, 33 U.S.C. § 2701, *et seq.*, (ix) California Health & Safety Code § 25100, *et seq.* (Hazardous Waste Control), (x) the Hazardous Substance Account Act, as amended, Health & Safety Code § 25300, *et seq.*, (xi) the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program, as amended, Health & Safety Code § 25404, *et seq.*, (xii) Health & Safety Code § 25531, *et seq.* (Hazardous Materials Management), (xiii) the California Safe Drinking Water and Toxic Enforcement Act, as amended, Health & Safety Code § 25249.5, *et seq.*, (xiv) Health & Safety Code § 25280, *et seq.* (Underground Storage of Hazardous Substances), (xv) the California Hazardous Waste Management Act, as amended, Health & Safety Code § 25170.1, *et seq.*, (xvi) Health & Safety Code § 25501, *et seq.*, (Hazardous Materials Response Plans and Inventory), (xvii) Health & Safety Code § 18901, *et seq.* (California Building Standards), (xviii) the Porter-Cologne Water Quality Control Act, as amended, California Water Code § 13000, *et seq.*, (xix)

California Fish and Game Code §§ 5650-5656, (xx) the Polanco Redevelopment Act, as amended, Health & Safety Code § 33459, *et seq.*, (xxi) Health & Safety Code § 25403, *et seq.* (Hazardous Materials Release Cleanup), and (xxii) any other federal, state or local laws, ordinances, rules, regulations, court orders or common law related in any way to the protection of the environment, health or safety.

“Escrow Agent” means Chicago Title Insurance Company.

“Final Completion” or **“Finally Complete”** shall be deemed to have occurred when a certificate of occupancy has been issued for the Project by City.

“Force Majeure Delay” is defined in Section 6.2.

“Grant Deed” means the grant deed for the conveyance of the Granary Expansion Property from City to Developer to be executed and recorded at Closing substantially in the form attached hereto as Exhibit C and incorporated herein by this reference.

“Granary Property” is defined in Recital B.

“Granary Expansion Property” is defined in Recital C and depicted in the site plan attached hereto and incorporated herein as Exhibit A.

“Granary Expansion Property Approved Condition of Title” is defined in Section 2.8.

“Granary Expansion Property Exceptions” is defined in Section 2.8.

“Granary Expansion Property Title Report(s)” is defined in Section 2.8.

“Hazardous Materials” means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government under any Environmental Laws, including any material or substance which is defined as “hazardous,” “extremely hazardous,” “hazardous waste,” “extremely hazardous waste,” “restricted hazardous waste,” “hazardous substance” or “hazardous material” under any Environmental Laws, including petroleum, or any fraction thereof, friable asbestos, and polychlorinated biphenyls.

“Initial Litigation Challenge” is defined in Section 6.20.

“Initial Site Preparation for the Project” shall mean the completion of all of the following initial site preparation activities for the Granary Expansion Property: grading of the Granary Expansion Property preparatory to the development of the Project in accordance with the Project Plans as may be modified by the DSP Permits, and installation of perimeter construction fencing on the Granary Expansion Property.

“Lot Line Adjustment” is defined in Section 2.3.5.

“Municipal Code” means the Morgan Hill Municipal Code.

“Notice” means a written notice in the form prescribed by Section 6.1.

“Organizational Documents” is defined in Section 1.2.2.

“Outside Date” is July 3, 2018.

“Owner’s Title Policy” is defined in Section 2.9.

“Permitted Transfer” is defined in Section 1.3.3.

“Project” is defined in Recital C.

“Project Agreements” means this Agreement, the Grant Deed (Exhibit C), and the Right of Entry Permit (Exhibit E).

“Project Approvals” is defined in Recital F.

“Project Plans” is defined in Recital E and depicted in Exhibit B.

“Property Claims” is defined in Section 2.15.

“Purchase Price” is defined in Section 2.2.

“Reports” is defined in Section 2.11.

“Schedule of Performance” means the Schedule of Performance attached hereto as Exhibit D and incorporated herein by this reference, setting out the dates and/or time periods by which certain obligations set forth in this Agreement must be accomplished.

“Site Condition” is defined in Section 2.13.

“Sources and Uses” is defined in Section 3.6.

“Subdivision” is defined in Recital F.

“Substantial Completion” or **“Substantially Complete”** shall be deemed to have occurred when (i) Developer has provided adequate evidence to the City Manager that eighty five percent (85%) of the contract price for the construction of the Project (including all change orders) has been expended and (ii) the City Manager determines, in his or her reasonable discretion, that the life safety systems within the Project have been installed and are fully functional.

“Title Company” means Chicago Title Insurance Company.

“Transfer” means any assignment or transfer of this Agreement or the Granary Expansion Property or any portion thereof or any interest therein and as further defined in Section 1.3.2.

“Unrecorded Agreements” is defined in Section 2.11.

1.2 Representations and Warranties.

1.2.1 City Representations and Warranties. City represents and warrants to Developer as follows:

(a) Authority. City is a municipal corporation with full right, power and lawful authority to perform its obligations hereunder, and the execution, delivery, and performance of this Agreement by City has been fully authorized by all requisite actions on the part of the City.

(b) No Conflict. City's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which City is bound.

(c) No Litigation or Other Proceeding. To City's Actual Knowledge, no litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of City to perform its obligations under this Agreement, or that would adversely affect the Granary Expansion Property or the ability of Developer to develop the same as contemplated by this Agreement.

(d) Right to Possession. No person or entity other than City has the right to use, occupy, or possess the Granary Expansion Property, or any portion thereof. City shall not enter into any lease or other agreement respecting use, occupancy, or possession of the Granary Expansion Property or any portion thereof without the written consent of Developer.

(e) Condition of Granary Expansion Property. City has not performed any environmental assessments of the Property. City has no notice of any pending or threatened action or proceeding arising out of the condition of the Granary Expansion Property or any alleged violation of any Environmental Laws. Except as otherwise disclosed by City, to City's Actual Knowledge, the Granary Expansion Property is in compliance with all Environmental Laws.

Until the Closing pursuant to Section 2.6 or earlier termination of this Agreement, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 1.2.1 not to be true, immediately give written Notice of such fact or condition to Developer.

1.2.2 Developer's Representations. Developer represents and warrants to City as follows:

(a) Authority. Developer is a California limited liability company duly organized in the State of California and qualified to do business and in good standing under the laws of the State of California. Prior to execution of this Agreement, Developer has provided to City its Articles of Incorporation, By-Laws, and Operating Agreement ("**Organizational Documents**"). The Organizational Documents provided by Developer to City are true and complete copies of the originals, as may be amended from time to

time. Developer has full right, power and lawful authority to undertake all of its obligations hereunder and the execution, performance and delivery of this Agreement by Developer has been fully authorized by all requisite company actions on the part of Developer.

(b) No Conflict. Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer or any Principal is a party or by which Developer or any Principal is bound.

(c) No Litigation or Other Proceeding. To Developer's current actual knowledge, no litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Developer to perform its obligations under this Agreement.

(d) No Developer Bankruptcy. Developer is not the subject of any bankruptcy proceeding, and no general assignment or general arrangement for the benefit of creditors or the appointment of a trustee or receiver to take possession of all or substantially all of Developer's assets has been made.

Until the Closing pursuant to Section 2.6 or earlier termination of this Agreement, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 1.2.2 not to be true, immediately give written Notice of such fact or condition to City.

1.3 Change in Ownership, Management and Control of Developer. The qualifications and identity of Developer are of particular concern to City. It is because of those unique qualifications and identity that City has entered into this Agreement with Developer.

1.3.1 Until Final Completion of Project. Until Final Completion of the Project as evidenced by issuance of a Certificate of Occupancy by City, Developer shall not Transfer the Development Property or any portion of this Agreement. After Final Completion of the Project, Developer may Transfer the Development Property, without the consent or approval of the City.

1.3.2 Additional Matters. Except for Permitted Transfers as provided in Section 1.3.3, the term "**Transfer**" for the purposes of this Section 1.3 shall include any significant change in the Control of Developer by any method or means. The term "**Control**" as used in the immediately preceding sentence and Section 1.3.3 below, shall mean the power to direct the Day-to-Day Management of Developer, and it shall be a presumption that control with respect to a corporation or limited liability company is the right to exercise, directly or indirectly, more than 50% of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, control is the possession, indirectly or directly, of the power to direct or cause the direction of the Day-to-Day Management of the controlled entity.

1.3.3 Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, each of following Transfers are permitted and shall not require City consent under this Section 1.3 (each, a “**Permitted Transfer**”):

- (a) Any lien or encumbrance on the Granary Expansion Property to secure the funds necessary for acquisition of the Granary Expansion Property and construction and/or permanent financing of the Project;
- (b) An assignment of this Agreement to an Affiliate of Developer, provided that Developer’s Principal retains Control, directly or indirectly, in such Affiliate;
- (c) Permanent financing of the Project following its Substantial Completion;
- (d) Dedications and grants of easements and rights of way required in accordance with the Project Approvals; or
- (e) The leasing of the Granary Expansion Property to third-party tenants, for uses permitted by this Agreement, the Project Approvals, Use Covenant, and Applicable Laws.

1.3.4 Subsequent Equity Transfers. Any admission of new equity partner(s) prior to Final Completion shall be subject to prior review and approval by the City Manager (which approval shall not be unreasonably withheld, conditioned or delayed, provided it does not result in a change in Control which is not a Permitted Transfer).

2. PURCHASE AND SALE.

2.1 Purchase and Sale. Subject to the terms, covenants and conditions of this Agreement, Developer shall purchase from City and City shall sell to Developer the Granary Expansion Property.

2.2 Purchase Price; Developer Deposit; Payment of Purchase Price. The purchase price for the Granary Expansion Property will be equal to Thirty-Five Dollars and 00/100 (\$35.00) per square foot, not to exceed 2,200 square feet (or \$77,000.00), as determined by a survey prepared by City prior to the Close of Escrow (“**Purchase Price**”). Concurrent with the opening of escrow in accordance with Section 2.5, Developer shall deposit Five Thousand and 00/100 Dollars (\$5,000.00) into Escrow with Escrow Agent (“**Developer Deposit**”).

2.3 City Conditions Precedent. City’s obligation to proceed with the disposition of the Granary Expansion Property pursuant to the terms of this Agreement is subject to the fulfillment or waiver by City of each and all of the conditions precedent described below (“**City Conditions Precedent**”). The City Conditions Precedent is solely for the benefit of City and shall be fulfilled or waived within the time periods provided for herein, and in any event, no later than the Outside Date (i.e. July 3, 2018).

2.3.1 No Default. Developer shall not be in Default under this Agreement, and no event shall have occurred, which with the passage of time or giving of Notice, or both, would constitute a Default by Developer hereunder.

2.3.2 Execution and Delivery of Documents by Developer. Developer shall have executed and delivered into escrow all documents that Developer is required to deliver into escrow pursuant to Section 2.7.1.

2.3.3 Delivery of Funds. In connection with the Closing, Developer shall have delivered through escrow the Purchase Price, less the Developer Deposit, and such other funds, including escrow costs, recording fees and other closing costs as are necessary to comply with Developer's obligations under this Agreement.

2.3.4 Evidence of Available Funds.

(a) Closing. City shall have received from Developer reasonable evidence that Developer has, or subject to Closing, will have, 100% of Granary Expansion Property acquisition and Project development and construction costs in ready and available funds (which may be Developer's own funds and/or third party equity or debt financing proceeds).

(b) Developer expressly acknowledges that Closing will not occur unless and until the condition above has been satisfied.

2.3.5 Lot Line Adjustment. Prior to the Close of Escrow, Developer shall have submitted, and the appropriate City authority shall have approved, a lot line adjustment application to shift the existing lot line between the Granary Property and the Granary Expansion Property such that the Developer Property is a single lot ("**Lot Line Adjustment**") and a Certificate of Compliance for Lot Line Adjustment shall be ready to be recorded with the Recorder.

2.3.6 Site Condition. Developer shall have provided City written notice of acceptance or waiver in accordance with Section 2.13 of the Approved Site Condition.

2.3.7 Equity Funding/Construction Loan. Developer shall have delivered to City evidence that the equity commitments or acquisition and/or construction loan, if any, for Closing shall have closed or (if not from the Developer's Principal or an Affiliate of Developer) shall be ready to close concurrently with the Closing.

2.3.8 Initial Site Preparation for the Project Permits. Developer shall have submitted complete applications to City for all grading and building permits necessary for the Developer to perform the work for the Initial Site Preparation for the Project, and such permits shall be ready to be issued by the City subject only to payment of applicable fees.

2.3.9 Other Project Construction Permits. Developer shall have submitted complete applications to City for all permits necessary for Developer to

develop and construct the Project, and such permits shall be ready to be issued by the City subject only to payment of applicable fees.

2.3.10 Project Approvals. The Project Approvals shall be final and non-appealable, and if any appeals, legal challenges, requests for rehearing, or referenda have been filed or instituted, such appeals, legal challenges, requests for rehearing, or referenda shall have been fully and finally resolved in a manner acceptable to City in its sole and absolute discretion, and such that no further appeals, legal challenges, requests for rehearing, or referenda are possible.

2.3.11 Organizational Documents. Developer shall have submitted to City the Organizational Documents for Developer confirming the Developer's Principal(s).

2.3.12 Legal Description. Within 60 calendar days of the Date of Agreement, City shall have prepared and delivered to Developer a legal description and corresponding map of the Development Property establishing the exact area and square footage of the Granary Expansion Property, the Granary Property, and the Development Property.

2.4 Developer Conditions Precedent. Developer's obligation to proceed with the acquisition of Granary Expansion Property from City pursuant to the terms of this Agreement is subject to the fulfillment or waiver by Developer of each and all of the conditions precedent described below ("**Developer Conditions Precedent**"). The Developer Conditions Precedent are solely for the benefit of Developer and shall be fulfilled or waived, if applicable, within the time periods provided for herein, and in any event, no later than the Outside Date (i.e. July 3, 2018).

2.4.1 No Default by City. City shall not be in Default under this Agreement, and no event shall have occurred, which with the passage of time or giving of Notice, or both, would constitute a default by City hereunder.

2.4.2 Execution and Delivery of Documents by City. City shall have executed and acknowledged the Grant Deed and delivered into escrow all other documents that City is required to deliver into escrow pursuant to Section 2.7.2.

2.4.3 Legal Description. Within 60 calendar days of the Date of Agreement, City shall have prepared and delivered to Developer a legal description and corresponding map of the Development Property establishing the exact area and square footage of the Granary Expansion Property, the Granary Property, and the Development Property.

2.4.4 Project Approvals. The Project Approvals shall be final and non-appealable, and if any appeals, legal challenges, requests for rehearing, or referenda have been filed or instituted, such appeals, legal challenges, requests for rehearing, or referenda shall have been fully and finally resolved in a manner acceptable to Developer in its sole and absolute discretion, and such that no further appeals, legal challenges, requests for rehearing, or referenda are possible.

2.4.5 Initial Site Preparation for the Project Permits. Subject to payment of the applicable fees, City shall be ready to issue the grading and building permit(s) necessary for the Developer to perform the work for the Initial Site Preparation for the Project.

2.4.6 Other Project Construction Permits. Subject to payment of the applicable fees, City shall be ready to issue all permits necessary for Developer to develop and construct the Project.

2.4.7 Owner's Title Policy. Developer shall have provided City written notice of acceptance or waiver in accordance with Section 2.8 of the Granary Expansion Property Approved Condition of Title. The Title Company shall, upon payment of Title Company's regularly scheduled premium, be irrevocably committed to issue the Owner's Title Policy upon recordation of the Grant Deed subject only to the Granary Expansion Property Approved Condition of Title.

2.4.8 Site Condition. Developer shall have provided City written notice of acceptance or waiver in accordance with Section 2.13 of the Approved Site Condition.

2.4.9 Equity Funding/Construction Loan. Developer shall have secured all necessary equity commitments and acquisition and construction loans, if any, for 100% of Granary Expansion Property acquisition and Project development and construction costs as identified in the Sources and Uses, and shall have closed or shall be ready to close concurrently with Closing.

2.4.10 Absence of Proceedings. There shall be an absence of any condemnation, environmental or any other pending governmental, administrative or legal proceeding with respect to the Granary Expansion Property which would materially and adversely affect Developer's intended uses of the Granary Expansion Property, the development of the Project, or value of the Granary Expansion Property.

2.4.11 No Material Adverse Change. There shall not have occurred between the Date of Agreement and the Closing a material adverse change to the physical, environmental or title condition of the Granary Expansion Property.

2.4.12 No Leases or Parties in Possession. City shall have demonstrated to Developer the ability to deliver fee title to the Granary Expansion Property to Developer free and clear of any tenants, lessees, licensees or any third party occupants or parties in possession, and executed the Title Company's standard form Commercial Owner's Affidavit as required by Section 2.7.2(e) below.

2.5 Escrow. Within three (3) calendar days of the Date of Agreement, the parties shall open an escrow for the conveyance of the Granary Expansion Property to Developer.

2.5.1 Costs of Escrow. All customary fees, charges, and costs chargeable by Escrow Agent for the escrow including recording fees, document fees, title insurance premiums and documentary transfer taxes, if any, due with respect to the

conveyance of the Granary Expansion Property to Developer shall be paid by Developer; provided, however, the City shall take all actions and pay all charges and costs (if any) required by Section 2.8.

2.5.2 Escrow Instructions. This Agreement constitutes the joint escrow instructions of Developer and City with respect to the conveyance of the Granary Expansion Property, and the Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. All funds received in the escrow shall be deposited in interest-bearing accounts for the benefit of the depositing party in any state or national bank doing business in the State of California. All disbursements shall be made by check or wire transfer from such accounts. If, in the opinion of either party, it is necessary or convenient in order to accomplish the Closing, such party may provide supplemental escrow instructions; provided that if there is any inconsistency between this Agreement and the supplemental escrow instructions, then the provisions of this Agreement shall control. The Closing shall take place as set forth in Section 2.6 below. Escrow Agent is instructed to release City's and Developer's escrow closing statements to the respective parties.

2.5.3 Authority of Escrow Agent. Escrow Agent is authorized to, and shall:

(a) Pay and charge Developer for the premium of the Owner's Title Policy, including any endorsements requested by Developer or City.

(b) Pay and charge Developer for escrow fees, charges, and costs as provided in Section 2.5.1.

(c) Disburse funds to City and record the Grant Deed when the Developer Conditions Precedent and City Conditions Precedent have been fulfilled or waived in writing by Developer and City, as applicable. Immediately following recordation of the Grant Deed, Escrow Agent shall record the Certificate of Compliance for the Lot Line Adjustment, and any other recordable documents delivered into escrow for the Closing.

(d) Do such other actions as necessary, including obtaining and issuing the Owner's Title Policy, to fulfill its obligations under this Agreement.

(e) Direct City and Developer to execute and deliver any instrument, affidavit, and statement, and to perform any act, reasonably necessary to comply with the provisions of FIRPTA, if applicable, and any similar state act and regulations promulgated thereunder.

(f) Prepare and file with all appropriate governmental or taxing authorities uniform settlement statements, closing statements, tax withholding forms including IRS 1099-S forms, and be responsible for withholding taxes, if any such forms are provided for or required by law.

2.6 Closing. The escrow for conveyance of the Granary Expansion Property shall close ("**Close of Escrow**") within 30 days after the satisfaction, or waiver by the appropriate party, of all of the City Conditions Precedent and Developer Conditions Precedent, which shall occur in no event later than the Outside Date, July 3, 2018. If Closing does not occur on or before the Outside Date, then this Agreement shall automatically terminate; provided, however, that the Outside Date may be extended by mutual agreement of the Parties, each in its sole discretion in accordance with Section 6.2 below. For purposes of this Agreement, "**Closing**" shall mean the time and day the Grant Deed is recorded with the Santa Clara County Recorder.

2.7 Delivery of Documents and Closing Funds.

2.7.1 At or before Closing, Developer shall deposit into escrow the following items with respect to the Granary Expansion Property:

(a) Funds in an amount necessary to consummate the Closing, including the Purchase Price, less the Developer Deposit, and escrow costs set forth in Sections 2.2 and 2.5.1, respectively; and

(b) one original executed Preliminary Change of Ownership Report for the Granary Expansion Property.

2.7.2 At or before Closing, City shall deposit into escrow the following items with respect to the Granary Expansion Property:

(a) one original executed and acknowledged Grant Deed;

(b) one duly executed non-foreign certification for the Granary Expansion Property in accordance with the requirements of Section 1445 of the Internal Revenue Code of 1986, as amended;

(c) A Certificate of Compliance for Lot Line Adjustment ready for recording with the Recorder;

(d) one duly executed California Form 593-W Certificate for the Granary Expansion Property or comparable non-foreign person affidavit; and

(e) one Commercial Owner's Affidavit in the standard form of the Title Company.

2.7.3 At Closing, City and Developer shall each deposit such other instruments as are reasonably required by the Title Company or otherwise required to close the escrow and consummate the conveyance of the Granary Expansion Property.

2.8 Granary Expansion Property Condition of Title. City shall cause the Title Company to deliver to the Developer a preliminary title report or reports (the "**Granary Expansion Property Title Report(s)**") with respect to the title to the Granary Expansion Property, together with legible copies of the documents underlying the exceptions

("Granary Expansion Property Exceptions") set forth in the Granary Expansion Property Title Reports, within fifteen (15) days from the Date of Agreement. Developer shall have the right to reasonably approve or disapprove the Granary Expansion Property Exceptions; provided, however, that the Developer hereby approves the lien of any non-delinquent property taxes and assessments (to be prorated at Close of Escrow).

Developer shall have thirty (30) days from the later of the date of its receipt of the Granary Expansion Property Title Report and all Granary Expansion Property Exceptions or the Date of Agreement to give written notice to City and Escrow Agent of Developer's approval or disapproval of any of such Granary Expansion Property Exceptions set forth in the Granary Expansion Property Title Report, in its sole discretion. Developer's failure to give written approval or disapproval of the Granary Expansion Property Title Report within such time limit shall be deemed Developer's disapproval of the Granary Expansion Property Title Report. If Developer notifies City of its disapproval of any Granary Expansion Property Exceptions in the Granary Expansion Property Title Report, City shall have the right, but not the obligation, to remove any disapproved Granary Expansion Property Exceptions within thirty (30) days after receiving written notice of Developer's disapproval or provide assurances satisfactory to Developer that such Granary Expansion Property Exception(s) will be removed on or before the Closing. If City cannot or does not elect to remove any of the disapproved Granary Expansion Property Exceptions within that period, Developer shall have fifteen (15) days after the expiration of such thirty (30) day period to either give City written notice that Developer elects to proceed with the purchase of the Granary Expansion Property subject to the disapproved Granary Expansion Property Exceptions not removed by City or to give City written notice that the Developer elects to terminate this Agreement. The Granary Expansion Property Exceptions to title to the Granary Expansion Property approved by Developer as provided herein shall hereinafter be referred to as the "**Granary Expansion Property Approved Condition of Title**" of the Granary Expansion Property. The Developer shall have the right to approve or disapprove any further Granary Expansion Property Exceptions reported by the Title Company after the Developer has approved the condition of title for the Granary Expansion Property (which are not created by Developer) including without limitation, any and all new exceptions disclosed by a survey of the Granary Expansion Property. City shall not create any new exceptions to title following the date of this Agreement without Developer's prior written consent. Notwithstanding the foregoing, the City agrees to deliver fee title to the Granary Expansion Property at the Closing free and clear of all (a) tenants, licensees and third party occupants and all leases, rental agreements, license agreements and third party occupancy agreements, and (b) monetary liens, deeds of trust, mechanics' liens and other liens and encumbrances (other than the lien for current real property taxes not yet due and payable), all of which shall be released from the Granary Expansion Property by City at City's sole expense on or before the Closing.

2.9 Owner's Title Insurance. Concurrently with recordation of the Grant Deed, the Title Company shall issue to Developer such policy of title insurance for the Granary Expansion Property, which at Developer's option may be an ALTA extended coverage owner's policy (or if requested by Developer a CLTA standard owner's policy of title insurance with survey exceptions) (each, a "**Owner's Title Policy**") as may be required

by Developer, and/or Developer's lenders or other institutions that may be providing financing for the Project, together with such endorsements as are reasonably requested by Developer and/or Developer's lenders or other institutions, insuring that Developer has a valid fee ownership interest in the Granary Expansion Property, subject only to the Granary Expansion Property Approved Condition of Title. The Owner's Title Policy for the Granary Expansion Property shall be in the amount of the Purchase Price, not to exceed Seventy Seven Thousand and 00/100 Dollars (\$77,000.00). The premium for the Owner's Title Policy shall be borne by Developer. Any additional costs related thereto (except for such costs to remove any title exceptions agreed to be removed by the City, which shall be at the City's sole cost), including the cost of surveys, and any endorsements requested by Developer shall be paid by Developer.

2.10 Property Taxes and Assessments. Ad valorem taxes and assessments levied, assessed or imposed on the Granary Expansion Property for any period prior to the Closing, if any, shall be paid by City. Ad valorem taxes and assessments levied, assessed or imposed on the Granary Expansion Property acquired by Developer or any other improvements thereon, for the period after the Closing shall be paid by Developer.

2.11 Documents. City represents and warrants that, to the best of the City's Actual Knowledge, as of the Date of Agreement, City has furnished Developer with copies or provided Developer with access to any and all material existing surveys, inspection reports, environmental and/or hazardous material reports, and any other data, reports, studies, agreements, correspondence and other writings (collectively, "**Reports**"), pertaining to the physical, environmental and/or title condition of the Granary Expansion Property, and the use and development of the Granary Expansion Property, which are in City's possession or control. City also represents and warrants that, to the best of the City's Actual Knowledge, as of the Date of Agreement, City has furnished Developer with copies of any and all unrecorded leases, service contracts, easements, licenses and/or other unrecorded agreements ("**Unrecorded Agreements**") (collectively, the Unrecorded Agreements and Reports are referred to herein as the "**Documents**") affecting the Granary Expansion Property, or portion thereof. City shall notify Developer in writing of any material changes to any Documents of which City becomes aware of before Closing. City shall terminate any and all Unrecorded Agreements prior to Closing.

2.12 AS-IS CONVEYANCE. SUBJECT TO SATISFACTION OF THE DEVELOPER CONDITIONS PRECEDENT, DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY IS SELLING AND DEVELOPER IS PURCHASING AS OF THE CLOSING THE GRANARY EXPANSION PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS, CONDITION AND STATE OF REPAIR INCLUSIVE OF ANY AND ALL FAULTS AND DEFECTS, LEGAL, PHYSICAL, OR ECONOMIC, WHETHER KNOWN OR UNKNOWN, AS MAY EXIST AS OF THE CLOSING ("**AS-IS CONDITION**") AND THAT DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES FROM CITY OR ANY OF CITY'S ELECTED OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES OR ATTORNEYS (EACH, A "**CITY PARTY**" AND COLLECTIVELY, "**CITY PARTIES**") AS TO ANY MATTERS CONCERNING THE GRANARY EXPANSION PROPERTY.

2.13 Independent Investigation. Prior to the Closing, City has provided Developer a right of access to the Granary Expansion Property pursuant to the terms of a Right of Entry Permit attached hereto as Exhibit E and incorporated herein by this reference, for purposes of physical investigation, including but not limited to, soil and groundwater testing, environmental audits, storm water retention analysis, adequacy of utilities including water, sewer, gas and electricity. Developer acknowledges, agrees, represents, and warrants that, prior to Closing, Developer has been given a full opportunity to obtain, review, inspect and investigate each and every aspect of the Granary Expansion Property, either independently or through agents of the Developer's choosing, including the following (hereinafter collectively referred to as the "**Site Condition**"):

- (a) The size and dimensions of the Granary Expansion Property.
- (b) The availability and adequacy of water, sewage, fire protection, and any utilities serving the Granary Expansion Property.
- (c) All matters relating to title including extent and conditions of title to the Granary Expansion Property, taxes, assessments, and liens.
- (d) All legal and governmental laws, statutes, rules, regulations, ordinances, limitations on title, restrictions or requirements concerning the Granary Expansion Property including zoning, use permit requirements and building codes.
- (e) Natural hazards, including flood plain issues, currently or potentially concerning or affecting the Granary Expansion Property.
- (f) The physical, legal, economic and environmental condition and aspects of the Granary Expansion Property, and all other matters concerning the conditions, use or sale of the Granary Expansion Property, including any permits, licenses, agreements, and liens, zoning reports, engineers' reports and studies and similar information relating to the Granary Expansion Property. Such examination of the condition of the Granary Expansion Property has included examinations of the soil, geology, groundwater, the presence of known or unknown faults, and for the presence or absence of known or unknown Hazardous Materials in, on, or under the Granary Expansion Property as Developer deemed necessary or desirable.
- (g) Any easements and/or access rights affecting the Granary Expansion Property.
- (h) Any contracts and other documents or agreements affecting the Granary Expansion Property.
- (i) All other matters of material significance affecting the Granary Expansion Property.

Developer shall have thirty (30) days following City's approval of the Project Approvals to give written notice to City of Developer's approval or disapproval of any Site

Condition in its reasonable discretion. Developer's failure to give written notice of approval or disapproval of the Site Condition within such time period shall be deemed Developer's disapproval of the Site Condition. If Developer notifies City of its disapproval of the Site Condition, City shall have the right, but not the obligation, to remedy any disapproved Site Condition within thirty (30) days after receiving notice of Developer's disapproval or providing assurances reasonably satisfactory to Developer that such disapproved Site Condition will be remedied on or before the Closing. If City cannot or does not elect to remedy the disapproved Site Condition within such thirty (30) day period, Developer shall have fifteen (15) days after expiration of such thirty (30) day period to either give the City written notice that Developer elects to proceed with the acquisition of the Granary Expansion Property subject to the disapproved Site Condition not remedied by City or to give the City written notice that the Developer elects to terminate this Agreement. The Site Condition of the Granary Expansion Property approved by Developer as provided herein shall hereafter be referred to as the **"Approved Site Condition"**.

2.14 Disclaimers. Developer acknowledges and agrees that except as expressly set forth in this Agreement: (i) neither City, nor any City Party, has made any representations, warranties, or promises to Developer, or to anyone acting for or on behalf of Developer, concerning the condition of the Granary Expansion Property or any other aspect of the Granary Expansion Property; (ii) the condition of the Granary Expansion Property has been independently evaluated by Developer prior to the Closing; and (iii) any information including any engineering reports, architectural reports, feasibility reports, marketing reports, title reports, soils reports, environmental reports, analyses or data or other similar reports, analyses, data or information of whatever type or kind, if any, which Developer has received or may hereafter receive from City or any City were and are furnished without warranty of any kind and on the express condition that Developer has made its own independent verification of the accuracy, reliability and completeness of such information and that Developer may rely on the foregoing at its own peril and knowingly assumes such risk.

2.15 Waivers and Releases. Developer hereby waives and releases City and City Parties, as of the Closing, from any and all manner of Claims or other compensation whatsoever, in law or equity, of whatever kind or nature, whether known or unknown, direct or indirect, foreseeable or unforeseeable, absolute or contingent, now existing or which may in the future arise, including lost business opportunities or economic advantage, and special and consequential damages, arising out of, directly or indirectly, or in any way connected with: (i) all warranties of whatever type or kind (excepting therefrom City Representations and Warranties set forth in Section 1.2.1 above) with respect to the physical or environmental condition of the Granary Expansion Property, whether express, implied or otherwise, including those of fitness for a particular purpose, tenantability, habitability or use; (ii) use, management, ownership or operation of the Granary Expansion Property, whether before or after Closing (excepting therefrom City's obligations set forth in Sections 3.7 and 3.12 below); (iii) the physical, environmental or other condition of the Granary Expansion Property; (iv) the application of, compliance with or failure to comply with any and all Applicable Laws with respect to the Granary Expansion Property; (v) Hazardous Materials in, on, or under the Granary Expansion Property; and (vi) the As-Is Condition of the Granary Expansion Property; the foregoing

are collectively referred to as “**Property Claims**”. By releasing and forever waiving the Property Claims, Developer expressly waives as of the Closing with respect to the Property Claims released hereunder any rights under California Civil Code Section 1542, which provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

INITIALS: DEVELOPER _____

3. **ENTITLEMENT AND DEVELOPMENT OF THE PROJECT.**

3.1 **Schedule of Performance.** Within the times set forth in the Schedule of Performance, attached hereto as Exhibit D, Developer shall use its best efforts to apply for and secure all required permits, entitlements and governmental approvals as set forth herein, and thereafter Developer shall commence and complete construction of the Project, and satisfy all of Developer’s other obligations under this Agreement within the times established therefor in the Schedule of Performance, as the same shall be extended by Force Majeure Delays or Agreed Extensions of Performance pursuant to Section 6.2. The Schedule of Performance is subject to revision in writing from time to time as may be agreed to in the sole discretion of Developer and the City Manager, or his or her designee. However, as provided in Section 6.2, in no event may Force Majeure Delays or Agreed Extension of Performance extend the Outside Date for Closing beyond December 30, 2018.

3.2 **Entitlement of the Project.** Within the times set forth in the Schedule of Performance, the Developer shall submit all applications for and secure all required Project Approvals, including the DSP Permit, necessary for the development and construction of the Project.

3.3 **Permits.** Within the times set forth in the Schedule of Performance, Developer, at its expense, shall use its best efforts to apply for and secure or cause to be applied for and secured any and all permits and approvals which may be required by City and any other governmental agency having jurisdiction over the Project, including permits for the demolition and removal of any improvements, if any, on the Granary Expansion Property, and (if applicable) encroachment or right of entry permits for performance of the off-site utility improvements required by the Project Approvals.

Within the times set forth in the Schedule of Performance, Developer shall: (a) submit to City (i) plans necessary for issuance of all demolition, grading and building permits required to undertake the Initial Site Preparation for the Project and (ii) plans necessary for the issuance of all building permits required to develop and construct the Project; and (b) secure all demolition, grading and building permits required to undertake

the Initial Site Preparation for the Project and all building permits required to develop and construct the Project.

3.4 Development of Project Improvements. Within the times set forth in the Schedule of Performance, the Developer shall construct and develop the Project in accordance with the Project Approvals, and Project Agreements. All such work related to the Project shall be performed by licensed contractors.

3.5 Cost of Development. All the costs of site preparation (including demolition of all improvements on the Granary Expansion Property), planning, designing, constructing and developing the Project, incurred by Developer shall be borne solely by Developer.

3.6 Sources and Uses. Within the times set forth in the Schedule of Performance, Developer shall submit to City for review and approval a pro-forma (a) budget identifying reasonably anticipated and estimated costs of purchasing the Granary Expansion Property and developing and constructing the Project, and (b) identification of the anticipated sources of such funds ("**Sources and Uses**"). The Sources and Uses shall be submitted no later than thirty (30) calendar days following the Date of Agreement, shall identify the anticipated sources of funds (e.g., Developer's Principals' capital contributions, third-party loans, third-party equity investments) and shall be accompanied by evidence reasonably satisfactory to City that upon implementation of the Sources and Uses, Developer shall have sufficient funds to meet all budget requirements. All equity partners (other than the Developer's Principal(s) or an Affiliate of Developer) shall be subject to Section 1.3.4.

3.7 Rights of Access. During construction of the Project, City representatives shall have reasonable access to the Granary Expansion Property, without charges or fees, at reasonable times and after prior arrangement with Developer, so long as such representatives comply with all safety rules of Developer and its contractors and insurers and do not unreasonably interfere with the progress of construction of the Project. Nothing herein shall be deemed to limit the ability of City to conduct code enforcement and other administrative inspections of any portion of the Granary Expansion Property or Project at any time in accordance with applicable law. City shall indemnify, defend, protect and hold Developer harmless from any Claims to the extent caused by the active negligence or willful misconduct of City representatives in the course of accessing the Granary Expansion Property.

3.8 Compliance With Laws. Developer shall carry out, and shall ensure that its contractors and subcontractors carry out, the Project work in conformity with all Applicable Laws, including all applicable state labor laws and standards; the City zoning and development standards; building, plumbing, mechanical and electrical codes; all other provisions of the City of Morgan Hill Municipal Code; and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

3.9 Final Completion of Project. Following Final Completion of the Project, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Granary Expansion Property shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement with respect to such Project. Except as otherwise provided herein, after Final Completion of the Project, neither City nor any other person shall have any rights, remedies or controls with respect to the Granary Expansion Property that it would otherwise have or be entitled to exercise under this Agreement as a result of a default in or breach of any provision of this Agreement. The preceding to the contrary notwithstanding, the Final Completion of the Project shall not constitute a waiver or release of any Claims based upon a breach of any representation or warranty set forth in Section 1.2.1 or Section 1.2.2 to the extent a Claim for breach of such representation or warranty has been asserted in writing by the claiming party against the breaching party within the survival period of such representations and warranties.

3.10 Liens and Stop Notices. Developer shall not allow to be placed on the Granary Expansion Property or any part thereof or any adjacent property (including without limitation any portion of the City Property) any lien or stop notice arising from any work or materials performed or provided or alleged to have been performed or provided by Developer's contractors, subcontractors, agents or representatives. If a claim of a lien or stop notice is given or recorded affecting the Granary Expansion Property or any adjacent property, Developer shall within 30 days of Developer becoming aware of such recording or service: (i) pay and discharge the same; or (ii) effect the release thereof by recording and delivering to the City Manager a surety bond in sufficient form and amount.

3.11 Right of City to Satisfy Other Liens After any Closing. After Closing, and provided the requirements set forth in Section 3.10 have not been met by Developer, City shall have the right, but not the obligation, upon not less than ten (10) days prior written notice to Developer, to satisfy any such liens or stop notices. In such event, Developer shall be liable for and City shall be entitled to reimbursement by Developer for the amount reasonably paid by the City to discharge such lien or satisfy such stop notice.

3.12 Covenants Regarding Operation, Management and Maintenance Prior to Closing. From the Date of Agreement until the Closing or earlier termination of this Agreement, City shall operate, manage and maintain the Granary Expansion Property in a manner generally consistent with the manner in which City has operated, managed and maintained the Granary Expansion Property prior to the date hereof. Notwithstanding the foregoing, from and after the Date of Agreement, City shall not: (a) cause nor voluntarily permit, any new lien, encumbrance or any other matter to cause the condition of title to be changed, without Developer's prior written consent, other than liens or other assessments, bonds, or special district liens including without limitation, Community Facility Districts, that arise by reason of any local, City, Municipal or County Project or Special District; (b) enter into any agreements with any governmental agency, utility company or any person or entity regarding the Granary Expansion Property, which would remain in effect after the Closing (other than to implement any matter described in (a) above), without obtaining Developer's prior written consent; or (c) amend any existing licenses, agreements or leases, or enter into any new licenses, agreements or leases,

that would give any person or entity any right of possession to any portion of the Granary Expansion Property, or which would remain in effect after the Closing. If Developer's consent is required by the terms of this Section 3.12, such consent shall not be unreasonably withheld, delayed, or conditioned.

4. COVENANTS, RESTRICTIONS AND AGREEMENTS.

4.1 Uses. Developer shall use the Granary Expansion Property, in accordance with the Project Approvals and/or such other uses as may be permitted or approved under zoning regulations applicable to the Granary Expansion Property. Subject to Developer's obligations under this Agreement to commence and complete construction of the Project, nothing in this Agreement shall constitute an implied or express covenant for Developer to make any particular use of the Granary Expansion Property, continuously or otherwise.

4.2 Taxes and Assessments. After the Closing, it shall be Developer's responsibility to pay prior to delinquency all ad valorem real estate taxes and assessments on the Granary Expansion Property and the Project, subject to Developer's right to contest in good faith any such taxes.

4.3 No City Approval of Tenants Required. Developer shall not be required to obtain the City's consent or approval as to the tenants to whom Developer may lease portions of the Project and the City shall not impose any restrictions or limitations on the nature of the tenants to whom Developer may lease portions of the Project; except that the use of the Granary Expansion Property acquired by Developer shall be subject to the use restrictions and limitations created by the Project Approvals and applicable zoning affecting the Project.

4.4 MHDA. Developer will include provisions in its leases encouraging all Development Property tenants to support the Morgan Hill Downtown Association ("MDHA") and related business district marketing and promotion efforts.

5. DEFAULTS AND REMEDIES.

5.1 Default Remedies - General. Subject to permitted extensions of time as provided in Section 6.2, failure by either party to perform any action or covenant required by this Agreement within the time periods provided herein following Notice and expiration of any applicable cure period, shall constitute a "Default" under this Agreement. A party claiming a Default shall give written Notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against the other party, and the other party shall not be in Default if (a) in the case of a monetary Default, such party cures the monetary Default within ten (10) days following receipt of such Notice of Default, or (b) in the case of a non-monetary Default, such party cures, corrects or remedies the non-monetary default within thirty (30) days following receipt of such Notice of Default, or if the non-monetary default cannot reasonably be cured within such thirty- (30) day period, said party commences to cure the non-monetary Default within said thirty- (30) day period and thereafter completes such cure, correction or remedy with diligence.

5.2 Legal Actions.

5.2.1 Institution of Legal Actions. Except as otherwise specifically provided herein, upon the occurrence of a Default, the non-defaulting party shall have the right, in addition to any other rights or remedies, to institute any action at law or in equity to cure, correct, prevent or remedy any Default, or to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Santa Clara, State of California, or in the Federal District Court for the Northern District of the State of California. Notwithstanding anything herein to the contrary, neither party shall have the right to recover any consequential or special damages in the event of a Default by the other party.

5.2.2 Liquidated Damages in the Event of Developer Failure to Close Escrow. SUBJECT TO NOTICE AND EXPIRATION OF APPLICABLE CURE PERIODS AND ANY PERMITTED EXTENSIONS OF TIME AS PROVIDED IN THIS AGREEMENT, IF DEVELOPER FAILS TO CLOSE ESCROW AS REQUIRED UNDER THIS AGREEMENT (A “**CLOSING DEFAULT**”), THE CITY MAY SUFFER DAMAGES AND THAT IT IS IMPRACTICABLE AND INFEASIBLE TO FIX THE ACTUAL AMOUNT OF SUCH DAMAGES. THEREFORE, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, IN THE EVENT OF A CLOSING DEFAULT, CITY SHALL BE ENTITLED TO RETAIN DEVELOPER’S DEPOSIT. THE DEVELOPER’S DEPOSIT SHALL SERVE AS LIQUIDATED DAMAGES TO THE CITY FOR A CLOSING DEFAULT. THE VALUE OF THE DEVELOPER’S DEPOSIT CONSTITUTES A REASONABLE ESTIMATE OF THE DAMAGES THAT THE CITY WOULD INCUR IN THE EVENT OF A CLOSING DEFAULT. RETENTION OF THE DEVELOPER’S DEPOSIT SHALL BE THE CITY’S SOLE AND EXCLUSIVE REMEDY AGAINST DEVELOPER IN THE EVENT OF A CLOSING DEFAULT, AND THE CITY WAIVES ANY AND ALL RIGHT TO SEEK OTHER RIGHTS OR REMEDIES AGAINST DEVELOPER ON ACCOUNT OF A CLOSING DEFAULT, INCLUDING WITHOUT LIMITATION, SPECIFIC PERFORMANCE AND MONETARY DAMAGES. THE LIQUIDATED DAMAGES PROVIDED FOR HEREIN IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF SECTIONS 3275 OR 3369 OF THE CALIFORNIA CIVIL CODE, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO THE CITY PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE. CITY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389. BY PLACING ITS INITIALS BELOW, DEVELOPER AND CITY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE, THE REASONABLENESS OF THE AMOUNT OF LIQUIDATED DAMAGES AGREED UPON, AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS:

CITY

DEVELOPER

5.2.3 Acceptance of Service of Process. In the event that any legal action is commenced by Developer against City, service of process on City shall be made by personal service upon the City Clerk of City or in such other manner as may be provided by law. In the event that any legal action is commenced by City against Developer, service of process on Developer shall be made in any manner as may be provided by law.

5.3 Termination. In addition to the termination provided for under Section 2.8 and 2.13 above, this Agreement may be terminated: (i) if there is an uncured Default, after Notice from the party not in default and expiration of all cure periods, or (ii) if there is a failure of an express Developer Condition Precedent or City Condition Precedent (which is not waived by the party whom the condition benefits) by timely Notice from the party whom the condition benefits. If requested by City, upon termination of this Agreement, Developer shall promptly execute and deliver to City a Quitclaim Deed, in recordable form, as to the Granary Expansion Property.

5.4 Rights and Remedies Are Cumulative. Except as specified otherwise in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party, except as otherwise expressly provided herein.

5.5 Inaction Not a Waiver of Default. Except as specified otherwise in the Agreement, any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

6. GENERAL PROVISIONS.

6.1 Notices, Demands and Communications Between the Parties. Any approval, disapproval, demand, document or other notice ("**Notice**") which either party may desire to give to the other party under this Agreement must be in writing and shall be given by certified mail, return receipt requested and postage prepaid, personal delivery, or reputable overnight courier (but not by facsimile or email), to the party to whom the Notice is directed at the address of the party as set forth below, or at any other address as that party may later designate by Notice.

To City: City of Morgan Hill
Office of the City Manager
17575 Peak Avenue
Morgan Hill, CA 95037
Attention: Leslie Little, Asst. City Manager
Leslie.Little@morganhill.ca.gov

With a copy to: City of Morgan Hill
 City Attorney's Office
 17575 Peak Avenue
 Morgan Hill, CA 95037
 Attention: Donald Larkin, City Attorney
 donald.larkin@morganhill.ca.gov

and: Burke, Williams & Sorensen, LLP
 1901 Harrison Street, 9th Floor
 Oakland, CA 94612
 Attention: Michael G. Biddle
 mbiddle@bwslaw.com

To Developer: Granary LLC
 17500 Depot Road
 Morgan Hill, CA 95037
 Attention: Lesley Miles
 [email address]

With a copy to: [firm name]
 [address]
 [address]
 Attention: [name]
 [email address]

Any Notice shall be deemed received on the date of delivery if delivered by personal service, on the date of delivery or refused delivery as shown by the return receipt if sent by certified mail, and on the date of delivery or refused delivery as shown by the records of the overnight courier if sent via nationally recognized overnight courier. Notices sent by a party's attorney on behalf of such party shall be deemed delivered by such party.

6.2 Enforced Delay; Extension of Times of Performance. Subject to the limitations set forth below, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays are due to: (i) war or insurrection; (ii) strikes, lockouts and labor disputes; (iii) riots, floods, earthquakes, fires, casualties, acts of God and acts of the public enemy; (iv) epidemics, quarantine restrictions, freight embargoes, and governmental restrictions or priority; (v) delays in issuance of any Project Approvals, entitlements or permits necessary to develop any improvements contemplated to be developed on the Granary Expansion Property, or applicable portion thereof (up to a maximum of 30-days aggregate for such delays by the City); (vi) litigation and arbitration, including court delays; legal challenges to this Agreement, the Project Agreements, the Project Approvals, or any other approval required for the Project or any initiatives or referenda regarding the same; (vii) environmental conditions, pre-existing or discovered, delaying the construction

or development of the Granary Expansion Property or any portion thereof; (viii) unusually severe weather or unseasonable inclement weather; (ix) acts or omissions of the other party or any of its members, managers, officers, agents, employees, affiliates or other representatives; or acts or failures to act or delay in acting of any public or governmental agency or entity (except that acts or failures to act of City shall not excuse performance by City); or (x) moratorium (each a “**Force Majeure Delay**”).

An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if Notice by the party claiming such extension is sent to the other party within 5 days of the commencement of the cause. If Notice is sent after such 5 day period, then the extension shall commence to run no sooner than 5 days prior to the giving of such Notice. Developer’s inability or failure to obtain financing or otherwise timely satisfy the Conditions Precedent to Closing on or before any Outside Date shall not be deemed to be a cause outside the reasonable control of the Developer and shall not be the basis for a Force Majeure Delay.

Times of performance under this Agreement may also be extended in writing by the City and Developer as agreed to in the sole discretion of each party (“**Agreed Extension of Performance**”). The City Manager may agree to no more than two (2) ninety (90) calendar day extensions of time for performance under this Agreement as an Agreed Extension of Performance. However, in no event shall a Force Majeure Delay, Force Majeure Delays or Agreed Extension of Performance extend the Outside Date for Closing beyond December 30, 2018.

6.3 Successors and Assigns. Subject to the restrictions on Developer transfers set forth in Section 1.3 above, all of the terms, covenants and conditions of this Agreement shall be binding upon Developer and City and their respective successors and assigns. Whenever the term “Developer” is used in this Agreement, such term shall include any permitted successors and assigns as herein provided.

6.4 Relationship Between City and Developer. It is hereby acknowledged that the relationship between City and Developer is not that of a partnership or joint venture and that City and Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the exhibits hereto, City shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Project.

6.5 City Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by City, the City Manager or his or her designee is authorized to act on behalf of City, unless specifically provided otherwise or the context requires otherwise.

6.6 Counterparts. This Agreement may be signed in multiple counterparts, each of which shall be deemed to be an original.

6.7 Integration. This Agreement, including the exhibits hereto, and the other Project Agreements contain the entire understanding between the parties relating to the transactions contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, other than the other Project Agreements, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

6.8 Brokerage Commissions. City and Developer each represents to the other that it has not engaged the services of any finder or broker and that it is not liable for any real estate commissions, broker's fees, or finder's fees which may accrue by means of the conveyance of the Granary Expansion Property as described in this Agreement, or the negotiation and execution of this Agreement. Each party shall indemnify, defend, protect and hold the other party harmless from any and all Claims based upon any assertion that such commissions or fees are allegedly due from the party making such representations.

6.9 Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. References to section numbers are to sections in this Agreement, unless expressly stated otherwise. References to specific section numbers shall include all subsections which follow the referenced section.

6.10 Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The words "include" and "including" shall be construed as if followed by the words "without limitation." The parties acknowledge that each party and his, her or its counsel have reviewed and revised this Agreement and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by either party in connection with this Agreement.

6.11 Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

6.12 Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

6.13 Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day, and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term

“holiday” shall mean all holidays as specified in Sections 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

6.14 Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

6.15 Time of Essence. Time is expressly made of the essence with respect to the performance by City and Developer of each and every obligation and condition of this Agreement.

6.16 Cooperation. Each party agrees to cooperate with the other in this transaction and, in that regard, shall execute any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement.

6.17 Conflicts of Interest. No City member, official or employee of City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

6.18 Time for Acceptance of Agreement by City. This Agreement, when executed by Developer and delivered to City, must be authorized, executed and delivered by City on or before ninety (90) days after signing and delivery of this Agreement by Developer or this Agreement shall be void, except to the extent that Developer shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement. Developer hereby acknowledges that the authorization, execution and delivery of this Agreement by City, requires the approval of the City Council.

6.19 Developer's Indemnity. Developer shall defend (with counsel reasonably acceptable to City), indemnify, assume all responsibility for, and hold City and City Parties, harmless from, all Property Claims and Claims arising directly or indirectly from the approval of this Agreement or any of Developer's acts, omissions, negligence or willful misconduct, whether such acts, omissions, negligence or willful misconduct be by Developer or by anyone directly or indirectly employed or contracted with by Developer, and whether such Property Claims or Claims shall accrue or be discovered before or after expiration or termination of this Agreement or Final Completion. Developer's indemnity obligations under this Section 6.19 shall not extend to Property Claims or Claims

occasioned by the sole negligence or willful misconduct of City or City Parties. Insurance limits shall not operate to limit Developer's indemnity obligations under this Agreement. Notwithstanding anything to the contrary in this Section 6.19, any claims related to Initial Litigation Challenges shall be controlled exclusively by Section 6.20.

6.20 Cooperation in the Event of Legal Challenge to Project Approvals. City and Developer shall cooperate in the defense of any court action or proceeding instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement or the City's initial approval of this Agreement or any of the Project Approvals ("**Initial Litigation Challenge**"), and the Parties shall keep each other informed of all developments relating to such defense, subject only to confidentiality requirements that may prevent the communication of such information. The foregoing notwithstanding, the City may choose not to defend any such proceeding challenging the validity of any provision of this Agreement, the approval of this Agreement, or any of the Project Approvals.

6.20.1 Meet and Confer. If an Initial Litigation Challenge is filed, upon receipt of the complaint, the Parties will have 20 days to meet and confer regarding the merits of such Initial Litigation Challenge and to determine whether to defend against the Initial Litigation Challenge, which period may be extended by the Parties' mutual agreement so long as it does not impact any litigation deadlines. The City and Developer mutually commit to meet all required litigation timelines and deadlines. The Parties may enter a joint defense agreement, which will include among other things, provisions regarding confidentiality. The City Manager is authorized to negotiate and enter such joint defense agreement in a form acceptable to the City Attorney. Such joint defense agreement shall also provide that any proposed settlement of an Initial Litigation Challenge shall be subject to City's and Developer's approval, each in its reasonable discretion. If the terms of the proposed settlement would constitute an amendment or modification of this Agreement, the settlement shall not become effective unless such amendment or modification is approved by Developer, and by City in accordance with Applicable Laws, and City reserves its full legislative discretion with respect thereto.

6.21 Non-liability of Officials and Employees of City. No member, official or employee of City shall be personally liable to Developer, or any successor in interest, in the event of any Default or breach by City or for any amount which may become due to Developer or its successors, or on any obligations under the terms of this Agreement. Developer hereby waives and releases any claim it may have against the members, officials or employees of City with respect to any Default or breach by City or for any amount which may become due to Developer or its successors under the terms of this Agreement.

6.22 Legal Fees. If any Party to this Agreement brings any action or suit against another Party regarding any matter relating to or arising out of this Agreement, then all Parties shall bear their own fees, costs and expenses incurred therein, including any and all attorneys' fees.

6.23 Applicable Law; Venue. The laws of the State of California, without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Agreement. The exclusive venue for any disputes or legal actions shall be the Superior Court of California in and for the County of Santa Clara or the US District Court, Northern California District.

6.24 Survival. The parties' indemnification obligations under Sections 3.7, 6.8, and 6.19 shall survive termination of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

CITY:

CITY OF MORGAN HILL, a California municipal corporation

By:

Christina Turner, City Manager

APPROVED AS TO FORM:

By:

Donald Larkin, Interim City Attorney

ATTEST:

By:

Irma Torrez, City Clerk

DEVELOPER:

GRANARY LLC, a California limited liability company

By:

Charles Weston, Managing Member

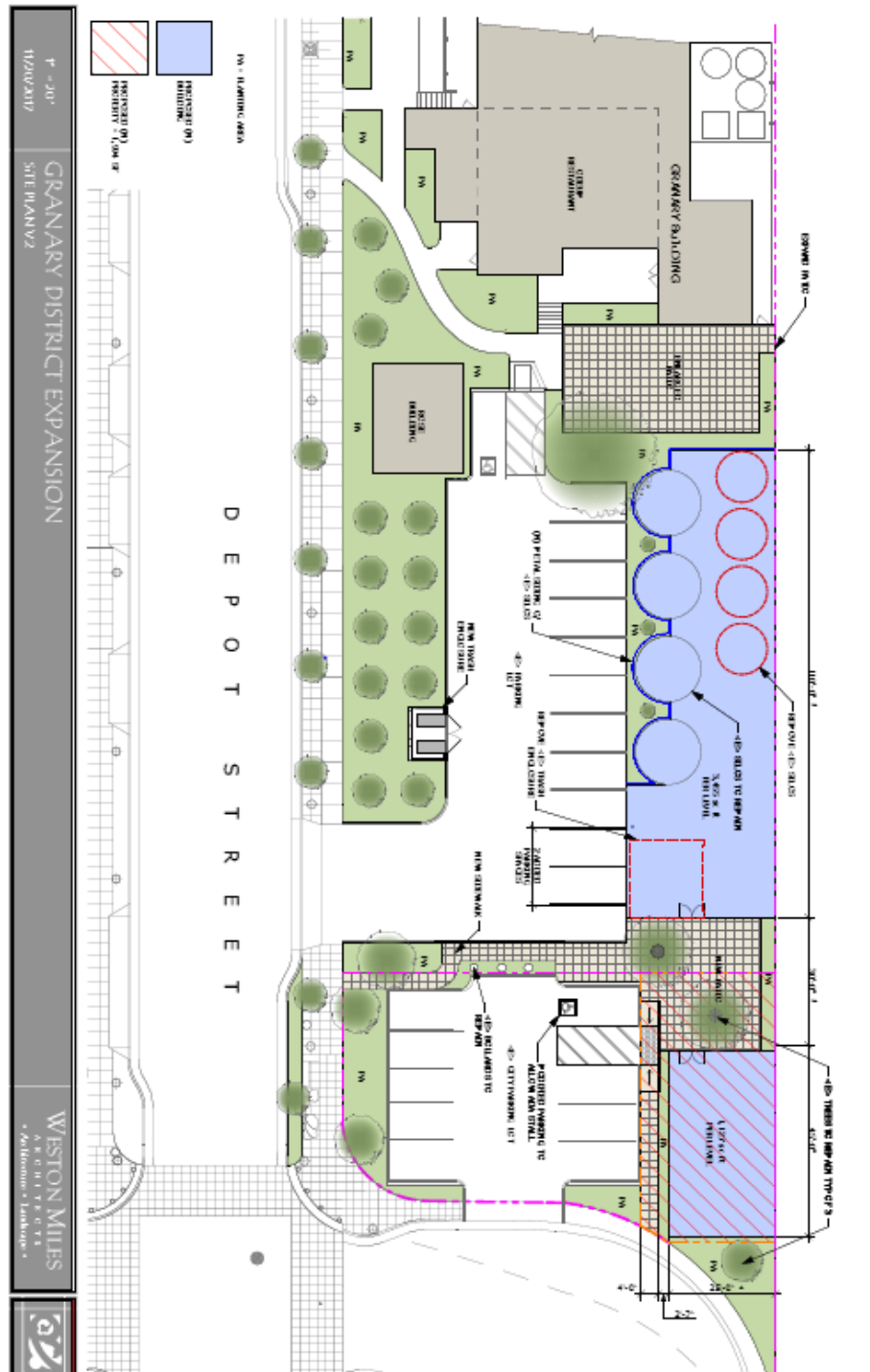
By:

Lesley Miles, Managing Member

EXHIBIT A

SITE PLAN – GRANARY EXPANSION PROPERTY

A Portion of Assessor Parcel Number 726-14-061



Attachment: Purchase and Sale Agreement (1500 : Purchase and Sale Agreement Between City of Morgan Hill and Granary LLC.)

EXHIBIT B
PROJECT PLANS

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Attachment: Purchase and Sale Agreement (1500 : Purchase and Sale Agreement Between City of Morgan Hill and Granary LLC.)

EXHIBIT C**RECORDING REQUESTED BY AND
AFTER RECORDATION MAIL TO:**

Granary LLC
 c/o Weston Miles Architects, Inc.
 17500 Depot Street, Suite 120
 Morgan Hill, CA 95037
 Attention: Lesley Miles

(Space Above This Line for Recorder's Use Only)

GRANT DEED

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City of Morgan Hill, a California municipal corporation ("**Grantor**"), hereby grants to Granary LLC, a California limited liability company ("**Grantee**"), the real property (the "**Property**") located in the City of Morgan Hill, County of Santa Clara, California, known as a portion of Santa Clara County Assessor's Parcel Nos. 726-14-061 and more particularly described in Attachment No. 1 attached hereto and incorporated in this grant deed ("**Grant Deed**") by reference.

GRANTOR:

City of Morgan Hill as Successor Agency to
 the former Morgan Hill Redevelopment
 Agency, a public entity

Date: _____, 2017 By:

 Christina Turner, City Manager

**[SIGNATURE MUST BE
 NOTARIZED]**

ATTEST:

Irma Torrez, City Clerk

APPROVED AS TO FORM:

Donald Larkin, City Attorney

Attachment: Purchase and Sale Agreement (1500 : Purchase and Sale Agreement Between City of Morgan Hill and Granary LLC.)

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 _____, 201__ before me,
_____, Notary Public, 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)

Attachment: Purchase and Sale Agreement (1500 : Purchase and Sale Agreement Between City of Morgan Hill and Granary LLC.)

ATTACHMENT NO. 1**LEGAL DESCRIPTION**

For Portion of Assessor Parcel Number: 726-14-061

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

*[To be provided by City in accordance with
Schedule of Performance and Conditions Precedent]*

Attachment: Purchase and Sale Agreement (1500 : Purchase and Sale Agreement Between City of Morgan Hill and Granary LLC.)

EXHIBIT D

SCHEDULE OF PERFORMANCE

NOTE: Capitalized terms used below shall have the meaning ascribed to such terms in the Purchase and Sale Agreement (“**Agreement**”) to which this Exhibit D is attached. All of the dates and deadlines described below shall be subject to extension by the City Manager pursuant to Section 3.1 of the Agreement or “Force Majeure Delays” or “Agreed Extension of Performance” in accordance with Section 6.2 of the Agreement. The provisions of the Schedule of Performance are intended as a convenient guideline for the Parties and are not intended to supersede or amend the referenced operative sections listed below. In the event of any conflict between this Schedule of Performance and the Agreement, the Agreement shall control.

#	MILESTONE	TIMING REQUIREMENT
1	City shall consider approval of the Agreement. City shall deliver one executed original to Developer.	Within [45] calendar days of Developer’s delivery to the City of three executed originals of this Agreement approved as to form by City Attorney. Within [7] calendar days following City Council’s approval of Agreement.
2	Developer shall have submitted Organizational Documents to City. [Section 1.2.2]	Prior to execution of this Agreement.
3	Parties to open escrow for the conveyance of the Granary Expansion Property. [Section 2.5]	Within [3] calendar days following Date of Agreement.
4	City to cause Title Company to deliver to Developer Granary Expansion Property Title Report and Granary Expansion Property Exceptions regarding Granary Expansion Property. [Sections 2.8 and 3.1] Developer to provide City and Escrow Agent notice of approval or disapproval of Granary Expansion Property Exceptions. [Sections 2.8 and 3.1] City removes disapproved Granary Expansion Property Exceptions, provides assurances that disapproved Granary Expansion Property	Within [15] calendar days following Date of Agreement. Within [30] calendar days following receipt of Granary Expansion Property Title Report and Granary Expansion Property Exceptions. Within [30] calendar days following receipt of Developer’s

#	MILESTONE	TIMING REQUIREMENT
	Exceptions will be removed before Closing, or indicates disapproved Granary Expansion Property Exceptions will not be removed. [Sections 2.8 and 3.1] Developer notifies City of acceptance or waiver of disapproved Granary Expansion Property Exceptions or terminates Agreement. [Sections 2.8 and 3.1]	notice of disapproval of Granary Expansion Property Exceptions. Within [15] calendar days following City's notification it will not remove disapproved Granary Expansion Property Exceptions.
6	Developer shall have submitted a Sources and Uses to City. [Sections 3.1 and 3.6]	Submittal of Sources and Uses within [30] calendar days following Date of Agreement.
7	Developer shall have submitted to City complete application for Project Approvals, including DSP Permit, for the Project. [Sections 3.1 and 3.2]	Within [60] calendar days following Date of Agreement.
8	Developer shall have secured from all agencies all required Project Approvals, including Subdivision and DSP Permit, for the Project. [Sections 3.1 and 3.2]	No later than July 1, 2018 .
9	Developer to provide City notice of approval or disapproval of Site Condition. [Sections 2.13 and 3.1] City remedies disapproved Site Condition, provides assurances that disapproved Site Condition will be remedied before Closing, or indicates disapproved Site Condition will not be remedied. [Sections 2.13 and 3.1] Developer notifies City of acceptance or waiver of disapproved Site Condition or terminates Agreement. [Sections 2.13 and 3.1]	Within [30] calendar days following approval of Project Approvals. Within [30] calendar days following receipt of Developer's notice of disapproval of Site Condition. Within [15] calendar days following City's notification it will not remove disapproved Site Condition.
11	Developer shall have submitted to City complete applications for all demolition, grading and building permits necessary for	No later than the earlier of August 1, 2018 or [60] calendar days

Attachment: Purchase and Sale Agreement (1500 : Purchase and Sale Agreement Between City of Morgan Hill and Granary LLC.)

#	MILESTONE	TIMING REQUIREMENT
	the Developer to perform the work for the Initial Site Preparation for the Project. [Sections 3.1 and 3.3]	following the approval of the Project Approvals.
12	Developer shall have submitted to City complete applications for all building permits necessary for Developer to develop and construct the Project. [Sections 3.1 and 3.3]	No later than the earlier of August 1, 2018 or [60] calendar days following the approval of the Project Approvals.
15	Developer shall have submitted to City evidence of submission of its loan application for the development and construction of the Project. [Sections 3.1 and 3.6]	No later than August 1, 2018.
16	Developer shall have secured from City all permits necessary for the Developer to (i) perform the work for the Initial Site Preparation for the Project and (ii) develop and construct the Project, subject only to payment of applicable fees. [Sections 3.1 and 3.3]	No later than September 15, 2018 .
17	Close of Escrow on the Granary Expansion Property. [Sections 2.6 and 3.1]	Within 30 days after satisfaction or waiver of all City Conditions Precedent and all Developer Conditions Precedent, but no later than the Outside Date, July 3, 2018 .
19	Developer Commences Construction of the Project. [Sections 3.1 and 3.4]	Within [10] business days following Closing and recordation of the Certificate of Compliance for the Lot Line Adjustment.
20	Developer Substantially Completes construction of the Project. [Sections 3.1 and 3.4]	Within [18] months following Closing.
21	Developer Finally Completes the Project. [Sections 3.1 and 3.4]	Within [3] months following Substantial Completion of the Project.

EXHIBIT E**RIGHT OF ENTRY PERMIT**

ISSUED TO: Granary LLC ("Developer")

17500 Depot Road
Morgan Hill, CA 95037
Attn: Lesley Miles
Phone: XXX-XXX-XXXX
Cell Phone: XXX-XXX-XXXX

PERMISSION IS HEREBY GRANTED to Developer and its agents, representatives, officers, officials, employees, contractors, and subcontractors to enter upon the property, as hereinafter defined, of the City of Morgan Hill, a California municipal corporation ("Owner"), subject to the conditions set forth in this Right of Entry Permit ("Permit"):

1. Property. This Permit is limited to certain real property located at 17300 Depot Street in the City of Morgan Hill, identified as a portion of Assessor Parcel Number 726-14-070, depicted in Exhibit A attached hereto and incorporated herein by this reference (the "Property").
2. Purpose. This nonexclusive and temporary Permit is limited to the following purposes:

Developer shall have the right of ingress and egress across the Property of Owner for the sole purpose of undertaking geotechnical investigations and environmental sampling and testing of soil and groundwater for the presence of hazardous materials. Developer shall be solely responsible for the handling, transportation and disposal of investigative derived waste from its soil and groundwater sampling and testing activities and shall sign any manifests for the disposal of such waste as the "Generator" thereof. Developer shall not install any groundwater wells on the Property, nor shall Developer store any investigative derived waste on the Property without Owner's prior written consent. Developer shall provide Owner copies of all sampling and testing plans and all results of its geotechnical investigations and environmental sampling and testing of soil and groundwater.

For purposes of this Permit, "hazardous materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government under any Environmental Laws, including any material or substance which is defined as hazardous, extremely hazardous, hazardous waste, extremely hazardous waste, restricted hazardous waste, hazardous substance or hazardous material under any Environmental Laws, including petroleum, or any fraction thereof, friable asbestos, and polychlorinated biphenyls.

For purposes of this Permit, "Environmental Laws" means, collectively: (i) the Comprehensive Environmental Response, Compensation and Liability Act, as

amended, 42 U.S.C. § 9601, *et seq.*, (ii) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, *et seq.*, (iii) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, *et seq.*, (iv) the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, *et seq.*, (v) the Clean Air Act, as amended, 42 U.S.C. § 7401, *et seq.*, (vi) the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601, *et seq.*, (vii) the Clean Water Act, as amended, 33 U.S.C. § 1251, *et seq.*, (viii) the Oil Pollution Act, as amended, 33 U.S.C. § 2701, *et seq.*, (ix) California Health & Safety Code § 25100, *et seq.* (Hazardous Waste Control), (x) the Hazardous Substance Account Act, as amended, Health & Safety Code § 25300, *et seq.*, (xi) the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program, as amended, Health & Safety Code § 25404, *et seq.*, (xii) Health & Safety Code § 25531, *et seq.* (Hazardous Materials Management), (xiii) the California Safe Drinking Water and Toxic Enforcement Act, as amended, Health & Safety Code § 25249.5, *et seq.*, (xiv) Health & Safety Code § 25280, *et seq.* (Underground Storage of Hazardous Substances), (xv) the California Hazardous Waste Management Act, as amended, Health & Safety Code § 25170.1, *et seq.*, (xvi) Health & Safety Code § 25501, *et seq.*, (Hazardous Materials Response Plans and Inventory), (xvii) Health & Safety Code § 18901, *et seq.* (California Building Standards), (xviii) the Porter-Cologne Water Quality Control Act, as amended, California Water Code § 13000, *et seq.*, (xix) California Fish and Game Code §§ 5650-5656, (xx) the Polanco Redevelopment Act, as amended, Health & Safety Code § 33459, *et seq.*, (xxi) Health & Safety Code § 25403, *et seq.* (Hazardous Materials Release Cleanup), and (xxii) any other federal, state or local laws, ordinances, rules, regulations, court orders or common law related in any way to the protection of the environment, health or safety.

Owner agrees to allow Developer to use the Property in the manner described above subject to the following conditions:

- a. Developer shall not access the Property prior to 7:00 am or after 6:00 p.m. Monday through Friday or on the weekend at any hour without the prior approval of the Owner.
- b. Developer shall notify Owner via email no later than twenty-four (24) hours prior to entry onto the Property and shall identify all individuals who will enter on the property and the company for whom they are employed. Developer shall notify Leslie Little, Assistant City Manager for Community Development, at Leslie.Little@morganhill.ca.gov on behalf of Owner.
- c. Developer shall commence any and all work or activities on or use of the Property at its sole cost and expense and Owner shall not incur any cost or expense.
- d. Developer shall perform all work in strict conformance with all Environmental Laws, and no soil may be stockpiled on the Property and no equipment or materials may be stored on the Property without Owner's prior written consent. To the extent Developer's activities generate soil cuttings or spoils which must be temporarily stockpiled, Developer shall promptly advise Owner of such fact, and upon Owner's

consent to temporarily place such waste on the Property, Developer shall place visquene beneath and over any such temporarily stockpiled soils on the Property.

- e. Any and all Mechanic's Liens filed on account of the work performed by Developer on the Property pursuant to this Permit shall be promptly cured by Developer's payment thereof and the recording of applicable Release of Mechanic's Liens, or Developer shall post a statutory mechanic's lien release bond in lieu thereof within seven (7) days after the filing of each such Mechanic's Lien.
3. Term. Developer's right to utilize the Property shall commence upon execution of this Permit by Owner and Developer and shall terminate thirty (30) calendar days thereafter. Prior to the expiration of the term, Developer shall restore the Property to its condition prior to Developer's entry and repair any damage to the Property caused by their use of the Property. Notwithstanding the foregoing, this Permit granted to Developer may be terminated by Owner upon providing twenty-four (24) hours prior written notice to Developer.
4. Assumption of Risk and Releases. Each person entering upon the Property under this Permit shall do so at its own risk. On behalf of itself and its agents, representatives, assigns, heirs, spouses, successors-in-interest, executors, administrators, employees, contractors and sub-contractors ("Releasors"), Developer assumes all risk of entering the Property and agrees that the Owner, and its officers, agents, employees and volunteers are released and shall not be liable in any manner for injury to or death of Releasors or their respective officers, employees or agents or for damage to property of Releasors arising from any cause. This release applies to all potential future claims and Developer on behalf of itself and the Releasors agrees to waive any and all rights pursuant to Section 1542 of the California Civil Code, which reads as follows:

"A general release does not extend to claims that the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."
5. Indemnification. Developer agrees on behalf of itself and its Releasors that the Owner shall not be liable for any bodily injury, sickness, disease or death of any person or damages to any property or any person pursuant to this Permit and that Developer shall be responsible for any liability, cost, expenses or claim associated with injuries to or death of any person or damage to property related directly or indirectly to any act or failure to act arising from the activities under this Permit. Developer agrees on behalf of itself and its Releasors to indemnify, defend and hold harmless the Owner and its officials, officers, employees, consultants, agents and volunteers (collectively, the Indemnitees), from any and all actions, claims and liability for any loss or damage, including, but not limited to, bodily injury, sickness, disease or death of any person or damage to any property, tangible or intangible, resulting from the execution of this Permit or the entry upon the Property, and from all costs and expenses, including reasonable attorneys' fees, arising there from, except for any claim arising from the sole negligence or willful misconduct of an

Indemnitee. This indemnification shall survive termination of this Permit.

6. Liability Insurance. Developer shall at all times during the term of this Permit maintain the following insurance coverage in connection with the use of the Property by Developer and its agents, representatives, employees, contractors or subcontractors.

- a. Insurance: For the duration of the term, Developer shall procure and maintain with an insurance company acceptable to Owner, the following types of insurance (and limits) written on an occurrence basis:

<u>COVERAGE</u>	<u>LIMITS</u>
Worker's Compensation	Statutory
Employer's Liability	\$2,000,000 each occurrence
General Liability (bodily injury & property damage)	\$2,000,000 combined single limit for each occurrence, \$5,000,000 umbrella
Automobile Liability (bodily injury & property damage)	\$2,000,000 combined single limit for each occurrence
Contractor's Pollution Liability	\$1,000,000 per accident or claim

- b. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the Owner.
- c. Other Insurance Provision: The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provision:
- i. The Indemnitees are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of Developer under

this Permit; products and completed operations of the Developer; premises owned, occupied or used by Developer; or automobiles owned, leased, hired or borrowed by Developer. The coverage shall contain no special limitations on the scope of protection afforded to the Indemnitees.

ii. For any claims related to this Permit, Developer's insurance coverage shall be primary insurance as respects the Indemnitees. Any insurance or self-insurance maintained by the Indemnitees shall be excess of Developer's insurance and shall not contribute with it.

iii. Any failure to comply with reporting or other provisions of the policies provided by Developer, including breaches of warranties, shall not affect coverage provided to the Indemnitees.

iv. Developer's insurance shall apply separately to each insured against whom claim is made or suit is brought.

v. Each insurance policy required shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail has been given to Owner.

- d. The Worker's Compensation and Employers Liability policies shall be endorsed to provide Waivers of Subrogation waiving all rights of subrogation against the Indemnitees.
 - e. Acceptability of Insurers: Insurance is to be placed with insurers admitted in California with a current A.M. Best's rating of no less than A:VII.
 - f. Verification of Coverage: Developer shall furnish the Owner with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms utilized by Developer's insurer in its normal course of business and are to be received and approved by Owner before Developer enters upon and utilizes the Property pursuant to this Permit.
 - g. Subcontractors: Developer shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.
7. Assignment. Developer shall not assign or otherwise transfer any rights under this Permit and any purported assignment or transfer shall be void and effectuate the automatic revocation of this Permit.
 8. Compliance with Laws. Developer shall obtain and maintain all permits and approvals required for the activities under this Permit and shall comply with all laws

now in effect or that become effective during the term of this Permit.

9. No Dedication. Nothing contained in this Permit shall be deemed a gift or dedication of any portion of the Property to or for the general public or for any public purpose whatsoever. This Permit shall be strictly limited to and for the purposes expressed within.
10. Rights Limited. This Permit shall not be construed to grant any real property or other rights to Developer in the Property.
11. Governing Law; Attorneys' Fees. This Permit shall be construed and enforced in accordance with and governed by the laws of the State of California. In the event that either party institutes any action, suit or other dispute resolution proceeding based on this Permit against the other party, each party shall be solely responsible for all of their costs and expenses associated therewith including but not limited to reasonable attorneys' fees and courts costs.
12. Counterparts. This Permit may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.
13. Authority to Contract. Developer hereby represents and warrants to Owner that in accordance with its by-laws and all operative rules and procedures, it has duly authorized the undersigned officer of Developer to enter into and execute this Permit and to carry out, fulfill and perform all promises, conditions and obligations contained herein.

Developer: GRANARY LLC, a California limited liability company

By: _____
Lesley Miles, Managing Member

Date: _____, 2017

By: _____

Charles Weston, Managing Member

Owner: CITY OF MORGAN HILL, a California municipal corporation

By: _____
Christina Turner, City Manager

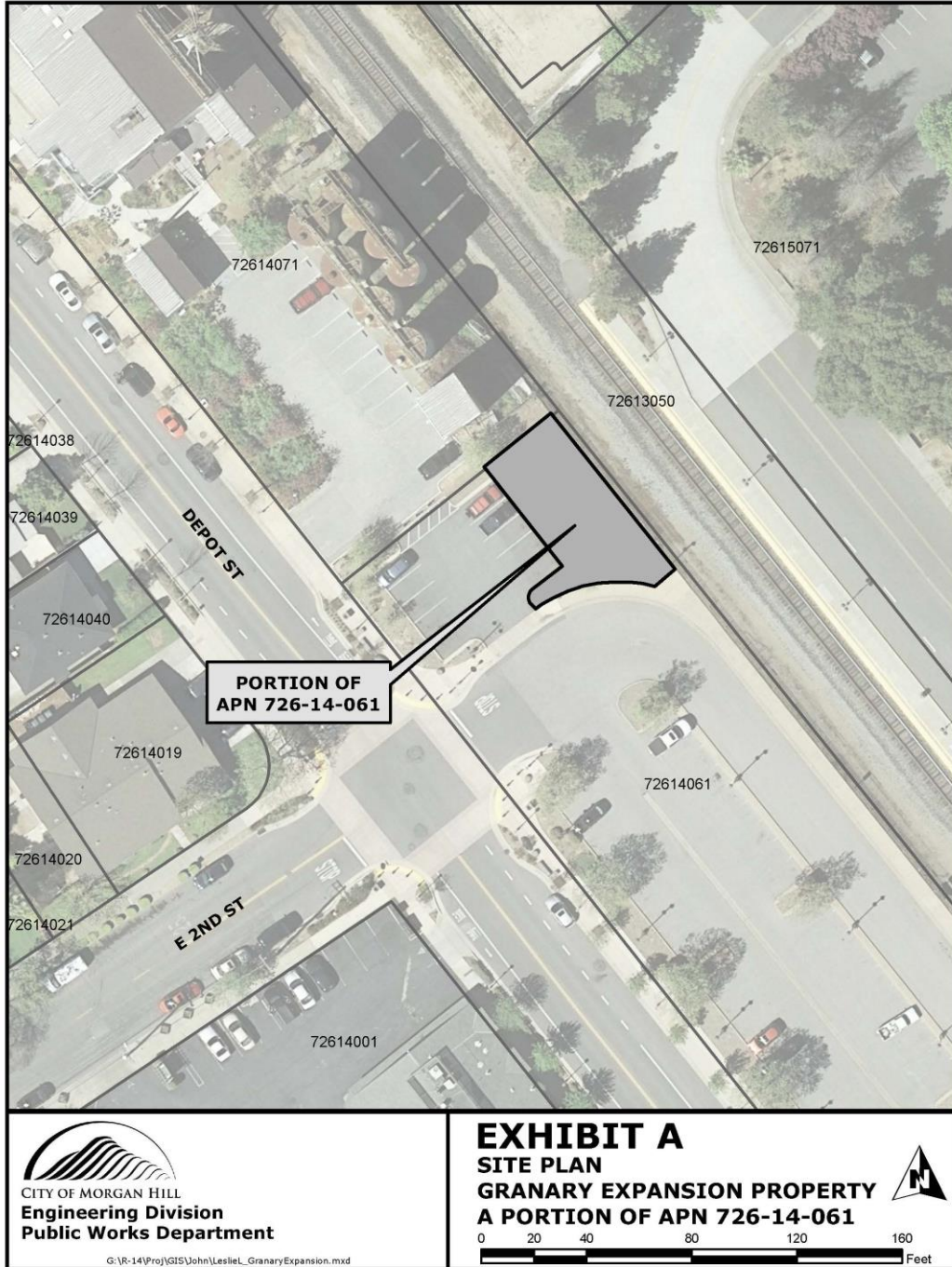
Date: _____, 2017

Approved as to form:

Donald Larkin, City Attorney

EXHIBIT A

CITY PROPERTY



Attachment: Purchase and Sale Agreement (1500 : Purchase and Sale Agreement Between City of Morgan Hill and Granary LLC.)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2017

PREPARED BY: Rich Buikema, Contract Planner
APPROVED BY: City Manager

WA2017-0001 DIANA - GROSSWEILER- PETITION TO CANCEL WILLIAMSON ACT CONTRACT FOR PROPERTY, IDENTIFIED BY ASSESSOR PARCEL NUMBER 726-09-002

RECOMMENDATION(S)

1. Open/close public hearing; and
2. Adopt resolution.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

Preserving and Cultivating Public Trust

REPORT NARRATIVE:

Background

A California Land Conservation Contract (Williamson Act) was established on the property on February 24, 1978. A Notice of Non-Renewal of the contract was filed with the City of Morgan Hill on May 19, 2015. The Williamson Act Contract will expire on December 31, 2024 as a result of a Notice of Non-Renewal (Attachment 2) which ended the automatic ten-year renewal that occurs annually (January 1). The contract requires that the property be used only to produce agricultural commodities for commercial purposes. In exchange, the property has been assessed at a value based upon farming and open space uses as opposed to full market value.

A Preliminary RDCS application was filed on November 1, 2017 for the initial review of 24 single-family homes to be developed on the 4.66-acre lot.

Project Description

The property owner has petitioned for a tentative cancellation of a 4.66-acre Williamson Act contract (Attachment 3), in association with the filing of a Preliminary RDCS application. The petition was filed on October 2, 2017. A letter of justification has been provided (Attachment 4).

It was determined that prior to filing a formal RDCS application on January 4, 2018, the Williamson Act Contract must be tentatively cancelled. Absent this cancellation, the Williamson Act Contract is set to expire on December 31, 2024. With this cancellation, the Williamson Act Contract would expire upon meeting the conditions of approval.

Williamson Act Cancellation Process

The Williamson Act cancellation process is regulated pursuant to California Government Code 51280-51287. Government Code Section 51282 outlines the specific requirements for tentative cancellation of a contract including five “consistency” findings that must be made by the City Council. The California Department of Conservation (DOC) provides comments on completed petitions for cancellation that must be considered by the City Council prior to acting on the petition. The DOC comments have been provided (Attachment 5).

The five “consistency” findings required of the City Council are:

1. The cancellation is for land on which a notice of non-renewal has been served pursuant to GC § 51245;

A Notice of Non-Renewal (Attachment 2) was executed in November 2015 which fulfills this requirement. The Williamson Act Contract was not renewed on January 1, 2016 and is set to expire on December 31, 2024.

2. That cancellation is not likely to result in the removal of adjacent lands from agricultural use;

As shown on the aerial of the site, there is no agricultural land adjacent to the site that could potentially be converted from agricultural use. In addition, the 4.6-acre parcel is considered small as it is below the 10-acre threshold for sustaining agricultural use established within Section §66474.4(a) of the Subdivision Map Act.

3. That cancellation is for an alternative use which is consistent with the applicable provisions of the Morgan Hill General Plan.

Residential development is proposed as an alternative use which is consistent with the applicable provisions of the City of Morgan Hill 2035 General Plan which designates the site as “Residential Detached Medium”, allowing up to 7 units per net acre.

4. That cancellation will not result in discontinuous patterns of urban development.

The cancellation will not result in discontinuous patterns of urban development as the property is located within the City of Morgan Hill’s Urban Service Area and entirely surrounded by existing urban development.

5. That there is no proximate non-contracted land which is both available and suitable for the use to which it is proposed the contracted land be put, or, that development of the contracted land would provide more contiguous patterns of urban development than development of proximate noncontracted land.

The attached analysis (Attachment 7) demonstrates that there is no available and suitable land for the residential development within a 3-mile radius of the subject site.

Summary

If the petition for cancellation is tentatively approved by the City Council, a certificate of tentative cancellation will be recorded. Prior to finalization of the cancellation, the applicant must pay in full the cancellation fee as computed by the County Assessor and fulfill any other cancellation conditions placed upon the cancellation. The County Assessor has calculated the cancellation fee to be \$537,500 (five hundred thirty-seven thousand five hundred dollars) which is 12.5 percent of the unrestricted full market value (\$4,300,000) as indicated in the attached letter (Attachment 6).

COMMUNITY ENGAGEMENT: Involve

The proposed Williamson Act cancellation was publicly noticed (mailing to property owners within 300 feet of the project and newspaper legal noticing) for the minimum 10-day period. The proposal was referred to the Santa Clara County Assessor and California Department of Conservation in accordance with the procedures established by Government Code GC § 51280.

ALTERNATIVE ACTIONS:

Deny the proposed Williamson Act Contract cancellation contract which would maintain the requirement that the property's use remain limited to the production of agricultural commodities for commercial purposes. Denial of the cancellation would preclude the applicant from participating in the 2017 RDCS competition.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

No prior actions.

FISCAL AND RESOURCE IMPACT:

Application fees were collected to cover the cost of processing the tentative Williamson Act cancellation request.

CEQA (California Environmental Quality Act):

The potential development of the site for "Residential Detached Medium", allowing up to 7 units per net acre was reviewed as part of the Master Environmental Impact Report for the 2035 General Plan update and has been found consistent with the California Environmental Quality Act Section 21083.3 and Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning). There are no new environmental effects peculiar to the property or the project and no new information, and thus additional environmental review is not required. Further environmental review will be required in conjunction with the review of a proposed subdivision of the property at a future date.

LINKS/ATTACHMENTS:

1. 1 - Resolution
2. 2 - Notice of Nonrenewal

3. 3 - Petition for Cancellation of Land Conservation
4. 4 - Letter of Justification
5. 5 - DOC Letter
6. 6 - County Assessor Letter
7. 7 - Applicant Report

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL TENTATIVELY APPROVING CANCELLATION OF A LAND CONSERVATION CONTRACT ON APPROXIMATELY 4.66 ACRES (APN 726-09-002)

WHEREAS, on October 2, 2017 the City of Morgan Hill received a petition for the cancellation of a land conservation contract (pursuant to the Williamson Act) from the Grossweiler Family Trust et al (“the Property Owner”) for approximately 4.66 acres located on the northeasterly corner of Diana Avenue and Lotus Way (Assessor's Parcel Numbers 726-09-002, the “Subject Property”); and

WHEREAS, Government Code Section 51282 permits a property owner to petition the City Council of the City of Morgan Hill to cancel a portion of or an entire land conservation contract and allows the City Council to grant tentative approval for cancellation of a contract if it finds that the cancellation is consistent with the purposes of the Williamson Act; and

WHEREAS, the Property Owner submitted a Notice of Nonrenewal, pursuant to the Williamson Act (Government Code Section 51200 et. seq.) for the 4.66 acres subject to the Williamson Act contract and the City approved the Notice of Nonrenewal on November 17, 2015; and

WHEREAS, the Property Owner recorded the Notice of Nonrenewal with the County of Santa Clara on December 7, 2015 (Exhibit A) and the Williamson Act contract shall expire on December 31, 2024; and

WHEREAS, the petition for a cancellation of a land conservation contract relative to the Subject Property is associated with by a preliminary proposal for an alternative land use consisting of 24 new dwelling units on approximately 4.66 acres; and

WHEREAS, the potential development of the site for “Residential Detached Medium”, allowing up to 7 units per net acre was reviewed as part of the Master Environmental Impact Report for the 2035 General Plan update and has been found consistent with the California Environmental Quality Act Section 21083.3 and Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning). There are no new environmental effects peculiar to the property or the project and no new information, and thus additional environmental review is not required. Further environmental review will be required in conjunction with the review of a proposed subdivision of the property at a future date and

WHEREAS, pursuant to Government Code 51282, the California Department of Conservation was notified in letters dated October 26, 2017 regarding the required findings establishing that the proposed cancellation of the land conservation contract is consistent with purposes of the Williamson Act; and

WHEREAS, public notice was provided in accordance with Government Code Section 51284 of the California Land Conservation Act of 1965; and

WHEREAS, the County Assessor has certified to the City Council in a letter dated November 16, 2017 (Exhibit B) that the cancellation valuation of the Subject Property is four million, three hundred thousand (\$4,300,000.00) and that the cancellation value of 12.5% results in a cancellation fee of five hundred thirty-seven thousand five hundred (\$537,500.00); and

WHEREAS, by copy of this Resolution, the City Council certifies to the County Auditor that based on the County Assessor's determination, certified to the City Council by letter dated November 16, 2017, the cancellation fee of \$537,500.00 shall be paid to the County Treasurer within one year of City Council approval, and prior to granting Final Cancellation; and

WHEREAS, a public hearing conducted by the City Council on December 6, 2017 to consider facts as presented in the staff report prepared for this request, and to accept public testimony regarding this request for tentative cancellation; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL based upon the facts and analysis presented below, the staff report and accompanying attachments, public testimony received and subject to Conditions of Approval, does resolve as follows:

Section 1. The above recitals are true and correct.

Section 2. The City Council finds that the proposed tentative Cancellation of the Williamson Act Contract is consistent with the purposes in accordance with California Government Code sections 51282(a)(1). Specifically;

- A. That the cancellation is for land on which a notice of nonrenewal has been served pursuant to Section 51245.
- B. That cancellation is not likely to result in the removal of adjacent lands from agricultural use.
- C. That cancellation is for an alternative use which is consistent with the applicable provisions of the city or county general plan.
- D. That cancellation will not result in discontinuous patterns of urban development.
- E. That there is no proximate non-contracted land which is both available and suitable for the use to which it is proposed the contracted land be put, or, that development of the contracted land would provide more contiguous patterns of urban development than development of proximate noncontracted land.

Section 3. The City Council hereby tentatively approves the request for a cancellation of the Land Conservation Contract for approximately 4.66 acres within Morgan Hill, based on the above findings.

Section 4. The City Clerk is directed and authorized to record a Certificate of Tentative Cancellation for the property (Exhibit C).

Section 5. Within one year of the date of recordation of the Certificate of Tentative Cancellation, the cancellation fee set by the County Tax Assessor shall be paid. If the fee is not paid within one year the fee shall be recomputed.

Section 6. The Landowner shall obtain approval of a Tentative Map, Final Map and Architecture and Site Review approval (the discretionary permits necessary to commence the project), and shall obtain the grading permits necessary to commence grading of the project.

Section 7. The City Council declares that should any provision, section, paragraph, sentence, or word of this Resolution be rendered or declared invalid by any court of competent jurisdiction, or due to any preemptive legislation, the remaining provisions, sections, paragraphs, sentences and words of this Resolution shall remain in full force and effect.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 6th day of December 2017.

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: 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 December 6, 2017.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: 1 - Resolution [Revision 2] (1511 : WA2017-0001 Diana - Grossweiler)

EXHIBIT A

**TO BE RECORDED AT NO CHARGE PURSUANT TO
CALIFORNIA GOVERNMENT CODE SECTION 27383**

RECORDING REQUESTED BY AND
AFTER RECORDATION RETURN TO:

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037-4128

ABOVE THIS LINE FOR RECORDER'S USE ONLY

A.P.N. 726-09-002

**DECLARATION AND NOTICE OF
NON-RENEWAL OF CALIFORNIA LAND CONSERVATION CONTRACT
CONTRACT NO. 1977-2 (Assessor Number 78.907)**

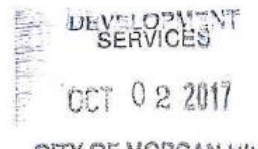
This Declaration and Notice of Non-Renewal of California Land Conservation Contract ("Notice") is executed on and as of the date set forth by the signature below regarding California Land Conservation Contract Number 1977-2 (Assessor Number 78.907) (the "Contract") between the owner of the real property described in this notice and the City of Morgan Hill. The Contract was recorded with the Santa Clara County Recorder's Office on February 24, 1978 in Book D486 at Page 122 of the public records of Santa Clara County as Document Number 5936249.

The below signatory: (1) is the current owner of the real property that is the subject of the Contract ("Owner"), which real property is described in and on EXHIBIT A, Legal Description, attached hereto and incorporated herein by this reference (the "Property"), and (2) has filed this Notice with the City of Morgan Hill on May 19, 2015. By filing this Notice, Owner understands, accepts and agrees that there will be resulting changes to Owner's property tax assessments pursuant to applicable provisions of state law, including without limitation California Revenue and Taxation Code section 426.

Owner hereby provides this Notice as of the date set forth below and the termination date for the Contract will be December 31, 2015 as to the Property described in EXHIBIT A:

OWNER (signatures to be notarized):

Name: CARMEN GROSSWELLER Date: 11-17-15
Address: 3414 ROYAL MEADOW LANE
SAN JOSE, CA 95135



Attachment: 1 - Resolution [Revision 2] (1511 : WA2017-0001 Diana - Grossweiler)

OWNER (signatures to be notarized):

Name: JAMES ANGELO CUNEO Date: 11-17-15

Address: 1671 CRESPI DR.
SONOMA, CA 94086

OWNER (signatures to be notarized):

Name: LOUIS ALBERT CUNEO Date: 11-17-15

Address: 896 S. MARY AVE,
SONOMA, CA 94087

OWNER (signatures to be notarized):

Name: _____ Date: _____

Address: _____

EXHIBIT "A"

BEGINNING at the common corner of Lots 50, 51, 73 and 75 in the center line of Diane Avenue as so shown on the Map hereinafter mentioned, and running thence along said center line of Diana Avenue South $45^{\circ} 23'$ West 3.25 chains to a point in said center line of Diana Avenue distant North $45^{\circ} 23'$ East 3.25 chains from the common corner of Lots 49, 50, 72 and 73 as shown on said Map, thence leaving said center line of Diana Avenue and running at right angles and parallel to the line between said Lots 50 and 51, North $44^{\circ} 37'$ West 15.38 $1/2$ chains to a point in the line between Lots 28 and 50 distant North $45^{\circ} 23'$ East 3.25 chains from the common corner of Lots 27, 28, 49 and 50, as shown on said Map, thence at right angles and along the line between said Lots 28 and 50, North $45^{\circ} 23'$ East 3.25 chains to the common corner for Lots 28, 29, 50 and 51, as shown on said Map, and thence at right angles and along the line between said Lots 50 and 51, South $44^{\circ} 37'$ East 15.36 $1/2$ chains to the point of beginning, being the Northeasterly one-half of Lot 50 as laid down, designated and delineated on the Map entitled, "Morgan Hill Ranch Map No. 1, being C.H. Phillips Subdivision of part of the Rancho Ojo de Agua de la Coche and La Laguna Seca in the County of Santa Clara, California", and which Map was recorded in the office of the County Recorder of the County of Santa Clara, State of California, on June 1, 1892, in Book G, pages 2 and 3 of Maps.

EXCEPTING THEREFROM that portion thereof conveyed to Ervine L. Xavier by Deed recorded December 6, 1956, in Book 3678, page 600 of Official Records, and being more particularly described as follows:

BEGINNING at the intersection of the line common to Lots 50 and 51 with the Northwestern line of Diana Avenue as shown on said Map, and running thence along the line common to Lots 50 and 51 North $44^{\circ} 37'$ West 174.00 feet to an iron pipe; thence leaving said Lot line South $45^{\circ} 27'$ West 85.00 feet to an iron pipe; thence parallel with the line common to Lots 50 and 51 South $44^{\circ} 37'$ east 174.00 feet to an iron pipe in the Northwestern line of Diana Avenue; thence along the Northwestern line of Diana Avenue North $45^{\circ} 23'$ East 85.00 feet to the point of beginning.

ACKNOWLEDGMENT

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

State of California
County of SANTA CLARA

On 11-17-15 before me, GLENN RUSSELL VAN DEN BOSCH Notary Public
(insert name and title of the officer)

personally appeared CARMEN LORA GROSSWEILER,
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 Glenn Russell Van Den Bosch (Seal)

EXHIBIT B

Office of the Assessor

County of Santa Clara

County Government Center, East Wing
70 West Hedding Street, 5th Floor
San Jose, CA 95110-1771
(408) 299-5500 www.sccassessor.org
Assessor@asr.sccgov.org



Lawrence E. Stone, Assessor

November 16, 2017

Carmen Grossweiler
3414 Royal Meadow Lane
San Jose, CA 95135

Re: APN: 726-09-002
Owner: Donald & Carmen Grossweiler, Trustees
Williamson Act Contract: 78.907
Appraisal Date: October 1, 2017

Certificate

In accordance with the provisions of Section 51283 of the government code, I, Lawrence E. Stone, do hereby certify under penalty of perjury that the full cash value of the 4.66 acres of land, being parcel 726-09-002 is \$4,300,000 (four million three hundred thousand dollars). This is the value to be used in calculating the cancellation fee.

The cancellation fee, which is determined by multiplying the full cash value by 12.5 percent is equal to \$537,500 (five hundred thirty seven thousand five hundred dollars). This is the amount of the cancellation fee.

Done this 16th day of November, 2017, at San Jose, California.

Lawrence E. Stone
Assessor

CC: Farl Grundy, Environmental Planner
California Department of Conservation

Assessor's Office Mission: To produce an annual assessment roll including all assessable property in accordance with legal mandates in a timely, accurate, and efficient manner; and to provide current assessment-related information to the public and governmental agencies in a timely and responsive way.

Attachment: 1 - Resolution [Revision 2] (1511 : WA2017-0001 Diana - Grossweiler)

EXHIBIT C**RECORDING REQUESTED BY AND
AFTER RECORDATION RETURN TO:**

**City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037-4128**

**CERTIFICATE OF TENTATIVE CANCELLATION
OF LAND CONSERVATION CONTRACT
(California Government Code Section 51283.4)**

I certify that on December 6, 2017, the City Council of the City of Morgan Hill, County of Santa Clara, State of California adopted Resolution Number _____ a tentative cancellation of a land contract, as further described below. Per California Government Code Section 51283.4, a final certificate of cancellation will be issued and recorded when the conditions and contingencies stated herein are satisfied

1. Name and Address of Landowner:

Donald Grossweiler Trustee ET AL
3414 Royal Meadow Lane
San Jose, CA 95135

2. Description of Property:

The property is described in the legal description, attached hereto as Exhibit A and incorporated herein by reference. (Also known as Assessor's Parcel Numbers 726-09-002.)

3. Description of Land Conservation Contract:

Land Conservation Contract dated February 15, 1978 and recorded on February 24, 1978, as Document No. 5936249 in the Official Records of the County of Santa Clara, California, attached hereto as Exhibit B and incorporated herein by reference.

4. Contingencies and conditions to be satisfied prior to final cancellation of said contract:

- A. The cancellation fee of \$537,500.00, computed under the provisions of Government Code Section 51283(a), which was determined and certified by the City Council, shall be paid in full prior to the issuance of building permits. If the fee is not paid within one year from the date of the recording of the certificate of tentative cancellation, such fee shall be re-computed as of the date of notice when the landowner notifies the City Council that he has satisfied the conditions and contingencies enumerated in this Section 4.

Attachment: 1 - Resolution [Revision 2] (1511 : WA2017-0001 Diana - Grossweiler)

- B. The Landowner shall obtain approval of a Tentative Map, Final Map and Architecture and Site Review approval (the discretionary permits necessary to commence the project), and shall obtain the grading permits necessary to commence grading of the project.

A final certificate of cancellation will be issued and recorded at such time as the conditions and contingencies stated herein are satisfied.

5. Method of approval:

Pursuant to Resolution No. duly adopted by the City Council on December 6, 2017.

Legal Description

EXHIBIT "A"

BEGINNING at the common corner of Lots 50, 51, 73 and 75 in the center line of Diane Avenue as so shown on the Map hereinafter mentioned, and running thence along said center line of Diana Avenue South $45^{\circ} 23'$ West 3.25 chains to a point in said center line of Diana Avenue distant North $45^{\circ} 23'$ East 3.25 chains from the common corner of Lots 49, 50, 72 and 73 as shown on said Map, thence leaving said center line of Diana Avenue and running at right angles and parallel to the line between said Lots 50 and 51, North $44^{\circ} 37'$ West 15.38 $\frac{1}{2}$ chains to a point in the line between Lots 28 and 50 distant North $45^{\circ} 23'$ East 3.25 chains from the common corner of Lots 27, 28, 49 and 50, as shown on said Map, thence at right angles and along the line between said Lots 28 and 50, North $45^{\circ} 23'$ East 3.25 chains to the common corner for Lots 28, 29, 50 and 51, as shown on said Map, and thence at right angles and along the line between said Lots 50 and 51, South $44^{\circ} 37'$ East 15.36 $\frac{1}{2}$ chains to the point of beginning, being the Northeasterly one-half of Lot 50 as laid down, designated and delineated on the Map entitled, "Morgan Hill Ranch Map No. 1, being C.H. Phillips Subdivision of part of the Rancho Ojo de Agua de la Coche and La Laguna Seca in the County of Santa Clara, California", and which Map was recorded in the office of the County Recorder of the County of Santa Clara, State of California, on June 1, 1892, in Book G, pages 2 and 3 of Maps.

EXCEPTING THEREFROM that portion thereof conveyed to Ervine L. Xavier by Deed recorded December 6, 1956, in Book 3678, page 600 of Official Records, and being more particularly described as follows:

BEGINNING at the intersection of the line common to Lots 50 and 51 with the Northwestern line of Diana Avenue as shown on said Map, and running thence along the line common to Lots 50 and 51 North $44^{\circ} 37'$ West 174.00 feet to an iron pipe; thence leaving said Lot line South $45^{\circ} 27'$ West 85.00 feet to an iron pipe; thence parallel with the line common to Lots 50 and 51 South $44^{\circ} 37'$ east 174.00 feet to an iron pipe in the Northwestern line of Diana Avenue; thence along the Northwestern line of Diana Avenue North $45^{\circ} 23'$ East 85.00 feet to the point of beginning.

Exhibit B Land Conservation Contract

Recorded at the request of and when recorded will to:
CITY OF MORGAN HILL
17355 Peak Ave., Morgan Hill, CA 95037

5936249
ASSessor's CODE NO. 78.907

D 486 na122

LAND CONSERVATION CONTRACT

This is an agreement between the City of Morgan Hill,
State of California (hereinafter called "City"), and
ANDREA CUNEO and ANASILIA CUNEO, his wife,
(hereinafter called "Owner").

WHEREAS, Owner possesses certain real property located within
the City of Morgan Hill, State of California, which is presently
devoted to agricultural use and is described in Exhibit B attached
hereto and made a part hereof; and,

WHEREAS, the property is located in an agricultural preserve
heretofore established by City; and,

WHEREAS, both Owner and City desire to limit the use of
the property to agricultural and compatible uses; and,

WHEREAS, the parties have determined that the highest and
best use for the property during the term of this contract, or
any renewal thereof, shall be for agricultural purposes.

NOW, THEREFORE, City and Owner agree as follows:

1. CONTRACT SUBJECT TO CALIFORNIA LAND CONSERVATION ACT OF 1965
This contract is entered into pursuant to Chapter 7
(commencing with Section 51200) of Part 1, Division 1, Title 5
of the Government Code, which is known as the California Land
Conservation Act of 1965. This contract is subject to all of the
provisions of this Act including any amendments thereto which
may hereafter be enacted.

2. RESTRICTION ON USE OF PROPERTY
During the term of this contract, and any and all renewals
thereof, the property described in Exhibit B shall not be used by
Owner, or Owner's successors in interest, for any purpose other
than the production of agricultural commodities for commercial
purposes and uses compatible thereto. A list of all such com-
patible uses is set forth in Exhibit A, attached hereto and by
this reference incorporated herein. City, by uniform rule
adopted by the City Council of the City of Morgan Hill, may from time

-1-

DEVELOPMENT
SERVICES
APR 10 2015
CITY OF MORGAN HILL

WAA-15-01: DIANA GROSSWEILER

Attachment: 1 - Resolution [Revision 2] (1511 : WA2017-0001 Diana - Grossweiler)

D. 486 PAGE 123

to time during the term of this contract and all renewals thereof, add to the list of compatible uses which shall be uniform throughout the agricultural preserve in which the property in Exhibit B is located; provided, however, City may not during the term of this contract or any renewal thereof, without the prior written consent of Owner, remove any of the compatible uses for the subject property which are set forth in Exhibit A. The provisions of this contract and any uniform rule supplementing the list of compatible uses are not intended to limit or supersede the planning and zoning powers of City.

3. TERM OF CONTRACT

This contract shall become effective on the date of execution and shall remain in full force and effect for an initial term of ten years. The initial term of ten years shall be measured commencing as of the first day of January next succeeding the date of execution if the date of execution is between March 2 and December 31. The initial term of ten years shall be measured commencing as of the first day of January of the year of execution if the date of execution is between January 1 and March 1. Each succeeding first day of January shall be deemed to be the annual renewal date of this contract. This contract shall be renewed on each succeeding January 1 and one additional year shall be added automatically to the initial term unless notice of nonrenewal is given as provided in Paragraph 4.

4. NOTICE OF NONRENEWAL

(a) If either party desires in any year not to renew this contract, that party shall serve written notice of nonrenewal upon the other party in advance of the annual renewal date of this contract. Unless such written notice of nonrenewal is served by Owner at least 90 days prior to the renewal date, or by City at least 60 days prior to the renewal date, this contract shall be considered renewed as provided in Paragraph 3 above.

(b) If either party serves written notice of nonrenewal in any year within the time limits of (a) above, this contract

D 486 PAGE 124

shall remain in effect for the balance of the period remaining since the original execution or the last renewal of this contract, as the case may be.

5. NO COMPENSATION

Owner shall not receive any payment from City in consideration of the obligations imposed under this contract, it being recognized and agreed that the consideration for the execution of this contract is the substantial benefit to be derived therefrom, and the advantage that may accrue to Owner as a result of the effect upon the assessed value of the property on account of the restrictions on the use of the property contained herein.

6. SUCCESSORS IN INTEREST

This contract and the restrictions imposed hereunder shall be binding upon, and inure to the benefit of, the successors in interest of the Owner. Whenever any of the property described in Exhibit B is divided, the owner of any parcel may exercise, independent of any other owner of a portion of the divided property, any of the rights of the owner in this contract, including the right to give notice of nonrenewal and to petition for cancellation. The effect of any such action by the owner of a parcel created by the division of land described in Exhibit B shall not be imputed to the owners of the remaining parcels and shall have no effect on this contract as it applies to the remaining parcels of the divided property.

7. CANCELLATION

This contract may be cancelled and a cancellation fee imposed pursuant to the provisions of the Land Conservation Act of 1965.

8. NOTICES

All notices required or permitted by this contract, including notice of a change of address, shall be in writing and given by personal delivery or sent by United States Mail addressed to the party intended to be notified. Notice shall be deemed given as of the date of delivery in person or as of the date when

D 486 Part 125

deposited in any post office or any post office box regularly maintained by the United States Government.

Notice to the County shall be addressed as follows:

CITY OF MORGAN HILL
17655 Peak Avenue
Morgan Hill, California 95037

Notice to Owner shall be addressed as follows:

Andrea and Anasilla Cuneo
454 North Mary Avenue
Sunnyvale, California 94086

9. EMINENT DOMAIN OR OTHER ACQUISITIONS

It is understood that portions of the real property the subject of this agreement, may be required for future freeway, highway, expressway, street, storm, or sanitary sewer purposes. In the event the State of California, the County of Santa Clara, the City of Morgan Hill, or any municipal corporation or other public agency, propose to acquire, through eminent domain or other acquisition in lieu thereof, any of such property for any such purpose, City and Owner agree that, for the purposes of this agreement:

(a) In order to protect Owner and such other public agency, neither party to this contract, nor any other public agency shall be prejudiced by this contract nor shall this contract be used to their detriment.

(b) It is not practicable nor reasonably feasible to locate public improvements for any such project, on any real property other than the real property, or portion thereof, the subject of this agreement.

(c) Owner will and does hereby waive any provisions of the California Land Conservation Act of 1966 (as said Act presently exists or may hereafter be amended) which may in any way prevent or impede such public agencies from acquiring such portions of Owner's land by eminent domain, or other acquisition in lieu thereof.

D 486 PAGE 126

(d) As to any proposed or future public utility or public improvement on the real property described herein, Owner will and hereby does stipulate that:

1. There exists the public necessity for such utility or improvement;
2. Such property is necessary thereof; and,
3. Such utility or improvement is planned or located in the manner which will be most compatible with the greatest public good, and the least public injury.

(e) Owner agrees that the said issues to be determined in such an eminent domain proceeding or in any agreement for acquisition in lieu thereof are those pertaining to Owner's damages and compensation to be paid Owner under the California Constitution.

(f) The provisions of Paragraph 9 hereof shall be binding upon, and inure to the benefit of, any successor or successors in interest of the parties hereto and to the State of California, County of Santa Clara, City of Morgan Hill, or any municipal corporation or other public agency and shall be deemed to run with the real property the subject of this agreement.

(SIGNATURE PAGE FOLLOWS)

D 486 PAGE 122
 FILED FOR RECORD
 AT REQUEST OF
 City of Morgan Hill
 FEB 24 11 11 AM '10
 OFFICIAL RECORDS
 COUNTY OF SANTA CLARA
 HISTORICAL RECORDS

DH

D 486 PAGE 127

contract to be executed by Owner on X November 24, 1976
and by City on February 15, 1978

City of Morgan Hill

Virginia Mae Days
Virginia Mae Days, Mayor

City of Morgan Hill
City Clerk
Madge W. Soares
Madge W. Soares

Andrew Soares
Andrew Soares, Councilman

(Mayor)

signatures must be identical to the
manner in which property is vested.

STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
CITY OF MORGAN HILL

On February 15, 1978 before me, MADGE W. SOARES,
the City Clerk of the City of Morgan Hill, personally appeared
VIRGINIA MAE DAYS, known to me to be the Mayor of the City of Morgan
Hill, the public body described in and that executed the within
instrument, and also known to me to be the person who executed the
within instrument on behalf of the public body therein named, and
acknowledged to me that such public body executed the same.

WITNESS my hand and official seal:

Madge W. Soares
MADGE W. SOARES, City Clerk of the
City of Morgan Hill

STATE OF CALIFORNIA
COUNTY OF SANTA CLARA } ss.

D 486 not 128

On this 24 day of November, 1996, before me, the undersigned, a Notary Public in and for the State of California with principal office in the County of Santa Clara, residing therein, duly commissioned and sworn, personally appeared James B. Willard, known to me to be the

that executed the within instrument, and known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same pursuant to its By-Laws or a resolution of the Board of Directors.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public in and for the
State of California

STATE OF CALIFORNIA
COUNTY OF SANTA CLARA } ss.

On this 24 day of November, 1996, before me, James B. Willard, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared

James B. Willard, known to me to be the person(s) described in and whose name(s) is/are subscribed to the attached instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



James B. Willard
Notary Public in and for the
County of Santa Clara,
State of California

TO BE RECORDED AT NO CHARGE PURSUANT TO
CALIFORNIA GOVERNMENT CODE SECTION 27383

RECORDING REQUESTED BY AND
AFTER RECORDATION RETURN TO:

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037-4128

DOCUMENT: 23165136

Pages: 5



Fees....	* No Fees
Taxes...	
Copies..	22.00
AMT PAID	22.00

REGINA ALCOMENDRAS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
City

RDE # 005
12/07/2015
11:52 AM

ABOVE THIS LINE FOR RECORDER'S USE ONLY

A.P.N. 726-09-002

ENDORSED COPY

**DECLARATION AND NOTICE OF
NON-RENEWAL OF CALIFORNIA LAND CONSERVATION CONTRACT
CONTRACT NO. 1977-2 (Assessor Number 78.907)**

This Declaration and Notice of Non-Renewal of California Land Conservation Contract ("Notice") is executed on and as of the date set forth by the signature below regarding California Land Conservation Contract Number 1977-2 (Assessor Number 78.907) (the "Contract") between the owner of the real property described in this notice and the City of Morgan Hill. The Contract was recorded with the Santa Clara County Recorder's Office on February 24, 1978 in Book D486 at Page 122 of the public records of Santa Clara County as Document Number 5936249.

The below signatory: (1) is the current owner of the real property that is the subject of the Contract ("Owner"), which real property is described in and on EXHIBIT A, Legal Description, attached hereto and incorporated herein by this reference (the "Property"), and (2) has filed this Notice with the City of Morgan Hill on May 19, 2015. By filing this Notice, Owner understands, accepts and agrees that there will be resulting changes to Owner's property tax assessments pursuant to applicable provisions of state law, including without limitation California Revenue and Taxation Code section 426.

Owner hereby provides this Notice as of the date set forth below and the termination date for the Contract will be December 31, 2015 as to the Property described in EXHIBIT A:

OWNER (signatures to be notarized):

Name:

Carmen Lora Grossweiler

Date:

11-12-15

Address:

3414 CARMEN LORA GROSSWEILER
ROYAL MEADOW LN.

SAN JOSE, CA 95135

Attachment: 2 - Notice of Nonrenewal (1511 : WA2017-0001 Diana - Grossweiler)

OCT 02 2017

Date/Time Received

CITY OF MORGAN HILL

PETITION FOR CANCELLATION OF LAND CONSERVATION (WILLIAMSON ACT) CONTRACT
(Gov. Code § 51200 *et seq.*)

A non-refundable minimum filing fee will be charged at the time of application. When the fixed fee is exhausted, the applicant will be required to pay additional hourly fees to cover the cost of any additional staff time to process the application. Payment of a filing fee does not guarantee approval and additional fees may be required.

File completed application with:

Clerk of the Board of Supervisors**70 West Hedding Street, East Wing 10th Floor****San Jose, California 95110****(408) 299-5001****1. PROPERTY OWNER INFORMATION** (Print or type full owner names/same as name appears on current deed)
A. Name(s) of all Owner(s)

James A. Cuneo and Alba Cuneo as trustees of the Cuneo Family 1999 Trust Dated May 3, 1999

Louis A. Cuneo and Roxanne Cuneo as trustees of the Cuneo Family 1997 Trust Dated September 18 1997

Donald Grossweiler and Carmen Grossweiler as trustees of the Grossweiler Family Trust Dated April 20 2005

B. Contact Information for notices/correspondence

Scott Murray

Name

175 E. Main Ave Suite 130 Morgan Hill CA 95037

Address

408-406-6000

Daytime Telephone Number

smurray@interorealestate.com

E-mail address (optional)

2. LAND CONSERVATION CONTRACT

Pursuant to Government Code Section 51282.1, the foregoing property owner(s) petition the Board of Supervisors for cancellation of Land Conservation Contract No. 1977-2 with respect to the Assessor Parcel Number (APN) described in section 3.

3. ASSESSOR PARCEL NUMBERS and ACREAGEAPN 726-09-001 Acreage .34

APN _____ Acreage _____

APN 726-09-002 Acreage 4.66

APN _____ Acreage _____

4. PROPERTY LOCATION (Provide the street address and describe the location, *e.g.* N. side of Main St. between 1st and 2nd Streets)APN 726-09-001 Address/Location Description N. side of Diana Ave between Lotus Way and Serene DriveAPN 726-09-002 Address/Location Description _____**OFFICIAL USE ONLY**

Filing Fee Receipt No. _____ Deputy Clerk _____

5. GENERAL PLAN DESIGNATION OF PROPERTY

The property that is the subject of this application currently has the following County General Plan land use designation:

_____ Hillsides _____ Agriculture _____ Ranchlands X Other

6. ZONING OF PROPERTY

The property that is the subject of this application is currently zoned as follows:

_____ A (Exclusive Agriculture) _____ HS (Hillsides)

_____ AR (Agricultural Ranchlands) X Other

7. CITY URBAN SERVICE AREA

Is the property inside a city urban service area? X Yes _____ No

If yes, name of city Morgan Hill

8. ALTERNATE LAND USE

Describe in detail the proposed alternate land use (proposed land use that is not commercial agriculture).

9. CANCELLATION FINDINGS

Please explain how the petition for cancellation meets all of the requirements under one of the two criteria below.

(1) The cancellation is consistent with the purposes of the Williamson Act and meets all of the following findings.

(a) A notice of nonrenewal has been filed for all of the parcels pursuant to Section 51245.

Date notice of nonrenewal was filed with the Clerk of the Board of Supervisors. 12-15-2015

(b) The removal of adjacent lands from agricultural use is not likely.

(c) The proposed alternative use is consistent with the County General Plan.

(d) Cancellation will not result in discontinuous patterns of urban development.

(e) There is no proximate noncontracted land that is both available and suitable for the proposed alternative use, or development of the land that is the subject of this cancellation application would

provide more contiguous patterns of urban development than other proximate noncontracted land that is available and suitable for the proposed alternative use.¹

[Note: Evidentiary support for this finding may be provided by contacting a real estate professional to perform a search of current listings of similar properties not restricted by a Williamson Act contract within a several mile radius of the subject parcel and provide an analysis of data results.]

- OR -

(2) The cancellation is in the public interest and meet all of the following findings:

(a) Other public concerns substantially outweigh the objectives of the Williamson Act.

(b) There is no proximate noncontracted land that is both available and suitable for the proposed alternative use, or development of the land that is the subject of this cancellation application would provide more contiguous patterns of urban development than other proximate noncontracted land that is available and suitable for the proposed alternative use.

[Note: Evidentiary support for this finding may be provided by contacting a real estate professional to perform a search of current listings of similar properties not restricted by a Williamson Act contract within a several mile radius of the subject parcel and provide an analysis of data results.]

10. ATTACHMENTS

- A. Copy of current grant deed for the property.
- B. APN map showing property proposed for cancellation (8-1/2"x11" size paper).
- C. Description of proposed alternate land use.
- D. Copy of recorded notice(s) of nonrenewal for all APNs.
- E. Evidence that there is no proximate land that is not covered by a Williamson Act contract and is both available and suitable for the proposed alternative use, or development of the land that is the subject of this cancellation application would provide more contiguous patterns of urban development than other proximate noncontracted land that is available and suitable for the proposed alternative use.

¹ "Proximate noncontracted land" means land that is not restricted by a Williamson Act contract, is sufficiently close to land which is so restricted that it can serve as a practical alternative for the proposed use. "Suitable" means that the salient features of the proposed use can be served by land that is not restricted by a Williamson Act contract. The unrestricted land may be a combination of contiguous or discontiguous parcels. (Government Code § 51282(b)(5).)

11. PROPERTY OWNER SIGNATURE(S)

The undersigned property owners declare under penalty of perjury pursuant to the laws of the State of California that the information supplied on this petition is true and correct:

DocuSigned by:

Donald D Grossweiler

Signature

(Print Name/Title)

DocuSigned by:

Carmen L Grossweiler

Signature

(Print Name and Title)

DocuSigned by:

Alba Cuneo

Signature

(Print Name/Title)

DocuSigned by:

James R. Cuneo

Signature

(Print Name/Title)

DocuSigned by:

Rosa R. Cuneo

Signature

DocuSigned by:

Louis Cuneo

Signature

11. PROPERTY OWNER SIGNATURE(S)

The undersigned property owners declare under penalty of perjury pursuant to the laws of the State of California that the information supplied on this petition is true and correct:

x

Signature

(Print Name/Title)

x

Signature

(Print Name and Title)

x

Signature

(Print Name/Title)

x

Signature

(Print Name/Title)



MH engineering Co.

16075 Vineyard Blvd., Morgan Hill, CA 95037
(408) 779-7381/226-3050; Fax (408) 226-5712

DEVELOPMENT
SERVICES

September 28, 2017

OCT 02 2017

MH 216134

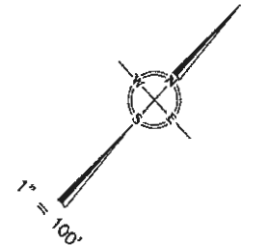
Petition for Cancellation of Williamson Act Contract:

CITY OF MORGAN HILL

8. Proposed Alternative use for APN 726-09-001 & 002

Existing General Plan is Residential Detached Medium. Zoning is R-1-7,000. Residential development existing on all adjacent sides. Proposed development will allow for approximately 27 lots compatible with the existing neighborhood and would be consistent with the General Plan & Zoning. Development of this project will allow for the street circulation completion of Lotus Way & Weichert Drive.

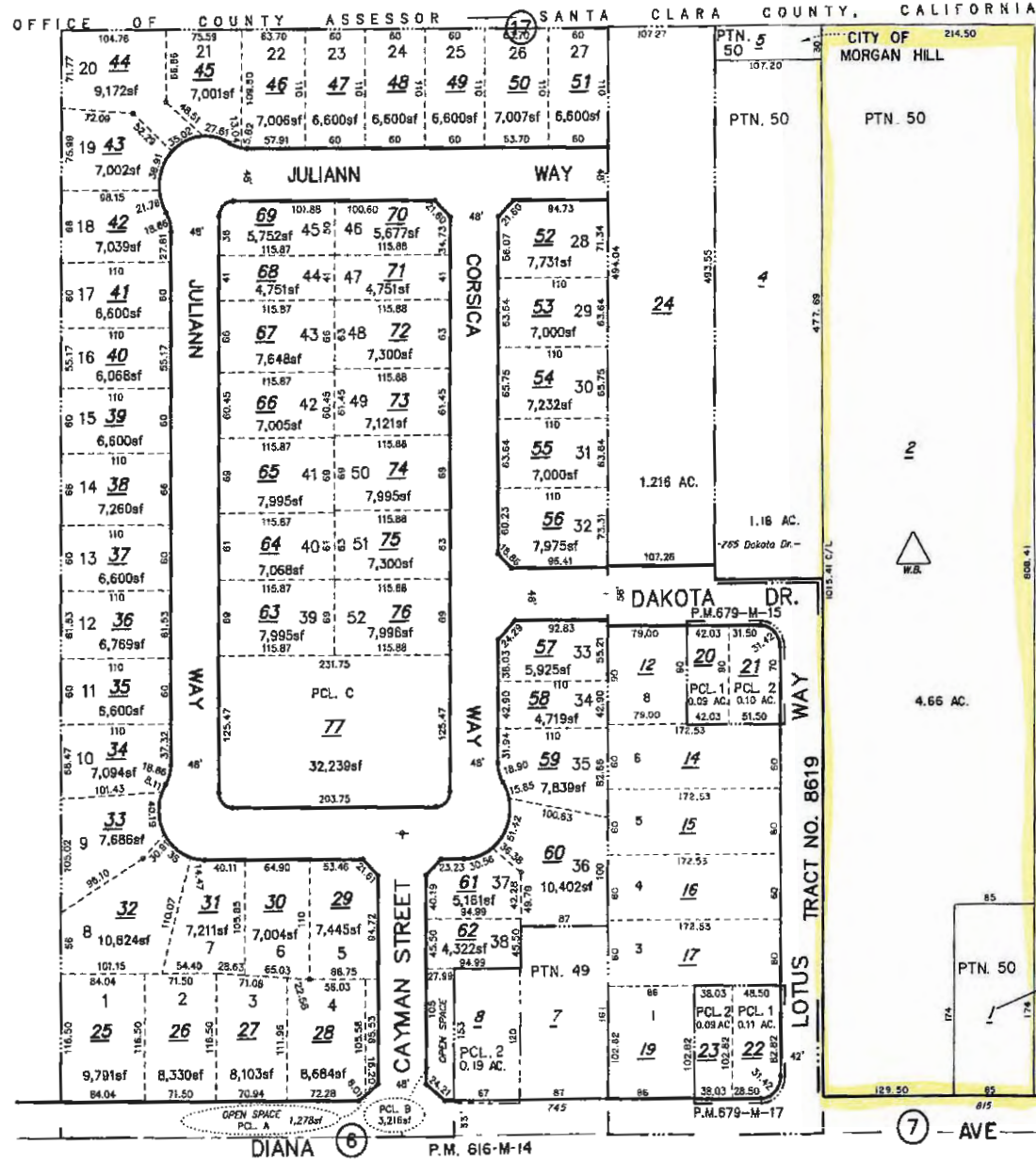
Attachment: 4 - Letter of Justification (1511 : WA2017-0001 Diana - Grossweiler)



MORGAN HILL RANCH MAP No. 1

This map/plan is being furnished as an aid in locating the herein described land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the Company does not insure dimensions, distances, locations of easements, easements or other matters shown thereon.

784 DET. MAP 202
LAWRENCE E. STONE - ASSESSOR
Controlled map for assessment purposes only.
Compiled under R. & T. Code, Sec. 327.
Effective Roll Year 2016-2017



ESPERANZA SUBDIVISION
TRACT No. 10277
882-M-1

This map/plan is being furnished as an aid in locating the herein described land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the Company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.



State of California • Natural Resources Agency
 Department of Conservation
Division of Land Resource Protection
 801 K Street • MS 14-15
 Sacramento, CA 95814
 (916) 324-0850 • FAX (916) 327-3430

Edmund G. Brown Jr., Governor
 Kathryn M. Lyddan, Division Director

November 28, 2017

VIA EMAIL: RICH.BUIKEMA@MORGANHILL.CA.GOV

Ms. Paolini, Principal Planner
 City of Morgan Hill Community Development Department
 17555 Peak Avenue
 Morgan Hill, CA 95037

Dear Ms. Paolini:

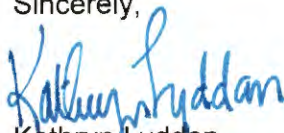
TENTATIVE CANCELLATION NOTICE, WA2017-0001 LAND CONSERVATION (WILLIAMSON ACT) CONTRACT CANCELLATION 416 ACRES, 815 DIANA AVENUE, (APN: 726-09-002) CONTRACT NO. 1977-217-01

Thank you for submitting notice to the Department of Conservation (Department) as required by Government Code §51284.1. The petition proposes to cancel a 4.6-acre parcel subject to a Land Conservation Act contract in the City of Morgan Hill (City). The applicant has proposed residential development as an alternative use, which is consistent with the City's General Plan land use designation as "Residential Detached Medium" allowing 7 units per net acre. The parcel is currently surrounded by residential use and is less than 10 acres.

The requirements for cancellation of land conservation contracts are outlined in Government Code section §51282. The City must document the justification for the cancellation through a set of findings. The project is being considered under the consistency with the Williamson Act findings, Government Code §51282(b). From the available information, it appears the County is able to make all of the required findings as stated in the staff review and applicant petition.

Thank you for the opportunity to provide comments on the proposed cancellation. Please consult Government Code §51284 for further requirements and notifications to the Department. If you have any questions concerning our comments, please contact Annie Giovacchini, Environmental Planner, at (916) 324-9038 or via email at annie.giovacchini@conservation.ca.gov.

Sincerely,


 Kathryn Lyddan
 Division Director

Attachment: 5 - DOC Letter (1511 : WA2017-0001 Diana - Grossweiler)

Office of the Assessor

County of Santa Clara

County Government Center, East Wing
70 West Hedding Street, 5th Floor
San Jose, CA 95110-1771
(408) 299-5500 www.sccassessor.org
Assessor@asr.sccgov.org



Lawrence E. Stone, Assessor

November 16, 2017

Carmen Grossweiler
3414 Royal Meadow Lane
San Jose, CA 95135

Re: APN: 726-09-002
Owner: Donald & Carmen Grossweiler, Trustees
Williamson Act Contract: 78.907
Appraisal Date: October 1, 2017

Certificate

In accordance with the provisions of Section 51283 of the government code, I, Lawrence E. Stone, do hereby certify under penalty of perjury that the full cash value of the 4.66 acres of land, being parcel 726-09-002 is \$4,300,000 (four million three hundred thousand dollars). This is the value to be used in calculating the cancellation fee.

The cancellation fee, which is determined by multiplying the full cash value by 12.5 percent is equal to \$537,500 (five hundred thirty seven thousand five hundred dollars). This is the amount of the cancellation fee.

Done this 16th day of November, 2017, at San Jose, California.

Lawrence E. Stone
Assessor

CC: Farl Grundy, Environmental Planner
California Department of Conservation

DEVELOPMENT
SERVICES

OCT 23 2017

CITY OF MORGAN HILL

October 16, 2017

Scott M. Murray BRE 01149081
 Intero Real Estate Services
 175 E. Main Ave Suite 130
 Morgan Hill, CA 95037
 408.406.6000

Re: Current available properties within a 3-mile radius of subject property located at 815 Diana Ave Morgan Hill, CA 95037 APN#726-09-002

To Whom It May Concern:

The attached map shows available properties as of 10/19/2017 within a 3-mile radius of 815 Diana Ave. Morgan Hill. I will address each property below and explain why the parcels are not suitable for the proposed development on 815 Diana Avenue.

1. 1490 Olive Avenue is located outside the city limits.
2. Condit Road is located outside the city limits.
3. Hendry Drive is located outside the city limits.
4. Barrett Avenue is located outside the city limits.
5. Hale Avenue is located outside the city limits.
6. 15860 Jackson Oaks Drive parcel is only 15,246 square feet and cannot be subdivided.
7. 280 Tilton Avenue parcel is only 34,272 square feet and only can be subdivided into 2 lots.
8. Seymour Avenue is located outside the city limits.
9. Seymour Avenue is located outside the city limits.
10. 17585 Blue Jay Drive parcel is hillside and cannot be subdivided.
11. 17381 Holiday Drive parcel is hillside and cannot be subdivided.
12. Rocky Ridge Road parcel is hillside and cannot be subdivided.
13. 2101 Dahlberg Drive parcel is hillside and cannot be subdivided.
14. Del Monte Avenue parcel is hillside and cannot be subdivided.

In closing the above currently available properties are not suitable for proposed development due to size and located outside the city limits.

Thank you,

Scott Murray
 Scott M. Murray BRE 01149081
 Intero Real Estate Services

Attachment: 7 - Applicant Report (1511 : WA2017-0001 Diana - Grossweiler)

Cross Property Agent 1 Line

Distance	MLS #	S	Street Address	Price	DOM	Bds	Bths	SqFt	Lot Size	Postal City	Class	Age
2.4 mi	1	ML81652713	A 14940 Olive Avenue	\$2,499,999	150	0	0		9.43 Acres	Morgan Hill	Residential Development Land	
1.2 mi	2	ML81635113	A 0 Condit Road	\$2,000,000	283	0	0		3.85 Acres	Morgan Hill	Res. Land Agricultural	
1.4 mi	3	ML81675632	A 0 Hendry	\$1,785,000	54	0	0		19.98 Acres	Morgan Hill	Res. Land Agricultural	
1.4 mi	4	ML81649332	A 0 Barrett Avenue	\$1,200,000	171	0	0		9.68 Acres	Morgan Hill	Res. Land Agricultural	
2.7 mi	5	ML81634084	A 0 Hale Avenue	\$975,000	304	0	0		12.33 Acres	Morgan Hill	Res. Land Agricultural	
2.9 mi	6	ML81655656	A 15860 Jackson Oaks Drive	\$499,000	129	0	0		15.24 Acres	Morgan Hill	Res. Land Single Family	
2.5 mi	7	ML81675463	A 280 Tilton Avenue	\$495,000	55	0	0		6 Lot SqFt	Morgan Hill	Res. Land Single Family	
2.0 mi	8	ML81672555	A 0000 Seymour Avenue	\$480,000	78	0	0		34,272 Lot SqFt	Morgan Hill	Res. Land Agricultural	
2.1 mi	9	ML81597090	A 000 Seymour Avenue	\$435,888	206	0	0		3.77 Acres	Morgan Hill	Res. Land Agricultural	
2.1 mi	10	ML81501868	A 17585 Blue Jay Drive	\$429,950	785	0	0		3.87 Acres	Morgan Hill	Res. Land Agricultural	
2.4 mi	11	ML81681037	A 17381 Holiday Drive	\$385,000	9	0	0		27,443 Lot SqFt	Morgan Hill	Res. Land Single Family	
2.9 mi	12	ML81644562	A 2105 Rocky Ridge Road	\$385,000	203	0	0		20,402 Lot SqFt	Morgan Hill	Res. Land Single Family	
2.8 mi	13	ML81514821	A 2101 Dahlberg Drive	\$295,000	710	0	0		38,850 Lot SqFt	Morgan Hill	Res. Land Single Family	
0.9 mi	14	ML81671065	A 0 Del Monte Avenue	\$49,500	89	0	0		2.89 Acres	Morgan Hill	Res. Land Single Family	
									6,750 Lot Sq Ft	Morgan Hill	Res. Land Single Family	

0 Condit Road

A \$2,000,000

Morgan Hill DOM: 283

beds, 10 baths SqFt:

2 MLS #: ML81635113 Lot: 167,706 SqFt (Tax)

This is a great investment opportunity! This property is currently in the Santa Clara County but it is adjacent to the City of Morgan Hill. You have the Morgan Hill Aquatic Center north of the property and a Hotel right across the street. Easy access to 101 from Tennant Ave off Condit.

0 Hendry

A \$1,785,000

Morgan Hill DOM: 54

beds, 10 baths SqFt:

MLS #: ML81675632 Lot: 870,328 SqFt (Tax)

20 Acres of flat land with views of the city lights and mountain. Great development opportunity for developers, builders, investors or individual home owner. Enjoy the convenience to shopping (Gilroy Outlets Nearby) Anderson Lake, Chesbro Reservoir, Coyote Creek Bike Trail, Spina Farms Pumpkin Patch, Henry W Coe State Park, Uvas Canyon County Park, Uvas Reservoir. YMCA Near Highspeed Railway Station. Easy access to freeway 101. Morgan Hill is a city in Santa Clara County, California, at the southern tip of Silicon Valley, in the San Francisco Bay Area. Morgan Hill is primarily an upscale residential community for Silicon Valley, as well as the seat for several high tech companies, including Anritsu, Flextronics, Velodyne LIDAR, and TenCate Advance Composites. Morgan Hill a prominent dining, entertainment, and recreational destination in Silicon Valley, luxury hospitality, nature parks and wineries. It is on the Wine Trail. Located within the Nordstrom elementary school boundaries.

0 Barrett Avenue

A \$1,200,000

Morgan Hill DOM: 171

beds, 10 baths SqFt:

4 MLS #: ML81649332 Lot: 421,776 SqFt (Tax)

Great opportunity to build your dream home and a limited-size secondary dwelling on a 9.64 acre-flat land. View of hills very close to downtown Morgan Hill with easy freeway access. Close to shopping and restaurants.

0 Hale Avenue

A \$975,000
 Morgan Hill DOM: 304
 beds, 10 baths SqFt:
 MLS #: ML81634084 Lot: 537,045 SqFt (Tax)

- 5 Large almost all usable property on the northern end of Morgan Hill. Centrally located to San Jose and Morgan Hill. Serene setting set against acres of hills and wide open space. No close neighbors. The central location and large amount of usable land suit just about any need. Perfect for horses, and your dream home surrounded by open fields.

15860 Jackson Oaks Drive

A \$499,000
 Morgan Hill DOM: 129
 beds, 10 baths SqFt:
 MLS #: ML81655656 Lot: 15,246 SqFt (Tax)

- 6 Views, views, views! This is one of the premier lake and mountain view lots in the exclusive Jackson Oaks Development. The lot is ready to build with all utilities available and ready to go. The lot features beautiful oak trees and a place to build your dream home. You can look forward to the opportunities to enjoy the lake, community pool, clubhouse and all the surrounding available outdoor activities right in your back yard. Professional building plans are available with purchase.

280 Tilton Avenue

- A \$495,000
 Morgan Hill DOM: 55
 beds, 10 baths SqFt:
 7 MLS #: ML81675463 Lot: 34,272 SqFt (Tax)

3/4 Acre lot ready for your custom home. City utilities and services. Great views of the hills to the west. Possible lot split allowing 2 homes!! Zoning is R-12000 per the City.

0000 Seymour Avenue

A \$480,000
 Morgan Hill DOM: 78
 beds, 10 baths SqFt:
 MLS #: ML81672555 Lot: 164,221 SqFt (Tax)

- 8 Great potential to build a main house and a detached guest house in Morgan Hill on 3.77 acres! Located very close to downtown Morgan Hill where you can enjoy award winning restaurants, farmers market and fun year-round festivals! Don't miss this opportunity to have your own custom-built ranch home! Contact the Santa Clara County Planning Department for further questions on building rules/restrictions, if any. Perc testing has been completed for septic.

000 Seymour Avenue

A \$435,888

Morgan Hill DOM: 206

beds, 10 baths SqFt:

9 MLS #: ML81597090 Lot: 168,658 SqFt (Tax)

3.77 acres of prime Morgan Hill land!!! Build your dream home and an in-law to include space for horses, other livestock, private vegetable gardens, fruit orchards, barns, stables, pools, and MUCH MORE while appreciating the serenity and beautiful vistas which surround this one of a kind property!!!!



17585 Blue Jay Drive

A \$429,950

Morgan Hill DOM: 785

beds, 10 baths SqFt:

MLS #: ML81501868 Lot: 27,443 SqFt (Other)



10 Build your home amidst the native oaks - OR we will build it for you! Gorgeous panoramic views of Lake Anderson & the surrounding hillsides. All city utilities and sewer services available to this fabulous lot. In prestigious community of Holiday Lake Estates overlooking Lake Anderson - a serene woodland community with abundant wildlife, yet you are only minutes to all town conveniences and major commute avenues into Silicon Valley. One of the few remaining lots in Holiday Lake Estates. In attendance area of Nordstrom Elementary School.

17381 Holiday Drive

A \$385,000

Morgan Hill DOM: 9

beds, 10 baths SqFt:

MLS #: ML81681037 Lot: 20,402 SqFt (Tax)



11 Welcome to the beautiful Holiday Lake Estates. This exceptional piece of property abounds with potential with stunning views of Lake Anderson and the tree and grass covered hills surrounding. Almost half an acre in the highly desired Holiday Lake Estates with an easy commute to Silicon Valley and Hwy 101. The vibrant community of Morgan Hill has top restaurants, art boutiques, farmers' market, and more! Visit dozens of wineries, Henry Coe State Park or go boating on the lake. Imagine your new life here in Morgan Hill...

2105 Rocky Ridge Road

A \$385,000

Morgan Hill DOM: 203

12 beds, 10 baths SqFt:

MLS #: ML81644562 Lot: 38,850 SqFt (Tax)



Build your dream home on this lot in a quite neighborhood with gorgeous views.

2101 Dahlberg Drive

A \$295,000
 Morgan Hill DOM: 710
 beds, 10 baths SqFt:

13 MLS #: ML81514821 Lot: 125,911 SqFt (Tax)

This Beautiful country lot is located on the North East corner of Llagas Road and Dahlberg Drive. Easy access from either road. It is only minutes away from Downtown Morgan Hill. Property Borders on Morgan Hill but is in the county.

0 Del Monte Avenue

A \$49,500
 Morgan Hill DOM: 89
 beds, 10 baths SqFt:
 MLS #: ML81671065 Lot: 6,750 SqFt (Tax)

14 Land is not easy to be located. Please ask your agent to request directions by email only. Directions would be very hard to visualize by phone. Please ask your agent to request directions by email only. Directions would be very hard to visualize by phone. Please ask your agent to request directions by email only. Directions would be very hard to visualize by phone. Verify land usage with city of Morgan Hill for accurate informations. No surveys were performed. Thank you



CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2017

PREPARED BY: Terry Linder, Interim Planning Manager
APPROVED BY: City Manager

ZONING AMENDMENT, ZA2017-0009: EAST DUNNE - YOUNG: A REQUEST TO AMEND THE ZONING DESIGNATION ON A 3.49-ACRE PARCEL LOCATED ON THE NORTH SIDE OF EAST DUNNE AVENUE APPROXIMATELY 610 FEET WEST OF WALNUT GROVE DRIVE FROM THE R-2 3,500 TO R-3 MEDIUM DENSITY ZONING DISTRICT

RECOMMENDATION(S)

1. Open/close public hearing;
2. Waive first and second reading of the ordinance; and
3. Introduce ordinance approving amendment to the City zoning map.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Preserving and Cultivating Public Trust

2017 Strategic Priorities

Inclusiveness

REPORT NARRATIVE:

In July 2016, the City of Morgan Hill adopted the 2035 General Plan. The 2035 General Plan Land Use Map amended the land use designation on the subject property from Multi-Family Low (5-14 dwelling units per acre) to Residential Attached Medium (16-24 dwelling units per acre). The General Plan designation on the parcels to the south, east and west were also amended from Multi-Family Low to Residential Attached Medium. The City's effort to update the Zoning Map to reflect the new 2035 General Plan land-use map is expected to conclude in March 2018.

The filing deadline for the Residential Development Control System (RDSCS) competition is January 4, 2018. To compete in the RDSCS application process, a project must be found consistent with the General Plan and Zoning. The applicant Dividend Homes, intends to compete in the 2017 RDSCS competition and has filed the Zoning Amendment application to comply with the RDSCS requirements. The requested R-3 zoning designation would be consistent with the Residential Attached Medium General Plan land use designation. The adjacent parcels to the south, east and west would be rezoned as part of the City's zoning map update in March 2018.

The proposed R-3 Multi-Family Medium Density zone district is the appropriate zoning for the property given its the site's General Plan Designation of Residential Attached Medium (16-24 dwelling units per acre).

COMMUNITY ENGAGEMENT: Involve

The proposed project was publicly noticed (mailing to property owners within 300 feet of the expanded project site and newspaper legal noticing) for the minimum 10-day period.

ALTERNATIVE ACTIONS:

Deny applicant's request and direct staff to create a new zoning designation consistent with the General Plan designation.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On November 14, 2017, the Planning Commission considered the application request to rezone the 3.49-acre parcel from R-2 3,500/RPD to R-3. The Planning Commission voted 6-1 to rezone the parcel, with Commissioner Mueller voting no. Commissioner Mueller believed the R-3 designation does not provide an appropriate transition to the adjacent R-1 7,000 lots to the north.

FISCAL AND RESOURCE IMPACT:

Application fees were collected to cover the cost of processing the zoning amendment request.

CEQA (California Environmental Quality Act): The project was reviewed as part of Master Environmental Impact Report for the 2035 General Plan update and has been found consistent with the California Environmental Quality Act Section 21083 and Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning), there are no new environmental effects peculiar to the property or the project and no new information, and thus additional environmental review is not required; The Zoning Amendment complies with the General Plan as required by Government Code Section 65860 and as noted in this report.

LINKS/ATTACHMENTS:

1. Planning Commission Staff Report
2. Ordinance



PLANNING COMMISSION STAFF REPORT

MEETING DATE: November 14, 2017

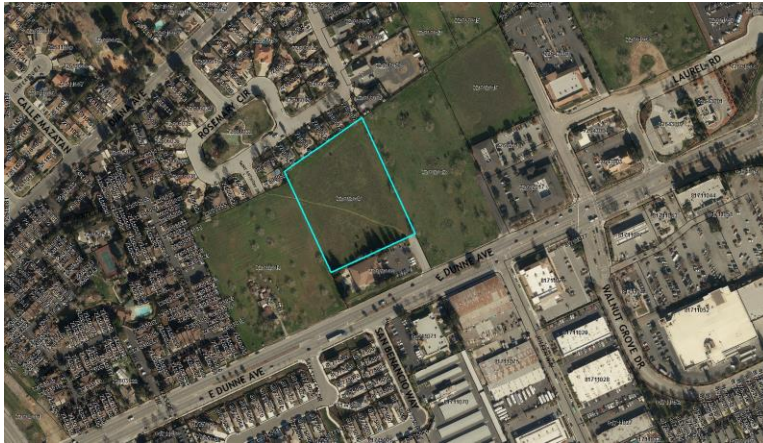
PREPARED BY: Terry Linder, Interim Planning Manager
 APPROVED BY: Jennifer Carman, Community Development Director

ZA2017-0009: EAST DUNNE - YOUNG: REQUEST FOR A ZONING AMENDMENT FROM THE R-2 3,500 TO R-3 MEDIUM DENSITY ZONE DISTRICT. ASSESSOR PARCEL NUMBER 726-02-007 LOCATED ON THE NORTH SIDE OF EAST DUNNE AVENUE.

RECOMMENDATION(S)

1. Adopt Resolution Recommending City Council approval of the Zoning Amendment.
2. No further CEQA action required.

LOCATION MAP



PROJECT SUMMARY:

1. Location: North side of East Dunne Avenue approximately 610 feet west of Walnut Grove Drive
2. Site Area: 3.49 Acres
3. General Plan: Residential Attached Medium (16 to 25 du/ac)
4. Zoning: R-2 3,500/Residential Planned Development(RPD)

BACKGROUND

In July 2016, the City of Morgan Hill adopted the 2035 General Plan. The 2035 General

Plan Land Use Map amended the land use designation on the subject property from Multi-Family Low (5-14 dwelling units per acre) to Residential Attached Medium (16-24 dwelling units per acre). The General Plan designation on the parcels to the south and east were also amended from Multi-Family Low to Residential Attached Medium. The parcel to the west was amended to both Multi-Family Low and Mixed-Use Flex (7-24 dwelling units per acre).

The applicant submitted a Preliminary Residential Development Control System (RDSCS) application on November 1, 2017 proposing the development of 46 residential attached units. The proposed rezone is a requirement for the applicant to compete in the 2017 RDSCS process and must be completed by the Final RDSCS application filing deadline of January 4, 2018.

PROJECT DESCRIPTION

A rezone is being initiated for a parcel located on the north side of East Dunne Avenue by the applicant, Dividend Homes. A letter of justification has been provided (Attachment 2). The proposed amendment would change the zoning map designation on a 3.5-acre parcel from R-2 3,500/RPD to R-3 to be consistent with the General Plan Land Use Designation of Residential Attached Medium.

Site Description

The parcel to be rezoned includes the following:

1. APN 726-02-007 (Tsai Young H and So M et al, Owner): The 3.5-acre property located on the north side of East Dunne Avenue (adjacent to the Kyono property) is currently zoned R-2 3,500/RPD and is undeveloped.

Surrounding Zoning/Land Use

North:	R-1 7,000/Single family detached homes on lots approximately 7,000 square feet in size
South:	R-2 3,500/RPD/Kinder Care Facility
East:	R-2 3,500/RPD/Undeveloped
West:	R-2 3,500/RPD/Undeveloped

ANALYSIS:

The proposed Zoning Amendment was analyzed for consistency with the: 1) General Plan and 2) Zoning Code:

The City's effort to update the Zoning Ordinance and Zoning Map to reflect the new 2035 General Plan is expected to conclude in early 2018. Without this application, the subject site would be rezoned R-3 Medium Density Residential District to be consistent with the General Plan as part of that process.

No change in use or development of the site is allowed because the zoning remains inconsistent with the General Plan land use designation. Amending the site's zoning will allow future residential development consistent with the City's General Plan land use diagram and General Plan goals and policies related to the provision of an adequate housing supply.

C. The proposed amendment does not grant a change in land use from commercial or industrial to a residential land use for property incorporated into the urban service boundary after December 7, 1990 unless it can be determined pursuant to the terms of [Section 18.78.070](#) of the municipal code that the amount of undeveloped, residentially developable land on the same side of Monterey Road as the proposed amendment is insufficient to accommodate five years' worth of residential growth.

The property was included within the Urban Service Area prior to 1990. The requested change in zoning does not change the land use or zoning from commercial or industrial to residential and is therefore not subject to this provision.

Community Engagement

The proposed project was publicly noticed (mailing to property owners within 300 feet of the project and newspaper legal noticing) for the minimum 10-day period.

Conclusion

The proposed R-3 Medium Density Residential District is the appropriate zoning for the property given the site's General Plan Land Use Designation of Residential Attached Medium (16-24 dwelling units per acre). Staff recommends approval of the proposed Zoning Amendment.

California Environmental Quality Act (CEQA):

The project was reviewed as part of Master Environmental Impact Report for the 2035 General Plan update and has been found consistent with the California Environmental Quality Act Section 21083.3 and Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning), there are no new environmental effects peculiar to the property or the project and no new information, and thus additional environmental review is not required. The Zoning Amendment complies with the General Plan as required by Government Code Section 65860 and as noted in this report.

LINKS/ATTACHMENTS:

1. Planning Commission Resolution
2. Letter of Justification

RESOLUTION NO. _____

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF MORGAN HILL RECOMMENDING
APPROVAL OF ZONING AMENDMENT ZA2017-0009
CHANGING THE ZONING DESIGNATION OF A 3.5 ACRE
PARCEL LOCATED ON THE NORTH SIDE OF EAST
DUNNE AVENUE APPROXIMATELY 610 FEET WEST OF
WALNUT GROVE DRIVE (ASSESSOR PARCEL NUMBER
726-02-007), FROM R-2 3,500/RPD TO R-3 MEDIUM
DENSITY RESIDENTIAL DISTRICT**

WHEREAS, an application for rezoning of the property located on the north side of East Dunne Avenue approximately 610 feet west of Walnut Grove Drive, APN 726-02-007 was made by the Dividend Homes Inc. on behalf of the owners of the property, Hsing-Tsai and So-Mei-Tsai Young and Sherry H.C. Tsai and Chau-Ran Wang (“Owners”), from R-2 3,500/Residential Planned Development to R-3 Medium Density Residential to be consistent with the General Plan;

WHEREAS, the rezoning is necessary to achieve consistency with the General Plan to allow Owners to participate in the 2017 Residential Development Control System (RDCS) process;

WHEREAS, the General Plan designates the above-referenced parcel as Residential Attached Medium;

WHEREAS, such application was considered by the Planning Commission at their regular meeting of November 14, 2017 at which time the Planning Commission recommended approval of Application ZA2017-0009: E. Dunne Avenue-Young; and

WHEREAS, the project site was reviewed as part of Master Environmental Impact Report for the 2035 General Plan update and has been found consistent with the requirements of the California Environmental Quality Act. No new environmental effects peculiar to the property or the project and no new information has been identified, and thus additional environmental review is not required pursuant to Public Resources Code Section 21083.3 and CEQA Guidelines Section 15183; and

WHEREAS, the Zoning Amendment complies with the General Plan as required by Government Code Section 65860; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

Resolution No. _____

Page 2

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

SECTION 1. The proposed Zoning Amendment is consistent with the General Plan.

SECTION 2. The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

SECTION 3. Further development shall comply with the site development standards of the R-3 Medium Density Residential District.

SECTION 4. The Planning Commission recommends that the City Council approve the Zoning Amendment from R-2 3,500/RPD to the R-3 Medium Density Residential District to the site described attached hereto, as Exhibit "A", and by this reference incorporated herein.

PASSED AND ADOPTED THIS 14th DAY OF NOVEMBER 2017, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

JENNA LUNA, Deputy City Clerk

JOHN McKAY, Chair

Date: _____

EXHIBIT A**CITY OF MORGAN HILL****LEGAL DESCRIPTION**

Real property in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

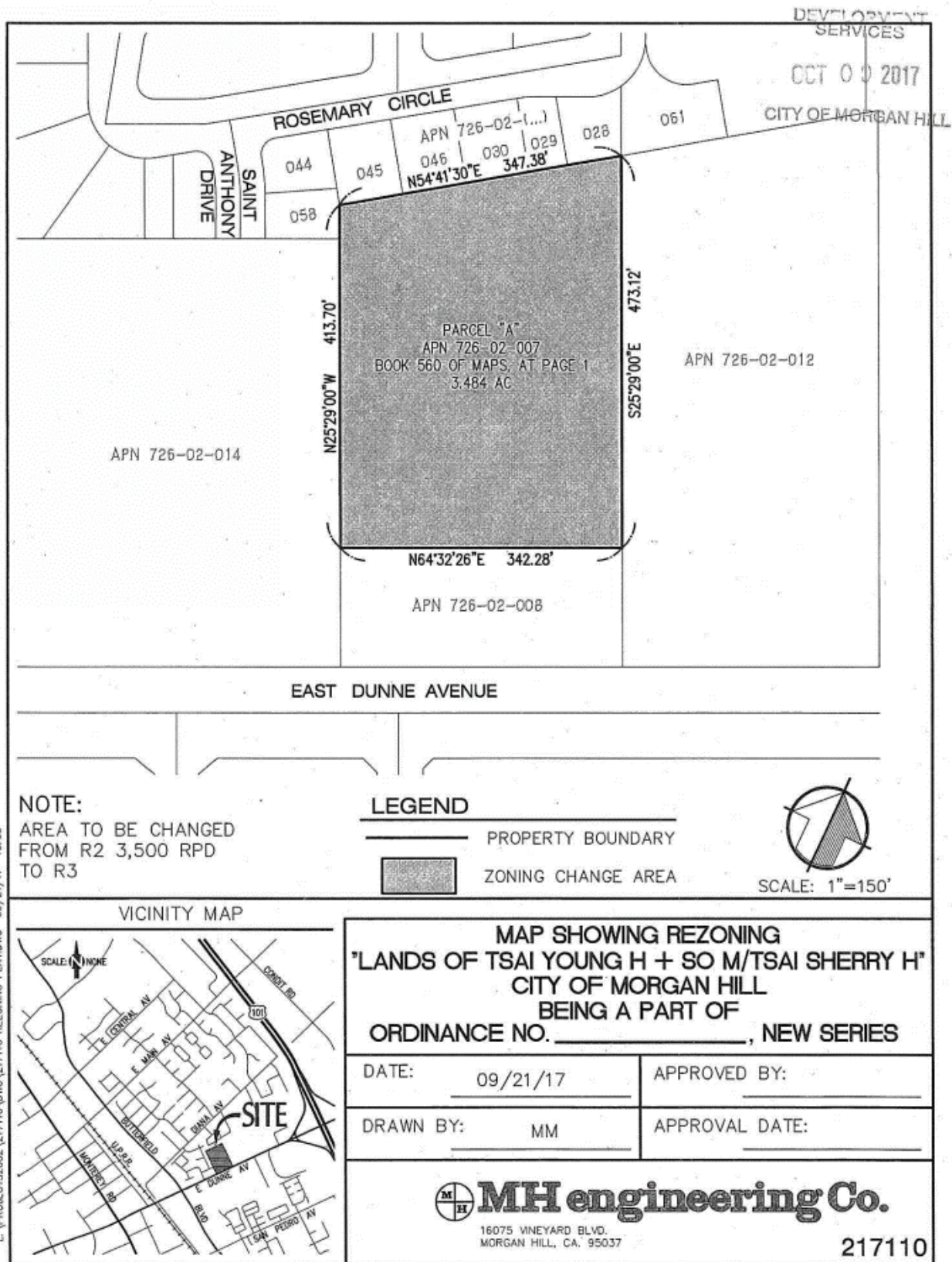
PARCEL "A", AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP IN THE CITY OF MORGAN HILL OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, PORTION OF LOT 71 MORGAN HILL RANCH, MAP NO. 1", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON MAY 21, 1986 IN BOOK 560 OF MAPS, AT PAGE 1 .

PARCEL MO:

AN EASEMENT FOR INGRESS, EGRESS AND PUBLIC UTILITIES OVER THE NORTHEAST 30 FEET OF PARCEL B, AS SHOWN ON PARCEL MAP ABOVE REFERRED TO.

APN: 726-02-007

EXHIBIT A CONT.



Attachment: Planning Commission Staff Report (1524 : E Dunne Young)

DIVIDEND HOMES, INC.
 385 WODVIEW AVE., SUITE 100
 MORGAN HILL, CA 95037
 408-779-5900 FAX 408-779-3840
roliver@dividendhomes.com
jvrotsos@dividendhomes.com

DEVELOPMENT
 SERVICES

OCT 09 2017

CITY OF MORGAN HILL

October 6, 2017

Mr. John Baty
 City of Morgan Hill – Planning Department
 17575 Peak Ave.
 Morgan Hill, CA 95037

Re: Zoning Amendment Application – APN 726-2-7 (behind 605 East Dunne Ave.) 3.48 acres

Dear Mr. Baty:

This letter is written as part the required documents supporting a request to rezone the above referenced property from its present zoning of R2-3500 RPD to R-3.

In the most recent General Plan Update, adopted earlier this year, the General Plan designation of this property was changed from Multi-Family Low to Residential Attached Medium (16-24 du/ac). This created a disconnect with the existing zoning of R2. City Staff is planning a clean-up to adjust the inconsistency on this site (and other sites in the City) later this year or early next year. However, the Property Owner wishes to have us submit an application for allotments in this year's Measure S competition under the new (and now current) General Plan designation of Residential Medium (16-24 du/ac), thus necessitating the filing of an application to Amend the existing zoning to R-3 at this time.

As further justification for this request, the City Staff recently reviewed and updated a Master Circulation Plan for the area between Butterfield Blvd. and Freeway 101 – Diana Ave. and East Dunne. That revised Master Circulation plan requires the location of two new city streets crossing the Subject Property, one which will bifurcate the Subject Parcel and one which will be located between the existing nursery school and the Subject Property. This will require the dedication of new public ROW's constituting over 25% of the Subject Property. The impact of these new required ROW is significant and the Owner needs the zoning change consistent with the new General Plan designation to hopefully make up for the loss of value due to the significant ROW dedication.

We appreciate your prompt review and processing of this application so that we can compete in this year's Measure S competition.

Respectfully,



Richard B. Oliver

Attachment: Planning Commission Staff Report (1524 : E Dunne Young)

ORDINANCE NO. NEW SERIES**AN ORDINANCE OF THE CITY OF MORGAN HILL
APPROVING ZONING AMENDMENT ZA2017-0009
CHANGING THE ZONING DESIGNATION OF A 3.5
ACRE PARCEL LOCATED ON THE NORTH SIDE OF
EAST DUNNE AVENUE APPROXIMATELY 610 FEET
WEST OF WALNUT GROVE DRIVE (ASSESSOR
PARCEL NUMBER 726-02-007), FROM R-2 3,500/RPD TO
R-3 MULTI FAMILY MEDIUM DENSITY RESIDENTIAL
DISTRICT**

WHEREAS, an application for rezoning of the property located on the north side of East Dunne Avenue approximately 610 feet west of Walnut Grove Drive, APN 726-02-007 was made by the Dividend Homes Inc. on behalf of the owners of the property, Hsing-Tsai and So-Mei-Tsai Young and Sherry H.C. Tsai and Chau-Ran Wang (“Owners”), from R-2 3,500/Residential Planned Development to R-3 Residential Attached Medium to be consistent with the General Plan;

WHEREAS, the rezoning is necessary to achieve consistency with the General Plan to allow Owners to participate in the 2017 Residential Development Control System (RDCS) process;

WHEREAS, the General Plan designates the above-referenced parcel as Residential Attached Medium;

WHEREAS, such application was considered by the Planning Commission at its regular meeting of November 14, 2017 at which time the Planning Commission recommended approval of Application ZA2017-0009: E. Dunne Avenue-Young; and

WHEREAS, the project site was reviewed as part of Master Environmental Impact Report for the 2035 General Plan update and has been found consistent with the requirements of the California Environmental Quality Act. No new environmental effects peculiar to the property or the project and no new information has been identified, and thus additional environmental review is not required pursuant to Public Resources Code Section 21083.3 and CEQA Guidelines Section 15183; and

WHEREAS, the Zoning Amendment complies with the General Plan as required by Government Code Section 65860; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

Attachment: Ordinance (1524 : E Dunne Young)

Ord. No.
Page 2

**NOW, THEREFORE, THE MORGAN HILL CITY COUNCIL DOES RESOLVE
AS FOLLOWS:**

SECTION 1. The proposed Zoning Amendment is consistent with the General Plan.

SECTION 2. The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

SECTION 3. Further development shall comply with the site development standards of the R-3 Multi Family Medium Density Residential District.

SECTION 4. The City Council hereby approves the Zoning Amendment from R-2 3,500/RPD to the R-3 Multi Family Medium Density Residential District to the site described attached hereto, as Exhibit “A”, and by this reference incorporated herein.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 6th DAY OF DECEMBER 2017, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE DAY OF 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:

ATTEST:

APPROVED:

IRMA TORREZ, City Clerk

STEVE TATE, Mayor

❧ CERTIFICATION ❧

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No._____ New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the _____ day of _____, 2017.

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

DATE: _____

IRMA TORREZ, City Clerk

Date: _____

EXHIBIT A**CITY OF MORGAN HILL
LEGAL DESCRIPTION**

Real property in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

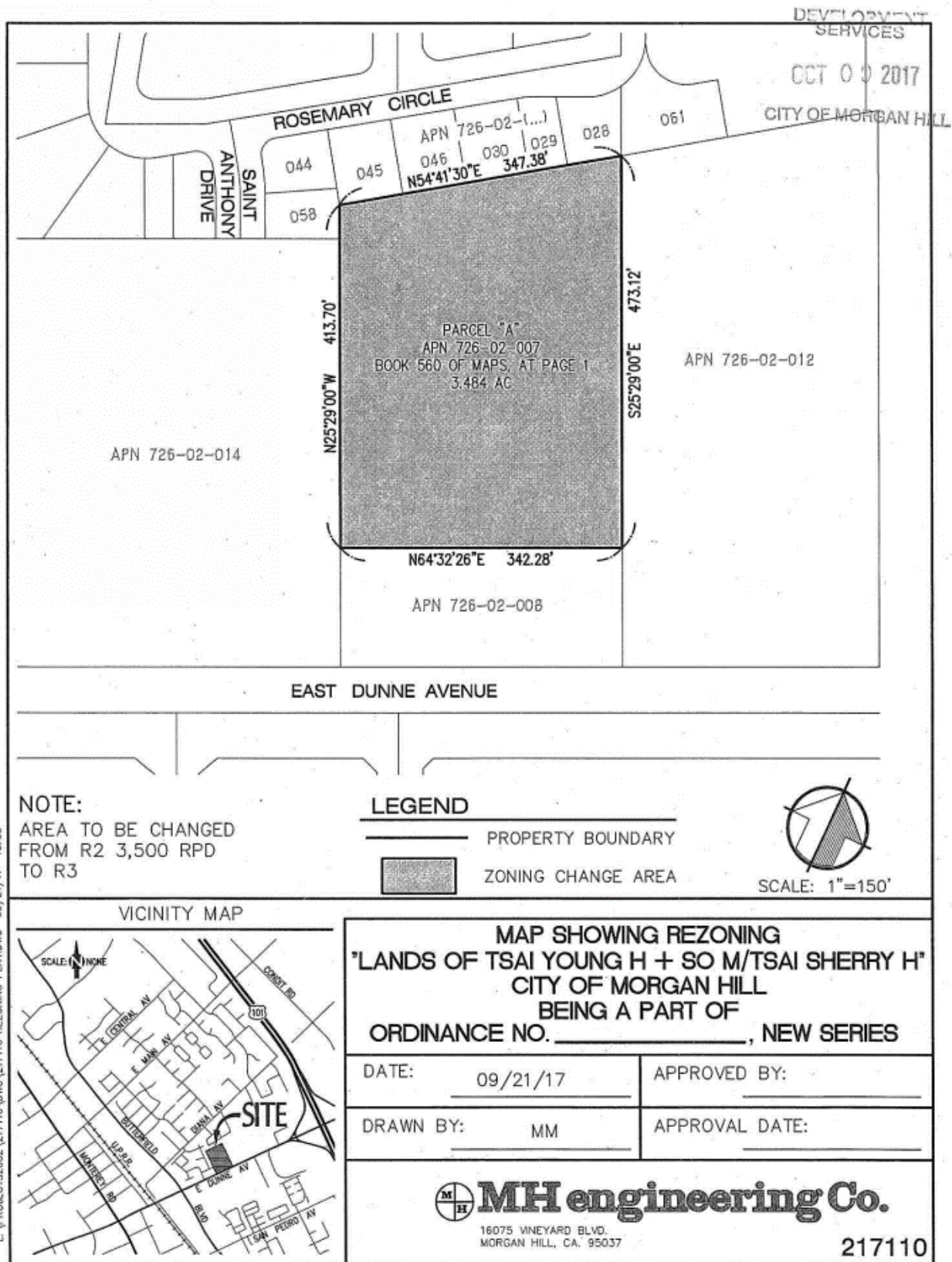
PARCEL "A", AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP IN THE CITY OF MORGAN HILL OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, PORTION OF LOT 71 MORGAN HILL RANCH, MAP NO. 1", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON MAY 21, 1986 IN BOOK 560 OF MAPS, AT PAGE 1 .

PARCEL TWO:

AN EASEMENT FOR INGRESS, EGRESS AND PUBLIC UTILITIES OVER THE NORTHEAST 30 FEET OF PARCEL B, AS SHOWN ON PARCEL MAP ABOVE REFERRED TO.
APN: 726-02-007

Attachment: Ordinance (1524 : E Dunne Young)

EXHIBIT A CONT.



Attachment: Ordinance (1524 : E Dunne Young)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2017

PREPARED BY: John Baty, Principal Planner/Development Services
APPROVED BY: City Manager

ZA2017-0008: MONTEREY-DOBKIN: REQUEST FOR A ZONING MAP AMENDMENT FROM THE ML - LIGHT INDUSTRIAL ZONING DISTRICT TO THE R-3 MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A 5.66 GROSS ACRE SITE IDENTIFIED BY ASSESSOR PARCEL NUMBER 726-25-006 LOCATED ON THE EAST SIDE OF MONTEREY ROAD OPPOSITE THE SOUTHERLY TERMINUS OF OLD MONTEREY ROAD

RECOMMENDATION(S)

1. Open/close public hearing;
2. Waive the first and second reading of Ordinance approving zoning amendment; and
3. Introduce Ordinance.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Preserving and Cultivating Public Trust

2017 Strategic Priorities

Inclusiveness
Infrastructure

POLICY CONSIDERATION:

Should the proposed rezoning and project be allowed to proceed in advance of the completion of the Monterey Corridor Study and Implementation Project or block level master plan?

REPORT NARRATIVE:

With the adoption of the Morgan Hill 2035 General Plan in July 2016, the land use designation for the subject site was changed from Industrial to Mixed Use Flex, which allows for a mix of residential, commercial, and office uses, but does not allow industrial uses.

The site is currently zoned ML – Light Industrial Zoning District which is not consistent with the Mixed Use Flex General Plan designation. Because state law (Government Code Section 65860) requires the zoning ordinance to be consistent with the general plan, the zoning for the subject site can either be changed by the City through the Zoning Code Update process (expected conclusion by spring 2018) or through a privately initiated Zoning Amendment process.

The Zoning Amendment initiated by the applicant, City Ventures, is a proposal to change the zoning for the subject site from the ML – Light Industrial Zoning District to

the R-3 Medium Density Residential District (which is consistent with the Mixed Use Flex General Plan designation). If approved by City Council in December, the applicant would be allowed to participate in the upcoming RDCS competition. The applicant's letter of justification is attached. The applicant contends that any master planning work would be completed as part of the entitlement process and this particular property "is a remnant site in the northern section of the Monterey Road Infill Corridor, and there is the opportunity to complete the build out of the area as a gateway into Downtown."

The attached Planning Commission staff report provides additional background on the proposed rezoning and the Monterey Corridor Study and Implementation Plan. Planning Commission recommended denial of the rezone request for two main reasons:

- 1) The General Plan Mixed Use Flex land use designation requires preparation of a block level master plan prior to the development of residential or mixed use projects and that has not been completed.
- 2) The proposed rezoning is being requested in advance of the completion of the City's Monterey Corridor Study (currently underway) and future Monterey Corridor Implementation Plan that will serve as the required block level master planning process for the entire corridor.

Per the RDCS Manual Implementation Policies adopted by City Council, in order for a project to compete in the RDCS process, a project must be consistent City's General Plan and Zoning Code. Applications which are found to be inconsistent with either the City's General Plan or Zoning Code are rejected.

A proposal is consistent with the General Plan when:

- 1. The subject site's General Plan Land Use designation allows the proposed use at the proposed density; and*
- 2. The proposal meets the overall intent of the Goals and Policies of applicable elements of the General Plan.*

A proposal is consistent with the Zoning Code when the base Zoning District or PD Zoning for the site allows the proposed use; and the proposal meets the zoning regulations (e.g., setbacks) of the subject site's base Zoning District or PD Zoning, or the proposal only includes minor deviations from zoning regulations that, at the entitlement stage, could either be modified to be fully consistent with zoning regulations or the applicant would secure approval of a PD Zoning to establish modified development standards.

The proposed rezone would allow staff to find a proposal on this property consistent with the Zoning Ordinance but the question of whether the block level master plan is mandated prior to participating in the RDCS competition would remain.

Analysis

The proposed Zoning Amendment was analyzed for consistency with the General Plan and Zoning Code.

General Plan Consistency

The Mixed Use Flex General Plan designation, which is primarily applied to properties along the Monterey Road Corridor north and south of Downtown, allows for a mix of residential, commercial, and office uses with a residential density of between 7 and 24 dwelling units per acre and a maximum floor area ratio (FAR) of 0.5. The R-3 Medium-Density Residential Zoning District requires a minimum site area of 2,000 square feet per dwelling unit, allowing up to approximately 21.78 dwelling units per acre, which is within the density range allowed by the Mixed Use Flex General Plan designation. There is currently not a Mixed Use Flex zoning designation available to apply for this property. Mixed Use Flex is a new zoning district being developed as part of the Zoning Update project and Monterey Corridor Study.

Properties with the Mixed Use Flex General Plan designation are allowed to develop at any time with commercial uses; however, prior to development of residential or mixed-use projects, the General Plan requires a block level master plan to identify how commercial uses will be incorporated within the development of a block and how individual development projects will connect with each other.

To facilitate the Morgan Hill 2035 General Plan vision of transforming the portions of the City along Monterey Road (outside of Downtown) into a vibrant mixed use corridor that encourages walking and bicycling, the City has contracted with Lisa Wise Consulting to conduct a comprehensive market analysis/land use capacity study of the corridor (Monterey Corridor Study), which will serve as the basis for formulating recommendations for potential implementation strategies (e.g., zoning changes).

The subject property is included in the Monterey Corridor Study at the northern end of the corridor that extends from Main Avenue to the Monterey Road railroad overcrossing. At a block level, the subject property is at the northern end of the block on the east side of Monterey Road between East Central Avenue and the railroad overcrossing.

Although it is anticipated that the implementation strategy recommendation will be presented to the Planning Commission and City Council by spring 2018, actual zoning changes would likely not occur until summer or fall 2018.

Zoning Code Consistency

In order to approve the proposed Zoning Amendment, Section 18.62.070 of the Morgan Hill Zoning Code requires the following findings to be made:

A. That the proposed amendment is in general conformance with the General Plan;

The uses and density allowed under the proposed R-3 Medium Density Residential Zoning District are in general conformance with the uses and density allowed under

the Mixed Use Flex General Plan designation.

- B. That the public necessity, convenience and general welfare require the adoption of the proposed amendment;*

The proposed amendment to the R-3 Medium Density Residential Zoning District would bring the subject property into conformance with the Mixed Use Flex General Plan Land Use designation.

- C. The proposed amendment does not grant a change in land use from commercial or industrial to a residential land use for property incorporated into the Urban Service Area boundary after December 7, 1990 unless it can be determined pursuant to the terms of Section 18.78.070 of the Municipal Code that the amount of undeveloped, residentially developable land on the same side of Monterey Road as the proposed amendment is insufficient to accommodate five years' worth of residential growth.*

The subject site was incorporated into the Urban Service Area boundary prior to December 7, 1990 and, with voter approval of Measure S, Section 18.78.070 no longer includes the "five years' worth of residential growth" provision.

Planning Commission Denial Recommendation

The attached Planning Commission Resolution recommending City Council denial of the proposed rezoning includes an explanation of the Commission's determination that all the required findings for approval of the proposed zoning amendment could not be made. Specifically, the Planning Commission concluded that the proposed Zoning Amendment:

1. Is not in general conformance with the General Plan because:
 - a. The Mixed Use Flex designation requires preparation of a block level master plan prior to the development of residential or mixed use projects and the proposed rezoning would allow the site to be developed as an exclusively residential project.
 - b. The proposed rezoning is being requested in advance of the completion of the City's Monterey Corridor Study (currently underway) and future Monterey Corridor Implementation Plan that will serve as the required block level master planning process for the entire corridor.
2. Is not required in order to serve the public convenience, necessity, and general welfare in that:
 - a. The City's Zoning Code Update process will change the zoning for the subject site to a district that is consistent with the Mixed Use Flex General Plan designation; and
 - b. The Monterey Corridor Project will identify how much, if any, commercial is appropriate for the subject site and new or modified development standards to facilitate transformation of the corridor.

COMMUNITY ENGAGEMENT: Inform

The proposed project was publicly noticed (mailing to property owners within 300 feet of the project and newspaper legal noticing) for the minimum 10-day period prior to the November 14, 2017 Planning Commission hearing and prior to the City Council hearing.

ALTERNATIVE ACTIONS:

Approve an alternative zoning district for the site that is consistent with the Mixed Use Flex General Plan Land Use designation. Because the Mixed Use Flex designation allows for 100-percent commercial development without the preparation of a block level master plan, the site could be rezoned to one of the City's existing commercial zoning districts. The City's commercial zoning districts either don't allow residential uses (e.g., CG General Commercial district) or only allow mixed-use residential after a subsequent Planned Development Zoning process (i.e., CL-R Light Commercial/Residential district).

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

At its November 14, 2017 public hearing, the Planning Commission voted 6-1 to recommend the City Council deny the proposed rezoning.

FISCAL AND RESOURCE IMPACT:

The recommendation action does not have a fiscal impact.

CEQA (California Environmental Quality Act):

The project was reviewed and found to be consistent with California Environmental Quality Act (CEQA) Section 21083.3 and CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan or Zoning) in that the proposed project is consistent with the Morgan Hill 2035 General Plan for which an Environmental Impact Report (EIR) was prepared in accordance with CEQA and certified by the Morgan Hill City Council (Resolution No. 16-127) on July 27, 2016 (SCH#2015022074).

There are no new environmental effects peculiar to the project or subject parcel that were not analyzed as significant effects in the Morgan Hill 2035 EIR and no new information that would result in potentially significant off-site impacts, cumulative impacts, or more severe impacts than discussed in the Morgan Hill 2035 EIR.

LINKS/ATTACHMENTS:

1. Planning Commission Resolution No. 17-36
2. Planning Commission Staff Report
3. Applicant Justification Letter
4. Draft Ordinance
5. Exhibit A Legal Description
6. Exhibit B - Map

RESOLUTION NO. 17-36

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING DENIAL OF ZONING AMENDMENT ZA2017-0008 TO CHANGE THE ZONING DESIGNATION OF AN APPROXIMATELY 5.66 GROSS ACRE SITE LOCATED ON THE EAST SIDE OF MONTEREY ROAD OPPOSITE THE SOUTHERLY TERMINUS OF OLD MONTEREY ROAD (ASSESSOR PARCEL NUMBER 726-25-006) FROM THE ML – LIGHT INDUSTRIAL ZONING DISTRICT TO THE R-3 MEDIUM DENSITY RESIDENTIAL DISTRICT.

WHEREAS, an application for rezoning of the property located at 18110 Monterey Road, APN 726-25-006 was made by the applicant, City Ventures (“Applicant”), on behalf of the of the property owner, Robert C Dobkin Trustee & et al (“Owner”), from the ML – Light Industrial Zoning District to the R-3 Medium Density Residential District to be consistent with the General Plan;

WHEREAS, the General Plan designates the above referenced parcel as Mixed Use Flex;

WHEREAS, such application was considered by the Planning Commission at their regular meeting of November 14, 2017 at which time the Planning Commission recommended denial of application ZA2017-0008: Monterey - Dobkin; and

WHEREAS, the project site was reviewed as part of Master Environmental Impact Report for the 2035 General Plan update and has been found consistent with the requirements of the California Environmental Quality Act. No new environmental effects peculiar to the property or the project and no new information has been identified, and thus additional environmental review is not required pursuant to Public Resources Code Section 21083.3 and CEQA Guidelines Section 15183; and

WHEREAS, the Zoning Amendment does not comply with the General Plan as required by Government Code Section 65860; and

WHEREAS, The City’s Monterey Corridor Study (currently underway) and future Monterey Corridor Implementation Plan will serve as the required block level master planning process for the entire corridor as required by General Plan Policy CNF-13.4.

WHEREAS, in order to recommend approval of a Zoning Amendment the Planning Commission, per Section 18.62.050 of the Zoning Code, shall find that the proposed amendment is in general conformance with the General Plan and that the public convenience and general welfare require the adoption of the proposed amendment; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

SECTION 1. The proposed zoning amendment is not in general conformance with the General Plan.

- a. The site has a Mixed Use Flex General Plan Land Use designation and the Mixed Use Flex General Plan designation requires the preparation of a block level master plan prior to development of residential or mixed use projects. The proposed rezoning would allow the site to be developed as an exclusively residential project.
- b. The proposed zoning amendment is being requested in advance of the completion of the City's Monterey Corridor Study (currently underway) and future Monterey Corridor Implementation Plan that will serve as the required block level master planning process for the entire corridor as required by General Plan Policy CNF-13.4.

SECTION 2. The zone change is not required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

- a. The City's Zoning Code Update process will change the zoning for the subject site to a district that is consistent with the Mixed Use Flex General Plan designation.
- b. The proposed zoning amendment is being requested in advance of the completion of the Monterey Corridor Project that will identify how much, if any, commercial is appropriate for the subject site and new or modified development standards to facilitate the transformation of the corridor.

SECTION 3. The Planning Commission recommends that the City Council deny the Zoning Amendment from ML – Light Industrial to the R-3 Medium Density Residential District to the site described attached hereto, as Exhibit "A", Legal Description and Exhibit "B" Zoning Plat and by this reference incorporated herein.

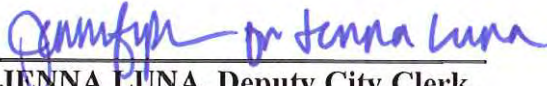
PASSED AND ADOPTED THIS 14th DAY OF NOVEMBER 2017, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES:	COMMISSIONERS:	MCKAY, DOWNEY, TANDA, MARTINEZ BELTRAN, MUELLER, HABIB
NOES:	COMMISSIONERS:	MIGUEL MUNOZ MORRIS
ABSTAIN:	COMMISSIONERS:	NONE

ABSENT: COMMISSIONERS: NONE

ATTEST:

APPROVED:


JENNA LUNA, Deputy City Clerk


JOHN MCKAY, Chair

Date: 11.30.17

F:\WP51\Zoning Amendment\2017\ZA2017-0008 Monterey - Dobkin\Resolution No. 17-36_DENIAL1.docx

Attachment: Planning Commission Resolution No. 17-36 (1527 : ZA2017-0008: Monterey-Dobkin)

EXHIBIT "A"

LEGAL DESCRIPTION

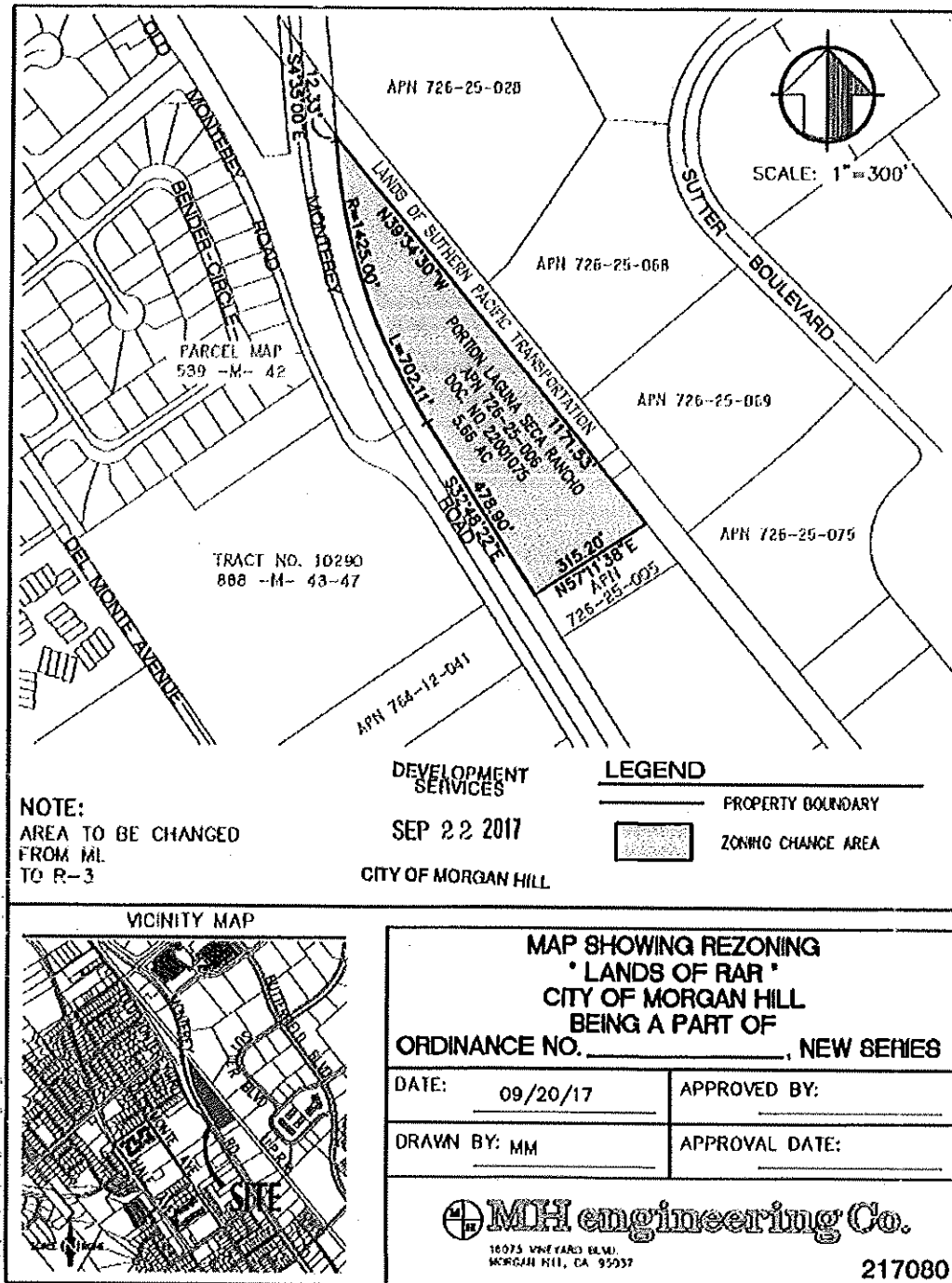
Real property in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

A PORTION OF THE LAGUNA SECA RANCHO LYING WEST OF THE SOUTHERN PACIFIC TRANSPORTATION COMPANY RIGHT OF WAY AND EAST OF THE MONTEREY STREET RIGHT OF WAY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY RIGHT OF WAY OF MONTEREY STREET AS ESTABLISHED BY GRANT DEED RECORDED AUGUST 31, 1938, IN BOOK 893, OFFICIAL RECORDS, PAGE 167, SANTA CLARA COUNTY RECORDS, SAID POINT BEING N. 32° 46' W. 1247.24 FEET FROM THE MOST SOUTHERLY POINT DESCRIBED IN SAID GRANT DEED FOR PARCEL III, AND BEING ALSO N. 32° 46' W. 119.15 FEET FROM THE MOST WESTERLY CORNER DESCRIBED IN THE GRANT DEED RECORDED ON AUGUST 15, 1956, IN BOOK 3579, OFFICIAL RECORDS, PAGE 15, SANTA CLARA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING, ALONG THE EASTERLY RIGHT OF WAY LINE OF MONTEREY STREET, N. 32° 46' W. 478.00 FEET; THENCE ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 1425 FEET, A CENTRAL ANGLE OF 28° 11', AND AN ARC LENGTH OF 700.95 FEET; THENCE N. 04° 35' W. 12.33 FEET TO THE WESTERLY RIGHT OF WAY LINE OF THE LANDS OF SOUTHERN PACIFIC TRANSPORTATION COMPANY; THENCE ALONG SAID RIGHT OF WAY, S. 39° 34' 30" E. 1171.04 FEET; AND THENCE S.57° 14' W. 313.59 FEET TO THE EASTERLY RIGHT OF WAY LINE OF MONTEREY STREET AT THE POINT OF BEGINNING.

APN: 726-25-006

EXHIBIT "B"





PLANNING COMMISSION STAFF REPORT

MEETING DATE: November 14, 2017

PREPARED BY: John Baty, Principal Planner/Development Services
 APPROVED BY: Jennifer Carman, Community Development Director

ZA2017-0008: MONTEREY-DOBKIN: REQUEST FOR A ZONING MAP AMENDMENT FROM THE ML - LIGHT INDUSTRIAL ZONING DISTRICT TO THE R-3 MEDIUM DENSITY RESIDENTIAL DISTRICT. ASSESSOR PARCEL NUMBER 726-25-006 LOCATED ON THE EAST SIDE OF MONTEREY ROAD.

RECOMMENDATION(S)

1. Adopt Resolution Recommending City Council approval of the Zoning Amendment.
2. No further CEQA action is required.

POLICY CONSIDERATIONS:

Should the proposed rezoning and project be allowed to proceed in advance of the completion of the Monterey Corridor Study and Implementation Project or block level master plan?

PROJECT SUMMARY:

1. Location: East side of Monterey Road opposite the southerly terminus of Old Monterey Road (APN 726-25-006)
2. Site Area: 5.66 gross acres
3. General Plan: Mixed Use Flex
4. Zoning: ML – Light Industrial
5. Request: R-3 Medium Density Residential



BACKGROUND:

The subject site is zoned ML – Light Industrial, which prior to the adoption of the Morgan Hill 2035 General Plan in July 2016, matched the site's Industrial General Plan Land Use designation.

With the adoption of the Morgan Hill 2035 General Plan, the land use designation for the site was changed to Mixed Use Flex, which allows for a mix of residential, commercial, and office uses applied either vertically (i.e., one structure with multiple uses) or horizontally (i.e., structures with different land uses located adjacent to one another).

The ML – Light Industrial Zoning District is not consistent with the Mixed Use Flex General Plan designation. Because state law (Government Code Section 65860) requires the zoning ordinance to be consistent with the general plan, the zoning for the subject site can either be changed by the City through the Zoning Code Update process or through a privately initiated Zoning Amendment process.

The City's effort to update the Zoning Ordinance and Zoning Map to be consistent with the Morgan Hill 2035 General Plan is expected to be concluded by spring 2018 at which time the subject property could be rezoned to the proposed new MU-F Mixed Use Flex Zoning District or other commercial or residential zoning district that would be consistent with the Mixed Use Flex General Plan Land Use designation.

The applicant is proposing the site be rezoned to the R-3 Medium Density Residential Zoning District in advance of the Zoning Code Update. If the applicant's proposal is approved by City Council in December 2017, the applicant intends to submit a Residential Development Control System (RDCS) application in January 2018 consistent with the R-3 district.

Monterey Corridor Study and Implementation Plan

Properties with the Mixed Use Flex General Plan designation are allowed to develop at any time with commercial uses; however, prior to development of residential or mixed-use projects, the General Plan requires a block level master plan to identify how commercial uses will be incorporated within the development of a block and how individual development projects will connect with each other.

To facilitate the Morgan Hill 2035 General Plan vision of transforming the portions of the City along Monterey Road (outside of Downtown) into a vibrant Mixed Use corridor that encourages walking and bicycling, the City has contracted with Lisa Wise Consulting to conduct a comprehensive market analysis/land use capacity study of the corridor (Monterey Corridor Study), which will serve as the basis for formulating recommendations for potential implementation strategies (e.g., zoning changes).

The subject property is included in the Monterey Corridor Study at the northern end of a segment of the corridor that extends from Main Avenue to the Monterey Road railroad overcrossing. At a block level, the subject property is at the northern end of the block on east side of Monterey Road between East Central Avenue and the railroad

overcrossing.

Although it is anticipated that the implementation strategy recommendations will be presented to the Planning Commission and City Council by spring of 2018, actual zoning changes would likely not occur until summer or fall 2018.

Project Description

The Zoning Amendment initiated by the applicant, City Ventures, is a proposal to change the zoning for the subject site from the ML – Light Industrial Zoning District to the R-3 Medium Density Residential District. The applicant's letter of justification is attached.

Site Description

APN 726-25-006 (Dobkin): The 5.66 gross acre parcel is largely undeveloped with one existing single-family home located in the lower half of the site, easterly of the new intersection of Monterey Road and Old Monterey Road, and approximately 60 feet west of the railroad right of way.

Surrounding Zoning / Land Use

North: PF – Public Facilities (across Monterey Road) / fire station

South: CL-R – Light Commercial/Residential / single-family home and Residential Planned Development (KB Homes)

East: PUD – Residential Planned Unit Development (Divco West and Madrone Townhomes (across railroad right of way) / open space (detention pond) and vacant industrial

West: R-1 7,000 (RPD), R-2 3,500, R-2 3,500 (PD) (across Monterey Road) / single-family detached homes on approximately 5,600 square foot lots, single-family home, townhomes and single-family detached homes on approximately 5,100 to 6,000 square foot lots.

ANALYSIS:

The proposed Zoning Map Amendment was analyzed for consistency with the General Plan and Zoning Code.

General Plan Consistency

The subject site is designated Mixed Use Flex on the Morgan Hill 2035 General Plan Land Use Map. This designation, which is primarily applied to properties along the Monterey Road Corridor north and south of downtown, allows for a mix of residential, commercial, and office uses applied either vertically or horizontally with a residential density of 7 to 24 dwelling units per acre and a maximum floor area ratio (FAR) of 0.5.

The R-3 Medium-Density Residential Zoning District requires a minimum site area of 2,000 square feet per dwelling unit, allowing up to approximately 21.78 dwelling units

per acre, which is within the density range allowed by the Mixed Use Flex General Plan designation.

Zoning Code Consistency

In order to approve the proposed Zoning Amendment, Section 18.62.070 of the Morgan Hill Zoning Code requires the following findings to be made:

- A. *That the proposed amendment is in general conformance with the General Plan;*

For the reasons detailed above, the proposed amendment is in general conformance with the General Plan.

- B. *That the public necessity, convenience and general welfare require the adoption of the proposed amendment;*

The proposed amendment to the R-3 Medium Density Residential Zoning District would bring the subject property into conformance with the Mixed Use Flex General Plan Land Use designation.

- C. *The proposed amendment does not grant a change in land use from commercial or industrial to a residential land use for property incorporated into the Urban Service Area boundary after December 7, 1990 unless it can be determined pursuant to the terms of Section 18.78.070 of the Municipal Code that the amount of undeveloped, residentially developable land on the same side of Monterey Road as the proposed amendment is insufficient to accommodate five years' worth of residential growth.*

The subject site was incorporated into the Urban Service Area boundary prior to December 7, 1990 and therefore this provision does not apply to this property..

Community Engagement

The proposed project was publicly noticed (mailing to property owners within 300 feet of the project and newspaper legal noticing) for the minimum 10-day period.

Conclusion At this time it is uncertain what the outcome of the Monterey Corridor Study/Implementation Plan will be regarding the zoning or its application to this site. The Planning Commission is being requested to determine that the subject site be allowed to be developed as an exclusively residential project. With that determination the proposed rezoning to the R-3 Medium Density Residential Zoning District would be appropriate, and if approved by the City Council this December, would allow the applicant to participate in the upcoming RDCS competition.

Should the Planning Commission be concerned that the Monterey Corridor Study may identify the property as an important site for future commercial development, or that the site should be developed with a mix of commercial and residential uses, the Planning Commission should recommend that the proposed rezoning request be denied. If the

request is denied by City Council, the applicant would not be allowed to participate in the upcoming RDCA competition as the current zoning does not allow residential uses. The subject property would be rezoned as part of the Zoning Code Update with the zoning standards potentially refined through implementation of the Monterey Corridor Study.

CEQA (California Environmental Quality Act):

The project was reviewed and found to be consistent with California Environmental Quality Act (CEQA) Section 21083.3 and CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan or Zoning) in that the proposed project is consistent with the Morgan Hill 2035 General Plan for which an Environmental Impact Report (EIR) was prepared in accordance with CEQA and certified by the Morgan Hill City Council (Resolution No. 16-127) on July 27, 2016 (SCH#2015022074).

There are no new environmental effects peculiar to the project or subject parcel that were not analyzed as significant effects in the Morgan Hill 2035 EIR and no new information that would result in potentially significant off-site impacts, cumulative impacts, or more severe impacts than discussed in the Morgan Hill 2035 EIR.

LINKS/ATTACHMENTS:

1. Applicant's Justification Letter
2. DRAFT Resolution



10/20/17

John Baty
Principal Planner
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

Dear John,

Please find below City Ventures' Letter of Justification for the proposed Zoning Map Amendment for 18110 Monterey Road in Morgan Hill. We appreciate your consideration of our proposal, and please let us know if there are any other questions the City of Morgan Hill would like us to resolve to help move this application forward.

Best wishes,

Jason Bernstein

1. Cite Specific General Plan policies and action statements that support the proposed application.

The proposed application would further several General Plan policies and action statements of the Mixed Use Flex Goal CNF-13 section of the General Plan.

Policy CNF-13.2: Density Feathering. Encourage the feathering of land use densities and intensities from high to low along Monterey Road with higher intensity land uses located adjacent to Downtown.

The proposed project will fulfill the Density Feathering called for within this policy with a mix of two-story homes on the frontage and three-story towns behind. The project preserves Morgan Hill's terrific character while increasing density toward the Downtown core. The townhome density is consistent with the immediately adjacent projects approved closer to Downtown and will help enhance a pedestrian friendly community in close proximity to downtown Morgan Hill. The proposed site is at the outer edge of the Monterey Road Infill Corridor but still provides convenient access to downtown Morgan Hill.

Policy CNF-13.3: Maximize Land Use. Encourage mixed use flex development to maximize allowed densities and intensities adjacent to Downtown.

With the irregular shape of this parcel, a townhome development would maximize the land use of the proposed property consistent with the General Plan. The flexibility allowed by townhome design enables buildings of varying sizes which allows City Ventures to fit more homes on the irregularly shaped portions of this lot. The site is not well suited for commercial development with limited access and residential adjacencies to the south and west. Low values for commercial

Attachment: Applicant Justification Letter (1527 : ZA2017-0008: Monterey-Dobkin)



City Ventures

in this area would result in low density commercial development. Additionally, since this site is not immediately adjacent to downtown, commercial uses may detract from the goal of focusing business activities in the downtown core. A well designed residential project in this location will increase the number of pedestrians able to walk into the downtown core, approximately .6 miles away from the proposed project, which will not only maximize land use on this site but act as a catalyst for increased commercial densities in the Downtown core.

Policy CNF-13.4: Block-level Master Plans. Require mixed use flex developments to a prepare block-level master plan to ensure well-planned development.

City Ventures is part of a residential block very close to the KB Home project *Monterey Parque*, which completed a block level master plan that found that the site was suited for a residential only project and was entitled without any commercial uses. With residential development across Monterey Road at Solera Ranch and to the south at Monterey Parque, development of this site completes the leftover portion of this block.

Action CNF-13.A: Monterey Road Infrastructure. Provide infrastructure improvements, as appropriate, to stimulate development along Monterey Road.

The Monterey Parque project and the Solera Ranch Project completed a good portion of the infrastructure improvements in this northern portion of Monterey. This project will provide the supplemental infrastructure funds to finish the infrastructure on both sides of this block and help the City complete this vital gateway into downtown Morgan Hill. These include traffic signal improvements, road improvements and storm water improvements that will enhance the entryway into downtown Morgan Hill.

2. Explain how the proposed Zoning Classification Amendment is in conformance with the General Plan.

This rezone simply updates the zoning to reflect the current General Plan designation. City Ventures' proposal to rezone the property to R-3 brings the site into conformance with the General Plan. The current ML Light Industrial Zoning is not consistent with the Mixed Use Flex General Plan designation, as the Mixed Use Flex "allows for a mix of residential, commercial, and office uses", but not industrial. Similar findings were made for KB Home Monterey Parque development next door. The General Plan allows land with this designation to be developed as solely residential if the site is consistent with surrounding block.

This site is part of new residential neighborhood that includes Solera Ranch and Monterey Parque. Given the site will only have a single point of entry and very low visibility it is not conducive to commercial uses. Completing this block will enhance the goal of residents living close to the core verse sprawling outward. Placing residents within easy walking distance to Downtown will also further fuel commercial development in the central Downtown core and help with the City's goal of getting more businesses to locate downtown.



3. Explain the purpose of the amendment?

As noted above, the purpose of this Zoning Map Amendment request is to bring the site into conformance with the current General Plan designation. Additionally, infrastructure improvements from this development will complete the block and will help avoid future traffic issues, help cope with storm water inundation, and will build out of the northern Monterey corridor, welcoming people into a pedestrian friendly Downtown with higher density homes in close proximity to Downtown entertainment, dining and shopping

A new traffic signal is currently being installed on Monterey Road at Old Monterey Road. Our proposed project will be the fourth and final leg in that new intersection. While the proposed project will align with that intersection, the construction of the intersection will not be fully complete until the entire intersection can be opened. City Ventures would like to complete the construction to allow for normal traffic patterns and to prevent any further delay in completing the intersection. Additionally, Public Works has expressed a desire to move a PG&E pole that is currently blocking part of the new traffic signal. Public Works has expressed a safety concern about the PG&E pole, but the lack of a public utility easement prevents the relocation of that pole onto the proposed property. City Ventures will prioritize moving that pole and completing the intersection when developing this project.

Second, Monterey Road dips below the railroad track adjacent to the subject property. As part of our proposed RDCS commitment City Ventures' intends to contribute towards storm water improvements in the area. This possibility that this dip could fill with water, therefore blocking a major road into downtown, needs to be addressed and by developing the adjacent property this specific issue will be studied. Ensuring that this major artery through downtown stays open even in the harshest weather will be vital in maintaining a thriving downtown.

Additionally, this is a remnant site in the northern section of the Monterey Road Infill Corridor, and there is the opportunity to complete the build out of the area as a gateway into Downtown. Two sites in the immediate vicinity are currently under construction, and this project presents the opportunity to complete construction and create an attractive entrance to anyone entering downtown via Monterey. This will also allow for construction in the area to be completed in the near future, allowing the neighborhood to return to normalcy after several years of construction impacts. Turning the proposed site into a new residential development will also allow the area to complete any remaining infrastructure projects in the vicinity through City requirements to improve adjacent roadways and infrastructure with additional funds committed to the area through the RDCS process.

Finally, the General Plan won't allow industrial on the site and commercial uses would be challenging and would not maximize the density potential on this property. The primary concern for commercial uses will be the irregular shape of the site and the single point of access at the intersection due to the train tracks on the eastern side of the property. Due to the location of the new intersection, the site would have to construct an entry road, or perhaps the full parking lot, on the widest part of the site that would be best suited for new commercial construction. The



City Ventures

new construction would then have to be located on the northern part of the site, which tapers to a point, or would need to accommodate an entry road large enough to accept any deliveries and traffic generated by the new commercial use. Commercial construction requires greater depths to allow for front of house areas and back of house areas for storage and staff. The tapering width of the site prohibits such a building from being constructed on northern part of the site. Lastly, the surrounding residential developments have changed the nature of the area, and undoubtedly any new commercial development would see challenges from neighbors concerned about traffic, pollution and the specific activities that would be occurring onsite. Regular deliveries would have to be made through the single point of entry, and if large trucks are making those delivery, more area of the site would have to be dedicated to allow for truck turnaround areas, since all traffic will have to enter and exit the site at the location of the traffic signal.

Given the context of the block, the unique aspect of this site, and the surrounding land use, and the proposed development to complete the neighborhood, a Zoning Map Amendment to bring the site into conformance with the General Plan makes sense.

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING ZONING AMENDMENT ZA2017-0008 TO CHANGE THE ZONING DESIGNATION OF AN APPROXIMATELY 5.66 GROSS ACRE SITE LOCATED ON THE EAST SIDE OF MONTEREY ROAD OPPOSITE THE SOUTHERLY TERMINUS OF OLD MONTEREY ROAD (ASSESSOR PARCEL NUMBER 726-25-006) FROM THE ML – LIGHT INDUSTRIAL ZONING DISTRICT TO THE R-3 MEDIUM DENSITY RESIDENTIAL DISTRICT.

WHEREAS, an application for rezoning of the property located at 18110 Monterey Road, APN 726-25-006 was made by the applicant, City Ventures (“Applicant”), on behalf of the property owner, Robert C Dobkin Trust et al (“Owner”), from the ML – Light Industrial Zoning District to the R-3 Medium Density Residential District to be consistent with the General Plan;

WHEREAS, the General Plan designates the above referenced parcel as Mixed Use Flex;

WHEREAS, such application was considered by the Planning Commission at its regular meeting of November 14, 2017 at which time the Planning Commission recommended denial of application ZA2017-0008: Monterey – Dobkin because after the public hearing, the Planning Commission could not make the findings required by Morgan Hill Municipal Code Section 18.62.050; and

WHEREAS, the project site was reviewed as part of Master Environmental Impact Report for the 2035 General Plan update and has been found consistent with the requirements of the California Environmental Quality Act. No new environmental effects peculiar to the property or the project and no new information has been identified, and thus additional environmental review is not required pursuant to Public Resources Code Section 21083.3 and CEQA Guidelines Section 15183; and

WHEREAS, the Zoning Amendment complies with the General Plan as required by Government Code Section 65860; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

SECTION 1. The proposed zoning amendment is in general conformance with the General

Plan.

SECTION 2. The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.070 of the Municipal Code.

SECTION 3. The subject site was incorporated into the Urban Service Area boundary prior to December 7, 1990; therefore, the provisions of Section 18.62.070C do not apply.

SECTION 4. Further development and any future building additions shall comply with the site development standards of the R-3 Medium Density Residential District.

SECTION 5. The City Council hereby approves the Zoning Map Amendment from ML – Light Industrial to the R-3 Medium Density Residential District to the site described attached hereto, as Exhibit “A”, Legal Description and Exhibit “B” Zoning Plat and by this reference incorporated herein.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 6TH DAY OF DECEMBER 2017, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE ____ DAY OF ____ 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:

ATTEST:

APPROVED:

IRMA TORREZ, City Clerk

STEVE TATE, Mayor

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Ordinance No. _____ New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on _____, _____.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Draft Ordinance [Revision 1] (1527 : ZA2017-0008: Monterey-Dobkin)

EXHIBIT "A"

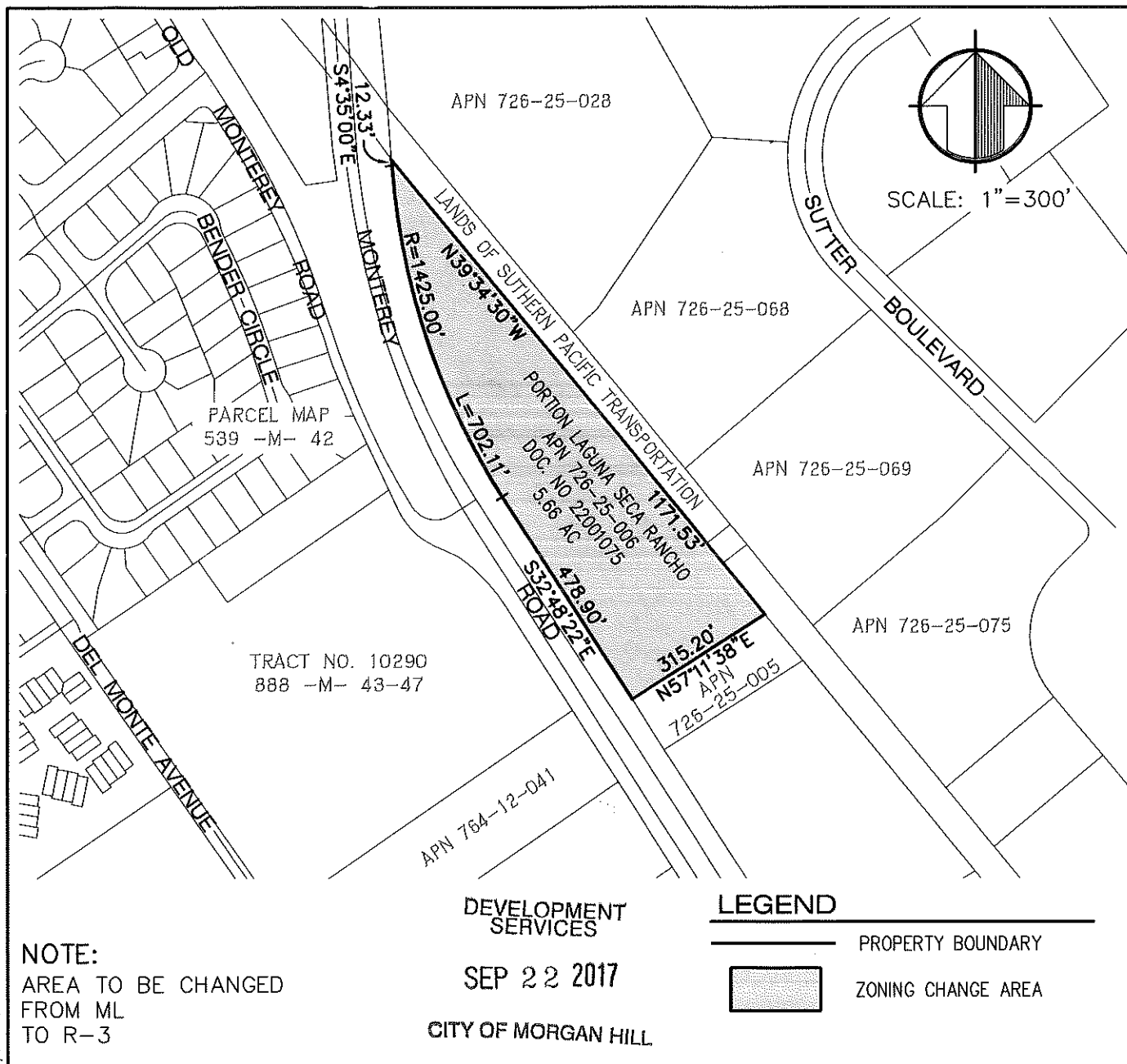
LEGAL DESCRIPTION

Real property in the City of Morgan Hill , County of Santa Clara, State of California, described as follows:

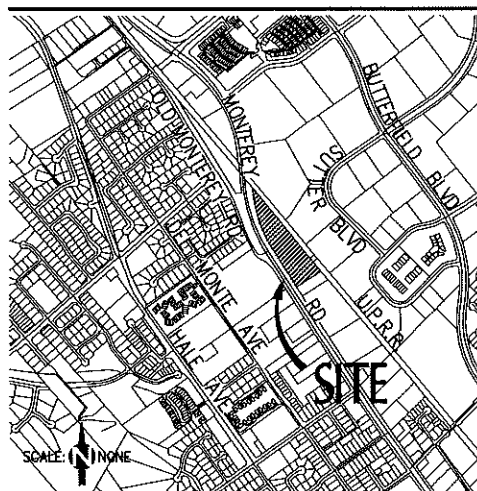
A PORTION OF THE LAGUNA SECA RANCHO LYING WEST OF THE SOUTHERN PACIFIC TRANSPORTATION COMPANY RIGHT OF WAY AND EAST OF THE MONTEREY STREET RIGHT OF WAY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY RIGHT OF WAY OF MONTEREY STREET AS ESTABLISHED BY GRANT DEED RECORDED AUGUST 31, 1938, IN [BOOK 893, OFFICIAL RECORDS, PAGE 167](#), SANTA CLARA COUNTY RECORDS, SAID POINT BEING N. 32° 46' W. 1247.24 FEET FROM THE MOST SOUTHERLY POINT DESCRIBED IN SAID GRANT DEED FOR PARCEL III, AND BEING ALSO N. 32° 46' W. 119.15 FEET FROM THE MOST WESTERLY CORNER DESCRIBED IN THE GRANT DEED RECORDED ON AUGUST 15, 1956, IN [BOOK 3579, OFFICIAL RECORDS, PAGE 15](#), SANTA CLARA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING, ALONG THE EASTERLY RIGHT OF WAY LINE OF MONTEREY STREET, N. 32° 46' W. 478.90 FEET; THENCE ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 1425 FEET, A CENTRAL ANGLE OF 28° 11', AND AN ARC LENGTH OF 700.95 FEET; THENCE N. 04° 35' W. 12.33 FEET TO THE WESTERLY RIGHT OF WAY LINE OF THE LANDS OF SOUTHERN PACIFIC TRANSPORTATION COMPANY; THENCE ALONG SAID RIGHT OF WAY, S. 39° 34' 30" E. 1171.04 FEET; AND THENCE S.57° 14' W. 313.59 FEET TO THE EASTERLY RIGHT OF WAY LINE OF MONTEREY STREET AT THE POINT OF BEGINNING.

APN: 726-25-006



VICINITY MAP



**MAP SHOWING REZONING
" LANDS OF RAR "**
**CITY OF MORGAN HILL
BEING A PART OF**

ORDINANCE NO. _____, NEW SERIES

DATE: 09/20/17

APPROVED BY: _____

DRAWN BY: MM

APPROVAL DATE: _____



MH engineering Co.

16075 VINEYARD BLVD.
MORGAN HILL, CA. 95037

217080



CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2017

PREPARED BY: Gina Paolini, Interim Principal Planner
APPROVED BY: City Manager

ZA2017-0005, EA2017-007: WATSONVILLE - BLACKROCK-ZONING AMENDMENT FROM RE 40,000-RPD TO RE 40,000 FOR PROPERTY IDENTIFIED BY ASSESSOR PARCEL NUMBER 779-02-023 LOCATED AT WATSONVILLE ROAD AND SANTA TERESA BOULEVARD.

RECOMMENDATION(S)

1. Open/close public hearing;
 2. Adopt resolution denying Zoning Amendment ZA2017-0005;
- OR
2. Waive the first and second reading of the ordinance approving the rezone; and
 3. Introduce the ordinance.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

Preserving and Cultivating Public Trust

POLICY CONSIDERATION:

Is the proposed Zoning Amendment consistent with the requirements imposed at the time the property applied for annexation into the City?

REPORT NARRATIVE:

Project Description:

A rezone is being initiated for a parcel located on the southeast corner of Watsonville Road and Santa Teresa Boulevard by Blackrock LLC. The proposed amendment would change the zoning map designation on the parcel from RE 40,000-RPD to RE 40,000, eliminating the RPD overlay, and therefore the requirement for a Precise Development Plan. The rezone request varies from the RPD overlay and related conditions by:

- 1) Eliminating the specific feathering requirement of Action 7.6, but leaving in place the General Plan policy requiring feathering in South Morgan Hill;
- 2) Reducing the size of the lots to below 1 acre and 2.5 acres; and,
- 3) Eliminating the requirement for a Precise Development Plan.

Background:

A detailed background analysis has been provided in the attached timeline (Attachment 3). On April 19, 2006, the City of Morgan Hill adopted Ordinance No. 1776 (Attachment

4) approving a Mitigated Negative Declaration, General Plan Amendment and Pre-Zoning application to allow the project site to be included within the City's Urban Growth Boundary (UGB) and Urban Service Area (USA). The site was pre-zoned RE 40,000 (RPD) subject to the following condition:

1. Development of the parcel shall occur at a density which transitions from minimum parcel sizes of one acre (43,560 square feet) on the southeastern side of the site to minimum parcel sizes of approximately two and one-half acres (108,900 square feet) on the southwestern side of the site.

The Local Agency Formation Commission (LAFCO) considered the proposed annexation on April 4, 2007, based on the City's pre-zoning of the site to RE 40,000 (RPD), the CEQA document, fiscal impact report, vacant land inventory and the agricultural land evaluation and site assessment for the Blackrock property. After a complete analysis of the site information, the property was annexed into the City in 2007.

In 2010, the Planning Commission awarded residential allotments for the site. In October 2010, Zoning Amendment, Subdivision and Development Agreement applications were filed to develop the site with 15 single-family custom homes. This application was inconsistent with City Council Ordinance No. 1776 and the 2001 General Plan because the proposed lots did not meet the size requirements specified within the General Plan or City Council Ordinance. The awarded allotments expired on June 30, 2014.

The applicant submitted a Preliminary Residential Development Control System (RDSCS) application on November 1, 2017. The proposed rezone requested by the applicant is a requirement for competition in the 2017 RDSCS process and must be completed by the Final RDSCS application filing deadline of January 4, 2018.

Planning Commission Review:

The Planning Commission considered the rezone request at its November 28, 2017 meeting. The staff report prepared for that meeting and related materials are attached (Attachment 5).

The applicant, Mr. Garcia, stated that he was a member of the Urban Limit Line (ULL) Advisory Committee when his property was considered for annexation into the City and confirmed the condition that was placed on the property limiting the size of the lots. He was not in favor of the condition at that time, but did agree that LAFCO considered this condition when evaluating the annexation application. Mr. Garcia provided a detailed letter to the Commission (Attachment 6).

Vince Burgos, land planner, explained the proposed development plan and the intent of the rezone request.

Bruce Schlegel, neighboring property owner, provided a detailed letter (Attachment 7) and spoke of his concern with the potential development. Traffic along Watsonville

Road has increased over the years, and he is concerned with the proposed entrance to the development. He is also concerned with the impacts that development will have on Llagas Creek.

Mark Wiselogel, neighboring property owner, provided a detailed letter (Attachment 8) and stated that he participated in the 2005 ULL Advisory Committee proposal requiring the lot feathering and that it is a reasonable requirement. A main concern with development at the site is the natural flow of water. He proposed that Lots No. 12 and No. 9 be increased in size.

The Planning Commission considered the following when deliberating on the project:

- Transition of lot sizes of 1 acre to approximately 2.5 acres
- The definition of “approximate”
- The definition of development “feathering”
- Neighborhood concerns
- Honoring the LAFCO process and commitments
- 2017 RDCS competition process

The majority of the Planning Commission wanted the project to be able to move forward but wanted to have development feathering specifically as described in the required pre-zone condition. The rezone would eliminate this condition and enable a less strict lot layout that would still comply with the more general policies included in the Morgan Hill 2035 General Plan. One of those policies is CNF 9.3 (Density Feathering in South Morgan Hill) which states “Maintain existing residential feathering south of Watsonville Road and west of Monterey Road.”

The Planning Commission recommended denial of the rezone application, and requested that although the applicant does not have a Precise Development Plan in place for the project site, conditions have been applied that would require specific lot sizes which is unique to this RPD zone. Therefore, the Planning Commission believes this project should be able to compete in the 2017 RDCS process absent a Precise Development Plan provided the proposed project is found to be compliant with the pre-zoning requirements specified in City Council Ordinance No. 1776. A Precise Development Plan would be submitted for approval following the receipt of building allotments through the RDCS process.

Summary

Due to the unique circumstances of this property, the existing Planned Development Overlay implemented as part of the annexation, City Council could determine that the property owner can participate in the RDCS process without having a Precise Development Plan approved in advance provided that the RDCS conceptual plan submitted is consistent with City Council Ordinance No. 1776.

COMMUNITY ENGAGEMENT: Inform

The proposed project was publicly noticed (mailing to property owners within 300 feet of the project and newspaper legal noticing) for the minimum 10-day period.

ALTERNATIVE ACTIONS:

This rezone is not required provided that a development project is designed to comply with the requirements of Ordinance No. 1776. However, if after review of the rezone request and hearing testimony, the City Council decides that a proposed project designed consistent with General Plan Policy CNF-9.3 (Density Feathering in South Morgan Hill) is an acceptable alternative, they could approve the rezone request. An Ordinance has been provided for the City Council's consideration if the appropriate findings can be made to approve the zoning amendment.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Planning Commission conducted a public hearing on this request on November 28, 2017. Based on the information presented, the Planning Commission determined that the findings for a zoning amendment could not be made and recommended denial of the rezone application. The Planning Commission has recommended that this project be able to compete in the 2017 RDCS process absent a Precise Development Plan provided the proposed project is found to be compliant with the pre-zoning requirements specified in City Council Ordinance No. 1776. The motion passed (5-1-1), with Commission Mueller voting no and Commissioner Downey absent.

FISCAL AND RESOURCE IMPACT:

The City administers land use entitlement processes on a cost-recovery basis with fees collected from applicants to cover the cost of services. These fees have been collected for the project.

California Environmental Quality Act (CEQA):

The California Environmental Quality Act (CEQA) does not apply to projects which a public agency rejects or disapproves (CEQA Guidelines Section 15270). However, understanding that the amendment request could be adopted, staff has completed the appropriate CEQA documentation for consideration.

On April 19, 2006, the Morgan Hill City Council adopted the Mitigated Negative Declaration (MND), which considered a General Plan Amendment that creates a ULL around the existing Morgan Hill city limits and greenbelt areas outside of the ULL. As part of the related actions, there were three sub-areas including "Oak Meadows", "West Hills Church" and "Blackrock" (the subject site).

The MND found that the project would result in impacts that were either less than significant or less than significant with mitigation. A mitigation monitoring and reporting program was adopted. Mitigation measures are applicable to the project site.

An addendum to a previously adopted MND may be prepared if some changes or additions are necessary but no substantial changes would result in new significant environmental impacts or increase the severity of previously identified significant impacts. An addendum in this case is warranted as none of the conditions described in Section 15162 of the CEQA guidelines would occur.

The Modified Project would not result in new or different environmental impacts, substantially increase the severity of the previously identified environmental impacts, not require new mitigation measures, and no new information has emerged that would materially change the analyses or conclusions set forth in the MND. Therefore, the Modified Project would not change the analysis or conclusions reached in the MND

The above-referenced CEQA analysis addresses only the zoning aspects of the project. An initial study (IS) for a residential project was initiated in May 2014, but the IS was not completed because the project did not move forward. Should a residential project be approved to move forward at this site, additional CEQA analysis is necessary.

LINKS/ATTACHMENTS:

1. Resolution
2. Ordinance
3. Project Timeline
4. Ordinance 1776
5. Planning Commission Staff Report (weblink)
6. Letter from Rocke Garcia
7. Letter from Brucee and Carol Schlegel
8. Letter from Mark Wiselogel

RESOLUTION NO.

A RESOLUTION OF THE CITY OF MORGAN HILL DENYING ZONING AMENDMENT ZA 2017-0005 CHANGING THE ZONING DESIGNATION TO REMOVE THE RPD OVERLAY FROM AN 18-ACRE PARCEL LOCATED ON THE SOUTH SIDE OF THE INTERSECTION OF SANTA TERESA BOULEVARD AND WATSONVILLE ROAD (ASSESSOR PARCEL NUMBER 726-02-023), FROM RE-40,000/RPD TO RE-40,000

WHEREAS, an application for rezoning of the property located on the south side of Santa Teresa Boulevard and Watsonville Road, APN 726-02-023 was made by the Blackrock, LLC (“Owners”), from RE-40,000/Residential Planned Development to RE-40,000;

WHEREAS, the rezoning is requested since the applicants propose that their development plan does not need the Planned Development overlay because it complies with the RE-40,000 zoning standards;

WHEREAS, the zone change will need to be completed prior to the end of the year so that the applicants could participate in the 2017 Residential Development Control System (RDSC) process with their current development plan;

WHEREAS, on April 19, 2006, the City of Morgan Hill approved the General Plan Amendment, Pre-Zoning, inclusion into the Urban Growth Boundary and the Urban Service Area;

WHEREAS, also on April 19, 2006, the City’s General Plan included Action 7.6 specifically describing the minimum parcel sizes for the subject property which transition from one acre to two and one-half acres;

WHEREAS, on April 4, 2007, the Santa Clara County Local Agency Formation Commission (LAFCO) approved the Urban Service Area application following the annexation of the site into the City of Morgan Hill;

WHEREAS, the Morgan Hill 2035 General Plan adopted in 2016 added Policy CNF-9.3 regarding feathering density in South Morgan Hill, but did not include Action 7.6; .

WHEREAS, the General Plan designates the above-referenced parcel as Residential Estate;

WHEREAS, the Zoning Amendment does not comply with the General Plan as required by Government Code Section 65860 because it does not comply with “**Policy CNF-9.3 Density Feathering in South Morgan Hill**. Maintain existing residential feathering south of Watsonville Road and west of Monterey Road”;

WHEREAS, the public necessity, convenience and general welfare do not require the

adoption of the proposed amendment;

WHEREAS, such application was considered by the Planning Commission at its regular meeting of November 28, 2017 at which time the Planning Commission recommended denial of Application ZA2017-0005: Watsonville-Blackrock because it could not make the findings required by Section 18.62.050 of the Morgan Hill Municipal Code;

WHEREAS, such application was considered by the City Council at its regular meeting of December 6, 2017 at which time the City Council denied application ZA2017-0005: Watsonville-Blackrock;

WHEREAS, the project site was reviewed as part of a Mitigated Negative Declaration adopted in 2006. However, CEQA does not apply to projects which a public agency rejects or disapproves (CEQA Guidelines Section 15270) and no further documentation is necessary; and,

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES RESOLVE AS FOLLOWS:

SECTION 1. The proposed Zoning Amendment is not consistent with the General Plan because the current proposal includes 14 lots ranging in size of 40,001 square feet to 87,164 square feet with three larger sized lots located along the boundary between the City and County which does not comply with Policy CNF-9.3 (Density Feathering in South Morgan Hill) of the Morgan Hill 2035 General Plan the intent of which is to maintain existing residential feathering south of Watsonville Road and west of Monterey Road, where this property is located. Furthermore, it does not comply with the pre-zoning requirements specified in City Council Ordinance No. 1776 described above.

SECTION 2. The proposed zoning amendment to remove the Residential Planned Development overlay is not required in order to serve the public necessity convenience, and general welfare as provided in Section 18.62.070 of the Municipal Code.

SECTION 3. Due to the unique circumstances of this property with the existing Planned Development Overlay implemented as part of the annexation, the property owner can participate in the RDCE process without having a Precise Development Plan approved in advance provided that the RDCE conceptual plan submitted is consistent with City Council Ordinance No. 1776.

SECTION 4. The City Council hereby denies the Zoning Amendment from RE-40,000/RPD Residential Estate to the RE-40,000 for property described in Exhibit "A", attached hereto, and by this reference incorporated herein.

PASSED AND ADOPTED THIS 6TH DAY OF DECEMBER 2017, AT A REGULAR MEETING OF THE CITY COUNCIL BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

IRMA TORREZ, City Clerk

STEVE TATE, Mayor

⌘ CERTIFICATION ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. _____ New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the _____ day of _____, 2017.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Resolution [Revision 1] (1508 : ZA2017-0005, EA2017-007: Watsonville - Blackrock)

EXHIBIT A

CITY OF MORGAN HILL

LEGAL DESCRIPTION

Real property in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

Beginning at the most Easterly corner of Parcel A as shown on that certain Record of Survey recorded in Book 234 of Maps, at page 50, Santa Clara County Records; thence leaving said point of beginning along the boundary of said Parcel A the following courses: S 44° 37' 26" W, 405.05 feet; S 31° 12' 39" E, 56.41 feet; S 28° 00' 57" W, 175.36 feet; N 37° 25' 01" W, 551.39 feet; N 57° 45' 05" W, 620.82 feet; N 32° 24' 55" E, 775.35 feet to the most Westerly corner of Parcel C as shown on said Record of Survey; thence along the Southeasterly line of said Parcel C S 57° 35' 05" E, 30.00 feet to the most Westerly corner of Parcel B as shown on said Record of Survey; thence along the boundary of said Parcel B the following courses: S 57° 34' E, 30.07 feet; thence along a curve concave Southerly with a radius of 50.00 feet through a central angle of 117° 44' 43" for an arc length of 99.51 feet; S 31° 31' 32" E, 27.82 feet; along a tangent curve to the left with a radius of 800.00 feet through a central angle of 59° 30' for an arc length of 457.24 feet to a boundary corner of the hereinabove mentioned Parcel A; thence along a Northeasterly boundary of said Parcel A S 31° 31' 32" E, 518.24 feet to a point on curve, concave Southerly, having a radius of 824 feet to which point a radial line that bears N 14° 52' 14" W; thence along said curve to the left through a central angle of 0° 16' 07" an arc distance of 3.86 feet to a point of reverse curve, concave Northerly, having a radius of 20.00 feet; thence along said curve to the right through a central angle of 43° 17' 20", an arc distance of 15.11 feet to a point of reverse curve having a radius of 42.00 feet; thence along said curve to the left through a central angle of 269° 32' 23" an arc distance of 197.58 feet to a point of reverse curve having a radius of 20.00 feet; thence Northeasterly and Easterly along said curve through a central angle of 46° 25' 24", an arc distance of 16.20 feet to a point of compound curve, concave Southerly, having a radius of 776.00 feet; thence along said curve to the right through a central angle of 1° 09' 33", an arc distance of 15.70 feet to a point on said Northeasterly boundary of Parcel A; thence along last said line S 31° 31' 32" E, 138.68 feet to the point of beginning.

**ORDINANCE NO.
AN ORDINANCE OF THE CITY OF MORGAN HILL
APPROVING ZONING AMENDMENT ZA2017-0005
CHANGING THE ZONING DESIGNATION OF AN 18.39
ACRE PARCEL LOCATED ON THE SOUTH SIDE OF THE
INTERSECTION OF SANTA TERESA BOULEVARD AND
WATSONVILLE ROAD (ASSESSOR PARCEL NUMBER
726-02-023), FROM RE-40,000/RPD TO RE-40,000**

WHEREAS, an application for rezoning of the property located on the south side of Santa Teresa Boulevard and Watsonville Road, APN 726-02-023 was made by the Blackrock, LLC ("Owners"), from RE-40,000/Residential Planned Development to RE-40,000;

WHEREAS, the rezoning is requested since the applicants propose that their development plan does not need the Planned Development overlay because it complies with the RE-40,000 zoning standards;

WHEREAS, the zone change will need to be completed prior to the end of the year so that the applicants could participate in the 2017 Residential Development Control System (RDSC) process with their current development plan;

WHEREAS, on April 19, 2006, the City of Morgan Hill approved the General Plan Amendment, Pre-Zoning, inclusion into the Urban Growth Boundary and the Urban Service Area;

WHEREAS, also on April 19, 2006, the City's General Plan included Action 7.6 specifically describing the minimum parcel sizes for the subject property which transition from one acre to two and one-half acres;

WHEREAS, the Morgan Hill 2035 General Plan adopted in 2016 added Policy CNF-9.3 regarding feathering density in South Morgan Hill, but did not include Action 7.6;

WHEREAS, on April 19, 2006, Ordinance No. 1776 was adopted with the following condition for the Pre-Zone: Development of the parcel shall occur at a density which transitions from minimum parcel sizes of one acre on the southeastern side of the site to minimum parcel sizes of approximately two and one-half acres on the southwestern side of the site;

WHEREAS, on April 4, 2007, the Santa Clara County Local Agency Formation Commission (LAFCO) approved the Urban Service Area application following the annexation of the site into the City of Morgan Hill;

WHEREAS, the General Plan designates the above-referenced parcel as Residential Estate;

WHEREAS, such application was considered by the Planning Commission at its regular meeting of November 28, 2017 at which time the Planning Commission recommended denial of

Application ZA2017-0005: Watsonville-Blackrock because it could not make the findings required by Section 18.62.050 of the Morgan Hill Municipal Code;

WHEREAS, such application was considered by the City Council at its regular meeting of December 6, 2017 at which time the City Council approved application ZA2017-0005: Watsonville-Blackrock; and

WHEREAS, the project site was reviewed as part of a Mitigated Negative Declaration adopted in 2006. A Mitigation Monitoring and Reporting Program was also adopted. Some of those mitigations are applicable to the site. An addendum to a previously adopted MND may be prepared if some changes or additions are necessary but no substantial changes would result in new significant environmental impacts or increase the severity of previously identified significant impacts. An addendum to the previously adopted 2006 MND in this case is warranted because none of the conditions described in Section 15162 of the CEQA guidelines would occur as a result of removing the Planned Development overlay; and

WHEREAS, the Zoning Amendment complies with the General Plan as required by Government Code Section 65860; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

SECTION 1. The proposed zoning amendment is consistent with the General Plan. The conceptual development proposal provides 14 lots ranging in size from 40,001 square feet to 87,164 square feet. Three larger sized lots are located along the southwestern boundary of the City of Morgan Hill and the County of Santa Clara boundary. The remaining 11 lots are approximately one acre in size. The draft proposal complies with the density feathering requirement stated in General Plan Policy CNF-9.3

SECTION 2. The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.070 of the Municipal Code.

SECTION 3. Further development and any future building additions shall comply with the site development standards of the RE-40,000 Residential Estate District.

SECTION 4. The City Council hereby approves amendment to the City zoning map changing the zoning designation from RE-40,000/RPD to the RE-40,000 of the site described in the Legal Description attached hereto, as Exhibit "A", and Exhibit "B" Zoning Plat and by this reference incorporated herein.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY

COUNCIL HELD ON THE 6th DAY OF DECEMBER 2017, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE ____ DAY OF _____ 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:**

ATTEST:

APPROVED:

IRMA TORREZ, City Clerk

STEVE TATE, Mayor

⌘ CERTIFICATION ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. _____ New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the _____ day of _____, 2017.

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

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT A

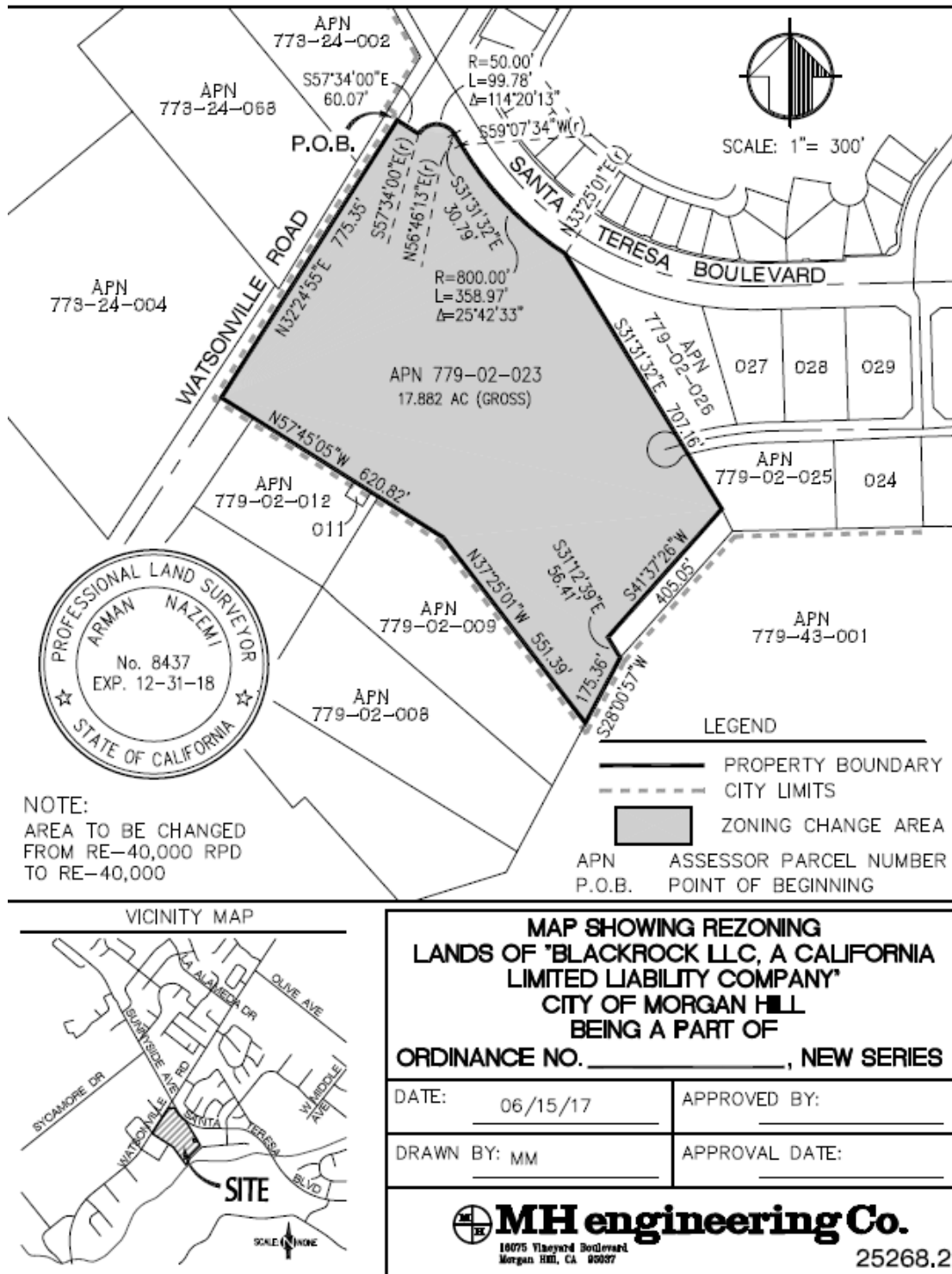
CITY OF MORGAN HILL

LEGAL DESCRIPTION

Real property in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

Beginning at the most Easterly corner of Parcel A as shown on that certain Record of Survey recorded in Book 234 of Maps, at page 50, Santa Clara County Records; thence leaving said point of beginning along the boundary of said Parcel A the following courses: S 44° 37' 26" W, 405.05 feet; S 31° 12' 39" E, 56.41 feet; S 28° 00' 57" W, 175.36 feet; N 37° 25' 01" W, 551.39 feet; N 57° 45' 05" W, 620.82 feet; N 32° 24' 55" E, 775.35 feet to the most Westerly corner of Parcel C as shown on said Record of Survey; thence along the Southeasterly line of said Parcel C S 57° 35' 05" E, 30.00 feet to the most Westerly corner of Parcel B as shown on said Record of Survey; thence along the boundary of said Parcel B the following courses: S 57° 34' E, 30.07 feet; thence along a curve concave Southerly with a radius of 50.00 feet through a central angle of 117° 44' 43" for an arc length of 99.51 feet; S 31° 31' 32" E, 27.82 feet; along a tangent curve to the left with a radius of 800.00 feet through a central angle of 59° 30' for an arc length of 457.24 feet to a boundary corner of the hereinabove mentioned Parcel A; thence along a Northeasterly boundary of said Parcel A S 31° 31' 32" E, 518.24 feet to a point on curve, concave Southerly, having a radius of 824 feet to which point a radial line that bears N 14° 52' 14" W; thence along said curve to the left through a central angle of 0° 16' 07" an arc distance of 3.86 feet to a point of reverse curve, concave Northerly, having a radius of 20.00 feet; thence along said curve to the right through a central angle of 43° 17' 20", an arc distance of 15.11 feet to a point of reverse curve having a radius of 42.00 feet; thence along said curve to the left through a central angle of 269° 32' 23" an arc distance of 197.58 feet to a point of reverse curve having a radius of 20.00 feet; thence Northeasterly and Easterly along said curve through a central angle of 46° 25' 24", an arc distance of 16.20 feet to a point of compound curve, concave Southerly, having a radius of 776.00 feet; thence along said curve to the right through a central angle of 1° 09' 33", an arc distance of 15.70 feet to a point on said Northeasterly boundary of Parcel A; thence along last said line S 31° 31' 32" E, 138.68 feet to the point of beginning.

EXHIBIT B



Santa Teresa – Blackrock
APN 779-02-023
Project Timeline
Page 1 of 4

DATE	ACTION
March 2003	The City of Morgan Hill convened an Urban Limit Line Advisory Committee to develop and recommend city policy regarding the establishment of an Urban Limit Line (ULL).
March 14 and 21, 2005	The Urban Limit Line Advisory Committee reviewed the inclusion of the Blackrock property within the ULL. At that time, land to the east side of Santa Teresa had been developed with 7,000 to 10,000 square foot lots and a property adjacent to the southwest side of the site had approval for one acre lots. Within unincorporated Santa Clara County, four lots were identified to the southwest of the site. The lot sizes were 3 acres, 2.5 acres and two, 3.8 acre lots. Immediately across Watsonville Road, there were two, 5.5-acre parcels. Farther south along Watsonville Road, parcel sizes ranged from one acre to one, 10- acre parcel. Based on the Advisory Committee analysis of the surrounding densities of adjacent properties, it was recommended that the lots range from a minimum of one acre in the area closest to the one acre lots in the City to lots with approximately 2.5 acres closest to the unincorporated residential area.
June 2005	The City accepted the committee's policy recommendations in relation to the ULL and greenbelt areas and directed the filing of a General Plan Amendment and preparation of an environmental review document.
APRIL 19, 2006	<u>GPA-05-05</u> – Approved by Council Reso. No. 5996 to amend Community Development Element to include Action 7.6: <i>The 18-acre property located at the southwest corner of Santa Teresa Blvd. and Watsonville Road should develop at a density which transitions from minimum parcel sizes of one acre on the southeastern side of the site to minimum parcel sizes of approximately two and one half acres on the southwestern side of the site.</i>

Santa Teresa – Blackrock
APN 779-02-023
Project Timeline
Page 2 of 4

DATE	ACTION
	<u>GPA-05-06</u> – Approved by Council Reso. No. 5997 to include the parcel within the Urban Growth Boundary (UGB) and change the General Plan land use designation from Rural County to Residential Estate. <u>USA-05-01</u> – Recommended for LAFCO approval by Council Reso. No. 5998 to include the subject parcel within the Urban Service Area (USA). Approved by LAFCO Reso. No. 2006-01 on April 4, 2007. Approval of USA expansion subject to the conditions requiring the applicant to enter into an agreement with the City committing the applicant to the provision of a well site and asphalt overlay. <u>ANX-05-18</u> – Annexation application approved by Council Reso. No. 5999. <u>ZA-05-027</u> – Approved by Council Ordinance No. 1776 (adopted April 26, 2006; effective May 26, 2006) to zone the property RE 40,000 (RPD), subject to the condition: <i>Development of the parcel shall occur at a density which transitions from minimum parcel sizes of one acre on the southeastern side of the site to minimum parcel sizes of approximately two and one half acres on the southwestern side of the site.</i>

Santa Teresa – Blackrock
APN 779-02-023
Project Timeline
Page 3 of 4

DATE	ACTION
APRIL 4, 2007	The Santa Clara County Local Agency Formation Commission (LAFCO) approved the USA application allowing the annexation of the site into the City of Morgan Hill.
JULY 2, 2007	<u>Agreement to Provide Infrastructure Improvements and Land</u> between City of Morgan Hill and Blackrock, LLC requiring well site dedication to the City and asphalt overlay installation by Blackrock no later than April 4, 2012.
NOVEMBER 7, 2007	<u>ANX-05-18</u> – Annexation approved by Council Reso. No. 6127. Certified by LAFCO on November 26, 2007.
FEBRUARY 23, 2010	<u>MC-09-07</u> – Approved by Planning Commission Resolution award and distribution of residential building allotments; five allotments for FY 2011/12 and nine allotments for FY 2012/13.
OCTOBER 6, 2010	<u>ZA-10-03/SD-10-04/DA-10-01/EA-10-16</u> – Applications (Zoning Amendment, Subdivision, Development Agreement, and Environmental Assessment) filed for 15-lot subdivision for custom homes.
APRIL 4, 2012	Deadline for delivering municipal well site and Watsonville Road asphalt overlay.
JUNE 6, 2012	<u>ELBA-12-04</u> – Approved by Council Reso. No. 6540 granting an 18-month extension for five MC-09-07 allotments.
JUNE 5, 2013	<u>ELBA-13-05</u> – Approved by Council Reso. No. 6642 granting a 9-month extension for nine MC-09-07 allotments.
DECEMBER 4, 2013	<u>ELBA-13-08</u> – Approved by Council Reso. No. 6767 to extend MC-09-07 allotments with a new “commencement of construction” date for all 14 units to June 30, 2014.

Santa Teresa – Blackrock
APN 779-02-023
Project Timeline
Page 4 of 4

DATE	ACTION
FEBRUARY 26, 2014	Applicants notified by letter of project's deadline for commencing construction and deadline to submit ELBA (March 21, 2014).
APRIL 14, 2014	Applicants notified by letter of project's deadline for commencing construction and extended deadline to submit ELBA (April 18, 2014). Letter also included project comments.
MAY 2014	Administrative Draft Initial Study submitted to City for review.
JUNE 30, 2014	Commencement of construction date for 14 units. Allotments were lost due to missing deadline.
JUNE 16, 2017	Application filed for Zoning Amendment (ZA2017-0003) and Environmental Assessment (EA2017-0007) to change the zoning designation on the site from RE 40,000 RPD to RE 40,000.
November 1, 2017	Application for Preliminary Residential Development Control System (RDCS) application filed for the development of 14 single-family custom homes.

ORDINANCE NO. 1776, NEW SERIES**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING ZONING AMENDMENT APPLICATION ZA-05-27: SANTA TERESA – BLACK ROCK LLC (APN 779-02-002)****THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:**

SECTION 1. The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

SECTION 3. An environmental initial study has been prepared for this application in conjunction with GPA 05-05. That study has been found complete, correct and in substantial compliance with the requirements of the California Environmental Quality Act. Mitigation measures have been developed for all potentially significant impacts that will reduce their effect to a less than significant level. A Mitigated Negative Declaration and a Mitigation Monitoring and Reporting Program were adopted for this application as part of GPA 05-05.

SECTION 4. The subject property is pre-zoned RE 40,000 (RPD) subject to the following condition:

1. Development of the parcel shall occur at a density which transitions from minimum parcel sizes of one acre on the southeastern side of the site to minimum parcel sizes of approximately two and one half acres on the southwestern side of the site.

SECTION 5. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 6. Effective Date Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

City of Morgan Hill
Ordinance No. 1776, New Series
Page 2 of 3

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 19th Day of April 2006, and was finally adopted at a regular meeting of said Council on the 26th Day of April 2006, and said ordinance was duly passed and adopted in accordance with law by the following vote:

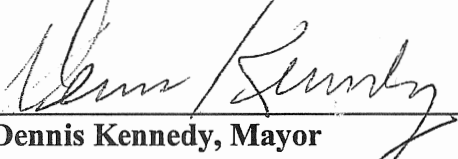
AYES:	COUNCIL MEMBERS:	Larry Carr, Mark Grzan, Dennis Kennedy, Greg Sellers,
NOES:	COUNCIL MEMBERS:	Steve Tate
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

ATTEST:



Irma Torrez, City Clerk

APPROVED:



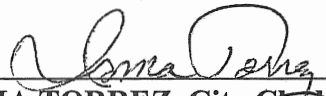
Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1776, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 26th Day of April 2006.

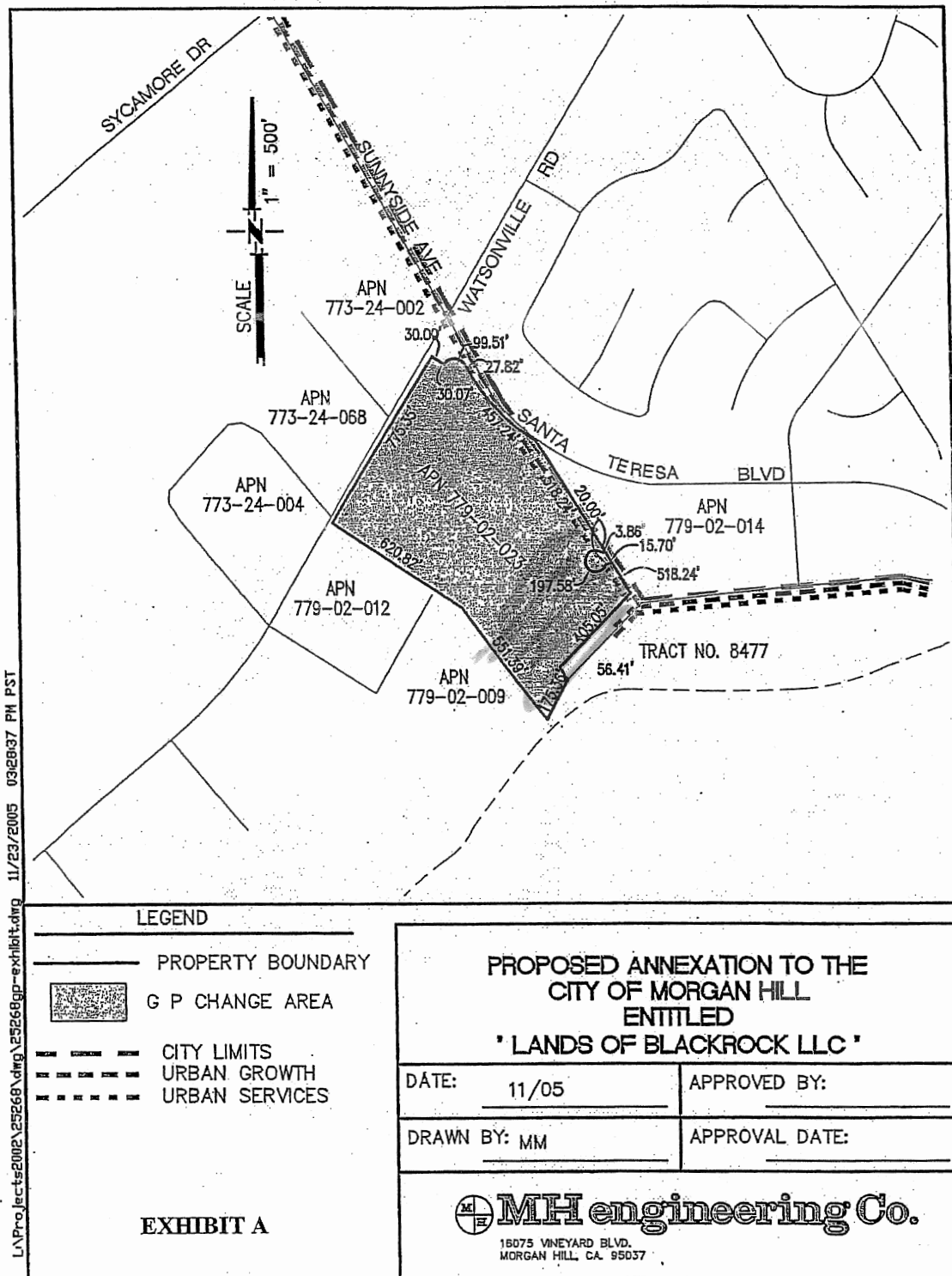
WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: May 4, 2006



IRMA TORREZ, City Clerk

Attachment: Ordinance 1776 (1508 : ZA2017-0005, EA2017-007: Watsonville - Blackrock)



November 28, 2017

Planning Commission

City of Morgan Hill

Re: Planning Commission ZA-2017-0005, EA-2017-0007 Watsonville-Blackrock Zoning Amendment... Watsonville Road and Santa Teresa Boulevard... 18.39 acres

BACKGROUND

As per Planning Staff's report: in 2005 the Urban Limit Line Advisory committee recommended our 18 acre property be annexed to the City; and, that our property fit the definition of infill property as adjacent lands either had existing homes or future homes that were approved/to be developed in the City. The three custom homes, within the County jurisdiction; and adjacent to our boundaries: to the S, a 20 acre hillside home across Llagas Creek with a vineyard; to the W, 2 custom homes on 3+/- acres on flat land

similar to Quail Vineyards'. All of these County approved homes have their own domestic well, fire suppression system, septic and leach fields.

As a note, homes along Watsonville Road to Bowden Drive SW have been fully developed under County regulations; including a 13 lot subdivision (12 one acre lots, and 1- 2+acre lot) known as Stonebridge.

In February 2010, our project, Quail Vineyards, was awarded 15 allotments through RDCS Measure C. These 15 allotments met the LAFCO "potential development of a maximum of 15 houses on the property after annexation" as well as the approximately two and half acre requirement to the SW. In June 2011, City Staff response letter to our subdivision submittals "received (y)our applications for a 15 unit single family residential development"...additional information is required. Under Subdivision of that letter:

1. Staff recommends the following changes: 1. Eliminate the shared driveways for individual lots; 2. Modify the site plan to provide greater

separation between the 100 year floodplain limit and the homes on Lots 13,14 & 15.

There was no mention of reducing the number lots below 15. (We have enclosed that Staff letter.)

Unfortunately circumstances beyond our control caused us to delay our project.

In June 2017 we submitted an application for 14 single family custom lots (RE-40,000) so we could compete for RDCS Measure S allotments meeting the General Plan and Zoning requirements and/or interpretation. We, again, made this determination after receiving the July 14, 2017 letter from City Staff in response to our application for a Zoning Amendment. Our attached October 22, 2017 letter outlines our reasons and responses to Staff comments.

We have met the requirements as set out in all of our approvals; and, have even reduced the number of lots and increased the sizes of the custom lots to the W.

RECOMMENDATION...We ask that you adapt a Resolution enclosed on Page 2.b of your packet approving our application for Rezoning to RE-40,000.

Thank you,

Blackrock LLC

Rocke Garcia, manager



DEVELOPMENT SERVICES CENTER

17575 PEAK AVENUE
MORGAN HILL, CA 95037-4128
TEL: 408-778-6480
FAX: 408-779-7236
WWW.MORGANHILL.CA.GOV

June 22, 2011

Mr. Vince Burgos
Development Process Consultants
220 Live Oak Drive
Danville, CA 94506

SUBJECT: Zoning Amendment, Subdivision and Development Agreement Applications,
ZA-10-03/SD-10-04/DA-10-01: Santa Teresa - Blackrock

Dear Vince:

The City of Morgan Hill has received your applications for a 15-unit, single family residential development proposed on the southwest corner of Santa Teresa Boulevard and Watsonville Road. Your applications have been reviewed for completeness and accuracy of filing. Based on this review, we have found that additional information is required before your applications can be deemed complete. Plans were forwarded to the Development Review Committee for review and comments. This letter describes comments received for your proposal from the Planning Department, as well as from other City departments and outside agencies. Please provide any responses or plan changes by Wednesday, July 20, 2011 in order to continue the processing of your applications.

A. PLANNING DIVISION.

Miscellaneous/General:

1. In accordance with the filing requirements for a PD application and Tentative Subdivision Map, please submit a copy of the Public Notice/Project Identification Sign. The sign shall be posted a minimum of 10 calendar days prior to the first public hearing. Once the sign is posted, the applicant must submit an affidavit of posting to the Planning Division as proof of posting the notice on-site.
2. An environmental assessment is required for your project. The City's consultant will prepare the required assessment and documentation as a supplement to the Environmental Initial Study prepared by EIP Associates in 2006.
3. The project shall comply with all Measure C requirements.

Subdivision:

1. Staff recommends the following changes: 1.) Eliminate the shared driveways for the individual lots; 2.) Modify the site plan to provide greater separation between the 100-yr floodplain limit and the homes on Lots 13, 14 & 15. 3.) Revise the plans to exclude the 0.493-acre lot that is part of the neighboring Quail Meadows development (pan-handle located along south property boundary with an Open Space Easement recorded over it). Elimination of this lot will result in the reduction in lot size for Lots 14 & 15. 4.) If proposing vineyards on individual lots, Staff recommends creating more substantial areas rather than a narrow row along the street frontages.
2. The Preliminary Grading Plan makes reference to existing trees that will either remain or be removed.



CITY OF MORGAN HILL

DEVELOPMENT SERVICES CENTER

17575 Peak Avenue Morgan Hill CA 95037 (408) 778-6480 Fax (408) 779-7236

Website Address: www.morgan-hill.ca.gov

July 14, 2017

Blackrock, LLC

P.O. Box 1179

City of Morgan Hill, CA 95038

Subject: Zoning Amendment No. ZA2017-0005, EA2017-0007: Watsonville - Blackrock

To Whom It May Concern:

Thank you for the application submittal received on June 16, 2017 for the above referenced permit(s) on the property located at 14905 Santa Tresa Blvd. (APN: 779-02-023). The application submittal for the project proposal to remove the existing PD overlay designation and retain the existing underlying zoning is complete. However, after reviewing related files for the annexation of the property (ANX-05-18), General Plan Amendment (GPA-05-06), Zoning Amendment (ZA-05-27, ZA-10-03, and the Final Mitigated Negative Declaration prepared by EIP Associates in April of 2006 for the subject property, staff would like to set up a meeting to discuss the future residential design proposal. Below is a list of items that will need to be addressed:

CEQA

1. A Greenbelt study was prepared and a final mitigation monitoring program approved that requires:
 "The impacts to the agricultural lands within the Black Rock subarea shall be assessed according to the California Agricultural Land Evaluation and Site Assessment Model (1997) to confirm that extent of State Prime Farmland. The City of Morgan Hill will then make a determination whether the portion mapped as Prime farmland has long-term economic viability for agriculture, and if it meets these criteria, shall require establishment of a conservation easement or agricultural preserve for that portion of the property consistent with its Open Space and Conservation Element policies. The City may also elect to implement a Transfer of Development Rights (TDRs) to allow for the increased net density of housing units on the remainder of the parcel in order to retain the proposed general plan designation as the gross density for this portion of the GPA."
- This may require an Environmental Impact Report for the project. Prior to sending the project plans to a consultant for a quote, we would like to have our meeting first.
2. The property has a historic barn that will need to be assessed and possibly incorporated within the new proposed development on the property.

Attachment: Letter from Rocky Garcia (1508 : ZA2017-0005, EA2017-007: Watsonville - Blackrock)

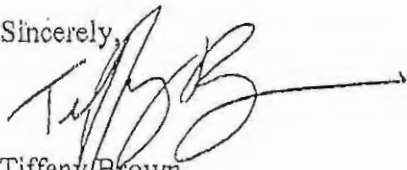
3. There is a stream located at the south end of the property that will require all development to meet the standard stream setbacks from top of bank.

Site Plan

4. We understand that the project proposal as is, does not require a site plan. However, it is hard for Planning to show that the new zoning will meet the intent of the conditions and mitigations set forth on the property when the property was annexed in 2006 without one.

Please give me a call, or send me an email with some available dates and times when you can meet and discuss. The Planning Division may ask for more information after you respond to these comments. You can contact me at (408)310-4655 or by email at Tiffany.Brown@morganhill.ca.gov

Sincerely,



Tiffany Brown
Associate Planner
17575 Peak Ave.
Morgan Hill, CA 95037

October 22, 2017

Tiffany Brown, Associate Planner

City of Morgan Hill

Sheldon S. Ah Sing, Principal Planner

17575 Peak Avenue

Morgan Hill, CA 95037

HAND DELIVERED

Re: Zoning Amendment No. ZA 2017-005, EA 2017 EA-0007: Watsonville-Blackrock

Dear Ms. Brown and Mr. Sing,

We are writing this letter as a formal response to your letter of July 14, 2017, an email from Mr. Sing and the multiple meetings we have had with Staff regarding our application to remove the PD overlay zoning on our property.

To summarize our meetings' accomplishments: we have reduced the number of lots from 15 lots to 14 lots

and have increased the square footage of the three "western lots" meeting your interpretation of our Annexation. We have submitted to you our new subdivision plan.

In answer to your items that needed to be addressed...we have found that Staff has misinterpreted or not been aware what has been approved in the past.

CEQA:

Prime agricultural land: In the December 20, 2006 letter (enclosed) from Morgan Hill Project Planner David Bischoff to Neelima Palacheria, LAFCO Executive Officer paragraph 6 states clearly: "The Initial Study found that approximately 7 acres of the site consists of prime agricultural land. The Mitigated Negative Declaration required that the significance of the loss of this agricultural land be evaluated using the California Agricultural Land Evaluation and Site Assessment (LESA) model. That assessment has been conducted and found that the loss of 7 acres of agricultural land would be less than significant." The City of Morgan Hill has made the assessment that this land has no long term economic viability for agriculture.

Historic Barn:

We have enclosed our Barney Machado House and Barn file. Rebecca Tolentino, Senior Planner City of

Morgan Hill worked on this project with David Powers and Associates (Environmental consultants) for the City. Akoni Danielson was their person in charge. In reviewing the files, a complete assessment was completed by the City; and, as per our submitted plans, we have incorporated and plan to save the Machado Barn in our development.

Little Llagas Creek

As per our submitted plans by MH Engineering we will meet the standard stream setbacks from top of bank.

Site Plan

Even though we were not required to submit a site plan we have done so. We have met or will meet the requirements of the annexation, zoning and mitigations.

Very truly,

Blackrock LLC

A handwritten signature in cursive script, appearing to read "Roche Garcia".

Roche Garcia, Manager

A handwritten signature in black ink, appearing to read 'Doug Blackwell', with a stylized, cursive script.

Doug Blackwell, Manager

Copies to Bart

Item # 2**AGENDA DATE: 11/28/17
SUPPLEMENTAL # 1**

November 28, 2017

Re: Zoning Amendment for parcel number 779-02-0023

To whom it may concern:

My wife and I live and own a nearby parcel and home on Branston Ct. There are concerns regarding the development of the site on the corner of Watsonville Road and Santa Teresa Blvd. that we would like recorded. Namely:

1. We and three other neighbors get our domestic water from a well that is within 50 feet or so of the parcel border. Construction, hazardous substances and the like need to be carefully monitored to insure our health and wellbeing are considered in terms of the well water.
2. There is a natural flow of water that continues from the Branston Ct parcels (most notably 14840) and the aforementioned joint well and water tank. It is imperative that the flow of rain water be considered in any elevation changes due to the development.
3. Traffic on Watsonville and Santa Teresa/Sunnyside has dramatically increased over the years. Additional vehicles residing on this corner would further add to this hazard. It is critical to consider the safest entrance from the development. It is undoubtedly not on Watsonville Rd. Additionally the intersection of Watsonville and Santa Teresa/Sunnyside needs to consider a roundabout or similar arrangement. The current 4-way stop may not be adequate.
4. Environmental impact on Lagas Creek. This year round stream is located on the southern end of the property in question. The impact on wildlife needs to be considered. There is a Blue Heron breeding habitat along with Wood Duck habitat including breeding boxes constructed by the Department of Fish and Game. The creek can also accommodate spawning steelhead and many forms of amphibians. There have been recent observations by the agencies who look after such issues. I would suggest a further study particularly with the issues mentioned in mind, e.g. Blue Heron, Wood Duck, Steelhead Trout and amphibians.

The number one criteria for this development besides accommodating these issues needs to be sensitivity towards the number of residences allowed. This is very sensitive land and over extending the number of homes allowed can be disastrous.

Respectfully,

Bruce and Carol Schlegel

14820 Branston Ct

Morgan Hill, CA 95037

Attachment: Letter from Bruce and Carol Schlegel (1508 : ZA2017-0005, EA2017-007: Watsonville - Blackrock)

Item 2
Supp. #2

Planning commission zoning meeting 11/28/17

Regarding zoning amendment za2017-0005,-0007 parcel 779-02-023

Mark Wiselogel property owner 14840 branston ct

I have concerns with the proposed zoning changes for parcel 779-02-023

My proposal for lot size feathering from 2.5 acres to 1 acre was adopted in 2005 and I believe still seems reasonable.

My main current concern is the natural flow of water.

The natural flow of water from the Branston, mosegard, knopf, Stonebridge watershed flows through the 14840 and 14830 branston properties and into the lower lying parcel 779-02-023. There are two dominate flow paths into the 779-02-023 parcel. The largest flow is near the back boundary between 14840, 14830 branston and the 779-02-023 parcel. The second is at the Watsonville road , 14840 branston and 779-02-023 parcel boundary. I have included pictures on the following pages.

While both of these natural flows need to be addressed, focusing on the larger flow area in the back. In 2017 rain season I calculated as much as approximately 1 ACRE ft per hour flowing through my culvert pipe. This flow is predominately from the branston through Stonebridge watershed into 14840 branston across and into parcel 779-02-023

As parcel 779-02-023 is currently structured. This flow and all other flows in the 22 years I have been at 14840 branston ct have had sufficient capacity for this natural flow.

My concern for Quail Vinyards proposed lots #12 and #9 are that the natural flow of water from the branston properties not be effected by the development.

I propose lots #12 and #9 be increased in size. This will allow room for culverts and drainage basins to be added. Engineered Culvert piping and storm drain systems that can handle worst case natural flow of water. Increase the setback on the branston/ parcel 779-02-023 boundaries for no detrimental grading effects. Fencing MUST allow for sufficient natural flow from the branston properties into parcel 779-02-023.

We have not had flooding issues that have affected the branston well or dwellings. Going forward, if these issues arise it will be due to changes brought on by the development of parcel 779-02-023

Thank you Mark Wiselogel

Attachment: Letter from Mark Wiselogel (1508 : ZA2017-0005, EA2017-007: Watsonville - Blackrock)

Picture of natural flow boundary rear 14840 branston and parcel 779-02-023



Natural flow across 14840 branston





Natural flow 14840 branston into parcel 779-02-023 at Watsonville

COUNCIL MEMBER NOTICE

ATTENTION

PLEASE BE ADVISED THAT STAFF HAS NOTED THAT YOU OWN PROPERTY LOCATED WITHIN 500' OF AGENDA ITEM(S) LISTED BELOW:

COUNCIL MEMBER(S): Carr

MEETING DATE: 12/6/17

AGENDA ITEM(S): 9 and 25

TITLE(S):

Item 9:

ACCEPTANCE OF SUBDIVISION PUBLIC IMPROVEMENTS - VILLAGE CENTER - TRACT NO. 10219

Item 25:

PURCHASE AND SALE AGREEMENT BETWEEN CITY OF MORGAN HILL AND GRANARY LLC, FOR THE GRANARY BUILDING EXPANSION PROJECT

.....
CC: Mayor
City Manager
City Attorney
Council Services & Records Coordinator

Item # 19

AGENDA DATE: 12/06/17
SUPPLEMENTAL # 1

From: D Dasovic <d_dasovic@yahoo.com>
Date: December 4, 2017 at 8:14:07 AM PST
To: Michelle Wilson <michelle.wilson@morganhill.ca.gov>
Cc: larry.carr@morganhill.ca.gov, rich.constantine@morganhill.ca.gov,
caitlin.jachimowicz@morganhill.ca.gov, rene.spring@morganhill.ca.gov,
steve.tate@morganhill.ca.gov, christina.turner@morganhill.ca.gov
Subject: December 6, 2017 City Council Meeting

Hello Ms. Wilson,

Regarding Item #19 Downtown Special Events and Street Closures-
Our attorney, Francois Sorba, has submitted a letter on our behalf with regard to this matter.
We request that his letter, along with this email, be included as a part of the public comment,
as a matter of public record.

When this item last appeared before City Council in October 2017, I had made the same
request regarding two emails I had sent you. While you had assured me that my emails would
appear as a supplemental item, only one email was included. My email documenting the
Community Service Coordinator conduct was excluded.

Thank you,
Diane Dasovic

FRANCOIS X. SORBA
Attorney at Law
1611 Borel Place, Ste 7
San Mateo, CA 94402
(650) 570-0566
Fax (650) 570-7831

December 1, 2017

Honorable Mayor and
City Council Members
City of Morgan Hill
171 W Edmundson Ave
Morgan Hill, CA 95037

Via mail and e-mail

RE: East Third Street – Street Closure

Honorable Mayor and Council Members:

This office represents Ms. Diane Dasovic and Ms. Ivanka Dasovic. My clients reside at 65 East Third Street, in Morgan Hill, CA.

The purpose of this letter is to request that you consider or reconsider the closure of 3rd Street for the reasons stated below.

As you are aware, based upon the letters sent to you by Ms. Diane Dasovic, Ms. Ivanka Dasovic lives on East Third Street and suffers from a disability which is protected under the American with Disability Act (“ADA”)

American With Disability Act and Reasonable Accommodation

Ms. Dasovic’s mother suffers from a physical impairment that substantially limits one or more major life activities.

The closure of East Third Street prevents Ms. Ivanka Dasovic from having access to her house during the events. The City is not immune from State and Federal action for violation of the ADA.

The ADA requires that the City of Morgan Hill not only prevent barriers which would impair egress and ingress but also imposes a duty on the City to accommodate Ms. Ivanka Dasovic.

Honorable Mayor and
City Council Members
December 1, 2017
Page 2

Request is therefore made that vehicles uses or that may be used by Ms. Ivanka Dasovic be allowed free access to and from her house to the main street. The vehicles include emergency vehicles and vehicles used by Ms. Ivanka Dasovic's health providers and assistants.

Inverse Condemnation

Inverse condemnation is the manner in which a landowner recovers just compensation for a taking of property without eminent domain proceedings. *United States v. Clarke* (1980) 445 U.S. 253, 257, 100 S. Ct. 1127, 63 L. Ed. 2d 373; Inverse condemnation is appropriate when there is an invasion of property right by a public entity. *Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal. 3d 110, 119-120, 109 Cal. Rptr. 799, 514 P.2d 111.

Substantial temporary impairment of access is compensable in inverse condemnation action. *Jones v. People ex rel. Dep't of Transp.* (1978) 22 Cal. 3d 144, 154-156, 148 Cal. Rptr. 640, 583 P.2d 165; A cause of action exists in inverse condemnation for substantial impairment of access to plaintiff's property. *Breidert v. Southern Pac. Co.* (1964) 61 Cal. 2d 659, 663-664, 39 Cal. Rptr. 903, 394 P.2d 719.

The Closure of East Third Street substantially impairs my client's right to free access to her property and substantially diminishes the value of her property.

Request is therefore made that the plan to close East Third Street be modified to allow my client free access to her property.

CEQA Violation

City staff determined that the east Third Street Closure was exempt from a CEQA review based upon CCR, Regs 15301: Said section recites in part: "Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The types of "existing facilities" itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use."

First, reliance on said code section is not appropriate. Second, City Staff failed to analyze the traffic impact created by the closure of East Third Street. A one or two day closure per year would certainly not have a significant impact on the environment. However, the impact on the traffic pattern and additional pollution due to the detours must be analyzed since the impact will be substantial.

Noise and pollution must also be analyzed. The closure will bring noise which will impact all property owners and occupants on the street.

An exemption under CEQA is therefore not available in this case.

Honorable Mayor and
City Council Members
December 1, 2017
Page 3

As stated above, the purpose of this letter to work out a plan which will not deprive my clients of her right to access her property.

Thank you for your prompt attention to this matter.

Sincerely,

Francois X. Sorba

cc. Client



Item # 19
AGENDA DATE: 12/06/17
SUPPLEMENTAL # 2

December 6, 2017

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

Re: December 6, 2017 City Council Meeting Agenda item 19
Downtown Special Events and Street Closures

Mayor Tate and Councilmembers,

The issues of events to bring people downtown, street closures for the events, and their effects on downtown residents are of great importance to the Morgan Hill Downtown Association.

The Downtown Association not only hosts events but is also supportive of the events of other organizations which bring so much of our community and visitors to the downtown area. These activities give our downtown businesses an opportunity to be seen and show visitors what they are all about.

We are also champions of residents who live in a district that is unlike any other in the city. These residents can do so much to help in the growth and sustainability of a downtown business district with their regular patronage. We hope those many residents enjoy the convenience of being so close to great businesses and appreciate the energy of the district.

Having events is one of the reasons so much was invested in the original 3rd Street Promenade and the subsequent 3rd Street remodel in conjunction with the parking garage plaza.

The investment and subsequent successful use of 3rd Street for events has spurred interest in further events and encouraged others to invest in businesses in the immediate area. We have new businesses that consider events a part of the reason they chose locations on or near the street.

We believe there should be an equitable balance between the wants and needs of the public and rights of the private residents and we feel the current proposed policy is reflective of those wishes.

As an Association we have gone to great lengths to understand the needs of our downtown residents and recognize the inconvenience that some street closures and events present to them. We also recognize the benefits events on closed streets provide for our businesses.

We hope that this set of policies will help residents feel that their personal needs are being respected and those of the business community are being honored.

We support the current resolution for Downtown Special Events and Street Closures.

Thank you for your time and attention.

Sincerely,
Board of Directors
Morgan Hill Downtown Association

Item # 21

AGENDA DATE: 12/06/17
SUPPLEMENTAL # 1

From: D. Muirhead
To: [Angie Gonzalez](#); [Michelle Wilson](#)
Subject: Morgan Hill City Council Meeting December 6, 2017 Item #21: animal services regional approach
Date: Tuesday, December 05, 2017 10:40:15 AM

Dear Morgan Hill City Council,
Comments for the Public Record for:
Morgan Hill City Council
Meeting December 6, 2017
Item #21: animal services regional approach

The stated POLICY CONSIDERATION is
Should the City explore a regional approach to animal services
in South County?

The answer is an emphatic YES but not as limited as staff appears
to be considering. Rather than working up from the lowest service levels
of spay/neuter and feral/lost animals, please look at the County approach
with their new Animal Services Center.

The best way to understand the objectives of the more-than-a-shelter
approach:

- Improved low-stress space for animals in trauma to enhance
animal care and safety

- An upgraded adoption center that will provide a better
adoption experience

Community multi-purpose room also exposes animal services to public
is to view the video by the architecture+planning firm Dreyfuss+Blackford
presented to Housing, Land Use, Environment, and Transportation Committee
(HLUET) Regular Meeting on November 16, 2017

Agenda Item #4: Santa Clara County Animal Services Center.
Minutes 24-34 are the site and facility layout, followed by
a video tour. This is not your grandparents "dog pound".

You might even look at having the School District and FFA join with you.

Thank you for your consideration,
Doug Muirhead, Morgan Hill

MORGAN HILL CITY COUNCIL MEETING
6 Dec 17
REQUEST FOR ADDITIONAL ANIMAL SERVICES FUNDING
AND CHANGE IN EMERGENCY SERVICES PROVIDER

Item 21
Handout
received from
the public
12/6/17

My name is Ava Geddes. I am a Morgan Hill City Resident, and am active in animal welfare in South County. Thank you to our City Council for reviewing and considering the subjects of additional animal services funding, and changing the emergency animal services provider.

Santa Clara County recently offered a proposal to Morgan Hill for unlimited animal services for \$30K/year. Please note this is separate from the \$5K/year for the County's low-cost spay/neuter program.

Lisa Jenkins is currently the Interim Program Manager over the County Animal Shelter in San Martin. Quoting from her e-mail, she stated, "We discussed providing full animal sheltering services for Morgan Hill so that citizens of incorporated Morgan Hill would have the same access to the County of Santa Clara Animal Shelter as unincorporated residents do for a flat yearly fee so that MH would not have to fret over the details of each impound."

In my opinion, this is an incredible offer, not to mention a bargain, a rarity in Government finances. The City Council already approved \$11K for cat services and \$4K for dog services (\$15K total) for FY18 (breakdown provided by MHPD Captain Shane Palsgrove). If FY18 needs mirror FY17 needs, Morgan Hill will require at least \$11K more for cat services since last year's \$11K ran-out in Dec (lasted only half a year), and we'll need more to cover the second half of the fiscal year, especially since that includes part of the peak baby season when demands are highest. Adding this second \$11K raises the total to \$26K. For \$4K more (total \$30K), Morgan Hill will have unlimited services from the County Shelter, and a local place with guaranteed acceptance to take found pets, stray, and other unowned animals; surrender animals; take injured and deceased animals; and a local facility during disasters such as the recent fires and floods. Providing more funding now will prevent a lapse in animal services. Please note, when those of us in South County animal rescue are contacted for help with lost, found, injured, and deceased animals, we strongly encourage the reporting party to contact MHPD to report the incident so there is an official record to document needed animal services.

I also propose a change in contracted after-hour emergency veterinary services. Currently, Morgan Hill contracts with United Veterinary Specialty and Emergency Hospital, the 24-hour emergency veterinary clinic near Oak Ridge Mall in San Jose. I request changing from there to Silicon Valley Veterinary Specialists near the intersection of Santa Teresa Boulevard and Bernal Road. This new animal hospital already has an outstanding reputation, and is closer than United Emergency. Using this hospital will improve the medical chances for injured animals, while at the same time, reduce the time police officers need to transport injured animals, and get officers back to their law enforcement duties quicker. Another win-win option.

Thank you.

(Additional details on the back - Over)

ANIMAL SERVICES (repeating from previous City Council meeting)

FYI - Lisa Jenkins, Interim Program Manager over the Animal Shelter, was at the New Shelter Meeting last week, and updated me on billing and payments from Morgan Hill to Santa Clara County for animal services.

\$4,620	Billed by the County and already paid by Morgan Hill
+ 3,190	Currently being billed by the County
<u>\$7,810</u>	Total paid/billed:

At this rate, it looks like we're on-track to expend the initial \$11K by the end of December, just like last year, i.e., services cost \$7,810 for roughly 4 months, so 6 months will likely cost \$11,715.

I request that increasing funding for animal services be placed on an upcoming City Council agenda so there is no lapse in services. Further I request that the City Council review and favorably vote to accept the County's offer of a flat \$30K annually to provide services for an unlimited number of animals. To reiterate the calculation:

\$11,000	First cat allocation for first half FY18
4,000	Allocation for dogs for FY18
+ 11,000	Proposed second cat allocation for second half of FY18, but likely need more since this period contains peak baby (kitten/puppy) season
<u>\$26,000</u>	
<u>\$30,000</u>	County's offer for unlimited animal services
\$4,000	Delta, but this will likely be used for peak kitten/puppy season demands, especially as more people move to Morgan Hill

CONTRACT ANIMAL EMERGENCY FACILITY

Morgan Hill contracts with United Veterinary Specialty and Emergency Hospital, the 24-hour emergency veterinary clinic located at 5406 Thornwood Drive, San Jose (near Oak Ridge Mall), (408) 578-5622. I request changing from there to Silicon Valley Veterinary Specialists, 7160 Santa Teresa Boulevard (near the intersection with Bernal Road), (408) 457-8866.

City of Morgan Hill California

1st Quarter FY 2017-18 Financial Report



General Fund

- Revenues are tracking to slightly exceed budget
- Key GF revenues:

Category	Budget	YTD Actual	Prior YTD
Property Tax	\$11,047,000	\$ 117,781	\$ 210,921
Sales Tax	9,588,502	2,591,346	2,422,390
Svc Charges	9,536,644	2,545,615	2,373,432
Hotel Tax	2,827,050	526,234	582,362

- Expenditures including encumbrances:

Total Exp	\$40,619,022	\$12,883,574	\$12,765,316
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Community Development Fund

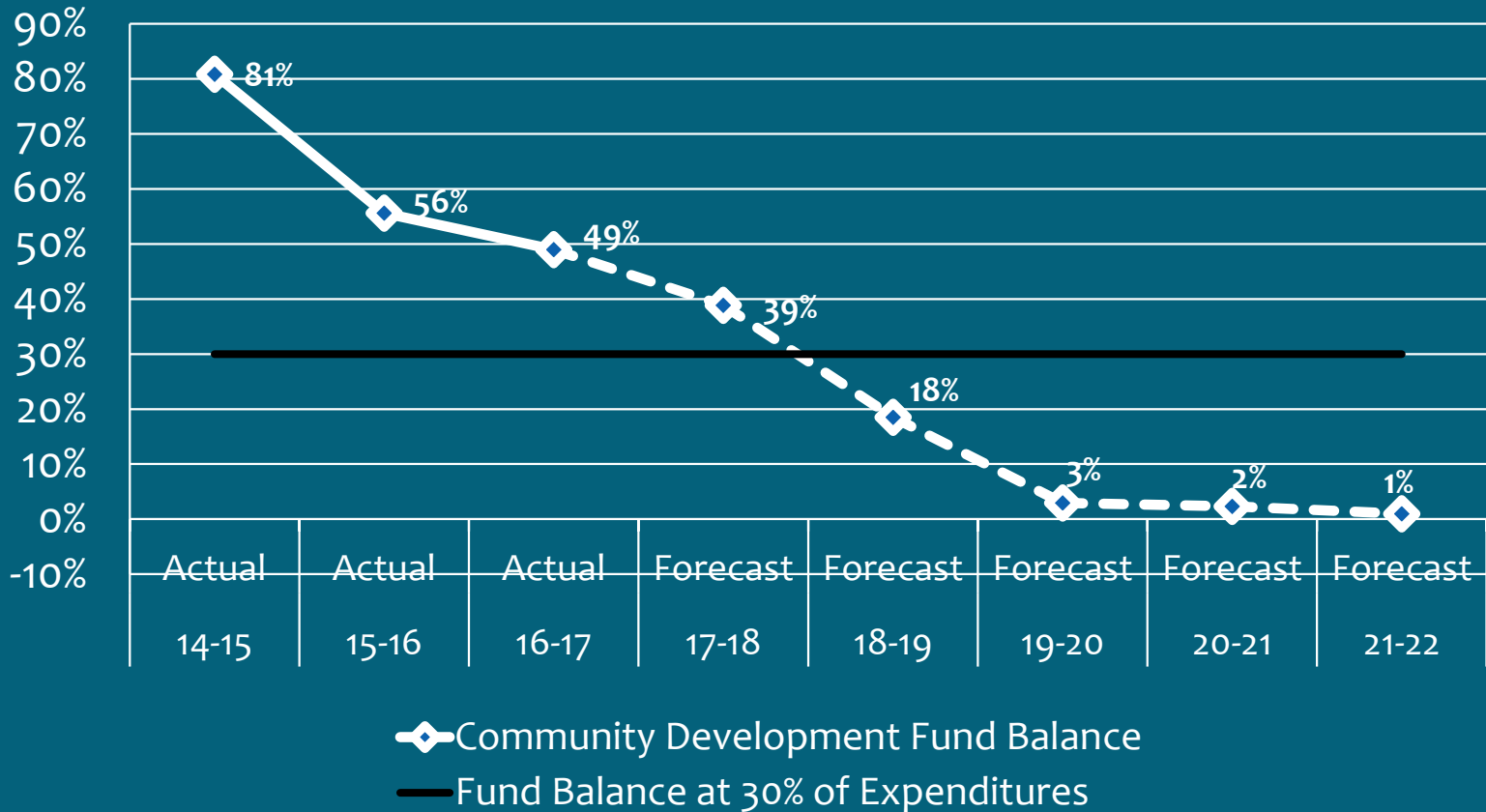
- Revenues are projected to come in better than budget

Category	Budget	YTD Actual	Prior YTD
Revenues	\$3,679,970	\$1,001,972	\$1,261,715
Expenditures	5,323,832	1,831,025	1,685,352
Net	(\$1,643,862)	(\$829,053)	(\$423,637)



Community Development Fund (cont'd)

- CD fund balance forecast:



Enterprise Funds

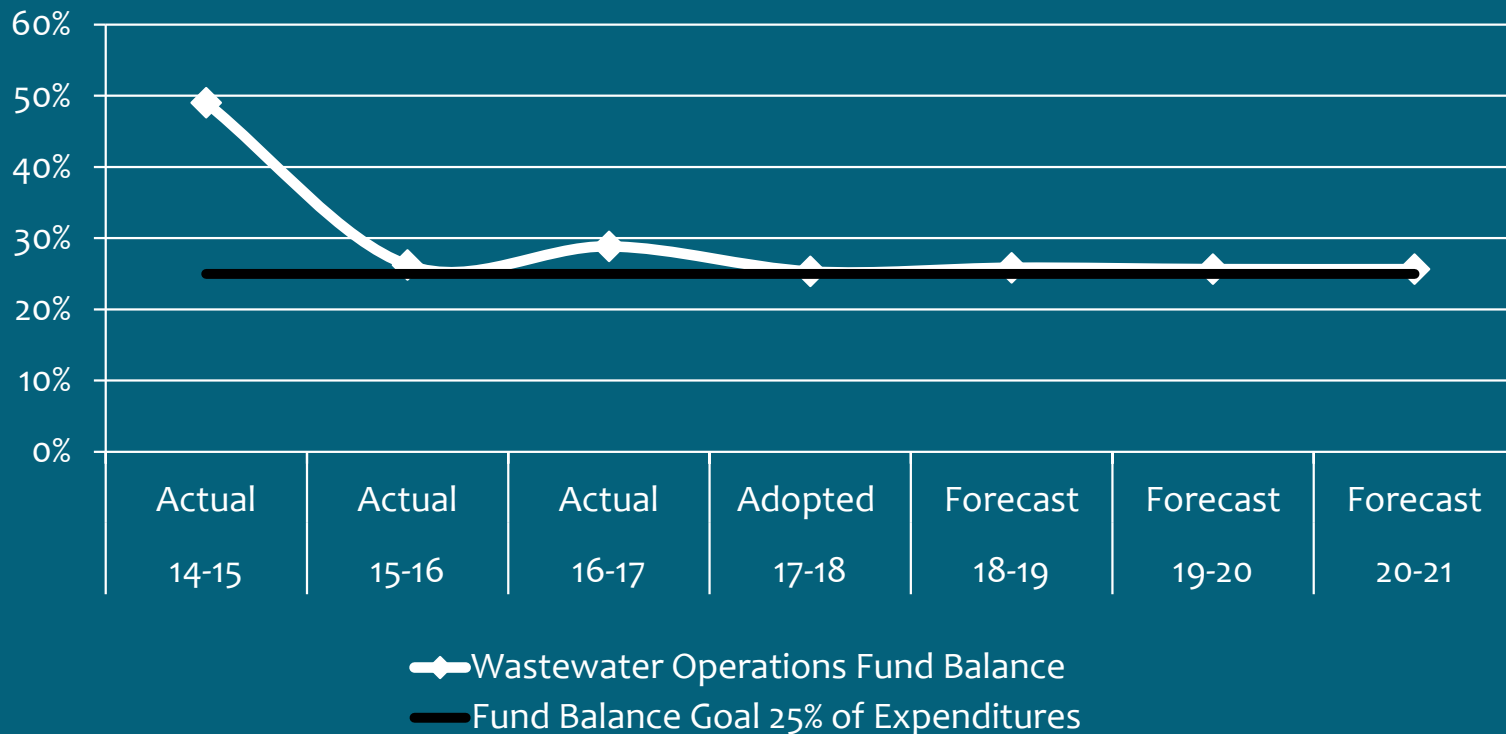
- Wastewater Operations

Category	Budget	YTD Actual	Prior YTD
Revenues	\$10,834,510	\$2,557,249	\$2,507,616
Expenditures	10,846,377	2,573,443	2,479,409
Net	(\$11,867)	(\$16,194)	\$28,207



Enterprise Funds – cont'd

- Wastewater Op fund balance forecast



Enterprise Funds – cont'd

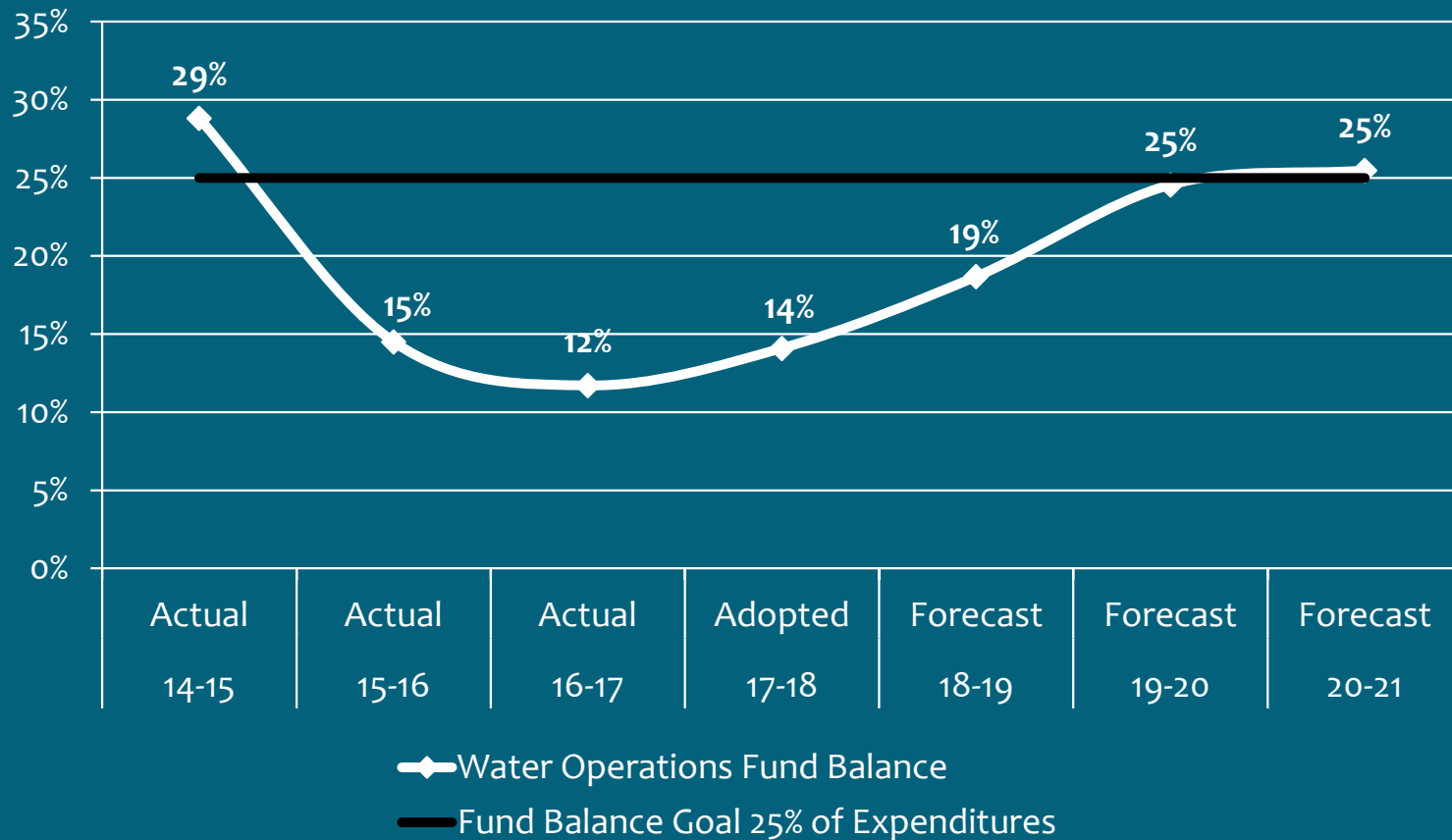
- Water Operations

Category	Budget	YTD Actual	Prior YTD
Revenues	\$12,222,722	\$3,813,954	\$3,255,732
Expenditures	12,054,389	3,105,720	3,565,794
Net	\$168,333	\$708,234	(\$310,062)



Enterprise Funds – cont'd

- Water Op fund balance forecast



MORGAN HILL 2035



GPA2017-0001 and -0002
Land Use Map & Text Corrections
City Council Hearing

December 6, 2017

Item No. 24

GPA2017-0001: Land Use Map

Correct Various Types of Mapping Errors:

- A. Designation inadvertently changed
- B. Designation does not reflect recommendation from General Plan adoption hearings
- C. Designation changed during General Plan Update process, but does not reflect existing zoning and/or approved/under construction/built project.
- D. Designation does not, and did not under previous General Plan, match existing zoning and/or approved/built project.

GPA2017-0002: Text

Text and Figure Corrections/Clarifications

E. Chapter 3 – City and Neighborhood Form

- 1) City Boundaries
- 2) Delete references to RDCS Measure F and A
- 3) Land Use Designations

F. Chapter 8 – Natural Resources and Environment

- 1) Stream Channel Protection

Staff & Planning Commission Recommendation

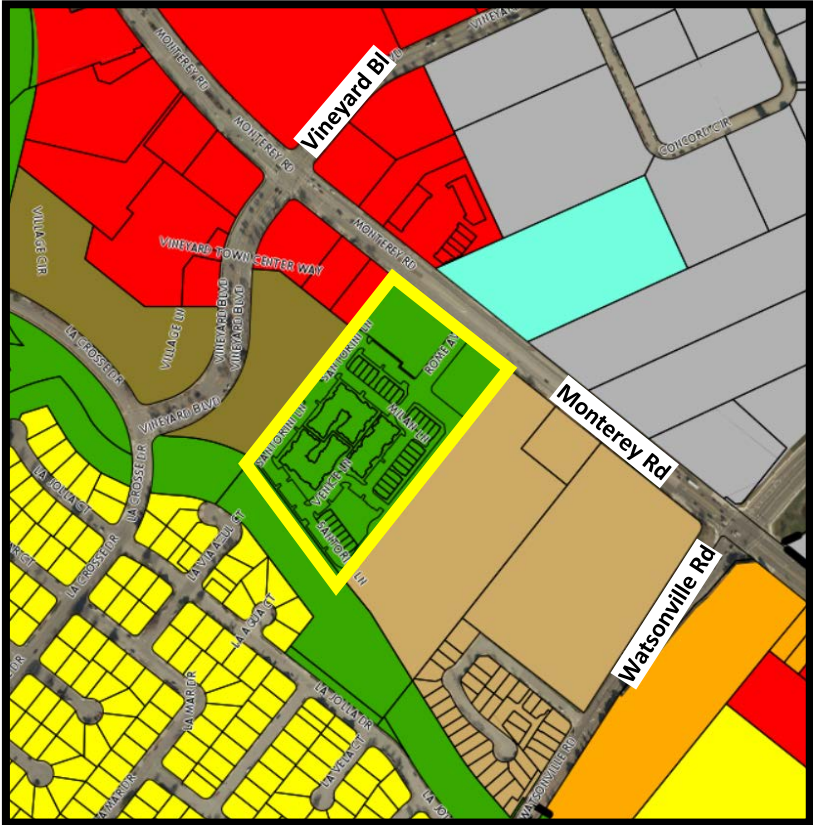
Adopt Resolution approving
General Plan Amendments
GPA2017-0001 and GPA2017-0002

GPA2017-0001: Land Use Map

Correct Various Types of Mapping Errors:

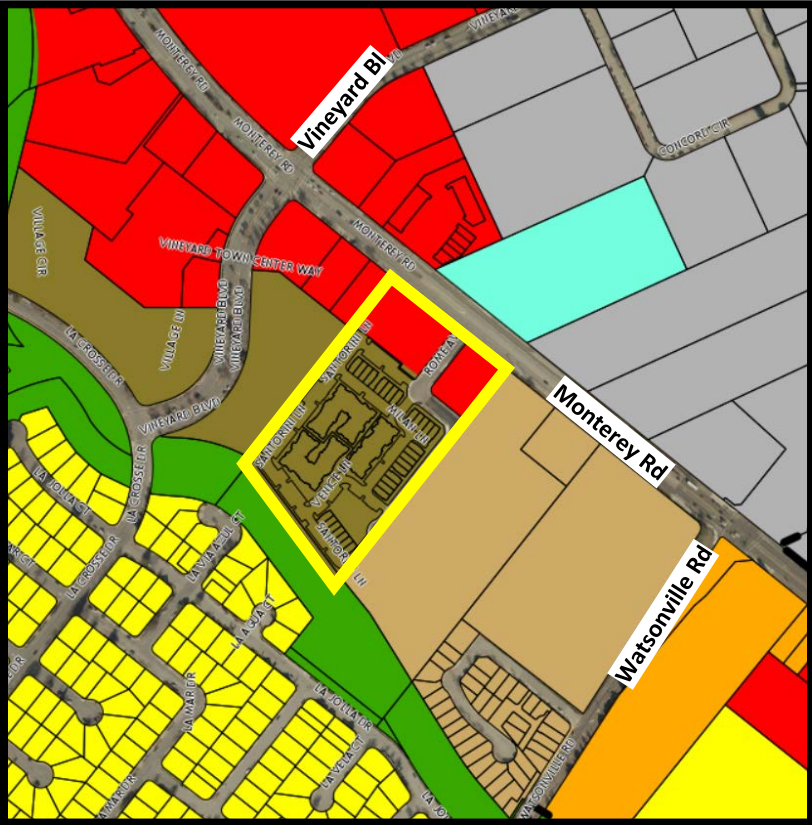
- A. Designation inadvertently changed
- B. Designation does not reflect recommendation from General Plan adoption hearings
- C. Designation changed during General Plan Update process, but does not reflect existing zoning and/or approved/under construction/built project.
- D. Designation does not, and did not under previous General Plan, match existing zoning and/or approved/built project.

General Plan Land Use Map
as Published July 26, 2016



Open Space

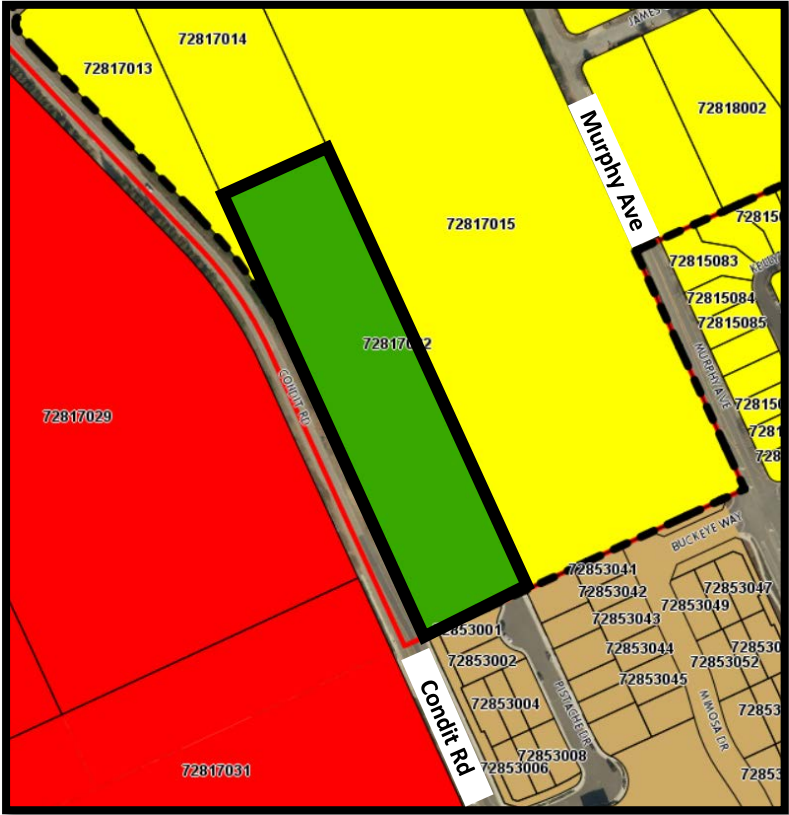
General Plan Land Use Map
with Proposed Correction



Open Space, Residential Attached Medium,
Commercial

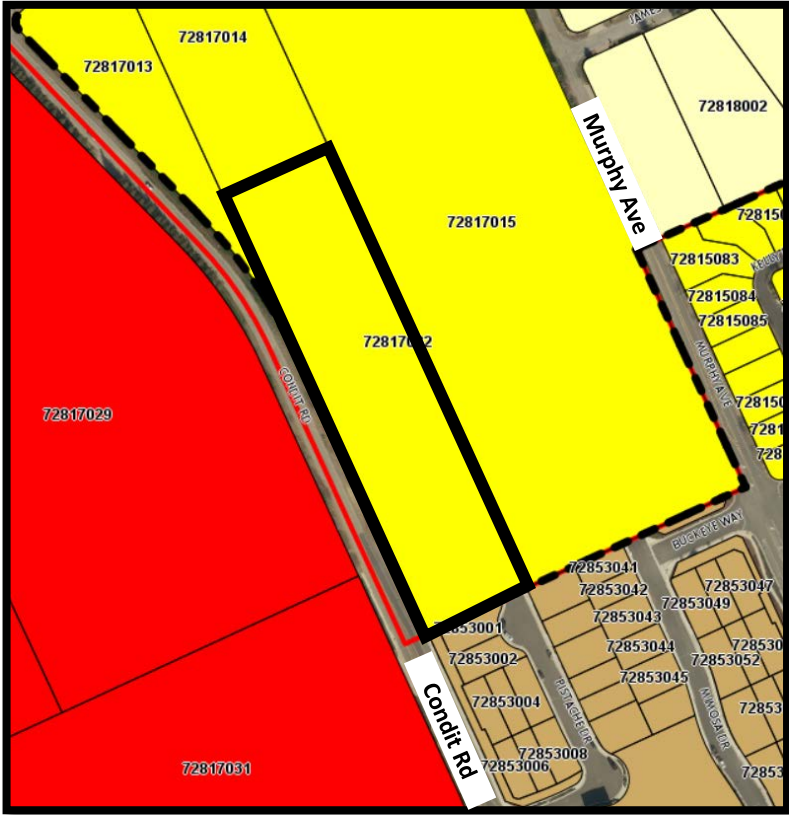
767-23-028 Open Space (owned by SCVWD). 767-54-010 and -011 Commercial; remaining 767-54 Residential Attached Medium (under construction).

General Plan Land Use Map
as Published July 26, 2016



Open Space

General Plan Land Use Map
with Proposed Correction



Residential Detached Medium

APN 728-17-032. Unincorporated County, outside Urban Service Area.

A.3

General Plan Land Use Map
as Published July 26, 2016



Residential Detached Medium

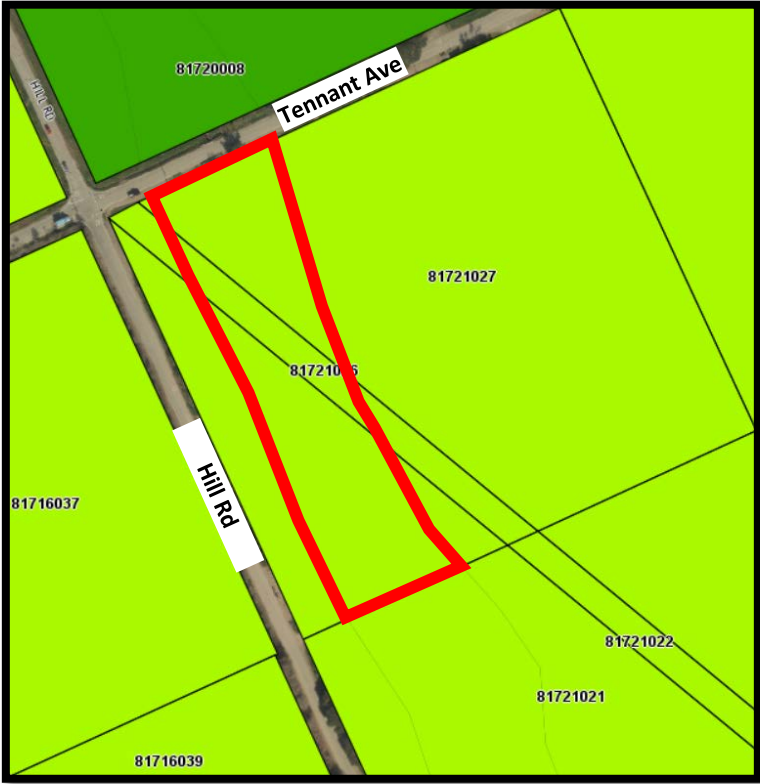
General Plan Land Use Map
with Proposed Correction



Open Space
(follows Tennant Creek)

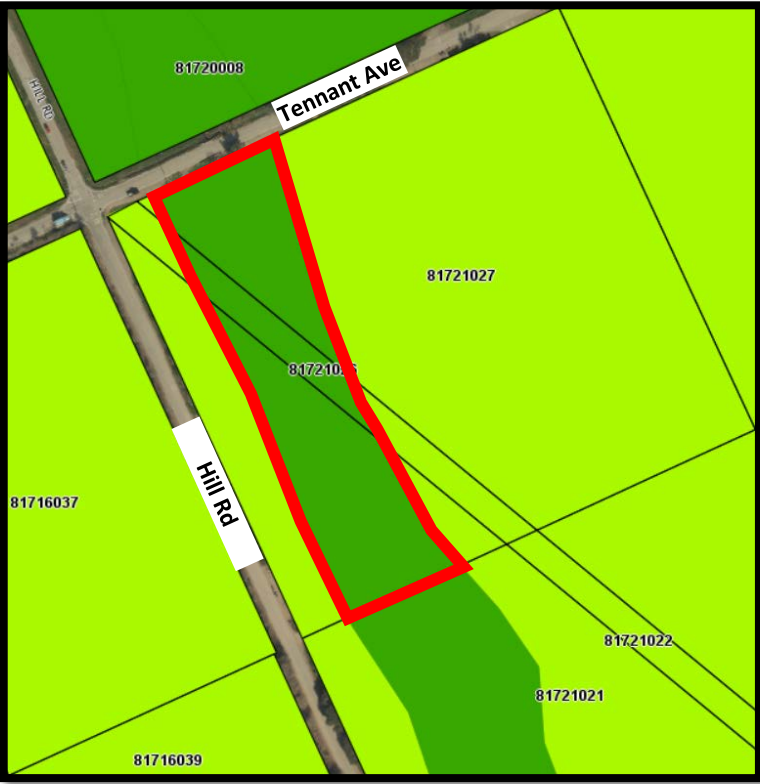
APNs: 817-20-040 ptn. and -041 ptn. Unincorporated County, outside Urban Service Area. Follows Tennant Creek.

General Plan Land Use Map
as Published July 26, 2016



Rural County

General Plan Land Use Map
with Proposed Correction



Open Space
(follows Tennant Creek)

APNs: 817-21-026 ptn. and -027 ptn. Unincorporated County, outside Urban Service Area. Follows Tennant Creek.

General Plan Land Use Map
as Published July 26, 2016



Rural County

General Plan Land Use Map
with Proposed Correction



Open Space
(follows Tennant Creek)

APN 817-21-021 ptn. Unincorporated County, outside Urban Service Area. Follows Tennant Creek.

General Plan Land Use Map
as Published July 26, 2016



Rural County

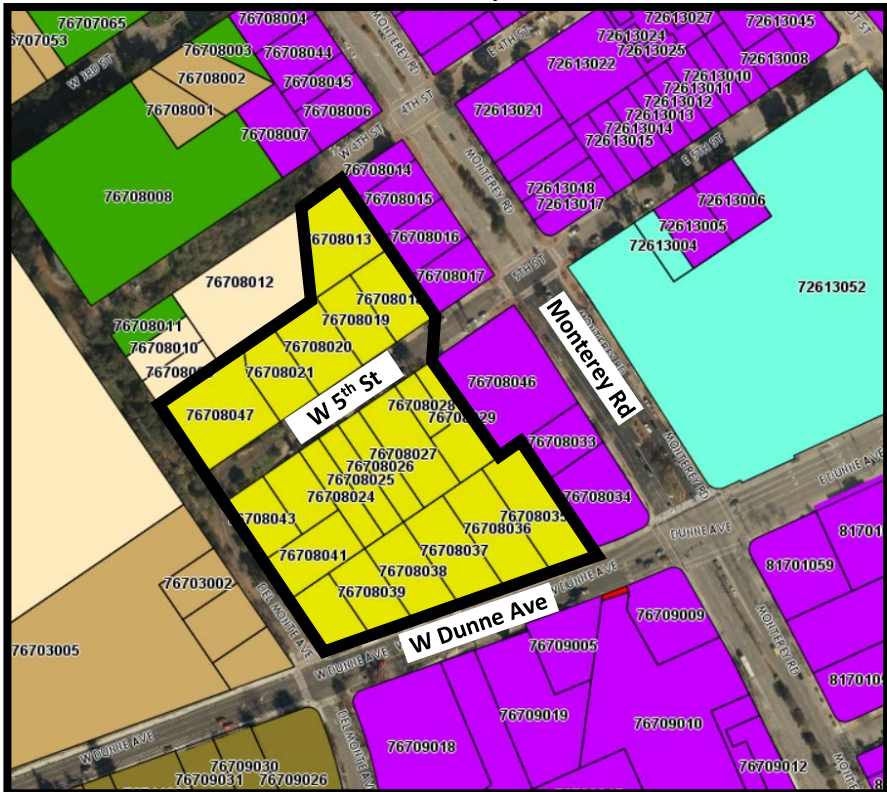
General Plan Land Use Map
with Proposed Correction



Open Space
follows Tennant Creek

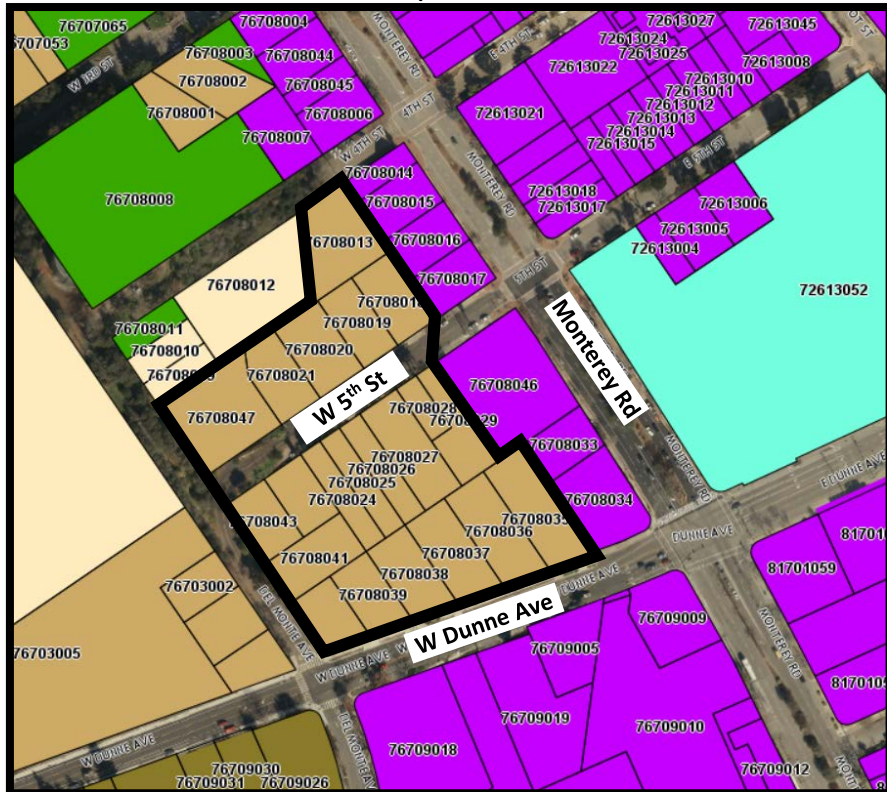
APNs 817-21-001 ptn. and 817-15-014 ptn. and 817-15-011 ptn. Unincorporated County, outside Urban Service Area. Follows Tennant Creek.

General Plan Land Use Map
as Published July 26, 2016



Residential Detached High

General Plan Land Use Map
with Proposed Correction

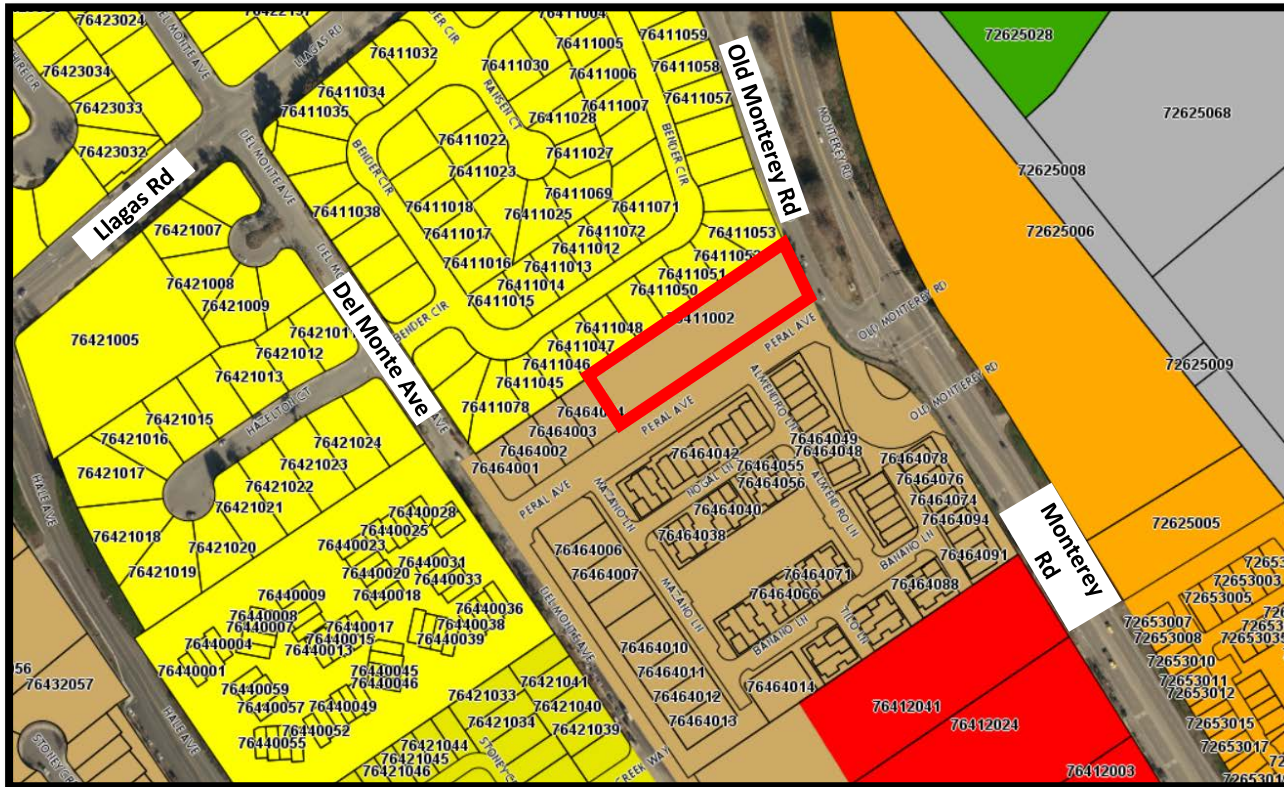


Residential Attached Low
(changed at July 2016 adoption hearing)

Residential Detached High was an option discussed with Planning Commission and City Council. Ultimately decision was to change (back to) Residential Attached Low, a designation that better matches existing and proposed development and was designation prior to DTSP changed area to Residential Attached Medium.
APNs: 767-08-013, -018 through -021, -047, -024 through -029, -035 through -043.

General Plan Land Use Map

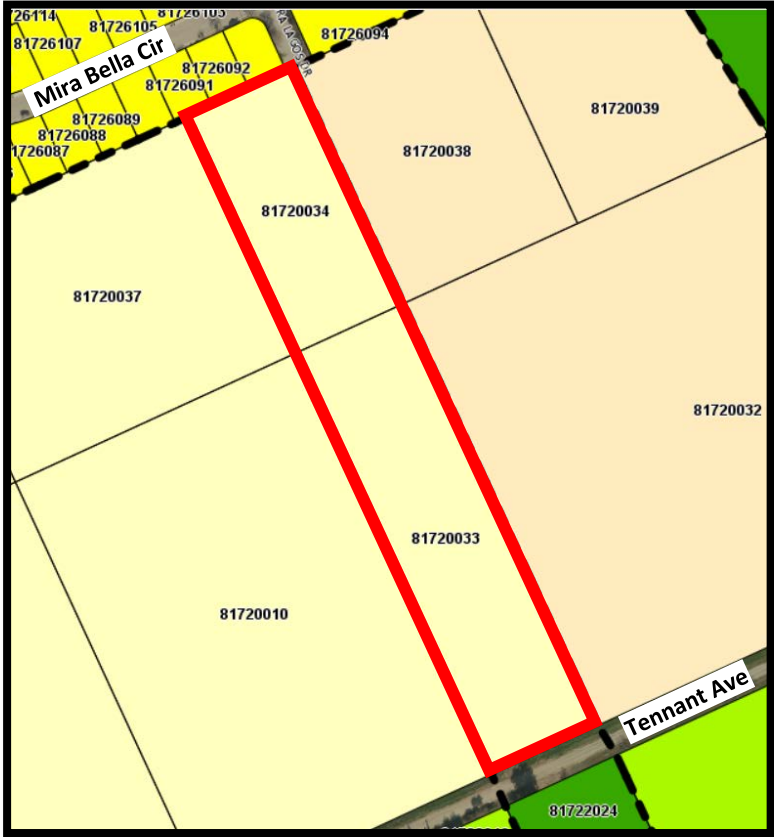
as Published July 26, 2016



Residential Attached Low to Residential Detached Medium
(changed at July 2016 adoption hearing)

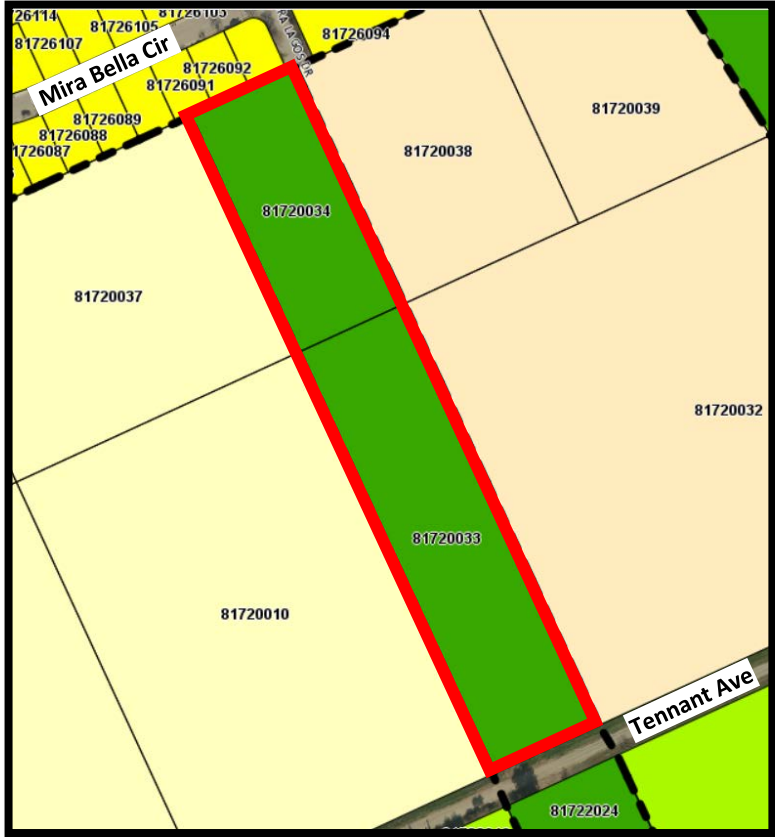
The City Council during the July adoption hearings changed the adjacent City Ventures site from Mixed Use Flex back to Residential Attached Low to match the approved/under construction project and changed the highlighted parcel to Residential Detached Medium to more closely relate to the adjacent single-family detached homes of the City Ventures project and the existing single-family detached neighborhood to the north.

General Plan Land Use Map
as Published July 26, 2016



Residential Detached Low

General Plan Land Use Map
with Proposed Correction

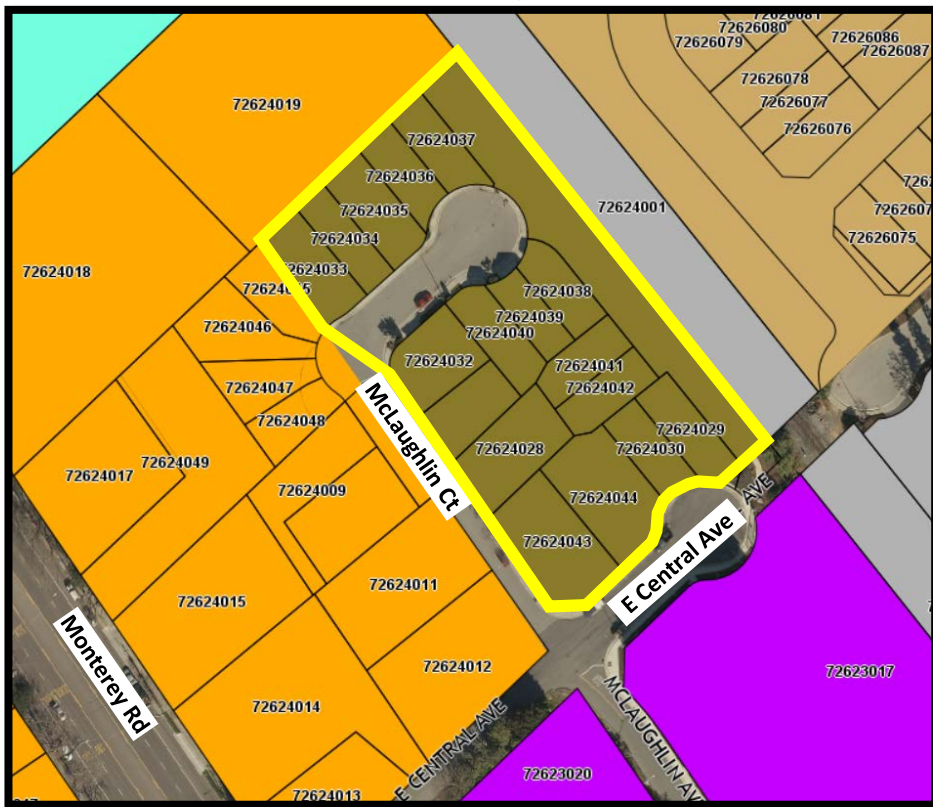


Open Space

APNs 817-20-033 and -034 zoned Open Space.

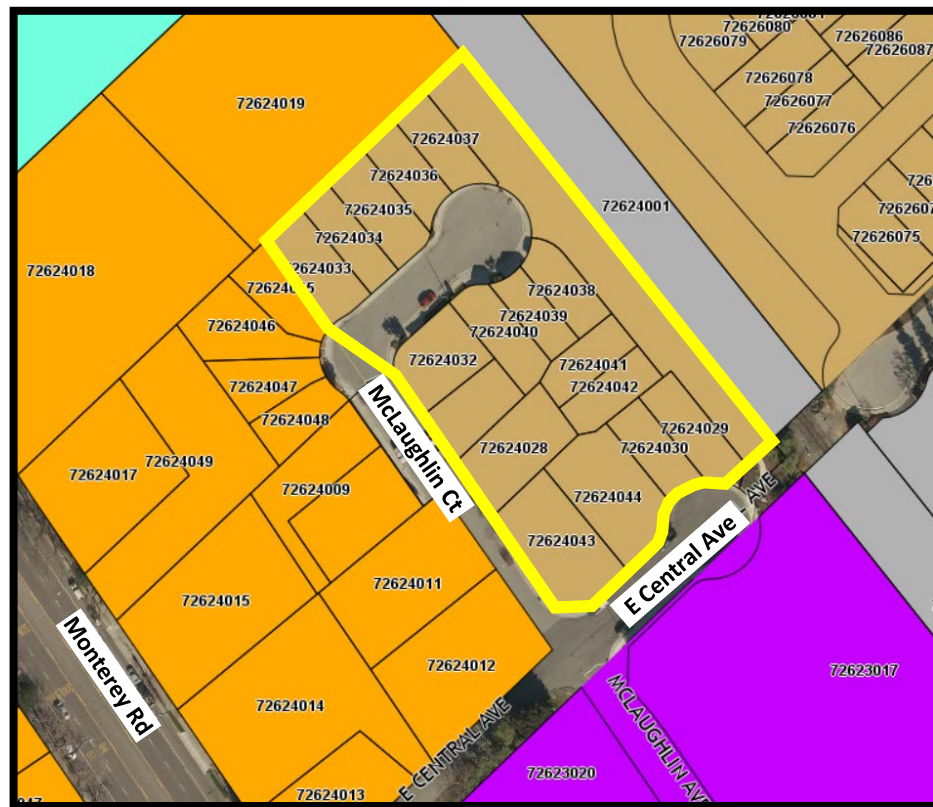
General Plan Land Use Map

as Published July 26, 2016



Residential Attached Medium

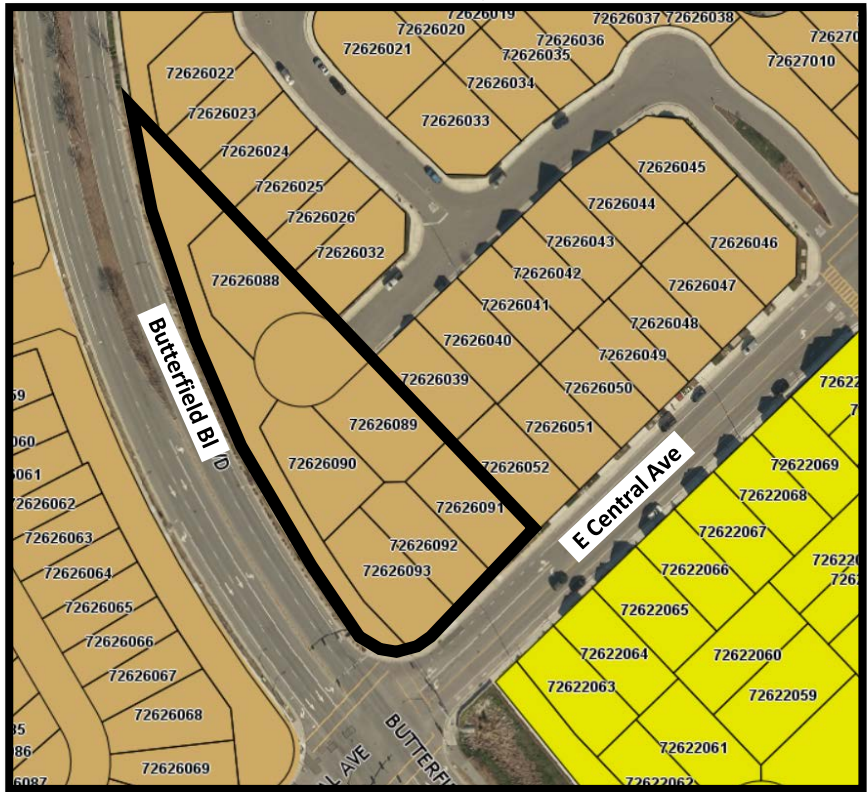
General Plan Land Use Map with Proposed Correction



Residential Attached Low

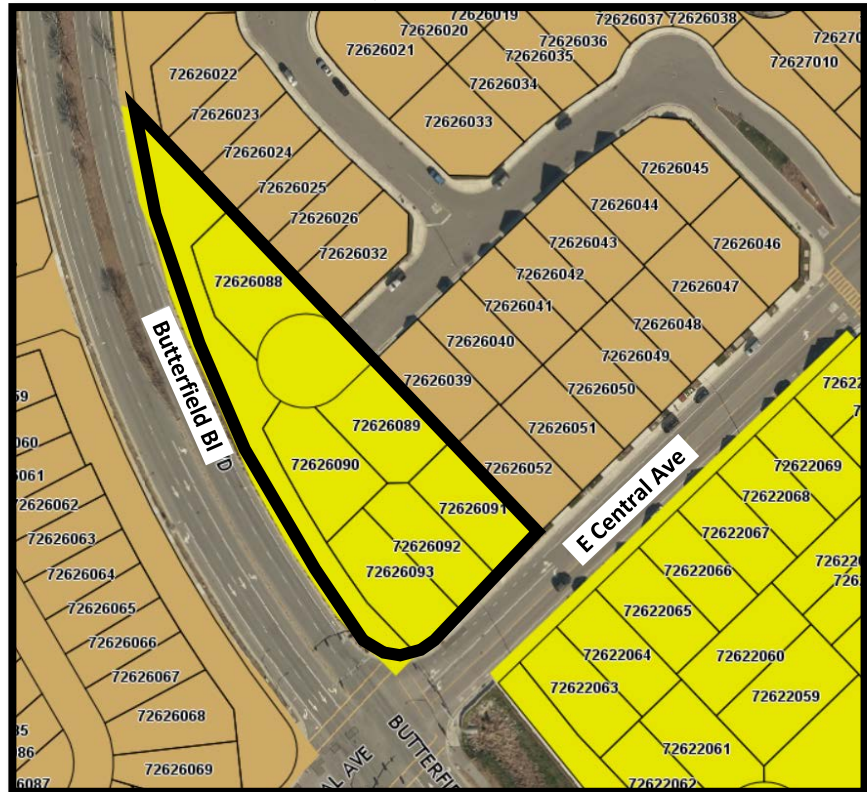
Zoned R-2 3,500 (PD) and developed with duets. APNs: 726-24-028 through -044.

General Plan Land Use Map
as Published July 26, 2016



Residential Attached Low

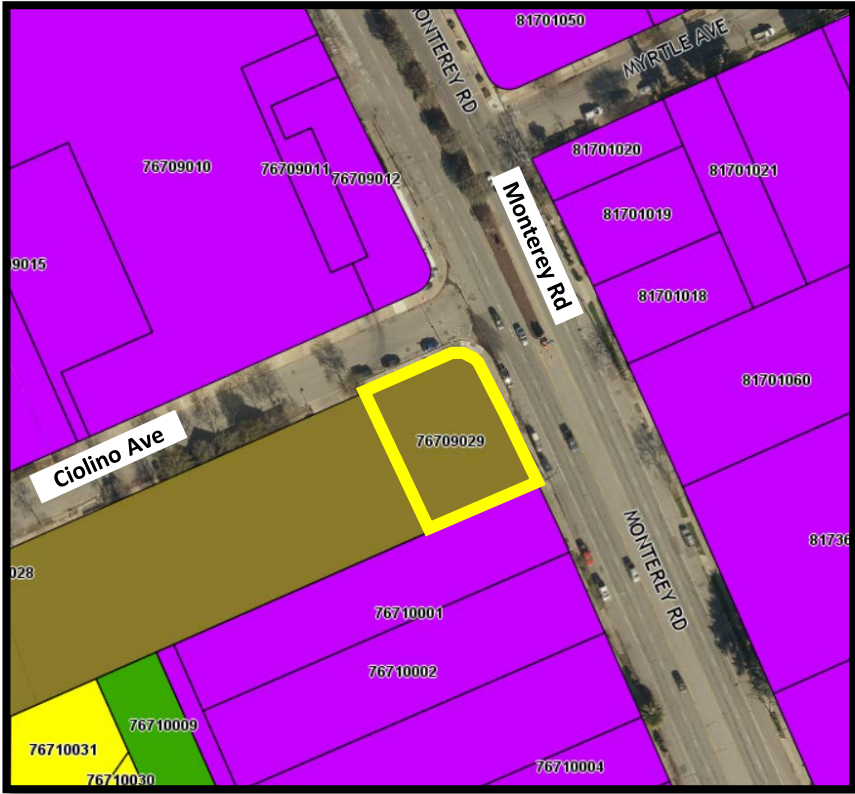
General Plan Land Use Map
with Proposed Correction



Residential Detached High

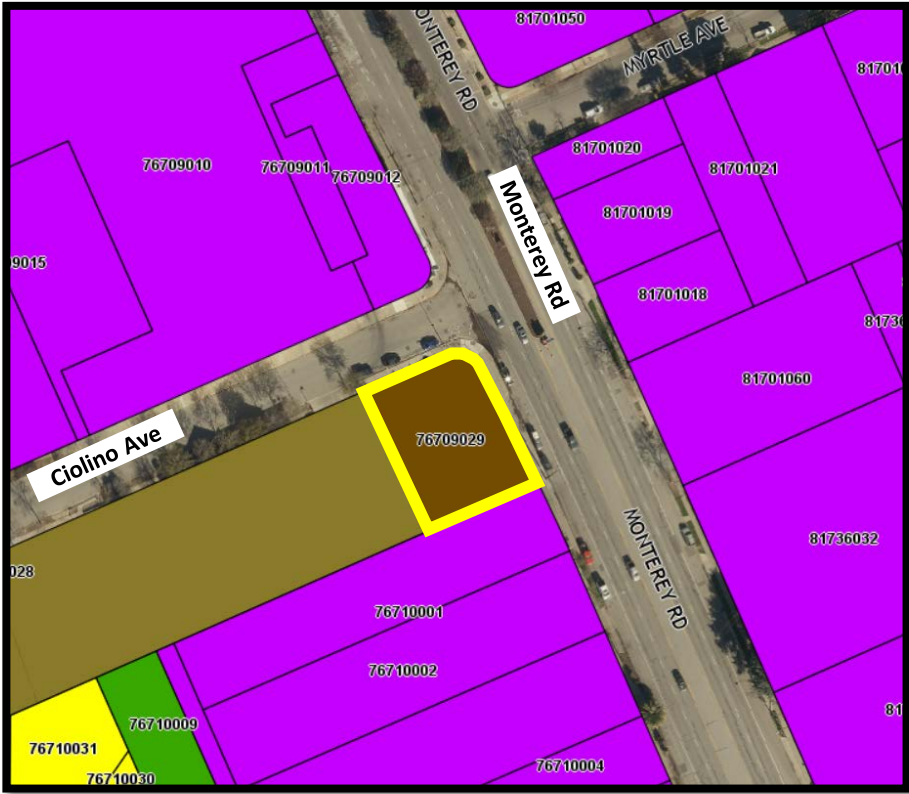
Zoned R-1 4,500 (PD). APNs: 726-26-088 through -093. Under construction/built.

General Plan Land Use Map
as Published July 26, 2016



Residential Attached Medium

General Plan Land Use Map
with Proposed Correction

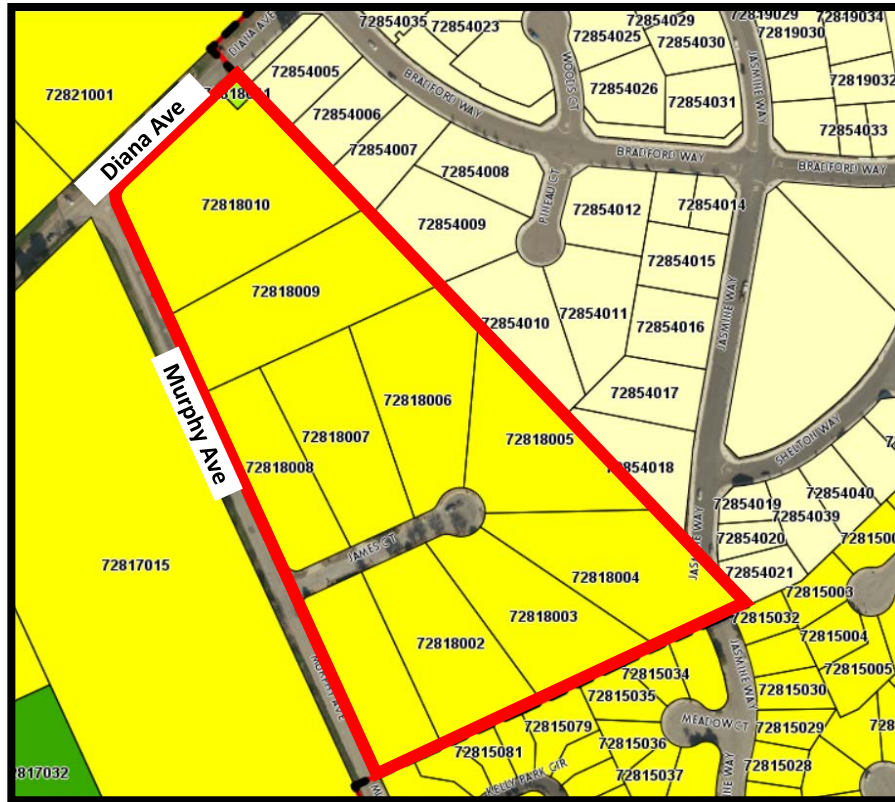


Residential Downtown
(GPA approved 10/1/14)

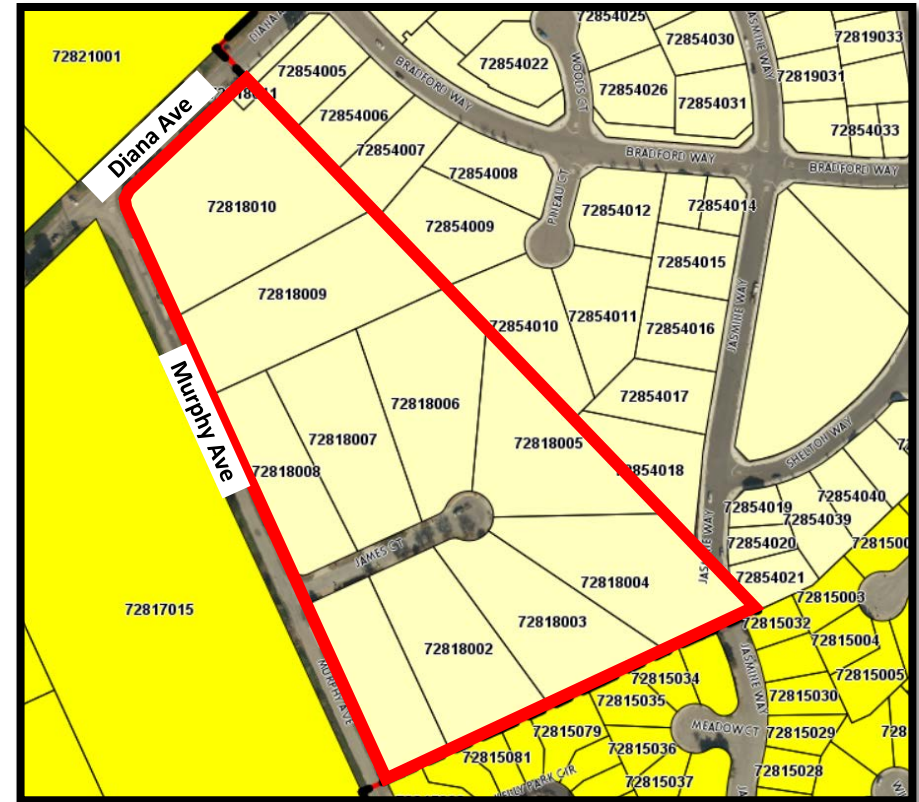
Zoned R-4, multi-family project approved and under construction. APN: 767-09-029.

General Plan Land Use Map

as Published July 26, 2016



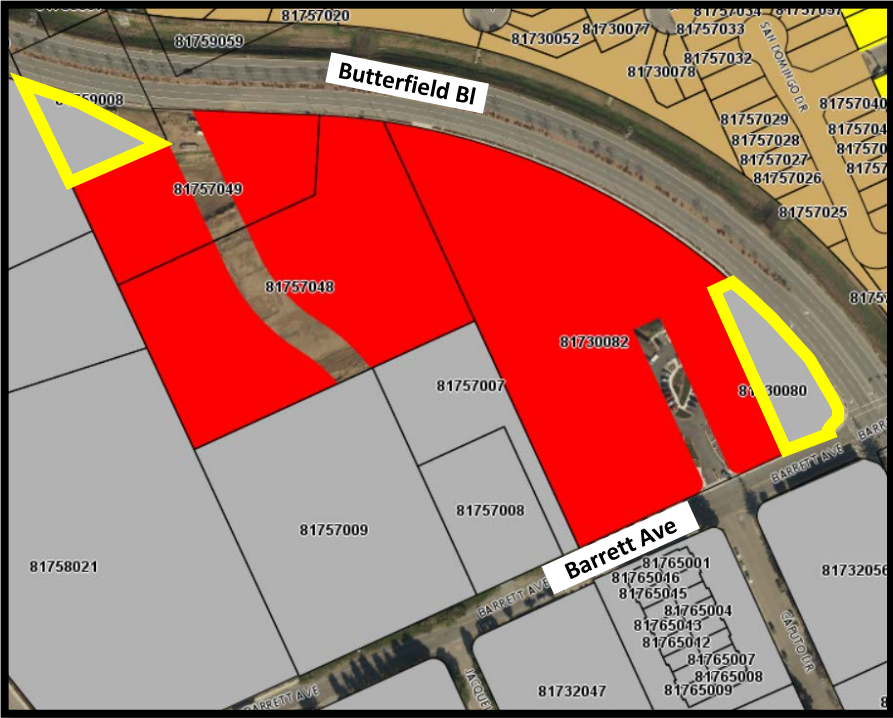
Residential Detached Medium



Residential Detached Low
(existing County subdivision)

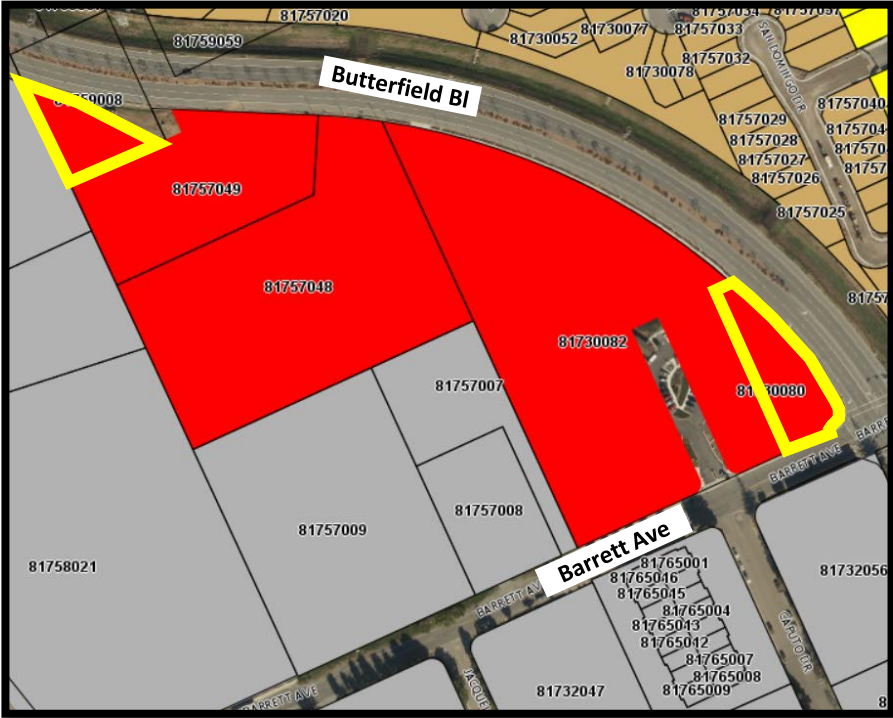
APNs: 728-18-001 through -010. Already fully developed. In Unincorporated County, outside Urban Service Area.

General Plan Land Use Map
as Published July 26, 2016



Industrial

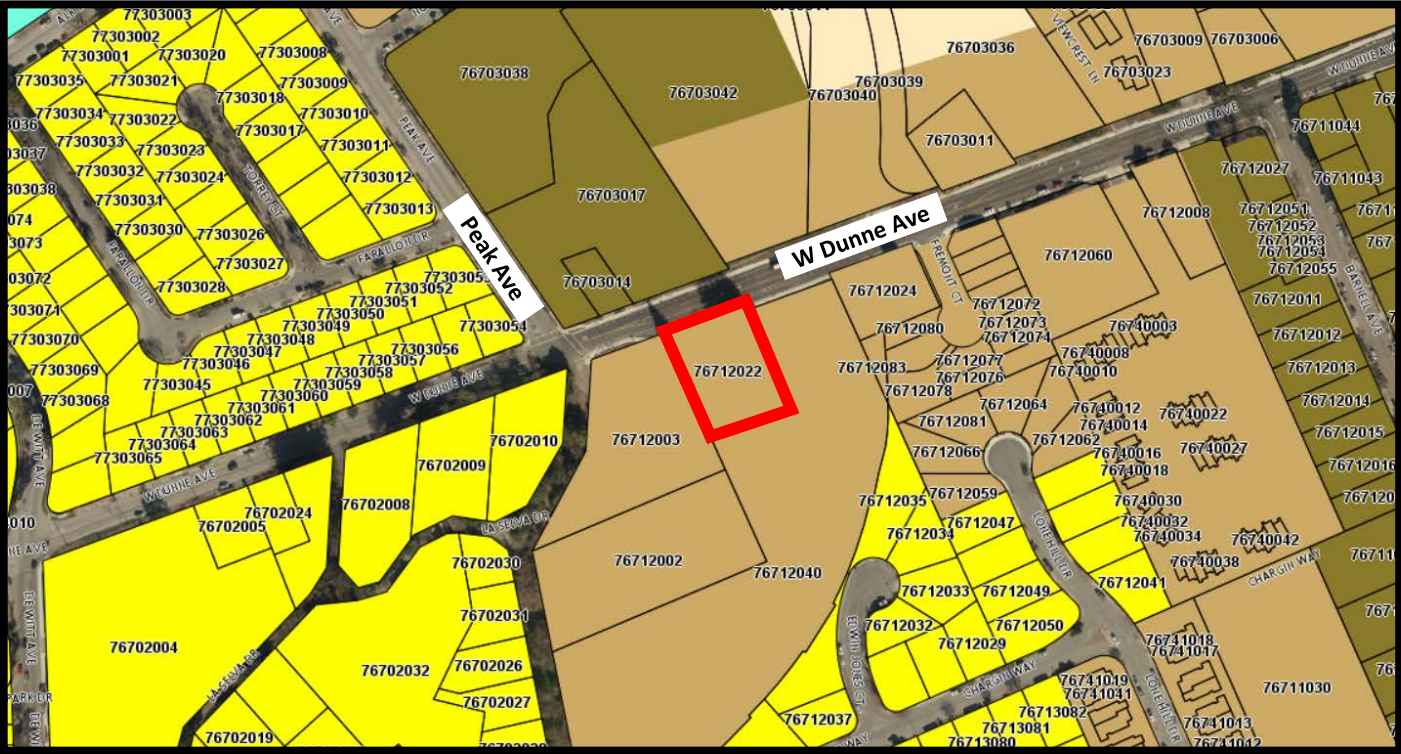
General Plan Land Use Map
with Proposed Correction



Commercial

Remnant parcels after Butterfield Blvd. extension. APN 817-59-008 (ptn.) Zoned CS (PD) under construction as Senior Congregate Care Facility. APN 817-30-080 Zoned CN Commercial Neighborhood.

General Plan Land Use Map
as Published July 26, 2016



Residential Attached Low to Commercial
(currently zoned Commercial Office; existing use Medical Office)

APN 767-12-022 Zoned CO Commercial Office, developed with medical office

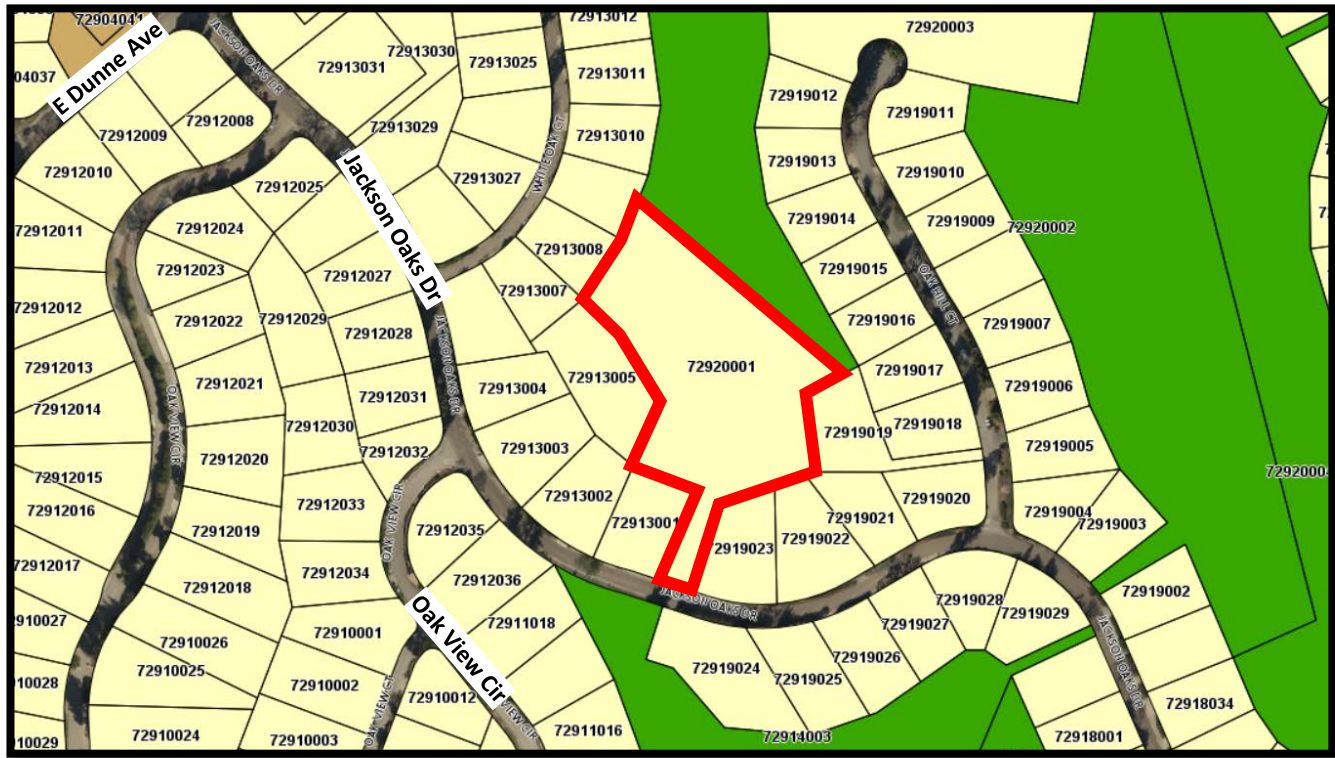
General Plan Land Use Map as Published July 26, 2016



Open Space to Residential Estate
(currently zoned RE 40,000)

APNs 764-38-001, -002, -003, -005, -010, -012, -013, Zoned RE 40,000.
Several parcels developed with single-family homes.

General Plan Land Use Map
as Published July 26, 2016

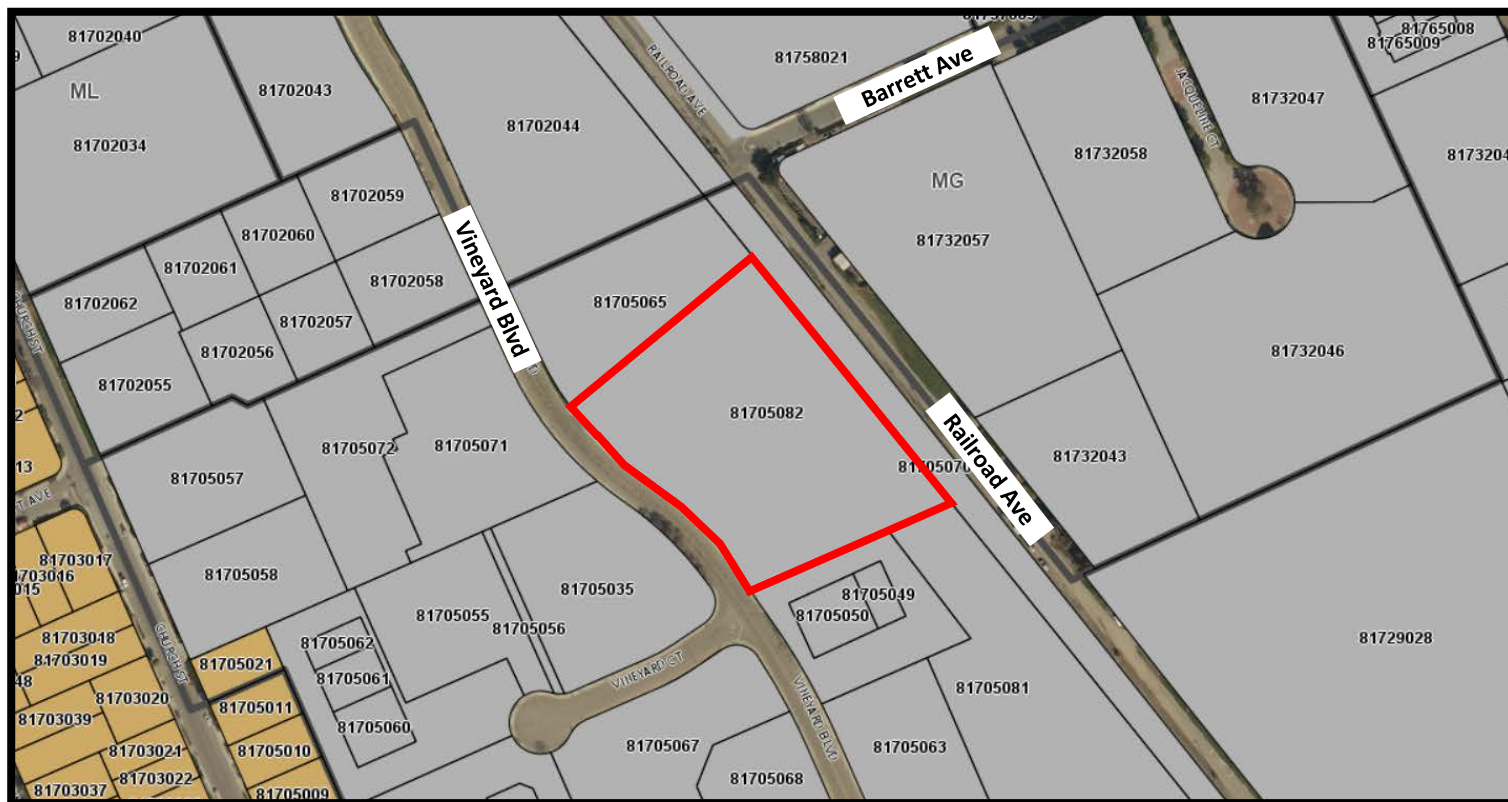


Residential Detached Low to Open Space
(currently zoned Open Space)

APN 729-20-001, Zoned Open Space, owned by City.

General Plan Land Use Map

as Published July 26, 2016



Industrial to Public Facilities

APN 817-05-082, City of Morgan Hill Police Station.

GPA2017-0002: Text

Text and Figure Corrections/Clarifications

E. Chapter 3 – City and Neighborhood Form

- 1) City Boundaries
- 2) Delete references to RDCS Measure F and A
- 3) Land Use Designations

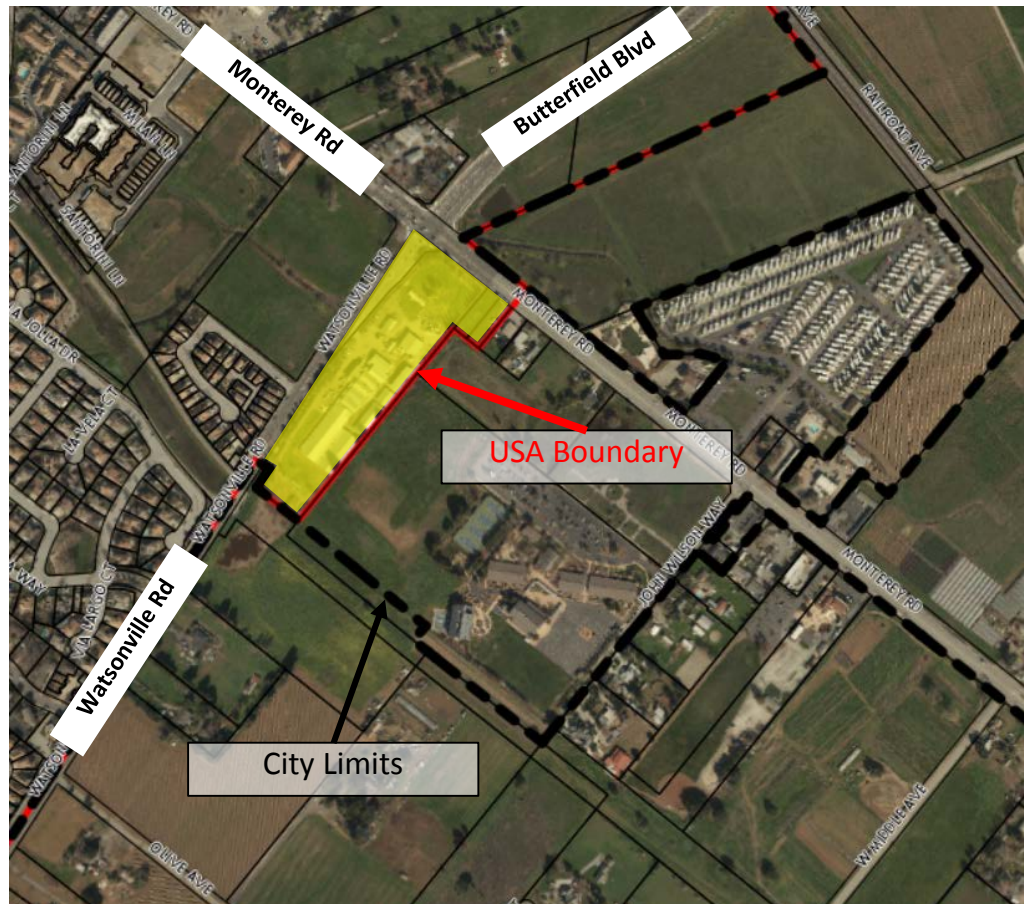
F. Chapter 8 – Natural Resources and Environment

- 1) Stream Channel Protection

General Plan Text

Page CNF-2: Figure CNF-1 City Boundaries

- *Update map to show 2014 approval of Monterey Road No. 6 Annexation / Monterey-South of Watsonville Urban Service Area Amendment (sw/c Monterey Road and Watsonville Road).*



General Plan Text

Page CNF-5: Growth Management Section

- *Delete reference to RDCS Measure F and Measure A; replaced by RDCS Measure S.*

Individual single-family homes, replacement of existing homes, secondary dwelling units, assisted living/nursing homes, and the conversion of an existing single-family home into a duplex are all exempt from the RDCS process. ~~In addition, there are two voter-approved exemptions to the RDCS; both are in the Downtown area. Measure F, approved by voters in November 2006, allows 100 residential unit allotments for projects up to 25 units within the Downtown. Measure A, passed in May 2009, allows up to 500 allotments for the 20-block area, as shown on Figure CNF-2.~~

Page CNF-6: Figure CNF-2 Downtown

- *Update map to remove references to Measure F Area and Measure A Area.*

General Plan Text

Page CNF-10: Table CNF-2 Summary of Land Use Designations

- *Update table to match land use designation descriptions.*

TABLE CNF-2 SUMMARY OF LAND USE DESIGNATIONS		
Designation	Primary Uses	Net Density Range
Commercial	Retail, office, services	0. 5 <u>6</u> FAR
Commercial-General <u>Commercial</u>	Retail, office, services	Comm. 0.5 FAR Ind. 0.6 FAR
Commercial/Industrial	Retail, office, services or warehouses, offices, manufacturing	<u>Comm.</u> 0.5 FAR <u>Ind.</u> 0.6 FAR
Industrial	Warehouse, offices, manufacturing	0. 2 <u>6</u> FAR

E.3.b

General Plan Text

Page CNF-11: Residential Designations

- *Change “Secondary dwelling units” to “Accessory dwelling units” per recent change in state law.*
- *Consistently use “unit(s) per net acre”.*

 **Residential Estate.** ...the Residential Estate designation allows single-family homes, ~~secondary~~ accessory dwelling units, appropriate agricultural uses, and associated community services and facilities. The maximum allowable density is 1 unit per net acre.

 **Residential Detached Low.** The Residential Detached Low designation is intended to accommodate families in suburban single-family homes, including manufactured homes on medium-sized parcels. ~~Secondary~~ Accessory dwelling units are allowed under this designation...

 **Residential Detached Medium.** Residential Detached Medium areas allow detached homes on smaller lots, including courtyard homes, manufactured homes, and small-lot single-family homes. ~~Secondary~~ Accessory dwelling units are allowed under this designation...

 **Residential Detached High.** The Residential Detached High designation is intended to accommodate detached single-family homes on small lots at a density of 6 to 12 ~~dwelling~~ units per net acre...

General Plan Text

Page CNF-13 and 14: Mixed Use Designations and Non-Residential Designations

- *Remove height from General Plan land use designation descriptions. City Council adopted Resolution No. 15-219 September 2, 2015 removing height references from General Plan; Zoning Code includes maximum heights.*
- *Last sentence of Mixed Use Flex, change “process” to “proceed”.*

-  **Mixed Use Flex.** The Mixed Use Flex designation... allows 7 to 24 units per acre and a maximum FAR of 0.5 ~~and a maximum commercial height of 35 feet~~...Commercial development may ~~process~~proceed without preparation of a block level master plan consistent with the Commercial designation.
-  **Commercial.** The Commercial designation... allows a maximum FAR of 0.5~~6~~~~and a~~
~~maximum building height of 30 feet~~.
-  **General Commercial.** This designation...allows a maximum FAR of 0.5~~and a maximum~~
~~building height of 35 feet~~.
-  **Commercial/Industrial.** ...This designation allows a maximum FAR of 0.5 ~~and a maximum~~
~~building height of 30 feet~~ for commercial uses and a maximum FAR of 0.6~~and a~~
~~maximum building height of 50 feet~~ for industrial uses.
-  **Industrial.** The Industrial designation...allows a maximum FAR of 0.6 ~~and a maximum~~
~~building height of 50 feet~~.
-  **Public Facilities.** ...This designation allows a maximum FAR of 0.5~~and a maximum~~
~~building height of 35 feet~~.
-  **Sports Recreation Leisure.** The Sports-Recreation Leisure designation...allows a maximum FAR of 0.4~~and a maximum building height of 40 feet~~.

General Plan Text

Page NRE-32: Biological Resources

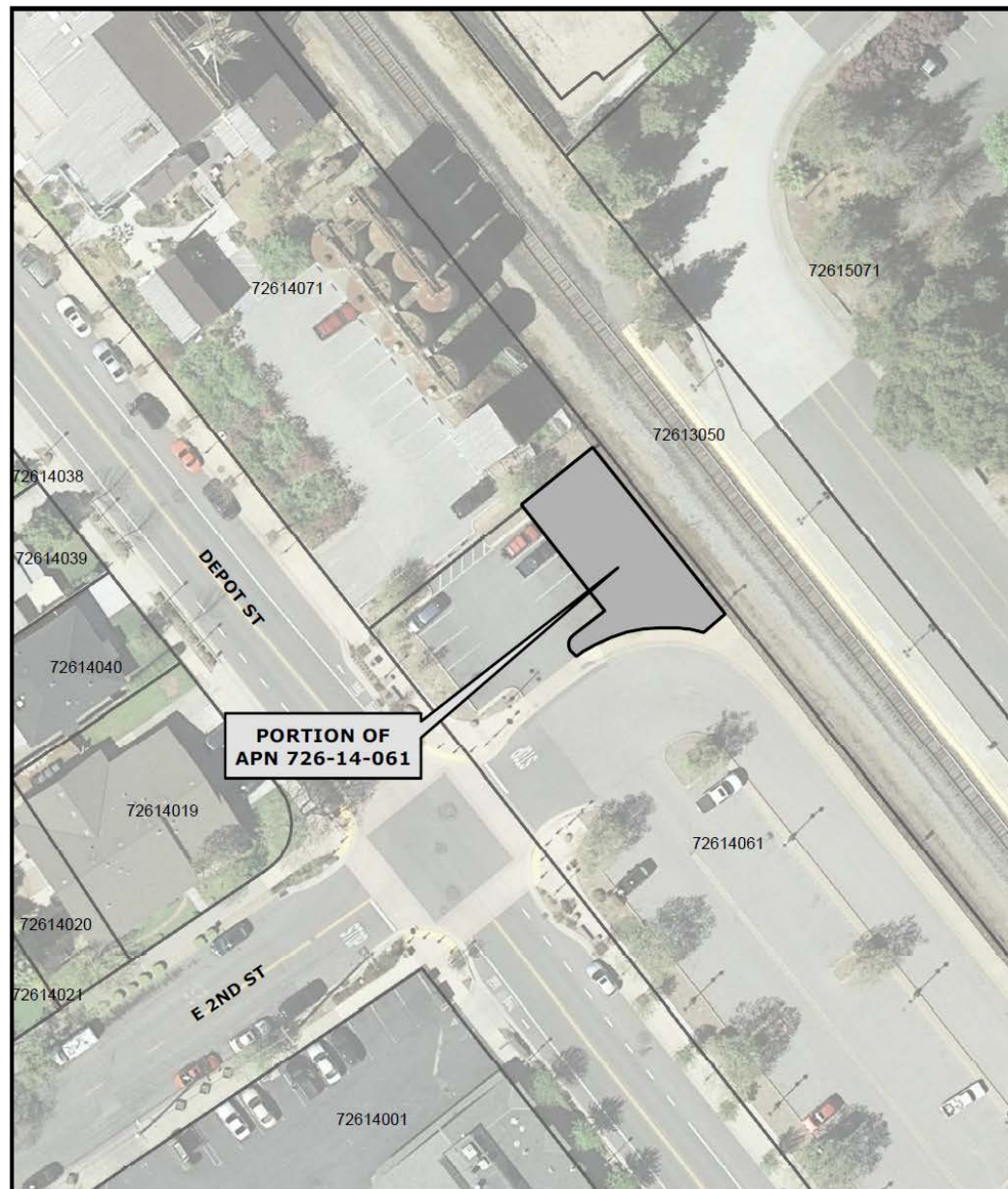
- *Add reference to Santa Clara Valley Habitat Plan in Stream Channel Protection Policy.*

Policy NRE-5.6 Stream Channel Protection. Protect existing stream channels and riparian vegetation by requiring buffering or landscaped setbacks and storm runoff interception as specified in Table NRE-1 and consistent with the Santa Clara Valley Habitat Plan.

Purchase and Sale Agreement Between City of Morgan Hill and Granary LLC for Expansion of the Granary Project

Item 25

December 6, 2017



CITY OF MORGAN HILL
Engineering Division
Public Works Department

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

EXHIBIT A

SITE PLAN

GRANARY EXPANSION PROPERTY

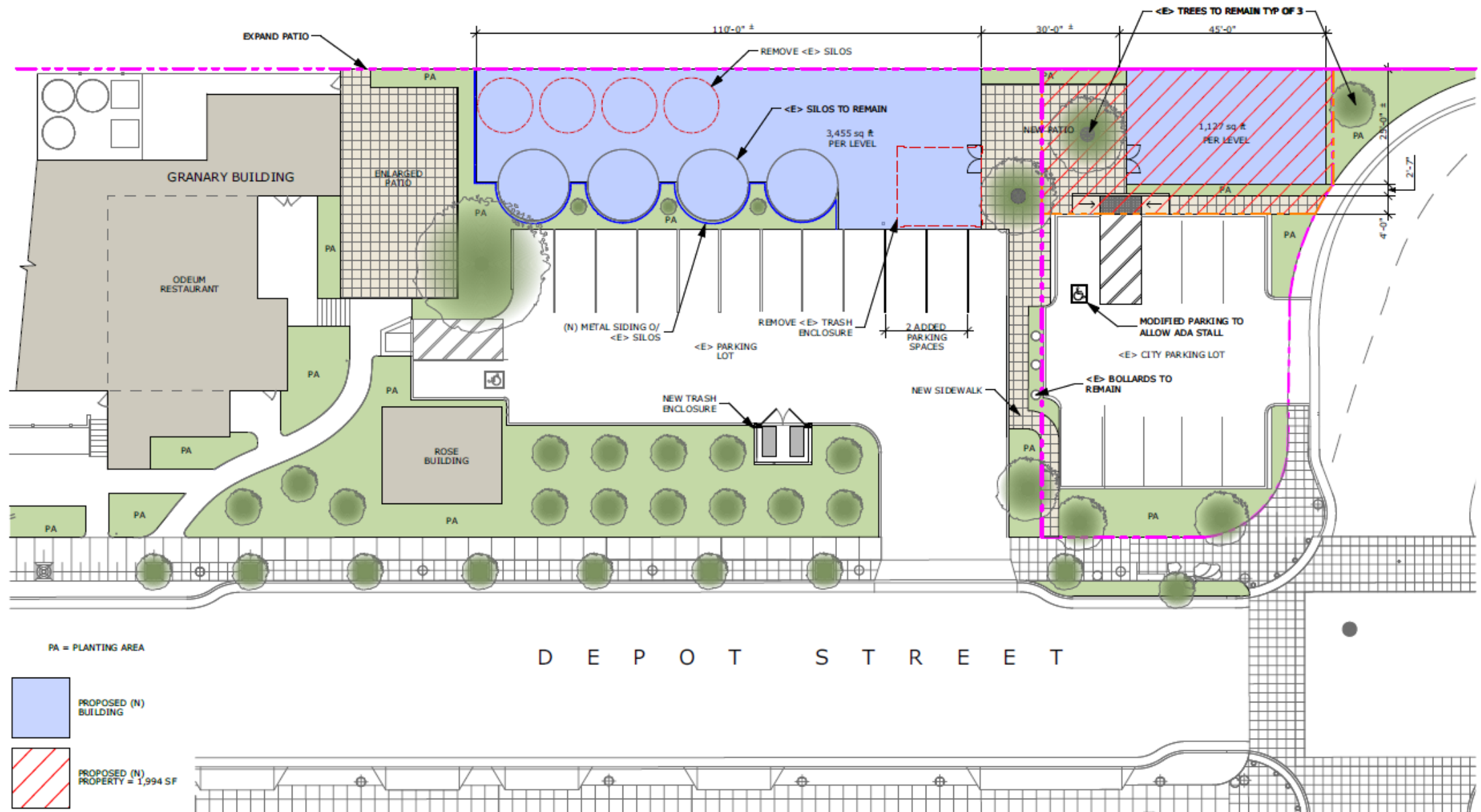
A PORTION OF APN 726-14-061



0 20 40 80 120 160
Feet

Terms

- City to sell up to 2,200 square feet at \$35 per square foot (Per appraisal - Valbridge/Hulberg)
- Developer to construct approximately 1,110 square foot retail/food building, extending Granary Concept
- City to perform survey of property and prepare legal descriptions
- Developer to prepare/submit lot line adjustment
- Developer to receive all permits and demonstrate financing secure prior to transfer/sale of property
- Transfer to occur Sept/October 2018, or no later than December 30, 2018 if weather or other force of nature events occur.



1" = 20'
11/20/2017

GRANARY DISTRICT EXPANSION SITE PLAN V2

WESTON MILES
ARCHITECTS
• Architecture • Landscape •





Item # 25
AGENDA DATE: 12/06/17
SUPPLEMENTAL # 1

December 6, 2017

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

Re: December 6, 2017 City Council Meeting Agenda item 25
Purchase and Sale Agreement Between City of Morgan Hill and Granary LLC, for the Granary
Building Expansion Project

Mayor Tate and Councilmembers,

The Downtown Association Board of Directors supports the sale of the remainder property adjacent the Granary development for development into business producing building space.

We support the sale for the following reasons:

- Creative use of lands to create a job producing opportunity otherwise destined to be no more than a landscaped area.
- Create an opportunity to better design parking and encourage the effective use of the landmark silo features on adjacent land.
- Create a much needed handicap parking space towards the north end of the downtown.
- Create revenues for the City of Morgan Hill general fund.

We support the creative use of this land with so many potential positive impacts.

Thank you for your time and attention.

Sincerely,

Board of Directors
Morgan Hill Downtown Association

Agenda Item #26

WA2017-0001 Diana - Grossweiler

Request:

Petition to Cancel
Williamson Act
Contract

Site: 4.66-acre parcel
located at Diana
Avenue and Lotus
Way



Background

- California Land Conservation Contract (Williamson Act) was established on the property on February 24, 1978
- Notice of Non-Renewal filed with the City on May 19, 2015
- Williamson Act Contract will expire on December 31, 2024 as a result of a Notice of Non-Renewal

Background (continued)

- Contract requires that the property be used only to produce agricultural commodities for commercial purposes
- In exchange, the property assessed at a value based upon farming and open space uses as opposed to full market value: \$4,300,000
- Preliminary RDCS application filed for 24 single-family homes

- Government Code Section 51282 outlines specific requirements for tentative cancellation of a contract
- Five “consistency” findings must be made by the City Council
- California Department of Conservation (DOC) provides comments on completed petitions for cancellation that also must be considered by the City Council

Consistency Findings:

1. The cancellation is for land on which a notice of non-renewal has been served pursuant to GC § 51245;
2. That cancellation is not likely to result in the removal of adjacent lands from agricultural use;
3. That cancellation is for an alternative use which is consistent with the applicable provisions of the Morgan Hill General Plan.
4. That cancellation will not result in discontinuous patterns of urban development.
5. That there is no proximate non-contracted land which is both available and suitable for the use to which it is proposed the contracted land be put, or, that development of the contracted land would provide more contiguous patterns of urban development than development of proximate noncontracted land

Next Steps:

- Certificate of tentative cancellation recorded.
- Applicant must pay in full cancellation fee as computed by the County Assessor.
- Cancellation fee \$537,500 or 12.5 percent of the unrestricted full market value (\$4,300,000)
- Applicant will submit for RDCS Competition

ZA2017-0009: Dunne - Young

Request

Change the Zoning Map designation from R-2 RPD to R-3 to be consistent with the 2035 General Plan.

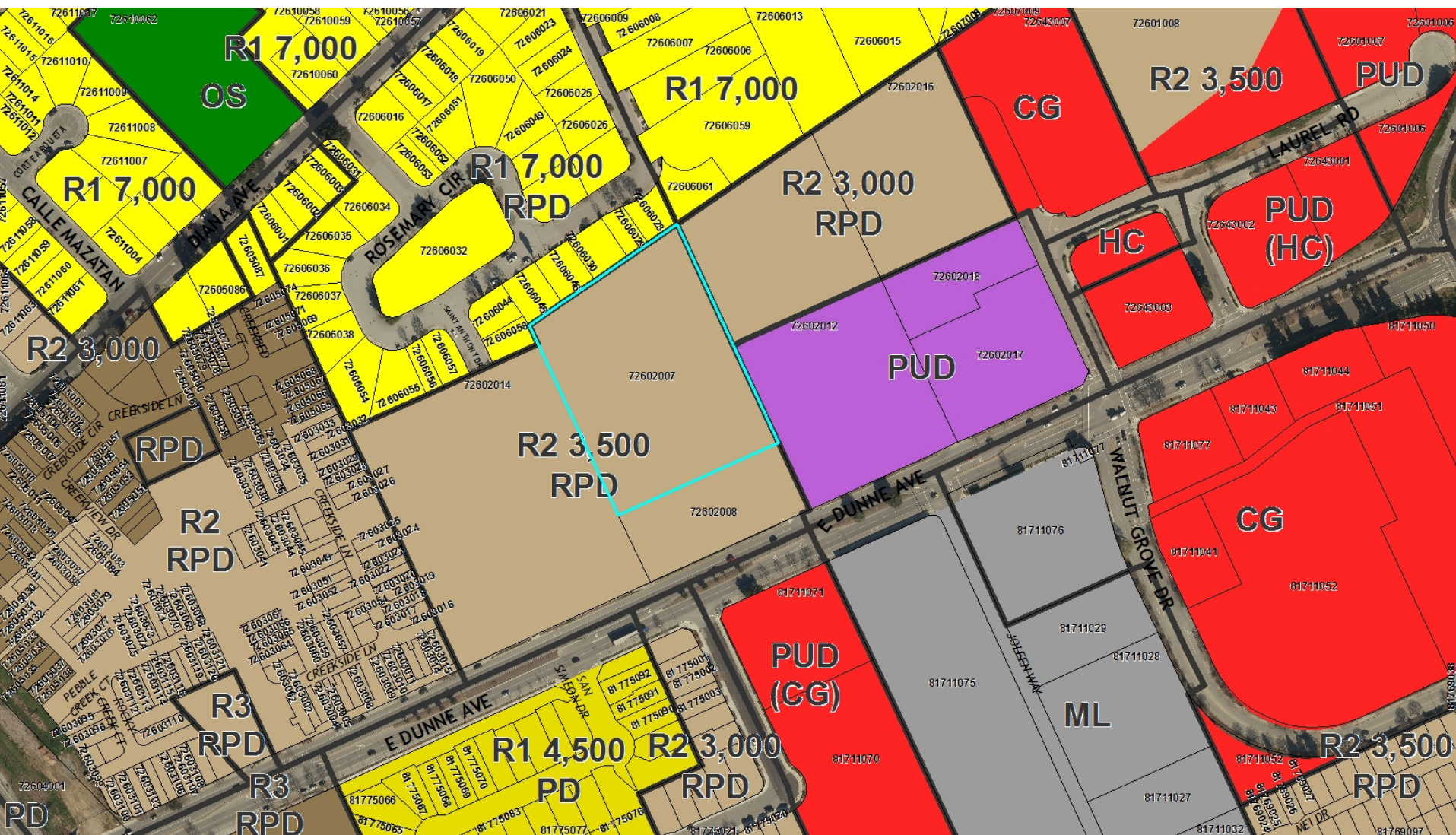
Recommendation

Open/Close the Public Hearing and Adopt Ordinance approving the Zoning Amendment.



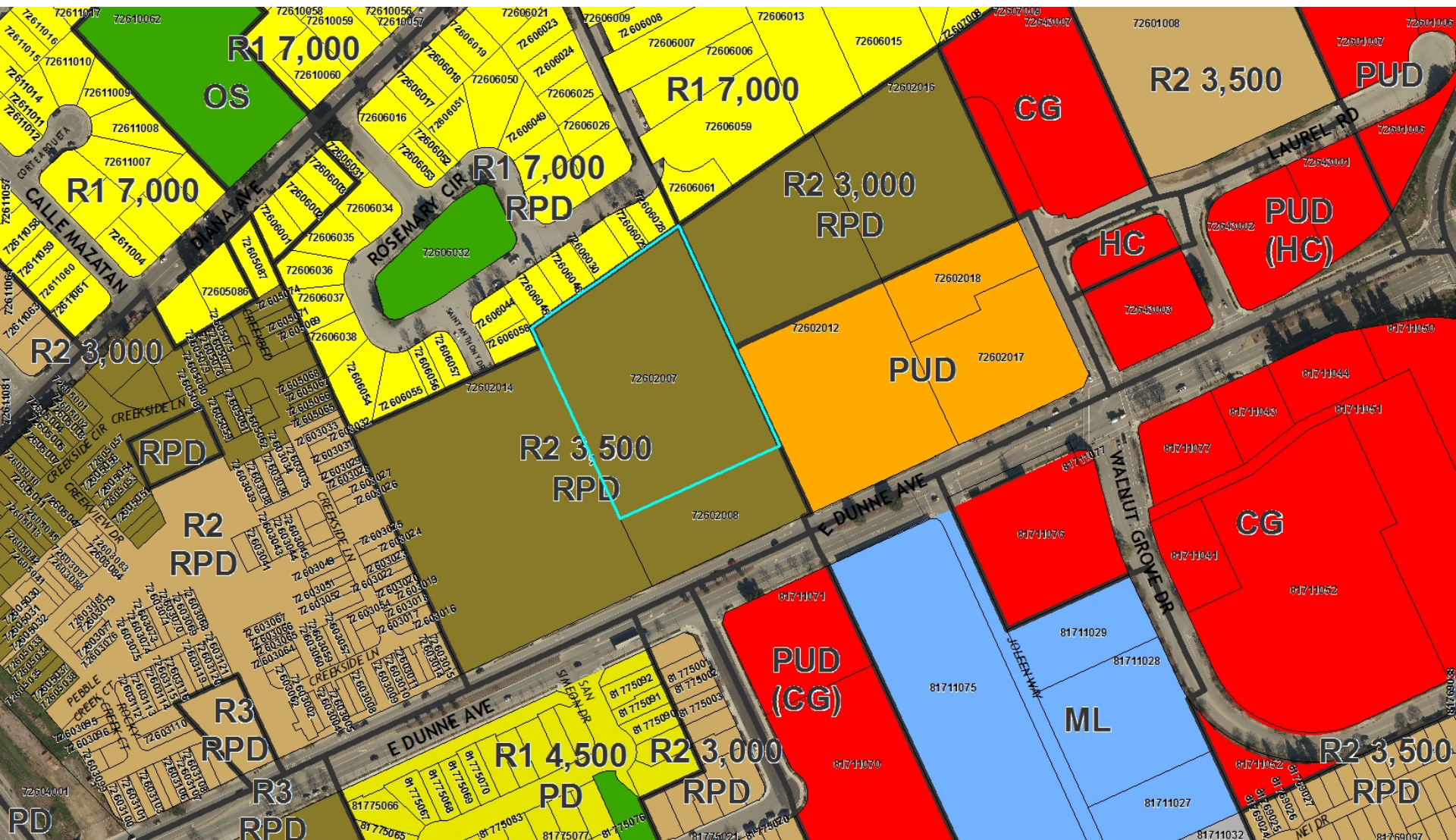
ZA2017-0004: Dunne-Young

2001 General Plan: Multi-Family Low 5-14 DU/AC



ZA2017-0004: Dunne-Young

2035 General Plan: Residential Attached Medium 16-24 DU/AC



ZA2017-0004: Dunne-Young

To amend Division I of the Zoning Ordinance, the City Council shall find the following:

- A. That the proposed amendment is in general conformance with the General Plan;*
- B. That the public necessity, convenience and general welfare require the adoption of the proposed amendment;*
- C. The proposed amendment does not grant a change in land use from commercial or industrial to a residential land use for property incorporated into the urban service boundary after December 7, 1990.*

ZA2017-0004: Dunne-Young

Staff Recommendation:

Adopt Ordinance amending the zoning designation on one parcel (3.49 acres total) from R-2 (3,500) RPD to R-3.



Monterey Gateway

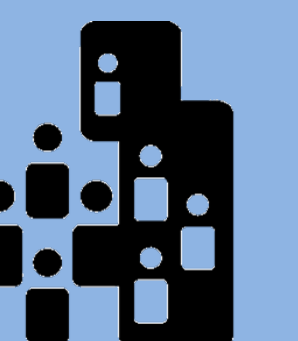
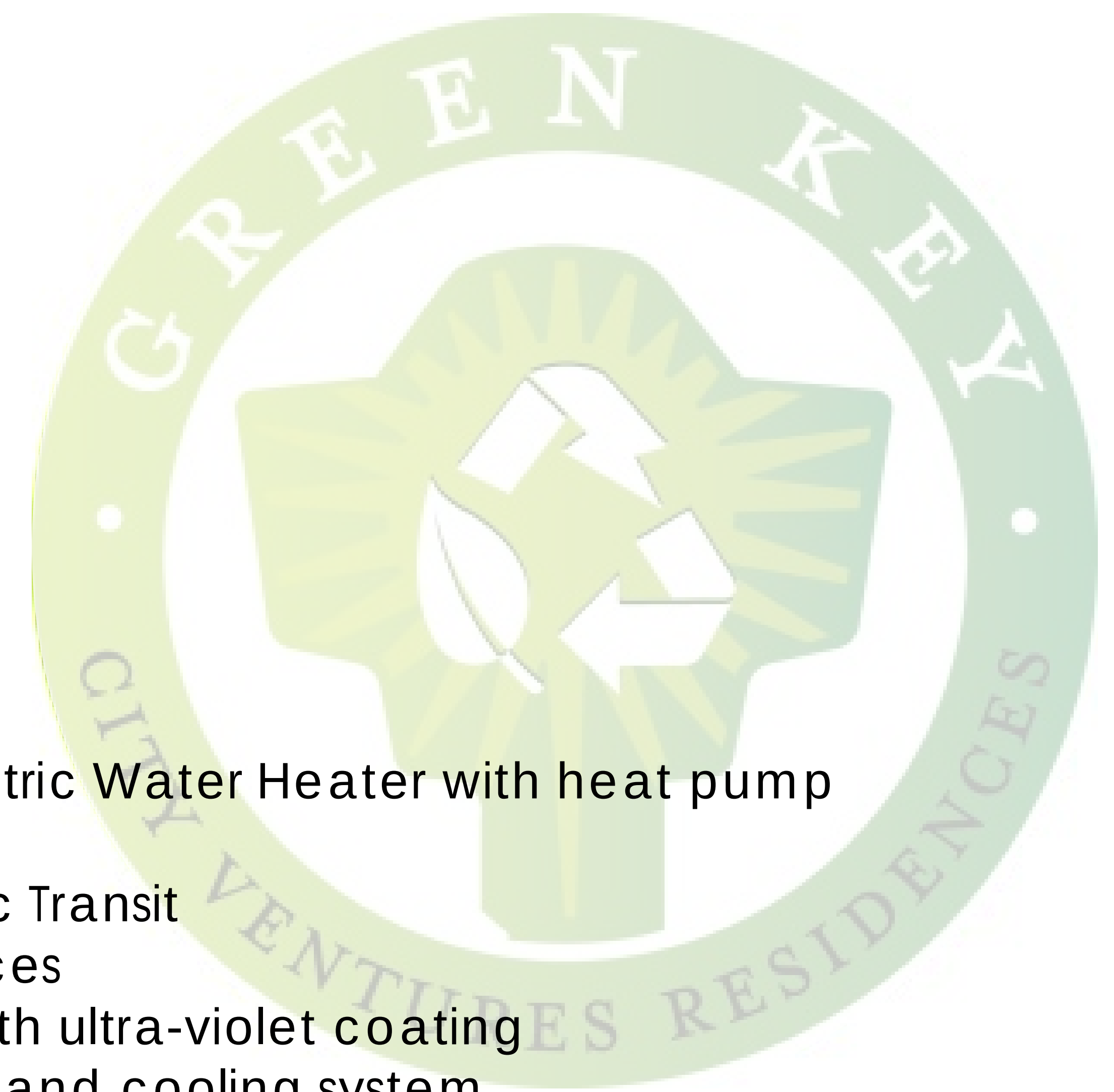
18110 Monterey Road

City Council

December 6, 2017

City Ventures

- Bay Area Builder
- Creates communities in **urban infill & transit oriented** sites
- All-electric, **solar-powered** homes
- Sustainability and our **Green Key**
 - All solar energy is generated and used onsite
 - Solar panels come standard, not as an option
 - High-tech energy efficient appliances
 - Pre-wiring for electric car charger in every home
 - Flow Limiting Faucets and shower heads
 - Earth-friendly energy efficient material
 - Energy Star® Hybrid Electric Water Heater with heat pump technology
 - In-fill siting close to Public Transit
 - High-efficiency appliances
 - Dual-glazed windows with ultra-violet coating
 - Energy efficient heating and cooling system





Loden Place



Solera Ranch



Solera Ranch



Monterey Collection

 **Mixed Use Flex.** The Mixed Use Flex designation, which is primarily applied to properties along the Monterey Road corridor north and south of downtown, allows for a mix of residential, commercial, and office uses applied either vertically (i.e., one structure with multiple uses) or horizontally (i.e., structures with different land uses located adjacent to one another). Density should transition from higher to lower at the ends of Monterey corridor. The Mixed Use Flex designation allows 7 to 24 units per acre and a maximum FAR of 0.5 and a maximum commercial building height of 35 feet. Prior to development of Residential or Mixed-Use projects within the Mixed Use Flex designation a block level master plan is required to identify how commercial uses will be incorporated within the development of the block and how individual development projects will connect with each other. Commercial development may process without preparation of a block level master plan consistent with the Commercial designation.

General Plan:

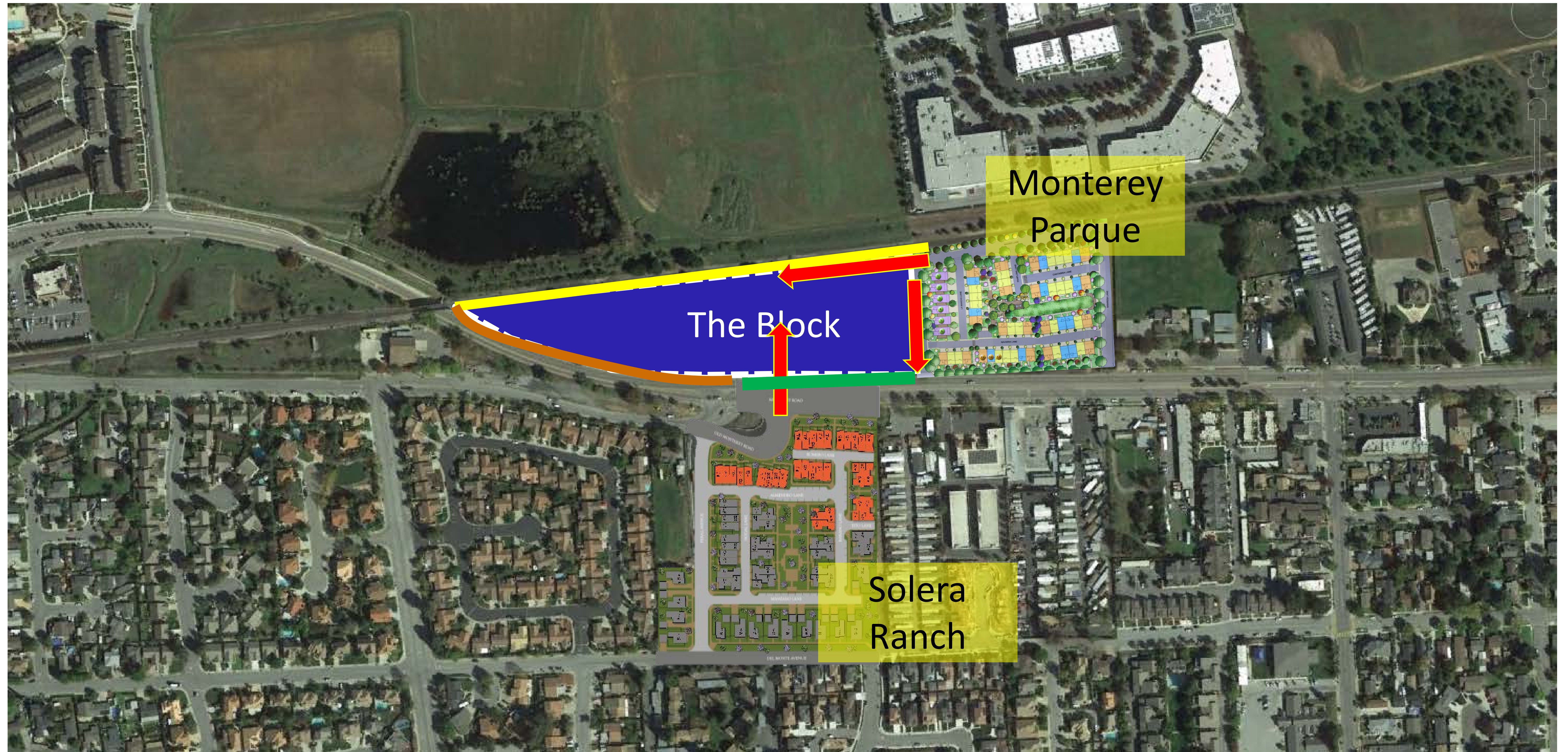
- Designated Mixed Use Flex
- Proposal: Maintain consistency

Zoning:

- Current: ML Light Industrial
- Proposal: Rezone to conform with General Plan (R-3 Medium Density Residential)



The Block – Master Plan



Getting More People Downtown

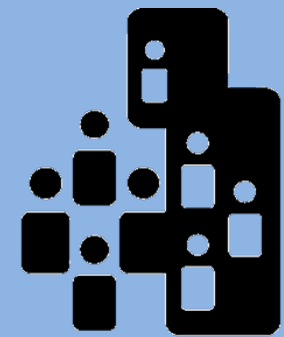


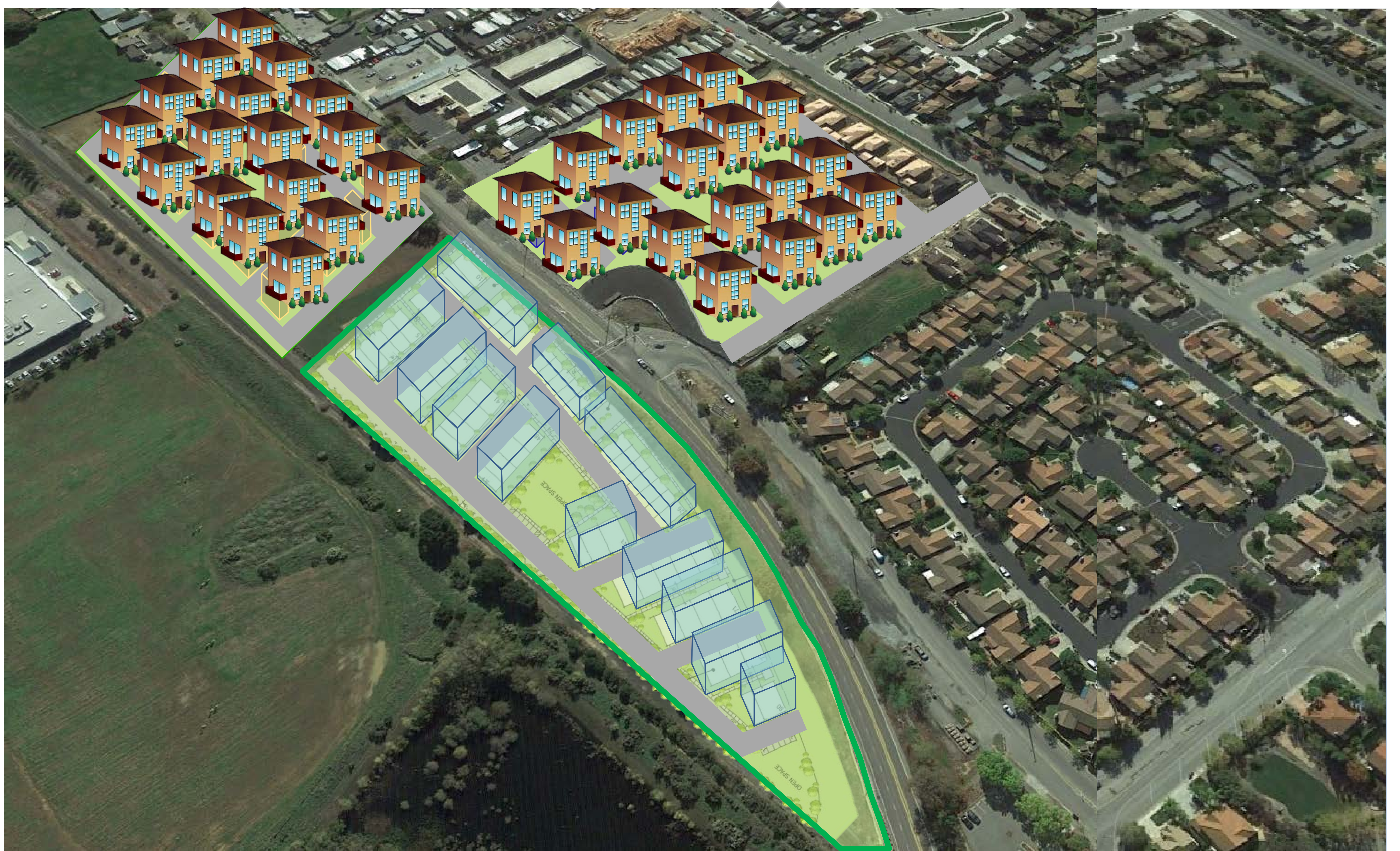
WALKABILITY

- .3mi Neighborhood Retail – Wright Avenue
- .6mi Edge of downtown – Main Street
- 1.1mi Edge of downtown – Dunne Avenue

BIKEABILITY

- 1.15mi Morgan Hill Caltrans





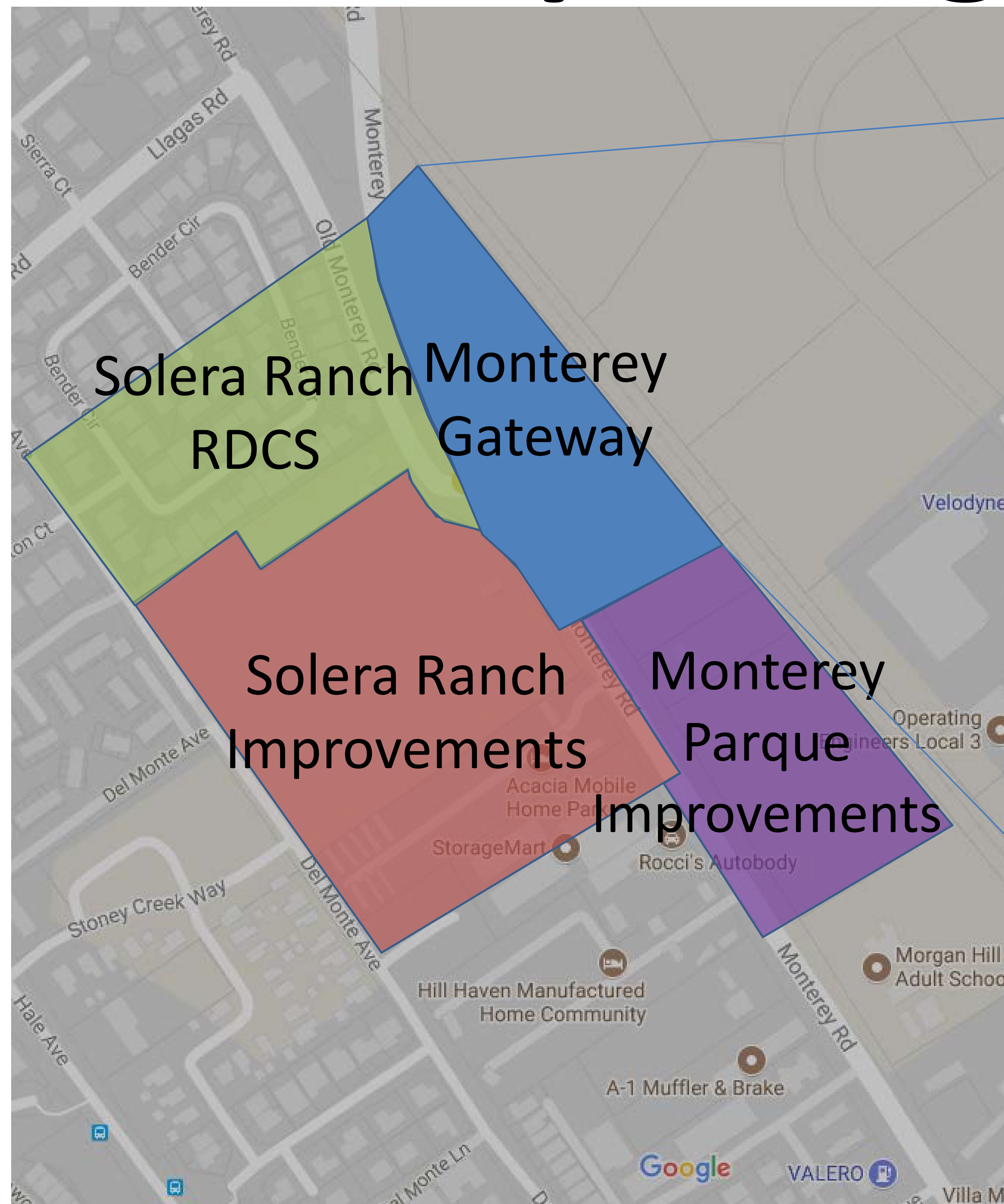
**Respectfully request that the Planning Commission approve
the requested Zoning Text Amendment.**

Thank You

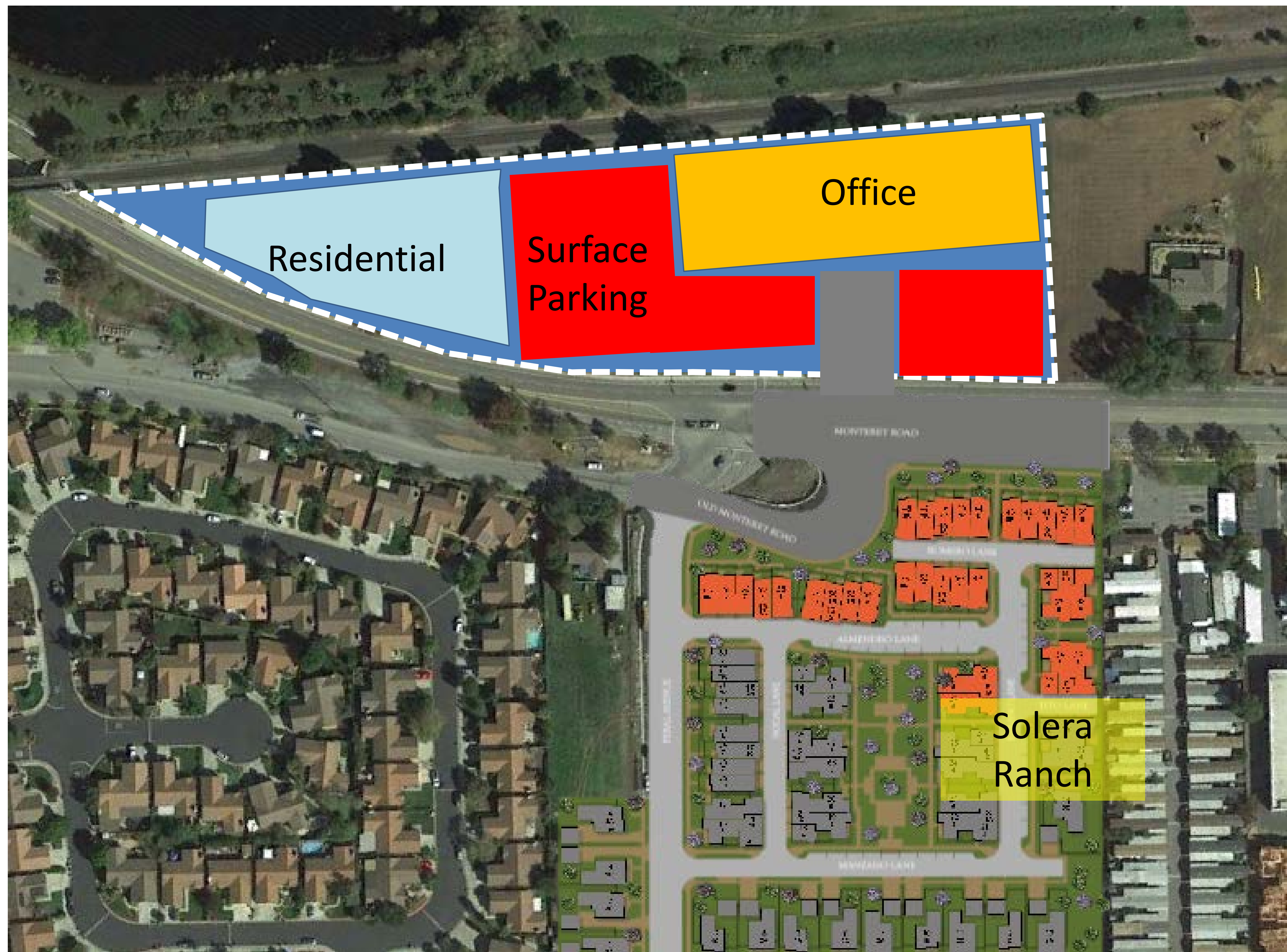


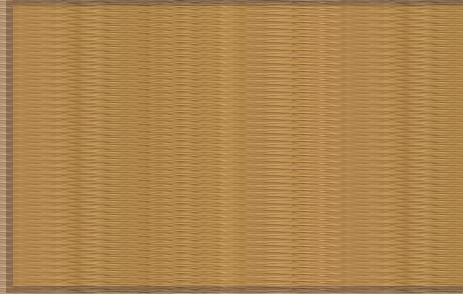


Completing Infrastructure



- Complete new traffic signal
- Pedestrian improvements
- Storm water infrastructure resiliency
- Bicycle improvements
- New intersection will open in all directions



 **Mixed Use Flex.** The Mixed Use Flex designation, which is primarily applied to properties along the Monterey Road corridor north and south of downtown, allows for a mix of residential, commercial, and office uses applied either vertically (i.e., one structure with multiple uses) or horizontally (i.e., structures with different land uses located adjacent to one another). Density should transition from higher to lower at the ends of Monterey corridor. The Mixed Use Flex designation allows 7 to 24 units per acre and a maximum FAR of 0.5 and a maximum commercial building height of 35 feet. Prior to development of Residential or Mixed-Use projects within the Mixed Use Flex designation a block level master plan is required to identify **how commercial uses will be incorporated** within the development of the block and **how individual development projects will connect with each other.** Commercial development may process without preparation of a block level master plan consistent with the Commercial designation.

Agenda Item #28

ZA2017-0008: Monterey-Dobkin

Request:

Zoning Map Amendment
from ML – Light Industrial
to R-3 Medium Density
Residential

Site:

5.66 gross acres
e/s Monterey Road
0.6 miles north of
Downtown



Surrounding Uses

North: El Toro Fire Station

South: Single-family detached and attached homes

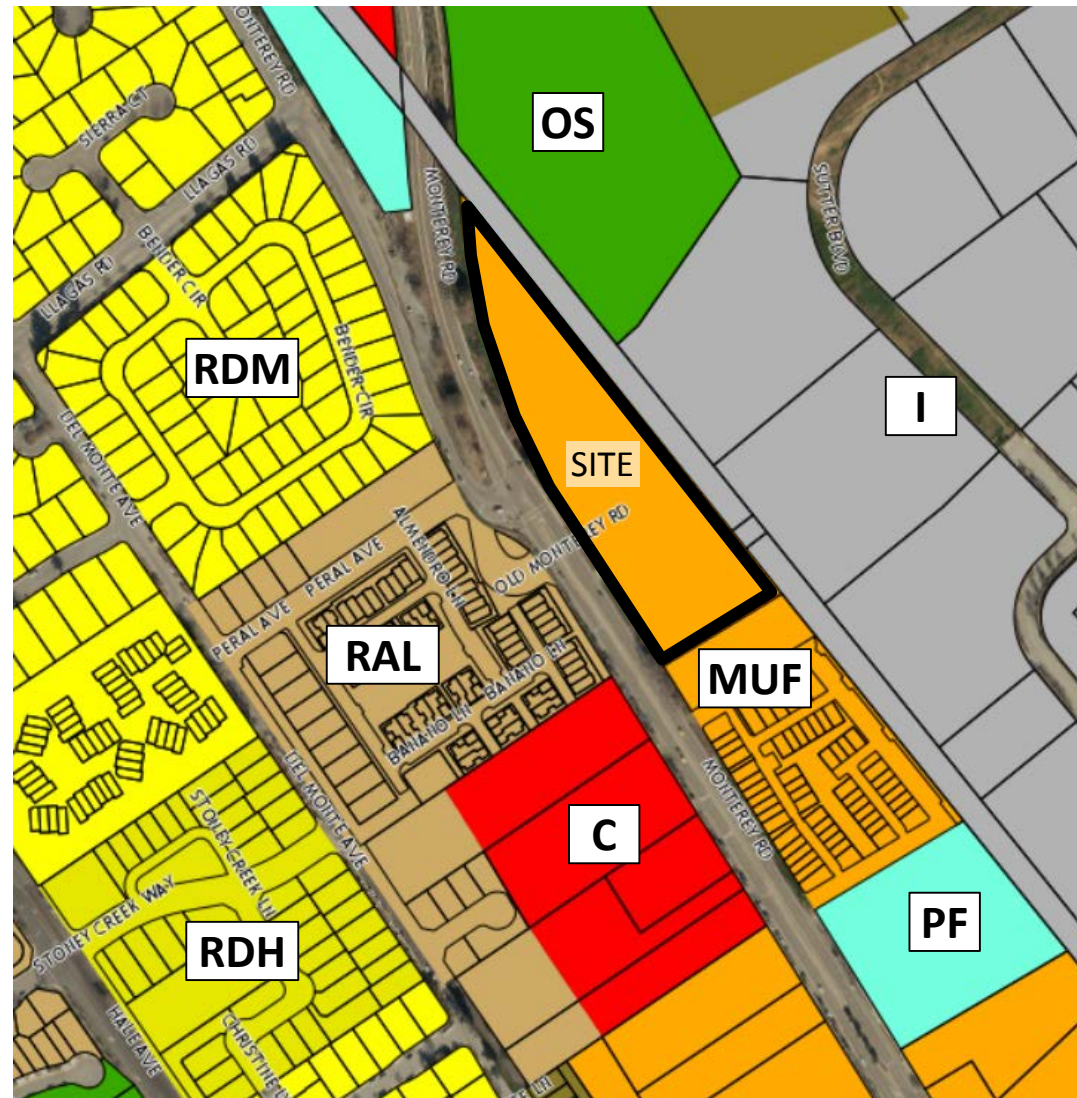
East: Vacant industrial, residential, and Open Space

West: Single-family attached and detached homes



General Plan Land Use Map

C = Commercial
I = Industrial
MUF = Mixed Use Flex
OS = Open Space
PF = Public Facilities
RAL = Residential
Attached Low
RDH = Residential
Detached High
RDM = Residential
Detached Medium



ZA2017-0008: Monterey-Dobkin

Planning Commission Recommendation (6-1):

City Council deny the proposed Zoning Map Amendment from the ML – Light Industrial Zoning District to the R-3 Medium Density Residential Zoning District.

Findings regarding proposed Zoning Amendment:

1. Not in general conformance with General Plan
2. Not required in order to serve public convenience, necessity or general welfare.

ZA2017-0008: Monterey-Dobkin

Policy Consideration:

Should the proposed Zoning Amendment (and project) be allowed to proceed in advance of the completion of the Monterey Corridor Study and Implementation Project or block level master plan?

No: Deny the proposed Amendment

Yes: Approve the proposed Zoning Amendment finding the proposal to be:

1. In general conformance with the General Plan; and
2. Required in order to serve public convenience, necessity, and general welfare.

Alternative: Approve CG or CL-R Zoning District

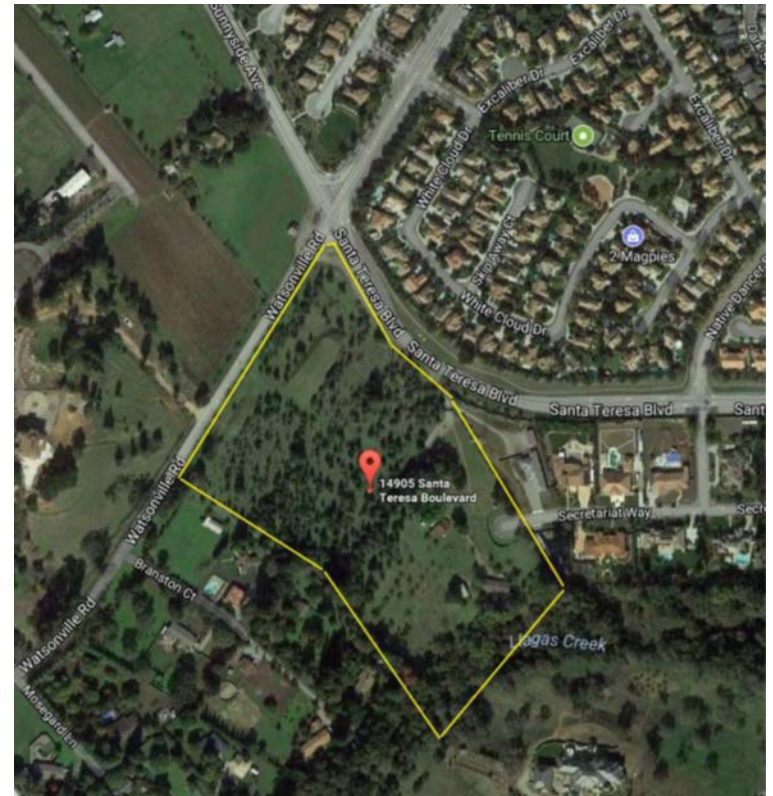
Morgan Hill City Council

December 6, 2017

Zoning Amendment: Watsonville-Blackrock

Project Request

- Rezone the site from RE 40,000 RPD to RE 40,000
- Remove PD requirement and minimum lot size requirements
- Allow the site to develop in accordance with zone district standards



Zoning Amendment: Watsonville-Blackrock

Policy Consideration

Is the proposed Zoning Amendment consistent with the requirements imposed at the time the property applied for annexation into the City?

Zoning Amendment: Watsonville-Blackrock

Urban Limit Line Advisory Committee

- Reviewed site in 2005
- Recommended lots range from a minimum of one acre in the area closest to the one acre lots in the City to lots with approximately 2.5 acres closest to the unincorporated residential area.

Zoning Amendment: Watsonville-Blackrock

City Council Actions

- Adopted Ord. No. 1776-Prezoned site subject to condition (2006):
 1. Development of the parcel shall occur at a density which transitions from a minimum of one acre on the southeastern side of the site to minimum parcel sizes of approximately 2.5 acres on the southwest side of the site.
- Amended General Plan to include Land Use Action 7.6

Zoning Amendment: Watsonville-Blackrock
Residential Development Control System

- Allotments awarded 2010
- Allotments expired 2014
- Preliminary application filed Nov. 1, 2017

Zoning Amendment: Watsonville-Blackrock

Morgan Hill 2035 General Plan

Land Use Action 7.6 was replaced with a broader policy statement:

- **Policy CNF-9.3 Density Feathering in South Morgan Hill.** Maintain existing residential feathering south of Watsonville Road and west of Monterey Road.

Zoning Amendment: Watsonville-Blackrock

November 28, 2017 - Planning Commission Review

- Majority of PC preferred density feathering specifically described in pre-zoning ordinance
- PC wanted to allow for participation in 2017 RDCS process
- Requested project comply with Ord. No 1776 to compete in 2017 RDCS without approved development plan
- Recommended Denial of rezone request

Zoning Amendment: Watsonville-Blackrock

Recommendation

1. Open/close public hearing; and,
2. Adopt resolution denying Zoning Amendment ZA2017-0005

Zoning Amendment: Watsonville-Blackrock

Findings

- The proposed zoning amendment is not consistent with the General Plan
- The proposed zoning amendment to remove the RPD overlay is not required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.070 of the Municipal Code
- Due to the unique circumstances of this property with the existing RPD Overlay implemented as part of the annexation, the property owner can participate in the RDCS process without having a Development Plan approved in advance provided that the RDCS conceptual plan submitted is consistent with Ord.No. 1776.

Zoning Amendment: Watsonville-Blackrock

Alternative Recommendation

If project is determined to be consistent with GP Policy CNF-9.3

Findings

- The proposed zoning amendment is consistent with the General plan
- The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.070 of the Municipal Code
- Further development and any future building addition shall comply with the site development standards of the RE-40,000 Residential Estate District

Zoning Amendment: Watsonville-Blackrock

Alternative Recommendation

1. Waive the first and second reading of the ordinance approving the rezone; and
2. Introduce the ordinance.

December 4, 2017

Re: Zoning Amendment for parcel number 779-02-0023. Watsonville-Blackrock Project

Agenda item on December 6, 2017 Council meeting

Honorable members of MH City Council:

My wife and I live and own a nearby parcel and home on Branston Ct. There are concerns regarding the development of the site on the corner of Watsonville Road and Santa Teresa Blvd. that we would like recorded. Namely:

1. We and three other neighbors get our domestic water from a well that is within 50 feet or so of the parcel border. Construction, hazardous substances and the like need to be carefully monitored to insure our health and wellbeing are considered in terms of the well water.
2. There is a natural flow of water that continues from the Branston Ct parcels (most notably 14840) and the aforementioned joint well and water tank. It is imperative that the flow of rain water be considered in any elevation changes due to the development.
3. Traffic on Watsonville and Santa Teresa/Sunnyside has dramatically increased over the years. Additional vehicles residing on this corner would further add to this situation. The traffic concern is particularly an issue if an entrance (as currently planned) is off of Watsonville Road. Turning left from Watsonville into the development can be a potential safety issue. Further study including the intersection of Watsonville and Santa Teresa/Sunnyside and other similar streets nearby off of Watsonville should be contemplated.
4. Environmental impact on Lagas Creek. This year round stream is located on the southern end of the property in question. The impact on wildlife needs to be considered. There is a Blue Heron breeding habitat along with Wood Duck habitat including breeding boxes constructed by the Department of Fish and Game. The creek can also accommodate spawning steelhead and many forms of amphibians. There have been recent observations by the agencies who look after such issues. I would suggest a further study particularly with the issues mentioned in mind, e.g. Blue Heron, Wood Duck, Steelhead Trout and amphibians.

The number one criteria for this development besides accommodating these issues needs to be **sensitivity towards the number of residences allowed**. Currently the plan we have seen suggests 14 parcels. Final approval of this project should not exceed this number.

Respectfully,

Bruce and Carol Schlegel

[REDACTED]

[REDACTED]

Item # 29
AGENDA DATE: 12/06/17
SUPPLEMENTAL # 2

City council meeting 12/6/2017

Regarding zoning amendment za2017-0005, -0007 parcel 779-02-023

Mark Wiselogel property owner 14840 branston ct

I have concerns with the proposed zoning changes for parcel 779-02-023

My proposal for minimum lot size and lot size feathering was adopted in 2005 and I still

Believe seems appropriate.

Ordinance 1776 section 4 provides for this lot size feathering from approximately 2.5 acres on the southwestern side to 1 acre on the southeastern side.

Discussions in the planning meeting 11/28/17 surrounding the definition of approximately 2.5 acres seemed fair. These discussions were about how close to 2.5 acres did the term approximately represent and not that it should not be present.

My concern with the possible elimination of ordinance 1776 and what it represents is the 'slippery slope'. As development constraints such as ordinance 1776 are considered for removal, the risk of the development moving from 2.5 acre to 1 acre to residential to condo's is put in play.

This parcel 779-02-023 is a wonderful property. It can be wonderful place for a dozen homeowners if it is developed properly. We absolutely must keep in place ordinance 1776 and the rules regarding lot sizing to insure that the lot sizing that was reasonable in 2005 continues today.

It is the goal of developers to push the limits to maximize their profit on a parcel. Allowing this one parcel to be split into 12 seems like a good win for the developer. We must also balance this with impact on the neighbors and community. Please keep in place the current constraints on the development of parcel 779-02-023.

Thank you Mark Wiselogel



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, December 6, 2017 6:15 PM

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

SPECIAL/REGULAR MEETING

(6:15 P.M. Closed Session/ 7:00 P.M. Regular Meeting)

A special meeting of the City Council is called at 6:15 p.m. for the purpose of conducting a closed session.

SPECIAL MEETING

6:15 P.M.

CALL TO ORDER

(Mayor Tate)

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
(Deputy City Clerk Wilson)

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

CLOSED SESSION ANNOUNCEMENT

ADJOURN TO CLOSED SESSION

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Authority: Government Code 54957(b)(1)

Title: City Attorney

RECONVENE

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 MANAGER'S REPORT

CITY ATTORNEY'S REPORT

OTHER REPORTS

OATHS OF OFFICE

Community Emergency Response Team (CERT) Oaths of Office

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

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

1. ACCEPT DONATION FROM ANYTIME FITNESS FUNDRAISING EVENT FOR POLICE PROGRAMS

Recommendation:

Adopt resolution approving an amendment to the City's Fiscal Year 2017-18 budget to accept \$4,250 in donations from a fundraiser held by Anytime Fitness to benefit the Police Department and appropriate \$4,250 for expenditures for the Police Explorers, Range, and K-9 programs.

2. LEADERSHIP MORGAN HILL 2017 PUPS IN NEED - ADDITIONAL DONATION

Recommendation:

Adopt resolution accepting a final donation of \$2,370 from the Leadership Morgan Hill Class of 2017 for the Pups in Need - Morgan Hill Police Department Kennel Makeover.

3. APPROVE SERVICE AGREEMENT FOR DESIGN PROFESSIONALS WITH WESTON MILES ARCHITECTS, INC. FOR DESIGN AND CONSTRUCTION SUPPORT SERVICES FOR THE CENTENNIAL RECREATION CENTER EXPANSION PROJECT

Recommendation:

1. Authorize the City Manager to execute and administer an agreement with Weston Miles Architects, Inc. for design and construction support services for the Centennial Recreation Center Expansion Project in an amount not to exceed \$225,400; and
2. Adopt resolution appropriating an additional \$65,400 to the project from the Recreation Center Impact Fund.

4. APPROVE AGREEMENT FOR CRC CONCESSIONS

Recommendation:

Approve a Concessionaire License Agreement with Sycamore Concessions Company for the operation of a concession food and beverage station at the Centennial Recreation Center and authorize the City Manager to execute all associated documents and agreements.

5. AWARD OF OUTDOOR SPORTS CENTER ARTIFICIAL TURF PROJECT

Recommendation:

1. Correct the award of contract for the Outdoor Sports Center Artificial Turf Project to reflect the proper entity, Valley Precision Grading, Inc. in the amount of \$1,475,437;
2. Authorize expenditure of construction contingency funds not to exceed \$51,000; and
3. Authorize the City Manager to execute and administer the construction contract with Valley Precision Grading, Inc.

6. AWARD CONTRACT FOR LANDSCAPE MAINTENANCE: PARK MOWING, MEDIANS, AND DOWNTOWN

Recommendation:

Authorize the City Manager to execute and administer a Maintenance Services Agreement with Brightview Landscape Services for \$261,552 to service Group 1: City Parks Mowing, Group 3: Medians, and Group 6: Downtown for two years.

7. ADOPT RESOLUTION SETTING PUBLIC HEARING DATE FOR 2018 HAZARDOUS VEGETATION PROGRAM

Recommendation:

Adopt resolution declaring weeds and brush to be a nuisance and setting the hazardous vegetation public hearing on February 7, 2018.

8. GRANT APPLICATION TO THE SANTA CLARA VALLEY OPEN SPACE AUTHORITY FOR THE WEST LITTLE LLAGAS CREEK INTERPRETIVE WILDLIFE TRAIL PROJECT

Recommendation:

Adopt resolution approving the submission of a grant application to the Santa Clara Valley Open Space Authority, authorizing the City Manager to execute grant documents if the grant application is successful.

9. ACCEPTANCE OF SUBDIVISION PUBLIC IMPROVEMENTS - VILLAGE CENTER - TRACT NO. 10219

Recommendation:

1. Accept the subdivision public improvements for Village Center – Tract No. 10219;
2. Authorize the Deputy Director of Engineering or his designee to sign a Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the Recorder of Santa Clara County.

10. ACQUISITION OF PORTIONS OF PROPERTY (TRAN/DO) APN'S 767-03-039, -041, & -042 FOR THE HALE AVENUE EXTENSION PROJECT

Recommendation:

1. Adopt resolution approving the property purchase for portions of property on APN's 767-03-039, -041, -042 for \$1,142,000 plus escrow and closing costs from Luc Van Tran and Hong Phuoc Thi Do, as Trustees of the Tran/Do Family Trust for the Hale Avenue Extension Project; and
2. Authorize the City Manager to execute all documents and make minor modifications as necessary in order to consummate the transaction.

11. ACQUISITION OF PROPERTY (GIANCOLA) APN 767-05-037 FOR THE HALE AVENUE EXTENSION PROJECT

Recommendation:

1. Adopt resolution approving the property purchase of APN 767-05-037 for \$36,400 plus escrow and closing costs from John A. Giancola & Sons, Inc. for the Hale Avenue Extension Project, and
2. Authorize the City Manager to execute all documents and make minor modifications as necessary in order to consummate the transaction.

12. NINTH SEMI-ANNUAL REPORT ON POST-ISSUANCE COMPLIANCE FOR TAX ADVANTAGED BONDS

Recommendation:

Receive and accept report.

13. COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2017

Recommendation:

Accept the City's Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2017.

14. RECEIVE AND FILE THE ANNUAL SB 165 REPORT FOR COMMUNITY FACILITIES DISTRICT NO. 2014-1 (FISHER CREEK)

Recommendation:

Receive and file the report.

15. AB 1600 DEVELOPMENT IMPACT FEE REPORT FOR FISCAL YEAR 2016-17

Recommendation:

Adopt resolution making findings for unexpended development impact fees and accept the annual development impact fee report.

16. "CITY COUNCIL TERM LIMIT" INITIATIVE PETITION

Recommendation:

Receive report.

17. ADOPT AN UNCODIFIED ORDINANCE OF THE CITY OF MORGAN HILL ALLOWING EXISTING RESIDENTIAL DEVELOPMENT PROJECTS WITH A COMMENCEMENT OF CONSTRUCTION REQUIREMENT TO UTILIZE THE EXERCISE OF ALLOTMENT PROVISION PROVIDED WITHIN THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) ORDINANCE SECTION 18.78.160 OF THE MORGAN HILL MUNICIPAL CODE

Recommendation:

Waive the reading, adopt Ordinance No. 2264, 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.

18. ADOPT ORDINANCE ADDING A NEW CHAPTER 15.38 (“WAGE THEFT PREVENTION”) TO TITLE 15 (“BUILDINGS AND CONSTRUCTION”) OF THE MORGAN HILL MUNICIPAL CODE

Recommendation:

Waive the reading, adopt Ordinance No. 2265, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

OTHER BUSINESS

19. DOWNTOWN SPECIAL EVENTS AND STREET CLOSURES

Recommendation:

Approve the proposed revised Downtown Special Events Street Closure Policy.

Estimated Time: 15 Minutes

20. ESTABLISHMENT OF ADMINISTRATIVE PROCESS TO CONSIDER HAZARDOUS VEGETATION PROGRAM CHARGES

Recommendation:

Direct staff to prepare an ordinance establishing an administrative process for hazardous vegetation abatement program charges.

Estimated Time: 15 Minutes

21. ANIMAL SERVICES UPDATE

Recommendation:

1. Receive report; and
2. Direct City staff to explore alternative regional approach to animal services.

Estimated Time: 30 Minutes

22. SEPTEMBER 2017 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

Estimated Time: 5 Minutes

23. APPROVE CITY MANAGER HOME LOAN

Recommendation:

1. Adopt resolution approving a housing loan to the City Manager in the amount not to exceed \$1,300,000 and authorizing the Mayor to sign all necessary loan documents; and
2. Amend the budget up to a maximum of \$1,300,000.

Estimated Time: 5 Minutes

PUBLIC HEARING

24. GENERAL PLAN AMENDMENTS, GPA2017-0001 AND -0002: CITY OF MORGAN HILL. AMENDMENTS TO THE MORGAN HILL 2035 GENERAL PLAN TO CORRECT MISCELLANEOUS LAND USE MAP AND TEXT ERRORS

Recommendation:

Adopt resolution approving amendments to the Morgan Hill 2035 General Plan.

Estimated Time: 30 Minutes

25. PURCHASE AND SALE AGREEMENT BETWEEN CITY OF MORGAN HILL AND GRANARY LLC, FOR THE GRANARY BUILDING EXPANSION PROJECT

Recommendation:

Adopt resolution approving Purchase and Sale Agreement by and between the City of Morgan Hill and Granary LLC, for the Granary Building Expansion Project and directing the City Manager to take all actions required to execute the Agreement.

Estimated Time: 15 Minutes

26. WA2017-0001 DIANA - GROSSWEILER- PETITION TO CANCEL WILLIAMSON ACT CONTRACT FOR PROPERTY, IDENTIFIED BY ASSESSOR PARCEL NUMBER 726-09-002

Recommendation:

1. Open/close public hearing; and
2. Adopt resolution.

Estimated Time: 15 Minutes

27. ZONING AMENDMENT, ZA2017-0009: EAST DUNNE - YOUNG: A REQUEST TO AMEND THE ZONING DESIGNATION ON A 3.49-ACRE PARCEL LOCATED ON THE NORTH SIDE OF EAST DUNNE AVENUE APPROXIMATELY 610 FEET WEST OF WALNUT GROVE DRIVE FROM THE R-2 3,500 TO R-3 MEDIUM DENSITY ZONING DISTRICT

Recommendation:

1. Open/close public hearing;
2. Waive first and second reading of the ordinance; and
3. Introduce ordinance approving amendment to the City zoning map.

Estimated Time: 10 Minutes

28. ZA2017-0008: MONTEREY-DOBKIN: REQUEST FOR A ZONING MAP AMENDMENT FROM THE ML - LIGHT INDUSTRIAL ZONING DISTRICT TO THE R-3 MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A 5.66 GROSS ACRE SITE IDENTIFIED BY ASSESSOR PARCEL NUMBER 726-25-006 LOCATED ON THE EAST SIDE OF MONTEREY ROAD OPPOSITE THE SOUTHERLY TERMINUS OF OLD MONTEREY ROAD

Recommendation:

1. Open/close public hearing;
2. Waive the first and second reading of Ordinance approving zoning amendment; and
3. Introduce Ordinance.

Estimated Time: 30 Minutes

29. ZA2017-0005, EA2017-007: WATSONVILLE - BLACKROCK-ZONING AMENDMENT FROM RE 40,000-RPD TO RE 40,000 FOR PROPERTY IDENTIFIED BY ASSESSOR PARCEL NUMBER 779-02-023 LOCATED AT WATSONVILLE ROAD AND SANTA TERESA BOULEVARD.

Recommendation:

1. Open/close public hearing;
2. Adopt resolution denying Zoning Amendment ZA2017-0005;
OR
2. Waive the first and second reading of the ordinance approving the rezone; and
3. Introduce the ordinance.

Estimated Time: 30 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.

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