



CITY OF MORGAN HILL

Regular Meeting Agenda

City Council

Steve Tate - Mayor

Rich Constantine - Mayor Pro Tem

Larry Carr - Council Member

Caitlin Jachimowicz - Council Member

Rene Spring - Council Member

Wednesday, March 7, 2018 7:00 pm

Council Chamber

17555 Peak Avenue, Morgan Hill, CA 95037

TELECONFERENCE

Mayor Tate will be participating in the regular meeting via teleconference as follows:

Mayor Steve Tate
4610 North 68th Street, Unit 438
Scottsdale, AZ 85251

Public comment from the Arizona location shall be allowed.

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

CALL TO ORDER

(Mayor Pro Tem Constantine)

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
(Deputy City Clerk Wilson)

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Jachimowicz

CITY MANAGER'S REPORT

CITY ATTORNEY'S REPORT

OTHER REPORTS

PROCLAMATIONS

Proclaiming the month of March 2018 as Youth Art Month

Proclaiming the month of March 2018 as American Red Cross Month

Proclaiming the week of April 5-8, 2018 as Poppy Jasper International Film Festival Days

PRESENTATIONS

Relay for Life presentation

YAC Presentation- Asset #14- Adult Role Models

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

Recommendation:

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

2. APPROVE CITY SPONSORSHIP OF 2018 MORGAN HILL COMMUNITY FOUNDATION'S PHILANTHROPY DAY EVENT AT THE COMMUNITY AND CULTURAL CENTER

Recommendation:

Authorize the City Manager to waive the rental fee for the use of the Community and Cultural Center for the Morgan Hill Community Foundation's Philanthropy Day Event on November 9, 2018.

3. RESOLUTION ADDING A PROPERTY ASSESSED CLEAN ENERGY PROVIDER

Recommendation:

Adopt resolution authorizing the California Municipal Finance Authority (CMFA) Open Property Assessed Clean Energy ("PACE") Program to operate in Morgan Hill.

4. ACCEPTANCE OF EASEMENT IN ASSOCIATION WITH WATER DISTRICT ACQUISITION OF LAKE SILVEIRA

Recommendation:

Authorize the City Manager to execute, administer, and further negotiate a conservation easement agreement and related documents for recreational use of certain areas of Lake Silveira to support the purchase of property by the Santa Clara Valley Water District.

5. COMMAND VEHICLE APPROPRIATION

Recommendation:

Adopt resolution approving an amendment to the City's Fiscal Year 2017-18 budget in the general fund appropriating \$699,186 for the purchase of a grant funded public safety command vehicle.

6. PURCHASE OF A CCTV SEWER INSPECTION TRUCK

Recommendation:

1. Authorize the City Manager to approve the purchase of a Closed Circuit Television Video (CCTV) inspection truck with RST/Subsite Electronics Inc. in the estimated amount of \$170,000;
2. Determine that a competitive bid process will not likely result in lower pricing; and
3. Adopt resolution appropriating \$129,000 from the Equipment Replacement Fund (Sewer Reserves) towards the purchase of new CCTV inspection truck.

7. PROFESSIONAL SERVICES AGREEMENT WITH CSG CONSULTANTS, INC. TO PROVIDE INSPECTION SERVICES AND PLAN CHECK/REVIEW ASSISTANCE

Recommendation:

Adopt resolution approving the following:

1. Amend the City's Fiscal Year 2017-18 budget for Building and Land Development Engineering Divisions in the Community Development Fund, to appropriate an additional \$150,000 for plan check/review services; and
2. Approve a professional services agreement with CSG Consultants, Inc. to provide Building and Land Development Engineering inspection and plan check/review services and public works inspection for 24 months in an amount not to exceed \$1,250,000.

8. APPROVAL OF IMPROVEMENT AGREEMENT WITH SUNSWEET MORGAN HILL LLC

Recommendation:

1. Approve an Improvement Agreement with Sunsweet Morgan Hill LLC;
2. Authorize the City Manager to execute the Improvement Agreement;
3. Authorize the City Manager to execute a Stormwater Best-Management-Practices (BMP) Operation and Maintenance Agreement pending review and approval by the City Attorney; and
4. Authorize the recordation of the Improvement Agreement and the Stormwater BMP Operation and Maintenance Agreement.

9. SECOND AMENDMENT TO WEST COAST ARBORIST, INC. AGREEMENT FOR CITYWIDE TREE SERVICES

Recommendation:

Approve the Second Amendment to the Maintenance Service Agreement with West Coast Arborist.

10. SECOND AMENDMENT TO AGREEMENT WITH ASSOCIATED RIGHT OF WAY SERVICES, INC. FOR THE HALE AVENUE EXTENSION PROJECT

Recommendation:

Approve and authorize the City Manager to execute a Second Amendment to agreement with Associated Right of Way Services, Inc. in the amount of \$25,000, for a total contract amount not to exceed \$170,000 to continue with property acquisition efforts for the Hale Avenue Extension Project.

11. APPROVE THIRD AMENDMENT TO BURR PLUMBING AND PUMPING, INC. AGREEMENT

Recommendation:

Approve the Third Amendment to the Maintenance Service Agreement with Burr Plumbing and Pumping, Inc.

12. GENERAL PLAN AND HOUSING ELEMENT ANNUAL PROGRESS REPORT

Recommendation:

Adopt resolution accepting the 2017 General Plan and Housing Element Annual Progress Report and directing staff to file the report with the Governor's Office of Planning and Research (OPR) and the Department of Housing and Community Development (HCD).

13. ADOPT ORDINANCE APPROVING ZONING AMENDMENT ZA2017-0010 FOR THE CC-R-(PD) PLANNED DEVELOPMENT OVERLAY DISTRICT AND PRECISE DEVELOPMENT PLAN FOR A 39-UNIT AFFORDABLE RESIDENTIAL DEVELOPMENT TO BE LOCATED ON A 1.62-ACRE SITE LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF MONTEREY ROAD AND BISCEGLIA AVENUE (APN 817-36-032 AND 817-36-033)

Recommendation:

Waive the reading, adopt Ordinance No. 2269, 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.

14. ADOPT ORDINANCE APPROVING DEVELOPMENT AGREEMENT DA2017-0006: MONTEREY-UHC FOR A 39-UNIT AFFORDABLE RESIDENTIAL DEVELOPMENT ON A 1.62-ACRE SITE LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF MONTEREY ROAD AND BISCEGLIA AVENUE. (APN 817-36-032 AND 033)

Recommendation:

Waive the reading, adopt Ordinance No. 2270, 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.

15. ADOPT ORDINANCE ADDING CHAPTER 8.49 (FIRE ALARM REGULATIONS) TO TITLE 8 (HEALTH AND SAFETY) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL TO REQUIRE FINES FOR NUISANCE AND EXCESSIVE FALSE FIRE ALARMS

Recommendation:

Waive the reading, adopt Ordinance No. 2271, 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.

16. ADOPT ORDINANCE AMENDING CHAPTER 8.48 (BURGLARY AND ROBBERY ALARM SYSTEM REGULATIONS) OF TITLE 8 (HEALTH AND SAFETY) OF THE MORGAN HILL MUNICIPAL CODE TO CLARIFY CERTAIN TERMS AND RESPONSIBILITIES OF ALARM SYSTEM OWNERS AND OPERATORS, DELETE REGISTRATION REQUIREMENTS, AND TO UPDATE ENFORCEMENT PROCEDURES

Recommendation:

Waive the reading, adopt Ordinance No. 2272, 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.

17. APPROVE THE FEBRUARY 21, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

PUBLIC HEARING

18. ZA2017-0007, DA2017-0003, SD2016-0009, EA2016-0009: E. DUNNE-KYONO - ZONING AMENDMENT FOR PLANNED DEVELOPMENT, DEVELOPMENT AGREEMENT, AND NON-VESTING TENTATIVE MAP FOR PROPERTY IDENTIFIED BY ASSESSOR PARCEL NUMBER 726-02-014 LOCATED AT 505 E. DUNNE AVENUE

Recommendation:

Open/close the public hearing and continue the project to the April 18, 2018 City Council meeting.

Estimated Time: 5 Minutes

OTHER BUSINESS

19. ADOPT RESOLUTION CONDEMNING GUN VIOLENCE

Recommendation:

1. Adopt resolution condemning gun violence; and
2. Direct staff to return with specific actions to help prevent future gun violence.

Estimated Time: 15 Minutes

20. APPROPRIATE FUNDS FOR HIGH SPEED RAIL CONSULTANT AGREEMENTS

Recommendation:

1. Adopt resolution approving an amendment to the City's Fiscal Year 2017-18 budget appropriating \$323,019 from the Long Range Planning Fund for expenses associated with the High Speed Rail Project; and
2. Direct staff to put on hold the contract with Urban Field Studios.

Estimated Time: 15 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.

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

Pursuant to: Government Code Section 54956.8

Property: 17545 Depot Street; 726-14-041

Agency Negotiators:	Leslie Little, Assistant City Manager
Negotiating Parties:	Ralph H. Bader, Trustee for Ralph H. Bader Trust
Under Negotiation:	Price and Terms of Payment

RECONVENE

CLOSED SESSION ANNOUNCEMENT

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 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 safe, inclusive, socially responsible, environmentally conscious, and economically sound community.

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 ·
Enhancing Diversity and Inclusiveness

2018 STRATEGIC PRIORITIES

Community Engagement and Messaging

Economic Development and Telecommunications

Financial Stewardship

Infrastructure

Regional Initiatives

2018 STRATEGIC PRIORITIES:



Community Engagement and Messaging

The City of Morgan Hill will tell our story through outreach and by working closely with our community in presenting our vision, priorities, and financial needs, and by engaging citizens and business owners to find affordable and sustainable solutions. The City's communications, services, public spaces, and projects will embrace all community members as partners, encouraging public participation.



Economic Development and Telecommunications

The Economic Blueprint will continue to be implemented, with a primary goal of attracting jobs and investment into our community. 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 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 with private sector partnerships. The plan will be used to signal Morgan Hill's support for business expansion.



Financial Stewardship

We will be financial stewards of the City's assets to ensure long-term fiscal sustainability. New revenue sources, including a possible tax measure, will be considered to fund increasing costs to deliver services and complete infrastructure projects. The City will closely manage its expenditures to maintain its general fund reserve. The labor contracts will be negotiated using the City's adopted Employee Compensation Guiding Principles.



Infrastructure

The City will review its streets, parks, and public facilities infrastructure needs 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 transportation projects and road maintenance. For High Speed Rail, we will strongly advocate for the route with the least impact on Morgan Hill.



Regional Initiatives

City Council and staff will focus on influencing regional decisions that benefit Morgan Hill. A regional approach will be employed to address many priorities, including but not limited to, homelessness, animal services, teen suicide, High Speed Rail, and land use (Catholic High School, Outdoor Sports Center, agricultural preservation, and city limits). This regional involvement will include partnering with the League of California Cities, Valley Transportation Authority, Caltrain, 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.



CITY COUNCIL STAFF REPORT

MEETING DATE: March 7, 2018

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

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

RECOMMENDATION(S)

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

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth

Seniors

and Entire Community

Enhancing Diversity and Inclusiveness

POLICY CONSIDERATION:

Does the City Council want to annually encourage the celebration of the month of June as Lesbian, Gay, Bisexual, Transgender, and Queer/Questioning (LGBTQ+) Pride Month and raise a Pride flag annually during the month of June as an expression of the City's official sentiments?

REPORT NARRATIVE:

During the February 22, 2017 City Council meeting, Council Member Spring requested the City consider celebrating the month of June in honor of LGBTQ+ Pride Month and display the Pride flag.

Acknowledging Pride Month supports our Sustainable Morgan Hill Vision of social responsibility and inclusiveness. During the April 19, 2017 meeting, the Council adopted a resolution encouraging the community to celebrate the progress that has been made to expand civil rights and recognize that the City of Morgan Hill will continue working to support its entire community. The resolution also authorized the City to display the pride flag at City Hall during the month of June 2017.

Councilmember Spring has requested that the City consider celebrating LGBTQ+ Pride Month annually each June and that the Pride flag be raised at City Hall, the Centennial Recreation Center (CRC), and the Community and Cultural Center (CCC) annually throughout the month.

On September 27, 2017, the Council adopted a City Council policy on Flag Raising (CP-17-02). Per the City Council's Flag Raising Policy, "the City's flag poles are not intended to serve as a forum for free expression by the public, but rather for the display of the Flags of the United States and the State of California. The flag poles located at City Hall, the CCC, and the CRC may also be used to display the flags of the City of Morgan Hill, Sister Cities, and any Commemorative Flags as may be authorized by the City Council as an expression of the City's official sentiments."

Under the policy, a commemorative flag "means a flag that identifies with a specific date, historical event, cause, nation or group of people, whereby the City honors or commemorates the date, event, cause, nation or people by flying the flag. Commemorative Flags shall be displayed at City facilities only upon City Council direction, consistent with the City's vision, mission, and ongoing and strategic priorities, incorporating themes of diversity, equity, social justice, and inclusion."

Commemorative flags may only be hung at City Hall, the CCC, and/or the CRC. Per the policy, commemorative flags may be hung no longer than 30 days. Authorization of commemorative flags must be approved by City Council resolution.

The Council may determine whether or not to raise the Pride flag annually in the month of June. Per CP-17-02, this determination is based on the Council's evaluation of its consistency with the City's vision, mission, and ongoing and strategic priorities, incorporating themes of diversity, equity, social justice, and inclusion.

City staff believe the proposed flag meets the criteria outlined in the policy, specifically in that the flag relates to a date, event, cause, nation or people; is consistent with the City's ongoing priorities; and incorporates themes of diversity, equity, social justice, and inclusion. The attached resolution annually commemorates Pride Month in the month of June and authorizes the City to display the Pride flag at City Hall, the CRC and CCC annually throughout the month.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the recommended flag raising.

ALTERNATIVE ACTIONS:

Alternatively, the Council could:

1. Not adopt the resolution.
2. Adopt a resolution encouraging the celebration of Pride Month and raising the Pride flag during the month of June 2018 only.
3. Adopt a resolution encouraging the celebration of Pride Month, but not to raise the Pride flag.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- April 19, 2017 – The Council adopted a resolution encouraging the community to celebrate LGBTQ+ Pride Month and authorizing the City to display the pride flag during the month of June 2017
- September 27, 2017 - The Council adopted a City Council policy on Flag Raising (CP-17-02).

FISCAL AND RESOURCE IMPACT:

None.

CEQA (California Environmental Quality Act):

Not a project - Organizational or administrative activity of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. Pride Month Resolution 2018
2. CP-17-02 Flag Raising Policy

RESOLUTION NO.

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

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

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

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

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

NOW, THEREFORE, BE IT RESOLVED that the City Council annually commemorates the month of June as LGBTQ+ Pride Month by displaying the Pride flag at City Hall, the Centennial Recreation Center and Community and Cultural Center.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 7th day of March, 2018 by the following vote:

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

STEVE TATE, Mayor

DATE: _____

ATTEST:

IRMA TORREZ, City Clerk

DATE: _____

Attachment: Pride Month Resolution 2018 (1647 : Pride Month)

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No.XX-XXX, adopted by the City Council at the meeting held on March 7, 2018

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Pride Month Resolution 2018 (1647 : Pride Month)

CITY OF MORGAN HILL

COUNCIL POLICIES AND PROCEDURES

CP-17-02

SUBJECT: FLAG RAISING**EFFECTIVE DATE SEPTEMBER 27, 2017****ORIGINATING DEPARTMENT: CITY ATTORNEY'S OFFICE****BACKGROUND**

The City of Morgan Hill displays the flags of the State of California and of the United States of America on poles located at facilities throughout Morgan Hill. City flag poles are not a public forum, but from time to time the City Council will authorize the display of ceremonial flags consistent with the City's ongoing and strategic priorities.

PURPOSE

Establish guidelines for the City Council to approve the display of flags other than those of the City of Morgan Hill, the State of California or the United States of America.

POLICY

It is the policy of the City of Morgan Hill that the City's flag poles are not intended to serve as a forum for free expression by the public, but rather for the display of the Flags of the United States and the State of California. The flag poles located at City Hall, the Community and Cultural Center and Centennial Recreation Center may also be used to display the flags of the City of Morgan Hill, Sister Cities, and any Commemorative Flags as may be authorized by the City Council as an expression of the City's official sentiments.

A Commemorative Flag under this policy means a flag that identifies with a specific date, historical event, cause, nation or group of people, whereby the City honors or commemorates the date, event, cause, nation or people by flying the flag. Commemorative Flags shall be displayed at City facilities only upon City Council direction, consistent with the City's vision, mission, and ongoing and strategic priorities, incorporating themes of diversity, equity, social justice, and inclusion.

PROCEDURE

In addition to the flags of the State of California and the United States of America, the City Council may, by resolution, direct City staff to display any Commemorative Flag on the flag poles of City Hall, the Community and Cultural Center and/or the Centennial Recreation Center as an expression of the City's official sentiments, for those dates and times and on those terms and conditions as set forth in the resolution. Commemorative Flags shall be displayed for a period of time that is reasonable or customary for the subject that is to be commemorated, but no longer than 30 continuous days.

This Policy shall remain in effect until modified by the City Council.

APPROVED:



STEVE TATE, MAYOR



CITY COUNCIL STAFF REPORT

MEETING DATE: March 7, 2018

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

APPROVE CITY SPONSORSHIP OF 2018 MORGAN HILL COMMUNITY FOUNDATION'S PHILANTHROPY DAY EVENT AT THE COMMUNITY AND CULTURAL CENTER

RECOMMENDATION(S)

Authorize the City Manager to waive the rental fee for the use of the Community and Cultural Center for the Morgan Hill Community Foundation's Philanthropy Day Event on November 9, 2018.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community

REPORT NARRATIVE:

The Morgan Hill Community Foundation (MHCF) is a tax-exempt public charity focused on addressing community needs and identifying and acquiring resources that provide support to nonprofit groups and programs within the Morgan Hill School District boundaries. The MHCF is committed to enriching the quality of life for the greater Morgan Hill area residents by awarding discretionary grants to charitable organizations that support valuable programs and activities.

Each year the MHCF holds a Philanthropy Day Event honoring community volunteers, community organizations, and philanthropists. For the last several years, the City has supported this event by waiving room rental fees for use of the Community and Cultural Center. The MHCF Board has requested that the City continue to offer the use of the Community and Cultural Center for the Philanthropy Event at no cost to the MHCF. The direct cost of a building coordinator and the required security guards would still be paid by the MHCF. The MHCF would provide the City with a table for 8 guests, including the Youth Action Council (YAC) honoree, for no cost. Additionally, the City of Morgan Hill would be recognized as a sponsor in all materials marketing and advertising the event.

The Philanthropy Event recognizes the importance of community involvement and volunteerism in Morgan Hill. Staff recommends that Council sponsor this important community celebration by directing the City Manager to waive the rental fee for use of the Community and Cultural Center.

COMMUNITY ENGAGEMENT: Collaborate

This request is an opportunity to collaborate with a local non-profit that is committed to enriching the quality of life for the greater Morgan Hill area. The event itself is an activity that supports and promotes community involvement, recognizing the efforts of community leaders.

ALTERNATIVE ACTIONS:

1. The Council could elect to not approve the requested sponsorship.
2. The Council could elect to waive a portion of the rental fee for the requested sponsorship.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council last approved the sponsorship of the 2017 Morgan Hill Community Foundation's Philanthropy Day Event at the April 5, 2017 meeting.

FISCAL AND RESOURCE IMPACT:

The fiscal impact is the loss of potential revenue for that evening. The value of this sponsorship is estimated to be \$3,000.

CEQA (California Environmental Quality Act):

Categorical Exemption

Hosting events at the Community and Cultural Center is part of the planned management of City facilities and falls within CEQA categorical exemption of Class 1, Existing Facilities.

LINKS/ATTACHMENTS:

1. Community Foundation Sponsorship Request Letter 2018



January 26, 2018

Dear Morgan Hill City Council,

The Morgan Hill Community Foundation (MHCF) is a tax-exempt, public charity that exists to improve the quality of life for as many Morgan Hill residents as possible. The MHCF does so through several programs, including annual grants, high school scholarships, and serving as a fiscal sponsor to a range of successful community partners.

Each year the MHCF hosts a philanthropy celebration that honors community volunteers and philanthropists who have made a significant impact on the community. The celebration recognizes the importance of community involvement and volunteerism in Morgan Hill.

For the last several years the City has generously supported this event by waiving the room rental fees for use of the Community and Cultural Center (CCC). The MHCF Board respectfully request that the City continue to offer the use of the CCC for the November 9, 2018 philanthropy celebration at no cost to the MHCF. The secondary costs of a building coordinator and the required security guards would still be paid by the MHCF. As a part of the agreement, the MHCF will provide the City with a table for 8 guests for no cost. Additionally, the City of Morgan Hill will be recognized as a sponsor in all materials marketing and advertising the event.

Staff recommends that Council sponsor this important community celebration by directing the City Manager to waive the rental fee of the Community and Cultural Center.

Support of this Philanthropy Event is consistent with the Council's priorities of enhancing community engagement and diversity.

Sincerely,

Pamala Meador
President



CITY COUNCIL STAFF REPORT

MEETING DATE: March 7, 2018

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

RESOLUTION ADDING A PROPERTY ASSESSED CLEAN ENERGY PROVIDER

RECOMMENDATION(S)

Adopt resolution authorizing the California Municipal Finance Authority (CMFA) Open Property Assessed Clean Energy ("PACE") Program to operate in Morgan Hill.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

REPORT NARRATIVE:

The purpose of this agenda item is to present the Council with an opportunity to again expand the number of administrators eligible to finance property improvements in Morgan Hill.

Property Assessed Clean Energy, commonly referred to as PACE, is a financing mechanism in which a property owner may enter into voluntary contractual assessments to finance the installation of renewable energy, energy efficiency, water efficiency, and seismic strengthening improvements as well as electric vehicle charging infrastructure. Once the improvements are made, the property owners who wish to participate in PACE agree to repay the money through the voluntary contractual assessment collected with property taxes. An advantage of this mechanism is that the obligation to pay the assessment is connected to the property, not the property owner, and can remain with the property after a transfer of ownership.

There are numerous PACE programs currently serving Morgan Hill including California First, HERO, Open Pace, Alliance NRG, and Ygrene Works. The City recently heard from the California Municipal Finance Authority (CMFA) that they would also like to serve the community. The CMFA is a Joint Powers Authority formed to assist local governments, nonprofit organizations and businesses by promoting economic, cultural and community development with the financing of economic development and charitable activities throughout California. To date, over 270 municipalities, including the City of Morgan Hill, have become members of the CMFA.

Like any service provided to a customer, having more choices in the eligible providers has the potential to improve customer service and reduce costs by enhancing competition. With this in mind, staff recommends adopting the attached resolution

authorizing CMFA's partners (Energy Efficient Equity, Inc.; BlueFlame PACE Services LLC; OnPACE Energy Solutions, LLC; Petros PACE Administrator, LLC; Structured Finance Associates, LLC; and Twain Community Partners II LLC) to provide services in Morgan Hill.

COMMUNITY ENGAGEMENT: Inform

If the resolution is adopted, contractors will inform interested property owners about the availability of PACE financing from the new providers.

ALTERNATIVE ACTIONS:

The Council could decline to adopt the resolution pending additional analyses or could direct staff to suspend any efforts to expand the number of PACE administrators serving Morgan Hill.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council has adopted numerous resolutions authorizing PACE administrators to operate in Morgan Hill in the past decade. The first resolution was adopted on December 16, 2009 and the most recent was adopted on February 15, 2017.

FISCAL AND RESOURCE IMPACT:

There are no City fiscal impacts associated with this proposed action as neither the initial funding nor the repayment assessments are administered by the City. The staffing resources to consider energy financing opportunities for the community are included in the work program of the Community Services Department.

CEQA (California Environmental Quality Act):

Not a Project

The recommended action does not constitute a "project" under the California Environmental Quality Act, because the resolutions do not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Section 15378(b)(4).

LINKS/ATTACHMENTS:

1. Resolution Adding All CMFA Providers

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL CONSENTING TO THE INCLUSION OF PROPERTIES WITHIN THE TERRITORY OF THE CITY IN THE CALIFORNIA MUNICIPAL FINANCE AUTHORITY OPEN PACE PROGRAMS; AUTHORIZING THE CALIFORNIA MUNICIPAL FINANCE AUTHORITY TO ACCEPT APPLICATIONS FROM PROPERTY OWNERS, CONDUCT CONTRACTUAL ASSESSMENT PROCEEDINGS AND LEVY CONTRACTUAL ASSESSMENTS WITHIN THE TERRITORY OF THE CITY; AND AUTHORIZING RELATED ACTIONS

WHEREAS, the California Municipal Finance Authority (the “Authority”) is a joint exercise of powers authority, the members of which include numerous cities and counties in the State of California, including the City of Morgan Hill (the “City); and

WHEREAS, the Authority is implementing Property Assessed Clean Energy (PACE) programs, which it has designated CMFA Open PACE, consisting of CMFA Open PACE programs each administered by a separate program administrator (collectively with any successors, assigns, replacements or additions, the “Programs”), to allow the financing or refinancing of renewable energy, energy efficiency, water efficiency and seismic strengthening improvements, electric vehicle charging infrastructure and such other improvements, infrastructure or other work as may be authorized by law from time to time (collectively, the “Improvements”) through the levy of contractual assessments pursuant to Chapter 29 of Division 7 of the Streets & Highways Code (“Chapter 29”) within counties and cities throughout the State of California that consent to the inclusion of properties within their respective territories in the Programs and the issuance of bonds from time to time; and

WHEREAS, the program administrators currently active in administering Programs are Energy Efficient Equity, Inc.; BlueFlame PACE Services LLC; OnPACE Energy Solutions, LLC; Petros PACE Administrator, LLC; Structured Finance Associates, LLC; and Twain Community Partners II LLC; and the Authority will notify the City in advance of any additions or changes; and

WHEREAS, Chapter 29 provides that assessments may be levied under its provisions only with the free and willing consent of the owner or owners of each lot or parcel on which an assessment is levied at the time the assessment is levied; and

WHEREAS, the City desires to allow the owners of property (“Participating Property Owners”) within its territory to participate in the Programs and to allow the Authority to conduct assessment proceedings under Chapter 29 within its territory and to issue bonds to finance or refinance Improvements; and

Attachment: Resolution Adding All CMFA Providers (1644 : Add CMFA PACE)

WHEREAS, the territory within which assessments may be levied for the Programs shall include all of the territory within the City's official boundaries; and

WHEREAS, the Authority will conduct all assessment proceedings under Chapter 29 for the Programs and issue any bonds issued in connection with the Programs; and

WHEREAS, the City will not be responsible for the conduct of any assessment proceedings; the levy of assessments; any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale, administration repayment or guarantee of any bonds issued in connection with the Programs;

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. This City Council hereby finds and declares that the foregoing recitals are true and correct.

Section 2. This City Council hereby finds and declares that properties in the territory of the City will benefit from the availability of the Programs within the territory of the City and, pursuant thereto, the conduct of special assessment proceedings by the Authority pursuant to Chapter 29 and the issuance of bonds to finance or refinance Improvements.

Section 3. In connection with the Programs, the City hereby consents to the conduct of special assessment proceedings by the Authority pursuant to Chapter 29 on any property within the territory of the City and the issuance of bonds to finance or refinance Improvements; provided, that

- (1) The Participating Property Owners, who shall be the legal owners of such property, execute a contract pursuant to Chapter 29 and comply with other applicable provisions of California law in order to accomplish the valid levy of assessments; and
- (2) The City will not be responsible for the conduct of any assessment proceedings; the levy of assessments; any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale, administration, repayment or guarantee of any bonds issued in connection with the Programs.

Section 4. The appropriate officials and staff of the City are hereby authorized and directed to execute and deliver such certificates, requisitions, agreements and related documents as are reasonably required by the Authority to implement the Programs.

Section 5. The City Council hereby finds that adoption of this Resolution is not a “project” under the California Environmental Quality Act, because the Resolution does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Section 15378(b)(4)).

Section 6. The City may withdraw from the Programs or any Program upon six (6) months written notice to the Authority. The City may withdraw its consent and approval for the conduct of special assessment proceedings by any specific program administrator under a Program within the jurisdictional limits of the City upon thirty (30) days written notice to the Authority without (a) liability to the Authority or any affiliated entity, and (b) withdrawing its consent and approval for the conduct of special assessment proceedings by any other program administrators under the other Programs. The City’s withdrawal from any Program shall not affect the validity of any voluntary assessment contract entered into prior to the date of such withdrawal or entered into after the date of such withdrawal so long as the application for such voluntary assessment contract was submitted to and approved by the Authority prior to the date of the City’s notice of withdrawal.

Section 7. This Resolution shall take effect immediately upon its adoption. The City Clerk is hereby authorized and directed to transmit a certified copy of this resolution to the Financial Advisor of the Authority at: California Municipal Finance Authority, 2111 Palomar Airport Road, Suite 320, Carlsbad, California 92011, Attn: Travis Cooper

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 7th day of March, 2018 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

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

DATE: _____

Steve Tate, MAYOR

Attachment: Resolution Adding All CMFA Providers (1644 : Add CMFA PACE)

∞ **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 March 7, 2018.

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

DATE: _____

Irma Torrez, CITY CLERK

Attachment: Resolution Adding All CMFA Providers (1644 : Add CMFA PACE)



CITY COUNCIL STAFF REPORT

MEETING DATE: March 7, 2018

PREPARED BY: Chris Ghione, Community Services Director

APPROVED BY: City Manager

ACCEPTANCE OF EASEMENT IN ASSOCIATION WITH WATER DISTRICT ACQUISITION OF LAKE SILVEIRA

RECOMMENDATION(S)

Authorize the City Manager to execute, administer, and further negotiate a conservation easement agreement and related documents for recreational use of certain areas of Lake Silveira to support the purchase of property by the Santa Clara Valley Water District.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

Protecting the Environment

2018 Strategic Priorities

Regional Initiatives

REPORT NARRATIVE:

For decades, the City has supported the Santa Clara Valley Water District in efforts to complete the Upper Llagas Creek Flood Protection Project. Completion of this project will provide flood control for the West Little Llagas Creek running through Morgan Hill, protecting homes and businesses. The project continues to move forward and the Water District intends to begin construction on areas within Morgan Hill within the next two years. The recommended action in this report is for the City to accept a conservation easement, which is a prerequisite to the purchase and sale agreement between the Water District and the County.

Lake Silveira is located near the southern end of the City. The Water District has identified and planned for Lake Silveira to serve as a mitigation site for the flood protection project, with the plan to return a portion of the site to its natural state. The City and County of Santa Clara have long planned for recreation amenities at the site as well. The planning includes trails in both the City Bikeways, Trails, Parks, and Recreation Master Plan and the County Parks Trails Master Plan.

The property is currently owned by the County and managed by the County Parks Department. The County has conditioned the sale of Lake Silveira to the Water District on the recording of a conservation easement granted to the City and the County for future recreational trail use. This easement is included as Exhibit G within Attachment 1 to this report.

COMMUNITY ENGAGEMENT: Inform

To this point the negotiation of this easement agreement has been internal to City, County and Water District staff. This report serves to inform the community on the progress of the project. Use of the Lake Silveira area for trails received significant discussion during the community engagement leading to the eventual adoption of the Bikeways, Trails, Parks and Recreation Master Plan. The conservation easement shall provide the City with the right to develop trails in the area, but the City would undergo a community engagement process with the nearby residents and community in general before moving forward on trail development.

ALTERNATIVE ACTIONS:

There is no practical alternative action that would allow the high priority flood control project to move forward without delay. The City's acceptance of the easement is an essential condition for the County to allow for the sale of the property to the Water District. The Council may direct staff to further negotiate this agreement, but this may result in further delay to the flood protection project.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City has taken numerous actions over the last several decades in support of the Upper Llagas Creek Flood Protection Project. The City Council has also identified the Lake Silveira area as a future recreational amenity dating back to the 1980's and most recently reaffirmed this in adoption of the Bikeways, Trails, Parks and Recreation Master Plan approved in 2017.

FISCAL AND RESOURCE IMPACT:

There is no immediate fiscal impact associated with the recommended action. Should the Council, District, and County approve the sale agreement and the conservation easement be granted to the City, the City would then be allowed (but not required) to construct trails in the area. The capital and operational impacts of constructing and managing these trails would be outlined in future staff reports to the Council.

CEQA (California Environmental Quality Act):

The Water District has developed an Environmental Impact Report for the Upper Llagas Creek Flood Control Project to meet CEQA standards for their project.

The City's Bikeways, Trails, Parks and Recreation Master Plan anticipated future trails to and around Lake Silveira. Adoption of the Plan included an addendum to the City's General Plan Environmental Impact Report. For future trail design and construction at Lake Silveira, further project level environmental work will be needed.

LINKS/ATTACHMENTS:

1. Purchase and Sale Agreement Silveira Lake including Conservation Easement
2. Upper Llagas Creek Flood Control Project EIR (weblink)

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”), made effective as of _____, 2018 (the “**Effective Date**”), is entered into by and between the County of Santa Clara, a political subdivision of the State of California, with its principal offices located at 70 West Hedding Street, San Jose, California 95113 (“**Seller**” or “**County**”) and Santa Clara Valley Water District, a special district organized and existing under the laws of the State of California located at 5750 Almaden Expressway, San Jose, California 95118 (“**Buyer**” or “**SCVWD**”). County and SCVWD are sometimes collectively referred to herein as the “**Parties**” and each of the Parties is sometimes singularly referred to herein as a “**Party**”.

RECITALS

- A. County is the owner of that certain 52.932 acre property commonly known as Lake Silveira, located within the City of Morgan Hill, County of Santa Clara, State of California, (APN’s: 779-03-114/779-06-030/779-49-014), and more particularly described on **Exhibit A** attached hereto (“**Property**”).
- B. SCVWD is the owner of that certain 14,791 square foot parcel, known as the Link property located within the City of Morgan Hill, County of Santa Clara, State of California, (APN 779-06-032) more particularly described on **Exhibit B** attached hereto (“**Olive Street Crossing**”).
- C. For park and other public purposes, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Property, subject to the terms and conditions of this Agreement.
- D. Buyer desires to purchase the Property as required to construct the Upper Llagas Creek Flood Protection Project (“**Project**”), consistent with the Conservation Values set out herein below, and for the development and construction of the on-site compensatory mitigation required for the Project within a designated portion of the Property that will be protected in perpetuity with a Mitigation Easement (as set out herein below) over that designated portion of the Property. Said Mitigation Easement will be negotiated with the United States of America, acting by and through the United States Army Corps of Engineers (the “**Corps**”).
- E. As part of this transaction, Buyer desires to grant Seller and the City of Morgan Hill (“**City**”) the Conservation Easement over the entire Property and the Olive Street Crossing to ensure that the Property will serve, in perpetuity, the park purpose of trail connectivity through linkage of this site to the regional system of trails within the geographic boundary of Santa Clara County, scenic viewshed protection, habitat conservation and open space preservation consistent

with the 1995 Countywide Trails Master Plan, as amended from time to time (the "Conservation Values").

F. As part of this transaction, and as more specifically addressed in the attached Conservation Easement Agreement (**Exhibit G**), the City desires to and will plan, design, construct, develop, operate, and maintain trails within the Property and the Olive Street Crossing.

NOW THEREFORE, for good and valuable consideration, as provided for herein, the mutual covenants and agreements contained herein and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree to the foregoing and as follows:

1. **Purchase and Sale.** In consideration of their mutual covenants set forth in this Agreement, Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the Property pursuant to the attached Grant Deed, with attachments, shown on **Exhibit C** ("Grant Deed") for the Purchase Price (defined in **Section 2**).
2. **Purchase Price.** In exchange for the conveyance of fee simple title to Buyer, Buyer shall provide consideration for the Property in the form of (1) cash to Seller in the amount of \$1,350,650.00, and (2) a grant to Seller and to the City of easement rights in the form of the Conservation Easement, as defined herein below. The cash and grant of Conservation Easement are collectively the purchase price ("**Purchase Price**").
3. **Escrow.** The Parties have opened an escrow account, having an Escrow Number 06160106639-RR and SCVWD File Number 5010-229 ("**Escrow**"), with Old Republic Title Company ("**Title Company**") which has an office located at 224 Airport Parkway, Ste. 170, San Jose, California, 95110; and Mr. Randy Romriell will be the designated escrow officer (telephone no.: (408) 557-8400, ("**Escrow Holder**"). Buyer and Seller will each provide separate escrow instructions to Title Company during Escrow in accordance with the terms and conditions of this Agreement. Buyer may obtain at Buyer's sole expense a preliminary title report for the Property from the Title Company.
4. **Deposit.**
 - (a) Within thirty (30) business days from the Effective Date, Buyer shall deposit immediately available funds in the amount of One Million Three Hundred Fifty Thousand Six Hundred Fifty Dollars (\$1,350,650) ("**Deposit**") into the Escrow opened with the Title Company with the Escrow Holder. If the Deposit has not been deposited into Escrow by the end of the thirtieth (30) business day from the Effective Date, either Party shall have the right to terminate this Agreement by providing written notice to the other Party after such requisite date but prior to

the Deposit being delivered into Escrow, and upon such notice of termination, a failure of Buyer to perform within five (5) business days of receipt of such written notice, the Agreement shall terminate and the Parties shall be relieved of any further obligation under this Agreement, except for the surviving obligations as stated elsewhere in this Agreement.

(b) The Deposit, including any unencumbered additional funds deposited by the Buyer in accordance with Section 4(d) of this Agreement, shall be refundable in full to Buyer if this Agreement terminates prior to the Close of Escrow, excluding Escrow fees or other costs owed to Escrow Officer or to the Title Company.

(c) At Close of Escrow, the Deposit shall be applied to the Purchase Price. Buyer may, upon delivery of the Deposit into Escrow, instruct the Escrow Holder to invest the Deposit in an interest-bearing money market or savings account with a national banking association or federally chartered savings and loan association, which interest shall accrue to the benefit of Buyer and shall be applied to the Purchase Price and closing costs at the Closing, with any remaining balance returned to Buyer at Closing. The Deposit shall be held by the Escrow Holder in accordance with the provisions of this Agreement until Agreement termination or Close of Escrow, whichever occurs sooner.

(d) In sufficient time for the Close of Escrow to occur on the Closing Date (defined in Section 3(a)), Buyer shall deposit into Escrow, in immediately available funds, in addition to the Deposit (which has already been placed into Escrow), such additional funds needed to satisfy the Purchase Price and Buyer's share of pro-rations and costs of Escrow ("**Additional Closing Funds**").

5. Inspections; "As Is" Sale.

(a) Inspections. At Buyer's sole cost and expense, Buyer shall have the right to conduct its inspection, investigation and title review (collectively, "**Inspections and Review**") of the Property and all Property Materials and Title Reports, subject to Buyer providing Seller at least 72 hours advance notice and obtaining Seller's prior reasonable consent. By accessing or entering the Property, in each instance, Buyer warrants, represents and agrees to indemnify, defend and hold harmless the Seller and each of its employees, invitees, guests, contractors, consultants, agents, officers, directors, representatives and assigns, from, for and against any and all causes of action, claims, allegations, injuries, illness, death or damages, both real and personal (collectively, "**Claims**") in any way relating to, arising from or caused by access to or entry upon the Property by Buyer or any of its employees, invitees, guests, contractors, consultants, representatives, agents, assigns, officers or directors (collectively, "**Buyer Parties**"), but excepting from the foregoing any Claims directly caused by the sole gross negligence or willful misconduct of Seller or any of its employees, contractors, consultants, representatives, agents,

assigns, officers or directors (collectively, “**Seller Parties**”). Buyer shall provide to Seller, upon Seller’s written request, copies of all Inspections, including any and all reports, studies or other written analyses.

(b) “As Is” Sale; General Release. Buyer acknowledges that it will have had an opportunity to conduct due diligence inspections of the Property and will acquire the Property in its current condition based on its due diligence inspections and reasonable inquiry. Buyer acknowledges and agrees that the Property is to be conveyed by Seller to Buyer “as is, with all faults,” and substantially in its current condition. Buyer further acknowledges and agrees that the sale of the Property to Buyer is made without any warranty or representation of any kind by Seller, either express or implied or arising by operation of law, and Seller shall have no liability with respect to the value, uses, habitability, merchantability, condition, design, operation, rents, financial condition or prospects, or fitness for purpose or use of the Property (or any part thereof), or any other aspect, portion or component of the Property, including: (i) the physical condition, nature or quality of the Property, including the quality of the soils on and under the Property and the quality of the labor and materials included in any improvements, fixtures, equipment or personal property comprising any portion of the Property; and (ii) the fitness of the Property for any particular purpose. Furthermore, Seller shall have no liability for any latent, hidden, or patent defect as to the Property. In particular, Buyer acknowledges and agrees that the Property information made available to Buyer under this Agreement (and any other information Buyer may have obtained regarding in any way any of the Property, including without limitation, its operations or its financial history or prospects from Seller or its agents, employees or other representatives) is delivered to Buyer as a courtesy, without representation or warranty as to its accuracy or completeness and not as an inducement to acquire the Property; that nothing contained in any deliveries of Property information shall constitute or be deemed to be a guarantee, representation or warranty, express or implied, in any regard as to any of the Property; and that Buyer is relying only upon the provisions of this Agreement and its own independent assessment of the Property and its prospects in determining whether to acquire the Property.

(c) Seller makes no representation or warranty whatsoever regarding the existence or availability of any information, records or materials (“**Materials**”) in Seller’s possession or control and Seller shall not be obligated to create, possess, maintain, control or provide such Materials. Buyer acknowledges and agrees that, except as otherwise provided in this Agreement: (i) any and all Materials that have been provided or made available to Buyer were made available or provided for informational purposes only and do not constitute representations or warranties of Seller of any kind; (ii) the Materials that Seller provides or makes available to Buyer in connection with the negotiation, execution and delivery of this Agreement may not be inclusive of all of the Materials in existence concerning the Property; and (iii) by providing or making available to Buyer any Materials, Seller has complied with and satisfied any obligations Seller

may have to provide Buyer with information about the Property. Buyer shall be deemed to have reviewed any and all Materials regardless of whether Buyer elects to review such Materials.

6. Conditions to Closing.

(a) Buyer's Conditions. In addition to all other conditions to the completion of the transaction described in this Agreement, Seller and Buyer agree that the Closing of the sale and purchase contemplated by this Agreement is subject to satisfaction, approval or waiver by Buyer of the matters specified in this Section 6(a), which conditions are solely for the benefit of Buyer and can be unilaterally waived by Buyer only:

(i) The Title Company shall be committed to issue to Buyer at the Closing an CLTA owner's policy of title insurance in the amount of the Purchase Price, insuring the Property is vested in Buyer subject to no exceptions other than the Permitted Exceptions, in the form and with endorsements to be approved by Buyer prior to Closing ("Title Policy"). Buyer shall be obligated to proceed with Closing as long as the Title Company is committed to issue to Buyer at Closing a CLTA owner's policy of title insurance in the amount of the Purchase Price, insuring the Property is vested in Buyer subject to no exceptions other than the Permitted Exceptions. Buyer is solely responsible for paying all costs associated with obtaining a Title Policy;

(ii) There shall have been no material adverse change in the physical condition of the Property from the Effective Date through the Closing Date;

(iii) The City and the County shall have fully executed, respectively, the Conservation Easement and the Certificate of Acceptance for the Conservation Easement and shall have deposited said original into Escrow no later than fifteen (15) days before Closing;

(iv) The Buyer shall have fully executed the Conservation Easement and shall have provided the original executed Conservation Easement to County for County's deposit of this document into Escrow prior to Closing;

(v) Seller shall not be in material default of Seller's obligations under this Agreement as of the date of Closing;

(vi) Buyer shall have successfully negotiated with the Corps and deposited into Escrow, no later than fifteen (15) business days before Closing: (1) a fully executed mitigation

agreement in substantially the form of the attached **Exhibit D** (“**Mitigation Easement**”) conveying to the Corps’ designated grantee(s) a perpetual wetlands mitigation easement interest over a portion of the Property, not to exceed 16 acres, as generally depicted in the attached **Exhibit E** (the “**Mitigation Easement Area**”); (2) such other requisite documentation evidencing the Corps’ acceptance and approval of the Mitigation Easement as executed; and, (3) such other requisite documents and agreements executed and agreed upon between SCVWD and a designated third party for the management and fulfillment of SCVWD’s obligations and responsibilities set forth in the Mitigation Easement.

(b) **Seller’s Conditions.** In addition to all other conditions to the completion of the transaction described in this Agreement, Seller and Buyer agree that the Closing of the sale and purchase contemplated by this Agreement is subject to satisfaction, approval or waiver by Seller of the matters specified in this **Section 6(b)**, which conditions are solely for the benefit of Seller and can be unilaterally waived by Seller:

(i) Buyer shall not be in material default of any of Buyer’s obligations under this Agreement;

(ii) Buyer’s express representations and warranties set forth in this Agreement continue to be true, correct and unchanged in all material respects as of the date of Closing;

(iii) Seller has executed and deposited into Escrow, no later than fifteen (15) business days before Closing, a Certificate of Acceptance of the Conservation Easement that shall be generally in the form attached as **Exhibit F**.

(iv) The City shall have fully executed the Conservation Easement and a Certificate of Acceptance accepting the easement interest and shall have provided the original executed Conservation Easement and Certificate of Acceptance to County for County’s deposit of this document into Escrow prior to Closing;

(v) The Buyer shall have fully executed the Conservation Easement and shall have provided the original executed Conservation Easement to County for County’s deposit of this document into Escrow prior to Closing;

(vi) The Buyer shall have fully executed a Certificate of Acceptance for the acquisition of the Property and shall have deposited same into Escrow before Closing.

(vii) Seller has executed the Conservation Easement after both Buyer and City have executed the same and Seller shall have deposited a fully executed Conservation Easement (which may be done in counterparts) into Escrow prior to Closing. Except within the Mitigation Easement Area, the Parties acknowledge and agree that the Conservation Values shall not be

diminished, altered or subordinate to any other use of the Property by Buyer, Corps, any other department or agency, any third party or any successor or assign. Seller acknowledges and agrees that the Conservation Easement shall be subordinate and subject to the terms and conditions of the Mitigation Easement over the Mitigation Easement Area as described in the Mitigation Easement and defined in the Conservation Easement.

(viii) For the purpose of ensuring conformity to the terms and conditions of this Agreement and the Conservation Easement, as a condition of Closing, County shall have a right to review and approve the final version of the Mitigation Easement, which approval will not be unreasonably withheld or denied. County's approval will be based primarily on the impact to future trail development and connectivity, considering the City's written opinion on the same issues. For this purpose, County shall be provided a copy of the final Mitigation Easement that has been approved by the Corps at least thirty (30) calendar days prior to Closing. Prior to Closing, Buyer shall have deposited the full Purchase Price into Escrow in accordance with Section 4 herein above and such other additional sums as are necessary to Close Escrow.

(c) Exceptions to Title at Closing. Title to the Property shall be conveyed to Buyer subject to only the following exceptions (collectively, the "**Permitted Exceptions**"): (i) non-delinquent real property taxes and assessments, (ii) the standard pre-printed exceptions and exclusions contained in an ALTA extended coverage or ALTA owner's policy of title insurance, (iii) liens and encumbrances to which Buyer has granted, consented or waived, (iv) all matters that would be disclosed by a current physical inspection or survey of the Property, or that are disclosed by any survey provided to the Title Company as the basis for the issuance of an ALTA extended coverage owner's policy of title insurance, or that are actually known or reasonably should have been to Buyer, (v) applicable zoning and use laws, ordinances, rules and regulations of any municipality, township, county, state or other governmental agency or authority, (vi) liens and encumbrances caused by the acts of Buyer, the United States of America or any of Buyer's employees, agents, contractors, subcontractors, consultants, officers, directors, representatives, successors or assigns; and, (vii) upon recordation, the Conservation Easement and Mitigation Easement, which occurs at Closing.

7. Closing

(a) Closing Date. The consummation of the purchase and sale of the Property (the "**Closing**" or "**Close of Escrow**") shall take place on the Closing Date (defined below), through the Escrow established with Escrow Holder, as evidenced by recordation of the Grant Deed, the Certificates of Acceptance in the form attached as Exhibit F, the Mitigation Easement and the Conservation Easement in the Office of the County Recorder for the County of Santa Clara ("**Official Records**"). The "**Closing Date**" shall be June 30, 2018, or such earlier date as the

Parties can complete their obligations in accordance with this Agreement. The Closing Date may be extended only upon the mutual written consent of the Parties, which consent shall not be unreasonably withheld or denied.

(b) Seller's Closing Obligations. In sufficient time prior thereto to allow Closing to occur on the Closing Date, Seller shall cause to be delivered into the Escrow:

(i) The Grant Deed, complete with all attachments and exhibits, fully executed by Seller and all other requisite parties, with signatures notarized for recording in the Official Records, conveying to Buyer the Property, which Grant Deed shall be recorded in the Official Records at the Closing;

(ii) The Conservation Easement fully executed by City, County and Buyer notarized for recording in the Official Records, and County's and City's Certificate of Acceptance for the Conservation Easement ;

(iii) An affidavit in compliance with the Foreign Investment and Real Property Tax Act and a California Tax Withholding Form 593-C, executed by Seller (the "**Non-Foreign Status Certificate**" and "**Form 593-C**", respectively), certifying that Seller is not subject to withholding under federal or state law; and

(iv) Such additional instruments or documents reasonably required by Escrow Holder in order to consummate the purchase and sale of the Property in accordance with the terms and conditions of this Agreement, to the extent consistent with this Agreement, including without limitation escrow instructions and an owner's affidavit reasonably required by the Title Company and reasonably acceptable to Seller to enable the Title Company to issue a Buyer-requested Title Policy to Buyer at the Closing.

(c) Buyer's Obligations at Closing. Prior to Closing, in sufficient time prior thereto to allow Closing to occur on the Closing Date, Buyer shall cause to be delivered into Escrow the following:

(i) The Certificate of Acceptance fully executed by the Buyer accepting the Grant Deed;

(ii) Buyer shall have fully executed and notarized the Conservation Easement and provided signed originals to Seller so that Seller may deposit same into Escrow.

(iii) The Mitigation Easement reviewed and approved by County pursuant to Section 6.b.viii and fully executed by SCVWD in favor of the Corps or the Corps' designated grantee(s) and such other requisite documentation evidencing acceptance by the Corps or by the

Corps' designated grantee(s) of such Mitigation Easement on behalf of the United States of America, substantially in the form of the attached **Exhibit D**.

(iv) The Additional Closing Funds;

(v) The Non-Foreign Status Certificate and Form 593-C, executed by Buyers, certifying that Buyer is not subject to withholding under federal or state law; and,

(vi) Such additional instruments or documents reasonably required by Escrow Holder in order to consummate the purchase and sale of the Property in accordance with the terms and conditions of this Agreement, to the extent consistent with this Agreement, including without limitation escrow instructions and any other information reasonably required by the Title Company to enable the Title Company to issue a Buyer-requested Title Policy to Buyer at the Closing and to timely Close Escrow.

(d) **At Closing**. On or before the Closing Date, Seller shall arrange to have a complete set of all keys (if any) to the Property, delivered to Buyer at the Property. At Closing all recordings shall be made by Escrow Holder.

(e) **Possession**. Possession of the Property shall be delivered to Buyer at the Closing, free and clear of all tenants and occupants (except as otherwise agreed herein), in broom clean condition, and with all furniture and personal property having been removed by Seller at Seller's cost.

(f) **Prorations**.

(i) All revenues and expenses of the Property, including without limitation real property taxes, special taxes, assessments (if any) shall be prorated and apportioned between Buyer and Seller as of the Closing Date, so that Seller bears all expenses with respect to the Property, and has the benefit of all income with respect to the Property, through and including the date immediately preceding the Closing Date. If any portion of the Property is affected by any assessment or other charge, whether for taxes or bonds, or interest thereon, which is or may become payable in installments, and an installment payment of such assessment is then a lien due and payable as part of the annual ad valorem property tax bill received for the Property, then such installment shall be prorated as of the Closing Date; and if any such assessment or other charge is not payable in installments or are not billed as part of the annual ad valorem property tax bill for the Property, shall be paid in full (if any) by Seller at the Closing. Notwithstanding the foregoing, Seller shall be solely responsible for clearing all possessory interest taxes from the Property that are due and owing by County not later than the Closing.

(ii) If any of the items to be prorated as of Closing cannot be finally determined as of Closing, the prorations shall be made at Closing based on the last available information, and post-closing adjustments between Buyer and Seller shall be made within twenty (20) days after the date that the actual amounts are determined, and if payment is not made within this twenty (20) day period the Party owing such sums shall pay interest thereon, at the rate of ten percent (10%) per annum, from date of delivery of the bill to the non-paying Party to the date of payment.

(g) Title Charges; Other Closing Costs. If this Agreement is terminated by Buyer for any reason other than Seller's material breach of this Agreement, Buyer shall pay all escrow costs billed by the Escrow Holder and Title Company. If Closing occurs as provided in this Agreement, (i) Buyer shall pay all Escrow fees and costs, including but not limited all costs and expenses related to any Title Policy issued; (ii) all recording fees (if any) for the recording of the Grant Deed and all other documents; and (iii) all other Closing costs, if any, shall be allocated between Seller and Buyer in accordance with the custom in Santa Clara County, California.

(h) Disbursement of Funds. At Closing, Escrow Holder shall disburse the Purchase Price, less Seller's share of prorations (as set out in this Agreement herein above), in immediately available funds (as directed by Seller).

(i) Delivery of Documents. Escrow Holder shall, upon the Close of Escrow, deliver all instruments and documents as follows:

Escrow Holder shall deliver to Seller all of the following:

- Copies of the recorded Grant Deed with all fully executed attachments and exhibits, Certificates of Acceptance, Mitigation Easement, and, executed by the applicable executing Parties and third parties, with Escrow Holder showing information of recordation of such documents in the Official Records in the foregoing order and certifying such copies as being true and complete reflections of the respective originals;
- A copy of the Non-Foreign Status Certificate, and Form 593-C from each of the Parties;
- A copy of all other documents deposited into Escrow; and,
- The Purchase Price, less the prorations chargeable to Seller pursuant to this Agreement.

Escrow Holder shall deliver to Buyer all of the following:

- Copies of the Grant Deed with all fully executed attachments and exhibits, Certificates of Acceptance, and Mitigation Easement, executed by the applicable executing Parties and third parties, with Escrow Holder showing information of recordation of such original

documents in the Official Records in the foregoing order and certifying such copies as being true and complete reflections of the respective originals;

- A copy of the Non-Foreign Status Certificate, and Form 593-C from each of the Parties;
- The original Title Policy;
- A copy of all other documents deposited into Escrow; and,
- Any remaining funds deposited into Escrow by Buyer, excluding the Purchase Price and all costs and prorations that are the responsibility of Buyer pursuant to the terms of this Agreement.

Escrow Holder shall deliver to City all of the following:

- Copies of the recorded Grant Deed with all fully executed attachments and exhibits, Certificates of Acceptance, Mitigation Easement, and, executed by the applicable executing Parties and third parties, with Escrow Holder showing information of recordation of such documents in the Official Records in the foregoing order and certifying such copies as being true and complete reflections of the respective originals;
- A copy of the Non-Foreign Status Certificate, and Form 593-C from each of the Parties;
- A copy of all other documents deposited into Escrow.

8. Representations, Warranties and Covenants.

(a) Representations By Seller. Seller represents and warrants to Buyer as follows:

(i) No consent or approval is required for the execution and delivery of this Agreement by Seller or the performance by Seller of its obligations hereunder other than those already obtained by Seller. To the best of Seller's knowledge, information or belief, the Property Materials made available to Buyer are all of the Property Materials in the possession of Seller.

(ii) There shall be no outstanding contracts made by Seller for any improvements to the Property which have not been fully paid for, and Seller shall cause to be discharged and removed as an exception to Title all mechanics' and materialmen's liens directly and solely caused by any labor and material furnished to Seller prior to the Closing (other than those caused by work performed by or for Buyer's benefit).

(b) Representations By Buyer. No consent or approval is required for the execution and delivery of this Agreement by Buyer or the performance by Buyer of its obligations hereunder other than those already obtained by Buyer.

9. Condemnation.

If between the date of this Agreement and the Closing Date any condemnation or eminent domain proceeding is initiated by any third party (excepting only those third parties, agencies, joint powers authority, cities, governmental agencies or departments, or special district affiliated with, with whom Buyer has contracted or who is/are under the Buyer's direction, management or control) which would result in the taking of any portion of the Property, then Buyer may terminate this Agreement by written notice to Seller. Seller shall promptly notify Buyer in writing upon receiving written notice of the commencement or occurrence of any condemnation or eminent domain proceeding affecting the Property. If such proceeding is initiated for the taking of any part of the Property, Buyer shall then notify Seller, within ten (10) business days after Buyer's receipt of Seller's notice (but in no event later than twenty-four (24) hours prior to the Closing Date), whether or not Buyer elects to terminate this Agreement. If Buyer elects not to terminate this Agreement or fails to make an election within such ten (10) day period or twenty-four (24) hours prior to the Closing Date, whichever is earlier, then Buyer shall be deemed to have elected to proceed with the Closing without any reduction in the Purchase Price, in which event Seller shall assign to Buyer at Closing all of Seller's right, title and interest in and to any award made in connection with such condemnation or eminent domain proceeding, or if such payment has been received by Seller such payment shall be credited to Buyer at the Closing. If this Agreement is terminated in accordance with this Section, then the Deposit shall be released to Buyer, and Seller and Buyer shall thereupon be released from all further obligations under this Agreement.

10. Default.

(a) Default by Buyer.

If Buyer defaults in the performance of any of its obligations hereunder or is otherwise in material breach of the terms hereof, then Seller will provide a written notice to cure to Buyer. Upon Buyer's failure to cure within ten (10) business days from issuance of said notice to cure, this Agreement shall terminate unless Seller agrees to provide Buyer additional time to cure. Upon termination, Escrow Holder shall cancel the Escrow; Seller and Buyer shall thereupon be released from their respective obligations hereunder (other than the surviving obligations); and, Escrow Holder shall return the Deposit, minus any and all costs and fees of Escrow or Title, to Buyer.

(b) Default by Seller.

If Seller defaults in the performance of its obligations hereunder or is otherwise in material breach of the terms hereof, then Buyer will provide a written ten (10) business day notice to cure

to Seller. Upon Seller's failure to cure within ten (10) days from issuance of said notice to cure, or make good faith efforts to cure if additional time is reasonably required to cure, within said ten (10) period, Buyer shall, at its election, have the right to terminate this Agreement, upon which termination Buyer's sole and exclusive right and exclusive remedy shall be the return of the Deposit. Buyer may, at its sole option, elect to grant Seller additional time to cure provided such additional time is set forth in a signed letter from Buyer to Seller and received before the expiration of the original ten (10) day notice. Upon termination, Escrow Holder shall cancel the Escrow; Seller and Buyer shall thereupon be released from their respective obligations hereunder (other than the surviving obligations); and, Escrow Holder shall return the Deposit, minus any and all costs and fees of Escrow or Title, to Buyer.

(c) Eminent Domain.

Notwithstanding the foregoing or anything to the contrary set forth in applicable law, upon termination of the Agreement pursuant to the terms set forth herein, Buyer shall have the right to pursue acquisition of the Property through its powers of eminent domain pursuant to California Code of Civil Procedure, Title 7, and Seller waives any claim that Seller may have that the terms or obligations of this Agreement preclude or prevent Buyer's exercise of any of its eminent domain authority.

11. Notice. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following address:

If to County: Clerk of the Board of Supervisors
County of Santa Clara
70 West Hedding Street, East Wing
San Jose, California 95110

WITH COPIES TO:

Department of Parks and Recreation
Attn: Real Estate Division
208 Garden Hill Drive
Los Gatos, CA 95032-7669 AND

Santa Clara County Counsel's Office
Attn: County Counsel
70 W. Hedding Street, East Wing, 9th Floor
San Jose, California 95110
Phone No.: (408) 299-5900
Email: james.williams@cco.sccgov.org

If to SCVWD: Clerk of the Board of Directors
 Santa Clara Valley Water District
 5750 Almaden Expressway
 San Jose, California 95118

WITH COPY TO:

Santa Clara Valley Water District
 Office of SCVWD Counsel
 5750 Almaden Expressway
 San Jose, CA 95118

Any such notices shall be sent either (a) by certified mail, return receipt requested, postage prepaid in the U.S. mail, (b) by personal delivery, (c) by a nationally recognized overnight courier, (d) by telecopier, in which case notice shall be deemed delivered when the transmitting telecopier machine has confirmed that the notice has been completed or sent without error, provided that a copy is also sent out not later than one (1) business day thereafter by certified mail, personal delivery or overnight courier as described in (a), (b) or (c) immediately above, or (e) by email, provided that a copy is also sent out not later than one (1) business day thereafter by certified mail, personal delivery or overnight courier as described in (a), (b) or (c) immediately above. A Party may change its address provided above by written notice to the other Party; provided, however, that in no event shall a change of address include a P.O. Box.

12. Governing Law and Venue. This Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement or the transaction(s) contemplated by it, shall be governed by, construed and enforced in accordance with the law of the State of California (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to this Agreement, including arbitration proceedings, shall be brought only in Santa Clara County, California. EACH OF THE PARTIES CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN SANTA CLARA COUNTY, CALIFORNIA.

13. Counterparts; Signatures. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures and initials to this Agreement created by the signer by electronic means and/or transmitted by telecopy or other electronic transmission shall be valid and effective to bind the Party so signing. Each Party agrees to promptly deliver an execution

original to this Agreement with its actual signature and initials to the other Party, but a failure to do so shall not affect the enforceability of this Agreement, it being expressly agreed that each Party to this Agreement shall be bound by its own electronically created and/or telecopied or electronically transmitted signature and initials and shall accept the electronically created and/or telecopied or electronically transmitted signature and initials of the other Party to this Agreement.

14. Captions. The captions in this Agreement are inserted for convenience of reference and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

15. Assignability. Neither party shall assign this Agreement without the prior written consent of all parties.

16. Modifications; Waiver. No waiver, modification, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by both parties.

17. Entire Agreement. This Agreement contains the entire agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations or statements, oral or written, are superseded hereby.

18. Submission of Agreement. The submission of this Agreement by one party to the other or their agents or attorneys for review will not be deemed an offer to sell or purchase the Property, and no agreement with respect to the purchase and sale of the Property will exist unless and until this Agreement is executed and delivered by both Seller and Buyer.

19. Real Estate Reporting Person. Escrow Holder is designated the "real estate reporting person" for purposes of Section 6045 of Title 26 of the United States Code and Treasury Regulation 1.6045-4 and any instructions or settlement statement prepared by Escrow Holder shall so provide. Upon the consummation of the transaction contemplated by this Agreement, Escrow Holder shall file a Form 1099 information return and send the statement to Seller as required under the aforementioned statute and regulation.

20. Computation of Time. In computing any period of time pursuant to this Agreement, the day of the act or event from which the designated period of time begins to run will not be included, and the last day of the period so computed will be included, unless it is a Saturday, Sunday or legal holiday recognized as such in California, in which event the period runs until the end of the next day which is not a Saturday, Sunday or such legal holiday. As used in the Agreement, "business day" shall mean a day which is not a Saturday, Sunday or legal holiday recognized as such in California.

21. Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

22. Number and Gender; Joint and Several Liability. When required by the context of this Agreement, each number (singular and plural) shall include all numbers, and each gender shall include all genders.

23. Negotiated Terms. Each party has had the opportunity to be advised by legal counsel and other professionals in connection with this Agreement, and each party has obtained such advice as each party deems appropriate. The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its professionals participated in the preparation of this Agreement. In the event either party hereto now or hereafter shall consist of more than one person, firm, or corporation, then and in such event, all such persons, firms, or corporations shall be jointly and severally liable as such party under this Agreement.

24. California Public Records Act. All documents and records provided to or made available to Seller under this Agreement become the property of the Seller, which is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If proprietary information is contained in documents submitted to Seller, and Buyer expressly claims that such information falls within one or more CPRA exemptions, Buyer must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the confidential information. In the event of a request for such information, the Seller will make reasonable efforts to provide notice to Buyer prior to such disclosure. If Buyer believes that any requested documents are exempt from the CPRA and wishes to prevent disclosure, it is required at its own cost, liability and expense to obtain protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County at least two (2) days before Seller's deadline to respond to the CPRA request. If Buyer fails to obtain such a remedy before the Seller responds to the CPRA request, Seller will disclose the requested information and shall not be liable or responsible for such disclosure.

25. Conflict of Interest. Buyer shall ensure that Buyer, its employees, agents and representatives, comply with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the

regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so will constitute a material breach of this Agreement and is grounds for immediate termination of this Agreement by the Seller. A violation of Government Code 1090 may make this Agreement void on its face. In accepting this Agreement, Buyer covenants, warrants, represents and agrees that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. Buyer further covenants that, in the performance of this Agreement, it will not employ any contractor, consultant or person having such an interest.

26. Relationship of Parties. The Parties acknowledge and agree that nothing set forth in this Agreement shall be deemed or construed to render the Parties as affiliates, joint-venturers, partners, associations, master-servant, agents, representatives, a joint enterprise, employer-employee, lender-borrower or contractor. Buyer shall have no authority to employ any person as employee, agent or representative on behalf of Seller for any purpose. Neither Buyer nor any person using or involved in or participating in any actions or inactions relating to the Agreement, or the Property shall be deemed an affiliate, employee, representative or agent of Seller, nor shall any such person or entity represent himself, herself or itself to others as an employee, affiliate, agent or representative of Seller.

27. No Third Party Rights. The Parties do not intend to create rights in, or to grant remedies to, any third party as a beneficiary of or to this Agreement or of any duty, covenant, obligation, or undertaking established herein. This Agreement shall not be construed as nor deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action herein for any cause whatsoever.

28. OFAC. Buyer represents and warrants to Seller that: (i) Buyer is not acting, and shall not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation enforced or administered by the federal Office of Foreign Assets Control; and (ii) Buyer is not entering into this Agreement, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity, or nation.

29. Non-Discrimination. Buyer shall comply with all applicable Federal, State and local laws and regulations including the County of Santa Clara's policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964, as amended; Americans with Disabilities Act of 1990; The

Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code Sections 12900 et seq.); California Labor Code sections 1101 and 1102. Buyer shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organization affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall Buyer discriminate in the fulfillment of any of the Agreement terms because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

30. Flood Hazard Zone. Buyer acknowledges that the Property is located in an area that the Department of Housing and Urban Development has found to have special flood hazards. Pursuant to the National Flood Insurance Program, Buyer may be required to purchase flood insurance in order to obtain a loan secured by the Property from any federally regulated financial institution or a loan insured or guaranteed by an agency of the United States government. Buyer shall have sole responsibility to determine whether the Property is located in an area that is subject to the National Flood Insurance Program.

31. Notice Regarding Gas and Hazardous Liquid Transmission Pipelines. This notice is being provided simply to inform Buyer that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System ("NPMS") Internet Web site maintained by the United States Department of Transportation at <http://www.npms.phmsa.dot.gov>. To seek further information about possible transmission pipelines near the Property, Buyer may contact Buyer's local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP code and county on the NPMS Internet Web site.

32. Headings. The captions appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections of this Agreement or in any way affect this Agreement. Any gender used shall be deemed to refer to any other gender more grammatically applicable to the party to whom such use of gender relates. The use of singular shall be deemed to include the plural and, conversely, the plural shall be deemed to include the singular.

33. No Permitted Use of Santa Clara County Name. Except as allowed herein or by another written agreement entered into by and between the Parties, Buyer shall not publicize or use, or

allow anyone else to use, the name, trade name, trade dress, seal, logo or other proprietary information of Seller in any manner.

34. Surviving Obligations. Those provisions which by their nature should survive termination, expiration or cancellation of this Agreement, shall so survive, including but not limited to Sections 5.b, 5.c, and 9 through 34, inclusive.

IN WITNESS WHEREOF, effective as of the last date signed by the Parties below ("**Effective Date**"), the Parties hereto have executed this Agreement as follows:

BUYER:

SANTA CLARA VALLEY WATER
DISTRICT, A Special District of the State of
California

NORMA J. CAMACHO
Chief Executive Officer

Date: _____

SELLER:

COUNTY OF SANTA CLARA, A
Political Subdivision of the State of
California

S. JOSEPH SIMITIAN, President
Board of Supervisors

Date: _____

ATTEST:

Megan Doyle, Clerk of the
Board of Supervisors

Date: _____

Approved as to form and legality:

DISTRICT COUNSEL,

Brian Hopper
Senior Assistant District Counsel

Approved as to form and legality:

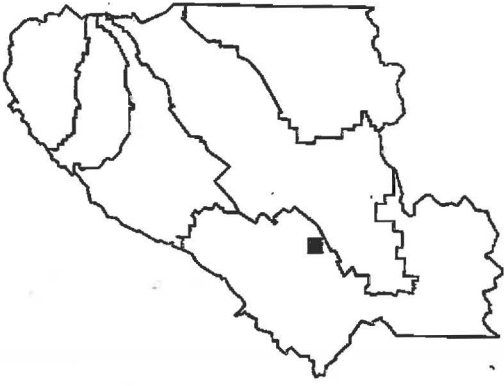
COUNTY COUNSEL, SANTA CLARA
COUNTY

By: Shirley R. Edwards,
Deputy County Counsel

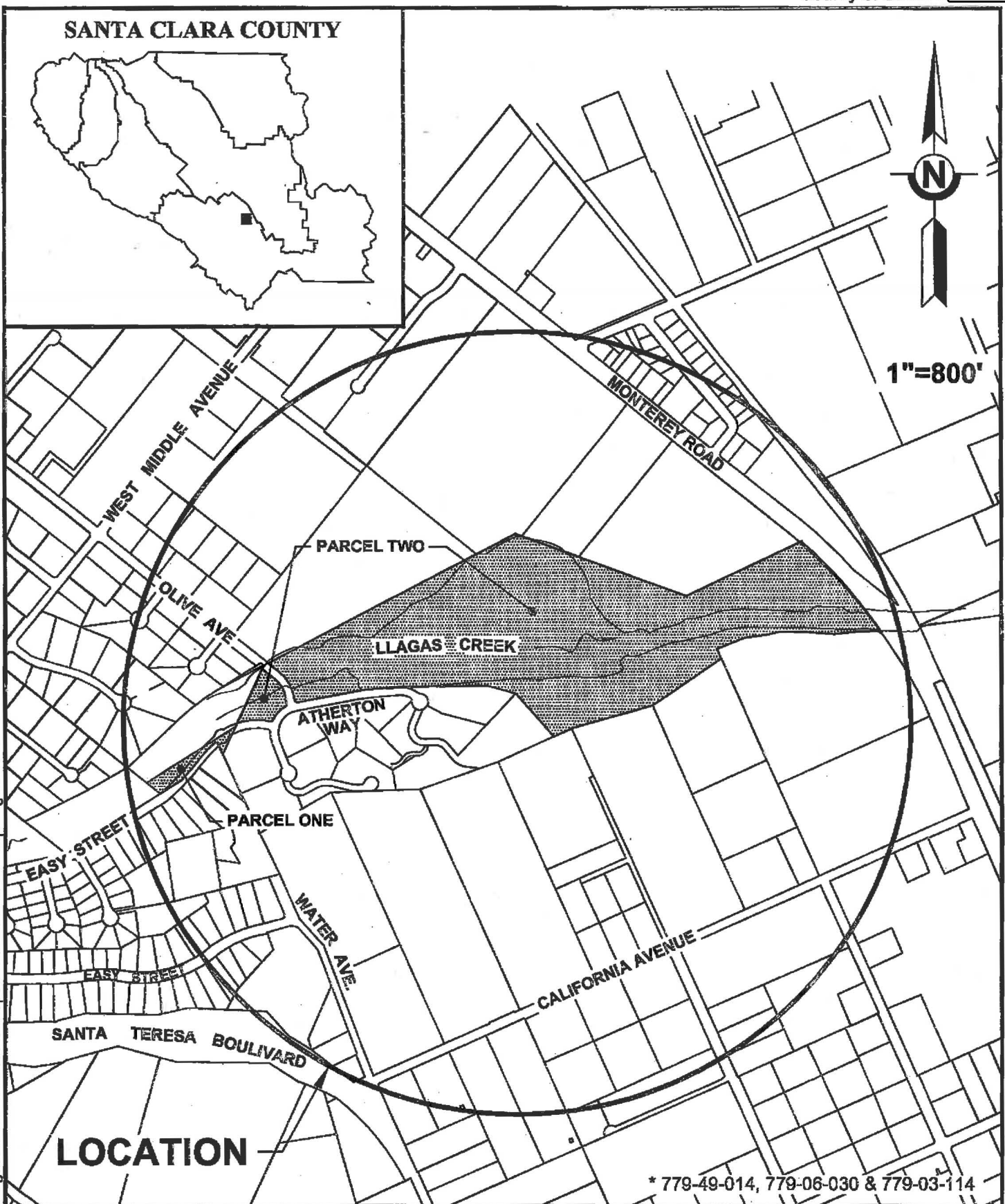
EXHIBIT A
(to Purchase and Sale Agreement)

MAP AND LEGAL DESCRIPTION OF PROPERTY

SANTA CLARA COUNTY



1"=800'



UVAS/LLAGAS WATERSHED

Santa Clara Valley Water District



County of Santa Clara
Easy St., Olive Ave. and Atherton Way
MORGAN HILL, CA. 95037

LLAGAS CREEK

PROJ. NO.	5010
FILE NO.	229
APN	*
DRAWN	B. Snyder
DATE	07/17/14

SANTA CLARA VALLEY WATER DISTRICT
San Jose, California

By: DOC. 7403031 & DOC. 7403032

Checked by: _____

Date: _____

PROJECT: LLAGAS CREEK

PROPERTY: COUNTY OF SANTA CLARA

FILE NO.: 5010-229

All that certain real property situate in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

PARCEL ONE

Being that portion of LOT 52 as conveyed from Walter Von Tagen and Verne D. Freeman and Joanne O. Freeman, his wife to the County of Santa Clara per Document 7403032, Santa Clara County Records described as follows:

LOT 52, as said lot is shown upon that certain Map entitled, "Tract No. 5448, Amberwood Glen Unit No. 2" which Map was filed for record on June 13, 1974 in Book 341 of Maps, pages 46, 47 and 48, Santa Clara County Records described as follows:

EXCEPTING THEREFROM that portion thereof described in the Deed from Walter Von Tagen, et al, to the City of Morgan Hill, recorded February 2, 1976 in Book B849 of Official Records, page 25, as follows:

BEGINNING at the most Westerly corner of Lot 52, said corner also being a common corner with Lot 41 as said Lots and corners are shown on the Map entitled "Tract No. 5448, Amberwood Glen Unit No. 2" filed in Book 341 of Maps, pages 46, 47 and 48, Santa Clara County Records; thence South 51° 40' East 147.44 feet; thence North 57° 20' 30" East 628.33 feet; thence North 24° 26' 42" East 407.80 feet; thence South 62° 11' 31" West 224.91 feet; thence tangent to the last course, along a curve to the left an arc distance of 362.67 feet, said curve having a central angle of 15° 40' 58" and a radius of 1325.00 feet; thence tangent to the last curve, South 46° 30' 33" West 407.53 feet; thence along a curve to the right an arc distance of 33.87 feet, said curve having a central angle of 2° 21' 07" and a radius of 825.00 feet to the point of beginning.

ALSO EXCEPTING THEREFROM that portion thereof described in the Deed from Walter Von Tagen, et al, to Sunnybrook Ranch, a limited partnership, recorded June 9, 1976 in Book C071 of Official Records, page 423, as follows:

BEGINNING at the most northeastern corner of Parcel 3 as said parcel is shown on the Parcel Map filed in Book 326 of Maps, at page 42, Santa Clara County Records; thence South 56° 58' 35" West, 288.84 feet; thence from a tangent which bears North 42° 54' 23" East, along a curve to the left, an arc distance of 122.22 feet; said curve having a radius of 1000.00 feet and a central angle of 7° 00' 10"; thence tangent to the last curve along a curve to the right an arc distance of 192.08 feet, said curve having a radius of 1000.00 feet and a central angle of 11° 00' 19"; thence South 25° 03' 44" East, 89.21 feet to the point of beginning.

Containing 0.913 acre of land, more or less. APN's: 779-03-114

BASIS OF BEARING: Bearings are based on and identical to that certain Tract Map No. 5448 filed in Book 341 of Maps, at pages 46, 47 and 48, filed in the office of the Recorder, County of Santa Clara, State of California.

PARCEL TWO

Being that portion of Parcels 1, 2, and 3 as conveyed from Verne D. Freeman and Joanne O. Freeman et al to the County of Santa Clara per Document 7403031 described as follows:

Being all of Parcels 1, 2, and 3 as shown on Parcel Map recorded in book 432 of Maps at page 29, Santa Clara County Records described as follows:

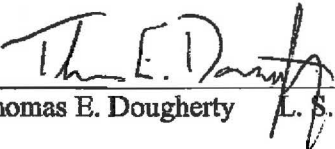
Excepting therefrom a parcel of land described as follows:

Beginning at an iron pipe at the Northwesternly line of Parcel 3 at the intersection with the centerline of Olive Avenue as shown on said map and running thence along said Northwesternly line North 61° 50' 14" East 27.35 feet; thence South 52° 05' 23" East 93.21; thence along a tangent curve to the right having a radius of 225.00 feet and a central angle of 41° 06' 14", a distance of 161.42 feet; thence South 10° 59' 09" East 27.83 feet; thence along a tangent curve to the left, having a radius of 20.00 feet and a central angle of 90° a distance of 31.42 feet; thence North 79° 00' 51" East 413.52 feet, and North 89° 59' 59" East 203.85 feet; thence along a tangent curve to the right, having a radius of 155 feet and a central angle of 7° 32' 32"; a distance of 20.40 feet; thence North 88° 45' 15" East 511.76 feet, South 75° 16' 02" East 174.74 feet, and South 41° 39' 22" East 346.11 feet to a point in the Southeasterly line of Parcel 2; thence along said Southeasterly line, South 64° 58' 03" West 370.00 to a 3/4" iron pipe, South 69° 49' 09" West 496.66 feet to an old 2" x 3" stake, and South 87° 47' 33" West 536.63 feet to a 3/4" iron pipe at the corner common to Parcels 2 and 3; thence along the Southeasterly line of Parcel 3, South 59° 40' 07" West 497.82 feet to 3/4 iron pipe at the most Southerly corner of Parcel 3; thence along the Southwesterly and Northwesternly line of Parcel 3, North 25° 05' 14" West 525.25 feet and North 23° 59' 11" East 207.43 feet; thence along a curve to the right from a tangent bearing of North 71° 20' 24" East, having a radius of 380.00 feet and a central angle of 29° 26' 02", a distance of 195.21 feet; thence along a tangent curve to the left, having a radius of 20.00 feet and a central angle of 75° 11' 02" a distance of 26.24 feet; thence along a tangent curve to the right, having a radius of 185.00 feet and a central angle of 33° 27' 30" a distance of 108.03 feet; thence along a tangent curve to the left, having a radius of 20.00 feet and a central angle of 70° 02' 02", a distance of 24.45 feet; thence North 10° 59' 09" West 40.15 feet; thence along a tangent curve to the left, having a radius of 175.00 feet and a central angle of 41° 06' 14" a distance of 125.55 feet; thence North 52° 05' 23" West 98.10 feet to the Northwesternly line of Parcel 3; thence along said Northwesternly line North 23° 59' 11" East 25.76 feet to the point of beginning.

Containing 52.019 acres of land, more or less. APN's: 779-06-030 and 779-49-014

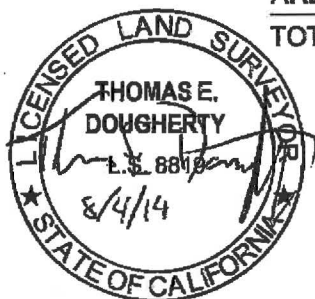
BASIS OF BEARING: Bearings are based on and identical to that certain Tract Map No. 7704 filed in Book 549 of Maps, at pages 41, 42 and 43, filed in the office of the Recorder, County of Santa Clara, State of California.

SURVEYOR'S STATEMENT: The description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.


Thomas E. Dougherty L. S. 8819

8/4/14
Date





The Bearing N38°20'E of the centerline of West Middle Avenue as said Avenue is shown on that certain map entitled "Amberwood Glen Unit No. 2" recorded in Book 341 of maps at pages 46, 47 & 48 of official records Santa Clara County, California.

P.O.B. LOT 41
FIRST EXCEPTION

Santa Clara Valley Water District

SCALE: 1" = 100'

REV.	APPR.	DATE	DESCRIPTION	TITLE REPORT NO.	13-51058087-B-EB
1				DRAWN	B. Snyder
2				DATE	07/16/14

Attachment: Purchase and Sale Agreement Silveira Lake including Conservation Easement (1656 : Acceptance of Easement in Association

C:\ROW 2013\Llagas\2014-174\Plats\5010-229 Parcel One.dwg

COUNTY OF SANTA CLARA

COUNTY OF SANTA CLARA
DOC. 7403032
779-03-114
PARCEL TO BE ACQUIRED
PARCEL ONE

P.O.B.
SECOND EXCEPTION

P. M. 326 - M - 42
PARCEL 3

SECOND EXCEPT.
SUNNYBROOK RANCH
C071 O.R. 423

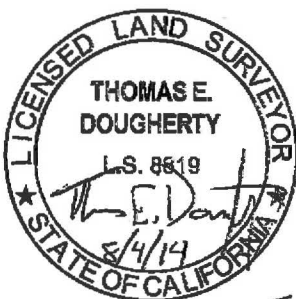
LOT 52
TRACT NO. 5448
AMBERWOOD GLEN
UNIT NO. 2
341 - M - 46, 47, 48

(TRACT NO. 5845
SUNNYBROOK HILLS
UNIT No. 2
376-M-25)

S.C.V.W.D.
EASEMENT
DOC. 20138882
PARCEL ONE

TAN. BRG. N42°54'23"E

LOT 42



LLAGAS CREEK

EASY STREET

CITY OF
MORGAN HILL
DOC. 5411749
779-34-018

Santa Clara Valley Water District

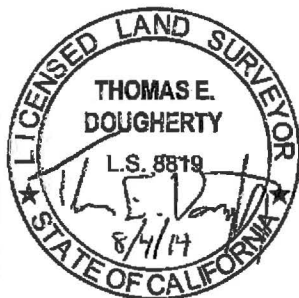
SCALE: 1" = 80'

PROJ. NO.	5010
FILE NO.	229
APN	779-03-114
TITLE REPORT NO.	13-51058087-B-EB
DRAWN	B. Snyder
DATE	07/16/14

REV.	APPR.	DATE	DESCRIPTION
1			
2			

COUNTY OF SANTA CLARA

MONTEREY ROAD

**NOTE:**

20' PUBLIC STREET & SIDEWALK, AND
PUBLIC UTILITIES DOC. NO. 5210138
(CANNOT ASCERTAIN FROM THE RECORD)

**MAP OF THE
LAS LLAGAS SUBDIVISION
"N" - M - 12**

S.C.V.W.D.

150' MINIMUM AREA
RESERVED FOR FUTURE
ACQUISITION PER PM 331 M. 17

LLAGAS CREEK

ATHERTON WAY

EXCEPTION FROM PARCEL TO BE
ACQUIRED SEE SHEET 4
TRACT NO. 7704
SHADOW HILLS
549-M-41

PORION OF
PARCEL TWO
TO BE ACQUIRED
779-49-014

PM 432-M-29
PARCEL 1

PM 432-M-29
PARCEL 3

COUNTY OF
SANTA CLARA
DOC. 7403031
(G877 O.R. 727)
779-06-030

PM 432-M-29
PARCEL 2

PORION OF
PARCEL TWO
TO BE ACQUIRED
779-06-030

**PARCEL TWO
AREA TO BE ACQUIRED**

AREA IN LEVEL LAND = 22.932 ACRE ±
AREA IN CREEK = 29.087 ACRE ±
TOTAL AREA = 52.019 ACRE ±

* 779-03-030 & 779-49-014

Santa Clara Valley Water District

SCALE: 1" = 400'

PROJ. NO.	26174051
FILE NO.	5010-229 TWO
APN	*
TITLE REPORT NO.	13-51058087-B-EB
DRAWN	K. Comer
DATE	06/20/13

REV.	APPR.	DATE	DESCRIPTION
1		1/14	CHANGE TITLE REPORT NO.
2		7/14	Add property - update PTR (B. Snyder)

COUNTY OF SANTA CLARA

S.C.V.W.D.

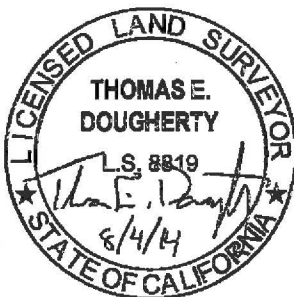
PM 432-M-29
PARCEL 3COUNTY OF SANTA CLARA
DOC. 7403031
(G877 O.R. 727)
779-06-030PM 432-M-29
PARCEL 2PARCEL TWO
PORTION OF
PARCEL TO BE
ACQUIREDPM 432-M-29
PARCEL 2

LLAGAS CREEK

EXCEPTION FROM
PARCEL
TO BE ACQUIRED
DESCRIBED IN
DOCUMENT 7403031
(G877 O.R.727)P.O.B.
EXCEPTION

OLIVE AVENUE

ATHERTON WAY

PARCEL TWO
PORTION OF
PARCEL TO BE
ACQUIRED
CO. OF
SANTA CLARA
DOC. 7403031
(G877 O.R. 727)
779-49-014TRACT NO. 7704
SHADOW HILLS
549-M-41Basis of Bearing
N25°05'14"W
Book 432 of Maps at page 29

* 779-03-030 & 779-49-014

Santa Clara Valley Water District

SCALE: 1" = 300'

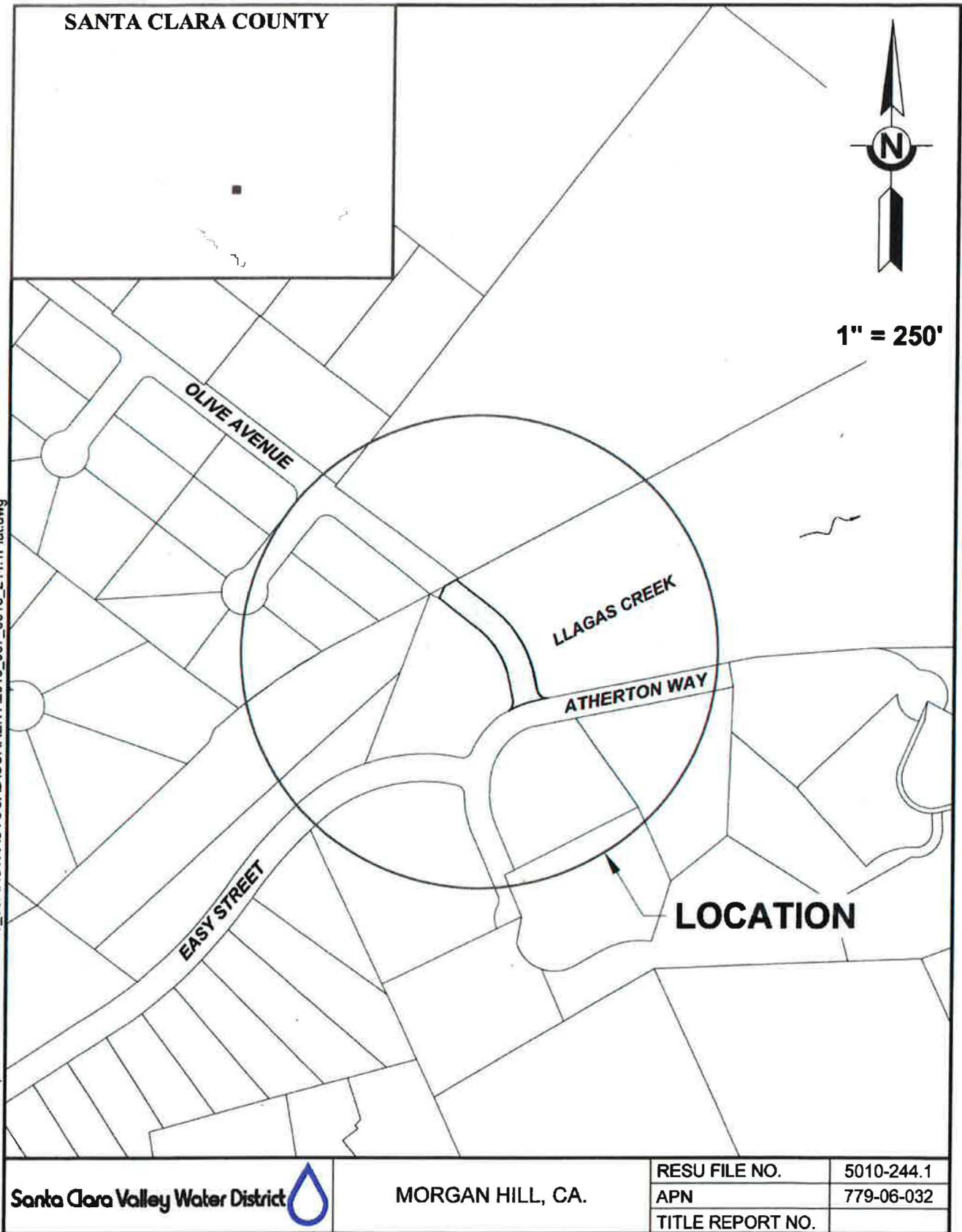
PROJ. NO.	26174051
FILE NO.	5010-229
APN	779-06-030
TITLE REPORT NO.	13-51058087-B-EB
DRAWN	K. Comerer
DATE	06/20/13

REV.	APPR.	DATE	DESCRIPTION
1		1/14	CHANGE TITLE REPORT NO.
2		7/14	Add Parcel - update PTR

EXHIBIT B
(to Purchase and Sale Agreement)

LEGAL DESCRIPTION OF OLIVE STREET CROSSING

SCVWD S:\REQUESTS\LLAGAS CREEK\2018_067\ROW\AUTOCAD\CURRENT\2018_067_5010_244.1Plat.dwg



Attachment: Purchase and Sale Agreement Silveira Lake including Conservation Easement (1656 : Acceptance of Easement in Association

SANTA CLARA VALLEY WATER DISTRICT
San Jose, California

PROJECT: LLAGAS CREEK

RESU File No.: 5010-244.1

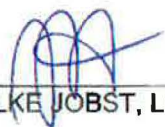
ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF THE LANDS AS DESCRIBED IN THAT CERTAIN GRANT DEED TO THE SANTA CLARA VALLEY WATER DISTRICT, RECORDED ON NOVEMBER 4, 2014 AS DOCUMENT NUMBER 22760059, IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

CONTAINING 0.339 ACRE OF LAND, MORE OR LESS.

SURVEYOR'S STATEMENT:

THE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT.

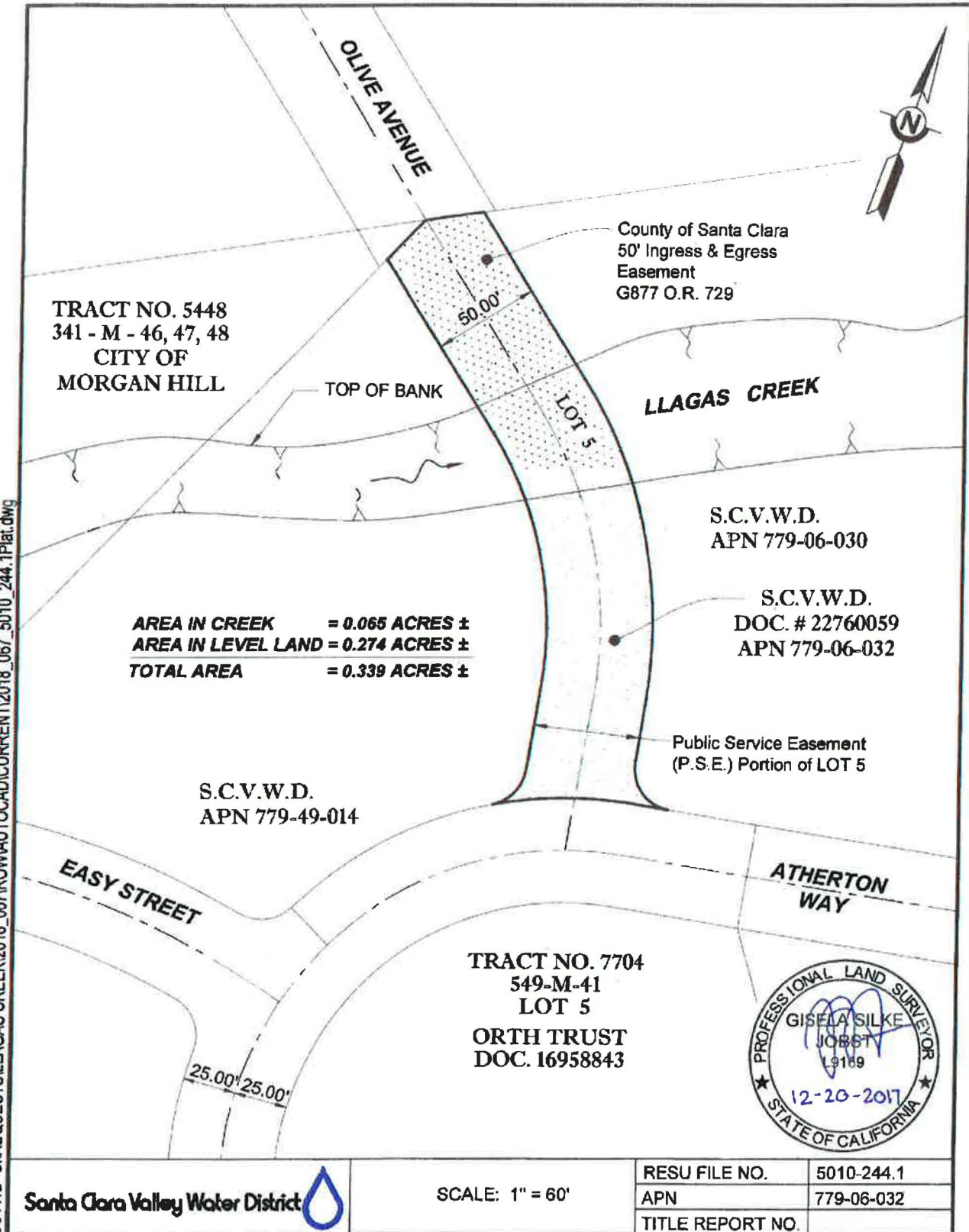


GISELA SILKE JOBST, L9169

12-20-2017
Date



SCVWD S:\REQUESTS\LLAGAS CREEK\2018_067\ROW\AUTOCAD\CURRENT\2018_067_5010_244_1\plat.dwg



SHEET 1 OF 1

Attachment: Purchase and Sale Agreement Silveira Lake including Conservation Easement (1656 : Acceptance of Easement in Association

EXHIBIT C
(to Purchase and Sale Agreement)
FORM OF GRANT DEED

EXHIBIT C**FORM OF GRANT DEED**

RECORD WITHOUT FEE UNDER CALIFORNIA
GOVERNMENT CODE SECTIONS 27383 AND 6103
RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

REAL ESTATE SERVICES UNIT
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

MAIL TAX STATEMENTS TO: Same as above

Space above this Line for Recorder's Use

A.P.N. Nos. 779-03-114; 779-06-030; 779-49-014

Transfer is exempt from documentary transfer tax pursuant to R&T Code Section 11922

District File: 5010-229

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the County of Santa Clara, a political subdivision of the state of California ("Grantor"), hereby GRANTS to the Santa Clara Valley Water District, a Special District of the State of California ("Grantee"), all of its right, title, fee, and interest in and to that real property situated in the City of Morgan Hill, County of Santa Clara, State of California, described on Exhibit 1 attached hereto. Recorded contemporaneously with this Grant Deed is the Conservation Easement (Exhibit 2) as part of the consideration for this Grant Deed.

In Witness Whereof, Grantor has caused this instrument to be executed on _____, _____.

GRANTOR: County of Santa Clara,
a political subdivision of the State of California

By:

Its:

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 } SS

On this ____ day of _____, in the year 20____, before me _____,

Notary Public, personally appeared _____
Name(s) of Signer(s)

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.

Notary Public in and for said County and State

CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

☐ Individual

☐ Trustee(s)

☐ Corporate Officer(s): _____

☐ Guardian/Conservator

☐ Attorney-In-Fact _____

Signer is Representing (Name of Person(s) or Entity(ies))



CERTIFICATE OF CONSENT AND ACCEPTANCE

This is to certify that the interest in real property conveyed by the attached Deed or Grant to the Santa Clara Valley Water District, also referred to herein as the Grantee, is hereby accepted by the undersigned duly authorized agent on behalf of the Board of Directors of said Santa Clara Valley Water District, pursuant to authority conferred by Resolution No. 14-79 of said Board of Directors adopted on the 9th day of September 2014, and the Grantee consents to recordation thereof by its said duly authorized agent.

Dated: _____, 20__

Santa Clara Valley Water District

By: _____
 Chief Executive Officer/Clerk of the Board of Directors
 (Strike out inapplicable one)

EXHIBIT D
(to Purchase and Sale Agreement)
DRAFT FORM OF MITIGATION EASEMENT

PLEASE NOTE: The following Conservation Easement Deed is provided by the multi-agency Project Delivery Team as a standardized template document for Mitigation and Conservation Banks in California. Any modifications to this template shall be identified using tracked changes or other electronic comparison and explained in a memorandum.
(Template Version Date: March 2010)

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

[*Fill in Grantee Name/Address*] Grantee Name Grantee Address City, State ZIP
Attn: _____

Space Above Line for Recorder's Use Only

CONSERVATION EASEMENT DEED [*Insert Bank Name*]

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made as of the _____ day of _____, 20____, by [*insert full legal name(s) of Grantor:* _____] ("Grantor"), in favor of [*insert Grantee's full legal name:* _____] [*if CDFW is Grantee insert: the State of California*] ("Grantee"), with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property containing approximately _____ acres, located in the City of [*insert City name*], County of [*insert County name*], State of California, and designated Assessor's Parcel Number(s) [*insert Assessor's Parcel Number(s)*] (the "Bank Property"). The Bank Property is legally described and depicted in **Exhibit A** attached to this Conservation Easement and incorporated in it by this reference.

B. The Bank Property possesses wildlife and habitat values of great importance to Grantee, the people of the State of California and the people of the United States. The Bank Property will provide high quality natural, restored and/or enhanced habitat for [*specify listed and sensitive plant and/or animal species*] and contain [*list habitats; native and/or non-native*], [*include the following phrase only if there are jurisdictional wetlands: and restored, created, enhanced and/or preserved jurisdictional waters of the United States*]. Individually and collectively, these wildlife and habitat values comprise the "Bank Property Conservation Values" of the Bank Property.

C. The California Department of Fish and Wildlife ("CDFW") has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of these species pursuant to California Fish and Wildlife Code Section 1802. CDFW is authorized to hold easements for these purposes

pursuant to California Civil Code Section 815.3, Fish and Wildlife Code Section 1348, and other provisions of California law.

D. The United States Fish and Wildlife Service (the "USFWS"), an agency within the United States Department of the Interior, has jurisdiction over the conservation, protection, restoration and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the federal Endangered Species Act, 16 U.S.C. Section 1531, *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. Sections 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. Section 742(f), *et seq.*, and other provisions of federal law.

E. **[Remove/modify this recital as appropriate when USEPA or USACE is not a signatory to the BEI or CBEI]**. The U.S. Environmental Protection Agency ("USEPA") and U.S. Army Corps of Engineers ("USACE") have jurisdiction over waters of the United States pursuant to the federal Clean Water Act, 33 U.S.C. Section 1251, *et seq.*

F. **[Use this version of Recital F when qualified nonprofit organization is Grantee]**. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3 and Government Code Section 65965. Specifically, Grantee is (i) a tax-exempt nonprofit organization qualified under section 501(c) (3) of the Internal Revenue Code of 1986, as amended, and qualified to do business in California; (ii) a "qualified organization" as defined in section 170(h) (3) of the Internal Revenue Code; and (iii) an organization which has as its primary and principal purpose and activity the protection and preservation of natural lands or resources in its natural, scenic, agricultural, forested, or open space condition or use.

[Use this version of Recital F when governmental entity is Grantee]. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3. Specifically, Grantee is a governmental entity identified in Civil Code Section 815.3 (b) and otherwise authorized to acquire and hold title to real property.

G. **[Modify this recital as appropriate when CDFW, USFWS, USEPA or USACE is not a signatory to the BEI or CBEI]**. This Conservation Easement is granted pursuant to the **[insert the appropriate term: Mitigation Bank Enabling Instrument (the "BEI") or Conservation Bank Enabling Instrument (the "CBEI")]**, by and between **[insert Bank Sponsor name(s)]**, **[insert Bank Property Owner name(s)]**, and **[insert Region name]** CDFW, CDFW Tracking No. **[insert number]**, the **[insert Field Office name]** of the USFWS, USFWS File No. **[insert number]**, the **[insert District name]** District of USACE, USACE File No. **[insert number]**, and Region IX of the USEPA, entered into concurrently with this Conservation Easement, and the Bank Development Plan (the "Development Plan"), and the Interim Management Plan and Long-Term Management Plan (as applicable, the "Management Plan") created under the **[insert: BEI or CBEI]**. **[Remove reference to any agency that is not a party to the BEI or CBEI]** CDFW, USFWS, USACE, and USEPA are together referred to in this Conservation Easement as the "Signatory Agencies".

A final, approved copy of the **[insert: BEI or CBEI]**, the Development Plan and the Management Plan, and any amendments thereto approved by the Signatory Agencies, shall be kept on file at the respective offices of the Signatory Agencies. If Grantor, or any successor or assign, requires an official copy of the **[insert: BEI or CBEI]**, the Development

Plan or the Management Plan, it should request a copy from one of the Signatory Agencies at its address for notices listed in Section 12 of this Conservation Easement.

The [*insert: BEI or CBEI*], the Development Plan and the Management Plan are incorporated by this reference into this Conservation Easement as if fully set forth herein.

H. All section numbers referred to in this Conservation Easement are references to sections within this Conservation Easement, unless otherwise indicated.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the United States and the State of California, including California Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Bank Property.

1. Purposes.

The purposes of this Conservation Easement are to ensure that the Bank Property will be retained forever in its natural, restored, or enhanced condition as contemplated by the [*insert: BEI or CBEI*], the Development Plan, and the Management Plan, and to prevent any use of the Bank Property that will impair or interfere with the Bank Property Conservation Values. Grantor intends that this Conservation Easement will confine the use of the Bank Property to activities that are consistent with such purposes, including, without limitation, those involving the preservation, restoration and enhancement of native species and their habitats implemented in accordance with the [*insert: BEI or CBEI*], the Development Plan and the Management Plan.

2. Grantee's Rights.

To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee:

- (a) To preserve and protect the Bank Property Conservation Values.
- (b) To enter the Bank Property at reasonable times, in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, the [*insert: BEI or CBEI*], the Development Plan and the Management Plan and to implement at Grantee's sole discretion Development Plan and Management Plan activities that have not been implemented, provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Bank Property.
- (c) To prevent any activity on or use of the Bank Property that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Bank Property that may be damaged by any act, failure to act, or any use or activity that is inconsistent with the purposes of this Conservation Easement.
- (d) To require that all mineral, air and water rights as Grantee deems necessary to preserve and protect the biological resources and Bank Property Conservation Values shall remain a part of and be put to beneficial use upon the Bank Property, consistent with the purposes of this Conservation Easement.

(e) All present and future development rights appurtenant to, allocated, implied, reserved or inherent in the Bank Property; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Bank Property, nor any other property adjacent or otherwise.

3. Prohibited Uses.

Any activity on or use of the Bank Property that is inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantor's agents, and third parties are expressly prohibited:

(a) Unseasonable watering; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; weed abatement activities; incompatible fire protection activities; and any and all other activities and uses which may impair or interfere with the purposes of this Conservation Easement [*include the following language only if the Development Plan or Management Plan, including any adaptive management measures, specifies such an exception:*], except for [*insert specific exception(s)*] as specifically provided in the [*specify: Development Plan or Management Plan*].

(b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways [*include the following language only if the Development Plan or Management Plan, including any adaptive management measures, specifies such an exception:*], except for [*insert specific exception(s)*] as specifically provided in the [*specify: Development Plan or Management Plan*].

(c) Agricultural activity of any kind [*include the following language only if the Development Plan or Management Plan, including any adaptive management measures, specifies such an exception:*] except grazing for vegetation management as specifically provided in the [*specify: Development Plan or Management Plan*].

(d) Recreational activities, including, but not limited to, horseback riding, biking, hunting or fishing except for personal, non-commercial, recreational activities of the Grantor, so long as such activities are consistent with the purposes of this Conservation Easement and specifically provided for in the Management Plan.

(e) Commercial, industrial, residential, or institutional uses.

(f) Any legal or de facto division, subdivision or partitioning of the Bank Property.

(g) Construction, reconstruction, erecting or placement of any building, billboard or sign, or any other structure or improvement of any kind [*include the following language only if the Development Plan or Management Plan specifies such an exception:*], except for [*insert specific exception(s)*] as specifically provided in the [*specify: Development Plan or Management Plan*].

(h) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials.

(i) Planting, introduction or dispersal of non-native or exotic plant or animal species.

(j) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting minerals, loam, soil, sand, gravel, rock or other material on or below the surface of the Bank Property, or granting or authorizing surface entry for any of these purposes.

(k) Altering the surface or general topography of the Bank Property, including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Bank Property with concrete, asphalt or any other impervious material except for those habitat management activities specified in the Development Plan or Management Plan.

(l) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law for (i) fire breaks, (ii) maintenance of existing foot trails or roads, or (iii) prevention or treatment of disease [*include the following language only if the Development Plan or Management Plan specifies such an exception:*]; and except for [*insert specific exception(s)*] as specifically provided in the [*specify: Development Plan or Management Plan*].

(m) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Bank Property, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters [*include the following language only if the Development Plan or Management Plan specifies such an exception:*], except for [*insert specific exception(s)*] as specifically provided in the [*specify: Development Plan or Management Plan*].

(n) Without the prior written consent of Grantee, which Grantee may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air or water rights for the Bank Property; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Bank Property, including but not limited to: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Bank Property; and (iv) any water from wells that are in existence or may be constructed in the future on the Bank Property.

(o) Engaging in any use or activity that may violate, or may fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Bank Property, or the use or activity in question.

4. Grantee's Duties.

(a) To ensure that the purposes of this Conservation Easement as described in Section 1 are being accomplished, Grantee and its successors and assigns shall:

(1) Perform, at a minimum on an annual basis, compliance monitoring inspections of the Bank Property; and

(2) Prepare reports on the results of the compliance monitoring inspections, and provide these reports to the Signatory Agencies on an annual basis.

(b) In the event that the Grantee's interest in this easement is held by, reverts to, or is transferred to the State of California, Section 4(a) shall not apply.

5. Grantor's Duties.

Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Bank Property Conservation Values or that are otherwise inconsistent with this Conservation Easement. In addition, Grantor shall undertake all necessary actions to perfect and defend Grantee's rights under Section 2 of this Conservation Easement, and to observe and carry out the obligations of Grantor under the [*insert: BEI or CBEI*], the Development Plan and the Management Plan.

6. Reserved Rights.

Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from Grantor's ownership of the Bank Property, including the right to engage in or permit or invite others to engage in all uses of the Bank Property that are not prohibited or limited by, and are consistent with the purposes of, this Conservation Easement.

7. Grantee's Remedies.

If Grantee determines that a violation of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation ("Notice of Violation"). If Grantor fails to cure the violation within thirty (30) days after receipt of a Notice of Violation, or if the cure reasonably requires more than thirty (30) days to complete and Grantor fails to begin the cure within the thirty (30)-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction for any or all of the following: to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the Bank Property Conservation Values; to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; to pursue any other legal or equitable relief, including but not limited to, the restoration of the Bank Property to the condition in which it existed prior to any violation or injury; or to otherwise enforce this Conservation Easement. Without limiting the liability of Grantor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Bank Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate injury to the Bank Property Conservation Values, Grantee may pursue its remedies under this Conservation Easement without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally to actual or threatened violations of this Conservation Easement.

Grantor agrees that Grantee's remedies at law for any violation of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to the remedies set forth in California Civil Code Section 815, *et seq.* The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from taking such action at a later time.

(a) Costs of Enforcement.

All costs incurred by Grantee, where Grantee is the prevailing party, in enforcing the terms of this Conservation Easement against Grantor, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by negligence or breach of this Conservation Easement, shall be borne by Grantor.

(b) Grantee's Discretion.

Enforcement of the terms of this Conservation Easement by Grantee shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any rights of Grantee under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

(c) Acts Beyond Grantor's Control.

Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Bank Property resulting from (i) any natural cause beyond Grantor's control, including, without limitation, fire not caused by Grantor, flood, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Bank Property resulting from such causes; or (ii) acts by Grantee or its employees.

(d) Enforcement; Standing.

All rights and remedies conveyed to Grantee under this Conservation Easement shall extend to and are enforceable by [*insert if State of California is Grantee:* CDFW and] the Third-Party Beneficiaries (as defined in Section 14(m)). These enforcement rights are in addition to, and do not limit, the rights of enforcement under the [*insert: BEI or CBEI*], the Development Plan or the Management Plan. If at any time in the future Grantor uses, allows the use, or threatens to use or allow use of, the Bank Property for any purpose that is inconsistent with or in violation of this Conservation Easement then, despite the provisions of California Civil Code Section 815.7, the California Attorney General and the Third-Party Beneficiaries each has standing as an interested party in any proceeding affecting this Conservation Easement.

(e) Notice of Conflict.

If Grantor receives a Notice of Violation from Grantee or a Third-Party Beneficiary with which it is impossible for Grantor to comply consistent with any prior uncured Notice(s) of Violation, Grantor shall give written notice of the conflict (hereinafter "Notice of Conflict") to the Grantee and Third-Party Beneficiaries. In order to be a valid, a Notice of Conflict shall be given within fifteen (15) days of the date Grantor receives a conflicting Notice of Violation, shall include copies of the conflicting Notices of Violation, and shall describe the conflict with specificity, including how the conflict makes compliance with the uncured Notice(s) of Violation impossible. Upon issuing a valid Notice of Conflict, Grantor shall not be required to comply with the conflicting Notices of Violation until such time as the entity or entities issuing said conflicting Notices of Violation issue(s) revised Notice(s) of Violation that resolve the conflict. Upon receipt of a revised Notice of Violation, Grantor shall comply with such notice within the time period(s) described in the first grammatical paragraph of this Section. The failure of Grantor to issue a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall constitute a waiver of Grantor's ability to claim a conflict.

(f) [Add if nonprofit organization is Grantee] Reversion.

If the Signatory Agencies determine that Grantee is not holding, monitoring or managing this Conservation Easement for conservation purposes in the manner specified in this Conservation Easement or in the [*insert: BEI or CBEI*], the Development Plan or the Management Plan then, pursuant to California Government Code Section 65965(c), this Conservation Easement shall revert to the State of California, or to another public agency or nonprofit organization qualified pursuant to Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable) and approved by the Signatory Agencies.

8. Access.

This Conservation Easement does not convey a general right of access to the public.

9. Costs and Liabilities.

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Bank Property. Grantor agrees that neither Grantee nor Third-Party Beneficiaries shall have any duty or responsibility for the operation, upkeep or maintenance of the Bank Property, the monitoring of hazardous conditions on it, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Bank Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement [*insert if CDFW or another government entity is Grantee:* , including permits and approvals required from Grantee acting in its regulatory capacity], and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency laws, statutes, ordinances, rules, regulations, orders and requirements.

(a) Taxes; No Liens.

Grantor shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Bank Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with

satisfactory evidence of payment upon request. Grantor shall keep the Bank Property free from any liens (other than a security interest that is expressly subordinated to this Conservation Easement, as provided in Section 14(k)), including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Bank Property.

(b) Hold Harmless.

(1) Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Grantee Indemnified Party" and collectively, "Grantee's Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Bank Property, regardless of cause, except that this indemnification shall be inapplicable to any Claim due solely to the negligence of Grantee or any of its employees; (ii) the obligations specified in Sections 5, 9 and 9(a); and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Grantee's Indemnified Party *[insert if CDFW is grantee: or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding]*.

(2) Grantor shall hold harmless, protect and indemnify Third-Party Beneficiaries and their respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Third-Party Beneficiary Indemnified Party" and collectively, "Third-Party Beneficiary Indemnified Parties") from and against any and all Claims arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Bank Property, regardless of cause and (ii) the existence or administration of this Conservation Easement. *Provided, however,* that the indemnification in this Section 9 (b) (2) shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Claim due solely to the negligence of that Third-Party Beneficiary Indemnified Party or any of its employees. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any Claim to which the indemnification in this Section 9 (b) (2) applies, then at the election of and upon written notice from the Third-Party Beneficiary Indemnified Party, Grantor shall defend such action or proceeding by counsel reasonably acceptable to the applicable Third-Party Beneficiary Indemnified Party or reimburse the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(c) Extinguishment.

If circumstances arise in the future that render the preservation of the Bank Property Conservation Values, *[include this phrase only if there are jurisdictional*

wetlands: including wetland functions and values,] or other purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction.

(d) Condemnation.

[Use the appropriate paragraph:]

[If CDFW or other state agency is Grantee:] Condemnation. This Conservation Easement is a "wildlife conservation easement" acquired by a State agency, the condemnation of which is prohibited except as provided in California Fish and Wildlife Code Section 1348.3.

[All other Grantees:] Condemnation. The purposes of this Conservation Easement are presumed to be the best and most necessary public use as defined at California Code of Civil Procedure Section 1240.680 notwithstanding Code of Civil Procedure Sections 1240.690 and 1240.700.

10. Transfer of Conservation Easement or Bank Property.

(a) Conservation Easement.

This Conservation Easement may be assigned or transferred by Grantee upon written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed, but Grantee shall give Grantor and the Signatory Agencies at least sixty (60) days prior written notice of the proposed assignment or transfer. Grantee may assign or transfer its rights under this Conservation Easement only to an entity or organization: (i) authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable), or the laws of the United States; and (ii) otherwise reasonably acceptable to the Signatory Agencies. Grantee shall require the assignee to record the assignment in the county where the Bank Property is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way. Any transfer under this section is subject to the requirements of Section 11.

(b) Bank Property.

Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Bank Property, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference the [insert: BEI or CBEI], the Development Plan, the Management Plan, and any amendment(s) to those documents. Grantor further agrees to give written notice to Grantee and the Signatory Agencies of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee or the Signatory Agencies shall have the right to prevent any transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions of this Conservation Easement (including the exhibits and documents incorporated by reference in it). The failure of Grantor to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any transfer under this section is subject to the requirements of Section 11.

11. Merger.

The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Bank Property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor, Grantee, and the Signatory Agencies otherwise agree in writing, a replacement conservation easement or restrictive covenant containing the same protections embodied in this Conservation Easement shall be recorded against the Bank Property.

12. Notices.

Any notice, demand, request, consent, approval, or other communication that Grantor or Grantee desires or is required to give to the other shall be in writing, with a copy to each of the Signatory Agencies, and served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, addressed as follows:

To Grantor: [Grantee name]
[Grantee address]

Attn: _____

To Grantee: *[insert the appropriate Grantee information:]*

[Department of Fish and Wildlife]
[Region name] Region
[REGION ADDRESS]
[Attn: Regional Manager]

OR

[Grantee name]
[Grantee address]

[Remove/modify the following blocks as appropriate when CDFW or the USFWS are not signatories to the BEI or CBEI or third-party beneficiaries to the CE.]

To CDFW: [Department of Fish and Wildlife]
[Region name] Region
[REGION ADDRESS]
[Attn: Regional Manager]

With a copy to: Department of Fish and Wildlife
Office of General Counsel
1416 Ninth Street, 12th Floor
Sacramento, CA 95814-2090
Attn: General Counsel

To USFWS: United States Fish and Wildlife Service
[Field Office name] Field Office
[FIELD OFFICE ADDRESS]
Attn: Field Supervisor

[Remove/modify these blocks as appropriate when USEPA or USACE are not signatories to the BEI or CBEI or third-party beneficiaries to the CE.]

To USACE: U.S. Army Corps of Engineers
[District name] District
[DISTRICT ADDRESS]
Attn: Chief, Regulatory Branch

To USEPA: U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Attn: Director, Water Division

or to such other address a party or a Signatory Agency shall designate by written notice to Grantor, Grantee and the Signatory Agencies. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, three (3) days after deposit into the United States mail.

13. Amendment.

This Conservation Easement may be amended only by mutual written agreement of Grantor and Grantee and written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed. Any such amendment shall be consistent with the purposes of this Conservation Easement and California law governing conservation easements, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the county in which the Bank Property is located, and Grantee shall promptly provide a conformed copy of the recorded amendment to the Grantor and the Signatory Agencies.

14. Additional Provisions.

(a) Controlling Law.

The interpretation and performance of this Conservation Easement shall be governed by the laws of the United States and the State of California, disregarding the conflicts of law principles of such state.

(b) Liberal Construction.

Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to effect the purposes of this Conservation Easement and the policy and purpose of California Civil Code Section 815, *et seq.* ***[add if Grantee is nonprofit organization: and Government Code Section 65965]***. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability.

If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, such action shall not affect the remainder of this Conservation Easement. If a court of competent jurisdiction voids or invalidates the

application of any provision of this Conservation Easement to a person or circumstance, such action shall not affect the application of the provision to any other persons or circumstances.

(d) Entire Agreement.

This document (including its exhibits and the [insert: BEI or CBEI], the Development Plan, and the Management Plan incorporated by reference in this document) sets forth the entire agreement of the parties and the Signatory Agencies with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements of the parties relating to the Conservation Easement. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in accordance with Section 13.

(e) No Forfeiture.

Nothing contained in this Conservation Easement will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Successors.

The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties and their respective personal representatives, heirs, successors, and assigns, and shall constitute a servitude running in perpetuity with the Bank Property.

(g) Termination of Rights and Obligations.

A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Bank Property, except that liability for acts, omissions or breaches occurring prior to transfer shall survive transfer.

(h) Captions.

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(i) No Hazardous Materials Liability.

(1) Grantor represents and warrants that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Bank Property, or transported to or from or affecting the Bank Property.

(2) Without limiting the obligations of Grantor under Section 9 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee's Indemnified Parties (defined in Section 9 (b) (1)) from and against any and all Claims (defined in Section 9 (b)(1)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Bank Property at any time, except any Hazardous Materials placed, disposed or released by Grantee or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation or alleged violation of, or other

failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the applicable Grantee Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party [*add if CDFW is Grantee:* or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding].

(3) Without limiting the obligations of Grantor under Section 9 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Third-Party Beneficiary Indemnified Parties (defined in Section 9 (b)(2)) from and against any and all Claims arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Bank Property at any time, except that this release and indemnification shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Hazardous Materials placed, disposed or released by that Third-Party Beneficiary Indemnified Party or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation of alleged violation of, or other failure to comply with, any Environmental Laws. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any such Claim, Grantor shall, at the election or and upon written notice from the applicable Third-Party Beneficiary Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(4) Despite any contrary provision of this Conservation Easement, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives to Grantee or any Third-Party Beneficiaries any of the following:

(A) The obligations or liability of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, *et seq.*; hereinafter, "CERCLA"); or

(B) The obligations or liabilities of a person described in 42 U.S.C. § 9607(a)(3) or (4); or

(C) The obligations of a responsible person under any applicable Environmental Laws; or

(D) The right to investigate and remediate any Hazardous Materials associated with the Bank Property; or

(E) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Bank Property.

(5) The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et seq.*; hereinafter, "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. §5101, *et seq.*; hereinafter, "HTA"); the Hazardous Waste Control Law (California Health & Safety Code § 25100, *et seq.*; hereinafter, "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code § 25300, *et seq.*; hereinafter "HSA"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement.

(6) The term "Environmental Laws" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee and Third-Party Beneficiaries that activities upon and use of the Bank Property by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

(j) Warranty.

Grantor represents and warrants that Grantor is the sole owner of the Bank Property. Grantor also represents and warrants that, except as specifically disclosed to and approved by the Signatory Agencies pursuant to the Bank Property Assessment and Warranty signed by Grantor and attached as an exhibit to the [*insert: BEI or CBEI*], [*choose applicable statement: there are no outstanding mortgages, liens, encumbrances or other interests in the Bank Property (including, without limitation, mineral interests) which may conflict or are inconsistent with this Conservation Easement or the holder of any outstanding mortgage, lien, encumbrance or other interest in the Bank Property (including, without limitation, mineral interest) which conflicts or is inconsistent with this Conservation Easement has expressly subordinated such interest to this Conservation Easement by a recorded Subordination Agreement approved by Grantee and the Signatory Agencies*].

(k) Additional Interests.

Grantor shall not grant any additional easements, rights of way or other interests in the Bank Property (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall Grantor grant, transfer, abandon or relinquish (each a "Transfer") any mineral, air, or water right or any water associated with the Bank Property, without first obtaining the written consent of Grantee and the Signatory Agencies. Such consent may be withheld if Grantee or the Signatory Agencies determine(s) that the proposed interest or Transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Bank Property Conservation Values. This Section 14(k) shall not limit the provisions of Section 2(d) or 3(n), nor prohibit transfer of a fee or leasehold interest in the Bank Property that is subject to this Conservation Easement and complies with Section 10. Grantor shall provide a copy of any recorded or unrecorded grant or Transfer document to the Grantee and Signatory Agencies.

(l) Recording.

Grantee shall record this Conservation Easement in the Official Records of the County in which the Bank Property is located, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

(m) Third-Party Beneficiary.

Grantor and Grantee acknowledge that the [*include the agencies that will be third-party beneficiaries*: CDFW, USFWS, USACE, and USEPA] (the "Third-Party Beneficiaries") are third party beneficiaries of this Conservation Easement with the right of access to the Bank Property and the right to enforce all of the obligations of Grantor including, but not limited to, Grantor's obligations under Section 14, and all other rights and remedies of the Grantee under this Conservation Easement.

(n) Funding.

Endowment funding for the perpetual management, maintenance and monitoring of the Bank Property is specified in and governed by the [*insert: BEI or CBEI*] and the Management Plan.

IN WITNESS WHEREOF Grantor has executed this Conservation Easement Deed the day and year first above written.

GRANTOR: [*Notarization Required*] Approved as to form:

[*Remove or modify the approval block as appropriate, i.e., Grantee's legal counsel if CDFW is not Grantee.*]

BY: _____
General Counsel

State of California

NAME: _____
_ Department of Fish and Wildlife

TITLE: _____ BY: _____

[*Insert General Counsel Representative*]

General Counsel
DATE:

CA PDT CE Template - March 3, 2010

Exhibit A
(to Exhibit D of Purchase and Sale Agreement)
Legal Description and Surveyed Plat
of Mitigation Easement

Attachment: Purchase and Sale Agreement Silveira Lake including Conservation Easement (1656 : Acceptance of Easement in Association

SANTA CLARA VALLEY WATER DISTRICT
San Jose, California

PROJECT: LLAGAS CREEK

RESU File No.: 5010-229.1

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL 1 AND PARCEL 3 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN BOOK 432 AT PAGE 29 IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF OLIVE AVENUE (60.00 FEET WIDE) WITH THE NORTHWESTERLY LINE OF PARCEL 3 AS SHOWN ON SAID MAP;

THENCE ALONG SAID NORTHWESTERLY LINE, NORTH 61°50'14" EAST, 1,712.76 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL 3;

THENCE ALONG SAID NORTHEASTERLY LINE, SOUTH 70°23'40" EAST, 86.99 FEET TO THE **POINT OF BEGINNING**;

THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE OF SAID PARCEL 3 AND ALONG THE NORTHWESTERLY LINE OF PARCEL 1 AS SHOWN ON SAID MAP, SOUTH 70°23'40" EAST, 132.15 FEET;

THENCE LEAVING SAID NORTHWESTERLY LINE OF SAID PARCEL 1, SOUTH 55°08'06" EAST, 189.44 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 180.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 36°35'24", AN ARC LENGTH OF 114.95 FEET;

THENCE SOUTH 18°32'42" EAST, 134.07 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 360.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 43°53'06", AN ARC LENGTH OF 275.74 FEET;

THENCE SOUTH 24°34'39" WEST, 40.66 FEET;

THENCE SOUTH 77°04'33" WEST, 552.38 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 26.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 47°08'34", AN ARC LENGTH OF 21.39 FEET;

THENCE NORTH 55°46'53" WEST, 148.90 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 180.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 94°40'37", AN ARC LENGTH OF 297.44 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT, HAVING A RADIUS OF 122.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 59°46'11", AN ARC LENGTH OF 127.27 FEET;

THENCE SOUTH 89°18'41" WEST, 13.69 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 60.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 55°22'46", AN ARC LENGTH OF 57.99 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT, HAVING A RADIUS OF 220.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 65°38'00", AN ARC LENGTH OF 252.01 FEET;

THENCE NORTH 80°26'05" WEST, 187.51 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 140.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 65°48'22", AN ARC LENGTH OF 160.79 FEET;

THENCE NORTH 14°37'42" WEST, 55.16 FEET;

THENCE NORTH 79°47'32" EAST, 69.49 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 500.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29°02'53", AN ARC LENGTH OF 253.49 FEET;

THENCE NORTH 50°44'39" EAST, 210.95 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 1,000.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 09°37'57", AN ARC LENGTH OF 168.12 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 1,490.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16°04'40", AN ARC LENGTH OF 418.11 FEET TO THE BEGINNING OF A COMPOUND CURVE TO THE RIGHT, HAVING A RADIUS OF 400.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29°31'24", AN ARC LENGTH OF 206.11 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL 3 TO WHICH A RADIAL BEARS NORTH 03°17'14" WEST, SAID POINT ALSO BEING THE **POINT OF BEGINNING**.

CONTAINING 15.993 ACRES OF LAND, MORE OR LESS.

BASIS OF BEARINGS:

BEARINGS ARE BASED ON AND IDENTICAL TO THAT CERTAIN PARCEL MAP FILED IN BOOK 432 OF MAPS AT PAGE 29, IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

SURVEYOR'S STATEMENT:

THE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT.

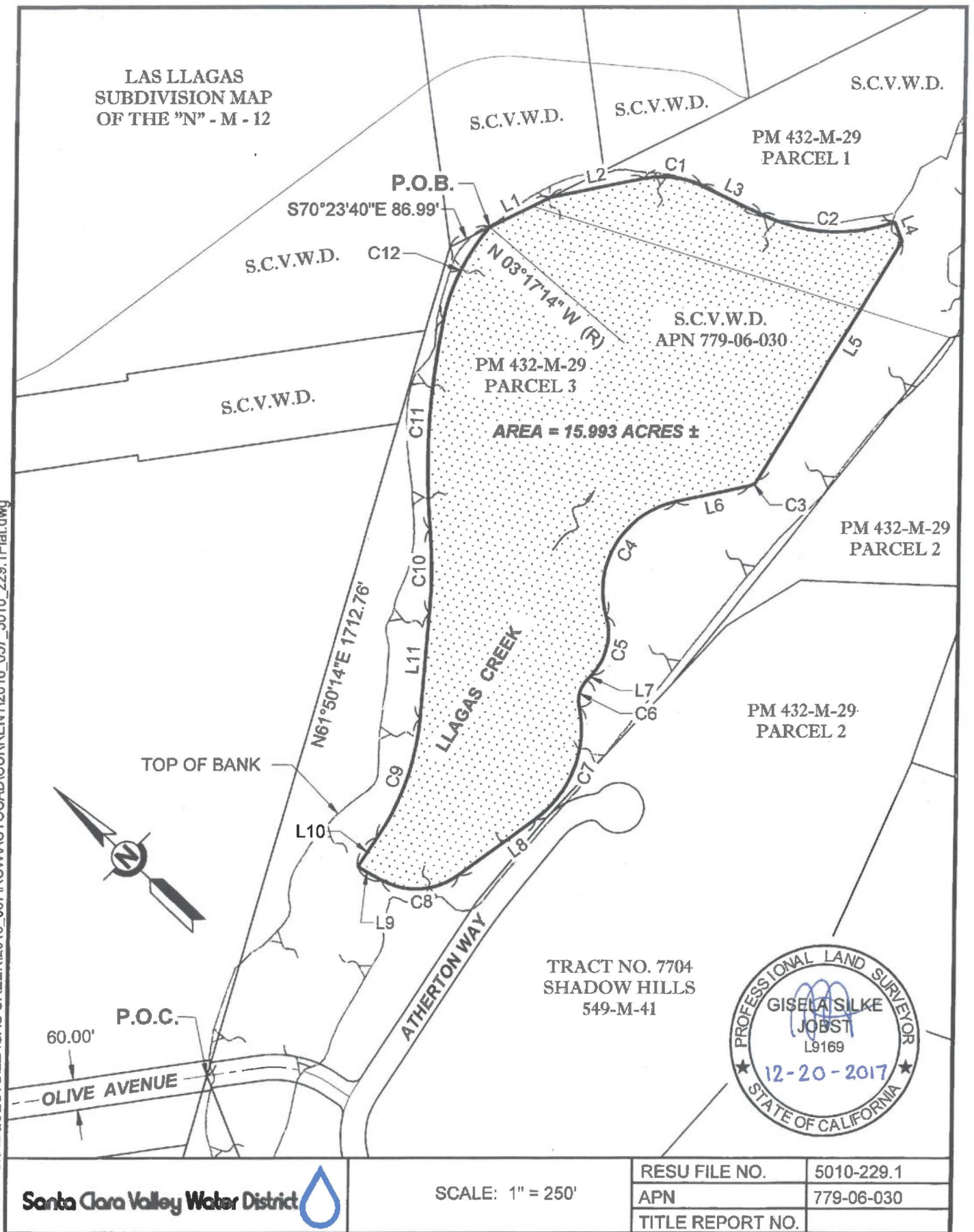


GISELA SILKE JOBST, L9169

12-20-2017
Date



SCVWD S:\REQUESTS\LLAGAS CREEK\2018_057\ROW\AUTOCAD\CURRENT\2018_057_5010_229.1\Plat.dwg



SHEET 1 OF 2

Line Table

Line #	Direction	Length
L1	S70°23'40"E	132.15'
L2	S55°08'06"E	189.44'
L3	S18°32'42"E	134.07'
L4	S24°34'39"W	40.66'
L5	S77°04'33"W	552.38'
L6	N55°46'53"W	148.90'
L7	S89°18'41"W	13.69'
L8	N80°26'05"W	187.51'
L9	N14°37'42"W	55.16'
L10	N79°47'32"E	69.49'
L11	N50°44'39"E	210.95'

Curve Table

Curve #	Radius	Delta	Length
C1	180.00'	36°35'24"	114.95'
C2	360.00'	43°53'06"	275.74'
C3	26.00'	47°08'34"	21.39'
C4	180.00'	94°40'37"	297.44'
C5	122.00'	59°46'11"	127.27'
C6	60.00'	55°22'46"	57.99'
C7	220.00'	65°38'00"	252.01'
C8	140.00'	65°48'22"	160.79'
C9	500.00'	29°02'53"	253.49'
C10	1000.00'	9°37'57"	168.12'
C11	1490.00'	16°04'40"	418.11'
C12	400.00'	29°31'24"	206.11'

Santa Clara Valley Water District



SCALE: N.T.S.

RESU FILE NO.	5010-229.1
APN	779-06-030
TITLE REPORT NO.	

SHEET 2 OF 2

Packet Pg. 86

EXHIBIT E
(to Purchase and Sale Agreement)

MITIGATION EASEMENT AREA

SANTA CLARA VALLEY WATER DISTRICT
San Jose, California

PROJECT: LLAGAS CREEK

RESU File No.: 5010-229.1

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL 1 AND PARCEL 3 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN BOOK 432 AT PAGE 29 IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF OLIVE AVENUE (60.00 FEET WIDE) WITH THE NORTHWESTERLY LINE OF PARCEL 3 AS SHOWN ON SAID MAP;

THENCE ALONG SAID NORTHWESTERLY LINE, NORTH 61°50'14" EAST, 1,712.76 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL 3;

THENCE ALONG SAID NORTHEASTERLY LINE, SOUTH 70°23'40" EAST, 86.99 FEET TO THE **POINT OF BEGINNING**;

THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE OF SAID PARCEL 3 AND ALONG THE NORTHWESTERLY LINE OF PARCEL 1 AS SHOWN ON SAID MAP, SOUTH 70°23'40" EAST, 132.15 FEET;

THENCE LEAVING SAID NORTHWESTERLY LINE OF SAID PARCEL 1, SOUTH 55°08'06" EAST, 189.44 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 180.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 36°35'24", AN ARC LENGTH OF 114.95 FEET;

THENCE SOUTH 18°32'42" EAST, 134.07 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 360.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 43°53'06", AN ARC LENGTH OF 275.74 FEET;

THENCE SOUTH 24°34'39" WEST, 40.66 FEET;

THENCE SOUTH 77°04'33" WEST, 552.38 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 26.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 47°08'34", AN ARC LENGTH OF 21.39 FEET;

THENCE NORTH 55°46'53" WEST, 148.90 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 180.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 94°40'37", AN ARC LENGTH OF 297.44 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT, HAVING A RADIUS OF 122.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 59°46'11", AN ARC LENGTH OF 127.27 FEET;

THENCE SOUTH 89°18'41" WEST, 13.69 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 60.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 55°22'46", AN ARC LENGTH OF 57.99 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT, HAVING A RADIUS OF 220.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 65°38'00", AN ARC LENGTH OF 252.01 FEET;

THENCE NORTH 80°26'05" WEST, 187.51 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 140.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 65°48'22", AN ARC LENGTH OF 160.79 FEET;

THENCE NORTH 14°37'42" WEST, 55.16 FEET;

THENCE NORTH 79°47'32" EAST, 69.49 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 500.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29°02'53", AN ARC LENGTH OF 253.49 FEET;

THENCE NORTH 50°44'39" EAST, 210.95 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 1,000.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 09°37'57", AN ARC LENGTH OF 168.12 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 1,490.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16°04'40", AN ARC LENGTH OF 418.11 FEET TO THE BEGINNING OF A COMPOUND CURVE TO THE RIGHT, HAVING A RADIUS OF 400.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29°31'24", AN ARC LENGTH OF 206.11 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL 3 TO WHICH A RADIAL BEARS NORTH 03°17'14" WEST, SAID POINT ALSO BEING THE **POINT OF BEGINNING**.

CONTAINING 15.993 ACRES OF LAND, MORE OR LESS.

BASIS OF BEARINGS:

BEARINGS ARE BASED ON AND IDENTICAL TO THAT CERTAIN PARCEL MAP FILED IN BOOK 432 OF MAPS AT PAGE 29, IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

SURVEYOR'S STATEMENT:

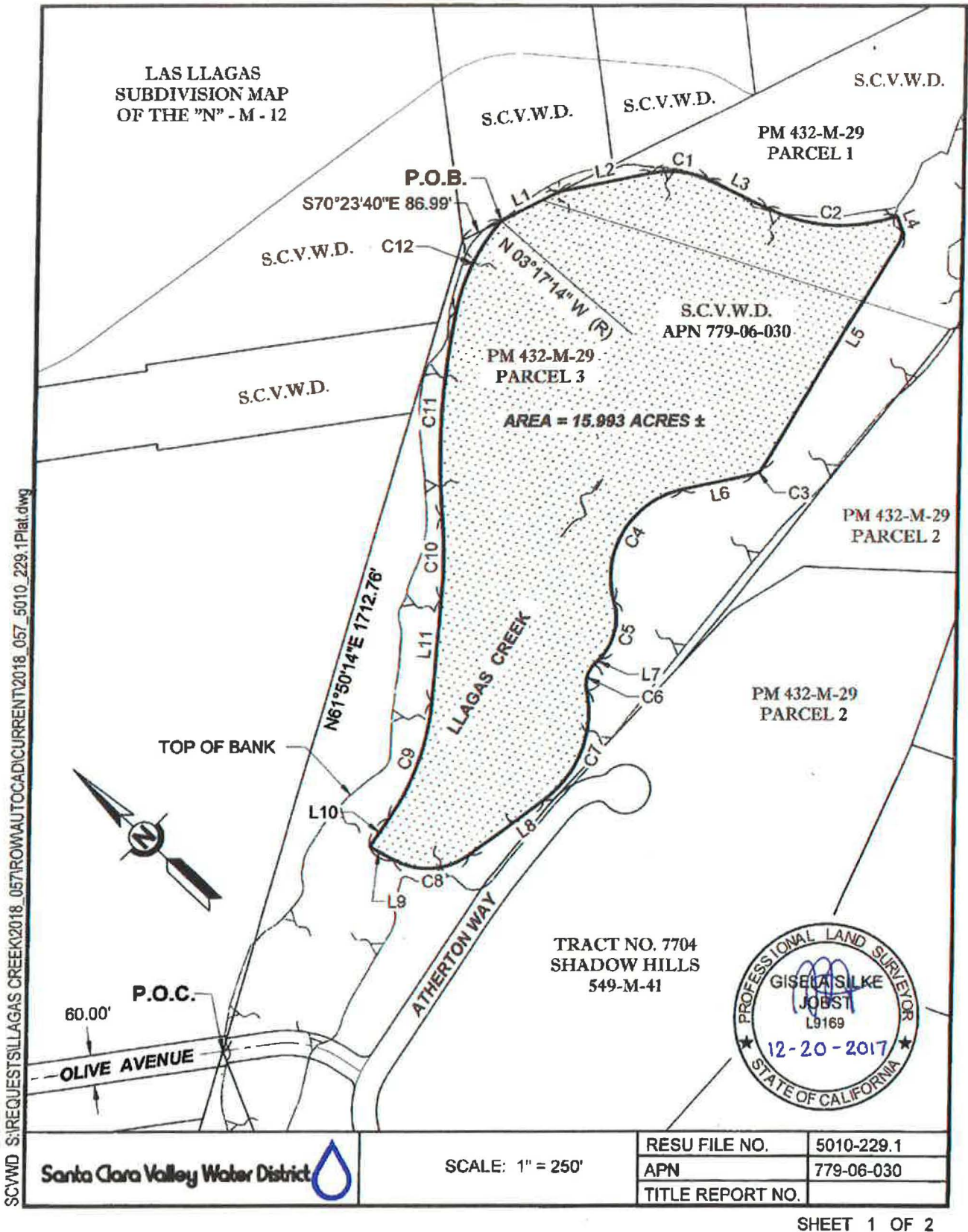
THE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT.



GISELA SILKE JOBST, L9169

12-20-2017
Date





SCVWD S:\REQUESTS\LAGAS CREEK\2018_057\ROW\AUTOCAD\CURRENT\2018_057_5010_229.1\plat.dwg

Line Table		
Line #	Direction	Length
L1	S70°23'40"E	132.15'
L2	S55°08'06"E	189.44'
L3	S18°32'42"E	134.07'
L4	S24°34'39"W	40.66'
L5	S77°04'33"W	552.38'
L6	N55°46'53"W	148.90'
L7	S89°18'41"W	13.69'
L8	N80°26'05"W	187.51'
L9	N14°37'42"W	55.16'
L10	N79°47'32"E	69.49'
L11	N50°44'39"E	210.95'

Curve Table			
Curve #	Radius	Delta	Length
C1	180.00'	36°35'24"	114.95'
C2	360.00'	43°53'06"	275.74'
C3	26.00'	47°08'34"	21.39'
C4	180.00'	94°40'37"	297.44'
C5	122.00'	59°46'11"	127.27'
C6	60.00'	55°22'46"	57.99'
C7	220.00'	65°38'00"	252.01'
C8	140.00'	65°48'22"	160.79'
C9	500.00'	29°02'53"	253.49'
C10	1000.00'	9°37'57"	168.12'
C11	1490.00'	16°04'40"	418.11'
C12	400.00'	29°31'24"	206.11'

Santa Clara Valley Water District



SCALE: N.T.S.

RESU FILE NO.	5010-229.1
APN	779-06-030
TITLE REPORT NO.	

SHEET 2 OF 2

EXHIBIT F
(to Purchase And Sale Agreement)
CERTIFICATE OF ACCEPTANCE

**Certificate of Acceptance by Grantee
(Government Code Section 27281).**

In accordance with Government Code Sec. 27281, this is to certify that the interest in real property conveyed by [Insert name of property owner(s)], in the foregoing Conservation Easement Agreement to the County of Santa Clara, a political subdivision of the State of California, is hereby accepted pursuant to authority delegated by resolution of the Board of Supervisors of the County of Santa Clara on [Insert date of Director signature], and the County consents to the recordation thereof by its duly authorized officer.

By: _____

_____, Director
Parks and Recreation Department

APPROVED AS TO FORM AND LEGALITY:

_____, Deputy County Counsel

[NOTE: DIRECTOR'S SIGNATURE MUST BE NOTARIZED AS SEPARATE ATTACHMENT]

**City of Morgan Hill to insert their standard
“Certificate of Acceptance by Grantee”**

EXHIBIT G
CONSERVATION EASEMENT
(follows on next page)

RECORDING REQUESTED BY:

County of Santa Clara

WHEN RECORDED, RETURN TO:

County of Santa Clara, Parks and Recreation
 Department
 Real Estate Services
 298 Garden Hill Drive
 Los Gatos, CA 95032

TO BE RECORDED WITHOUT FEE AS PER
 GOVERNMENT CODE 6103

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN's: 779-03-114, 779-06-030, 779-49-014, 779-06-032

District Files: 5010-229.1; 5010-244.1

CONSERVATION EASEMENT AGREEMENT

Parties: Grantor: Santa Clara Valley Water District, a special district organized and existing under the laws of the State of California ("**Grantor**" or "**SCVWD**").

Grantee: The County of Santa Clara, a political subdivision of the State of California ("**Grantee**", "**County**" or "**County of Santa Clara**"); and,

Grantee: City of Morgan Hill, a municipal corporation of the State of California ("**Grantee**", "**City**" or "**City of Morgan Hill**"). Collectively, the City and County are referred to herein interchangeably as "**Grantee**" or "**Grantees**".

Subject The "**Property**" consists collectively of both:

Property: A. That certain real property commonly known as Lake Silveira, located in the City of Morgan Hill, County of Santa Clara, State of California, consisting of approximately 52.932 acres, as more particularly described in Attachment 1 attached hereto and incorporated herein ("**Lake Silveira**"); and

B. That certain real property commonly known as the SCVWD Link Property, located in the City of Morgan Hill, County of Santa Clara, State of California, consisting of approximately 14,791 square feet, as more particularly described in Attachment 2 attached hereto and incorporated herein (the "**Olive Street Crossing**").

Conservation This Conservation Easement preserves in perpetuity the "**Conservation Values**"

Conservation Easement By and Among
 SCVWD, City of Morgan Hill and
 County of Santa Clara – Lake Silveira

- Easement** which are the park purposes of trail connectivity through linkage of this site to the regional system of trails within the geographic boundary of Santa Clara County, scenic viewshed protection, habitat conservation and open space preservation consistent with the 1995 Countywide Trails Master Plan, as amended from time to time.
- Mitigation Easement** The Mitigation Easement (**Attachment 3**) is entered into between SCVWD and the United States by and through the United States Army Corps of Engineers. The easement will ensure that the mitigation activities associated with the Upper Llagas Creek Flood Protection Project, Project #26174052 (“**Flood Protection Project**”) will be retained forever in its natural, restored, or enhanced condition. The area of mitigation to be covered by the Mitigation Easement shall be for the purpose of preservation, restoration and enhancement of native species and their habitats implemented in accordance with the Flood Protection Project. The mitigation easement area covered by the Mitigation Easement shall be comprised of not more than 16 acres within the Property as reflected in **Attachment 3-A** (the “**Mitigation Easement Area**”) as more fully set out in exhibits and/or attachments to the final executed Mitigation Easement, and, with respect to the Mitigation Easement Area, the Conservation Easement shall be subordinate to the Mitigation Easement.
- Easement Area:** The “**Conservation Easement Area**” consists of that portion of the Property described on **Attachments 1 and 2** attached hereto and incorporated herein.
- Agreed:** By execution of this Conservation Easement (“**Conservation Easement**”), and in consideration of the above and mutual covenants, terms, conditions and restrictions contained herein below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and pursuant to the laws of the State of California, including California Civil Code *Section 815 et seq.*, Grantor hereby voluntarily grants and conveys to Grantees and each of their respective successors and assigns, and Grantees hereby accept, this Conservation Easement forever in, on, over and across the Conservation Easement Area, subject to the terms and conditions set forth herein, restricting forever the uses which may be made of the Conservation Easement Area; and the parties agree to all of the foregoing and as follows:

RECITALS

A. Grantor is Owner. Grantor represents, warrants and agrees that Grantor is the sole owner, in fee title, of the Property; and,

B. Purpose of Easement. It is the intention of the Parties to protect the Conservation Easement Area in perpetuity to serve the Conservation Values through the grant of this Conservation Easement to County and City. This Conservation Easement forever protects the Conservation

Easement Area from uses that would impair or interfere with the Conservation Values. Use of the Conservation Easement Area must not impair or interfere with the Conservation Values and must be compatible with these Conservation Values. Notwithstanding the foregoing, Grantor and Grantee hereby acknowledge and agree that this Conservation Easement is subordinate and subject to the fully executed Mitigation Easement only with respect to the Mitigation Easement Area so long as all Grantor's successors and assigns are forever bound by the terms of this Conservation Easement and a future trail development and connectivity as generally depicted in the attached **Attachment 4** ("**Proposed Trail Alignment**") is not impacted; and,

C. The City prepared and adopted a Master Plan for Lake Silveira, on or about April 19, 1989, hereinafter called the "1989 Master Plan", which was approved by the County's Board of Supervisors on September 11, 1990; and,

D. County adopted the 1995 Countywide Trails Master Plan on November 14, 1995, as part of its General Plan, which included a proposed future connector trail through and around Lake Silveira.

E. City and County agree that by entering into this Conservation Easement, all prior agreements by, among or between the Grantees, including all leases, with respect to the Property, excepting any prior lawful transfer of any existing fee title or easement, interests, are terminated and are of no further force or effect.

TERMS, COVENANTS AND CONDITIONS

1. Conservation Easement Definition. This Conservation Easement shall have a definition, force and effect consistent with California Civil Code *Section 815.1* and shall include the *Conservation Values*.

2. Grant of Easement/Rights of Grantees. To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to each of the Grantees for the entire Conservation Easement Area, except that, with respect to the Mitigation Easement Area only, such rights shall be subject and subordinate to the terms and conditions of the Mitigation Easement:

(a) To preserve, protect, sustain, restore, develop and enhance the Conservation Values for the Conservation Easement Area in accordance with the terms and conditions of this Conservation Easement;

(b) To enter upon the Conservation Easement Area for scientific research necessary to support monitoring and adaptive management of the Conservation Values; provided, that neither Grantee shall unreasonably interfere with Grantor's use and quiet enjoyment of the Conservation Easement Area or the Mitigation Easement Area;

(c) To enter upon the Conservation Easement Area to carry out those management and monitoring activities and requirements applicable to the Conservation Easement Area that either Grantee determines to be reasonable or necessary to preserve, protect, sustain, restore, create or enhance the Conservation Values; provided, that the Grantee performing these activities use reasonable good faith efforts to conduct such management and monitoring activities in a manner that does not unreasonably interfere with Grantor's use and quiet enjoyment of the Conservation Easement Area and the terms and conditions of the Mitigation Easement;

(d) To prevent any activity on or use of the Conservation Easement Area that is inconsistent with the Conservation Values, to enforce the terms or conditions of this Conservation Easement and/or to require the restoration of such areas or features of the Conservation Easement Area that may be damaged by any act, failure to act, or any use that is inconsistent with the Conservation Values; and,

(e) For the perpetual opportunity for the City to develop, operate and maintain a proposed trail system connecting through and along the Conservation Easement Area, as shown on the attached **Attachment 4** (the "**Proposed Trail Alignment**"). The Proposed Trail Alignment, as depicted by a yellow dashed line on **Attachment 4**, shall have a maximum eighteen (18) foot width and shall serve as an important Conservation Value once established. City's rights to establish the Proposed Trail Alignment shall not be removed, obstructed, altered or prevented by any action of Grantor, its successors, assigns or third party beneficiaries; except that the City may be required to realign the Proposed Trail Alignment for Grantor's purposes, including but not limited to flood protection on the Property or wetlands or habitat mitigation within the Mitigation Area, as determined by Grantor in its sole, but reasonable, discretion, or as may be necessary to meet the terms and conditions of the Mitigation Easement. City shall use best efforts to establish connectivity of the Proposed Trail Alignment through two potential pedestrian trail crossings located at Olive Avenue and parallel to Monterey Highway creek bridge (collectively, the "**Crossings**"), as depicted on **Attachment 4**. However, connectivity from the Proposed Trail Alignment to Crossings shall not be unreasonably obstructed, altered or prevented by any action of Grantor, its successors, assigns or third party beneficiaries.

3. Grantor's Use of Conservation Easement Area. Notwithstanding anything to the contrary stated in this Conservation Easement, Grantor is authorized to use the Mitigation Easement Area to fulfill the obligations and responsibilities set forth in the Mitigation Easement, including without limitation, construction of flood protection measures for the Flood Protection Project, subject to compliance with all requisite laws. The Parties further hereby acknowledge and agree that Grantor shall have the right, but not the obligation, to implement reasonable public safety measures from time to time on the Property.

4. Maintenance Responsibilities. Grantor and Grantees shall be responsible for construction and maintenance, as among themselves, as follows: a) Grantor shall be solely responsible for constructing and maintaining all flood protection and on-site mitigation improvements made as part of the Flood Protection Project within the Property, including any improvements required by the Mitigation Easement within the Mitigation Easement Area; and b) City of Morgan Hill shall be solely responsible for all costs for planning, design, construction,

operation and maintenance associated with the Conservation Values, including those which the City desires to undertake in accordance with the 1989 Master Plan, the funding for which the City of Morgan Hill shall, with diligence and good faith, pursue, seek and obtain at the level necessary to fulfill the Conservation Values at all times after Grantor's completion of the Flood Protection Project.

5. Conservation Easement Appurtenant. The grant of easement contained herein binds Grantor and all of Grantor's successors and assigns, and constitutes a servitude on the Conservation Easement Area that runs with the land in perpetuity.

6. Enforcement. Any act, conveyance, contract or authorization by the Grantor that uses, or causes or allows the use of, the Conservation Easement Area in a manner contrary to or inconsistent with the terms of this Conservation Easement constitutes a material breach of this Conservation Easement, but excepting therefrom the priority rights of the Mitigation Easement with respect to the Mitigation Easement Area only. The County or City may bring an action in any court to enforce the terms of this Conservation Easement and the responsibility for paying all costs, fees, damages, penalties and claims associated with or relating to enforcement, litigation, remediation, mitigation and compliance involving this Conservation Easement shall be as determined by said court. The enforcement remedies in this paragraph are not exclusive, and each of the Grantees may pursue any and all appropriate legal and equitable remedies, including but not limited to specific performance and injunctive relief. Grantees each have sole discretion to determine under what circumstances an enforcement action shall be brought. A Grantee's failure to enforce the terms of this Conservation Easement shall not be deemed a waiver of either of the Grantee's rights regarding any subsequent breach.

7. Right of Entry. Grantor grants to each of the Grantees and their respective successors, assigns, agents, employees and contractors a right to enter the Property (the "**Right of Entry**") at reasonable times to inspect the Conservation Easement Area for compliance with this Conservation Easement or to conduct any maintenance or restoration activities, with such right of entry being subordinate and subject to the terms and conditions of the Mitigation Easement with respect to the Mitigation Easement Area. Prior to entering the Property, the Grantee seeking entry will notify Grantor at least forty-eight (48) hours in advance, except for emergencies in which case said Grantee may provide notice immediately upon or after entry. The notice may be by telephone, personal service, email or U.S. mail delivered to the address of the Grantor as listed on the most recent assessment roll of the Office of the Assessor for Santa Clara County. Each Grantee shall indemnify, defend, and hold harmless Grantor for any and all claims, liabilities, losses, injuries (including death and bodily injury), penalties, fees and damages, directly caused by the Grantee's use of this Right of Entry and/or its agents, employees or contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of Grantor, its employees, agents, successors, assigns or contractors or the other Grantee or the other Grantee's employees, agents, successors, assigns or contractors. This Right of Entry includes the right to enter the land to correct any dangerous condition as defined by California Government Code *Section 830 et seq.*

(a) County acknowledges and agrees to apply for and secure an appropriate permit from the City of Morgan Hill for attendance by third party invitees at any County-sponsored

events occurring within the Conservation Easement, and such permit shall not be unreasonably withheld or denied.

8. **Liability and Indemnification.**

(a) **Grantor's Obligations.** Grantor shall hold harmless, protect and indemnify each of the Grantees and their respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "**Grantee Indemnified Party**" and collectively, "the **Grantee Indemnified Parties**") from, for and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "**Claim**" and, collectively, "**Claims**"), arising from or related to Grantor's use of the Property or the use of the Property by any of Grantor's directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them, including but not limited to construction or maintenance of the Flood Protection Project, except that this indemnification shall be inapplicable to any Claim directly caused solely by the gross negligence or willful misconduct of any of the Grantees or any of the Grantee Indemnified Parties

(b) **City's Obligations.** City agrees to hold harmless, protect and indemnify the Grantor, its agents, officers, directors, and employees from and against any and all Claims arising from or related to the use of the Property as described in this Conservation Easement by any of the Grantees, any of the applicable Grantee Indemnified Parties, City's invitees, or the general public; except that this indemnification shall be inapplicable to any Claim directly caused solely by the gross negligence or willful misconduct of Grantor, the Corps or any of the Grantor's or Corps' successors, assigns, employees, agents, officers, directors, representatives, contractors or invitees.

(c) **County's Obligations.** County agrees to hold harmless, protect and indemnify the Grantor, its agents, officers, directors, and employees from and against any and all Claims arising from or related to the use of the Property by County or any of the County's directors, officers, employees, agents, contractors and representatives and each of their respective heirs, personal representatives, successors and assigns except that this indemnification shall be inapplicable to any Claim directly caused solely by the gross negligence or willful misconduct of Grantor, the Corps or any of Grantor's or Corps' successors, assigns, employees, agents, officers, directors, representatives, contractors or invitees.

9. **Enforceable Covenant and Restriction.** This Conservation Easement and every term, condition, restriction and covenant in it is intended for the benefit of each of the Grantees, their respective successors and assigns, and constitutes an enforceable restriction. Grantor and the Grantees each expressly intend that this covenant is to run with the land and constitutes an equitable servitude and shall bind every successive owner of the Property or of any interest in it, and shall be enforceable by each of the Grantees, their respective successors and assigns.

10. Taxes and Assessments. Grantor warrants, represents and agrees to timely pay or cause to be paid any real property taxes, assessments and liens that may be levied or assessed against the fee title to the Property, and the City of Morgan Hill hereby warrants, represents and agrees to timely pay or cause to be paid any real property taxes, assessments and liens that may be levied or assessed against any of its improvements made within the Conservation Easement Area. Grantor does not waive any legal right or recourse relating to the assessment or collection of taxes.

11. Transfer of Easement. Neither Grantee will transfer its Conservation Easement rights without the express written permission of the other Grantee and Grantor, which permission shall not be unreasonably withheld or delayed. Any proposed transfer shall be subject to the following: (a) the Grantee desiring to transfer or assign its Conservation Easement rights shall give the other Grantee and Grantor at least sixty (60) calendar days prior written notice of the proposed assignment or transfer, (b) the transfer is only to another California agency, city, county or special district that has the authority to acquire and hold conservation easements pursuant to California Civil Code *Section 815.3* and California Government Code *Section 65967(c)* (and any successor or other provisions then applicable), (3) the transferee or assignee is otherwise reasonably acceptable to the other Grantee and to Grantor; and (4) the transferee or assignee agrees in writing to assume fully the obligations hereunder of the Grantee seeking the transfer. The failure of a Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

12. Transfer of Property. Grantor agrees to incorporate this Conservation Easement by reference into any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to each of the Grantees of its intent to transfer any interest at least thirty (30) calendar days prior to the date of such transfer. Each of the Grantees shall have the right to prevent subsequent transfers in which prospective subsequent claimants or transferees are not given notice of the covenants, terms, conditions and restrictions of this Conservation Easement. The failure of Grantor to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any successor in interest of Grantor, by acceptance of a deed, lease, or other document purporting to convey an interest in the Property, shall be deemed to have consented to, reaffirmed and agreed to be bound by all of the terms, covenants, restrictions, and conditions of this Conservation Easement.

13. Amendment. This Conservation Easement may not be amended, modified or otherwise changed in any manner, except by a written amendment executed by all the parties hereto, or their successors in interest, it being understood that no Grantee or Grantor will ever be obligated to negotiate or enter into any such amendment; and no discretionary approval that this Conservation Easement may allow to be made from time to time by a party will operate to amend or modify any of the terms of this Conservation Easement to any extent or in any manner.

14. Merger. The doctrine of merger shall not operate to extinguish the Conservation Easement if the Conservation Easement and the Property become vested in the same party.

15. Headings. The titles and headings of the various sections of this Conservation Easement are intended solely for convenience of reference and are not intended to explain, modify or place any construction on any of the provisions of this Conservation Easement.

16. Governing Law; Exclusive Jurisdiction. This Conservation Easement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Conservation Easement or the transaction(s) contemplated by it, shall be governed by, construed and enforced in accordance with the law of the State of California (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to this Conservation Easement, including arbitration or mediation proceedings, shall be brought only in the State of California, County of Santa Clara EACH OF THE PARTIES CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN THE STATE OF CALIFORNIA, COUNTY OF SANTA CLARA.

17. Severability. Each and every provision of this Conservation Easement is severable from any and all other provisions of this Conservation Easement. Should any provision or provisions of this Conservation Easement be, by operation of law, unenforceable, the balance shall nonetheless be of full force and effect. If there is a conflict between a part of this Conservation Easement and any present or future law, regulation or other regulatory mandate or requirement, the part of this Conservation Easement that is affected shall be curtailed only to the extent necessary to bring it within the requirements of the law, regulation, regulatory mandate or requirement. Such curtailment may commence as quickly as necessary to ensure full compliance with applicable law, regulation, regulatory mandate or requirement. Furthermore, in that event, the parties agree to negotiate in good faith to amend this Conservation Easement in such a manner as will provide each party with the same intended benefit while still complying with all applicable laws and regulations.

18. Waivers. No delay or omission by either party hereto to exercise any right in each instance, including those occurring upon any noncompliance or default by the other party, with respect to any of the terms of this Conservation Easement shall impair any such right or power or be construed to be a waiver thereof of any other instance in whole or in part. A waiver by either of the parties hereto of any of the covenants, conditions or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition or agreement herein contained.

19. Cumulative Remedies. The rights and remedies of each of the parties to this Conservation Easement, whether pursuant to this Conservation Easement or in accordance with law, shall be construed as cumulative, and the exercise of any single right or remedy shall constitute neither a bar to the exercise of nor the waiver of any other available right or remedy.

20. Construction. This Conservation Easement shall not be construed more strongly against any party regardless of who is more responsible for its preparation.

21. Relationship of Parties. The parties acknowledge that nothing set forth in this Conservation Easement shall be deemed or construed to render the parties as joint venturers, partners, agents, a joint enterprise or employer and employee. Under no circumstances shall any party be considered the employer of any other party's personnel, nor shall any party have any right with respect to any employee, agent or representative of any other party. No party shall have authority to contract for or bind the other in any manner.

22. Voluntary Execution. The parties acknowledge that each of them have been furnished with copies of, and have read, this Conservation Easement and that this Conservation Easement has been freely and voluntarily entered into by them and they agree to be fully bound by the terms hereof. Furthermore, this Conservation Easement is executed without reliance upon any representation by any person not contained herein.

23. Status of Parties; Authority to Sign. Each signatory to this Conservation Easement personally warrants that he/she has full authority to execute this Conservation Easement on behalf of the entity which he/she represents, if signing in a representative capacity. Grantor warrants that it is the sole owner, in fee title, of the Property and will continue to be the sole owner of the Property after the Effective Date (as defined below) of this Conservation Easement and the Conservation Easement shall be recorded in the official records of the County of Santa Clara.

24. Entire Agreement. This instrument, along with the Mitigation Easement, sets forth the entire agreement of the parties with respect to this Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the subject matter contained herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment in accordance with the provisions contained herein.

25. Successors. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the Property.

26. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

27. Recording. Grantees shall record this Conservation Easement in the Official Records of the county where the Property is located, and may re-record it at any time as either Grantee deems necessary to preserve their/its respective rights hereunder.

28. Counterparts. The parties may execute this Conservation Easement in two or more counterparts, which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

29. Effective Date. The effective date of this Conservation Easement ("**Effective Date**") shall be the last date that it is fully executed by the Grantor and each of the Grantees.

30. Survival. Those Sections and provisions that by their nature should survive, shall survive termination, expiration or cancellation of this Conservation Easement, including but not limited to Sections 1, 5, 6 and 8 through 30, inclusive.

////SIGNATURES FOLLOW ON NEXT PAGE////

IN WITNESS WHEREOF, effective as of the Effective Date, the parties hereto have executed this Conservation Easement as follows:

GRANTOR: SANTA CLARA VALLEY WATER DISTRICT, A Special District of the State of California

By: _____
 Norma J. Camacho
 Chief Executive Officer

Date: _____

APPROVED AS TO FORM AND LEGALITY:

 Brian Hopper,
 Senior Assistant District Counsel

////SIGNATURES FOLLOW ON NEXT PAGE////

GRANTEE: COUNTY OF SANTA CLARA, a Political Subdivision of the State of California

By: _____
S. JOSEPH SIMITIAN, President,
Board of Supervisors

Date: _____

ATTEST:

By: _____
Megan Doyle, Clerk of the
Board of Supervisors

Date: _____

APPROVED AS TO FORM AND LEGALITY:

COUNTY COUNSEL, SANTA CLARA COUNTY

By: _____
Shirley R. Edwards,
Deputy County Counsel

////SIGNATURES FOLLOW ON NEXT PAGE////

GRANTEE: CITY OF MORGAN HILL, a Municipal Corporation

By: _____
_____, Chair,
City Council

Date: _____

ATTEST:

By: _____
_____, Clerk of the
City Council

Date: _____

APPROVED AS TO FORM AND LEGALITY:

Donald Larkin, City Attorney

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 } SS

On this ____ day of _____, in the year 20____, before me _____,

Notary Public, personally appeared _____
Name(s) of Signer(s)

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.

Notary Public in and for said County and State

CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

☐ Individual

☐ Trustee(s)

☐ Corporate Officer(s): _____

☐ Guardian/Conservator

☐ Attorney-In-Fact _____

Signer is Representing (Name of Person(s) or Entity(ies))

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 } SS

On this ____ day of _____, in the year 20__, before me _____,

Notary Public, personally appeared _____
 Name(s) of Signer(s)

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

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☐ Guardian/Conservator

☐ Attorney-In-Fact _____

Signer is Representing (Name of Person(s) or Entity(ies))

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STATE OF CALIFORNIA }
COUNTY OF SANTA CLARA } SS

On this ____ day of _____, in the year 20____, before me _____,

Notary Public, personally appeared _____
Name(s) of Signer(s)

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.

Notary Public in and for said County and State

CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

☐ Individual

☐ Trustee(s)

☐ Corporate Officer(s): _____

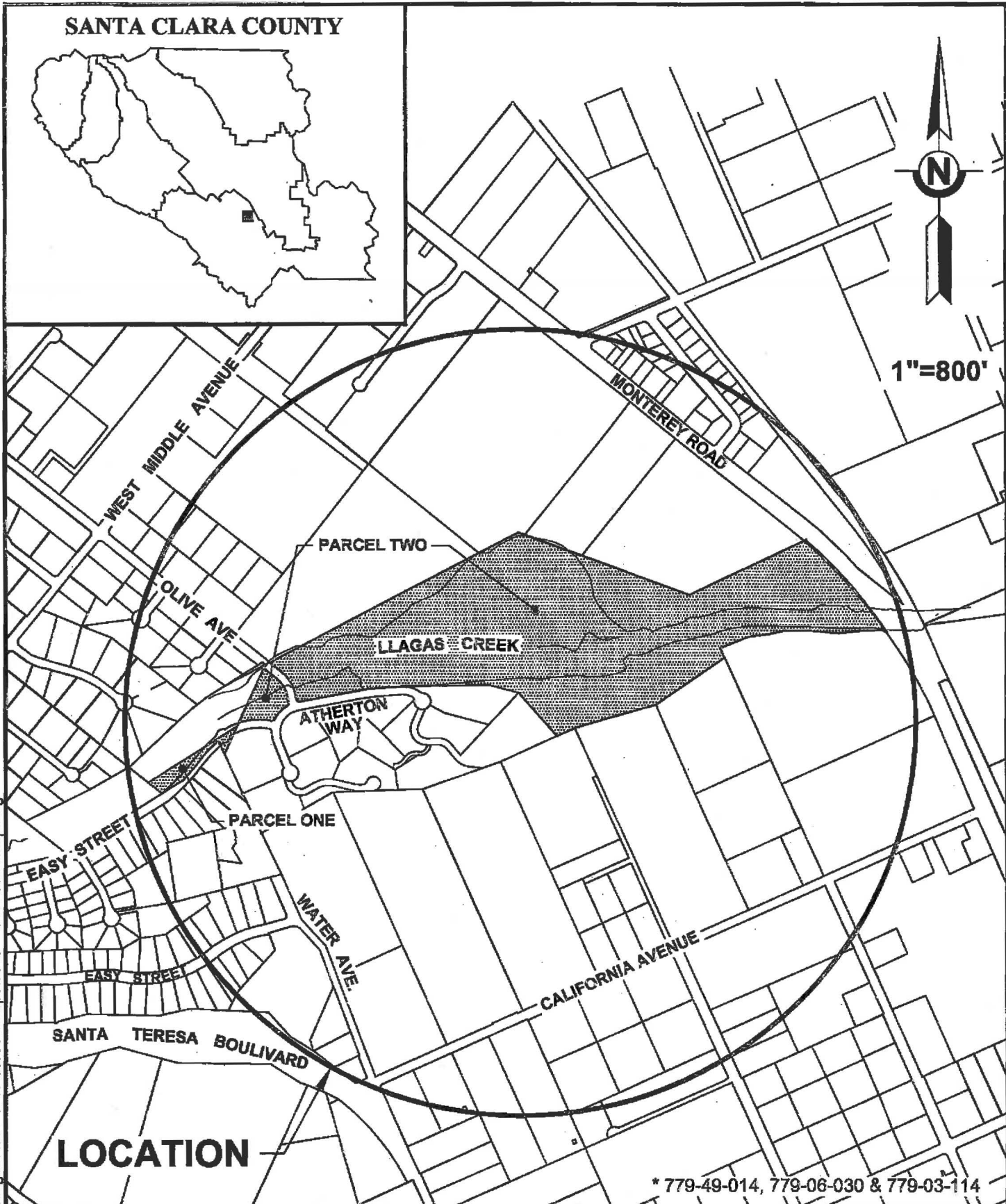
☐ Guardian/Conservator

☐ Attorney-In-Fact _____

Signer is Representing (Name of Person(s) or Entity(ies))

ATTACHMENT 1
(to Conservation Easement)
LEGAL DESCRIPTION OF PROPERTY (LAKE SILVEIRA)

Attachment: Purchase and Sale Agreement Silveira Lake including Conservation Easement (1656 : Acceptance of Easement in Association



Attachment: Purchase and Sale Agreement Silveira Lake including Conservation Easement (1656 : Acceptance of Easement in Association

SCVWD C:\ROW 2013\Ilgas\2014-174\Location Maps\5010 229 Location Map.dwg

UVAS/LLAGAS WATERSHED		LLAGAS CREEK	
Santa Clara Valley Water District	County of Santa Clara	PROJ. NO.	5010
	Easy St. , Olive Ave. and Atherton Way	FILE NO.	229
	MORGAN HILL, CA. 95037	APN	*
		DRAWN	B. Snyder
		DATE	07/17/14
			Packet Pg. 1

SANTA CLARA VALLEY WATER DISTRICT
San Jose, California

By: DOC. 7403031 & DOC. 7403032

Checked by: _____ Date: _____

PROJECT: LLAGAS CREEK

PROPERTY: COUNTY OF SANTA CLARA

FILE NO.: 5010-229

All that certain real property situate in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

PARCEL ONE

Being that portion of LOT 52 as conveyed from Walter Von Tagen and Verne D. Freeman and Joanne O. Freeman, his wife to the County of Santa Clara per Document 7403032, Santa Clara County Records described as follows:

LOT 52, as said lot is shown upon that certain Map entitled, "Tract No. 5448, Amberwood Glen Unit No. 2" which Map was filed for record on June 13, 1974 in Book 341 of Maps, pages 46, 47 and 48, Santa Clara County Records described as follows:

EXCEPTING THEREFROM that portion thereof described in the Deed from Walter Von Tagen, et al, to the City of Morgan Hill, recorded February 2, 1976 in Book B849 of Official Records, page 25, as follows:

BEGINNING at the most Westerly corner of Lot 52, said corner also being a common corner with Lot 41 as said Lots and corners are shown on the Map entitled "Tract No. 5448, Amberwood Glen Unit No. 2" filed in Book 341 of Maps, pages 46, 47 and 48, Santa Clara County Records; thence South 51° 40' East 147.44 feet; thence North 57° 20' 30" East 628.33 feet; thence North 24° 26' 42" East 407.80 feet; thence South 62° 11' 31" West 224.91 feet; thence tangent to the last course, along a curve to the left an arc distance of 362.67 feet, said curve having a central angle of 15° 40' 58" and a radius of 1325.00 feet; thence tangent to the last curve, South 46° 30' 33" West 407.53 feet; thence along a curve to the right an arc distance of 33.87 feet, said curve having a central angle of 2° 21' 07" and a radius of 825.00 feet to the point of beginning.

ALSO EXCEPTING THEREFROM that portion thereof described in the Deed from Walter Von Tagen, et al, to Sunnybrook Ranch, a limited partnership, recorded June 9, 1976 in Book C071 of Official Records, page 423, as follows:

BEGINNING at the most northeastern corner of Parcel 3 as said parcel is shown on the Parcel Map filed in Book 326 of Maps, at page 42, Santa Clara County Records; thence South 56° 58' 35" West, 288.84 feet; thence from a tangent which bears North 42° 54' 23" East, along a curve to the left, an arc distance of 122.22 feet; said curve having a radius of 1000.00 feet and a central angle of 7° 00' 10"; thence tangent to the last curve along a curve to the right an arc distance of 192.08 feet, said curve having a radius of 1000.00 feet and a central angle of 11° 00' 19"; thence South 25° 03' 44" East, 89.21 feet to the point of beginning.

Containing 0.913 acre of land, more or less. APN's: 779-03-114

BASIS OF BEARING: Bearings are based on and identical to that certain Tract Map No. 5448 filed in Book 341 of Maps, at pages 46, 47 and 48, filed in the office of the Recorder, County of Santa Clara, State of California.

PARCEL TWO

Being that portion of Parcels 1, 2, and 3 as conveyed from Verne D. Freeman and Joanne O. Freeman et al to the County of Santa Clara per Document 7403031 described as follows:

Being all of Parcels 1, 2, and 3 as shown on Parcel Map recorded in book 432 of Maps at page 29, Santa Clara County Records described as follows:

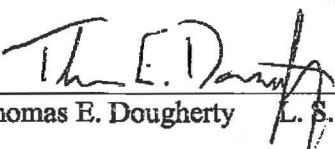
Excepting therefrom a parcel of land described as follows:

Beginning at an iron pipe at the Northwestern line of Parcel 3 at the intersection with the centerline of Olive Avenue as shown on said map and running thence along said Northwestern line North 61° 50' 14" East 27.35 feet; thence South 52° 05' 23" East 93.21; thence along a tangent curve to the right having a radius of 225.00 feet and a central angle of 41° 06' 14", a distance of 161.42 feet; thence South 10° 59' 09" East 27.83 feet; thence along a tangent curve to the left, having a radius of 20.00 feet and a central angle of 90° a distance of 31.42 feet; thence North 79° 00' 51" East 413.52 feet, and North 89° 59' 59" East 203.85 feet; thence along a tangent curve to the right, having a radius of 155 feet and a central angle of 7° 32' 32"; a distance of 20.40 feet; thence North 88° 45' 15" East 511.76 feet, South 75° 16' 02" East 174.74 feet, and South 41° 39' 22" East 346.11 feet to a point in the Southeasterly line of Parcel 2; thence along said Southeasterly line, South 64° 58' 03" West 370.00 to a 3/4" iron pipe, South 69° 49' 09" West 496.66 feet to an old 2" x 3" stake, and South 87° 47' 33" West 536.63 feet to a 3/4" iron pipe at the corner common to Parcels 2 and 3; thence along the Southeasterly line of Parcel 3, South 59° 40' 07" West 497.82 feet to 3/4" iron pipe at the most Southerly corner of Parcel 3; thence along the Southwesterly and Northwestern line of Parcel 3, North 25° 05' 14" West 525.25 feet and North 23° 59' 11" East 207.43 feet; thence along a curve to the right from a tangent bearing of North 71° 20' 24" East, having a radius of 380.00 feet and a central angle of 29° 26' 02", a distance of 195.21 feet; thence along a tangent curve to the left, having a radius of 20.00 feet and a central angle of 75° 11' 02" a distance of 26.24 feet; thence along a tangent curve to the right, having a radius of 185.00 feet and a central angle of 33° 27' 30" a distance of 108.03 feet; thence along a tangent curve to the left, having a radius of 20.00 feet and a central angle of 70° 02' 02", a distance of 24.45 feet; thence North 10° 59' 09" West 40.15 feet; thence along a tangent curve to the left, having a radius of 175.00 feet and a central angle of 41° 06' 14" a distance of 125.55 feet; thence North 52° 05' 23" West 98.10 feet to the Northwestern line of Parcel 3; thence along said Northwestern line North 23° 59' 11" East 25.76 feet to the point of beginning.

Containing 52.019 acres of land, more or less. APN's: 779-06-030 and 779-49-014

BASIS OF BEARING: Bearings are based on and identical to that certain Tract Map No. 7704 filed in Book 549 of Maps, at pages 41, 42 and 43, filed in the office of the Recorder, County of Santa Clara, State of California.

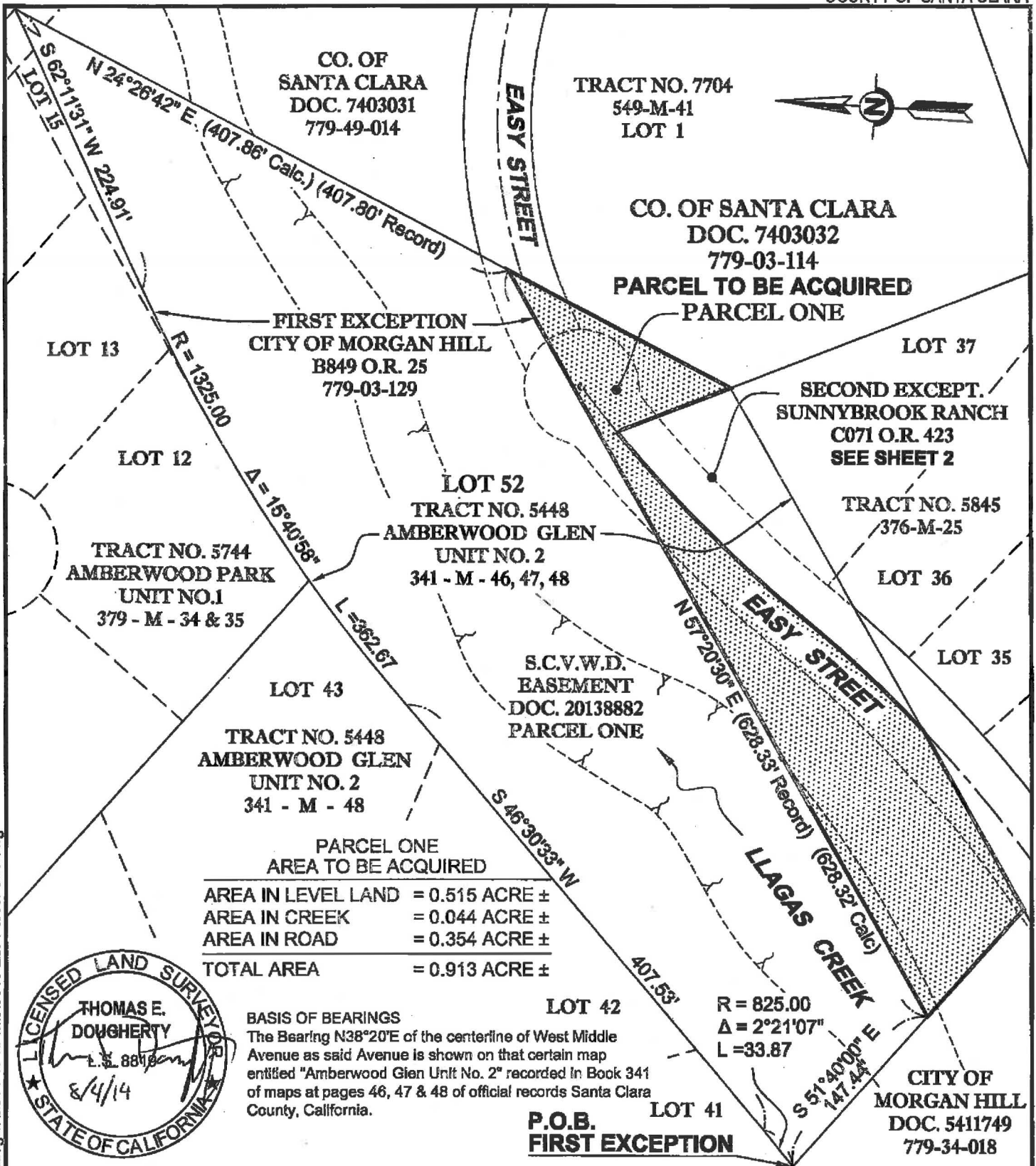
SURVEYOR'S STATEMENT: The description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.


Thomas E. Dougherty L.S. 8819

8/4/14
Date



COUNTY OF SANTA CLARA



Santa Clara Valley Water District

SCALE: 1" = 100'

PROJ. NO.	5010
FILE NO.	229
APN	779-03-114
TITLE REPORT NO.	13-51058087-B-EB
DRAWN	B. Snyder
DATE	07/16/14

REV. APPR. DATE

DESCRIPTION

1

2

COUNTY OF SANTA CLARA

COUNTY OF SANTA CLARA
DOC. 7403032
779-03-114
PARCEL TO BE ACQUIRED
PARCEL ONE

P.O.B.
SECOND EXCEPTION

P. M. 326 - M - 42
PARCEL 3

SECOND EXCEPT.
SUNNYBROOK RANCH
C071 O.R. 423

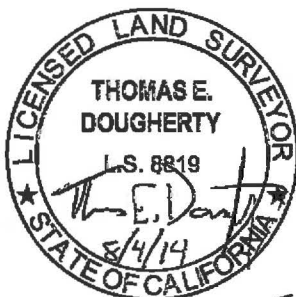
LOT 52
TRACT NO. 5448
AMBERWOOD GLEN
UNIT NO. 2
341 - M - 46, 47, 48

(TRACT NO. 5845
SUNNYBROOK HILLS
UNIT No. 2
376-M-25)

S.C.V.W.D.
EASEMENT
DOC. 20138882
PARCEL ONE

TAN. BRG. N42°54'23"E

LOT 42



LLAGAS CREEK

EASY STREET

CITY OF
MORGAN HILL
DOC. 5411749
779-34-018

Santa Clara Valley Water District

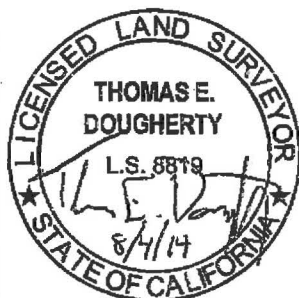
SCALE: 1" = 80'

PROJ. NO.	5010
FILE NO.	229
APN	779-03-114
TITLE REPORT NO.	13-51058087-B-EB
DRAWN	B. Snyder
DATE	07/16/14

REV.	APPR.	DATE	DESCRIPTION
1			
2			

COUNTY OF SANTA CLARA

MONTEREY ROAD

**NOTE:**

20' PUBLIC STREET & SIDEWALK, AND
PUBLIC UTILITIES DOC. NO. 5210138
(CANNOT ASCERTAIN FROM THE RECORD)

**MAP OF THE
LAS LLAGAS SUBDIVISION
"N" - M - 12**

S.C.V.W.D.

150' MINIMUM AREA
RESERVED FOR FUTURE
ACQUISITION PER PM 331 M. 17

LLAGAS CREEK
ATHERTON WAY

EXCEPTION FROM PARCEL TO BE
ACQUIRED SEE SHEET 4
TRACT NO. 7704
SHADOW HILLS
549-M-41

PM 432-M-29
PARCEL 3

COUNTY OF
SANTA CLARA
DOC. 7403031
(G877 O.R. 727)
779-06-030

PM 432-M-29
PARCEL 1

PM 432-M-29
PARCEL 2

20' SEWER LINE EASEMENT
Per P.M. 432-M-29

PORTION OF
PARCEL TWO
TO BE ACQUIRED
779-06-030

PORTION OF
PARCEL TWO
TO BE ACQUIRED
779-49-014

**PARCEL TWO
AREA TO BE ACQUIRED**

AREA IN LEVEL LAND = 22.932 ACRE ±
AREA IN CREEK = 29.087 ACRE ±
TOTAL AREA = 52.019 ACRE ±

* 779-03-030 & 779-49-014

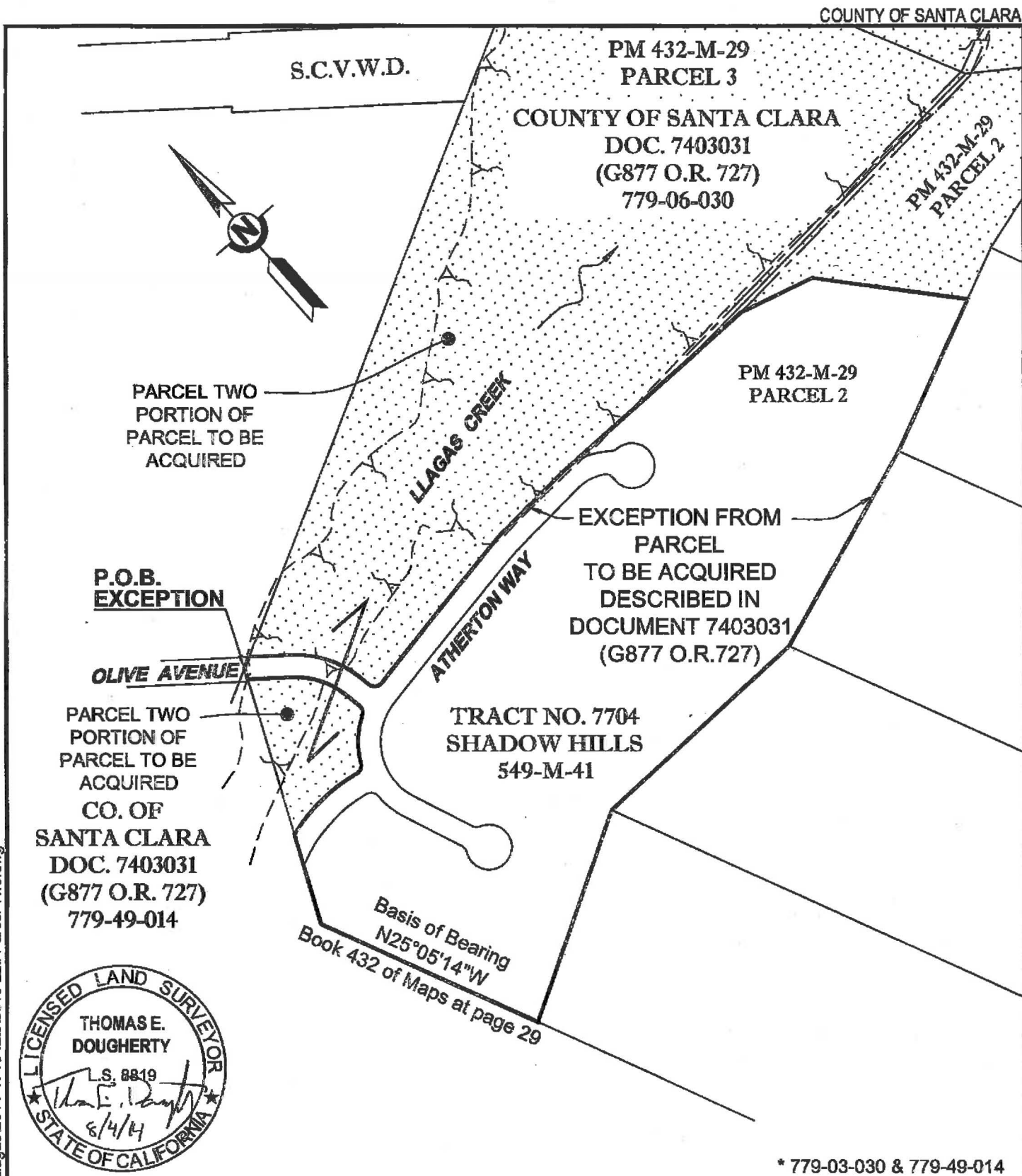
Santa Clara Valley Water District

SCALE: 1" = 400'

PROJ. NO.	26174051
FILE NO.	5010-229 TWO
APN	*
TITLE REPORT NO.	13-51058087-B-EB
DRAWN	K. Comerer
DATE	06/20/13

REV.	APPR.	DATE	DESCRIPTION
1		1/14	CHANGE TITLE REPORT NO.
2		7/14	Add property - update PTR (B. Snyder)

SCVWD C:\P\W 2013\Jlagas\2014-174\Plats\5010-229 Parcel Two.dwg



Santa Clara Valley Water District

SCALE: 1" = 300'

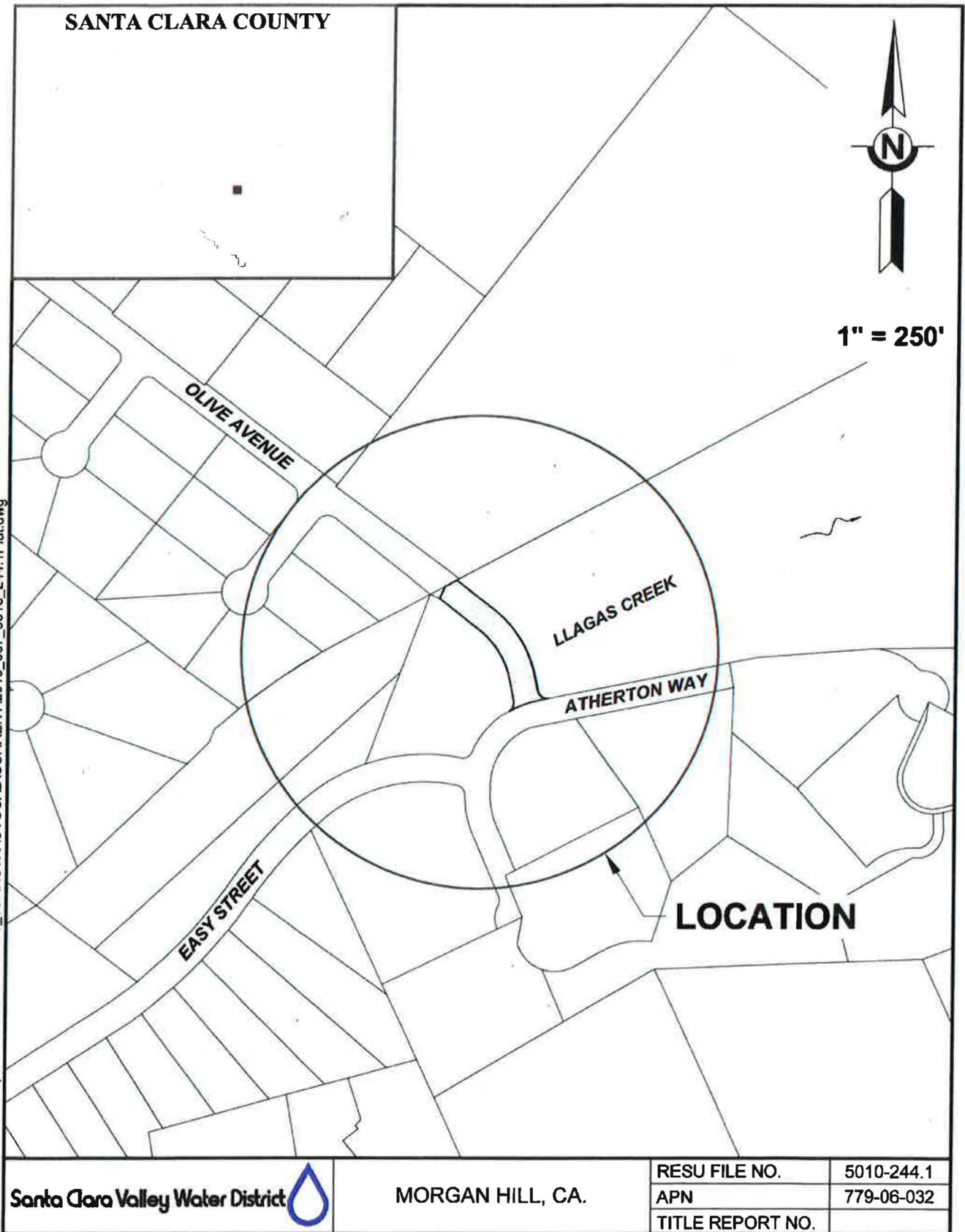
PROJ. NO.	26174051
FILE NO.	5010-229
APN	779-06-030
TITLE REPORT NO.	13-51058087-B-EB
DRAWN	K. Comerer
DATE	06/20/13

REV.	APPR.	DATE	DESCRIPTION
1		1/14	CHANGE TITLE REPORT NO.
2		7/14	Add Parcel - update PTR

**ATTACHMENT 2
(to Conservation Easement)**

LEGAL DESCRIPTION OF OLIVE STREET CROSSING

SCVWD S:\REQUESTS\LLAGAS CREEK\2018_067\ROW\AUTOCAD\CURRENT\2018_067_5010_244.1\Plat.dwg



Attachment: Purchase and Sale Agreement Silveira Lake including Conservation Easement (1656 : Acceptance of Easement in Association

SANTA CLARA VALLEY WATER DISTRICT
San Jose, California

PROJECT: LLAGAS CREEK

RESU File No.: 5010-244.1

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF THE LANDS AS DESCRIBED IN THAT CERTAIN GRANT DEED TO THE SANTA CLARA VALLEY WATER DISTRICT, RECORDED ON NOVEMBER 4, 2014 AS DOCUMENT NUMBER 22760059, IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

CONTAINING 0.339 ACRE OF LAND, MORE OR LESS.

SURVEYOR'S STATEMENT:

THE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT.

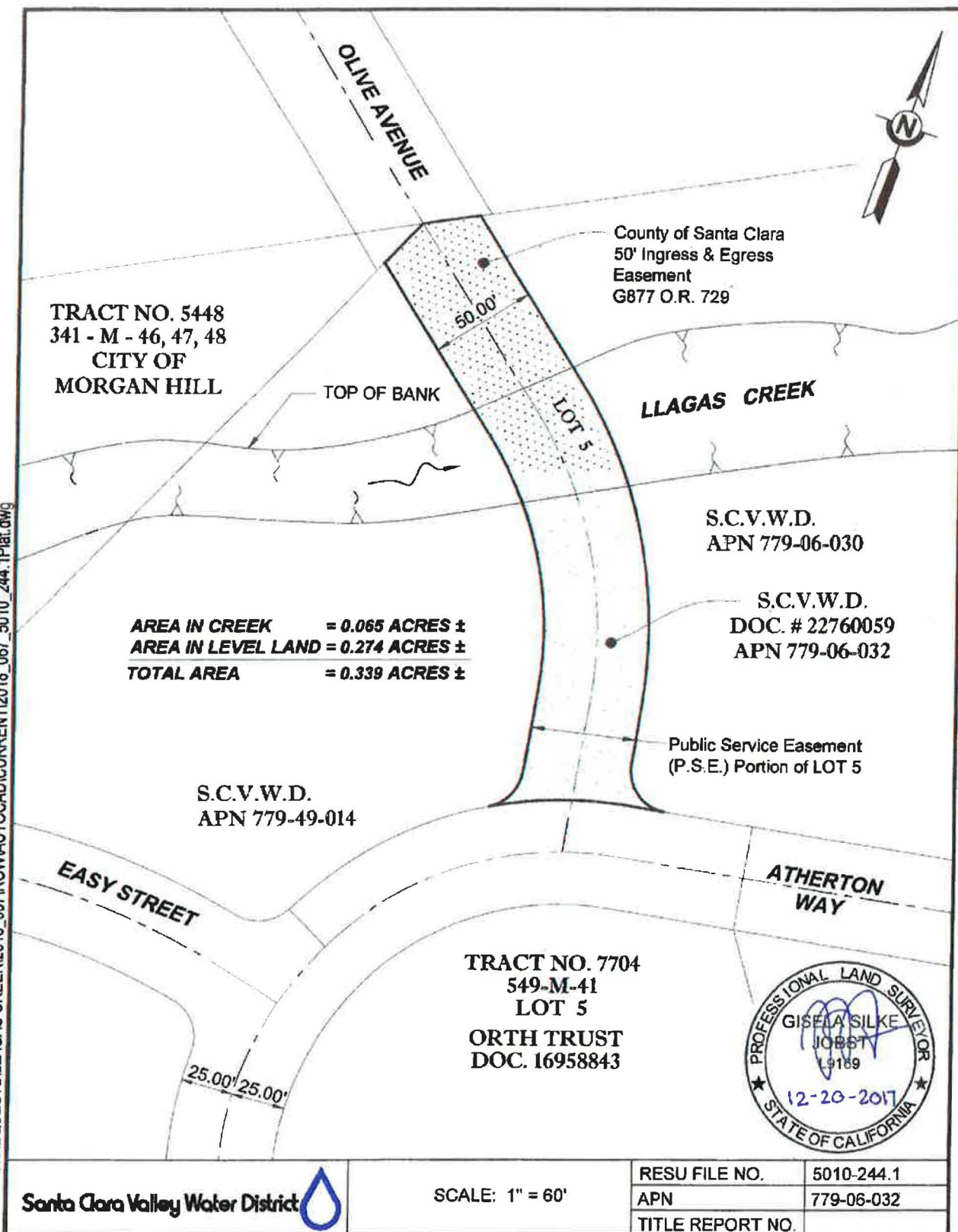


GISELA SILKE JOBST, L9169

12-20-2017
Date



SCVWD S:\REQUESTS\LLAGAS CREEK\2018_067\ROW\AUTOCAD\CURRENT\2018_067_5010_244.1\Plat.dwg



SHEET 1 OF 1

ATTACHMENT 3
(to Conservation Easement)
FORM OF MITIGATION EASEMENT

PLEASE NOTE: The following Conservation Easement Deed is provided by the multi-agency Project Delivery Team as a standardized template document for Mitigation and Conservation Banks in California. Any modifications to this template shall be identified using tracked changes or other electronic comparison and explained in a memorandum.
(Template Version Date: March 2010)

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

[*Fill in Grantee Name/Address*] Grantee Name Grantee Address City, State ZIP

Attn: _____

Space Above Line for Recorder's Use Only

CONSERVATION EASEMENT DEED [*Insert Bank Name*]

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made as of the _____ day of _____, 20____, by [*insert full legal name(s) of Grantor:* _____] ("Grantor"), in favor of [*insert Grantee's full legal name:* _____] [*if CDFW is Grantee insert: the State of California*] ("Grantee"), with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property containing approximately _____ acres, located in the City of [*insert City name*], County of [*insert County name*], State of California, and designated Assessor's Parcel Number(s) [*insert Assessor's Parcel Number(s)*] (the "Bank Property"). The Bank Property is legally described and depicted in **Exhibit A** attached to this Conservation Easement and incorporated in it by this reference.

B. The Bank Property possesses wildlife and habitat values of great importance to Grantee, the people of the State of California and the people of the United States. The Bank Property will provide high quality natural, restored and/or enhanced habitat for [*specify listed and sensitive plant and/or animal species*] and contain [*list habitats; native and/or non-native*], [*include the following phrase only if there are jurisdictional wetlands: and restored, created, enhanced and/or preserved jurisdictional waters of the United States*]. Individually and collectively, these wildlife and habitat values comprise the "Bank Property Conservation Values" of the Bank Property.

C. The California Department of Fish and Wildlife ("CDFW") has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of these species pursuant to California Fish and Wildlife Code Section 1802. CDFW is authorized to hold easements for these purposes

pursuant to California Civil Code Section 815.3, Fish and Wildlife Code Section 1348, and other provisions of California law.

D. The United States Fish and Wildlife Service (the "USFWS"), an agency within the United States Department of the Interior, has jurisdiction over the conservation, protection, restoration and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the federal Endangered Species Act, 16 U.S.C. Section 1531, *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. Sections 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. Section 742(f), *et seq.*, and other provisions of federal law.

E. ***[Remove/modify this recital as appropriate when USEPA or USACE is not a signatory to the BEI or CBEI]***. The U.S. Environmental Protection Agency ("USEPA") and U.S. Army Corps of Engineers ("USACE") have jurisdiction over waters of the United States pursuant to the federal Clean Water Act, 33 U.S.C. Section 1251, *et seq.*

F. ***[Use this version of Recital F when qualified nonprofit organization is Grantee]***. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3 and Government Code Section 65965. Specifically, Grantee is (i) a tax-exempt nonprofit organization qualified under section 501(c) (3) of the Internal Revenue Code of 1986, as amended, and qualified to do business in California; (ii) a "qualified organization" as defined in section 170(h) (3) of the Internal Revenue Code; and (iii) an organization which has as its primary and principal purpose and activity the protection and preservation of natural lands or resources in its natural, scenic, agricultural, forested, or open space condition or use.

[Use this version of Recital F when governmental entity is Grantee]. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3. Specifically, Grantee is a governmental entity identified in Civil Code Section 815.3 (b) and otherwise authorized to acquire and hold title to real property.

G. ***[Modify this recital as appropriate when CDFW, USFWS, USEPA or USACE is not a signatory to the BEI or CBEI]***. This Conservation Easement is granted pursuant to the ***[insert the appropriate term: Mitigation Bank Enabling Instrument (the "BEI") or Conservation Bank Enabling Instrument (the "CBEI")]***, by and between ***[insert Bank Sponsor name(s)]***, ***[insert Bank Property Owner name(s)]***, and ***[insert Region name]*** CDFW, CDFW Tracking No. ***[insert number]***, the ***[insert Field Office name]*** of the USFWS, USFWS File No. ***[insert number]***, the ***[insert District name]*** District of USACE, USACE File No. ***[insert number]***, and Region IX of the USEPA, entered into concurrently with this Conservation Easement, and the Bank Development Plan (the "Development Plan"), and the Interim Management Plan and Long-Term Management Plan (as applicable, the "Management Plan") created under the ***[insert: BEI or CBEI]***. ***[Remove reference to any agency that is not a party to the BEI or CBEI]*** CDFW, USFWS, USACE, and USEPA are together referred to in this Conservation Easement as the "Signatory Agencies".

A final, approved copy of the ***[insert: BEI or CBEI]***, the Development Plan and the Management Plan, and any amendments thereto approved by the Signatory Agencies, shall be kept on file at the respective offices of the Signatory Agencies. If Grantor, or any successor or assign, requires an official copy of the ***[insert: BEI or CBEI]***, the Development

Plan or the Management Plan, it should request a copy from one of the Signatory Agencies at its address for notices listed in Section 12 of this Conservation Easement.

The [*insert: BEI or CBEI*], the Development Plan and the Management Plan are incorporated by this reference into this Conservation Easement as if fully set forth herein.

H. All section numbers referred to in this Conservation Easement are references to sections within this Conservation Easement, unless otherwise indicated.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the United States and the State of California, including California Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Bank Property.

1. Purposes.

The purposes of this Conservation Easement are to ensure that the Bank Property will be retained forever in its natural, restored, or enhanced condition as contemplated by the [*insert: BEI or CBEI*], the Development Plan, and the Management Plan, and to prevent any use of the Bank Property that will impair or interfere with the Bank Property Conservation Values. Grantor intends that this Conservation Easement will confine the use of the Bank Property to activities that are consistent with such purposes, including, without limitation, those involving the preservation, restoration and enhancement of native species and their habitats implemented in accordance with the [*insert: BEI or CBEI*], the Development Plan and the Management Plan.

2. Grantee's Rights.

To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee:

- (a) To preserve and protect the Bank Property Conservation Values.
- (b) To enter the Bank Property at reasonable times, in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, the [*insert: BEI or CBEI*], the Development Plan and the Management Plan and to implement at Grantee's sole discretion Development Plan and Management Plan activities that have not been implemented, provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Bank Property.
- (c) To prevent any activity on or use of the Bank Property that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Bank Property that may be damaged by any act, failure to act, or any use or activity that is inconsistent with the purposes of this Conservation Easement.
- (d) To require that all mineral, air and water rights as Grantee deems necessary to preserve and protect the biological resources and Bank Property Conservation Values shall remain a part of and be put to beneficial use upon the Bank Property, consistent with the purposes of this Conservation Easement.

(e) All present and future development rights appurtenant to, allocated, implied, reserved or inherent in the Bank Property; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Bank Property, nor any other property adjacent or otherwise.

3. Prohibited Uses.

Any activity on or use of the Bank Property that is inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantor's agents, and third parties are expressly prohibited:

(a) Unseasonable watering; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; weed abatement activities; incompatible fire protection activities; and any and all other activities and uses which may impair or interfere with the purposes of this Conservation Easement [*include the following language only if the Development Plan or Management Plan, including any adaptive management measures, specifies such an exception:*], except for [*insert specific exception(s)*] as specifically provided in the [*specify: Development Plan or Management Plan*].

(b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways [*include the following language only if the Development Plan or Management Plan, including any adaptive management measures, specifies such an exception:*], except for [*insert specific exception(s)*] as specifically provided in the [*specify: Development Plan or Management Plan*].

(c) Agricultural activity of any kind [*include the following language only if the Development Plan or Management Plan, including any adaptive management measures, specifies such an exception:*] except grazing for vegetation management as specifically provided in the [*specify: Development Plan or Management Plan*].

(d) Recreational activities, including, but not limited to, horseback riding, biking, hunting or fishing except for personal, non-commercial, recreational activities of the Grantor, so long as such activities are consistent with the purposes of this Conservation Easement and specifically provided for in the Management Plan.

(e) Commercial, industrial, residential, or institutional uses.

(f) Any legal or de facto division, subdivision or partitioning of the Bank Property.

(g) Construction, reconstruction, erecting or placement of any building, billboard or sign, or any other structure or improvement of any kind [*include the following language only if the Development Plan or Management Plan specifies such an exception:*], except for [*insert specific exception(s)*] as specifically provided in the [*specify: Development Plan or Management Plan*].

(h) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials.

(i) Planting, introduction or dispersal of non-native or exotic plant or animal species.

(j) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting minerals, loam, soil, sand, gravel, rock or other material on or below the surface of the Bank Property, or granting or authorizing surface entry for any of these purposes.

(k) Altering the surface or general topography of the Bank Property, including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Bank Property with concrete, asphalt or any other impervious material except for those habitat management activities specified in the Development Plan or Management Plan.

(l) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law for (i) fire breaks, (ii) maintenance of existing foot trails or roads, or (iii) prevention or treatment of disease [*include the following language only if the Development Plan or Management Plan specifies such an exception:*]; and except for [*insert specific exception(s)*] as specifically provided in the [*specify: Development Plan or Management Plan*].

(m) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Bank Property, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters [*include the following language only if the Development Plan or Management Plan specifies such an exception:*], except for [*insert specific exception(s)*] as specifically provided in the [*specify: Development Plan or Management Plan*].

(n) Without the prior written consent of Grantee, which Grantee may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air or water rights for the Bank Property; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Bank Property, including but not limited to: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Bank Property; and (iv) any water from wells that are in existence or may be constructed in the future on the Bank Property.

(o) Engaging in any use or activity that may violate, or may fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Bank Property, or the use or activity in question.

4. Grantee's Duties.

(a) To ensure that the purposes of this Conservation Easement as described in Section 1 are being accomplished, Grantee and its successors and assigns shall:

(1) Perform, at a minimum on an annual basis, compliance monitoring inspections of the Bank Property; and

(2) Prepare reports on the results of the compliance monitoring inspections, and provide these reports to the Signatory Agencies on an annual basis.

(b) In the event that the Grantee's interest in this easement is held by, reverts to, or is transferred to the State of California, Section 4(a) shall not apply.

5. Grantor's Duties.

Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Bank Property Conservation Values or that are otherwise inconsistent with this Conservation Easement. In addition, Grantor shall undertake all necessary actions to perfect and defend Grantee's rights under Section 2 of this Conservation Easement, and to observe and carry out the obligations of Grantor under the [*insert: BEI or CBEI*], the Development Plan and the Management Plan.

6. Reserved Rights.

Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from Grantor's ownership of the Bank Property, including the right to engage in or permit or invite others to engage in all uses of the Bank Property that are not prohibited or limited by, and are consistent with the purposes of, this Conservation Easement.

7. Grantee's Remedies.

If Grantee determines that a violation of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation ("Notice of Violation"). If Grantor fails to cure the violation within thirty (30) days after receipt of a Notice of Violation, or if the cure reasonably requires more than thirty (30) days to complete and Grantor fails to begin the cure within the thirty (30)-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction for any or all of the following: to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the Bank Property Conservation Values; to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; to pursue any other legal or equitable relief, including but not limited to, the restoration of the Bank Property to the condition in which it existed prior to any violation or injury; or to otherwise enforce this Conservation Easement. Without limiting the liability of Grantor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Bank Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate injury to the Bank Property Conservation Values, Grantee may pursue its remedies under this Conservation Easement without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally to actual or threatened violations of this Conservation Easement.

Grantor agrees that Grantee's remedies at law for any violation of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to the remedies set forth in California Civil Code Section 815, *et seq.* The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from taking such action at a later time.

(a) Costs of Enforcement.

All costs incurred by Grantee, where Grantee is the prevailing party, in enforcing the terms of this Conservation Easement against Grantor, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by negligence or breach of this Conservation Easement, shall be borne by Grantor.

(b) Grantee's Discretion.

Enforcement of the terms of this Conservation Easement by Grantee shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any rights of Grantee under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

(c) Acts Beyond Grantor's Control.

Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Bank Property resulting from (i) any natural cause beyond Grantor's control, including, without limitation, fire not caused by Grantor, flood, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Bank Property resulting from such causes; or (ii) acts by Grantee or its employees.

(d) Enforcement; Standing.

All rights and remedies conveyed to Grantee under this Conservation Easement shall extend to and are enforceable by [*insert if State of California is Grantee:* CDFW and] the Third-Party Beneficiaries (as defined in Section 14(m)). These enforcement rights are in addition to, and do not limit, the rights of enforcement under the [*insert: BEI or CBEI*], the Development Plan or the Management Plan. If at any time in the future Grantor uses, allows the use, or threatens to use or allow use of, the Bank Property for any purpose that is inconsistent with or in violation of this Conservation Easement then, despite the provisions of California Civil Code Section 815.7, the California Attorney General and the Third-Party Beneficiaries each has standing as an interested party in any proceeding affecting this Conservation Easement.

(e) Notice of Conflict.

If Grantor receives a Notice of Violation from Grantee or a Third-Party Beneficiary with which it is impossible for Grantor to comply consistent with any prior uncured Notice(s) of Violation, Grantor shall give written notice of the conflict (hereinafter "Notice of Conflict") to the Grantee and Third-Party Beneficiaries. In order to be a valid, a Notice of Conflict shall be given within fifteen (15) days of the date Grantor receives a conflicting Notice of Violation, shall include copies of the conflicting Notices of Violation, and shall describe the conflict with specificity, including how the conflict makes compliance with the uncured Notice(s) of Violation impossible. Upon issuing a valid Notice of Conflict, Grantor shall not be required to comply with the conflicting Notices of Violation until such time as the entity or entities issuing said conflicting Notices of Violation issue(s) revised Notice(s) of Violation that resolve the conflict. Upon receipt of a revised Notice of Violation, Grantor shall comply with such notice within the time period(s) described in the first grammatical paragraph of this Section. The failure of Grantor to issue a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall constitute a waiver of Grantor's ability to claim a conflict.

(f) *[Add if nonprofit organization is Grantee]* Reversion.

If the Signatory Agencies determine that Grantee is not holding, monitoring or managing this Conservation Easement for conservation purposes in the manner specified in this Conservation Easement or in the *[insert: BEI or CBEI]*, the Development Plan or the Management Plan then, pursuant to California Government Code Section 65965(c), this Conservation Easement shall revert to the State of California, or to another public agency or nonprofit organization qualified pursuant to Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable) and approved by the Signatory Agencies.

8. Access.

This Conservation Easement does not convey a general right of access to the public.

9. Costs and Liabilities.

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Bank Property. Grantor agrees that neither Grantee nor Third-Party Beneficiaries shall have any duty or responsibility for the operation, upkeep or maintenance of the Bank Property, the monitoring of hazardous conditions on it, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Bank Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement *[insert if CDFW or another government entity is Grantee: , including permits and approvals required from Grantee acting in its regulatory capacity]*, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency laws, statutes, ordinances, rules, regulations, orders and requirements.

(a) Taxes; No Liens.

Grantor shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Bank Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with

satisfactory evidence of payment upon request. Grantor shall keep the Bank Property free from any liens (other than a security interest that is expressly subordinated to this Conservation Easement, as provided in Section 14(k)), including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Bank Property.

(b) Hold Harmless.

(1) Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Grantee Indemnified Party" and collectively, "Grantee's Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Bank Property, regardless of cause, except that this indemnification shall be inapplicable to any Claim due solely to the negligence of Grantee or any of its employees; (ii) the obligations specified in Sections 5, 9 and 9(a); and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Grantee's Indemnified Party [*insert if CDFW is grantee: or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding*].

(2) Grantor shall hold harmless, protect and indemnify Third-Party Beneficiaries and their respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Third-Party Beneficiary Indemnified Party" and collectively, "Third-Party Beneficiary Indemnified Parties") from and against any and all Claims arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Bank Property, regardless of cause and (ii) the existence or administration of this Conservation Easement. *Provided, however,* that the indemnification in this Section 9 (b) (2) shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Claim due solely to the negligence of that Third-Party Beneficiary Indemnified Party or any of its employees. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any Claim to which the indemnification in this Section 9 (b) (2) applies, then at the election of and upon written notice from the Third-Party Beneficiary Indemnified Party, Grantor shall defend such action or proceeding by counsel reasonably acceptable to the applicable Third-Party Beneficiary Indemnified Party or reimburse the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(c) Extinguishment.

If circumstances arise in the future that render the preservation of the Bank Property Conservation Values, [*include this phrase only if there are jurisdictional*

wetlands: including wetland functions and values,] or other purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction.

(d) Condemnation.

[*Use the appropriate paragraph:*]

[*If CDFW or other state agency is Grantee:*] Condemnation. This Conservation Easement is a "wildlife conservation easement" acquired by a State agency, the condemnation of which is prohibited except as provided in California Fish and Wildlife Code Section 1348.3.

[*All other Grantees:*] Condemnation. The purposes of this Conservation Easement are presumed to be the best and most necessary public use as defined at California Code of Civil Procedure Section 1240.680 notwithstanding Code of Civil Procedure Sections 1240.690 and 1240.700.

10. Transfer of Conservation Easement or Bank Property.

(a) Conservation Easement.

This Conservation Easement may be assigned or transferred by Grantee upon written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed, but Grantee shall give Grantor and the Signatory Agencies at least sixty (60) days prior written notice of the proposed assignment or transfer. Grantee may assign or transfer its rights under this Conservation Easement only to an entity or organization: (i) authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable), or the laws of the United States; and (ii) otherwise reasonably acceptable to the Signatory Agencies. Grantee shall require the assignee to record the assignment in the county where the Bank Property is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way. Any transfer under this section is subject to the requirements of Section 11.

(b) Bank Property.

Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Bank Property, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference the [*insert: BEI or CBEI*], the Development Plan, the Management Plan, and any amendment(s) to those documents. Grantor further agrees to give written notice to Grantee and the Signatory Agencies of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee or the Signatory Agencies shall have the right to prevent any transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions of this Conservation Easement (including the exhibits and documents incorporated by reference in it). The failure of Grantor to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any transfer under this section is subject to the requirements of Section 11.

11. Merger.

The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Bank Property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor, Grantee, and the Signatory Agencies otherwise agree in writing, a replacement conservation easement or restrictive covenant containing the same protections embodied in this Conservation Easement shall be recorded against the Bank Property.

12. Notices.

Any notice, demand, request, consent, approval, or other communication that Grantor or Grantee desires or is required to give to the other shall be in writing, with a copy to each of the Signatory Agencies, and served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, addressed as follows:

To Grantor: [Grantee name]
[Grantee address]

Attn: _____

To Grantee: *[insert the appropriate Grantee information:]*

[Department of Fish and Wildlife]
[Region name] Region
[REGION ADDRESS]
[Attn: Regional Manager]

OR

[Grantee name]
[Grantee address]

[Remove/modify the following blocks as appropriate when CDFW or the USFWS are not signatories to the BEI or CBEI or third-party beneficiaries to the CE.]

To CDFW: [Department of Fish and Wildlife]
[Region name] Region
[REGION ADDRESS]
[Attn: Regional Manager]

With a copy to: Department of Fish and Wildlife
Office of General Counsel
1416 Ninth Street, 12th Floor
Sacramento, CA 95814-2090
Attn: General Counsel

To USFWS: United States Fish and Wildlife Service
[Field Office name] Field Office
[FIELD OFFICE ADDRESS]
Attn: Field Supervisor

[Remove/modify these blocks as appropriate when USEPA or USACE are not signatories to the BEI or CBEI or third-party beneficiaries to the CE.]

To USACE: U.S. Army Corps of Engineers
[District name] District
[DISTRICT ADDRESS]
Attn: Chief, Regulatory Branch

To USEPA: U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Attn: Director, Water Division

or to such other address a party or a Signatory Agency shall designate by written notice to Grantor, Grantee and the Signatory Agencies. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, three (3) days after deposit into the United States mail.

13. Amendment.

This Conservation Easement may be amended only by mutual written agreement of Grantor and Grantee and written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed. Any such amendment shall be consistent with the purposes of this Conservation Easement and California law governing conservation easements, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the county in which the Bank Property is located, and Grantee shall promptly provide a conformed copy of the recorded amendment to the Grantor and the Signatory Agencies.

14. Additional Provisions.

(a) Controlling Law.

The interpretation and performance of this Conservation Easement shall be governed by the laws of the United States and the State of California, disregarding the conflicts of law principles of such state.

(b) Liberal Construction.

Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to effect the purposes of this Conservation Easement and the policy and purpose of California Civil Code Section 815, *et seq.* **[add if Grantee is nonprofit organization: and Government Code Section 65965].** If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability.

If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, such action shall not affect the remainder of this Conservation Easement. If a court of competent jurisdiction voids or invalidates the

application of any provision of this Conservation Easement to a person or circumstance, such action shall not affect the application of the provision to any other persons or circumstances.

(d) Entire Agreement.

This document (including its exhibits and the [insert: BEI or CBEI], the Development Plan, and the Management Plan incorporated by reference in this document) sets forth the entire agreement of the parties and the Signatory Agencies with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements of the parties relating to the Conservation Easement. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in accordance with Section 13.

(e) No Forfeiture.

Nothing contained in this Conservation Easement will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Successors.

The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties and their respective personal representatives, heirs, successors, and assigns, and shall constitute a servitude running in perpetuity with the Bank Property.

(g) Termination of Rights and Obligations.

A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Bank Property, except that liability for acts, omissions or breaches occurring prior to transfer shall survive transfer.

(h) Captions.

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(i) No Hazardous Materials Liability.

(1) Grantor represents and warrants that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Bank Property, or transported to or from or affecting the Bank Property.

(2) Without limiting the obligations of Grantor under Section 9 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee's Indemnified Parties (defined in Section 9 (b) (1)) from and against any and all Claims (defined in Section 9 (b)(1)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Bank Property at any time, except any Hazardous Materials placed, disposed or released by Grantee or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation or alleged violation of, or other

failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the applicable Grantee Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party [*add if CDFW is Grantee:* or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding].

(3) Without limiting the obligations of Grantor under Section 9 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Third-Party Beneficiary Indemnified Parties (defined in Section 9 (b)(2)) from and against any and all Claims arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Bank Property at any time, except that this release and indemnification shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Hazardous Materials placed, disposed or released by that Third-Party Beneficiary Indemnified Party or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation of alleged violation of, or other failure to comply with, any Environmental Laws. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the applicable Third-Party Beneficiary Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(4) Despite any contrary provision of this Conservation Easement, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives to Grantee or any Third-Party Beneficiaries any of the following:

(A) The obligations or liability of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, *et seq.*; hereinafter, "CERCLA"); or

(B) The obligations or liabilities of a person described in 42 U.S.C. § 9607(a)(3) or (4); or

(C) The obligations of a responsible person under any applicable Environmental Laws; or

(D) The right to investigate and remediate any Hazardous Materials associated with the Bank Property; or

(E) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Bank Property.

(5) The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et seq.*; hereinafter, "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. § 5101, *et seq.*; hereinafter, "HTA"); the Hazardous Waste Control Law (California Health & Safety Code § 25100, *et seq.*; hereinafter, "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code § 25300, *et seq.*; hereinafter "HSA"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement.

(6) The term "Environmental Laws" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee and Third-Party Beneficiaries that activities upon and use of the Bank Property by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

(j) Warranty.

Grantor represents and warrants that Grantor is the sole owner of the Bank Property. Grantor also represents and warrants that, except as specifically disclosed to and approved by the Signatory Agencies pursuant to the Bank Property Assessment and Warranty signed by Grantor and attached as an exhibit to the [insert: BEI or CBEI], [***choose applicable statement:*** there are no outstanding mortgages, liens, encumbrances or other interests in the Bank Property (including, without limitation, mineral interests) which may conflict or are inconsistent with this Conservation Easement ***or*** the holder of any outstanding mortgage, lien, encumbrance or other interest in the Bank Property (including, without limitation, mineral interest) which conflicts or is inconsistent with this Conservation Easement has expressly subordinated such interest to this Conservation Easement by a recorded Subordination Agreement approved by Grantee and the Signatory Agencies].

(k) Additional Interests.

Grantor shall not grant any additional easements, rights of way or other interests in the Bank Property (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall Grantor grant, transfer, abandon or relinquish (each a "Transfer") any mineral, air, or water right or any water associated with the Bank Property, without first obtaining the written consent of Grantee and the Signatory Agencies. Such consent may be withheld if Grantee or the Signatory Agencies determine(s) that the proposed interest or Transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Bank Property Conservation Values. This Section 14(k) shall not limit the provisions of Section 2(d) or 3(n), nor prohibit transfer of a fee or leasehold interest in the Bank Property that is subject to this Conservation Easement and complies with Section 10. Grantor shall provide a copy of any recorded or unrecorded grant or Transfer document to the Grantee and Signatory Agencies.

(l) Recording.

Grantee shall record this Conservation Easement in the Official Records of the County in which the Bank Property is located, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

(m) Third-Party Beneficiary.

Grantor and Grantee acknowledge that the [*include the agencies that will be third-party beneficiaries*: CDFW, USFWS, USACE, and USEPA] (the "Third-Party Beneficiaries") are third party beneficiaries of this Conservation Easement with the right of access to the Bank Property and the right to enforce all of the obligations of Grantor including, but not limited to, Grantor's obligations under Section 14, and all other rights and remedies of the Grantee under this Conservation Easement.

(n) Funding.

Endowment funding for the perpetual management, maintenance and monitoring of the Bank Property is specified in and governed by the [*insert: BEI or CBEI*] and the Management Plan.

IN WITNESS WHEREOF Grantor has executed this Conservation Easement Deed the day and year first above written.

GRANTOR: [*Notarization Required*] Approved as to form:

[*Remove or modify the approval block as appropriate, i.e., Grantee's legal counsel if CDFW is not Grantee.*]

BY: _____
General Counsel

State of California

NAME: _____
_ Department of Fish and Wildlife

TITLE: _____ BY: _____

[*Insert General Counsel Representative*]

General Counsel

DATE:

CA PDT CE Template - March 3, 2010

**ATTACHMENT 3-A
(to Conservation Easement)
MITIGATION EASEMENT AREA**

SANTA CLARA VALLEY WATER DISTRICT
San Jose, California

PROJECT: LLAGAS CREEK

RESU File No.: 5010-229.1

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL 1 AND PARCEL 3 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN BOOK 432 AT PAGE 29 IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF OLIVE AVENUE (60.00 FEET WIDE) WITH THE NORTHWESTERLY LINE OF PARCEL 3 AS SHOWN ON SAID MAP;

THENCE ALONG SAID NORTHWESTERLY LINE, NORTH 61°50'14" EAST, 1,712.76 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL 3;

THENCE ALONG SAID NORTHEASTERLY LINE, SOUTH 70°23'40" EAST, 86.99 FEET TO THE **POINT OF BEGINNING**;

THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE OF SAID PARCEL 3 AND ALONG THE NORTHWESTERLY LINE OF PARCEL 1 AS SHOWN ON SAID MAP, SOUTH 70°23'40" EAST, 132.15 FEET;

THENCE LEAVING SAID NORTHWESTERLY LINE OF SAID PARCEL 1, SOUTH 55°08'06" EAST, 189.44 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 180.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 36°35'24", AN ARC LENGTH OF 114.95 FEET;

THENCE SOUTH 18°32'42" EAST, 134.07 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 360.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 43°53'06", AN ARC LENGTH OF 275.74 FEET;

THENCE SOUTH 24°34'39" WEST, 40.66 FEET;

THENCE SOUTH 77°04'33" WEST, 552.38 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 26.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 47°08'34", AN ARC LENGTH OF 21.39 FEET;

THENCE NORTH 55°46'53" WEST, 148.90 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 180.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 94°40'37", AN ARC LENGTH OF 297.44 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT, HAVING A RADIUS OF 122.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 59°46'11", AN ARC LENGTH OF 127.27 FEET;

THENCE SOUTH 89°18'41" WEST, 13.69 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 60.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 55°22'46", AN ARC LENGTH OF 57.99 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT, HAVING A RADIUS OF 220.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 65°38'00", AN ARC LENGTH OF 252.01 FEET;

THENCE NORTH 80°26'05" WEST, 187.51 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 140.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 65°48'22", AN ARC LENGTH OF 160.79 FEET;

THENCE NORTH 14°37'42" WEST, 55.16 FEET;

THENCE NORTH 79°47'32" EAST, 69.49 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 500.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29°02'53", AN ARC LENGTH OF 253.49 FEET;

THENCE NORTH 50°44'39" EAST, 210.95 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 1,000.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 09°37'57", AN ARC LENGTH OF 168.12 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 1,490.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16°04'40", AN ARC LENGTH OF 418.11 FEET TO THE BEGINNING OF A COMPOUND CURVE TO THE RIGHT, HAVING A RADIUS OF 400.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29°31'24", AN ARC LENGTH OF 206.11 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL 3 TO WHICH A RADIAL BEARS NORTH 03°17'14" WEST, SAID POINT ALSO BEING THE **POINT OF BEGINNING.**

CONTAINING 15.993 ACRES OF LAND, MORE OR LESS.

BASIS OF BEARINGS:

BEARINGS ARE BASED ON AND IDENTICAL TO THAT CERTAIN PARCEL MAP FILED IN BOOK 432 OF MAPS AT PAGE 29, IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

SURVEYOR'S STATEMENT:

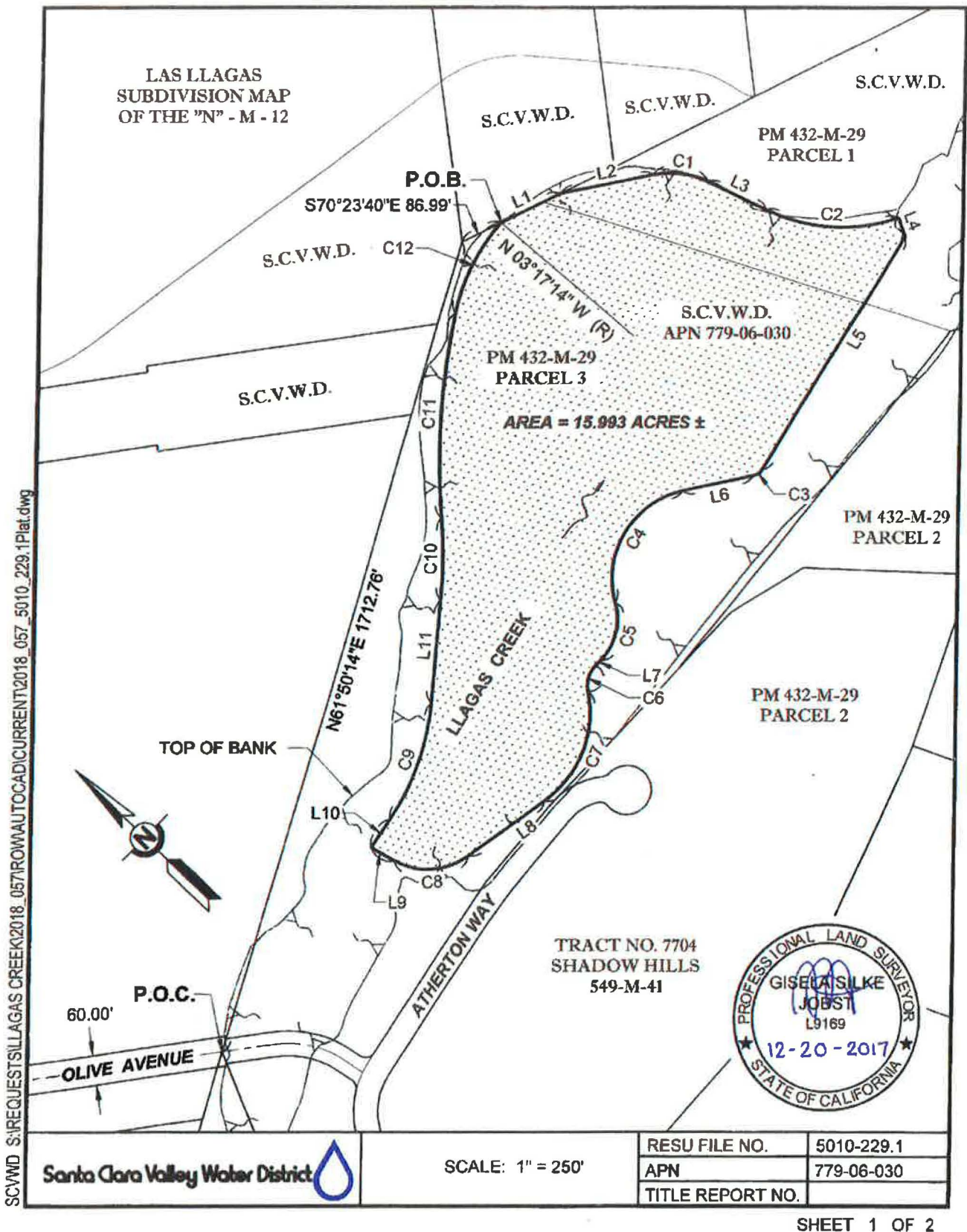
THE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT.



GISELA SILKE JOBST, L9169

12-20-2017
Date





SCWWD S:\REQUESTS\LAGAS CREEK\2018_057\ROW\AUTOCAD\CURRENT\2018_057_5010_229.1Plat.dwg

Line Table		
Line #	Direction	Length
L1	S70°23'40"E	132.15'
L2	S55°08'06"E	189.44'
L3	S18°32'42"E	134.07'
L4	S24°34'39"W	40.66'
L5	S77°04'33"W	552.38'
L6	N55°46'53"W	148.90'
L7	S89°18'41"W	13.69'
L8	N80°26'05"W	187.51'
L9	N14°37'42"W	55.16'
L10	N79°47'32"E	69.49'
L11	N50°44'39"E	210.95'

Curve Table			
Curve #	Radius	Delta	Length
C1	180.00'	36°35'24"	114.95'
C2	360.00'	43°53'06"	275.74'
C3	26.00'	47°08'34"	21.39'
C4	180.00'	94°40'37"	297.44'
C5	122.00'	59°46'11"	127.27'
C6	60.00'	55°22'46"	57.99'
C7	220.00'	65°38'00"	252.01'
C8	140.00'	65°48'22"	160.79'
C9	500.00'	29°02'53"	253.49'
C10	1000.00'	9°37'57"	168.12'
C11	1490.00'	16°04'40"	418.11'
C12	400.00'	29°31'24"	206.11'

Santa Clara Valley Water District



SCALE: N.T.S.

RESU FILE NO.	5010-229.1
APN	779-06-030
TITLE REPORT NO.	

SHEET 2 OF 2

ATTACHMENT 4
(to Conservation Easement)

PROPOSED TRAIL ALIGNMENT





CITY COUNCIL STAFF REPORT

MEETING DATE: March 7, 2018

PREPARED BY: David Swing, Police Chief
APPROVED BY: City Manager

COMMAND VEHICLE APPROPRIATION

RECOMMENDATION(S)

Adopt resolution approving an amendment to the City's Fiscal Year 2017-18 budget in the general fund appropriating \$699,186 for the purchase of a grant funded public safety command vehicle.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

On January 17, 2018, City Council authorized the purchase of a Public Safety Command Vehicle from LDV systems for a not to exceed amount of \$699,186. Staff intends to take receipt of the vehicle in late 2018. As such, staff intended to include the fiscal aspects of the purchase in the Fiscal Year 2018/2019 Budget to avoid a carry-over encumbrance of a significant dollar value. After the purchase was authorized, LDV informed staff that a formal purchase order was required in order to execute the contract and begin construction. The issuance of a purchase order requires the appropriation of funds by the Council. The approval of the actions in the staff report will appropriate the necessary funds for the previously approved purchase.

COMMUNITY ENGAGEMENT: Inform

This staff report informs the community of the purchase and appropriation of funds.

ALTERNATIVE ACTIONS:

None – Council has authorized the purchase of the vehicle.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On January 17, 2018, Council authorized the purchase of a Public Safety Command Vehicle from LDV systems for a not to exceed amount of \$699,186.

FISCAL AND RESOURCE IMPACT:

This will authorize the issuance of a purchase order for a not to exceed amount of \$699,186 to be encumbered in Fiscal Year 17/18 and expensed in Fiscal Year 18/19.

CEQA (California Environmental Quality Act): Not a Project. The purchase of a Mobile Command Vehicle will not result in any direct or indirect changes to the physical environment.

LINKS/ATTACHMENTS:

1. January 17 Staff Report - Public Safety Command Vehicle (weblink)
2. Resolution Command Vehicle Appropriation
3. Budget Scorecard - Exhibit A to Resolution

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2017-2018 BUDGET IN THE GENERAL FUND (FUND NO. 010) TO APPROPRIATE \$699,186 THEREFOR

WHEREAS, the subject of, this Resolution is set forth in detail in that certain City Council Staff Report entitled "Command Vehicle Appropriation" submitted for City Council consideration at its meeting of March 7th, 2018, submitted to the City Council by the City Manager (the "Staff Report"), the contents of which Staff Report are incorporated herein by this reference; and

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Budget for Fiscal Year 2017-2018, as set forth on Exhibit A to this Resolution, to appropriate the requisite funds to implement the actions authorized by this Resolution; and

WHEREAS, the 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 2017-2018 Budget, as the same has been amended to date, is hereby further amended in accordance with and as reflected on Exhibit A attached hereto and incorporated herein by this reference; and

- b. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Year 2017-2018 Budget of City.

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

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 7th day of March 2018 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 March 7, 2018.

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

DATE: _____

Irma Torrez, CITY CLERK

Attachment: Resolution Command Vehicle Appropriation (1666 : Command Vehicle Appropriation)

EXHIBIT A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2017-18

ADJUSTMENT #

029

FUND:

DEPARTMENT:

OBJECT:

010	General Fund
3210	Police-Patrol
43825	MACHINERY/EQUIPMENT

AGENDA DATE:

AGENDA ITEM TITLE:

03/07/18
Police Command Vehicle Appropriation

	07/01/17			06/30/18 PROJECTED
	BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	ENDING FUND BALANCE
ORIGINAL BUDGET	16,830,617	37,137,688	39,033,006	14,935,299
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	73,495	1,438,995	(1,365,500)
RECOMMENDED ACTION	-	699,186	699,186	-
RESULT OF RECOMMENDED ACTION	16,830,617	37,910,369	41,171,187	13,569,799

Attachment: Budget Scorecard - Exhibit A to Resolution (1666 : Command Vehicle Appropriation)



CITY COUNCIL STAFF REPORT

MEETING DATE: March 7, 2018

PREPARED BY: Dan Repp, Deputy Director Utility Services
APPROVED BY: City Manager

PURCHASE OF A CCTV SEWER INSPECTION TRUCK

RECOMMENDATION(S)

1. Authorize the City Manager to approve the purchase of a Closed Circuit Television Video (CCTV) inspection truck with RST/Subsite Electronics Inc. in the estimated amount of \$170,000;
2. Determine that a competitive bid process will not likely result in lower pricing; and
3. Adopt resolution appropriating \$129,000 from the Equipment Replacement Fund (Sewer Reserves) towards the purchase of new CCTV inspection truck.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Maintaining Fiscal Responsibility

2018 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

This purchase is for a CCTV inspection truck that will be used to perform video pipeline inspection of City's 158 miles of sanitary sewer mains. The vehicle will be an integral tool in meeting State of California regulations for reduction and elimination of sanitary sewer overflows. Inspection data is used to reduce sanitary sewer overflows by determining pipe condition, identify blockages and their causes, and is used to select corrective actions. The City is now required to inspect and verify pipe condition for the City's sewer system over the next three years. With the proposed new equipment, the Utilities Division will be able to perform this work in-house efficiently and cost effectively. City staff are proposing this purchase ahead of the planned budget process, in order to get the new equipment into service as quickly as possible. The new truck will replace an existing trailer unit that has been in service since 2008 and has reached the end of its useful service life.

Staff is specifically requesting RST/Subsite Electronics equipment for this purchase. The City already uses RST/Subsite Electronics equipment for its CCTV system. The equipment includes: a POSM Software data accusation system and RST controller, reel and cable, tractors and camera(s) equipment. Staff has used this equipment since 2008 and is fully trained and familiar with the operation and maintenance of these systems. Furthermore, staff finds that that RST/Subsite Electronic equipment has been reliable and has produced excellent data and reports. Staff has concluded that continued use of RST/Subsite Electronics CCTV equipment is justified both in terms of staff familiarity

(i.e. there is no learning curve) and historic high performance of the equipment. For these reasons, staff is recommending the City move forward with a sole source purchase from RST/Subsite Electronics.

Staff is recommending a truck platform, instead of the current trailer platform, to increase productivity of the inspection process. For example, the truck is fully self-contained with a generator, water supply, office area and restroom (see Attachment A for proposed layout). The amenities will allow the operators to take breaks without leaving the work site. With the current trailer unit, the operators must leave the work site whenever a break is needed which includes time consuming take-down and set up tasks. In addition, the sewer point repair truck is currently used to pull the CCTV trailer and therefore is not available for repair work. Having the CCTV equipment contained in a motor vehicle frees up the point repair truck to be used to repair sewer pipe. Production will be further improved due to the new camera equipment utilizing a track drive system which is less prone to getting stuck than our existing equipment. Reducing the number of time consuming stuck camera occurrences will result in less down time and increased efficiency in inspection.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the public of the recommendation to purchase the equipment for the Engineering & Utilities Department.

ALTERNATIVE ACTIONS:

The Council could choose to not approve the recommended purchase and direct staff to solicit quotes/bids through a formal bidding process.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

The cost of the fully equipped vehicle is approximately \$170,000 (see product quote in Attachment B). The purchase will be paid for using \$129,000 in savings from previous Sewer Division Vehicle purchases within the Vehicle Replacement Fund (requiring budget scorecard for appropriation in Fiscal Year 17/18) and \$41,000 anticipated savings within the Sewer Utility operating budget for Fiscal Year 17/18. This will be a new vehicle to the sewer fleet so the annual operating budget will be increased by approximately \$30,000 to pay for operating and replacement costs.

CEQA (California Environmental Quality Act):

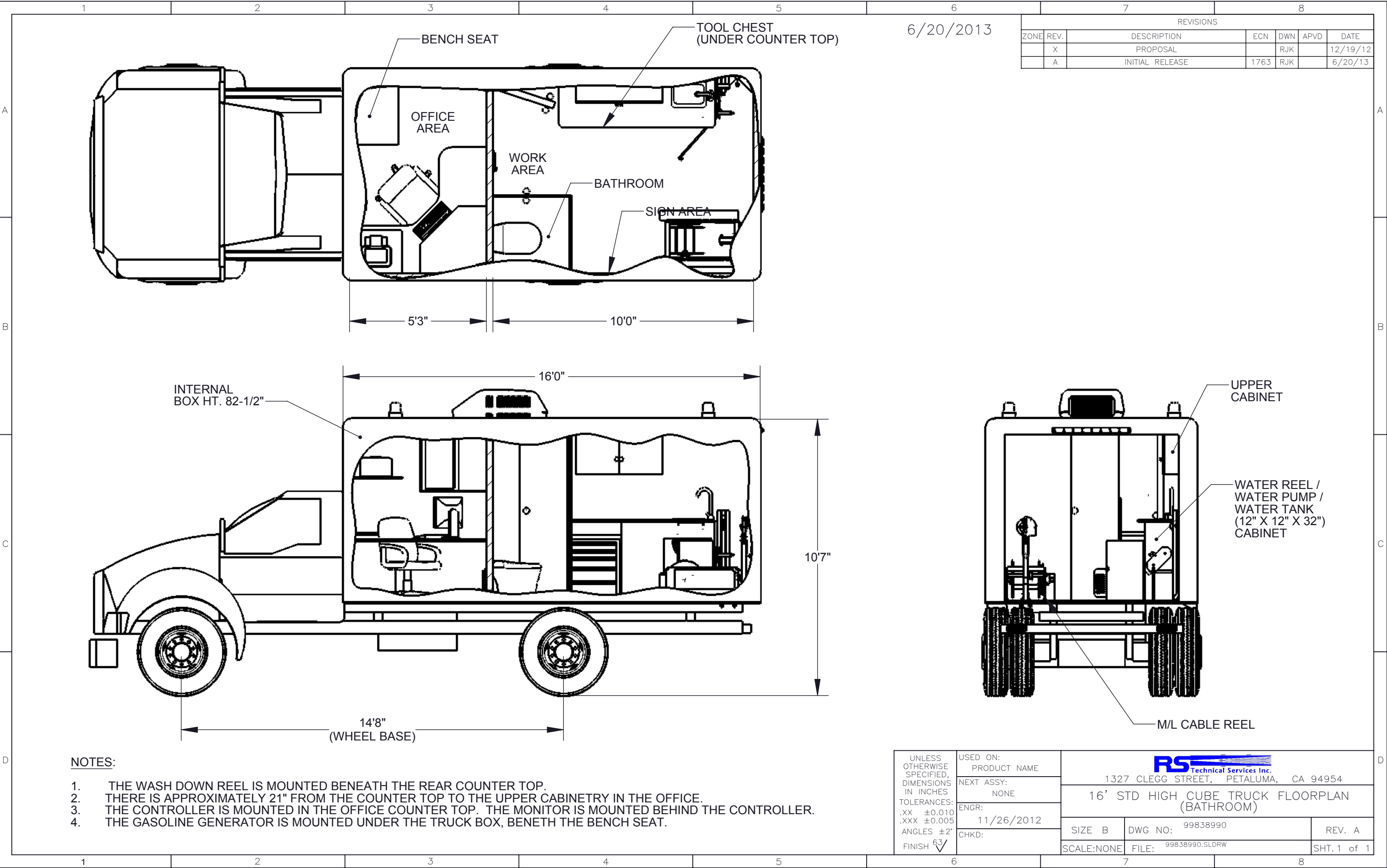
Not a Project

Continuing administrative or maintenance activities, including the replacement of equipment, is not a project subject to environmental review.

LINKS/ATTACHMENTS:

1. Attachment A - Design 16FT HIGH CUBE WITH BATHROOM
2. Attachment B - Quote CR180004_Morgan Hill-VMS 010917B
3. Resolution for Budget Adjustment Sewer Truck

4. Exhibit to Resolution - Budget Scorecard



REVISIONS						
ZONE	REV.	DESCRIPTION	ECN	DWN	APVD	DATE
	X	PROPOSAL		RJK		12/19/12
	A	INITIAL RELEASE	1763	RJK		6/20/13

NOTES:

1. THE WASH DOWN REEL IS MOUNTED BENEATH THE REAR COUNTER TOP.
2. THERE IS APPROXIMATELY 21" FROM THE COUNTER TOP TO THE UPPER CABINETRY IN THE OFFICE.
3. THE CONTROLLER IS MOUNTED IN THE OFFICE COUNTER TOP. THE MONITOR IS MOUNTED BEHIND THE CONTROLLER.
4. THE GASOLINE GENERATOR IS MOUNTED UNDER THE TRUCK BOX, BENETH THE BENCH SEAT.

UNLESS OTHERWISE SPECIFIED, DIMENSIONS IN INCHES TOLERANCES: .XX ±0.010 .XXX ±0.005 ANGLES ±2° FINISH 6.3/	USED ON: PRODUCT NAME	RS Technical Services Inc. 1327 CLEGG STREET, PETALUMA, CA 94954			
	NEXT ASSY: NONE				
	ENGR: 11/26/2012	16' STD HIGH CUBE TRUCK FLOORPLAN (BATHROOM)			
	CHKD:	SIZE B	DWG NO: 99838990	REV. A	
		SCALE:NONE	FILE: 99838990.SLDW	SHT. 1 of 1	



1327 Clegg Street - Petaluma, CA 94954
 707/778-1974 x236 Fax: 707/778-1981
 christopher.remillard@subsite.com
 www.subsite.com



6.b

City of Morgan Hill

Quote Number:
 CR180004

Salesperson:
 Chris Remillard

Sales Quotation

Date: 1/9/2018

Expiration: 4/9/2018

Line #	Part #	Description	Price	Qty	Extend
1	051-02505	INSTALL Installation, Standard, Cutaway/Cube/Step Van Office Area To Include: (1) - Laminate flooring (1) - Countertop (1) - Printer shelf (1) - Counter mounted equipment console (1) - 12" x 26" x 36" upper cabinet (1) - 20" x 36" bench seat with cushion (1) - 12 volt dc dome light (1) - Bulkhead door (1) - 24" x 30" bulkhead window (2) - Countertop height, 110 volt ac duplex outlets Equipment Area To Include: (1) - Flooring is quoted on a separate line (1) - Floor mounted two door cabinet (1) - Rubber matting covered countertop installed on top of two door cabinet (1) - 12" x 20" x 40" upper cabinet (1) - Five drawer tool box with work top (1) - 12 volt dc dome light (1) - Countertop height, 110 volt fourplex outlet (3) - Driver's side, wall mounted, 110 volt duplex outlets	\$10,790.00	1	\$10,790.00
2	841-20671	Kit, Cbl, Step Van/High Cube, Truck Install	\$520.00	1	\$520.00
3	051-02530	LONSEAL Lonplate equipment room flooring, Cutaway/Cube Van	\$1,180.00	1	\$1,180.00
4	867-34571	30" Wide Folding Steps, Installed	\$575.00	1	\$575.00
5	051-18279	File Cabinet With Latch And Key Lock	\$250.00	1	\$250.00
6	051-39186	Drawer with lock, mounted above the Hi cube rear bumper, Installed	\$1,025.00	1	\$1,025.00
7	051-31436	Restroom Facility With 20 Gallon Water Tank, Corner Mounted In Equipment Room, Does Not Include Sink	\$4,000.00	1	\$4,000.00
8	634-12754	Box, Undermount, 36"W x 20"D x 18"H, Installed	\$849.50	1	\$849.50
9	560-37222	12 Volt DC, 10 Amp Automobile Accessory Outlet, Installed	\$200.00	2	\$400.00
10	888-35663	Dispenser, Towel/Gloves, PITPAL#363	\$128.00	1	\$128.00

Attachment: Attachment B - Quote CR180004_Morgan Hill-VMS 010917B (1641 : Purchase of a CCTV Sewer Inspection Truck)

Line #	Part #	Description	Price	Qty	Extend	6.b
		Safety Lights/Equipment				
11	606-30365	Highway Warning Triangle kit (includes three triangles)	\$65.00	1	\$65.00	
12	051-36997	Fire Extinguisher, 5 Lbs., 3 A: 40 BC, Installed	\$105.00	1	\$105.00	
13	541-37613	Whelen Traffic Advisor TAN85 Sequential Light Bar, LED, 12 Volt DC, Installed	\$2,087.50	1	\$2,087.50	
14	051-38603	Strobe Light, LED, Whelen L21HAP, Amber, Installed	\$345.00	2	\$690.00	
15	051-33253-1	Video System, Vehicle Back Up, Brigade Electronics Model A2591, Installed	\$795.00	1	\$795.00	
16	888-39574-1	Spot Light, 12VDC, 3 MILLION CP,Q Beam Max	\$181.80	1	\$181.80	
17	888-37670	Lighthouse Kit, Universal Hideaway, LED, Amber, Installed	\$850.00	1	\$850.00	
18	051-31911-1	Floodlight Set, 27W 12V LED, Installed	\$210.00	1	\$210.00	
19	541-38175	Whelen Horizontal Strobe, LED, Model RSA03ZCR, Installed	\$240.00	6	\$1,440.00	
		Power Source				
20	050-34670	7.0 Kw Onan Air Cooled, Gasoline Generator And All Mounting Accessories, Box Mount Installed	\$8,282.00	1	\$8,282.00	
21	841-34528	12 Volt - 55 Amp Power Supply w/ 3 Stage Battery Charging Circuit	\$395.00	1	\$395.00	
		A/C & Heat				
22	050-41741	15,000 Btu Low Profile Roof Mounted Air Conditioner	\$2,220.00	1	\$2,220.00	
23	051-31419	Wall Heater, 1,500 Watt, Hi-Cube/Step Van/Trailer, Installed	\$200.00	1	\$200.00	
24	050-02022-01	30 Gallon Water Washdown System With Reel And Hose, Cutaway/Cube/Step Van, Self Contained (1) - Sink and faucet (1) - 5.4 g.p.m. water pump (1) - 30 gallon water tank with shutoff valve (1) - Retractable hose reel with 25' hose and nozzle	\$2,175.00	1	\$2,175.00	
25	051-40891	Monitor, 22", Flat Panel LCD/TFT, Equipment Room, Installed	\$1,385.00	1	\$1,385.00	
26	703-13554	Operators Chair w/ 5 Casters	\$160.00	1	\$160.00	
27	840-10352	Maintenance Tool Kit	\$425.00	1	\$425.00	
28	633-13220	Vise, 4" Installed	\$100.00	1	\$100.00	
29	634-18421	Kit, Grinder, Hand, Variable Speed, Dremel	\$150.00	1	\$150.00	
		Subtotal			\$41,633.80	
		RST EQUIPMENT				
		Controller(s)				
30	020-02000-00	Mainline Controller, (PCU) (1) - Mainline Controller, Listed (1) - Power Cord	\$5,450.00	1	\$5,450.00	
31	010-01103-01	Auxiliary Desktop Controller, Dual Tone, Zoom, Joystick	\$1,250.00	1	\$1,250.00	
32	010-01105-01	Auxiliary Desktop Controller, Dual Tone, Zoom, PS2, Wireless (1) - PS2 Wireless Controller (1) - PS2 Wireless Controller to Main Line Cable Reel Interface	\$1,400.00	1	\$1,400.00	
		Reel & Cable				

Attachment: Attachment B - Quote CR180004_Morgan Hill-VMS 010917B (1641 : Purchase of a CCTV Sewer Inspection Truck)

Line #	Part #	Description	Price	Qty	Extend	6.b
33	030-01000-20	Mainline Cable Reel, Single Conductor (1) - Reel speed controller (1) - Footage counter, English (1) - 6 pin x 3 pin screw on pigtail	\$7,250.00	1	\$7,250.00	
34	841-34293	Mainline Cable Reel emergency kill switch factory upgrade - Includes a lighted red operator button	\$220.00	1	\$220.00	
35	569-20283	Single Conductor, Steel Armored Cable, Per Foot	\$3.05	1500	\$4,575.00	
36	010-01655-204	Camera & Tractor TrakSTAR Pan & Tilt Zoom Camera with inclination & Diagnostics, NTSC, Single Conductor - *See Data Acquisition For Additional Items* (1) - TrakSTAR rotating head zoom camera with inclination, diagnostics and LED lighting, 4 pin (1) - Camera case	\$17,500.00	1	\$17,500.00	
37	032-05102-010	ProTRAK Tread Drive Transporter, Single Conductor, 6"-15", with 4 Pin Camera Cable (1) - 8-15" Tread drive ProTRAK (1) - 6" Pipe Kit (1) - Vehicle mounting kit (1) - Accessories kit	\$8,150.00	1	\$8,150.00	
38	039-01000-10	Downhole Roller Set, Double Manhole Setup with Articulating Arm (1) - Single Roller (1) - Top Manhole Roller (1) - Double Roller (2) - Manhole Adapter Hook (6) - Extension Pole (1) - Grab Hook (1) - Articulating Arm (1) - Lowering Rope	\$2,060.00	1	\$2,060.00	
39	806-31484	Test Cable, N-Plug to 6 Pin-Female Screw-on	\$176.50	1	\$176.50	
40	806-39319	Cable, Mainline, 4 Pin Female (Euro) Screw On To 6 Pin Male Screw On (Camera Test Cable)	\$120.50	1	\$120.50	
41	900-32036	Equipment Operator and Installation manuals on compact disk	\$0.00	1		
42	840-35012	Camera/Tractor Nitrogen Recharging Kit (Does Not Include Nitrogen Canister) (1) - Pressure regulator (1) - Hose (1) - Kit Stand	\$275.00	1	\$275.00	
43	630-36875	Cylinder, Gas, Nitrogen, 40 CU FT	\$240.00	1	\$240.00	
		Subtotal			\$48,667.00	
44	841-40015	Spare Parts Recommended Spare Parts Kit (1) - SINCON cable grip assembly (1) - 3 pin to 6 pin pigtail cable (1) - SINCON removable pigtail installation kit (1) - SINCON removable pigtail bullet compression fitting replacement kit (2) - 4 pinTranSTAR to TrakSTAR cable	\$1,160.00	1	\$1,160.00	
		Subtotal			\$1,160.00	
45	867-37782	Data Collection System P.O.S.M. PRO Winlogger 2 Replacement Laptop Computer with Docking Station (1) - Laptop Computer (1) - Docking Station	\$4,175.00	1	\$4,175.00	

Attachment: Attachment B - Quote CR180004_Morgan Hill-VMS 010917B (1641 : Purchase of a CCTV Sewer Inspection Truck)

Line #		Part #	Description	Price	Qty	Extend
			(1) - POSM Pro Software (1) - USB Mpeg Encoder			
46		702-35033	Wireless Keyboard & Mouse Set	\$82.30	1	\$82.30
47		704-40890	Monitor, Tru-Vu, 22", Flat Panel LCD/TFT Studio, Installed, *(Add Mounting Rack If Retrofit)*	\$1,200.00	2	\$2,400.00
48		451-40071	Dual Monitor Rack Mount	\$247.50	1	\$247.50
49		045-01000-02	Color Ink Jet Report Printer For P.O.S.M. Pro, Installed	\$325.00	1	\$325.00
			Subtotal			\$7,229.80
50		607-18218	2018 Ford E450 High Cube Van V10, 176' WB, 14,500 GVWR, Power Windows, & Locks Integrated bluetooth Side Door Installed in Box Chassis price subject to change depending on availability from chassis mfg	\$41,018.89	1	\$41,018.89
51		REG FEE		\$904.00	1	\$904.00
52		950-33941	Technical Support, P.O.S.M. Pro Software, One Year	\$1,500.00	1	\$1,500.00
			Additional Options For Truck System Additional Install Items			
53		051-18282	Refrigerator, Installed	\$1,425.00	1	\$1,425.00
54		606-20929	Microwave, Installed	\$475.00	1	\$475.00
			Inclinatiopn Upgrade for Software & Camera			
55		040-04520-11	Winlogger II Inclination interface V2 with Cables (For Use With P.O.S.M. Pro & TrakSTAR II)	\$2,150.00	1	\$2,150.00
56		010-01655-05	Inclinometer Factory Upgrade, NovaSTAR Camera **(Lead Time)** - See Data Acquisition For Additional Items	\$2,730.00	1	\$2,730.00
			Extended Warranty Options Camera & Tractor			
57		950-18263-1	Pan and Tilt Zoom Camera, 12 month extended warranty	\$925.00	1	\$925.00
58		950-18263-2	Mainline Tractor and Crawler Transporters, 12 month extended warranty	\$345.00	1	\$345.00
59		950-18024-3	Training, RST Equipment/P.O.S.M., Other Personnel, Per Day	\$1,500.00	1	\$1,500.00

I accept the terms and conditions of this quotation.

Signed: _____

Name: _____ Date: _____

Terms:

Sub-Total:	\$151,663.49
Tax:	\$13,184.05
Total:	\$164,847.54

Attachment: Attachment B - Quote CR180004_Morgan Hill-VMS 010917B (1641 : Purchase of a CCTV Sewer Inspection Truck)

RESOLUTION NO.

A RESOLUTION APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2017/18 BUDGET IN THE EQUIPMENT REPLACEMENT FUND (FUND NO. 790) FOR ONE HUNDRED TWENTY-NINE THOUSAND (\$129,000) FOR THE PURCHASE OF A SEWER INSPECTION TRUCK

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 7th day of March, 2018 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 March 7, 2018.

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

DATE: _____

Irma Torrez, CITY CLERK

EXHIBIT A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2017-18

ADJUSTMENT #

031

FUND:

790 Equipment Replacement Fund

DEPARTMENT:

8500 Equipment Replacement

OBJECT:

43830 AUTO/TRUCKS

AGENDA DATE:

03/07/18

AGENDA ITEM TITLE:

Purchase of a CCTV Sewer Inspection Truck

	07/01/17			06/30/18
	BEGINNING		AMENDED	PROJECTED
	FUND	ESTIMATED	APPROPRI-	ENDING
	BALANCE	REVENUES	ATIONS	FUND
				BALANCE
ORIGINAL BUDGET	4,110,874	974,418	1,096,427	3,988,865
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION	-	-	129,000	(129,000)
RESULT OF RECOMMENDED ACTION	4,110,874	974,418	1,225,427	3,859,865

Attachment: Exhibit to Resolution - Budget Scorecard (1641 : Purchase of a CCTV Sewer Inspection Truck)



CITY COUNCIL STAFF REPORT

MEETING DATE: March 7, 2018

PREPARED BY: Leslie Little, Assistant City Manager for Community Development
APPROVED BY: City Manager

PROFESSIONAL SERVICES AGREEMENT WITH CSG CONSULTANTS, INC. TO PROVIDE INSPECTION SERVICES AND PLAN CHECK/REVIEW ASSISTANCE

RECOMMENDATION(S)

Adopt resolution approving the following:

1. Amend the City's Fiscal Year 2017-18 budget for Building and Land Development Engineering Divisions in the Community Development Fund, to appropriate an additional \$150,000 for plan check/review services; and
2. Approve a professional services agreement with CSG Consultants, Inc. to provide Building and Land Development Engineering inspection and plan check/review services and public works inspection for 24 months in an amount not to exceed \$1,250,000.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

2018 Strategic Priorities

Financial Stewardship

POLICY CONSIDERATIONS:

Shall the City continue to augment land development review and inspection utilizing contract services vs. permanent employees during robust economic cycles to meet increased demand for services.

REPORT NARRATIVE:

The City public works inspectors are responsible for monitoring/inspecting and guiding all construction work within the public right of way. This includes Capital Improvement Program (CIP) projects, developer projects, and any related encroachment permit projects by residents and various utility companies. When inspection service workload cannot be met by the two staffed inspectors, additional inspection services are required.

In addition, the Building Division currently supplements their activities with one full time contract building inspector. Both Building and Land Development Engineering Divisions utilize CSG Consultants and Harris and Associates for outside plan check and review services for many projects, when specific expertise is needed, or workload necessitates augmentation. The current CSG services contract was approved by the City Council in December 2015 and will expire on March 30, 2018.

In October 2015, the City issued a Request for Qualifications (RFQ) to firms capable of providing these critical services, establishing a list of qualified contractors. Two proposals were received, with CSG being selected to provide all services requested. The other firm, Harris and Associates, also provides contract services to Morgan Hill, for only Land Development Engineering review. With a practice of augmenting City needs with contract services during peak intervals, the CSG Consultants, Inc contract is pivotal to the City's ability to respond to CIP and development activity. Similarly, the Planning Division utilizes master planning contracts to support specific project related planning activities.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the recommended contractual services.

ALTERNATIVE ACTIONS:

The Council could direct staff to not increase the contract and to issue a new RFQ.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council approved a contract with CSG Consultants in December 2015 which expires on March 30, 2018.

FISCAL AND RESOURCE IMPACT:

The proposed cost of the entire contract over the 24-month term is \$1,250,000. The recommended amounts for the remainder of FY 2017-18 are proposed to be appropriated from the Community Development Fund, Land Development Engineering Division (206.5410) and \$75,000 from Building Division (206.5120) for plan check/review and inspection services. It is recommended that the balance of the proposed contract be appropriated in the upcoming budget process.

California Environmental Quality Act (CEQA):

Not a Project. This professional service agreement and the service performed thereunder are not a project as defined in Section 15378 of CEQA Guidelines.

LINKS/ATTACHMENTS:

1. Resolution
2. Budget Scorecard 1 - 027-CSG Consultant Agreement Fund 206
3. Budget Scorecard 2 - 028-CSG Consultant Agreement Fund 206
4. CSG Service Agreement-signed 2018

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING, AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND ADMINISTER THAT CERTAIN PROFESSIONAL SERVICES AGREEMENT WITH CSG CONSULTANTS, INC FOR PLAN CHECK AND INSPECTION SERVICES AND APPROVING AMENDMENTS TO THE CITY'S FISCAL YEAR 2017-18 BUDGET IN THE COMMUNITY DEVELOPMENT FUND (FUND NO. 206.5410) TO APPROPRIATE \$75,000 FOR THE PROFESSIONAL SERVICES AGREEMENT WITH CSG CONSULTANTS, INC. FOR LAND DEVELOPMENT REVIEW SERVICES AND APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2017-18 BUDGET IN THE COMMUNITY DEVELOPMENT FUND (FUND NO. 206.5130) TO APPROPRIATE \$75,000 FOR THE PROFESSIONAL SERVICES AGREEMENT WITH CSG CONSULTANTS, INC. FOR BUILDING SERVICES

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 "Professional Services Agreement with CSG Consultants, Inc. to Provide Inspection Services and Plan Check/Review Assistance" submitted for City Council consideration at its meeting of March 7, 2018, submitted to the City Council by the City Manager (the "Staff Report"), the contents of which Staff Report are incorporated herein by this reference; and

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Budget for Fiscal Year 2017-18, as set forth on Exhibit A to this Resolution, to appropriate the requisite funds to implement the actions authorized by this Resolution; and

WHEREAS, the activities allowed under this Resolution 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 Professional Services Agreement with CSG Consultants, Inc. for plan check/review and inspection services substantially in the form attached hereto as Exhibit B and incorporated herein by this reference (the “Agreement”) is hereby approved; and
- 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 B; provided, specifically, that the total amounts to be paid by City under the Agreement shall in no event exceed One Million Two Hundred Fifty Thousand Dollars (\$1,250,000); and
- c. 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
- d. 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 ____ day of _____, 2018 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 _____, 2018.

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

DATE: _____

Irma Torrez, CITY CLERK

EXHIBIT A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2017-18

ADJUSTMENT #

027

FUND:

DEPARTMENT:

OBJECT:

206	Community Development Fund
5130	Building Division
42231	CONTRACT SERVICES

AGENDA DATE:

AGENDA ITEM TITLE:

03/07/18
CSG Consultant Agreement

	07/01/17			06/30/18 PROJECTED
	BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	ENDING FUND BALANCE
ORIGINAL BUDGET	2,646,685	3,679,970	5,144,941	1,181,714
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	170,000	(170,000)
RECOMMENDED ACTION	-	-	75,000	(75,000)
RESULT OF RECOMMENDED ACTION	<u>2,646,685</u>	<u>3,679,970</u>	<u>5,389,941</u>	<u>936,714</u>

Attachment: Budget Scorecard 1 - 027-CSG Consultant Agreement Fund 206 (1654 : Professional Services contract CSG)

EXHIBIT A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2017-18

ADJUSTMENT #

028

FUND:

DEPARTMENT:

OBJECT:

206	Community Development Fund
5410	PW Engineering
42231	CONTRACT SERVICES

AGENDA DATE:

AGENDA ITEM TITLE:

03/07/18
CSG Consultant Agreement

	07/01/17			06/30/18 PROJECTED
	BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	ENDING FUND BALANCE
ORIGINAL BUDGET	2,646,685	3,679,970	5,144,941	1,181,714
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	245,000	(245,000)
RECOMMENDED ACTION	-	-	75,000	(75,000)
RESULT OF RECOMMENDED ACTION	<u>2,646,685</u>	<u>3,679,970</u>	<u>5,464,941</u>	<u>861,714</u>

Attachment: Budget Scorecard 2 - 028-CSG Consultant Agreement Fund 206 (1654 : Professional Services contract CSG)

SERVICE AGREEMENT FOR DESIGN PROFESSIONALS CSG CONSULTANTS, 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 CSG CONSULTANTS, 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 March 30, 2020 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 inspection services as further described in **Exhibit A.**
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$1,250,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed One Million Two Hundred Fifty Thousand 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

Attachment: CSG Service Agreement-signed 2018 (1654 : Professional Services contract CSG)

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:

CSG Consultants, Inc.
Nourdin Khayata
550 Pilgram Drive
Foster City, CA 94404

Address of CITY is as follows:

Leslie Little	with a copy to:
Assistant City Manager	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") to the extent of CONSULTANT'S proportionate percentage of fault.

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:

CSG Consultants, Inc.

 City Attorney

By: _____

 Donald A. Larkin

 Print Name

CYRUS KIANPOUR, PRESIDENT

 Print Name and Title of Signer.

If Corporate: Chairman, President or
 Vice President

Date: _____

Date: 02-16-18

By: _____

NOURDIN KHAYATA, SECRETARY

 Print Name and Title of Signer.

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

Date: 02-16-18

Attachment: CSG Service Agreement-signed 2018 (1654 : Professional Services contract CSG)



EXHIBIT A

550 Pilgrim Drive
Foster City, CA 94404
phone 650.522.2500
fax 650.522.2599

www.csgegr.com

February 26, 2018

David I Gittleson, P.E.
Associate Engineer
City of Morgan Hill
100 Edes Court
Morgan Hill, CA 95037

Re: Inspection and Plan Review Services

CSG Consultants, Inc. (CSG) is pleased to present this proposal to the City of Morgan Hill (City) to provide public works inspection, building inspection, engineering land development review, and building plan review services for a two-year contract term. We understand that the City is seeking a full-service construction inspection company who is able to assist the City during the construction of municipal infrastructure and building projects. CSG has been providing construction inspection services to the City for the past seven years and is currently providing program management for the City's utility program. We are familiar with the issues, needs, and processes of the City.

CSG has a large pool of qualified public works inspectors from which to draw depending upon the size and scope as well as the needs of the project. Our inspectors possess a wide range of construction project experience. This includes various public works project such as utilities (sewer, water, drainage and electrical), roadway rehabilitation and improvements, bike trail projects, highway, bridges and freeway interchanges, parks, landscape and streetscape, as well as development and infrastructure projects. Our staff is also trained and familiar with the latest Storm Water Pollution Permit requirements.

CSG provides fully integrated, multi-disciplined building inspection services for residential, commercial, and industrial projects, and are experienced in all construction types. We provide experienced, ICC certified (and/or with other appropriate entities in accordance with AB717) inspectors.

Nourdin Khayata will serve as the Contract Manager and will provide quality control and quality assurance services for this contract. The following is my contact information:

Nourdin Khayata, PE | Contract Manager
550 Pilgrim Drive | Foster City, CA 94404
phone (650) 522-2500 | fax (650) 522-2599 | nourdin@csgegr.com

CSG is excited at the opportunity to continue providing construction inspection services to the City of Morgan Hill. As a Vice President and a Partner, I am empowered to enter into a binding contract for these services. Should you have any questions, please contact me at the information provided above.

Sincerely,

Nourdin Khayata, PE
Vice President, Construction Management

Attachment: CSG Service Agreement-signed 2018 (1654 : Professional Services contract CSG)

EXHIBIT A

Scope of Work

1. Perform Plan Check review on request of the City Engineer and Building Official for engineering, land development engineering and building.
2. Perform inspections on request of City Engineer and Building Official.

EXHIBIT B

Fee Schedule

LAND DEVELOPMENT REVIEW & INSPECTION SERVICES

Engineering land development review, public works inspection, and building inspection services are billed on a time-and-materials basis in accordance with the hourly rates shown below.

Professional Engineering Services	Hourly Rate
Analyst	\$120
Engineering Designer	\$130
Senior Analyst	\$140
Assistant Resident Engineer	\$160
Assistant Engineer	\$140
Associate Engineer	\$160
Senior Construction Inspector	\$150
Senior Engineer	\$185
Resident Engineer	\$180
Structure Representative	\$180
Senior Structural Engineer	\$195
Senior Project Manager	\$195
Principal Engineer	\$205
Senior Principal Engineer	\$230
Two-Person Survey Crew	\$310
Inspection Services	Hourly Rate
Construction Inspector	\$125
Building Inspector	\$100

BUILDING, FIRE & STRUCTURAL PLAN REVIEW SERVICES

CSG's fee schedule for building, fire, and structural plan review services is provided in the table below. CSG will coordinate the pickup and delivery of all plans to CSG via staff or a licensed courier service. This service is provided at no additional cost.

Plan review based on a percentage of the City's plan check fee includes initial plan review and two subsequent reviews. Additional reviews will be charged at the appropriate hourly rate indicated below.

Review Type/Role	All Inclusive Fee/ Hourly Rate
Building Plan Review (excluding Fire Plan Review)	65% of City's Plan Check Fee
Structural Plan Review Only	50% of City's Plan Check Fee
Expedited Plan Review	90% of City's Plan Check Fee
Hourly Plan Review	\$130
Hourly Structural Plan Review	\$130
Fire Plan Review	\$100
Expedited Plan Review (Hourly)	1.5 x Hourly Rate
Overtime (Hourly)	1.5 x Hourly Rate

All hourly rates include overhead costs including, but not limited to, salaries, benefits, Workers Compensation Insurance, travel and office expenses. Overtime work will be billed at 1.5x the hourly rates indicated in the table above. On each anniversary of the contract start date, CSG will initiate a rate increase based on the change in CPI-W for the applicable region. CSG will mail an invoice at the beginning of every month for services rendered during the previous month.

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

The City will request inspection services on an as-needed basis until the expiration of the agreement.



CITY COUNCIL STAFF REPORT

MEETING DATE: March 7, 2018

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

APPROVAL OF IMPROVEMENT AGREEMENT WITH SUNSWEET MORGAN HILL LLC

RECOMMENDATION(S)

1. Approve an Improvement Agreement with Sunsweet Morgan Hill LLC;
2. Authorize the City Manager to execute the Improvement Agreement;
3. Authorize the City Manager to execute a Stormwater Best-Management-Practices (BMP) Operation and Maintenance Agreement pending review and approval by the City Attorney; and
4. Authorize the recordation of the Improvement Agreement and the Stormwater BMP Operation and Maintenance Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

2018 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

Sunsweet is a mixed-use development with 83 apartment units and 4 commercial units, located on the west side of Depot Street bounded by Third and Fourth Street in the Downtown Area (see attached site map). As required by the project's conditions of approval for Site Review, the developer is required to enter into an Improvement Agreement with the City of Morgan Hill and provide a financial guarantee covering the project's public improvements.

The developer has furnished the City with the necessary documents to complete the processing of the Improvement Agreement by providing surety bonds and insurance for the proposed public improvements for the Sunsweet development. Staff recommends that City Council authorize the City Manager to sign an Improvement Agreement on behalf of the City and sign a Stormwater Best Management Practices (BMP) Operation and Maintenance Agreement pending review and approval by the City Attorney.

COMMUNITY ENGAGEMENT: Involve

On March 28, 2017, the Planning Commission recommended approval of the project's Site Review. Residents within a 300 foot radius were informed of the Planning Commission's recommendation to approve the Site Review for the project, in which a public hearing was held to allow the public to be involved and voice their concerns over the Site Review requirements.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On January 10, 2017, the City Council approved the Development Agreement and on April 19, 2017 the City Council approved the Site Review for the project

FISCAL AND RESOURCE IMPACT:

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

CEQA (California Environmental Quality Act):

Project - An Environmental Impact Report (EIR) was prepared and certified for the Downtown Specific Plan. An Addendum analyzing the 83-unit Mixed-Use project was completed in January 3, 2017, which concluded that the project is consistent with the development projections analyzed in the EIR for the project site. No further environmental assessment is required. The project shall be subject to compliance with the mitigation measures of the Downtown Specific Plan EIR on file in the Community Development Department.

LINKS/ATTACHMENTS:

1. Site Map - Sunsweet
2. Improvement Agreement - Sunsweet
3. Stormwater BMP Operation and Maintenance Agreement



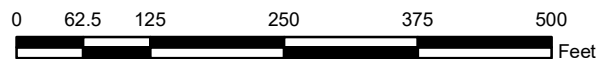
CITY OF MORGAN HILL

**Department of Public Works
Engineering and Utilities Division**

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

SITE MAP

SUNSWEEET PROJECT



RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

CITY OF MORGAN HILL
17575 PEAK AVENUE
MORGAN HILL, CA 95037

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

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

IMPROVEMENT AGREEMENT

Sunsweet Morgan Hill LLC
90 East Third Street
APN 726-13-32, 44, and 54
Sunsweet

THIS AGREEMENT is made on this _____ day of _____, 2018, by the CITY OF MORGAN HILL, a municipal corporation ("CITY"), and **Sunsweet Morgan Hill LLC** a California limited liability company ("PROPERTY OWNER").

RECITALS

The following Recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Morgan Hill Municipal Code Chapter 12.02.
2. PROPERTY OWNER has filed a Development Application and supporting documents on the property with the address of **90 East Third Street** and the **APN 726-13-32, 44, and 54** having the development name of **Sunsweet** ("Development").
3. CITY requires as a condition of approval of the Development Permit, as described on said permit, that certain improvements be installed by PROPERTY OWNER as shown on the fully executed Development Improvement Plans entitled '**Improvement Plans for Sunsweet Morgan Hill LLC**' ("Improvements"), on file with CITY and incorporated herein by this reference.
4. PROPERTY OWNER has been unable to complete, prior to the issuance of the Development Permit, all of the Improvements required by CITY to the satisfaction of the City Engineer.
5. PROPERTY OWNER is required by the terms of the Morgan Hill Municipal Code to improve all streets, highways, or public areas which are part of the Development, including but not limited to necessary paving, curbs, sidewalks, catch basins, water mains, culverts, storm drains, and sanitary sewers, in accordance with the plans and specifications on file with the City Engineer.

6. To assure CITY that PROPERTY OWNER will complete all the work and Improvements required for the Development, the parties have entered into this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** This term of this Agreement shall be six (6) months from the date of issuance of the Development Permit ("Term") unless extended by written agreement.
2. **Improvements.** PROPERTY OWNER agrees to construct the Improvements in a good and workmanlike manner in accordance with the plans and documents filed with and approved by CITY in conjunction with the Development, all of which are incorporated herein by reference. These items of the Improvements shall be completed, constructed and installed at PROPERTY OWNER's sole expense unless agreed to otherwise by CITY.
3. **Rights-of-Way.** Except as otherwise provided by this Agreement, CITY can hold without acceptance or recordation all lands, rights-of-way, and easements offered for dedication. All such offers shall, however, remain open, and shall constitute irrevocable offers of dedication in accordance with the Government Code. All such offers may be accepted and recorded by CITY in its sole discretion at any later date without further notice to PROPERTY OWNER as provided by law. By way of explanation only, it is the current intention of CITY to accept all or part of the irrevocable offers to dedicate upon acceptance of the Improvements called for in this Agreement.
4. **Improvements: Time Limits.** PROPERTY OWNER agrees to cause all Improvements to be made and constructed to comply with all requirements of Morgan Hill Municipal Code Chapter 12.02, according to the improvement plans for the Development approved by the City Engineer and including any changes or alteration in the Improvements required by the City Engineer. The Improvements shall be completed utilizing CITY standards and specifications. PROPERTY OWNER agrees to complete the Improvements prior to the expiration of this Agreement, or the issuance of the certificate of occupancy, whichever is earlier; provided however, the City Manager may extend the deadline for completion by not more than twenty-four (24) months at his or her reasonable discretion and determination that granting the extension will not be detrimental to the public welfare. No extension of this deadline for completion shall be made except upon the basis of a written application made by PROPERTY OWNER stating fully the ground for the application and the facts relied upon for an extension.

It is further agreed by and between PROPERTY OWNER and CITY that any extension granted shall in no way affect the validity of this Agreement or release the surety(ies) on any bond attached hereto or the financial institution guaranteeing the same. PROPERTY OWNER further agrees to maintain the securities described in Section 6 in full force and effect during the terms of this Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by CITY.

In the event that PROPERTY OWNER shall fail to complete the Improvements within the time provided by this Agreement, CITY may in its sole discretion and in addition to any other remedy provided in this Agreement or by law, enter upon the Development and complete the Improvements and recover the full cost and expense of construction from PROPERTY OWNER, PROPERTY OWNER's successors and

assigns, PROPERTY OWNER's Performance/Labor & Material Bonds associated with this Development, or from the then owner of the Development, and/or place a lien upon the Development property for the cost and expense. Any and all CITY costs shall include but not be limited to administrative and attorney costs.

5. **Acquisition and Dedication of Easements or Rights-of-Way.** If any of the Improvements is to be constructed or installed on land not within the Development or already existing public right-of-way, no construction or installation shall be commenced before the irrevocable offer of dedication or conveyance to CITY of appropriate rights-of-way, easements or other interest in real property, and appropriate authorization from PROPERTY OWNER to allow construction or installation of the Improvements or work has been obtained and paid for by PROPERTY OWNER.

6. **Bond Requirements.** To secure the performance of each Improvement required under this Agreement and to ensure full payment to all persons furnishing or supplying labor or materials for each Improvement required, PROPERTY OWNER shall provide to CITY concurrently with the execution of this Agreement, payment and performance bonds each in the amount of 100% of the total estimated cost of the Improvements as determined by the City Engineer. A performance bond to secure faithful performance of this Agreement as required by Section 12.02.160 of the Morgan Hill Municipal Code for performance shall be provided in substantially the form set forth in Exhibit B. A payment bond to secure full payment to all persons furnishing or supplying labor or materials as required by Section 12.02.160 of the Morgan Hill Municipal Code for labor and materials shall be provided in substantially the form set forth in Exhibit C. PROPERTY OWNER shall provide an additional guarantee and warranty security (in substantially the form set forth in Exhibit D) of fifty (50%) percent of the City Engineer's estimated cost of the Improvements to guarantee and warranty the Improvements for a period of one year following its completion and acceptance against any defective work or labor done, or defective materials furnished, as required by Section 12.02.170 of the Morgan Hill Municipal Code.

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

Any bonds submitted under this Agreement shall be executed by a surety company authorized to write the same in the State of California, and subject to the review and approval of the City's risk manager. All required securities shall be in a form approved by the City Attorney. The bonds shall be executed on CITY forms by a surety authorized to do business in the State of California and shall be approved by the City Attorney and the City Engineer. Submittal of the Performance/Labor & Material Bonds is a requirement prior to CITY's issuance of an encroachment permit to do work in CITY's right-of-way. Submittal of the Warranty Bond is a requirement prior to the City Engineer's consideration of acceptance of the public improvements.

Note: If Cash Deposit Agreement Guaranteeing Improvements is utilized for security purposes, the Cash Deposit Agreement amount shall be two hundred (200%) percent of the aforementioned City Engineer's Estimated Costs of Improvements. In lieu of the above, CITY will accept a certificate of deposit in CITY's name with escrow instructions acceptable to the City Engineer, subject to the approval of the City Attorney.

The release of any securities shall be governed by the provisions of Section 12.02.170 of the Morgan Hill Municipal Code.

7. **Irrevocability of Security.** The securities provided under this Agreement shall be irrevocable, shall

not be limited as to time, and may be released only upon the written approval of the City Engineer and City Council.

8. **Duty to Warn.** PROPERTY OWNER shall give adequate warning to the public of each and every dangerous condition which may exist in the Improvements, and will take all reasonable actions to protect the public from any dangerous condition.

9. **Warranty.** PROPERTY OWNER guarantees and warrants the Improvements required by this Agreement and agrees to remedy any defects in the Improvements arising from faulty or defective materials or construction occurring within twelve (12) months after acceptance by CITY of said Improvements. Following notice, PROPERTY OWNER shall, without delay or cost to CITY, repair, replace, or reconstruct any defective or unsatisfactory portion of Improvements. CITY may, at its sole option, perform the repair or replacement itself if PROPERTY OWNER has failed to commence repair within twenty (20) days after CITY has mailed written notice to PROPERTY OWNER. In such event, PROPERTY OWNER agrees to pay the cost of repair and replacement, plus 15%, by CITY; and CITY may recover such costs as a lien against the Development. CITY may proceed immediately to make repairs should an emergency arise without waiving its rights of recovery against PROPERTY OWNER.

10. **Failure of Performance.** In addition to the other remedies provided by this Agreement, CITY shall have recourse to the security given. In the event that CITY seeks recourse against any security, CITY shall have recourse against PROPERTY OWNER for any and all amounts necessary to complete the obligation. All administrative costs, including attorneys' fees shall be a proper charge against the security and PROPERTY OWNER pursuant to Government Code. The right of CITY to draw upon or utilize the security is additional and not in lieu of any other remedy available to CITY at law or in equity. The parties agree that the estimated costs and security amounts may not reflect the actual cost of construction or installation of Improvements, and therefore, CITY damages for PROPERTY OWNER's default shall be measured by the cost of completing the required Improvements.

11. **Certificate of Occupancy.** PROPERTY OWNER understands that CITY will expect completion, to the satisfaction of CITY, of specific public improvements as well as private utility improvements prior to CITY Approval of a Certificate of Occupancy for any building on the Development property. The specific improvements shall include activation of all public utilities (water, sewer, storm drain); activation of all private utilities (electric, gas, phone) except for cable; street lights turn-on request filed with P G & E; and full street improvements (curb-gutter and paving with/without final lift) from existing public street to building under consideration for Certificate of Occupancy. PROPERTY OWNER, furthermore, agrees to so inform successor in lot interest should lot be transferred to another party prior to CITY acceptance of public improvements.

12. **Final Toxic Report.** Where applicable, PROPERTY OWNER hereby agrees to furnish the City Attorney with a copy of the Final Toxic Report issued by the appropriate licensed consultant on the proposed Development. This report must be received prior to final acceptance of on-site improvements and issuance of certificate of occupancy.

13. **Public Improvements Fee Schedule.** PROPERTY OWNER shall pay the following sums in cash to CITY pursuant to the provisions of Resolution 1383 and any amendments. These sums shall be paid to CITY at the time of issuance of the Development Permit and prior to occupancy of the apartment units and shall be in accordance with the attached Department of Public Works Fee Schedules attached hereto

demonstrating a current Total Fee Obligation of \$1,402,721 (\$312,433 due prior to Building Permit approval; \$1,090,288 due prior to occupancy of the apartment units). All Fees are estimated and may be increased by CITY subject to current resolutions and ordinances. These fees are subject to a minimum annual revision. PROPERTY OWNER consents to increases in these fees. This Agreement shall not be construed to fix or freeze fees as of any point prior to issuance of Development Permits.

All development fees shall be those in effect at the time of the issuance of the Development Permit for this Development. This Agreement does not entitle the developer to any permit including a grading permit. A separate application for a grading permit should be made to the Building Department.

14. **Other Agreements Associated with This Improvement Agreement:** The following "checked off" Agreements are understood to be associated with this Agreement and have been fully executed prior to or concurrent with this Agreement:

☐ CITY "Streets" Reimbursement Agreement (CITY Ordinance 982)

PROPERTY OWNER acknowledges and agrees that the property is subject to a Reimbursement Agreement whereby PROPERTY OWNER must reimburse CITY for all costs associated with off-site improvements completed by the CITY and/or others or to be completed by CITY and/or others. PROPERTY OWNER agrees to pay CITY for all sums already incurred under the reimbursement agreement prior to issuance of any building permits. If the improvement has not been completed by CITY and/or others, then PROPERTY OWNER or successor-in-interest agrees to fully reimburse CITY for all costs incurred by CITY and/or others in constructing the improvements.

☐ CITY Public/Private Utility Reimbursement Agreement

☐ Landscape & Lighting Maintenance Assessment District Annexation

☐ Improvements Deferral Agreement

15. **Insurance Requirements.**

Commencement of Improvements. Before beginning construction of the improvements, PROPERTY OWNER 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 PROPERTY OWNER and its subcontractors relating to or arising from the performance of work associated with the Improvements, and must remain in full force and effect at all times during the period covered by the Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by CITY. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. Any deductibles or self-insured retentions must be declared to and approved by City. Coverages may be provided by PROPERTY OWNER's General Contractor if PROPERTY OWNER is not directly insuring such exposures under an "Owners and Contractors Protective Liability Policy (OCP)" on which CITY would be an additional insured. If PROPERTY OWNER will utilize the services of a General Contractor to perform all of the work associated with the Improvements, then PROPERTY OWNER may opt to have all coverages provided by PROPERTY OWNER's General Contractor, provided that a written contract is executed between PROPERTY OWNER and the General Contractor whereby the written contract specifically required General Contractor to fulfill all of the City insurance requirements as outlined in this Agreement, including all endorsements in favor of the City. Verification of the written contract must be provided to City upon request. If PROPERTY OWNER fails to provide any of the required coverage in

full compliance with the requirements outlined in this Agreement, CITY may, at its sole discretion, purchase such coverage at PROPERTY OWNER's expense and deduct the cost from payments due to PROPERTY OWNER, assess payment against Development, or terminate the Agreement for default. PROPERTY OWNER further understands that CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to PROPERTY OWNER, at any time as deemed necessary to protect the interests of CITY.

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

(1) Commercial General Liability Insurance ("CGL"): PROPERTY OWNER shall maintain CGL and shall include coverage for liability arising from PROPERTY OWNER's or its subcontractor's acts or omissions in the performance of work associated with the Improvements against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) five million dollars (\$5,000,000.00) combined single limit and a general aggregate limit of ten million dollars (\$10,000,000.00), or (ii) the maximum amount of such insurance available to PROPERTY OWNER under PROPERTY OWNER'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: PROPERTY OWNER 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 PROPERTY OWNER under PROPERTY OWNER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If PROPERTY OWNER is self-insured, PROPERTY OWNER must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

(3) Automobile Liability: PROPERTY OWNER shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if PROPERTY OWNER does not own automobiles, then PROPERTY OWNER 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) combined single limit, or (ii) the maximum amount of such insurance available to PROPERTY OWNER under PROPERTY OWNER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(4) Pollution (Environmental) Liability: The performance of PROPERTY OWNER's work or service under this Agreement involves handling of hazardous materials,

contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials. PROPERTY OWNER shall procure and maintain Pollution Liability covering PROPERTY OWNER'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 PROPERTY OWNER under PROPERTY OWNER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

(1) ALL Policies:

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

(2) ALL policies except Workers Compensation:

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

(3) General Liability:

a. "Primary and Non-Contributing" - Insurance shall be primary non-contributing;

b. "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. PROPERTY OWNER must ensure that each subcontractor is required to maintain the same insurance coverage required under this Section 15, with respect to its performance of work associated with the Improvements, including those requirements related to the additional insureds and waiver of subrogation.

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

(e) Certificates. PROPERTY OWNER 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 PROPERTY OWNER's agreement with CITY shall be reduced, canceled, allowed to expire, or materially changed except after thirty (30) days' notice by the insurer to CITY, unless due to non-payment of premiums, in which case ten days written notice must be made to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

16. **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.
17. **Non-Discrimination.** PROPERTY OWNER covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, or ancestry, in any activity pursuant to this Agreement.
18. **Independent Contractor.** It is agreed to that PROPERTY OWNER shall act and be an independent contractor, and not an agent or employee of CITY.
19. **Compliance with Law.** PROPERTY OWNER shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.
20. **Right to Inspect and Inspection Fees.** PROPERTY OWNER shall at all times maintain proper facilities and provide safe access for inspection for CITY and its employees to all parts of the Improvements. PROPERTY OWNER shall pay and reimburse CITY for all expenses incurred by CITY for inspecting and checking all work to be performed under the provisions of the Municipal Code or this Agreement. CITY Engineering plan checking and field improvement inspection costs are included in the Department of Public Works Fee Schedule which may be revised from time to time.
21. **Conflict of Interest and Reporting.** PROPERTY OWNER shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
22. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed addresses. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

- a. Address of PROPERTY OWNER is as follows:

Michael Van Every
Sunsweet Morgan Hill LLC
84 W. Santa Clara Street, Suite 600
San Jose, Ca 95113

b. Address of CITY is as follows:

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

With a copy to:

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

23. **PROPERTY OWNER'S Representations.** This Agreement shall include application or items submitted by PROPERTY OWNER to CITY'S Planning Department, Building Department, Planning Commission, and City Council. In the event of any inconsistency between their representations and this Agreement, this Agreement shall govern.

24. **Licenses, Permits and Fees.** PROPERTY OWNER shall obtain a CITY Business License, all permits, and licenses as may be required by this Agreement.

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

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

27. **Limitations Upon Subcontracting and Assignment.** Neither this Agreement nor any portion shall be assigned by PROPERTY OWNER without prior written consent of CITY.

28. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

29. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

30. **Indemnification.** PROPERTY OWNER agrees to protect, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with performance of the Agreement by PROPERTY OWNER, PROPERTY OWNER'S agents, officers, employees, subcontractors, or independent contractors hired by PROPERTY OWNER. The only exception to PROPERTY OWNER'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence of CITY. This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by PROPERTY OWNER.

31. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes

any previous agreements, oral or written. This Agreement may be modified on provisions waived only by subsequent mutual written agreement executed by CITY and PROPERTY OWNER.

32. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Santa Clara County Superior Court.

33. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.

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

35. **Agreement Runs With the Land.** This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties. It shall be recorded in the Office of the Recorder of Santa Clara County concurrently with the issuance of the Development Permit and shall constitute a covenant running with the land and an equitable servitude upon the Development real property.

36. **Recording.** It shall be the responsibility of CITY to cause the executed Agreement to be recorded.

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

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

ATTEST:

THE CITY OF MORGAN HILL

City Clerk

Date: _____

City Manager

Date: _____

APPROVED AS TO FORM:

“PROPERTY OWNER”

City Attorney

Date: _____

By: Michael VanEvery

Title: _____

Date: _____

By:

Title: _____

Date: _____

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

State of **California**

County of **Santa Clara**

On _____ 20__, before me, _____ a Notary Public in and for said County and State, personally appeared _____ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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State of **California**

County of **Santa Clara**

On _____ 20__, before me, _____ a Notary Public in and for said County and State, personally appeared _____ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

EXHIBIT A
IMPROVEMENTS AND
ESTIMATED COSTS OF IMPROVEMENTS
AS OF MAY 2017

Schedule V - Off-Site improvements (Public)

Third, Fourth and Depot Streets

1	Street grading	996 SF	\$	0.50	\$	498.00
2	15"RCP Storm Drain	19 LF	\$	65.00	\$	1,235.00
3	Plaza Pavers	2,212 SF	\$	50.00	\$	110,600.00
4	City std. sidewalk	1,520 SF	\$	6.00	\$	9,120.00
5	City std. curb and gutter	83 LF	\$	25.00	\$	2,075.00
6	Demo Existing Sidewalk	5,140 SF	\$	3.00	\$	15,420.00
7	City std. 'U-3' trench restoration	611 SF	\$	10.00	\$	6,110.00
8	City Standard PCC Driveway Approaches	789 SF	\$	10.00	\$	7,890.00
9	6" PVC (SDR-26)	27 LF	\$	38.00	\$	1,026.00
10	City Std. San. Sewer Manhole	3 EA.	\$	3,500.00	\$	10,500.00
11	Traffic control	1 LS		TBD		TBD
12	2" domestic service w/RPBP	4 EA	\$	2,800.00	\$	11,200.00
13	2" irrigation service w/RPBP	1 EA	\$	2,800.00	\$	2,800.00
14	City std. fire hydrant assembly	1 EA	\$	3,500.00	\$	3,500.00
15	6" Ø F.S. w/Fire department connection and DDCVA	1 EA	\$	10,000.00	\$	10,000.00
Total Schedule V					\$	191,974.00

EXHIBIT "B"
FORM OF PERFORMANCE BOND
(100% of Engineer's Estimate)

Bond No.: _____
 Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California, and **Sunsweet Morgan Hill LLC** (hereinafter designated as "principal") have entered into an Improvement Agreement:

Sunsweet Morgan Hill LLC
90 East Third Street
APN 726-13-32, 44, and 54

whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 2018, and identified as project **Sunsweet**, is hereby referred to and made a part hereof; and

Whereas, said principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement.

Now, therefore, we, the principal and _____, as surety, are held and firmly bound unto the City of Morgan Hill, hereinafter called ("City"), in the penal sum of **one hundred ninety one thousand nine hundred seventy four dollars (\$191,974)** lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The Surety's office is located at _____,
 Telephone No. _____; the Surety is licensed to do business in the State of California; and the California Insurance Agent's License No., address, and telephone number are as follows:

License No.: _____
 Address: _____
 Telephone No.: _____.

The non-resident agent for the Surety, if any, is a party to the transaction:

Name of non-resident agent: _____
 Non-resident agent's office address: _____
 Telephone No.: _____

The condition of this obligation is such that if the above bounded principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and

Performance Bond
 Page 1 of 3
 Version: December 2017

Attachment: Improvement Agreement - Sunsweet (1645 : APPROVAL OF IMPROVEMENT AGREEMENT WITH SUNSWEET MORGAN HILL LLC)

well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

Executed this _____ day of _____ 20 ____ .

Principal

Principal

By: _____
Surety

By: _____
Attorney-in Fact

By: _____
California Resident Agent

By: _____
Non-resident Agent - Attorney-in-Fact

APPROVED:

Scott Creer, City Engineer

Date: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____
(Acknowledgment on following page.)

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

State of **California**
County of **Santa Clara**

On _____ 20__, before me, _____ a Notary Public in and for said County and State, personally appeared _____ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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State of **California**
County of **Santa Clara**

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Performance Bond
Page 4 of 3
Version: December 2017

EXHIBIT "C"
FORM OF LABOR AND MATERIAL BOND
(100% of Engineer's Estimate)

Bond No.: _____
 Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California, and **Sunsweet Morgan Hill LLC** (hereinafter designated as "principal") have entered into an Improvement Agreement:

Sunsweet Morgan Hill LLC
90 East Third Street
APN 726-13-32, 44, and 54

whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated _____, 2018, and identified as project **Sunsweet**, is hereby referred to and made a part hereof; and

Whereas, under the terms of the agreement, the principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the City of Morgan Hill, hereinafter called "City," to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code of the State of California.

Now, therefore, the principal and the undersigned as corporate surety, and their successors and assigns are held firmly bound unto City and all contractors, subcontractors, laborers, materialmen, and other persons employed in the performance of the agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the sum of **one hundred ninety one thousand nine hundred seventy four dollars (\$191,974)**, for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The Surety's office is located at _____,
 Telephone No. _____; the Surety is licensed to do business in the State of California; and

Labor and Material Bond
 Page 1 of 3
 Version: December 2017

Attachment: Improvement Agreement - Sunsweet (1645 : APPROVAL OF IMPROVEMENT AGREEMENT WITH SUNSWEET MORGAN HILL LLC)

the California Insurance Agent's License No., address, and telephone number as follows:

License No.: _____
 Address: _____
 Telephone No.: _____.

The following non-resident agent, if any, for the Surety is a party to the transaction:

Name of non-resident agent: _____,
 Non-resident agent's office address: _____
 Telephone No.: _____.

The surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

Executed this _____ day of _____ 20 ____ .

 Principal Principal

By: _____
 Surety

By: _____
 Attorney-in Fact

By: _____
 California Resident Agent

By: _____
 Non-resident Agent - Attorney-in-Fact

APPROVED:

 Scott Creer, City Engineer

Date: _____

APPROVED AS TO FORM:

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

(Acknowledgment on following page.)

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

State of **California**
County of **Santa Clara**

On _____ 20__, before me, _____ a Notary Public in and for said County and State, personally appeared _____ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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State of **California**
County of **Santa Clara**

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WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Labor and Material Bond

Page 3 of 3

Version: December 2017

**EXHIBIT “D”
FORM OF WARRANTY BOND
(50% of Engineer’s Estimate)**

Bond No.: _____
Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California (hereinafter designated as “City”), and **Sunsweet Morgan Hill LLC** (hereinafter designated as “Principal”) have entered into an Improvement Agreement (hereinafter “Agreement”):

**Sunsweet Morgan Hill LLC
90 East Third Street
APN 726-13-32, 44, and 54**

whereby the Principal agrees to install and complete certain designated public improvements (hereinafter “Improvements”), which said Agreement, dated _____, 2018, and identified as project **Sunsweet**, is hereby referred to and made a part hereof; and

Whereas, under the terms of said Agreement, the Principal is required to furnish a bond to guarantee and warrant the work required by said Agreement for a period of one year following the completion and acceptance by the City of the Improvements, against any defective work or labor performed, or defective materials furnished by Principal.

Now, therefore, we, the Principal and _____ as Surety, are held and firmly bound unto the City of Morgan Hill in the penal sum of **ninety-five thousand nine hundred eighty-seven** dollars (\$95,987) for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

If Principal faithfully carries out and performs its guarantee and warranty under the Agreement, and, on due notice from City, repairs and make good at its sole expense any and all defects in materials and workmanship in the Project which are discovered during the Warranty Period, or if Principal promptly reimburses City for all loss and damage that City sustains because of Principal’s failure to makes such repairs in accordance with the Agreement requirements, then Surety’s obligations under this Bond will be null and void. Otherwise, Surety’s obligations will remain in full force and effect.

Surety waives the provisions of Civil Code Sections 2819 and 2845. Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

Warranty Bond
Page 1 of 3
Version: October 2017

Any notice to Surety may be given in the manner specified in the Agreement and delivered or transmitted to Surety as follows:

Attn: _____

Address: _____

City/State/Zip: _____

Phone: _____

Fax: _____

Email: _____

This Bond will be governed by California law, and the venue for any dispute pursuant to this Bond will be in the Superior Court of Santa Clara County, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.

In witness whereof, this instrument has been duly executed by the principal and surety above named.

SURETY:

Principal:

Date: _____

Date: _____

s/ _____

s/ _____

Name: _____

Name: _____

Title: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

APPROVED AS TO FORM:

By: _____

Date: _____

Donald A. Larkin, City Attorney

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

State of **California**
County of **Santa Clara**

On _____ 20__, before me, _____ a Notary Public in and for said County and State, personally appeared _____ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

State of **California**
County of **Santa Clara**

On _____ 20__, before me, _____ a Notary Public in and for said County and State, personally appeared _____ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Warranty Bond
Page 3 of 3
Version: October 2017

RECORDING REQUESTED BY:

CITY OF MORGAN HILL

WHEN RECORDED MAIL DOCUMENT TO:

CITY CLERK
CITY OF MORGAN HILL
17575 PEAK AVENUE
MORGAN HILL, CA 95037

RECORD AT NO FEE PER
GOVERNMENT CODE SECTIONS 6103
& 27383

SPACE ABOVE THIS LINE FOR RECORDER'S
USE

**STORMWATER BEST MANAGEMENT PRACTICES,
OPERATION, AND MAINTENANCE AGREEMENT**

THIS STORMWATER BEST MANAGEMENT PRACTICES OPERATION, AND MAINTENANCE AGREEMENT ("AGREEMENT") is made and entered into this ____ day of _____, 2018, by **SUNSWEEET MORGAN HILL LLC**, (hereinafter referred to as "COVENANTOR") and the City of Morgan Hill ("CITY"). CITY and COVENANTOR may be referred to individually as a "Party" or collectively as the "Parties" throughout this AGREEMENT.

RECITALS:

This AGREEMENT is made and entered into with reference to the following facts:

- A. CITY is authorized and required to regulate and control the disposition of storm and surface waters as set forth in CITY's National Pollutant Discharge Elimination System permit.
- B. COVENANTOR is the owner of a certain tract or parcel of land more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "PROPERTY").
- C. COVENANTOR desires to construct certain improvements of the kind or nature described in Morgan Hill Municipal Code Chapter 18.71 (the "ORDINANCE") on the PROPERTY that may alter existing stormwater conditions on both the PROPERTY and adjacent lands.
- D. To minimize adverse impacts due to these anticipated changes in existing storm and surface water flow conditions, COVENANTOR is required by CITY to implement Best Management Practices ("BMPs") and to build and maintain, at COVENANTOR's expense, stormwater management facilities ("FACILITIES"), more particularly described and shown in the **STORMWATER RUNOFF MANAGEMENT PLAN** prepared by **MH ENGINEERING INC** and dated _____, which plans and any amendments thereto, are on file with CITY's Public Works Department, and are hereby incorporated by this reference.
- E. CITY has reviewed and approved the Stormwater Runoff Management Plan (the "PLAN") subject to the execution of this AGREEMENT.

NOW, THEREFORE, in consideration of the benefit received and to be received by COVENANTOR, its successors, and assigns, as a result of CITY's approval of the Stormwater Runoff Management Plan, COVENANTOR, hereby covenants and agrees with CITY as follows:

1. Covenants Running With the Land; Property Subject to Agreement: All of the real property described in Exhibit "A" shall be subject to this AGREEMENT. It is intended and determined that the provisions of this AGREEMENT shall run with the land and shall be

binding on all parties having or acquiring any right, title, or interest in the real PROPERTY or any portion thereof and shall be for the benefit of each owner of any of said parcels or any portion of said PROPERTY and shall inure to the benefit of and be binding upon each successor in interest of the owners thereof. Each and all of the limitations, easements, obligations, covenants, conditions, and restrictions contained herein shall be deemed to be, and shall be construed as, equitable servitudes, enforceable by any of the owners of any of the PROPERTY subject to this AGREEMENT against any other owner, tenant or occupant of the said PROPERTY, or any portion thereof.

2. Responsibility for Installation, Operation, and Maintenance: At its sole expense, COVENANTOR, its successors, and assigns, shall construct, operate, and perpetually maintain the FACILITIES in strict accordance with the PLAN and any amendments thereto that have been approved by CITY or required by the ORDINANCE.
3. Facility Modifications: At its sole expense, COVENANTOR, its successors, and assigns, shall make such changes or modifications to the FACILITIES as may be determined as reasonably necessary by CITY to ensure that the FACILITIES are properly maintained and continue to operate as originally designed and approved. COVENANTOR agrees that it shall not modify the BMPs and shall not allow BMP maintenance activities to alter the designed function of the FACILITIES from its original design unless approved by CITY prior to the commencement of the proposed modification or maintenance activity.
4. Facility Inspections by CITY: At reasonable times and in a reasonable manner as provided in the ORDINANCE, CITY, its agents, employees, and contractors shall have the right of ingress and egress to the FACILITIES and the right to inspect the FACILITIES in order to ensure that the FACILITIES are being properly maintained, are continuing to perform in an adequate manner, and are in compliance with the ORDINANCE, the PLAN and any amendments thereto approved by CITY.
5. Failure to Perform Required Facility Repairs or Modifications: Should either COVENANTOR or its successors and assigns fail to implement the BMPs, maintain the facilities, or correct any defects in the FACILITIES in accordance with the approved design standards and/or the PLAN, and in accordance with the law and applicable regulations of the ORDINANCE, after thirty (30) days from the date of the written notice from CITY, CITY shall have the right to enter the PROPERTY to perform remedial work, for which CITY will collect reimbursement for such work from COVENANTOR. Additionally, conditions from failure to implement the BMPs or to maintain or correct the FACILITIES shall be deemed a nuisance subject to abatement of such conditions as provided in Chapter 1.18 of the Morgan Hill Municipal Code. In addition, CITY may pursue other such remedies as provided by law, including, but not limited to, such civil and criminal remedies set forth in the ORDINANCE.
6. Indemnity: COVENANTOR, its successors, and assigns, shall defend, indemnify, and hold CITY harmless of and from any and all claims, liabilities, actions, causes of action, and damages for personal injury and property damage, including, without limitation, reasonable attorneys' fees, arbitration fees, or costs and court costs, arising out of or related to COVENANTOR's, its successors', and/or assigns' construction, operation, or maintenance of the FACILITIES except claims, liabilities, actions, causes of action, and damages that arise out of CITY's sole negligence or willful misconduct or the sole negligence or willful misconduct of any of CITY'S employees, agents, representatives, contractors, vendors, or consultants.
7. Obligations and Responsibilities of COVENANTOR: Initially, COVENANTOR is solely responsible for the performance of the obligations required hereunder and, to the extent permitted under applicable law, the payment of any and all fees, fines, and penalties associated with such performance or failure to perform under this AGREEMENT.

Notwithstanding any provisions of this AGREEMENT to the contrary, upon the recordation of a deed or other instrument of sale, transfer or other conveyance of fee simple title to the PROPERTY or any portion thereof (a "Transfer") to a third party (the "Transferee"), COVENANTOR shall be released of all of its obligations and responsibilities under this AGREEMENT accruing after the date of such Transfer to the extent such obligations and responsibilities are applicable to that portion of the PROPERTY included in such Transfer, but such release shall be expressly conditioned upon the Transferee assuming such obligations and responsibilities by recorded written agreement for the benefit of CITY. Such written agreement may be included in the Transfer deed or instrument, provided that the Transferee joins in the execution of such deed or instrument. A certified copy of such deed, instrument, or agreement shall be provided to CITY. The provisions of the preceding three sentences shall be applicable to the original COVENANTOR and any successor Transferee who has assumed the obligations and responsibilities of COVENANTOR under this AGREEMENT as provided above.

8. Property Transfer: Nothing herein shall be construed to prohibit a transfer by COVENANTOR to subsequent owners and assigns.
9. Attorneys' Fees: In the event that any Party institutes legal action or arbitration against the other to interpret or enforce this AGREEMENT, or to obtain damages for any alleged breach hereof, the prevailing party in such action or arbitration shall be entitled to reasonable attorneys' or arbitrators' fees in addition to all other recoverable costs, expenses, and damages.
10. Further Documents: The Parties covenant and agree that they shall execute such further documents and instructions as shall be necessary to fully effectuate the terms and provisions of this AGREEMENT.
11. Entire Agreement: This AGREEMENT constitutes the entire agreement of the Parties with respect to the subject matter contained herein and supersedes all prior agreements, whether written or oral. There are no representations, agreements, arrangements, or undertakings, oral or written, that are not fully expressed herein.
12. Severability: In the event any part or provision of this AGREEMENT shall be determined to be invalid or unenforceable under the laws of the State of California, the remaining portions of this AGREEMENT that can be separated from the invalid, unenforceable provisions shall, nevertheless, continue in full force and effect.
13. No Waiver: The waiver of any covenant contained herein shall not be deemed to be a continuing waiver of the same or any other covenant contained herein.
14. Amendment: This AGREEMENT may be amended in whole or in part only by mutual written agreement. Any such amendment shall be recorded in Santa Clara County, California. In the event any conflict arises between the provisions of any such amendment and any of the provisions of any earlier document or documents, the most recently duly executed and recorded amendment shall be controlling.
15. Authority to Execute: The persons executing this AGREEMENT on behalf of the parties warrant that they are duly authorized to execute this AGREEMENT.
16. In the event that CITY shall determine, at its sole discretion, at any future time, that the FACILITIES are no longer required, then at the written request of COVENANTOR, its successors, and/or assigns, CITY shall execute a release of this AGREEMENT which COVENANTOR, its successors, and/or assigns, shall record in the Recorder's Office, at its expense.

Executed the day and year first above written.

COVENANTOR:

By: _____

Name: _____

Title: _____

CITY OF MORGAN HILL:

By: _____

Name: **CHRISTINA J. TURNER**

Title: **CITY MANAGER, CITY OF MORGAN HILL**

APPROVED AS TO FORM:

By: _____

Name: **DONALD A. LARKIN**

Title: **CITY ATTORNEY, CITY OF MORGAN HILL**

EXHIBIT "A"**TBD****(RECORDATION OF LOT MERGER IS PENDING)****Attachment: Stormwater BMP Operation and Maintenance Agreement (1645 : APPROVAL OF IMPROVEMENT AGREEMENT WITH SUNSWEET**

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

State of **California**
County of **Santa Clara**

On _____ 20__, before me, _____ a Notary Public in and for said County and State, personally appeared _____ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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State of **California**
County of **Santa Clara**

On _____ 20__, before me, _____ a Notary Public in and for said County and State, personally appeared _____ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)



CITY COUNCIL STAFF REPORT

MEETING DATE: March 7, 2018

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

SECOND AMENDMENT TO WEST COAST ARBORIST, INC. AGREEMENT FOR CITYWIDE TREE SERVICES

RECOMMENDATION(S)

Approve the Second Amendment to the Maintenance Service Agreement with West Coast Arborist.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Maintaining Fiscal Responsibility

REPORT NARRATIVE:

The City has contracted with West Coast Arborist, Inc. for on-call tree maintenance, park tree maintenance and citywide grid pruning of street trees. The term of the Agreement ends on June 30, 2019. The original amount of the Agreement was \$600,000 for four years. On March 1, 2017, the agreement was increased to \$625,827 to support additional work in conjunction with sidewalk repair projects.

City staff is recommending that the contract be increased by approximately \$130,000 to \$755,000. The reason for the recommended increase is two-fold. The contract would be increased by approximately \$20,000 to support maintenance related to the upcoming sidewalk repair projects and an additional \$110,000 to fund regular tree maintenance through June 2019. Due to higher than anticipated tree maintenance needs over the last 2.5 years, the need for tree maintenance services has been higher than previously anticipated. A good portion of this work was in relation to the heavy rains in the winter of 2016/17 as well as work conducted in association with the Downtown Parks Project.

West Coast Arborists have provided standard pricing for the term of the contract and staff believe going out to bid for work associated with the sidewalk project or tree maintenance in general will result in significantly higher pricing.

COMMUNITY ENGAGEMENT: Inform

This staff report supports informing the community of this action. For tree maintenance work in general, information is shared via City communication tools, including “the Scoop” weekly maintenance updates.

ALTERNATIVE ACTIONS:

The City Council could direct staff to proceed with a request for proposals relating to tree maintenance services. The current projects and maintenance could continue forward as there is still funding left on the contract, but a new contract would be needed by Fiscal Year 2018/19.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council previously awarded the contract to West Coast Arborist, Inc. on July 15, 2015 and subsequently approved an amendment to the agreement on March 1, 2017.

FISCAL AND RESOURCE IMPACT:

The funding for tree maintenance services is included in several areas of the City's operating budget, including Street Maintenance, Landscape Assessment District, Park Maintenance, Downtown Maintenance and the Sidewalk Replacement Capital Improvement Project. Appropriations of future funding are dependent on the City's annual budget process, but an increase in funding is not anticipated to be necessary to support this increase to the contract.

CEQA (California Environmental Quality Act):

Categorical Exemption

Tree maintenance is part of the planned maintenance and management of City facilities and falls within the CEQA categorical exemption of Class 1, Existing Facilities.

LINKS/ATTACHMENTS:

1. West Coast Arborists Inc. 2nd Amend - Tree Pruning (002)

SECOND AMENDMENT TO AGREEMENT WEST COAST ARBORIST, INC.

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, WEST COAST ARBORIST, INC., a California Corporation ("SERVICE PROVIDER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into based upon approval of the City of Morgan Hill City Council approval on _____.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of July 16, 2015, for services for a maximum compensation of SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$600,000.00) ("MAINTENANCE SERVICE AGREEMENT").
3. The CITY and SERVICE PROVIDER entered into a "First Amendment to Agreement" made as of March 15, 2017, under which the maximum compensation under the MAINTENANCE SERVICE AGREEMENT, as amended, was increased to SIX HUNDRED TWENTY-FIVE THOUSAND EIGHT HUNDRED TWENTY-SEVEN AND NO/100 DOLLARS (\$625,827.00). The MAINTENANCE SERVICE AGREEMENT and the First Amendment thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the MAINTENANCE SERVICE AGREEMENT, as amended, as attached as Exhibit "1," shall remain in full force and effect; except that the following amendments shall be made as set forth below:

- A. Paragraph 3 shall be amended by adding the following:

"The services to be performed by SERVICE PROVIDER shall consist of the following additional services set forth in Exhibit "2" dated February 26, 2018, attached hereto and incorporated herein by this reference.

Tree maintenance needed in conjunction with Spring 2018 Sidewalk Repair Project.

- B. Paragraph 4.1 shall be amended and replaced in its entirety by the following:

"4.1 **Amount.** Total compensation under this Agreement shall not exceed SEVEN HUNDRED FIFTY-FIVE THOUSAND AND NO/100 DOLLARS (\$755,000.00) and shall be billed based on the rate and basis set forth in Exhibit "B" Schedule of Compensation Rates attached to the Maintenance Service Agreement made as of July 16, 2015.

- C. Paragraph 9 shall be amended and replaced in its entirety by the following:

9. **Compliance with Law.**

- 9.1. SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. SERVICE PROVIDER and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.
- 9.2. Without limiting the provisions of Section 9.1 above, each worker performing work under this Agreement shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite. Pursuant to Labor Code Section 1775, SERVICE PROVIDER and any Subcontractor shall forfeit to CITY as a penalty up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. SERVICE PROVIDER shall also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.
- 9.3. 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.
- 9.4. 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.

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[Signatures on Next Page]

2. **Conflicts.** In the event of a conflict between the terms and provisions of this Second Amendment to Agreement and the terms and provisions of the MAINTENANCE SERVICE AGREEMENT or any earlier amendment, the terms of this Second Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

 City Clerk/Deputy City Clerk

 City Manager

 Michelle Wilson
 Print Name

 Christina J. Turner
 Print Name

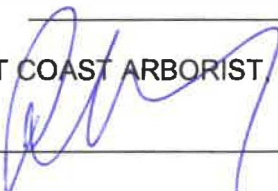
Date: _____

Date: _____

APPROVED AS TO FORM:

WEST COAST ARBORIST, INC.

 City Attorney

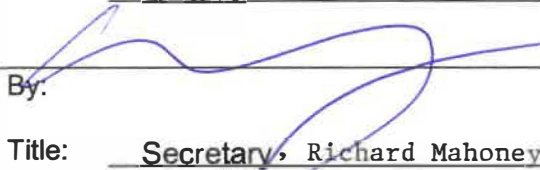
By: 

 Donald A. Larkin
 Print Name

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

Date: _____

Date: 2/26/18

By: 

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

Date: 2/26/18

Second Amendment to Agreement
West Coast Arborist, Inc.

Exhibit 2 Dated February 26, 2018

Additional work shall include anticipated tree maintenance needed in conjunction with Spring 2018 Sidewalk Repair Project and additional funding for annual services for Street Tree Pruning, Park Safety Pruning, Grid Pruning and Assessment District Safety Pruning.

EXHIBIT "1"**FIRST AMENDMENT TO AGREEMENT
ANNUAL TREE MAINTENANCE
WEST COAST ARBORIST, INC.**

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on 3/15/17 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, WEST COAST ARBORIST, INC., a California Corporation ("SERVICE PROVIDER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into pursuant to action of the Morgan Hill City Council taken on March 1, 2017.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of July 16, 2015, for services for a maximum compensation of \$600,000.00 ("MAINTENANCE SERVICE AGREEMENT"). The MAINTENANCE SERVICE AGREEMENT is attached as Exhibit "A" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the MAINTENANCE SERVICE AGREEMENT, as amended, as attached as Exhibit "A," shall remain in full force and effect; except that the following amendments shall be made as set forth below:

A. Paragraph 4.1 shall be amended and replaced in its entirety by the following:

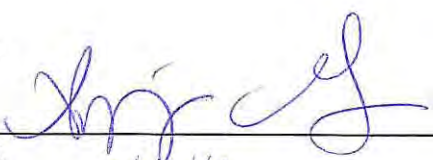
4.1. **Amount.** Compensation under this Agreement shall not exceed six hundred twenty-five thousand, eight hundred twenty-seven dollars (\$625,827).

2. **Conflicts.** In the event of a conflict between the terms and provisions of this First Amendment to Agreement and the terms and provisions of the MAINTENANCE SERVICE AGREEMENT, the terms of this First Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

Deputy City Clerk 
 Date: 3/17/17

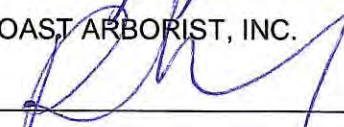
APPROVED AS TO FORM:


 City Attorney
 Date: 3/15/2017

CITY OF MORGAN HILL


 City Manager
Date: 3/15/17

WEST COAST ARBORIST, INC.

By: Title: Patrick Mahoney, President

Print Name and Title of Signer.

If Corporate: Chairman, President or
Vice PresidentDate: 2/16/17By: Title: Richard Mahoney, Assistant

Print Name and Title of Signer.

If Corporate: Secretary, Assistant
Secretary, Chief Financial Officer or
Assistant TreasurerDate: 2/16/17

128-04-15-015

**MAINTENANCE SERVICE AGREEMENT
ANNUAL TREE MAINTENANCE
WEST COAST ARBORIST, INC.**

THIS AGREEMENT is entered into and becomes effective on 7/16/15 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and WEST COAST ARBORIST, INC., a California corporation ("SERVICE PROVIDER") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on July 15, 2015
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 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 all supervision, labor, vehicles, materials, tools, equipment, barricades, traffic and warning devices and all other items necessary to provide tree pruning and other designated work as further described in **Exhibit A**.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$600,000.00. Total compensation under this Agreement shall not exceed \$600,000.00 dollars and shall be billed based on the rate and basis set forth in **Exhibit B**.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with a monthly invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER. The CITY Manager of CITY 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 the SERVICE PROVIDER'S profession. By

delivery of completed work, SERVICE PROVIDER certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. SERVICE PROVIDER shall perform all work and services under this Agreement in conformance with the time schedule set forth on Exhibit C, "Schedule of Performance," attached hereto and incorporated herein by this reference. CITY's City Manager is authorized on behalf of CITY to modify the timeframes set forth on the Schedule of Performance within the term of this Agreement. 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 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 SERVICE PROVIDER's sole risk.

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

7.1. **Insurance Types and Amounts.**

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

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

7.1.5. Professional Liability.

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

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

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

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

7.2.1. General Liability.

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

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

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. Workers Compensation.

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

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

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

Certificate Holder address:

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

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

9. Compliance with Law.

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

9.2. Without limiting the provisions of Section 9.1 above, each worker performing work under this Agreement shall be paid at a rate not less than the prevailing wage as defined in Sections

1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite. Pursuant to Labor Code Section 1775, SERVICE PROVIDER and any Subcontractor shall forfeit to CITY as a penalty up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. SERVICE PROVIDER shall also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.

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

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

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

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

Address of SERVICE PROVIDER is as follows:

West Coast Arborists, Inc.
2220 E. Via Burton Street
Anaheim, CA 92806

Address of CITY is as follows:

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

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

15. **Maintenance of Records.**

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

the end of the 3 year period, then SERVICE PROVIDER shall retain said records until such action is resolved.

- 15.2. **Access to and Audit of Records.** The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the SERVICE PROVIDER and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 15.3. **Ownership of Work Product.** All documents or other information developed or received by SERVICE PROVIDER for work performed under this Agreement shall be the property of CITY. SERVICE PROVIDER shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
16. **Familiarity with Work.** By executing this Agreement, SERVICE PROVIDER represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should SERVICE PROVIDER discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at SERVICE PROVIDER'S risk, until written instructions are received from CITY.
17. **Time of Essence.** Time is of the essence in the performance of this Agreement.
18. **No Assignment.** Neither this Agreement nor any portion shall be assigned by SERVICE PROVIDER, without prior written consent of CITY.
19. **Attorney Fees.** In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.
20. **Defense and Indemnification.**
- 20.1. **Defense and Indemnification.** SERVICE PROVIDER shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by SERVICE PROVIDER, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
- 20.2. **Exceptions.** SERVICE PROVIDER is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the CITY.
- 20.3. **Not limited by insurance.** The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMS alleged against an INDEMNITEE, regardless of whether any

insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by SERVICE PROVIDER.

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

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

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

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

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

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

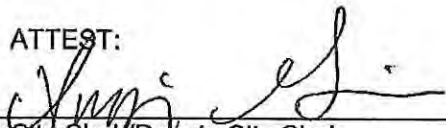
25. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

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

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

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

ATTEST:



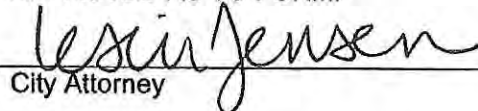
City Clerk/Deputy City Clerk

for Michelle Wilson

Print Name

Date: 7/16/15

APPROVED AS TO FORM:

for 

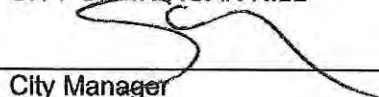
City Attorney

Renee Gurza

Print Name

Date: 07/16/15

CITY OF MORGAN HILL



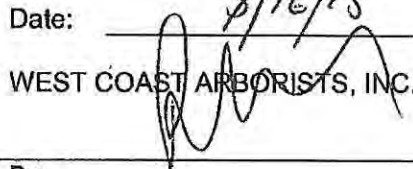
City Manager

Steve Rymer

Print Name

Date: 8/16/15

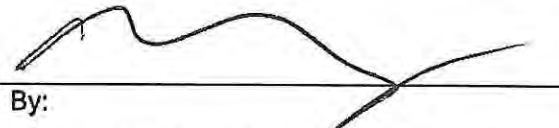
WEST COAST ARBORISTS, INC.

By: 

Title: Patrick Mahoney, President

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

Date: 6/30/15

By: 

Title: Richard Mahoney, Assistant Secretary

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

Date: 6/30/15

**EXHIBIT A
SCOPE OF SERVICES****RFP DOCUMENTS-SPECIAL PROVISIONS****SECTION 2
SCOPE OF WORK**

2-1 Scope of Work. This work shall consist of pruning street trees and park trees for traffic and pedestrian clearance, tree health, removing trees as designated, stump removal, tree planting, staking and inventory of trees as well as leaving the work site in a neat, clean, and orderly condition upon completion of the work or at the end of the day, in the area as specified in these specifications and the special provisions. The Contractor will cease all pruning activities when the designated number of trees has been pruned. Regardless of size of the tree the price to prune will be the same for all grid and park trees. This work also includes scheduled crew pruning on a daily basis as 12 well as emergency call outs, over and above the grid pruning. All green waste to be disposed of by the contractor and the cost to be included within the various bid items.

2-2 General Conditions. These general conditions which shall apply to this contract and shall be attached to the executed Maintenance Services Agreement. Contractor shall also comply with the International Society of Arboriculture Pruning Standards, latest revised edition of the Western Chapter, Standards for Nursery Stock by the American Association of Nurserymen and the American National Standards for tree care operations.

2-3 Estimated Annual Volume of Work. The estimated annual volume of work is \$150,000.

**SECTION 3
PRUNING SERVICES****3-1 Types of Pruning Services.**

3-1.1 Scheduled Service. The Contractor will furnish scheduled tree pruning service (complete trim) for trees designated by the City at the execution of the agreement. After executing of the agreement, City may add or delete other trees within the specified grids or within designated parks, at the same bid price.

3-1.2 Unscheduled Service. The Contractor will also provide, if required by the City, unscheduled tree pruning. The City will provide at least 24 hour notice for unscheduled pruning. Crew and equipment shall consist of 2 workers, 1 of which is an arborist, truck, and chipper plus all necessary pruning tools. The City may increase or decrease the quantity of these services at the same bid price.

3-1.3 Emergency Service. The Contractor will also respond to emergency calls for service at any and all times day or night during the term of this agreement within (3) hours of being notified. Crew and equipment shall consist of 2 workers, 1 of which is an arborist, truck, and chipper, plus all necessary pruning tools.

3-2 Work Schedule. As soon as notified of the award of the contract, the Contractor shall perform the activities as outlined by the Director of Community Services Tree Trimming/Maintenance Contract work schedule. Said schedule must show the dates of the expected start and completion of

the various items of the contract work. During a scheduling conference between the Contractor and the Director of Community Services, the work schedule will be discussed and modified, if necessary, by mutual agreement. The Contractor will cease all grid and park tree pruning once the designated number of trees has been pruned. 13

3-3 Temporary Stoppage of Tree Trimming/Maintenance Activities. The Director of Community Services shall have the authority to suspend the contract work, wholly or in part, for such a period of time as the Director may deem necessary, due to unsuitable weather, or to such other conditions as the Director considers unfavorable for the proper prosecution of the work, or for such time as the Director may deem necessary due to failure on the part of the Contractor or contractor's workers to carry out orders or to perform any of the requirements of the contract. The Contractor shall immediately comply with such an order from the Director of Community Services and shall not resume operations until so ordered in writing.

3-4 Extra Work . Extra work, when ordered in writing by the Director of Community Services and accepted by the Contractor, shall be paid for under written work order in accordance with the terms therein provided. Payment for extra work will be made at the unit price or lump sum previously agreed upon between the Contractor and the Director of Community Services. All extra work shall be adjusted daily upon report sheets prepared for the Director of Community Services, furnished by the Contractor and signed by both parties, and said daily report shall be considered thereafter the true records of extra work done.

3-5 Authority of the Director of Community Services. The Director of Community Services shall decide any and all questions that may arise as to the quality and acceptability of materials furnished and work performed as to the manner of performance and rate of progress of the work, and any and all questions which may arise as to the interpretation of the plans and specifications. The Director of Community Services shall likewise decide any and all questions as to the acceptable fulfillment of the contract on the part of the Contractor, and all questions as to claims and compensations. The decision of the Director of Community Services shall be final, and he shall have relative authority to enforce and make effective such decisions and actions as the Contractor fails to carry out promptly. For the purposes of routine and normal supervision and coordination of work the Director of Public Work is the City's authorized representative for all work within the scope of this agreement.

3-6 Interpretation of Specifications. Should it appear that the work to be done or any matter relative thereto, is not sufficiently detailed or explained in the specifications, the Contractor shall request the Director of Community Services for such further explanation as may be necessary, and shall conform to such explanation or interpretation as part of the contract, so far as may be consistent with the intent of the original specifications. In the event of doubt of questions relative to the true meaning of the specifications, reference shall be made to the Board of Directors, whose decision thereon shall be final.

3-7 Removal of Defective or Unauthorized Work . It is the intent of the specifications that only first-class work, materials and workmanship will be acceptable. All work which is defective in its construction or deficient in any of the requirements of the specifications shall be remedied, or removed and replaced by the Contractor in an acceptable manner, and no compensation will be allowed for such correction. Any work done beyond the lines shown on the plans or established by the Director of Community Services, or any extra work done without written authority will be considered as unauthorized and will not be paid for. Upon failure on the part of the Contractor to comply forthwith with any order of the Director of Community Services made under the provisions of this paragraph, the Director of Community Services shall have authority to cause defective work to be remedied or removed and replaced and unauthorized work to be removed and to deduct the

costs thereof from any moneys due or to become due the Contractor. Damage done to trees as a result of pruning practices not in compliance with the specifications shall result in replacement of the tree by the contractor with no additional compensation. Similar size tree will be provided and planted (up to 48" box).

3-8 Sound and Vibration Control Requirements. The contractor shall comply with all local sound control and noise level rules, regulations and ordinances. No internal combustion engine shall operate on the project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage, the Contractor shall promptly remove the equipment and shall not return said equipment to the job until the device is repaired or replaced. Said noise and vibration level requirements shall apply to all equipment on the job or related to the job, including, but not limited to truck, transit mixers or transit equipment that may or may not be owned by the Contractor.

3-9 Air Pollution Control. Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes. All containers of paint, thinner, during compound, solvent or liquid asphalt shall be labeled to indicate the contents, fully complying with the applicable material requirements.

3-10 Cleaning up. Upon completion of the scheduled work or at the end of the day, whatever occurs first, the Contractor shall clean all the streets and grounds occupied by contractor in connection with the project, of all rubbish, debris, excess material, temporary structures and equipment, leaving the entire site of the work in a neat and presentable condition.

3-11 Public Convenience and Safety.

A. Attention is directed to Section 7-10 of the Standard Specifications and the Manual of Warning Signs, Lights and Devices for Use In Performing Work upon Highways, published by the California Department of Transportation.

Full compensation for conforming to the requirements of Section 7-10 of the Standard Specifications, the above referenced Caltrans Manual and these Special Provisions not otherwise provided for, shall be considered as included in the prices paid for the various contract items of work and not additional compensation will be allowed thereof.

B. **Warning and Protection Devices:** The Contractor will be responsible for providing placing and maintaining approved signs, barricades, pedestals, flashers, delineators, fences, barriers and flagmen where needed, and other necessary facilities in the vicinity of the maintenance area and where any dangerous conditions may be encountered as a result thereof, for the protection of the motoring public. The Contractor will not be allowed to proceed with the work until such time that a sufficient number of these protection devices have been delivered to the project site. Where parked vehicles are likely to interfere with the proposed work, the Contractor will supply and post at no less than 200' intervals on each side of the street "Temporary No Parking" signs 48 hours before the start of construction and to report the time of posting to the City's Police Department for the purpose of establishing "Tow Away" provisions. The Contractor shall be responsible for the removal of the temporary signs upon the completion of the Work. All signs shall be kept graffiti free at all times. Should the Contractor appear neglectful in furnishing warning and protection devices as outlines above, the Traffic Director of Community Services may direct attention to the existence of a hazard and the necessity of additional or different measures which shall be furnished and installed by the Contractor at Contractor's own expense, free of any cost to the City. Should the Contractor refuse or fail to act in a timely manner to correct a hazardous condition, the Traffic Director of Community Services may direct City forces to provide the necessary protective and warning devices as deemed appropriate by the Director of Community Services.

The cost accrued by the City in connection therewith will be deducted from the Contractor's contract payment. Any action or inaction on the part of the City in directing attention to the inadequacy of warning and protective measures or in providing additional protective warning devices shall not relieve the Contractor from responsibility for public safety or abrogate Contractor's obligation to furnish and pay for these devices.

The Contractor shall submit any and all work schedules and/or traffic control plans to the Director of Community Services for approval as needed.

3-12 Construction Yard. It shall be the Contractor's responsibility to locate any storage sites for materials and equipment needed and such sites either located on public or private property must be approved in advance by the Director of Community Services.

When storage sites are to be located upon private property, the Contractor shall be required to submit to the Director of Community Services, written approval from the record owner authorizing the use of the property by the Contractor.

3-13 Equipment Requirements. Prior to beginning of contractor operations, the Contractor shall furnish a current list indicating the equipment to be used for the project. All equipment shall be in safe and working condition. Prior to the beginning of aerial operations, the Contractor shall furnish, at no cost to the City, current certification for all aerial devices to be used in the completion of contract operations.

3-14 Preservation of Property. Existing improvements in areas adjoining the property whereon tree pruning work is being performed shall be protected from injury or damage resulting from operations of the Contractor.

3-15 Emergency Work

A. Emergency response - The contractor shall have the capability to receive and to respond immediately to calls of an emergency nature during normal working hours and during hours outside of normal working hours. Calls of an emergency nature received by the City shall be referred to the contractor for immediate disposition.

B. Emergency Work - In the event that emergency work is required, the Contractor shall notify the Director of Community Services or representative by telephone in advance before any emergency work is commenced. Non-emergency maintenance work requires written approval before the work is performed.

C. Emergency Personnel - In situations involving an emergency after normal work hours, the Contractor shall dispatch qualified personnel and equipment to reach the site within three (3) hours. Contractor's vehicle shall carry sufficient equipment to effect safe control of traffic. When the Contractor arrives at the site, the Contractor shall set up traffic warning and control devices, if deemed necessary, and proceed to accomplish the necessary work. The Contractor shall supply the City with name(s) and telephone number(s) of responsible person(s) representing the Contractor for twenty-four (24) hour emergency response. The above mentioned information shall remain current at all times. Any changes shall be forwarded to the City in writing within twelve (12) hours of any such change. Failure to maintain emergency information current shall result in a \$200.00 penalty for each occurrence.

D. Contractor's Response - The Contractor must maintain telephone service so that all calls from the City to the Contractor have no toll charge. Failure to respond by telephone or in person within one (1) hour of the City's attempt to contact the Contractor's representative may result in a \$200.00

penalty per incident. Failure to respond at any level will subject the Contractor to any primary or secondary costs arising from said emergencies.

E. Complaint Requests - The contractor must correct all complaint requests within twenty-four (24) hours. Failure to respond/correct as requested may result in termination of the contract.

3-16 Pruning Standards. All trimming/maintenance work shall be accordance with pruning standards as established by the latest edition of the International Society of Arboriculture Western Chapter. In all cases, the Director of Community Services shall have complete and sole discretion in determining conformance and acceptability of trees trimmed by the contractor. Trimmed trees rejected by the Director of Community Services shall be excluded from payment, and may need to be replaced per Section 3-7.

A. All trees, large and small, shall be given a complete trim by grid and park area (see specifications for "Complete Trim").

B. Contractor shall comply with Standards of CAL OSHA and the American National Standard Institute Safety Requirements. 17

C. The Contractor shall exercise precautions as necessary when working adjacent to aerial and subterranean utilities. In the event that aerial utility wires present a hazard to the Contractor's personnel or others near the work site, work is to immediately cease and the appropriate utility company notified. Work shall then commence in accordance with instructions from the utility company. In the event that work causes excavation, contractor is responsible for appropriate notification of Underground Service Alert (USA).

D. No hooks, gaffs, spurs or climbers will be used by anyone employed for such trimming. Any vine plant growing on trees shall be removed at ground level.

E. Final pruning cuts shall be made without leaving stubs. Cuts shall be made in a manner to promote fast callous growth.

F. Unless otherwise approved, trees are to be trimmed block by block, subject to the instructions of the Director of Community Services or authorized representative.

G. Contractor shall maintain at least one (1) English speaking arborist, on-site, at all times.

H. When trimming fungus, disease or fire blight infected limbs or fronds, all pruning tools shall be cleaned after each cut with alcohol or bleach.

I. Topping shall not be done without prior approval of the City.

3-17 Specifications for Complete Trim

A. Low branches overhanging streets shall be removed, where practical, to a minimum height above the street grade to fifteen feet (15'). Low branches overhanging sidewalks and parkway shall be removed to a minimum height of seven feet (7') and without detracting from the natural shape of the tree.

B. Shorten the length of limbs which extend beyond the natural perimeter of an otherwise symmetrical form.

C. Prune end branches to lighten end weight where such overburden appears likely to cause breakage of limbs. Remove cross limbs, water sprouts and suckers. Perform crown reduction to ISA Specifications to approximately a 25 percent reduction in total crown size.

D. All trees on which vines are growing shall have said vines removed. Vine tendrils shall be removed in a manner which will not injure trees or cause scaring of low branches and tree trunks.

3-18 Specifications for Removals

3-18.1 Specifications for Complete Tree Removal 18

A. Removal of entire tree, stump remaining shall be no higher than four (4) inches above soil grade and shall be removed within 24 hours after tree removal per the unit bid price contained within "Complete Tree Removal."

B. Work shall begin within 10 days after each request and be diligently pursued until completion.

C. Contractor shall make all arrangements necessary to have power or utility lines temporarily disconnected if necessary for the safe removal of the tree.

D. When the removal requires special or additional means, there shall be no additional units or overall cost to the City without the authorization of the Director of Community Services.

3-18.2 Tree Stump Removal

A. Type of Work: Provide complete tree stump and surface root removal.

B. Specifications for stump and surface root removal:

1. Removal of entire stump or grinding to a depth of 12 inches below average soil grade or deeper if specified by the Director of Community Services.

2. Removal of all lateral surface roots to a depth of 8 inches (8") below grade.

a) When sidewalk is present, remove all surface roots between the curb and sidewalk.

b) When no sidewalk is present, remove surface roots.

c) Backfill material shall be compacted to provide for minimal settling. It shall consist of an equal mixture of soil and stumped material which shall be three (3) inches above grade to provide for any soil settlement.

3-19 Climbing Techniques. Climbing and pruning practices should not injure the tree except for the pruning cuts. Climbing spurs shall not be used when pruning a tree, unless the branches are more than the throw-line distance apart. In such cases, the spurs should be removed once the climber is tied in. Spurs may be used to reach an injured climber and when removing tree.

Rope injury to thin barked trees from loading out heavy limbs should be avoided by installing a block in the tree to carry the load.

3-20 Competing Plant Materials. Competing plant material or plant material clinging to trunk, such as ivy, volunteer trees, or woody shrubs shall be removed to provide a clear 19 area of at least 18", but not more than 24" around the trunk of the tree, and the root crown.

3-21 Tree Specifications. If applicable, each replacement tree shall be selected in accordance with the standards set forth in the American Standard for Nursery Stock.

3-22 Tree Stakes and Ties. If applicable, tree stakes shall be 3" diameter pressure treated wood poles. Tree ties shall be "VIT" twist brace ties in 18" or 24" lengths.

3-23 Disposal of Material. Excavation material determined as unsuitable fill material by the Director of Community Services shall become the property of the contractor and shall be legally disposed of outside the site of the work by and at the expense of the Contractor. The Contractor is required to recycle all green waste material generated from its operations, unless the Director of Community Services desires the material to be stock piled. Green waste receipts are required and are to be submitted for material.

3-24 Public Convenience. Contractor shall perform all tree trimming/maintenance operations in such a manner as to cause as little inconvenience as possible to abutting property owners. Convenient access to driveways, houses and buildings along the line of the work shall be maintained at least each morning and evening and temporary approaches to crossings or intersecting streets shall be provided and kept in good condition.

3-25 Inventory. The Contractor will collect and maintain an entire tree inventory as part of this Agreement. The data will be collected by address and GPS coordinate and include tree species, land type, diameter at breast height, crown height, work information, botanical and common names, and other relevant information. Areas to be collected will include, but not limited to, Assessment Districts, Parks, Right-of-Ways, and City-owned Facilities. Inventory information shall be available on-line to City staff and must allow for the production of reports on work histories and the printing of reports from the system. Upon request, data files shall be made available to the City in a standard format for integration with the City's GIS system and Microsoft Excel.

3-26 Quality Control Program. Contractor shall provide the City with a copy of their quality control program. This program shall address how the contractor will address citizen concerns; communicate with the City and contractor's employees. This program shall also include the contractor's methods for ensuring that work is completed in a satisfactory manner and that adequate follow-up work is accomplished.

3-27 Pictures. Contractor is to supply representative of "Before and After" trimming pictures that are suitable for reproduction when requested by the City.

3-28 Tree Planting Contractor to follow the guidelines as outlined in the City's Standard Tree Planting and Staking (L-17) standards and Tree Root Barrier (L-18) standards.

Exhibit A
Page 16 of 17

Exhibit B

Schedule of Compensation Rates

ITEM	DESCRIPTION	REFERENCE	UNIT	UNIT PRICE
1.	Residential Grid and Park Pruning (small, medium, and large trees)	3-16, 3-17	Per tree	\$64.00
2.	Full Trim Based on Service or Special Requests			
A	0" – 6" dbh	3-17	Per tree	\$45.00
B	7" – 12" dbh	3-17	Per tree	\$79.00
C	13" – 18" dbh	3-17	Per tree	\$119.00
D	19" – 24" dbh	3-17	Per tree	\$229.00
E	25" and over dbh	3-17	Per tree	\$329.00
3 – A	Complete Tree / Removal – Under 36" (including stump/roots)	3-18.1	Per dbh	\$27.00
3 – B	Complete Tree / Removal – Over 36" (including stump/roots)	3-18.1	Per dbh	\$39.00
4	Stump Removal (including roots)	3-18.2	Per diameter inch	\$14.00
5 – A	Tree Planting – 15 gallon tree with linear root barrier	3-28	Per tree	\$189.00
5 – B	Tree Planting – 15 gallon tree without root barrier	3-28	Per tree	\$159.00
5 – C	Tree Planting – 24 inch box tree with linear root barrier	3-28	Per tree	\$309.00
6 – A	Tree Inventory – with GPS	3-25	Per tree	\$3.00
6 – B	Tree Inventory – without GPS	3-25	Per tree	\$2.00
7	Evaluations by certified arborist with verbal recommendations		Hourly	\$119.00
8.	Tree Watering (per half day)			\$337.50
9	Crew Rental			
A	3 crew members with truck & equipment (regular time)	3-13	Hourly	\$207.00
B	3 crew members with truck & equipment (emergency response)	3-13, 3-15	Hourly	\$297.00

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

All work shall be planned in advance on a schedule to be agreed upon by the City and Contractor.

Exhibit B
Page 1 of 2

West Coast Arborist, Inc.
First Amendment to Maintenance Service Agreement

Scope of Work – Potential Tree Removals for Sidewalk Project

Tree Removal:	\$16,188.00
Tree Replanting	\$ 9,639.00
Total Amendment	\$25,827.00

The sidewalk repair project has 50 trees that may need to be removed as they are lifting sidewalks and the City would like to assure that trees that may cause future damage either have roots removed (where feasible) or trees removed to prevent future damage.

Scope of work will include:

- Coordinating with the Maintenance Manager of the City of Morgan Hill (or delegate) and sidewalk contractor to:
 - Inspect tree roots of 50 trees after removal of existing concrete and advise upon root removal, feasibility of sidewalk path re-route, or tree removal prior to re-installation of concrete walkway
 - Remove roots, where feasible
 - Remove trees, where required
 - Replant any removals with 15 gallon trees including root barriers

Trees are located in the following 5 locations:

- Llagas Creek Estates – 30 trees
- Monterey Road – 5 trees
- Downtown Area – 2 Trees
- East Dunne Area – 13

There is also one sidewalk location on Hayloft Court, near Jackson School that has had a large tree removed and the stump will need to be removed/ground down. The estimated size is 50+ inches.

Exhibit B
Page 2 of 2

The following is the size and number of trees to be inspected, and expected costs are based on existing contract prices, assuming all trees would need to be removed:

DBH	Number	Cost / In	Total Cost
6	1	\$27	\$162
7	1	\$27	\$189
8	5	\$27	\$1,080
9	4	\$27	\$972
10	12	\$27	\$3,240
11	10	\$27	\$2,970
12	6	\$27	\$1,944
13	5	\$27	\$1,755
14	1	\$27	\$378
15	1	\$27	\$405
17	1	\$27	\$459
19	1	\$27	\$513
28	1	\$27	\$756
35	1	\$39	\$1,365
Total	50	Total	\$16,188

Additionally, the installation of 15 gallon trees with root barriers @ \$189/tree, and there are 51 potential locations for replanting; net impact would be \$9,639, assuming every tree required removal.

We do not expect all trees to be removed, and these estimates are based on a worst case scenario, and cost of the work would be based only upon work performed.



CITY COUNCIL STAFF REPORT

MEETING DATE: March 7, 2018

PREPARED BY: David Gittleson, Associate Engineer
APPROVED BY: City Manager

SECOND AMENDMENT TO AGREEMENT WITH ASSOCIATED RIGHT OF WAY SERVICES, INC. FOR THE HALE AVENUE EXTENSION PROJECT

RECOMMENDATION(S)

Approve and authorize the City Manager to execute a Second Amendment to agreement with Associated Right of Way Services, Inc. in the amount of \$25,000, for a total contract amount not to exceed \$170,000 to continue with property acquisition efforts for the Hale Avenue Extension Project.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2018 Strategic Priorities

Financial Stewardship
Infrastructure

REPORT NARRATIVE:

The Hale Avenue Extension Project is being designed as a two-lane roadway with a median, bike lanes, and pedestrian walkway in conformance with the City's multi-modal arterial standard and the City's General Plan. When completed the Hale Avenue Extension project will provide a critical north-south corridor west of the Downtown. The project requires that a substantial amount of right-of-way be purchased from private property owners before construction can commence.

As with any public right-of-way acquisition effort, it is difficult to estimate the time that will ultimately be required to complete the process. Thus far, Associated Right of Way Services has prepared appraisals, performed negotiations, prepared purchase agreements and offer letters for all eight property owners affected by the Hale Avenue Extension Project. To date, the City Council has approved the right-of-way purchase from three of the eight affected property owners. However, additional efforts will be required from Associated Right of Way Services to negotiate and acquire the remaining parcels. Therefore, staff recommends that City Council execute a second amendment with Associated Right of Way Services in the amount of \$25,000, which will allow staff to continue to utilize their services in order to finalize the property acquisition from the five remaining property owners. Approval of this amendment will result in a revised contract amount of \$170,000 (\$70,000 original + \$75,000 first amendment + \$25,000 second amendment).

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. In addition, the City hired David J. Powers and Associates to complete the Environmental Impact Report (EIR) for the project. This process included opportunities for the community to provide input regarding the scope and content of the EIR and on potential environmental impacts from the project.

ALTERNATIVE ACTIONS:

City Council could decide not to move forward with the second amendment at this time and direct staff to wait until the project is fully funded. This action would ultimately delay some voluntary property purchases and could delay the construction of the project.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- December 7, 2016, City Council awarded a consultant agreement with Associated Right of Way Services, Inc. for \$70,000 to provide acquisition services for the Hale Avenue Extension project.
- July 19, 2017, City Council awarded a first amendment to agreement with Associated Right of Way Services, Inc. in the amount of \$75,000 to continue with property acquisitions for the Hale Avenue Extension Project.

FISCAL AND RESOURCE IMPACT:

Sufficient funds for the \$25,000 second amendment are budgeted in the FY 2017-18 Capital Improvement Program (CIP). \$1,755,000 has been budgeted to purchase right-of-way from willing sellers for FY 2016-17 and 2017-18 from the Traffic Impact Fund (309). The total amount budgeted for FY 2017-18 for this project is \$2,985,000.

CEQA (California Environmental Quality Act):
Project

David J. Powers and Associates was hired to prepare the EIR for the Hale Avenue Extension Project. The Final EIR was certified by the City Council in August 2017.

LINKS/ATTACHMENTS:

1. Associated Right of Way - 2nd Amend - Hale Avenue Extension
2. Project Location Map

**SECOND AMENDMENT TO AGREEMENT
ASSOCIATED RIGHT OF WAY SERVICES, INC.**

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, ASSOCIATED RIGHT OF WAY SERVICES, INC., a California corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" as of December 14, 2016, for consultant services for a maximum compensation of SEVENTY THOUSAND AND NO/100 DOLLARS (\$70,000.00) ("CONSULTANT AGREEMENT").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of August 2, 2017, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to ONE HUNDRED FORTY-FIVE THOUSAND AND NO/100 DOLLARS (\$145,000.00), the scope of services was amended and the term of the Agreement was extended to July 2, 2018. The CONSULTANT AGREEMENT and the First Amendment thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the CONSULTANT AGREEMENT, as amended, as attached as Exhibit "1," shall remain in full force and effect; except that the following amendments shall be made as set forth below:

A. Paragraph 2 shall be amended and replaced in its entirety by the following:

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from December 14, 2016, until July 2, 2019. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both parties to this Agreement."

B. Paragraph 3 shall be amended by adding the following:

"The services to be performed by CONSULTANT shall consist of the additional services set forth in revised Exhibit "B" dated February 20, 2018."

C. Paragraph 4.1 shall be amended and replaced in its entirety by the following:

"4.1. **Amount.** Compensation under this Agreement shall not exceed a total amount of ONE HUNDRED SEVENTY THOUSAND AND NO/100 DOLLARS (\$170,000.00) during the term set forth in Section 2 above, and shall be billed based on the rate and basis set forth in the revised

Exhibit B dated February 20, 2018, incorporated herein and attached hereto by this reference. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement."

2. **Conflicts.** In the event of a conflict between the terms and provisions of this Second Amendment to Agreement and the terms and provisions of the CONSULTANT AGREEMENT or any earlier amendment, the terms of this Second Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

 City Clerk

Date: _____

 City Manager

Date: _____

APPROVED AS TO FORM:

ASSOCIATED RIGHT OF WAY SERVICES, INC.

 City Attorney

Date: _____

 By:

Title: _____

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

 By:

Title: _____

Print Name and Title of Signer.

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

Date: _____

MEMORANDUM

DATE: February 16, 2018
TO: Dave Gittleson – City of Morgan Hill
FROM: Steve Castellano – AR/WS
PROJECT: Hale Avenue Extension
SUBJECT: Scope and Budget Amendment Request

This is a format we use to communicate and track changes in scope of services and level of effort from those anticipated, predictable or agreed upon, when entering into the contract for services or subsequent extra work authorizations.

Type of Change:

☒ Level of Effort ☒ Scope of Services ☐ Other

AR/WS has reached agreements with four (Tran, Kerr, Giancola & Sons, and Howard) of the eight property owners for this project. We continue to coordinate the escrow process with the title company involving these four parcels. Of the remaining four parcels (Betpolice, Garcia, County, and PG&E), we are continuing negotiations with owners Betpolice and Garcia, as well as additional discussions with owner Kerr regarding a potential future excess land sale. The City has requested our assistance with the County and PG&E parcels as needed. Condemnation support may be needed for the PG&E parcel. These continued efforts have nearly depleted our remaining budget. The appraisal of PG&E parcel and preparation of offer documents were added to the project scope in October 2017. The budget for the PG&E parcel temporarily replaced the \$10,000 budget already approved by the City for Relocation Services involving the County parcel tenant. The \$10,000 for Relocation Services will now need to be replenished as part of this budget amendment request.

Budgetary Change:

☐ No Change at this Time ☒ Additional Funds Needed ☐ Reduction of Budget

Budget breakdown of the services described above in this memorandum:

• <u>Project Management</u> (billed hourly)	= \$ 3,000.00
• Preparation of sale agreements	
• <u>Acquisition/Negotiations/Escrow Coordination/Condemnation Support</u> (4 property owners, billed hourly)	= \$ 22,000.00
Total	\$ 25,000.00

Dave Gittleson
February 16, 2018
Page 2 of 2



Please contact me if you have any questions. If this budget amendment request is acceptable to the City, please sign your authorization below and return to my attention. Thank you.

Additional Funds Authorized

City of Morgan Hill

By: _____

Title: _____

Date: _____

126-04-16-129

EXHIBIT "1"

FIRST AMENDMENT TO AGREEMENT
Associated Right of Way Services, Inc.

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on 8/2/17 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and Associated Right of Way Services, Inc, a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into based upon City of Morgan Hill City Council approval on July 19, 2017.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of December 14, 2016, for consultant services for a maximum compensation of \$70,000 ("CONSULTANT AGREEMENT"). The CONSULTANT AGREEMENT is attached as Exhibit "A" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the CONSULTANT AGREEMENT, as amended, as attached as Exhibit "A," shall remain in full force and effect; except that the following amendments shall be made as set forth below:

A. Paragraph 2 shall be amended and replaced in its entirety by the following:

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from December 14, 2016, until July 2, 2018. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both parties to this Agreement."

B. Paragraph 3 shall be amended by adding the following:

"The services to be performed by CONSULTANT shall consist of the following additional services set forth in Exhibit "B": Continue negotiations, project management, two new appraisals, update existing appraisals, and add relocation services.

C. Paragraph 4.1 shall be amended and replaced in its entirety by the following:

"4.1. **Amount.** Compensation under this Agreement shall not exceed \$70,000 for the original agreement plus \$75,000 for the First Amendment for a total of One Hundred Forty Five Thousand Dollars (\$145,000).

2. **Conflicts.** In the event of a conflict between the terms and provisions of this First Amendment to Agreement and the terms and provisions of the CONSULTANT AGREEMENT, the terms of this First Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

Deputy
 City Clerk
 Date: 8/31/17

APPROVED AS TO FORM:

ye
Aprilia Olson, Assistant
 City Attorney
 Date: 8-1-17

CITY OF MORGAN HILL

[Signature]
 City Manager
 Date: 8/2/17

Associated Right of Way Services, Inc

[Signature]
 By: Bill Thompson
 Title: PRESIDENT
 Print Name and Title of Signer. **PRESIDENT**
 If Corporate: Chairman, President or Vice President

Date: 6-13-17

[Signature]
 By: Larry Castellanos
 Title: Secretary
 Print Name and Title of Signer.
 If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 6/13/17

EXHIBIT A

12-04-16-129

CONSULTANT AGREEMENT
Associated Right of Way Services, Inc.

THIS AGREEMENT is entered into and becomes effective on 12/14/16 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Associated Right of Way Services, 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 December 7, 2016.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until December 15, 2017 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be to contact and negotiate with willing property owners for the purposes of acquiring street right of way for the Hale Avenue Extension Project, as further described in Exhibit A.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$70,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Seventy Thousand dollars and shall be billed based on the rate and basis set forth in Exhibit B. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with a monthly invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and

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

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

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

7.1. **Insurance Types and Amounts.**

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

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

- 7.1.3. Workers' Compensation Insurance and Employer's Liability. CONSULTANT shall maintain Workers Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If CONSULTANT is self-insured, CONSULTANT shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- 7.1.4. Pollution (Environmental) Liability. If the performance of CONSULTANT's work or service under this Agreement involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, CONSULTANT shall procure and maintain Pollution Liability covering the contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 7.1.5. Professional Liability.
- 7.1.5.1. If the performance of CONSULTANT's work or service under this Agreement involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, and appraisers), CONSULTANT shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if CONSULTANT maintains a claims-made policy, CONSULTANT shall provide written evidence of such insurance to the CITY for at least five (5) years after the completion of work performed under this Agreement.
- 7.1.5.2. If the performance of CONSULTANT's work or service under this Agreement relates to Information Technology or related services (examples include, but are not limited to computer programmers, software designers, hardware engineers, or other systems consultants), CONSULTANT shall procure and maintain a claims made Errors and Omission liability insurance, including Cyber Liability and Data Breach, in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 7.1.5.3. If the performance of CONSULTANT's work or service under this Agreement involves contact with minors, CONSULTANT shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance

available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

7.2.1. **General Liability.**

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

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

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. **Workers Compensation.**

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

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

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

Certificate Holder address:

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

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

9. **Compliance with Law.** CONSULTANT and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. CONSULTANT and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender,

marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

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

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

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

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

Address of CONSULTANT is as follows:

Associated Right of Way Services, Inc.
2300 Contra Costa Blvd., Suite 525
Pleasant Hill, CA 94523

Address of CITY is as follows:

David Gittleson, P.E.	with a copy to:
City of Morgan Hill	City Clerk
17575 Peak Avenue	City of Morgan Hill
Morgan Hill, CA 95037	17575 Peak Avenue
	Morgan Hill, CA 95037

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

15. **Maintenance of Records.**

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

15.2. **Access to and Audit of Records.** The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONSULTANT and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to

matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

- 15.3. Ownership of Work Product. All documents or other information developed or received by CONSULTANT for work performed under this Agreement shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
16. Familiarity with Work. By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.
17. Time of Essence. Time is of the essence in the performance of this Agreement.
18. No Assignment. Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.
19. Attorney Fees. In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.
20. Defense and Indemnification.
- 20.1. Defense and Indemnification. CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the CONSULTANT's negligence or willful misconduct in the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
- 20.2. Exceptions. CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the CITY.
- 20.3. Not limited by insurance. The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMS alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.
- 20.4. Right to Offset. CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (20) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

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

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

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

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

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

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

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

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

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

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

ATTEST:

City Clerk/Deputy City Clerk

Michelle Wilson
 Print Name

Date:

APPROVED AS TO FORM:

Donald A. Larkin
 City Attorney

for
 Donald A. Larkin
 Print Name

Date:

12/09/16

CITY OF MORGAN HILL

Steve Rymer
 City Manager

Steve Rymer
 Print Name

Date:

12/14/16

Associated Right of Way Services, Inc.

By:

Title:

Denise Jackson

Denise Jackson, Vice President

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date:

11/22/16

By:

Title:

Larry Castellanos
 Larry Castellanos, Secretary

Print Name and Title of Signer.

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

Date:

11/22/16

EXHIBIT A SCOPE OF SERVICES



Scope of Work

SCOPE OF WORK

Associated Right of Way Services, Inc. (AR/WS) will provide real estate consulting, appraisal and acquisition services for the City of Morgan Hill's (City) Hale Avenue Extension Project. AR/WS proposes to provide right of way engineering services through a subcontractor.

Our proposal is based on the following assumptions:

- The Project will occur in phases. The first phase will include general consulting and contacting property owners to determine their level of interest in voluntarily granting property rights to the City. The second phase will include right of way engineering, appraisal and acquisition services for specific properties once willing sellers have been identified. The scope of work for the second phase is unknown at this time. The specific scope of work for this phase will be defined when voluntary owners have been identified and the City authorizes second-phase services on particular parcels.
- All acquisitions at this time will be entirely voluntary.
- The Project may include partial fee simple and permanent easement acquisitions from up to 11 parcels, with up to 9 property owners.
- The project does not include federal funds.

REAL ESTATE CONSULTING

- Attend kick-off meeting with City staff.
- Review project exhibits, current design information and right of way acquisitions as currently proposed.
- Prepare draft property owner contact letters for review and approval by City.
- Contact up to 9 property owners to discuss Project and determine level of interest in voluntarily granting property rights to the City.
- Discuss results of property owner contacts with City.
- Coordinate with City, legal counsel and other team members, as appropriate.
- Provide on-going consultation and assistance with analyzing various courses of action.
- Provide risk assessment related to real estate and right of way issues and recommend solutions.

CITY OBLIGATIONS (REAL ESTATE CONSULTING)

- Approval of draft property owner contact letters.

APPRAISAL SERVICES

Parcels that will require appraisal services have not been defined at this time. AR/WS will provide a fee for the appraisals once owners agreeable to voluntary acquisitions have been identified.

- Appraisals to be provided as one original with two copies addressed and delivered to City staff as directed.



Scope of Work

- Appraisals to be prepared in accordance with California Eminent Domain Law; California Government Code Section 7260 et seq.; and the Uniform Standards of Professional Appraisal Practice requirements, except as jurisdictionally exempt.
- The owner or a designated representative will be invited by the appraiser to accompany him/her during the inspection of the property.
- Prepare appraisal report in an Appraisal Report format in accordance with Uniform Standards of Professional Appraisal Practice, Standard Rule 2-2.
- Appraisal is for the "Fair Market Value" of the property as per California Code of Civil Procedure, Section 1263.320.
- The appraiser will issue the necessary public acquisition informational brochure to all owners.
- The market value of the property taken will not include any increase or decrease in the value of the property that is attributable to any of the following:
 - The project for which the property is taken;
 - The eminent domain proceeding in which the property is taken;
 - Any preliminary actions of the acquiring authority relating to the taking of the property.
- Appraiser will not give consideration to, nor include in their appraisal, any allowance for relocation benefits of personal property.
- The appraisal of real estate does not include business or goodwill analyses or conclusions. Any loss of goodwill valuations should be performed by others under direct contract to City.
- If updated values are requested, appraisal services will be billed on an hourly basis in accordance with the AR/WS Fee Schedule. (Optional Service)
- If revisions are made to the property requirements during the appraisal process or upon completion of the report, appraisal time to address these revisions will be billed on an hourly basis in accordance with the AR/WS Fee Schedule. (Optional Service)

CITY OBLIGATIONS (APPRAISAL)

- Preliminary title reports.
- Legal opinions as necessary.

NEGOTIATIONS / ACQUISITIONS

- AR/WS to prepare acquisition documents. Said documents include, but are not limited to: offer letter, appraisal summary statement and summary of the basis for just compensation, summary statement pertaining to the acquisition of real property or an interest therein, purchase agreement, deed, public acquisition brochure and goodwill information sheet (if not addressed in City brochure).
- Once owners agreeable to voluntary acquisitions have been identified and right of way mapping and appraisal services have been completed, AR/WS will negotiate to acquire acquisitions identified by the City.



ASSOCIATED
RIGHT OF WAY
SERVICES, INC

Scope of Work

- All acquisition documents to receive City's written approval as to form prior to use in the field. If agreement with all owners and other required interests cannot be reached, AR/WS will advise City that negotiations have reached an impasse.
- If settlement with owner and other required interests is reached pursuant to the City approved appraisal or City approved administrative settlement, AR/WS will prepare a Memorandum of Settlement for transmittal to City. If an administrative settlement appears to be prudent, AR/WS will prepare a settlement discussion memorandum reviewing the issues. This memorandum will require City written approval before implementation of any settlement agreement.
- AR/WS will establish with City a process of coordinating escrow closings and reviewing escrow instructions. Where there are escrow closings, preparation of escrow instructions will be completed by title company. Approval of conditions of title and escrow instructions, including but not limited to, "subject to" title exceptions, will be done by City.

CITY OBLIGATIONS (ACQUISITION)

- Written approval of all acquisition documents in a timely manner.
- Direction as to administrative settlements, negotiating authority and condition of title acceptance.
- Providing any formats to be used by AR/WS on City's behalf.
- Selection of title company.
- Review and approval of title company prepared escrow instructions including acceptable condition of title.

RIGHT OF WAY ENGINEERING/SURVEYING SERVICES (SUBCONTRACTOR)

AR/WS proposes to provide right of way engineering/surveying services through a subcontractor. Parcels that will require these services have not been defined at this time. AR/WS will obtain a fee for plat maps and legal descriptions for individual parcels once owners agreeable to voluntary acquisitions have been identified. The scope of work may include the following:

- Research and record boundary compilation.
- Review title reports.
- Attend meetings.
- Coordinate with AR/WS and City staff.
- Prepare plat maps and legal descriptions.

ADMINISTRATIVE SUPPORT

AR/WS will provide a fully staffed in-house clerical team to provide word processing, reports, project tracking and budget control for all AR/WS services.

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**



Fee Schedule

AR/WS FEE SCHEDULE 2016

CONSULTING CATEGORY	HOURLY RATE
Principal Consultant	\$200.00
Managing Consultant	\$185.00
Consultant I	\$150.00
Consultant II	\$130.00
Consultant III	\$115.00
Right of Way Technician	\$80.00
Administrative Support	\$65.00
Appraisal Reports	Lump Sum
Appraisal Services (Hourly)	\$200.00
Subcontractors	Cost + 10%
Depositions, Court Appearances, Arbitrations / Mediations, Hearings, and Testimony (including preparation)	\$275.00

Fees include direct and indirect expenses and profit

BUDGET

A budget of \$70,000 is being requested for initiation of these services. Since parcels that will require right of way engineering, appraisal and acquisition services have not been identified at this time, it is unknown if this budget will be sufficient for the entire project. AR/WS will provide a quote to the City for appraisal services and right of way engineering when voluntary owners have been identified. Appraisal services will be billed lump sum. Right of way engineering, provided through a subcontractor, will be billed at cost plus fee (see attached AR/WS Fee Schedule). All other services are billed on an hourly basis, in conformance with the AR/WS Fee Schedule.

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

The Consultant shall work diligently to acquire right of way from willing sellers. Thus, the term of the agreement shall extend to December 15, 2017 or when the compensation amount runs out.

EXHIBIT B



2300 Contra Costa Blvd.
Suite 525
Pleasant Hill, CA 94523

925.691.8500 *phone*
925.691.6505 *fax*
www.arws.com

MEMORANDUM

DATE: July 7, 2017
TO: Dave Gittleson – City of Morgan Hill
FROM: Steve Castellano – AR/WS 
PROJECT: Hale Avenue Extension
SUBJECT: Scope and Budget Amendment Request - Updated

This is a format we use to communicate and track changes in scope of services and level of effort from those anticipated, predictable or agreed upon, when entering into the contract for services or subsequent extra work authorizations.

Type of Change:

☐ Level of Effort ☒ Scope of Services ☐ Other

AR/WS completed the Phase I of the project by contacting all nine property owners to solicit voluntary acquisitions for the property rights needed for the project:

- Tran (apn: 767-030-039, -041, & -042)
- Kerr (apn: 767-05-024)
- Santa Clara County (apn: 767-06-034 & -035) – *second appraisal added to original scope.*
- Betpolice (apn: 767-03-036)
- PG&E (apn: 767-04-009 & 767-05-001)
- Giancola & Sons (apn: 767-05-037)
- Howard (apn: 767-12-024)
- Garcia (apn: 767-01-050)
- Gose (apn: 767-14-001) – *added parcel to original scope.*

This effort included project coordination and setup, preparation of the contact letter, research property owners' contact information, and conduct both phone and email contacts with seven property owners. Four owners (Tran, Kerr, Howard, and Santa Clara County) initially contacted us, willing to sell portions of their property. The three remaining owners ((Betpolice, Giancola, and Garcia) responded shortly thereafter. We corresponded with PG&E but never received confirmation to proceed with an appraisal (*we have been recently informed by the City that the appraisal/acquisition for the PG&E property is longer required as part of the AR/WS scope*). A second appraisal and acquisition services have been added to the original scope to address the County's additional parcel as a separate larger parcel. The Gose parcel is a late addition to the project scope and will require an appraisal and acquisition services.

AR/WS has completed and submitted to the City the Giancola & Sons, Kerr, Betpolice, Tran, Howard, and Garcia appraisals. The Santa Clara County appraisal is in progress but is expected to be completed and submitted to City by mid-September 2017. We have also initiated the preparation of draft acquisition documents for several of the properties that have been appraised. As a result of the aforementioned work described, we are near depletion of the original budget.

Dave Gittleson
July 7, 2017
Page 2 of 2



In addition, the City has recently revised the project right of way requirements that will result in updates to five of the already completed appraisals (Giancola & Sons, Kerr, Betpolice, Tran, and Garcia). The appraisal updates will require an additional fee to complete. The amended budget proposed in this request will cover the fees for the services identified in the Budgetary Change section shown below.

Furthermore, ARWS has attached a deliverable/critical path schedule. This schedule is an estimate to complete the appraisal and acquisition tasks. ARWS expects that the acquisitions will be accomplished by negotiations. However, a condemnation schedule is included in the event that some negotiations reach an impasse and the City elects to proceed with condemnation.

Budgetary Change:

☐ No Change at this Time ☒ Additional Funds Needed ☐ Reduction of Budget

Budget breakdown of the services described on Page 1 and above in this memorandum:

• <u>Project Management</u> (billed hourly)	= \$ 3,000.00
• <u>Appraisals</u> (Update 5 appraisals)	= \$ 7,500.00
(2 new appraisals - County and Gose parcels, billed lump sum)	= \$ 14,000.00
• <u>Acquisition/Negotiations</u> (8 property owners, billed hourly)	= \$ 40,500.00
• <u>Relocation Assistance</u> (County parcel, includes Relocation Planning, billed hourly)	= \$ 10,000.00
Total	\$ 75,000.00

Please contact me if you have any questions. If this budget amendment request is acceptable to the City, please sign your authorization below and return to my attention. Thank you.

Additional Funds Authorized

City of Morgan Hill

By: _____

Title: _____

Date: _____



ASSORIG-01

JDOMA0AL

10.a

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/14/2017

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

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

PRODUCER HUB International Insurance Services Inc. 5731 Palmer Way, Suite D Carlsbad, CA 92010	CONTACT NAME: Gary Cox	
	PHONE (A/C, No, Ext): (442) 244-6921	FAX (A/C, No):
	E-MAIL ADDRESS: gary.cox@hubinternational.com	
INSURED Associated Right of Way Services, Inc. Services, Inc. 2300 Contra Costa Blvd, #525 Pleasant Hill, CA 94523	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Travelers Property Casualty Company of America	
	INSURER B: Houston Casualty Company	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	
	NAIC #	
	25674	
	42374	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC ☐ OTHER:	X	X	6804701L630	07/17/2017	07/17/2018	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			BA3984M39515	07/17/2017	07/17/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ 0			CUP7067Y7681542	07/17/2017	07/17/2018	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ Y/N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
B	Prof Liability			H717-110011	07/17/2017	07/17/2018	Per Claim 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
** Umbrella goes over the following policies only: BA3984M395-17, 6804701L630-17, UB0E003434

Re: Hale Avenue Extension Project

The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named additional insured as respects General Liability per CGD251 0805. Waiver of subrogation applies per CGD186 1103. Primary wording applies per CGD037 0405. All forms valid where required by written contract.

CERTIFICATE HOLDER

CANCELLATION

City of Morgan Hill 17575 Peak Avenue Morgan Hill, CA 95037	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

ACORD 25 (2016/03)

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Packet Pg. 271

Attachment: Associated Right of Way - 2nd Amend - Hale Avenue Extension (1643 : Second Amendment with Associated Right of Way)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

XTEND ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the **PROVISIONS** of this endorsement carefully to determine rights, duties, and what is and is not covered.

- | | |
|---|--|
| <ul style="list-style-type: none"> A. Broadened Named Insured B. Damage To Premises Rented To You Extension <ul style="list-style-type: none"> • Perils of fire, explosion, lightning, smoke, water • Limit increased to \$300,000 C. Blanket Waiver of Subrogation D. Blanket Additional Insured – Managers or Lessors of Premises E. Blanket Additional Insured – Lessor of Leased Equipment F. Incidental Medical Malpractice G. Personal Injury – Assumed by Contract H. Extension of Coverage – Bodily Injury | <ul style="list-style-type: none"> I. Injury to Co-Employees and Co-Volunteer Workers J. Aircraft Chartered with Crew K. Non-Owned Watercraft – Increased from 25 feet to 50 feet L. Increased Supplementary Payments <ul style="list-style-type: none"> • Cost for bail bonds increased to \$2,500 • Loss of earnings increased to \$500 per day M. Knowledge and Notice of Occurrence or Offense N. Unintentional Omission O. Reasonable Force – Bodily Injury or Property Damage |
|---|--|

PROVISIONS

A. BROADENED NAMED INSURED

1. The Named Insured in Item 1. of the Declarations is as follows:
 The person or organization named in Item 1. of the Declarations and any organization, other than a partnership or joint venture, over which you maintain ownership or majority interest on the effective date of the policy. However, coverage for any such organization will cease as of the date during the policy period that you no longer maintain ownership of, or majority interest in, such organization.
2. **WHO IS AN INSURED (Section II) Item 4.a.** is deleted and replaced by the following:
 - a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, unless reported in writing to us within 180 days.
3. This Provision **A.** does not apply to any person or organization for which coverage is excluded by endorsement.

B. DAMAGE TO PREMISES RENTED TO YOU EXTENSION

1. The last paragraph of **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I – Coverages)** is deleted and replaced by the following:
 Exclusions **c.** through **n.** do not apply to damage to premises while rented to you, or temporarily occupied by you with permission of the owner, caused by:
 - a. Fire;
 - b. Explosion;
 - c. Lightning;
 - d. Smoke resulting from such fire, explosion, or lightning; or
 - e. Water.
 A separate limit of insurance applies to this coverage as described in **LIMITS OF INSURANCE (Section III)**.
2. This insurance does not apply to damage to premises while rented to you, or temporarily

COMMERCIAL GENERAL LIABILITY

occupied by you with permission of the owner, caused by:

- a. Rupture, bursting, or operation of pressure relief devices;
 - b. Rupture or bursting due to expansion or swelling of the contents of any building or structure, caused by or resulting from water;
 - c. Explosion of steam boilers, steam pipes, steam engines, or steam turbines.
3. Part 6. of LIMITS OF INSURANCE (Section III) is deleted and replaced by the following:
- Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under COVERAGE A. for damages because of "property damage" to any one premises while rented to you, or temporarily occupied by you with permission of the owner, caused by fire, explosion, lightning, smoke resulting from such fire, explosion, or lightning, or water. The Damage To Premises Rented To You Limit will apply to all damage proximately caused by the same "occurrence", whether such damage results from fire, explosion, lightning, smoke resulting from such fire, explosion, or lightning, or water, or any combination of any of these.
- The Damage To Premises Rented To You Limit will be the higher of:
- a. \$300,000; or
 - b. The amount shown on the Declarations for Damage To Premises Rented To You Limit.
4. Under DEFINITIONS (Section V), Paragraph a. of the definition of "insured contract" is amended so that it does not include that portion of the contract for a lease of premises that indemnifies any person or organization for damage to premises while rented to you, or temporarily occupied by you with permission of the owner, caused by:
- a. Fire;
 - b. Explosion;
 - c. Lightning;
 - d. Smoke resulting from such fire, explosion, or lightning; or
 - e. Water.
5. This Provision B. does not apply if coverage for Damage To Premises Rented To You of

COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I – Coverages) is excluded by endorsement.

C. BLANKET WAIVER OF SUBROGATION

We waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of premises owned or occupied by or rented or loaned to you; ongoing operations performed by you or on your behalf, done under a contract with that person or organization; "your work"; or "your products". We waive this right where you have agreed to do so as part of a written contract, executed by you prior to loss.

D. BLANKET ADDITIONAL INSURED – MANAGERS OR LESSORS OF PREMISES

WHO IS AN INSURED (Section II) is amended to include as an insured any person or organization (referred to below as "additional insured") with whom you have agreed in a written contract, executed prior to loss, to name as an additional insured, but only with respect to liability arising out of the ownership, maintenance or use of that part of any premises leased to you, subject to the following provisions:

1. Limits of Insurance. The limits of insurance afforded to the additional insured shall be the limits which you agreed to provide, or the limits shown on the Declarations, whichever is less.
2. The insurance afforded to the additional insured does not apply to:
 - a. Any "occurrence" that takes place after you cease to be a tenant in that premises;
 - b. Any premises for which coverage is excluded by endorsement; or
 - c. Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.
3. The insurance afforded to the additional insured is excess over any valid and collectible insurance available to such additional insured, unless you have agreed in a written contract for this insurance to apply on a primary or contributory basis.

E. BLANKET ADDITIONAL INSURED – LESSOR OF LEASED EQUIPMENT

WHO IS AN INSURED (Section II) is amended to include as an insured any person or organization (referred to below as "additional insured") with

COMMERCIAL GENERAL LIABILITY

whom you have agreed in a written contract, executed prior to loss, to name as an additional insured, but only with respect to their liability arising out of the maintenance, operation or use by you of equipment leased to you by such additional insured, subject to the following provisions:

1. **Limits of Insurance.** The limits of insurance afforded to the additional insured shall be the limits which you agreed to provide, or the limits shown on the Declarations, whichever is less.
2. The insurance afforded to the additional insured does not apply to:
 - a. Any "occurrence" that takes place after the equipment lease expires; or
 - b. "Bodily injury" or "property damage" arising out of the sole negligence of such additional insured.
3. The insurance afforded to the additional insured is excess over any valid and collectible insurance available to such additional insured, unless you have agreed in a written contract for this insurance to apply on a primary or contributory basis.

F. INCIDENTAL MEDICAL MALPRACTICE

1. The definition of "bodily injury" in DEFINITIONS (Section V) is amended to include "Incidental Medical Malpractice Injury".
2. The following definition is added to DEFINITIONS (Section V):

"Incidental medical malpractice injury" means bodily injury, mental anguish, sickness or disease sustained by a person, including death resulting from any of these at any time, arising out of the rendering of, or failure to render, the following services:

 - a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages;
 - b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances; or
 - c. First aid.
 - d. "Good Samaritan services". As used in this Provision F., "Good Samaritan services" are those medical services rendered or provided in an emergency and

for which no remuneration is demanded or received.

3. Paragraph 2.a.(1)(d) of WHO IS AN INSURED (Section II) does not apply to any registered nurse, licensed practical nurse, emergency medical technician or paramedic employed by you, but only while performing the services described in paragraph 2. above and while acting within the scope of their employment by you. Any "employees" rendering "Good Samaritan services" will be deemed to be acting within the scope of their employment by you.

4. The following exclusion is added to paragraph 2. Exclusions of COVERAGE A. – BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I – Coverages):

(This insurance does not apply to:) Liability arising out of the willful violation of a penal statute or ordinance relating to the sale of pharmaceuticals by or with the knowledge or consent of the insured.

5. For the purposes of determining the applicable limits of insurance, any act or omission, together with all related acts or omissions in the furnishing of the services described in paragraph 2. above to any one person, will be considered one "occurrence".
6. This Provision F. does not apply if you are in the business or occupation of providing any of the services described in paragraph 2. above.
7. The insurance provided by this Provision F. shall be excess over any other valid and collectible insurance available to the insured, whether primary, excess, contingent or on any other basis, except for insurance purchased specifically by you to be excess of this policy.

G. PERSONAL INJURY – ASSUMED BY CONTRACT

1. The **Contractual Liability** Exclusion in Part 2., Exclusions of COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY (Section I – Coverages) is deleted and replaced by the following:

(This insurance does not apply to:)

Contractual Liability

"Advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for

COMMERCIAL GENERAL LIABILITY

damages that the insured would have in the absence of the contract of agreement.

2. Subparagraph f. of the definition of "insured contract" (DEFINITIONS – Section V) is deleted and replaced by the following:

- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury," "property damage" or "personal injury" to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

3. This Provision G. does not apply if COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY is excluded by endorsement.

H. EXTENSION OF COVERAGE – BODILY INJURY

The definition of "bodily injury" (DEFINITIONS – Section V) is deleted and replaced by the following:

"Bodily injury" means bodily injury, mental anguish, mental injury, shock, fright, disability, humiliation, sickness or disease sustained by a person, including death resulting from any of these at any time.

I. INJURY TO CO-EMPLOYEES AND CO-VOLUNTEER WORKERS

1. Your "employees" are insureds with respect to "bodily injury" to a co-"employee" in the course of the co-"employee's" employment by you, or to your "volunteer workers" while performing duties related to the conduct of your business, provided that this coverage for your "employees" does not apply to acts outside the scope of their employment by you or while performing duties unrelated to the conduct of your business.
2. Your "volunteer workers" are insureds with respect to "bodily injury" to a co-"volunteer worker" while performing duties related to the conduct of your business, or to your "employees" in the course of the "employee's" employment by you, provided that this coverage for your "volunteer workers" does not apply while performing duties unrelated to the conduct of your business.

3. Subparagraphs 2.a.(1)(a), (b) and (c) and 3.a. of WHO IS AN INSURED (Section II) do not apply to "bodily injury" for which insurance is provided by paragraph 1. or 2. above.

J. AIRCRAFT CHARTERED WITH CREW

1. The following is added to the exceptions contained in the **Aircraft, Auto Or Watercraft** Exclusion in Part 2., **Exclusions** of COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I – Coverages):
(This exclusion does not apply to:) Aircraft chartered with crew to any insured.
2. This Provision J. does not apply if the chartered aircraft is owned by any insured.
3. The insurance provided by this Provision J. shall be excess over any other valid and collectible insurance available to the insured, whether primary, excess, contingent or on any other basis, except for insurance purchased specifically by you to be excess of this policy.

K. NON-OWNED WATERCRAFT

1. The exception contained in Subparagraph (2) of the **Aircraft, Auto Or Watercraft** Exclusion in Part 2., **Exclusions** of COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I – Coverages) is deleted and replaced by the following:
(2) A watercraft you do not own that is:
 - (a) Fifty feet long or less; and
 - (b) Not being used to carry persons or property for a charge;
2. This Provision K. applies to any person who, with your expressed or implied consent, either uses or is responsible for the use of a watercraft.
3. The insurance provided by this Provision K. shall be excess over any other valid and collectible insurance available to the insured, whether primary, excess, contingent or on any other basis, except for insurance purchased specifically by you to be excess of this policy.

L. INCREASED SUPPLEMENTARY PAYMENTS

Parts b. and d. of SUPPLEMENTARY PAYMENTS – COVERAGES A AND B (Section I – Coverages) are amended as follows:

1. In Part b. the amount we will pay for the cost of bail bonds is increased to \$2500.

COMMERCIAL GENERAL LIABILITY

2. In Part d. the amount we will pay for loss of earnings is increased to \$500 a day.

M. KNOWLEDGE AND NOTICE OF OCCURRENCE OR OFFENSE

1. The following is added to COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV), paragraph 2. (Duties In The Event of Occurrence, Offense, Claim or Suit):

Notice of an "occurrence" or of an offense which may result in a claim under this insurance shall be given as soon as practicable after knowledge of the "occurrence" or offense has been reported to any insured listed under Paragraph 1. of Section II – Who Is An Insured or an "employee" (such as an insurance, loss control or risk manager or administrator) designated by you to give such notice.

Knowledge by other "employee(s)" of an "occurrence" or of an offense does not imply that you also have such knowledge.

2. Notice shall be deemed prompt if given in good faith as soon as practicable to your workers' compensation insurer. This applies only if you subsequently give notice to us as soon as practicable after any insured listed under Paragraph 1. of Section II – Who Is An Insured or an "employee" (such as an insurance, loss control or risk manager or administrator) designated by you to give such notice discovers that the "occurrence", offense or claim may involve this policy.
3. However, this Provision M. does not apply as respects the specific number of days within

which you are required to notify us in writing of the abrupt commencement of a discharge, release or escape of "pollutants" which causes "bodily injury" or "property damage" which may otherwise be covered under this policy.

N. UNINTENTIONAL OMISSION

The following is added to COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV), paragraph 6. (Representations):

The unintentional omission of, or unintentional error in, any information provided by you shall not prejudice your rights under this insurance. However, this Provision N. does not affect our right to collect additional premium or to exercise our right of cancellation or nonrenewal in accordance with applicable state insurance laws, codes or regulations.

O. REASONABLE FORCE – BODILY INJURY OR PROPERTY DAMAGE

The **Expected Or Intended Injury** Exclusion in Part 2., **Exclusions** of COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I – Coverages) is deleted and replaced by the following:

(This insurance does not apply to:)

Expected or Intended Injury or Damage

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

POLICY NUMBER: 6804701L630

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

OTHER INSURANCE – ADDITIONAL INSUREDS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PROVISIONS

COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV), Paragraph 4. (**Other Insurance**), is amended as follows:

1. The following is added to Paragraph **a. Primary Insurance**:

However, if you specifically agree in a written contract or written agreement that the insurance provided to an additional insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with that other insurance, provided that:

- a. The "bodily injury" or "property damage" for which coverage is sought occurs; and

- b. The "personal injury" or "advertising injury" for which coverage is sought arises out of an offense committed

subsequent to the signing and execution of that contract or agreement by you.

2. The first Subparagraph (2) of Paragraph **b. Excess Insurance** regarding any other primary insurance available to you is deleted.

3. The following is added to Paragraph **b. Excess Insurance**, as an additional subparagraph under Subparagraph (1):

That is available to the insured when the insured is added as an additional insured under any other policy, including any umbrella or excess policy.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**BLANKET ADDITIONAL INSURED
(CONTRACTORS)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. WHO IS AN INSURED – (Section II) is amended to include any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:
 - a) Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
 - b) If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies. The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.
2. The insurance provided to the additional insured by this endorsement is limited as follows:
 - a) In the event that the Limits of Insurance of this Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement shall not increase the limits of insurance described in Section III – Limits Of Insurance.
 - b) The insurance provided to the additional insured does not apply to "bodily injury", "property damage" or "personal injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services, including:
 - i. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders or change orders, or the preparing, approving, or failing to prepare or approve, drawings and specifications; and
 - ii. Supervisory, inspection, architectural or engineering activities.
 - c) The insurance provided to the additional insured does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured applies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.
 - d) The insurance provided to the additional insured does not apply to "bodily injury" or "property damage" that occurs, or "personal injury" arising out of an offense committed, while any separate liability insurance that you have procured for that person or organization is in effect, regardless of whether the scope or limits of insurance in this Coverage Part exceed those of that separate liability insurance or whether that separate liability insurance is valid and collectible.
3. The insurance provided to the additional insured by this endorsement is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover under this endorsement. However, if the "written contract requiring insurance" specifically requires that this insurance apply on a primary basis or a primary and non-contributory basis, this insurance is primary to "other insurance" available to the additional insured which covers that person or organization as a named insured for such loss, and we will not share with that "other insurance". But the insurance provided to the additional insured by this endorsement still is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the addi-

COMMERCIAL GENERAL LIABILITY

tional insured when that person or organization is an additional insured under such "other insurance".

4. As a condition of coverage provided to the additional insured by this endorsement:

a) The additional insured must give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:

- i. How, when and where the "occurrence" or offense took place;
- ii. The names and addresses of any injured persons and witnesses; and
- iii. The nature and location of any injury or damage arising out of the "occurrence" or offense.

b) If a claim is made or "suit" is brought against the additional insured, the additional insured must:

- i. Immediately record the specifics of the claim or "suit" and the date received; and
- ii. Notify us as soon as practicable.

The additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c) The additional insured must immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.

d) The additional insured must tender the defense and indemnity of any claim or "suit" to any provider of "other insurance" which would cover the additional insured for a loss we cover under this endorsement.

5. The following definition is added to SECTION V. – DEFINITIONS:

"Written contract requiring insurance" means that part of any written contract or agreement under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

- a. After the signing and execution of the contract or agreement by you;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.



CERTIFICATE OF LIABILITY INSURANCE

 DATE (MM/DD/YYYY)
02/08/2017

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

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

PRODUCER PAYCHEX INSURANCE AGENCY INC 150 SAWGRASS DR ROCHESTER, NY 14620 (877) 362-6785	CONTACT NAME: PHONE (A/C, No, Ext): (877) 362-6785 FAX (A/C, No): (877) 677-0447 E-MAIL ADDRESS: paychex@travelers.com																					
INSURED ASSOCIATED RIGHT OF WAY SERVICES, INC. AR/WS, LLC, AR/WS APPRAISAL 2300 CONTRA COSTA BLVD STE 525 PLEASANT HILL, CA 94523	<table border="1"> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr> <tr> <td>INSURER A :</td><td>TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA</td><td></td></tr> <tr> <td>INSURER B :</td><td></td><td></td></tr> <tr> <td>INSURER C :</td><td></td><td></td></tr> <tr> <td>INSURER D :</td><td></td><td></td></tr> <tr> <td>INSURER E :</td><td></td><td></td></tr> <tr> <td>INSURER F :</td><td></td><td></td></tr> </table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A :	TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA		INSURER B :			INSURER C :			INSURER D :			INSURER E :			INSURER F :		
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INSURER D :																						
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INSURER F :																						

COVERAGES
CERTIFICATE NUMBER: 081454236521930

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	☐ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC ☐ OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	☐ UMBRELLA LIAB ☐ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☐ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	X	UB-OE003434-17	01/10/2017	01/10/2018	☒ PER STATUTE ☐ OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

REFERENCE: HALE AVENUE EXTENSION PROJECT
 AS RESPECTS TO WORKERS COMPENSATION COVERAGE, WC 99 03 76 (A) WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT-CALIFORNIA HAS BEEN ATTACHED TO THE POLICY.

CERTIFICATE HOLDER
CANCELLATION

CITY OF MORGAN HILL 17575 PEAK AVENUE MORGAN HILL, CA 95037	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Mary J. Swan</i>
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TRAVELERS
 ONE TOWER SQUARE
 HARTFORD, CT 06183

**WORKERS COMPENSATION
 AND
 EMPLOYERS LIABILITY POLICY**

ENDORSEMENT WC 99 03 76 (A) - 001

POLICY NUMBER: (UB-0E00343-4-17)

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS
 ENDORSEMENT - CALIFORNIA
 (BLANKET WAIVER)**

We have the right to recover our payments from anyone liable for an Injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

The additional premium for this endorsement shall be 02.00 % of the California workers' compensation premium.

Schedule

Person or Organization

Job Description

ANY PERSON OR ORGANIZATION FOR
 WHICH THE INSURED HAS AGREED
 BY WRITTEN CONTRACT EXECUTED P
 RIOR TO LOSS TO FURNISH THIS W
 AIVER.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective
 Insured

Policy No.

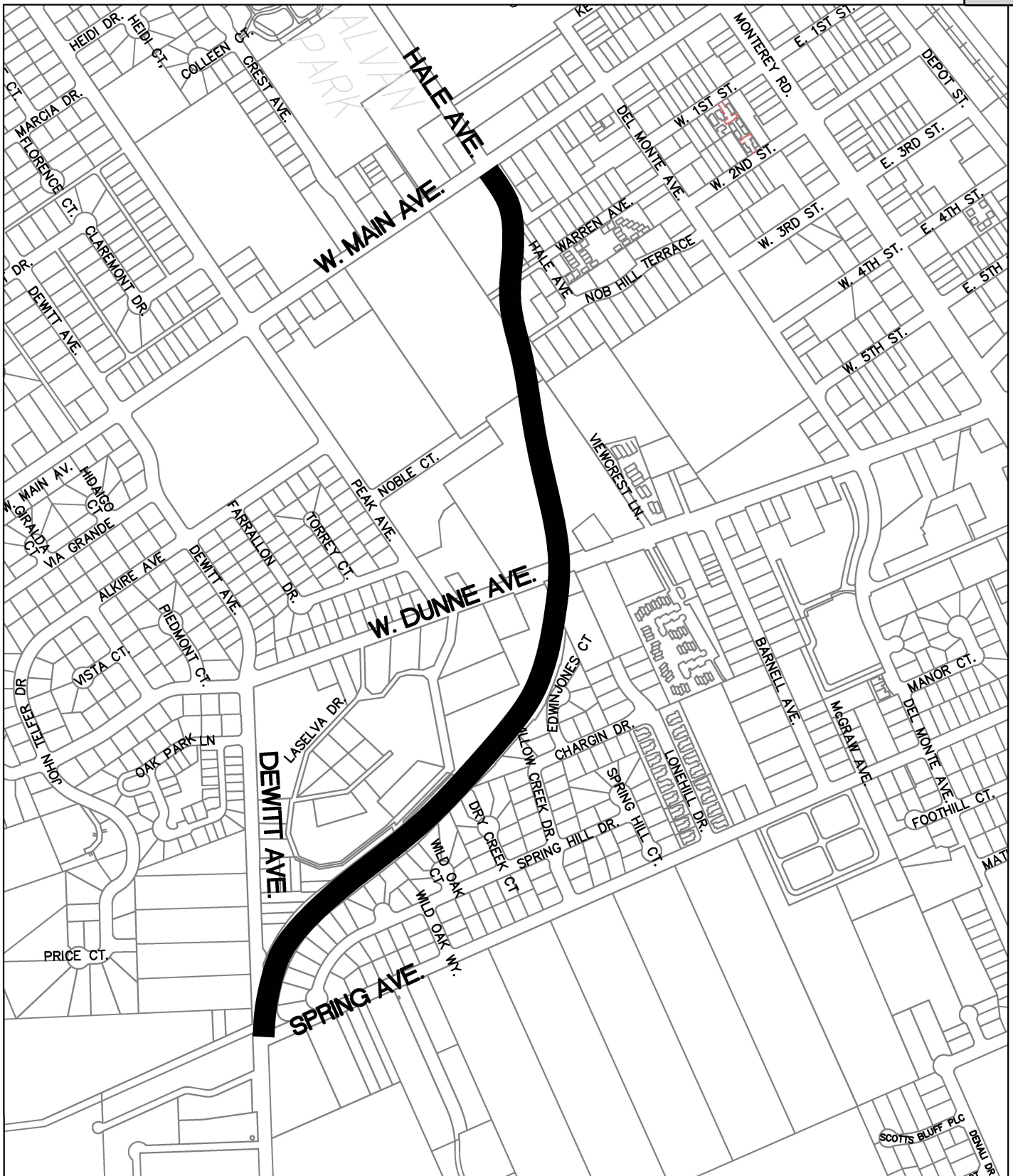
Endorsement No.
 Premium

Insurance Company

Countersigned by _____

DATE OF ISSUE: 12-02-16 ST ASSIGN:

Page 1 of 1



SCALE: NTS

City of Morgan Hill

Public Works Department



CITY OF MORGAN HILL

N:\PROJECTS\CIP\STREETS\548007-Santa Teresa Const\Staff Reports\hale plot 8-24-11.dwg

LOCATION PLAN

Hale Avenue Extension

Date: 3/7/18

Drwn by: DIG

PAGE 1 OF 1

Packet Pg. 282



CITY COUNCIL STAFF REPORT

MEETING DATE: March 7, 2018

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

APPROVE THIRD AMENDMENT TO BURR PLUMBING AND PUMPING, INC. AGREEMENT

RECOMMENDATION(S)

Approve the Third Amendment to the Maintenance Service Agreement with Burr Plumbing and Pumping, Inc.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

The purpose of this item is to provide an opportunity for the City Council to consider an amendment to the City's maintenance agreement with Burr Plumbing and Pumping that extends the agreement by one year and increases the total compensation amount of the agreement.

Since November 2015, the City has contracted with Burr Plumbing and Pumping, Inc. for on-call plumbing and pumping services at key public facilities. Since 2015, the original agreement has been amended two times to address desired changes in service. The original amount of the agreement was \$75,000. As of February 23, 2018, the contractor has completed nearly \$85,000 in services. This cost overrun was due to some fairly significant and unanticipated repairs that were urgently completed in order to restore hot water services in a timely manner to our Aquatics Center customers. Without this significant repair, the charges to date would be under the contract amount.

If approved, this Third Amendment will extend the term of the agreement by one year and will increase the amount of the contract by \$60,000. Burr Plumbing has been extremely responsive to emergency requests and has performed the plumbing and pumping services to staff's satisfaction. This amendment will ensure that seamless plumbing repairs and grease trap services are not interrupted in the coming year.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the public of the recommended contract amendment.

ALTERNATIVE ACTIONS:

The Council could decide not to approve this Third Amendment, but that is not recommended as this may result in delays to necessary plumbing and pumping repairs at key City facilities.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council approved the Original Maintenance Services Agreement with Burr Plumbing and Pumping on November 4, 2015. The First Amendment was approved on October 19, 2016 and the Second Amendment was approved on April 25, 2017.

FISCAL AND RESOURCE IMPACT:

While the recommended action increases the total amount of the agreement from \$75,000 to \$135,000, no budget adjustment is requested because there are remaining funds available for repairs in the Fiscal Year 2017-2018 Adopted Budget. The work performed under this agreement is directly charged to the contract services line item (42231) for the individual facilities requiring the work. Administering maintenance services agreements and coordinating plumbing repair work are activities included in the work program of the Community Services Department.

CEQA (California Environmental Quality Act):

Categorical Exemption

The activities described in this Staff Report are categorically exempt under CEQA, specifically pursuant to Section 15301 of the CEQA Guidelines (Existing Facilities), as the subject work involves the repair, maintenance or minor alteration of existing City facilities involving negligible or no expansion of use of those facilities.

LINKS/ATTACHMENTS:

1. COMH - Third Amendment to the Maintenance Service Agreement

THIRD AMENDMENT TO AGREEMENT BURR PLUMBING AND PUMPING, INC.

This THIRD AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, BURR PLUMBING AND PUMPING, INC., a California corporation ("SERVICE PROVIDER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Third Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of November 11, 2015, for services for a maximum compensation of SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$75,000.00) ("MAINTENANCE SERVICE AGREEMENT").
3. The CITY and SERVICE PROVIDER entered into a "First Amendment to Agreement" made as of November 1, 2016, under which additional services were added to the scope of services. The amount of compensation remained unchanged.
4. The CITY and SERVICE PROVIDER entered into a "Second Amendment to Agreement" made as of April 25, 2017, under which additional services were added to the scope of services. The amount of compensation remained unchanged. The MAINTENANCE SERVICE AGREEMENT, and the First and Second Amendments thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the MAINTENANCE SERVICE AGREEMENT, as amended, as attached as Exhibit "1," shall remain in full force and effect; except that the following amendments shall be made as set forth below:

A. Paragraph 2 shall be amended and replaced in its entirety by the following:

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from November 11, 2015, until June 30, 2019. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both parties to this Agreement."

B. Paragraph 3 shall be amended by adding the following:

"The services to be performed by SERVICE PROVIDER shall consist of the following additional services set forth in Exhibit "B" and dated February 26, 2018:

On-call plumbing maintenance, repair and pumping services at the Morgan Hill Police Department, 16200 Vineyard Blvd., Morgan Hill, California and Morgan Hill Fire Department Fire Station facilities: El Toro Fire Station, 18300 Old Monterey Road, Morgan Hill, California and Dunne Hill Fire Station, 2100 E. Dunne Avenue, Morgan Hill, California."

C. Paragraph 4.1 shall be amended and replaced in its entirety by the following:

"4.1. Amount. Compensation under this Agreement shall not exceed ONE HUNDRED THIRTY-FIVE THOUSAND AND NO/100 (\$135,000.00) and shall be billed at the rate and basis set forth in Exhibit B Schedule of Compensation Rates attached to the MAINTENANCE SERVICE AGREEMENT made as of November 11, 2015."

D. Paragraph 10 shall be amended and replaced in its entirety by the following:

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.

[Signatures on Next Page]

2. **Conflicts.** In the event of a conflict between the terms and provisions of this Third Amendment to Agreement and the terms and provisions of the MAINTENANCE SERVICE AGREEMENT or any earlier amendment, the terms of this Third Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

City Clerk

Date: _____

City Manager

Date: _____

APPROVED AS TO FORM:

BURR PLUMBING AND PUMPING, INC.

City Attorney

Date: _____

By: 

Title: Kevin Burr / V.P.

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 2/27/18

By: 

Title: Mark Burr V.P. & Secretary

Print Name and Title of Signer.

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

Date: 2-27-18

EXHIBIT "B" DATED FEBRUARY 26, 2018**BURR PLUMBING AND PUMPING, INC.****THIRD AMENDMENT TO AGREEMENT
ADDITIONAL SERVICES**

On-call plumbing maintenance, repair and pumping services at the Morgan Hill Police Department, 16200 Vineyard Blvd., Morgan Hill, California and Morgan Hill Fire Department Fire Station facilities: El Toro Fire Station, 18300 Old Monterey Road, Morgan Hill, California and Dunne Hill Fire Station, 2100 E. Dunne Avenue, Morgan Hill, California.

128 04-15-029

EXHIBIT "1"

**SECOND AMENDMENT TO AGREEMENT
BURR PLUMBING AND PUMPING, INC.**

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on 4/25/17 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, BURR PLUMBING AND PUMPING, INC., a California Corporation ("SERVICE PROVIDER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into based upon City of Morgan Hill Council approval on April 5, 2017.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement," made as of November 11, 2015, for services for a maximum compensation of Seventy-Five Thousand Dollars (\$75,000.00) ("MAINTENANCE SERVICE AGREEMENT").
3. The CITY and SERVICE PROVIDER entered into a "First Amendment to Agreement" made as of November 1, 2016, under which additional services to be performed by the SERVICE PROVIDER were added to the Scope of Services. The MAINTENANCE SERVICE AGREEMENT and the First Amendment thereto are attached as Exhibit "A" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the MAINTENANCE SERVICE AGREEMENT, as amended, as attached as Exhibit "A," shall remain in full force and effect; except that the following amendments shall be made as set forth below:

Paragraph 3 shall be amended by adding the following:

The services to be performed by the SERVICE PROVIDER shall consist of the following additional services set forth in Exhibit "B" and dated March 1, 2017:

Pumping/Cleaning of large grease trap interceptor at Community and Cultural Center for \$500 per quarter

2. **Conflicts.** In the event of a conflict between the terms and provisions of this Second Amendment to Agreement and the terms and provisions of the MAINTENANCE SERVICE AGREEMENT or any earlier amendment, the terms of this Second Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

Deputy

City Clerk

Date:

5/2/17

APPROVED AS TO FORM:

City Attorney

Date:

4/24/2017

CITY OF MORGAN HILL

City Manager

Date:

4/25/17

BURR PLUMBING AND PUMPING, INC.

By:

Title:

KEVIN BURR

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

Date:

3/15/17

By:

Title:

V.P. & Secretary

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

Date:

3/15/17

Exhibit A
Page 1 of 17

128-04-15-029

**FIRST AMENDMENT TO AGREEMENT
BURR PLUMBING AND PUMPING, INC.**

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on 11/01/16 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, Burr Plumbing and Pumping, Inc., a California Corporation ("SERVICE PROVIDER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into based upon City of Morgan Hill City Council approval on October 19, 2016.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of November 11, 2015, for services for a maximum compensation of \$75,000.00 ("MAINTENANCE SERVICE AGREEMENT"). The MAINTENANCE SERVICE AGREEMENT is attached as Exhibit "A" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the MAINTENANCE SERVICE AGREEMENT, as amended, as attached as Exhibit "A," shall remain in full force and effect; except that the following amendments shall be made as set forth below:

B. Paragraph 3 shall be amended by adding the following:

"The services to be performed by SERVICE PROVIDER shall consist of the following additional services set forth in Exhibit "B":

1. Pumping/Cleaning of 3,000 gallon grease trap interceptor @ CRC \$850 per quarter
2. Pumping/Cleaning of 20 gallon grease trap interceptor at Aquatics Center \$180 per quarter

2. **Conflicts.** In the event of a conflict between the terms and provisions of this First Amendment to Agreement and the terms and provisions of the MAINTENANCE SERVICE AGREEMENT, the terms of this First Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

[Signature]
City Clerk
Date: 11/01/16

APPROVED AS TO FORM:

[Signature]
City Attorney
Date: 11/01/16
Resolution: 16-168

CITY OF MORGAN HILL

[Signature]
City Manager
Date: 11/1/16

BURR PLUMBING AND PUMPING, INC.

[Signature]
By: Henry Burr, V.P.
Title: Henry Burr, V.P.
Print Name and Title of Signer.
If Corporate: Chairman, President or
Vice President

Date: 10/24/16

[Signature]
By: Mark Burr, V.P. + Secretary
Title: Mark Burr, V.P. + Secretary
Print Name and Title of Signer.
If Corporate: Secretary, Assistant
Secretary, Chief Financial Officer or
Assistant Treasurer

Date: 10-24-16

MAINTENANCE SERVICE AGREEMENT
Burr Plumbing and Pumping, Inc.

THIS AGREEMENT is entered into and becomes effective on 11/11/15 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Burr Plumbing and Pumping, 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 November 4, 2015.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2018 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 on-call plumbing maintenance and repair services as further described in Exhibit A.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$75,000.00. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed seventy-five thousand 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. 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 fourth 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 of CITY 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 the SERVICE PROVIDER'S profession. By delivery of completed work, SERVICE PROVIDER certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. SERVICE PROVIDER shall perform all work and services under this Agreement in conformance with the time schedule set forth on Exhibit C, "Schedule of Performance," attached hereto and incorporated herein by this reference. CITY's City Manager is authorized on behalf of CITY to modify the timeframes set forth on the Schedule of Performance within the term of this Agreement. 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 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 SERVICE PROVIDER's sole risk.

7. **Hazardous Materials.** Without limiting any other requirement or obligation of SERVICE PROVIDER under this Agreement, SERVICE PROVIDER agrees to fully and timely abide by and comply with all laws, regulations and policies pertaining to the use, transport, removal, handling or other activity related to any and all materials or chemicals that are considered hazardous materials under any such law, regulation or policy.

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, 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 the 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 the 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.

8.2. 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 the 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 the 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 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 SERVICE PROVIDER'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

9. **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.

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. The City will not accept a Bid Proposal from or enter into a contract with a Contractor, without first receiving proof to the satisfaction of City that Contractor 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, the Contract for this Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

Exhibit A
Page 7 of 17

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:

Burr Plumbing and Pumping, Inc.
1645 Almaden Road
San Jose, CA 95125
Attn: Eric Burr, President

Address of CITY is as follows:

Director of Community Services City of Morgan Hill 17575 Peak Avenue Morgan Hill, CA 95037	with a copy to: City Clerk City of Morgan Hill 17575 Peak Avenue Morgan Hill, CA 95037
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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.** The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the SERVICE PROVIDER and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to

matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

- 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 the 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 the SERVICE PROVIDER to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

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.

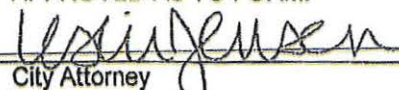
ATTEST:


City Clerk/Deputy City Clerk

for Michelle Wilson
Print Name

Date: 11/12/15

APPROVED AS TO FORM:


City Attorney

for Renee Gurza
Print Name

Date: 11/10/15

CITY OF MORGAN HILL


City Manager

Steve Rymer
Print Name

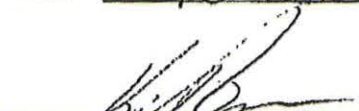
Date: 11/11/15

BURR PLUMBING AND PUMPING, INC.

By: 

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

Date: 10-28-15

By: 

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

Date: 10/28/15

Exhibit A
Page 11 of 17

Exhibit A
Scope of Services

Services to be performed include the furnishing of all labor, materials, tools, equipment, supplies, services, tasks and incidental and customary work necessary to competently perform on-call Plumbing maintenance and repair work at various City facilities as described below.

The work will include the provision of a total maintenance and repair program consisting of a variety of tasks including, but not limited to, laying out, installing, replacing, piping, and testing plumbing service and plumbing systems and components. Systems include, but are not limited to domestic water, heating, cooling, hot water systems, conditioned water systems, pool water systems, sanitary sewer and storm systems as well as all related components required for municipal buildings and facilities. Services will include, but not be limited to installing and repairing piping, fixtures and maintenance for commodes, urinals, drinking fountains, pools, water spray features, heating and air conditioning systems as well as additional plumbing related issues as they arise and the services necessary to insure safe, well maintained Influent, effluent and closed loop systems for City employees and the public. The scope and number of projects and tasks are unknown at the time of contract execution.

The Contractor shall leave work areas free of all dirt, litter, lubricants, or other materials utilized to perform Plumbing maintenance.

~~The Contractor shall erect barricades, warning signs, and any other devices to prevent unauthorized access by the public or unauthorized City staff to work areas.~~

The Contractor shall respond to all requests for repairs or unscheduled emergency repairs as required, 24 hours per day, 365 days per year, including holidays. Response time by the Contractor shall be within four (4) hours of all requests.

The Contractor will be responsible for providing labor, supervision, materials, equipment, transportation, service and the shop facilities necessary to perform high quality work. Contractor will also be responsible for discarding all used materials.

It is the intent of the City of Morgan Hill to identify and establish long term partnerships with highly qualified contractors. To achieve the best level of service, the City believes that the relationship must be based on mutual trust and respect. Teamwork, flexibility, and cooperation will be essential characteristics of the successful Contractor.

The Contractor shall provide full-service on-call Plumbing maintenance and repair services to City Facilities as outlined in this document. Contractor shall retain professional personnel who have successfully and competently provided municipal facility Plumbing maintenance and repair services on projects of similar scope and complexity. It shall be the Contractor's responsibility to effectively repair and maintain, to the satisfaction of the City representative, all aspects of Plumbing systems in City defined facilities with minimal downtime. All maintenance and repairs shall be provided in accordance with the highest standards of the industry, skill, workmanship, applicable trade practices, shall meet warranties and be in conformance to all applicable laws, codes and regulations. The successful Contractor's

Exhibit A
Page 12 of 17

Plumbing maintenance and repairs shall, at a minimum, include but not be limited to the specifications outlined herein.

It is the Contractor's responsibility to provide an appropriate level of staffing and provide appropriate tools and vehicles necessary to support all facility Plumbing maintenance and repair functions during hours of operation and for response after normal working hours. Contractor shall maintain the appropriate license and will comply with all other license, Insurance and permit requirements of the City, State and Federal governments, as well as all other requirements of the law.

LIST OF FACILITIES AND WORK HOURS Scheduled maintenance and repairs shall typically occur during normal business hours. Facility business hours are:

- Aquatics Center is open weekdays from 5:00 a.m. to 8:00 p. m., Saturdays from 7:00 a.m. to 12:00 p.m. (summer season to 6:30 p.m.), and Sundays 11:30 a.m. to 6:30 p.m. (summer season only).
- Centennial Recreation Center is an active facility on Weekdays from 5:00 a.m. to 10:00 p.m., Saturdays from 6:30 a.m. to 8:00 p.m., and on Sundays from 8:00 a.m. to 6:00 p.m.
- City Hall is open Monday-Friday 8:00 a.m. – 5 p.m.
- Chambers Building is open Monday-Friday 8:00 a.m. – 5 p.m.
- The Community and Cultural Center is open Monday-Friday 8:00 a.m. – 5 p.m.
- El Toro Youth Center is open Monday-Friday 2:00 p.m. – 6:00 p.m.
- The Friendly Inn is open Monday-Saturday 8:00 a.m. to 10:00 p.m.
- The Outdoor Sports Complex – coordinate hours with Project Manager, Dale Dapp
- The Police Department is open Monday-Friday 8 a.m. – 5:30 p.m.
- The Public Works Corporation Yard is open Monday-Thursday 6:30 a.m. – 4:00 p.m. and Fridays from 6:30 a.m. -3:00 p.m.
- The Villas are open Monday-Friday 8:00 a.m. – 5 p.m.
- Community Park Restrooms are open seven days a week 6 a.m. to 10 p.m.
- Galvan Park Restroom are open seven days a week 6 a.m. to 10 p.m.

SERVICE AVAILABILITY The Contractor shall have trouble-call service available on a twenty-four hours a day, seven days a week basis with a response time not to exceed the following:

EMERGENCIES.....two hour response time
NON-EMERGENCIES..... four hour response time

Time to respond shall start when the City calls the problem into Contractor's designated emergency phone number. Additionally, the Contractor shall provide the ability to respond immediately to situations involving the health and safety of employees and/or the public and the comfort and operational capability of any public meeting space. Routine repairs, service requests or other non-urgent tasks shall be completed by journey level staff within one (1) working day from the date of request by City.

TROUBLE-CALL/REPAIR SERVICE Should the City request the contractor to make unscheduled, emergency Plumbing system repairs, the City shall be responsible for labor and travel costs

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associated therewith. Rates shall be firm for the term of the contract. The City reserves the right to contract with others for trouble calls and repairs.

BILLABLE WORK The Contractor shall not bill for unnecessary repairs, for repairs that were not completed satisfactorily, for repairs that did not fix an identified problem, or for facility visits that are made by staff unqualified to complete needed repairs.

STAFFING, WORKMANSHIP AND QUALITY LEVEL The Contractor shall provide a staffing level to perform on-call Plumbing maintenance and repair services at designated City facilities in a thorough and professional manner, so that the City is provided with reliable and high quality Plumbing maintenance at all times. The Contractor shall possess and maintain a C-36 General Plumbing license by the State of California Contractors Licensing Board through the term of the contract. All personnel performing work under this Contract shall possess and maintain a state Journeyman certification and be directly employed and supervised by the Contractor. Any assigned apprentice shall work directly under the supervision of a qualified Journeyman. The Contractor shall provide management and technical supervision through competent supervisors as required. The Contractor shall be responsible for the skills, methods and actions of all employees, subcontractors and for all work done.

TOOLS AND EQUIPMENT The Contractor shall furnish and maintain all equipment necessary for properly servicing and maintaining Plumbing systems in City buildings. The City of Morgan Hill reserves the right to inspect equipment to be used to perform services under this contract. Any equipment determined to be in poor condition must be replaced immediately, at the contractor's expense. Failure to provide suitable equipment for carrying out all requirements of this contract may be grounds for termination.

PARTS AND MATERIALS The Contractor shall furnish all parts and materials necessary for properly maintaining and repairing Plumbing systems in City buildings. Mark-up on parts and materials may not exceed 10% of Contractor's cost. Invoices must identify the work performed, cost of labor, parts/materials used, parts/materials cost, and parts/materials mark-up cost.

INSPECTIONS AND REMEDIES So as to ensure consistent quality of the work being performed, the City will perform periodic inspections of Plumbing systems to ensure compliance with the contract specifications. Inspections may be made by the City at any time to confirm that work performed meets specifications. If corrective work is required, the City will provide a written list of items and the Contractor shall correct deficiencies as directed. If deficiencies are not corrected in a timely manner, the City may perform the work using others and deduct the cost from the Contractor's payment.

DAMAGES The Contractor will be responsible for all damages to the facility or contents caused by Contractor, their staff or subcontractors during the performance of their duties.

SAFETY & SECURITY The Contractor and staff shall follow all established safety procedures and shall take special care not to endanger the public in any way. The Contractor is responsible for the security of all doors at the conclusion of work in each room. All exterior doors should remain locked at all times. Interior doors that are found open or unlocked shall be left in the

same position/condition in which they were found,

FINGERPRINTING (Live Scan State of California Criminal Records Check): All Contractor staff who will be working on City facilities must pass a State of California Department of Justice Criminal Records Check. Fingerprinting Appointments can be scheduled at the Morgan Hill Police Department (16200 Vineyard Boulevard, Morgan Hill) by calling 408-776-7300. Live Scan (Criminal Records Check Request) Forms are available at www.morganhill.ca.gov (Department Tab: Police Department Link) and the fingerprint fee is \$52.00 per person (payable at the time of the appointment). The Contractor is responsible for providing the City of Morgan Hill with updated records check information for their employees.

EMERGENCY SITUATIONS For medical or public safety emergencies occurring at the Facilities call 9-1-1. For all building maintenance emergencies (water leaks, etc.) contact the Maintenance Manager or designated staff to report the issue immediately (24-hours/day).

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

Bid Item	Description of Bid Item	Hourly Rate	Comments
1	Shop rate for Plumbing services - Apprentice (8:00 a.m. to 5:00 p.m.)	\$140.00	Inclusive of standard service equipment, snakes & hand tools
2	Shop rate for Plumbing services - Journeyman (8:00 a.m. to 5:00 p.m.)	\$180.00	Inclusive of standard service equipment, snakes & hand tools
3	Shop rate for other Plumbing services - Describe in Comments (8:00 a.m. to 5:00 p.m.)	\$	
4	Overtime rate for Apprentice (5:00 p.m. to 8:00 a.m.)	\$210.00	Inclusive of standard service equipment, snakes & hand tools
5	Overtime rate for Journeyman (5:00 p.m. to 8:00 a.m.)	\$260.00	Inclusive of standard service equipment, snakes & hand tools
6	Other Overtime rate - Describe in Comments (5:00 p.m. to 8:00 a.m.)	\$	
7	Saturday, Sunday & Holiday Rate	\$260.00	Inclusive of standard service equipment, snakes & hand tools
Equipment Rate Schedule Describe Equipment & Hourly or Flat Rate		Hourly Rate	Comments
8	Hydro Jetting (trailer), push/pull camera, leak detection equipment, smoke testing equipment, Jack Hammer, ProPress Tool, Threading Machine, Grooving Tooling, Digging/Hammer Drill, Steam Cleaner, Concrete Saw, Small Generator/Pump, etc.	\$125.00	4 hour minimum w/verbal approval or included in quoted projects
9	VacCon Combination Truck, VacCon Flush Truck, Rodder Truck, Tractor Camera Truck, Dump Trailer, Dump Truck, Backhoe, Excavator, Side Steer, Pump Trucks, Pump Trailers, Confined Space Equipment, Trailers, Etc.	\$175.00	6 hour minimum w/verbal approval or included in quoted projects
10	Any additional services we offer, can be priced at the time of need, if those services ever become necessary.	\$	
11		\$	
Note: Quantities cannot be predetermined, but shall be on an "as needed" basis. A flat maximum travel fee of \$50 will be charged for all repair visits. Mark-up on parts and materials may not exceed 10% of Contractor's cost. Invoices must identify the work performed, cost of labor, parts/materials used, parts/materials cost, and parts/materials mark-up cost.			

Exhibit A
Page 16 of 17

EXHIBIT C
SCHEDULE OF PERFORMANCE

To be scheduled with City of Morgan Hill Maintenance Manager or other appropriate city staff.

Exhibit A
Page 17 of 17

Exhibit B

Additional Services

1. Pumping/Cleaning of 3,000 gallon grease trap interceptor @ CRC for \$850 per quarter
 2. Pumping/Cleaning of 20 gallon grease trap interceptor at Aquatics Center for \$180 per quarter
-

Exhibit B

March 1, 2017

Burr Plumbing and Pumping, Inc.

Second Amendment
Additional Services

Pumping and Cleaning of large grease trap interceptor at Community and Cultural Center for \$500.00 per quarter.



CITY COUNCIL STAFF REPORT

MEETING DATE: March 7, 2018

PREPARED BY: John Baty, Principal Planner/Development Services

APPROVED BY: City Manager

GENERAL PLAN AND HOUSING ELEMENT ANNUAL PROGRESS REPORT

RECOMMENDATION(S)

Adopt resolution accepting the 2017 General Plan and Housing Element Annual Progress Report and directing staff to file the report with the Governor's Office of Planning and Research (OPR) and the Department of Housing and Community Development (HCD).

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

2018 Strategic Priorities

Community Engagement and Messaging
Economic Development and
Telecommunications
Financial Stewardship
Infrastructure
Regional Initiatives
Telecommunications

REPORT NARRATIVE:

California Government Code Section 65400 mandates that all 58 counties and non-charter cities, including the City of Morgan Hill, submit an annual report on the status of the General Plan and progress made regarding its implementation to the Governor's Office of Planning and Research (OPR) and the Department of Housing and Community Development (HCD) by April 1 of each year.

Annual Progress Reports (APRs) must be presented to the local legislative body for review and acceptance, as a consent or discussion item on a regular agenda.

The attached APR for 2017 includes implementation highlights for each of the Morgan Hill 2035 General Plan Elements and lists three recently submitted applications for General Plan Land Use Map amendments.

The Housing Element implementation portion of the APR is reported on separate forms adopted by HCD. These completed forms are attached to the APR and provide information regarding the City's progress towards meeting its "fair share" of regional housing needs and compliance with State Housing Law.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the progress made on implementation of the Morgan Hill 2035 General Plan.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

No fiscal impact related to acceptance of this report.

CEQA (California Environmental Quality Act):

Not a Project

Pursuant to CEQA Guidelines Section 15378(b)(5) the Morgan Hill 2035 Annual Progress Report is not considered a “project” in that it is considered an administrative activity of government that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. Resolution
2. Exhibit A - Morgan Hill 2035 General Plan Annual Progress Report
3. Housing Element: HCD Forms 2017
4. Housing Element: Past and Current RHNA Accomplishments

RESOLUTION NO. 18-0XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ACCEPTING THE 2017 GENERAL PLAN ANNUAL PROGRESS REPORT AND DIRECTING STAFF TO FILE THE REPORT WITH THE GOVERNOR'S OFFICE OF PLANNING AND RESEARCH (OPR) AND THE STATE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (HCD).

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 Morgan Hill 2035 General Plan incorporates the City's Housing Element, which was adopted by City Council on February 18, 2015 and certified by the State Housing and Community Development Department (HCD) in April 2015; and

WHEREAS, California Government Code Section 65400 mandates that all 58 counties and non-charter cities submit an annual report on the status of the General Plan and progress on its implementation to the Governor's Office of Planning and Research (OPR) and the State Department of Housing and Community Development (HCD); and

WHEREAS, the City Council is the decision-making body for review and acceptance of the Annual Progress Report.

NOW, THEREFORE, THE MORGAN HILL CITY COUNCIL DOES RESOLVE AS FOLLOWS:

SECTION 1. The Morgan Hill 2035 General Plan Annual Progress Report attached hereto at Exhibit A has been reviewed and accepted and staff is hereby directed to submit the report to OPR and HCD by no later than April 1, 2018.

PASSED AND ADOPTED THIS 7th DAY OF MARCH 2018, 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 ∞

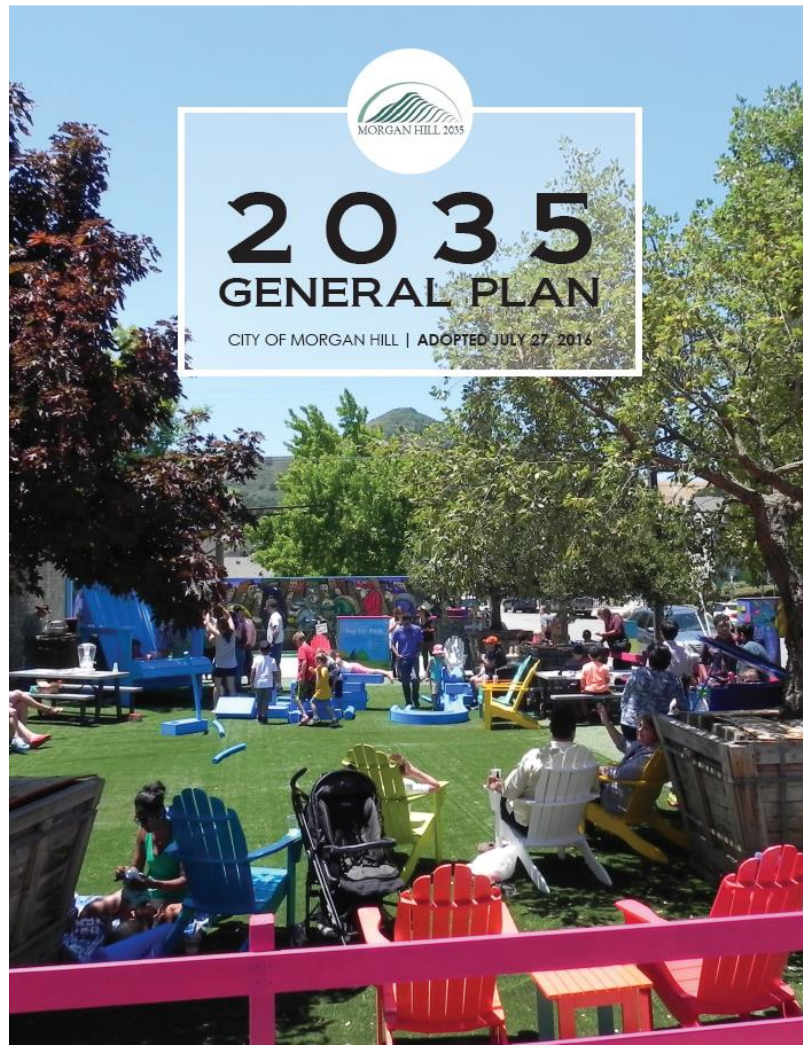
I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No.18-XXX, adopted by the City Council at the meeting held on March 7, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT A



Annual Progress Report

2017

March 7, 2018

1. Introduction

On July 27, 2016 the Morgan Hill 2035 General Plan was adopted by City Council [Resolution No. 16-128](#). The Morgan Hill 2035 General Plan is a comprehensive update of the City's 2001 General Plan.

The General Plan incorporates the City's Housing Element, which was adopted by City Council on February 18, 2015 and certified by the State Housing and Community Development Department (HCD) in April 2015.

With voter approval of Measure S, the City's Residential Development Control System (RDCS) on November 8, 2016, the RDCS Ordinance (Ordinance No. 2229 New Series) became effective. The RDCS Ordinance amended the General Plan text to be consistent with the provisions of Measure S.

On December 6, 2017 the City Council adopted [Resolution No. 17-098](#) approving General Plan Land Use and Text Amendments (File Nos. GPA2017-0001 and GPA2017-0002) to correct miscellaneous Land Use Map, figure, and text errors.

Government Code Section 65400 mandates that certain cities and all 58 counties submit an annual report on the status of the General Plan and progress on its implementation to their legislative bodies, the Governor's Office of Planning and Research (OPR) and the Department of Housing and Community Development (HCD) by April 1 of each year. Only charter cities are exempt from the requirement to prepare Annual Progress Reports (APRs) unless the charter stipulates otherwise.

APRs must be presented to the local legislative body for its review and acceptance, usually as a consent or discussion item on a regular agenda.

2. Implementation Highlights by General Plan Element

CITY AND NEIGHBORHOOD FORM ELEMENT

Regional Coordination and Agricultural Preservation

- In support of ongoing regional coordination (Policy CNF-1.3) and inter-jurisdictional support for agriculture (Policy CNF-7.5), the City participated with Santa Clara County, Santa Clara Valley Open Space Authority, Santa Clara Valley Water District, City of Gilroy, City of San Jose, and Farming and Food Sector representatives in the development of the [Santa Clara Valley Agricultural Plan](#) (formerly Climate and Agricultural Preservation Plan).

Policy CNF-1.3 and CNF-7.5

Residential Development Control System (RDCS)

- City of Morgan Hill voters approved Measure S in November 2016 (76.5%) extending the City's long-standing Residential Development Control System (RDCS) to the year 2035, establishing a population ceiling (not a target) of 58,200 with a maximum number of annual residential allotments that would not be exceeded and can only be reduced.
- The Planning Commission held 20 public workshops between October 11, 2016 and April 25, 2017 to develop the [RDCS Competition Manual](#), which was adopted at City Council hearings in May and June 2017.

Policy CNF-3.1 through CNF-3.16

HOUSING ELEMENT

- See Attached House Element Annual Progress Report

ECONOMIC DEVELOPMENT ELEMENT

- [Economic Blueprint](#) Adopted April 19, 2017. The Economic Blueprint establishes the City's current priorities for the implementation of the Economic Development Goals and Policies in the Morgan Hill 2035 General Plan.

HEALTHY COMMUNITY ELEMENT

- [Bikeways, Trails, Parks and Recreation Master Plan](#) (Master Plan) Adopted July 20, 2017. The Master Plan puts into action the Morgan Hill 2035 General Plan's policy direction for usable, complete, well-maintained, safe, and high-quality activities and amenities that are accessible to all ages, functional abilities, and socio-economic groups. The Master Plan will help implement General Plan Goals and Policies by identifying specific strategies, improvements, and priority projects.

TRANSPORTATION ELEMENT

Hale Avenue/Santa Teresa Boulevard Corridor Completion

- [Hale Avenue Extension and Santa Teresa Corridor Widening and Realignment Project](#) Environmental Impact Report (EIR) Certified and Official Plan Line Adopted August 23, 2017. Hale Avenue/Santa Teresa Boulevard has been a planned arterial corridor in the City's General Plan since 1969. Once completed, the two-lane multi-modal arterial will provide a continuous direct north/south route for the west side of the City reducing through traffic on neighborhood streets and provide an alternative north/south road to relieve congestion on Monterey Road and Butterfield Boulevard.
- Since the adoption of the Official Plan Line for the Hale/Santa Teresa project, property acquisition for needed right-of-way has begun.

Action TR-4.D and TR-4.F

NATURAL RESOURCES AND ENVIRONMENT ELEMENT

- The City is partnering with the Santa Clara Valley Open Space Authority on developing access to [El Toro Mountain](#).
- [Ordinance No. 2182n.s.](#) adopted January 20, 2016 authorizing the implementation of a Community Choice Aggregation (CCA) program by participating in the CCA program of the Silicon Valley Clean Energy Authority.

Action NRE-16.A

SAFETY, SERVICES, AND INFRASTRUCTURE ELEMENT

- In partnership with Santa Clara County and local governments within the County, participated in the development of the 2017 [Santa Clara Operational Area Hazard Mitigation Plan](#) (Local Hazard Mitigation Plan). The Hazard Mitigation Plan is intended to reduce risks from natural disasters in the Santa Clara County Operational Area and to establish eligibility for funding under FEMA grant programs.

Policy SSI-12.3

- [Public Safety Master Plan](#) adopted February 22, 2017.

Policy SSI-11.1

- Infrastructure Master Plans ([Sewer](#) and [Water](#) approved October 18, 2017. Storm pending).

Policy SSI-13.2 and SSI-15.2

3. Pending General Plan Amendment Applications

GPA2018-0001: E DUNNE-ROSS

General Plan Land Use Map Amendment – Residential Estate to Residential Detached Low on an 8.34 gross acre parcel located at the northerly terminus of Sorrel Way and Saddleback Drive.

GPA2018-0002: MONTEREY-GLENROCK

General Plan Land Use Map Amendment – Residential Detached Low to Commercial Industrial on a 7.8 gross acre site located on the east side of Monterey Road approximately 750-feet northerly of East Middle Avenue.

GPA2018-0003: COCHRANE-LLAGAS LLC

General Plan Land Use Map Amendment – Commercial and Commercial/Industrial to Residential Attached Medium and Residential Downtown on an approximately 58 acre site on the east side of Highway 101 between Cochrane Road and Half Road.

ANNUAL ELEMENT PROGRESS REPORT

Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction City of Morgan Hill 2017
Reporting Period 1/1/2017 - 12/31/2017

Table A

Annual Building Activity Report Summary - New Construction Very Low-, Low-, and Mixed-Income Multifamily Projects

Housing Development Information								Housing with Financial Assistance and/or Deed Restrictions		Housing without Financial Assistance or Deed Restrictions	
1	2	3	4				5	5a	6	7	8
Project Identifier (may be APN No., project name or address)	Unit Category	Tenure	Affordability by Household Incomes				Total Units per Project	Est. # Infill Units*	Assistance Programs for Each Development	Deed Restricted Units	Note below the number of units determined to be affordable without financial or deed restrictions and attach an explanation how the jurisdiction determined the units were affordable. Refer to instructions.
		R=Renter O=Owner	Very Low-Income	Low-Income	Moderate-Income	Above Moderate-Income			See Instructions	See Instructions	
11 Deed restricted (45 yrs) BMR Ownership Low Income-Units (Lantana Wisteria Project: 1301 Red Bird LN, 18661 Turtle Dove DR, 1324 Rainbow Crow LN, Madison Gate Project: 17110 Saint Brendan Loop, 812 Saint Solange Loop, Solera Ranch Project: 18107 Monterey Road, 18167 Old Monterey Road, The Commons Project: 16751 Rohan LN, Valencia Project: 120 Vereda Del Turia, 240 Vereda Del Turia, Project Young Propert Gables: 15517 Monterey RD			0	11			11				

ANNUAL ELEMENT PROGRESS REPORT

Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction

City of Morgan Hill 2017

Reporting Period

1/1/2017 - 12/31/2017

Housing Development Information								Housing with Financial Assistance and/or Deed Restrictions		Housing without Financial Assistance or Deed Restrictions	
1	2	3	4				5	5a	6	7	8
Project Identifier (may be APN No., project name or address)	Unit Category	Tenure R=Renter O=Owner	Affordability by Household Incomes				Total Units per Project	Est. # Infill Units*	Assistance Programs for Each Development	Deed Restricted Units	Note below the number of units determined to be affordable without financial or deed restrictions and attach an explanation how the jurisdiction determined the units were affordable. Refer to instructions.
			Very Low-Income	Low-Income	Moderate-Income	Above Moderate-Income			See Instructions	See Instructions	
5 Moderate BMR Deed Restricted Ownership Units: Connemara Project: 15065 La Alameda, Solera Ranch Project: 18083 Monterey RD, 18107 Monterey RR, 18143 Old Monterey RD, Valenice Project: 17710 Calle Granada, 150 Vereda Del Turia					5		5				
198 Above Moderate						198	198				
(9) Total of Moderate and Above Moderate from Table A3			▶▶		5	198	214				
(10) Total by income Table A/A3			▶▶		4	11	5	198	214		
(11) Total Extremely Low-Income Units*											

* Note: These fields are voluntary

ANNUAL ELEMENT PROGRESS REPORT

Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction

City of Morgan Hill 2017

Reporting Period

1/1/2017 - 12/31/2017

Table A2

Annual Building Activity Report Summary - Units Rehabilitated, Preserved and Acquired pursuant to GC Section 65583.1(c)(1)

Please note: Units may only be credited to the table below when a jurisdiction has included a program in its housing element to rehabilitate, preserve or acquire units to accommodate a portion of its RHNA which meets the specific criteria as outlined in GC Section 65583.1(c)(1)

Activity Type	Affordability by Household Incomes				(4) The Description should adequately document how each unit complies with subsection (c)(7) of Government Code Section 65583.1
	Extremely Low-Income*	Very Low-Income	Low-Income	TOTAL UNITS	
(1) Rehabilitation Activity	10	79	23	112	In June 2017, the City conducted a loan closing to facilitate the major rehabilitation of the 1970's Village Avante, now known as Park Place development, a 112-unit multifamily development that is home to 420 people. Note: It was expected to close in 2016 but closed
(2) Preservation of Units At-Risk					
(3) Acquisition of Units					
(5) Total Units by Income					

* Note: This field is voluntary

Table A3

Annual building Activity Report Summary for Above Moderate-Income Units (not including those units reported on Table A)

	1. Single Family	2. 2 - 4 Units	3. 5+ Units	4. Second Unit	5. Mobile Homes	6. Total	7. Number of infill units*
No. of Units Permitted for Moderate (deed restricted BMR ownership)	5					5	
No. of Units Permitted for Above Moderate	198					198	

* Note: This field is voluntary

ANNUAL ELEMENT PROGRESS REPORT

Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction

City of Morgan Hill 2017

Reporting Period

1/1/2017 - 12/31/2017

Table B

Regional Housing Needs Allocation Progress Planning Period 2015-2023

Permitted Units Issued by Affordability													
Enter Calendar Year starting with the first year of the RHNA allocation period. See Example.												Total Units to Date (all years)	Total Remaining RHNA by Income Level
Income Level		RHNA Allocation by Income Level	Year 2015 1	Year 2016 2	Year 2017 3	Year 2018 4	Year 2019 5	Year 2020 6	Year 2021 7	Year 2022 8	Year 2023 9		
Very Low	Deed Restricted	273	11	29	0							40	233
	Non-deed restricted		0		0								
Low	Deed Restricted	154	113	30	11							154	-1
	Non-deed restricted		1		0						1		
Moderate	Deed Restricted	185		5	5							10	170
	Non-deed restricted		5		0						5		
Above Moderate		316	333	201	198							732	-416
Total RHNA by COG. Enter allocation number:		928	463	265	214							942	-14
Total Units ▶ ▶ ▶													
Remaining Need for RHNA Period ▶ ▶ ▶ ▶ ▶													

Note: units serving extremely low-income households are included in the very low-income permitted units totals.

ANNUAL ELEMENT PROGRESS REPORT

Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction

City of Morgan Hill 2017

Reporting Period

1/1/2017 - 12/31/2017

Table C

Program Implementation Status

Program Description (By Housing Element Program Names)	Housing Programs Progress Report - Government Code Section 65583. Describe progress of all programs including local efforts to remove governmental constraints to the maintenance, improvement, and development of housing as identified in the housing element.		
Name of Program	Objective	Timeframe in H.E.	2017 Status of Program Implementation
City of Morgan Hill Below Market Rate(BMR) Program	Facilitate the construction of BMRs for low to mod income eligible households, recorded 45 year affordability deed restrictions on 11 low income ownership BMR units, and 5 moderate income ownership units	2015-2023	16 BMRs constructed in 2017. To date Morgan Hill's portfolio consist of 516 BMRs as a result of the City's 1977 voter initiative, Residential Development Growth Control System (RDCS).
City of Morgan Hill Housing Rehab Loan Program, Minor Home Repair	Facilitate the rehabilitation of affordable housing units	2015-2023	The City rehabbed 31 homes in the calendar year of 2017, low income mobile home units through a grant program adminstered by Rebuilding Together, repairs are funded by City funds and Community Development Block Grant funds.
Urban County CDBG and HOME Federal Grant Program, Morgan Hill participates with the County and 6 other Cities to receive some CDBG HOME benefits	CDBG/HOME funds provide funding for capital improvement projects in low income Census Tracts to benefit low income persons, as well as fund development of new units	2015-2023	\$700,000 (CDBG & HOME) funds awarded to EAH new development/40 new units/ affordable housing Homeless Family & Transitional Age Youth project, project is nearing completion. The City of Morgan Hill also funded this project \$4.5 Million. Lease up will occur in 2018. City of Morgan Hill recieved \$132,649 in CDBG funds for the rehabilitation of Galvan park.
Rehabilitation and Preservation of existing affordable units	Preserve existing affordable housing stock	2015-2013	EAH Park Place Village Avante is currently undergoing a major rehab to preserve 112 units, 30-60% AMI, older large project from 1970, 412 residents. Project is located at 16480 Del Monte Avenue.

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
 (CCR Title 25 §6202)

Jurisdiction City of Morgan Hill 2017
Reporting Period 1/1/2017 - 12/31/2017

Measure A Housing Bond, County of Santa Clara	Create new units at the ELI and VLI level.	2015-2023	In November of 2016 Santa Clara County voters approved a \$950 million bond (Measure A) which will fund the development of 4,800 extremely low-income (ELI) housing units throughout the County serving the homeless. It is expected that the 4,800-unit goal will generate 10,000 new construction, affordable housing units countywide, by leveraging resources. Additionally, \$150 million of the Measure A funds will be set aside for workforce housing and down payment assistance. The County's goal is to create 4,800 affordable ELI units Countywide, of which 92 units have been designated as the Measure A affordable housing goal for the City of Morgan Hill, over a ten-year period. 39 ELI/VLI UHC units will begin construction in September of 2018. The remaining balance is planned to be distributed throughout the County in the other cities equivalently, based on Regional Housing Needs Allocation (RHNA) methodology. The Housing team has actively participated in discussions regarding implementation of the bond program and provided program recommendations. Urban Housing Communities applied for and was awarded \$5.5 Million for a 39 unit ELI and VLI project located at Monterey and Biseglia in Morgan Hill. The City has committed \$750,000 and the applicant will compete for tax credits March 16, 2017.
City and County Partnership: July 1, 2017 two part-time homeless outreach workers began assessing Homeless individuals.			City and County Partnership: July 1, 2017 two part-time homeless outreach workers began conducting interviews and assessments with homeless individuals in South County. This is a critical first step as the City is beginning to see homeless individuals assessed through a coordinated effort with the goal of connecting them to the appropriate case manager, program, service and housing opportunities. The City contributed \$50,000 to the larger countywide "outreach" effort for two years. Outreach workers are tasked with the goal of connecting the homeless to case managers and programs.
Homeless Prevention			A City and County Partnership: August 1, 2017 was the launch of a Homeless Prevention and Rapid Rehousing (rental assistance) Program for families, targeting families with children in the school district at risk of homelessness. The City contributed \$25,000 to this larger countywide effort for two years.

ANNUAL ELEMENT PROGRESS REPORT

Housing Element Implementation

(CCR Title 25 §6202)

JurisdictionCity of Morgan Hill 2017

Reporting Period1/1/2017 - 12/31/2017

Homeless Safe Parking Program			Partnered with the Police Department, County Planning Department, and the faith based community to create an eight space, pet welcome, Safe Parking Program. It was launched on July 8, 2017 at a local church for eight homeless families living in their cars where they are receiving coordinated assessment, services, meals, and support with the goal of providing some stability and getting them into permanent housing. The Program began serving eight families, 25 people and 8 children.

ANNUAL ELEMENT PROGRESS REPORT

Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction

City of Morgan Hill 2017

Reporting Period

1/1/2017 - 12/31/2017

General Comments:

Past RHNA Housing Accomplishments for the 2007-2014 Housing Element Cycle

Income Level	RHNA unit Goal	Permits Issued	% of RHNA Met	Units + or -
Very Low (0-50% AMI) includes 30% AMI for reporting purposes	317	98	31%	-219 units
Low (50-80% AMI)	249	100	40%	-149 units
Moderate (80-120% AMI)	246	43	17%	-203 units
Above Moderate (120% +AMI)	500	1,286	257%	+786 units
TOTAL RHNA	1,312	1,527	116%	+215

Current 2015 – 2022 Regional Housing Needs Allocation (RHNA) Goals

Income Level	RHNA unit Goal	Permits Issued to date (not including 2018)	% of RHNA Met	Units + or -
Very Low (0-50% AMI) includes 30% AMI for reporting purposes	273	40	14.65%	- 233
Low (50-80% AMI)	154	155	100.64%	+1
Moderate (80-120% AMI)	185	15	8.10%	- 170
Above Moderate (120% +AMI)	316	732	231.64%	+ 416
TOTAL RHNA	928	942	101.50%	+14



CITY COUNCIL STAFF REPORT

MEETING DATE: March 7, 2018

PREPARED BY: Angie Gonzalez, Council Services Assistant
APPROVED BY: City Manager

ADOPT ORDINANCE APPROVING ZONING AMENDMENT ZA2017-0010 FOR THE CC-R-(PD) PLANNED DEVELOPMENT OVERLAY DISTRICT AND PRECISE DEVELOPMENT PLAN FOR A 39-UNIT AFFORDABLE RESIDENTIAL DEVELOPMENT TO BE LOCATED ON A 1.62-ACRE SITE LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF MONTEREY ROAD AND BISCEGLIA AVENUE (APN 817-36-032 AND 817-36-033)

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2269, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

On February 21, 2018, the City Council introduced Ordinance No. 2269 New Series, by the following roll call vote: AYES: Carr, Constantine, Robinett Jachimowicz, Spring, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

This ordinance is an amendment to an adopted PD for an affordable UHC housing project with 39 dwelling units in a three-story building. The project includes surface parking and carport parking (tucked-under the building). A 1,457 square foot community room/office area is located on the ground floor and a tot-lot recreation area is proposed on-site.

Under California's Density Bonus law (Government Code section 65915), the City is required to incentivize affordable housing by granting increased density and other exemptions to zoning regulations to any "developer who agrees to build a certain percentage of low-income housing with the opportunity to build more residences than would otherwise be permitted by the applicable local regulations." The concessions requested as part of the zoning amendment are setback reduction, height increase and parking reduction.

COMMUNITY ENGAGEMENT: Inform

The Morgan Hill community was informed about the project through public notification, including site signage, newspaper notice, and direct mail to property owners within 300 feet.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council adopted Resolution No. 5951 and Ordinance No. 1740 on December 19, 2005, approving General Plan and Zoning amendments for a three-block area comprised of 29 parcels totaling 13.25 acres, which includes the 3.5-acre subject property. The General Plan land use on all 29 parcels was changed to Mixed Use and zoning to the CC-R zone district.

The City Council adopted Ordinance No. 1786 on July 26, 2006 approving a Planned Development (PD) and Precise Development Plan for the 3.5-acre project site.

The City Council adopted Ordinance No. 1848 on September 19, 2007, amending the Precise Development Plan established for the 3.5-acre site.

The City Council adopted Resolution No. 15-050 on March 4, 2015, reaffirming the award of seven, Fiscal Year 2016-2017 residential allotments for the project site. On January 12, 2016, the Planning Commission adopted Resolution No. 16-02 awarding the project an additional 32, Fiscal Year 2017-2018 residential allotments for full project buildout.

The Planning Commission considered the project applications on February 13, 2018. The Planning Commission recommended that the City Council approve the Zoning Amendment and Development Agreement. The motions passed (5-0-2) with Commissioners Tanda and Martinez Beltran absent.

FISCAL AND RESOURCE IMPACT:

City development review functions are cost-recovery, with fees collected from applicants to cover cost of services. These fees have been collected.

CEQA (California Environmental Quality Act):

Mitigated Negative Declaration (MND) was prepared for the project and adopted on July 26, 2006. An addendum to the MND was prepared for the revised project. The addendum finds that:

- A. No new significant impacts will result from the project.
- B. No substantial increase in the severity of environmental impact will occur.
- C. No new feasible alternatives or mitigation measures that would reduce impacts previously found not to be feasible have, in fact, been found to be feasible.

A complete analysis of the project and environmental impacts have been provided in the Addendum. The previously adopted Mitigation Monitoring and Reporting Program (MMRP) would apply to the project.

LINKS/ATTACHMENTS:

1. 2269 Monterey-UHC ZA

ORDINANCE NO. 2269, NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
APPROVING ZONING AMENDMENT ZA2017-0010 FOR
THE CC-R-(PD) PLANNED DEVELOPMENT OVERLAY
DISTRICT AND PRECISE DEVELOPMENT PLAN FOR A
39-UNIT AFFORDABLE RESIDENTIAL DEVELOPMENT
TO BE LOCATED ON A 1.62-ACRE SITE LOCATED AT
THE NORTHEAST CORNER OF THE INTERSECTION OF
MONTEREY ROAD AND BISCEGLIA AVENUE (APN 817-
36-032 AND 817-36-033)**

WHEREAS, Urban Housing Communities, LLC (UHC) proposes to develop the property located at 16800-16840 Monterey Road, identified by Assessor Parcel Number(s) 817-36-032 and 817-36-033, on the northeast corner of Monterey Road and Bisceglia Avenue, with an affordable housing project with 39 dwelling units in a three-story building;

WHEREAS, through the RDCS process, the City Council adopted Resolution No. 15-050 on March 4, 2015, reaffirming the award of seven, Fiscal Year 2016-2017 residential allotments and on January 12, 2016, the Planning Commission adopted Resolution No. 16-02 awarding the project an additional 32, Fiscal Year 2017-2018 residential allotments for full project buildout;

WHEREAS, the 39 allotments were awarded for affordable housing;

WHEREAS, said development requires an amendment to the adopted Planned Development (PD) and Precise Development Plan;

WHEREAS, findings must be made pursuant to Section 18.62.070 to support a request for an amendment to a PD, and any Planned Development Plan shall be found consistent with the findings described in Section 18.30.050;

WHEREAS, such request was considered by the City Council at its regular meeting of February 21, 2018, at which time the City Council recommended approval of Zoning Amendment application, ZA2017-0010: Monterey-UHC; 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 MORGAN HILL DOES ORDAIN
AS FOLLOWS:**

SECTION 1. The proposed Zoning Amendment is consistent with the General Plan as required by Section 18.62.070 of the Municipal Code.

The project complies with the allowed density range for units on the site, with the affordable housing density bonus applied. The proposed project will be a workforce housing development for individuals and families making 30-60 percent of the area median income, providing necessary affordable housing within the City.

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.

The project is an affordable housing project that would provide variety and opportunity for those seeking housing in the current market.

SECTION 3. 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 project does not convert the land use from commercial/industrial to a residential land use.

SECTION 4. The City Council finds that the amended Planned Development (PD) Overlay District is consistent with the criteria specified in Chapter 18.30 of the Morgan Hill Municipal Code.

- A. The development of the subject property, with the uses and in the manner proposed by the applicant, will not be detrimental to the public welfare, will be in the best interests of the city, and will be in keeping with the general intent and spirit of the zoning regulations of the city of Morgan Hill, with the Morgan Hill General Plan, and with any applicable plans adopted by the city.

The project is an affordable housing development which is entitled to three development concessions based on the proposed affordability levels of the project pursuant to Government Code Section 65915. The project has been designed to enhance the project frontage. As an affordable housing project, it can reasonably be expected that the residents may have a lower rate of personal vehicle ownership. The proximity of the site to local and regional transit also offers the opportunity to rely on public transportation. The project is transit-oriented by design. Pedestrian, bicycle and transit facilities are expected to adequately serve the proposed project.

- B. That the plan for the proposed development presents a unified and organized arrangement of buildings and/or service facilities which are appropriate in relation to adjacent or nearby properties, and that adequate landscaping and/or screening is included if necessary to insure compatibility.

The project includes a single, three-story building with articulated elevations including a variety of building materials and fenestration placement. The parking for the project is located mostly behind the building. Landscaping provides a buffer between the building and the street. A tot-lot has been provided at the site and will be shielded from Monterey Road.

- C. Any exception from standard ordinance requirements is warranted by the provision of affordable housing, senior housing, overall quality of design and/or the

incorporation of amenities within the general development plan, in accord with adopted policy of the Planning Commission and the City Council.

The project is an affordable housing development providing housing options for those with lower incomes. The project requests a density bonus and concessions to development standards in accordance with state law.

SECTION 5. The City Council of the City of Morgan Hill finds, on the basis of the whole record before it, including the Addendum (and previously adopted Mitigated Negative Declaration (MND)), that there is no substantial evidence that the project will have a significant effect on the environment and that the MND and Addendum reflect the City Council's independent judgment and analysis. No new mitigation is necessary beyond what was originally identified for the project. The custodian of the documents or other material which constitute the record shall be the Development Services Department.

SECTION 6. On the basis that the proposed project is for affordable housing entitled to density bonuses and other incentives pursuant to State law for affordable housing projects, including Government Code Section 65915, the City Council hereby adopts the amendment to the Precise Development Plan, on file at the Development Services Department entitled "Crossing on Monterey" dated January 23, 2018, as prepared by WHA. The amendment includes a single, three-story multi-family building with 39 affordable housing units meeting specified affordability levels which entitles the project to a density bonus and three development concessions for the development of the project on the 1.62-acre site.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 21ST DAY OF FEBRUARY 2018, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 7TH DAY OF MARCH 2018, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

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

APPROVED:

STEVE TATE, Mayor

ATTEST:

IRMA TORREZ, City Clerk

DATE: _____

Effective April 7, 2018

⌘ 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. 2269, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the 7th day of March 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: 2269 Monterey-UHC ZA (1658 : Adopt Ordinance 2269 Monterey- UHC ZA)



CITY COUNCIL STAFF REPORT

MEETING DATE: March 7, 2018

PREPARED BY: Angie Gonzalez, Council Services Assistant
APPROVED BY: City Manager

ADOPT ORDINANCE APPROVING DEVELOPMENT AGREEMENT DA2017-0006: MONTEREY-UHC FOR A 39-UNIT AFFORDABLE RESIDENTIAL DEVELOPMENT ON A 1.62-ACRE SITE LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF MONTEREY ROAD AND BISCEGLIA AVENUE. (APN 817-36-032 AND 033)

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2270, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

On February 21, 2018, the City Council introduced Ordinance No. 2270 New Series, by the following roll call vote: AYES: Carr, Constantine, Robinett Jachimowicz, Spring, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

This ordinance is for a Development Agreement for an affordable UHC housing project consisting of 39 dwelling units in a three-story building. Allocations were received as part of Fiscal Year 2016-2017 and Fiscal Year 2017-2018 residential allotments for full project buildout. The project includes surface parking and carport parking (tucked-under the building). A 1,457 square foot community room/office area is located on the ground floor and a tot-lot recreation area is proposed on-site.

COMMUNITY ENGAGEMENT: Inform

The Morgan Hill community was informed about the project through public notification, including site signage, newspaper notice, and direct mail to property owners within 300 feet.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council adopted Resolution No. 5951 and Ordinance No. 1740 on December 19, 2005, approving General Plan and Zoning amendments for a three-block area comprised of 29 parcels totaling 13.25 acres, which includes the 3.5-acre subject property. The General Plan land use on all 29 parcels was changed to Mixed Use and zoning to the CC-R zone district.

The City Council adopted Ordinance No. 1786 on July 26, 2006 approving a Planned Development (PD) and Precise Development Plan for the 3.5-acre project site.

The City Council adopted Ordinance No. 1848 on September 19, 2007, amending the Precise Development Plan established for the 3.5-acre site.

The City Council adopted Resolution No. 15-050 on March 4, 2015, reaffirming the award of seven, Fiscal Year 2016-2017 residential allotments for the project site. On January 12, 2016, the Planning Commission adopted Resolution No. 16-02 awarding the project an additional 32, Fiscal Year 2017-2018 residential allotments for full project buildout.

The Planning Commission considered the project applications on February 13, 2018. The Planning Commission recommended that the City Council approve the Zoning Amendment and Development Agreement. The motions passed (5-0-2) with Commissioners Tanda and Martinez Beltran absent.

FISCAL AND RESOURCE IMPACT:

City development review functions are cost-recovery, with fees collected from applicants to cover cost of services. These fees have been collected.

CEQA (California Environmental Quality Act):

Mitigated Negative Declaration was prepared for the project and adopted on July 26, 2006. An addendum to the MND was prepared for the revised project. The addendum finds that:

- A. No new significant impacts will result from the project.
- B. No substantial increase in the severity of environmental impact will occur.
- C. No new feasible alternatives or mitigation measures that would reduce impacts previously found not to be feasible have, in fact, been found to be feasible.

A complete analysis of the project and environmental impacts have been provided in the Addendum. The previously adopted Mitigation Monitoring and Reporting Program (MMRP) would apply to the project.

LINKS/ATTACHMENTS:

1. 2270 Monterey-UHC DA

ORDINANCE NO.2270, NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
APPROVING DEVELOPMENT AGREEMENT DA2017-
0006: MONTEREY-UHC FOR A 39-UNIT AFFORDABLE
RESIDENTIAL DEVELOPMENT ON A 1.62-ACRE SITE
LOCATED ON THE NORTHEAST CORNER OF THE
INTERSECTION OF MONTEREY ROAD AND BISCEGLIA
AVENUE. (APN 817-36-032 AND 033)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY
ORDAIN AS FOLLOWS:**

SECTION 1. Through the Residential Development Control System (RDCS) process, the City Council adopted Resolution No. 15-050 on March 4, 2015, reaffirming the award of seven, Fiscal Year 2016-2017 residential allotments and on January 12, 2016, the Planning Commission adopted Resolution No. 16-02 awarding the project an additional 32, Fiscal Year 2017-2018 residential allotments for full project buildout.

SECTION 2. The City Council of the City of Morgan Hill enacted Ordinance number 1594, establishing a procedure for processing Development Agreements in Chapter 18.80 for projects receiving allotments through the RDCS, Chapter 18.78, of Title 18 of the Morgan Hill Municipal Code.

SECTION 3. Sections 65864 through 65869.5 of the California Government Code authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner(s) set forth in detail the development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the development proposal and Development Agreement approved by this Ordinance is consistent with the goals, objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan.

SECTION 6. The City Council hereby finds that the affordable housing development project is a permitted use within the CC-R zoning district and is compatible with the surrounding residential and small business uses.

SECTION 7. The City Council has duly considered City mitigation programs in effect at the time of execution of the agreement and hereby finds that the project is subject to the payment of applicable impact fees and community benefit commitments as part of the RDCS process.

Attachment: 2270 Monterey-UHC DA (1659 : Adopt Ordinance 2270 Monterey- UHC DA)

SECTION 8. The City Council hereby finds that the project will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood because project construction would adhere to state, local and federal laws. The project is residential housing that would include the normal daily operations of other residential sites.

SECTION 9. The City Council of the City of Morgan Hill finds, on the basis of the whole record before it, including the Addendum (and previously adopted Mitigated Negative Declaration (MND)), that there is no substantial evidence that the project will have a significant effect on the environment and that the MND and Addendum reflect the City Council's independent judgment and analysis. No new mitigation is necessary beyond what was originally identified for the project. The custodian of the documents or other material which constitute the record shall be the Development Services Department.

SECTION 10. Testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

SECTION 11. 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 12. 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 21ST DAY OF FEBRUARY 2018, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 7TH DAY OF MARCH 2018, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

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

APPROVED:

STEVE TATE, Mayor

ATTEST:

IRMA TORREZ, City Clerk

DATE: _____

Effective April 7, 2018

⌘ 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. 2270, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the 7th day of March 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: 2270 Monterey-UHC DA (1659 : Adopt Ordinance 2270 Monterey- UHC DA)

RECORDING REQUESTED BY AND

WHEN RECORDED MAIL TO:

City of Morgan Hill
Development Services Department
17575 Peak Avenue
Morgan Hill, CA 95037

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF MORGAN HILL

AND

UHC 00661 Morgan Hill, LP

REGARDING

THE CROSSINGS ON MONTEREY RESIDENTIAL DEVELOPMENT PROJECT

Attachment: 2270 Monterey-UHC DA (1659 : Adopt Ordinance 2270 Monterey- UHC DA)

RESIDENTIAL DEVELOPMENT AGREEMENT
 BY AND BETWEEN
 THE CITY OF MORGAN HILL
 AND
 UHC 00661 Morgan Hill, LP
 REGARDING THE
 CROSSING ON MONTEREY PROJECT

This Development Agreement ("**Agreement**") is entered into on the below-stated "**Effective Date**" by and between the City of Morgan Hill, a California municipal corporation, (hereinafter "**City**"), and UHC 00661 Morgan Hill, LP, a limited partnership, and its successor and assigns (hereinafter, collectively, "**Developer**"), pursuant to Section 65864 *et seq.* of the Government Code of the State of California and City's police powers. City and Developer are, from time to time, also hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq.* ("**Development Agreement Statute**"), which regulates development agreements with any person having a legal or equitable interest in real property providing for the development of that property and establishes certain development rights in the property. In accordance with the Development Agreement Statute, and by virtue of its police powers, City has the authority to enter into development agreements, and has reflected that authority in its Morgan Hill Municipal Code (Chapter 18.80 *et seq.*) ("**Enabling Ordinance**"). This Agreement has been drafted and processed pursuant to the Development Agreement Statute and the Enabling Ordinance.

B. Developer currently has a legal and/or equitable interest in the Property.

C. Developer proposes to plan, develop, construct, operate and maintain the Project on the Property (as such terms are defined herein).

D. As of the Effective Date, various land use regulations, allotments, entitlements, grants, permits and other approvals have been adopted, issued, and/or granted by City relating to the Project (collectively "**Existing Approvals**"), including without limitation, all of the following:

1. 39 building allotments (Seven (7) allotments for FY 2016-2017 and 32 allotments for FY2017-2018), and conditions attached to the award of such allotments including an exercise of allotment deadline of December 30, 2018;

2. Addendum to Church-Alcini Mixed-Use Development;

3. Zoning Amendment application ZA2017-0010;

The Existing Approvals are more particularly described in the resolutions adopting the Existing Approvals.

E. For the reasons recited herein, Developer and City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will help to eliminate uncertainty in planning, provide for the orderly development of the Project consistent with the planning goals, policies, and other provisions of the City's General Plan and City's Municipal Code, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

F. On March 4, 2015, the Morgan Hill City Council reaffirmed the allotment award for the Project and on January 12, 2016, the Morgan Hill Planning Commission awarded an allotment for the Project as set forth in the Developer's application for residential allotments pursuant to Chapter 18.78 ("**Residential Development Control System**", or "**RDCS**") of the Morgan Hill Municipal Code ("**Code**"). This Agreement serves to secure in a permanent and enforceable manner the public benefits and commitments included in the Developer's application as required under Section 18.78.120.J of the Code.

G. On February 13, 2018, following a duly noticed and conducted public hearing, the Planning Commission of the City ("**Planning Commission**") considered the Development Agreement for recommendation to the City Council, and determined that the Development Agreement is consistent with the goals, objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan; is compatible with the uses authorized in the zoning district in which the real property is located; duly considers City mitigation programs in effect at the time of execution of the agreement; will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood; complies with the provisions of the California Environmental Quality Act and City's procedures adopted pursuant thereto; and will not adversely affect the orderly development of property or the preservation of property values.

ARTICLE 1

ADMINISTRATION

1.01 Effective Date. On February 21, 2018, following a duly noticed and conducted public hearing, the Morgan Hill City Council ("City Council") introduced Ordinance No.2270 ("Ordinance"), [accepting, rejecting or conditionally accepting] the recommendation of the Planning Commission, finding that its provisions are consistent with the General Plan [and any applicable specific plan], approving this Agreement, and directing this Agreement's execution by City. The City adopted the Ordinance on March 7, 2018, and the Ordinance became effective thirty (30) days later. The "Effective Date" in this Agreement shall be the date that the Ordinance became effective.

1.02 Definitions.

(a) The following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

- (1) *"Allotments" shall mean those residential allotments awarded Developer through the Residential Development Control System*
- (2) *"Applicable Law" shall have that meaning set forth in Section 2.01(a) of this Agreement.*
- (3) *"Commitments" shall have that meaning set forth in Section 2.04(a) of this Agreement.*
- (4) *"Director" shall mean the Director of Community Development, and his or her designee.*
- (5) *"Existing Approvals" shall have that meaning set forth in paragraph D of the Recitals of this Agreement.*
- (6) *"Existing City Laws" shall mean all City ordinances, resolutions, rules, regulations, guidelines, motions, practices and official policies governing land use, zoning and development, RDCS, permitted uses, density and intensity of use, maximum height, bulk and size of proposed buildings, and other City land use regulations in force and effect on the Effective Date of this Agreement.*
- (7) *"Impact Fees" shall mean those fees imposed so that developments bear a proportionate share of the cost of public facilities and service improvements that are reasonably related to the impacts and burdens of the Project, adopted pursuant to Morgan Hill Municipal Code Chapter 3.56 and California Government Code Section 66001 et seq.*
- (8) *"Legal Effect" shall mean the ordinance, resolution, permit, license or other grant of approval that has been adopted by City and has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and all applicable administrative appeal periods and statutes of limitations have expired.*
- (9) *"New City Laws" shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations, whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes "Legal Effect" after the Effective Date of this Agreement, and that applies City wide.*
- (10) *"Project" means the development containing residential uses, as more particularly described in the RDCS applications MC-14-17 Monterey-UHC and MC-15-14 Monterey-UHC. Any reference in this Agreement to the "Project" shall mean and include the "Property".*
- (11) *"Project Approvals" mean, collectively, the Project's Existing Approvals and the Subsequent Approvals.*
- (12) *"Property" shall mean that certain real property consisting of approximately 1.62 acres located within the City, as more particularly described and shown on Exhibit A to this Agreement.*

- (13) *"RDCS" means the Residential Development Control System set forth in Chapter 18.78 of the Morgan Hill Municipal Code.*
- (14) *"Second Notice" shall have that meaning set forth in Section 4.07(c) of this Agreement.*
- (15) *"Subdivision Document" means, pursuant to Government Code Section 66452.6(a) and this Agreement, any tentative map, vesting tentative map, parcel map, or final map, or any such new map or any amendment to any such map, or any resubdivision.*
- (16) *"Subsequent Approvals" and "Subsequent Approval" mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are sought by Developer, and that are granted by City after the City Council adopts the Ordinance, including without limitation, subdivision maps and building permits.*

(b) To the extent that any defined terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them elsewhere in this Agreement, or if not in this Agreement, by controlling law, including the Morgan Hill Municipal Code.

1.03 Term.

(a) The term ("**Term**") of this Agreement shall commence on the Effective Date, and then shall continue (unless this Agreement is otherwise terminated or modified as provided in this Agreement) until the earliest of (1) the loss of all residential allotments for the Project pursuant to the RDCS, if applicable, (2) the issuance of a certificate of occupancy for all units in the Project or (3) ten (10) years plus one day after the Effective Date; provided however that Developer's obligations pursuant to Sections 2.03 and 2.04 shall survive the termination of this Agreement until such obligations are fully performed and completed in accordance with this Agreement.

(b) If any "**Third-Party Challenge**" (as that term is defined in Section 4.06(a) of this Agreement) is filed, then the Term of this Agreement shall be tolled for the period or periods of time from the date of the filing of such litigation until the conclusion of such litigation by dismissal or entry of a final judgment ("**Litigation Tolling**"). Notwithstanding the foregoing, regardless of the number of Third-Party Challenges that may be filed during the Term of this Agreement, the sum total of such Litigation Tolling shall not exceed five (5) years. The filing of any Third-Party Challenge shall not delay or stop the development, processing or construction of the Project, or the approval or issuance of any Project Approvals, unless enjoined or otherwise controlled by a court of competent jurisdiction. The Parties shall not stipulate to the issuance of any such order unless mutually agreed to.

ARTICLE 2

APPLICABLE LAW

2.01 Applicable Law—Generally.

(a) As used in this Agreement, "**Applicable Law**" shall mean the rules, regulations, official policies, standards, and specifications applicable to the development of the Property listed below in this Section 2.01. The order of their importance is the order in which they are listed (with highest importance listed first, second most important listed second, etc.); in the event of a conflict between them, their order shall determine which one controls (the one listed higher controlling over the one listed lower):

- (1) *All the provisions, terms and conditions of this Agreement.*
- (2) *Existing Approvals.*
- (3) *The Subsequent Approvals, provided such Subsequent Approvals are:*
 - (i) In compliance with all controlling California law;
 - (ii) Mutually agreed to by the Parties;
 - (iii) In compliance with this Agreement; and
 - (iv) Duly enacted by City.
- (4) *The "Existing City Laws" that are not in conflict with this Agreement and the Project Approvals.*
- (5) *Any "New City Laws" Developer is subject to as provided in Section 2.09 of this Agreement.*

(b) The Parties shall cooperatively assemble all of the necessary documents to memorialize, to the best of their abilities, the Project Approvals, Existing City Laws, and the terms and conditions contained in this Agreement to assist Developer to maintain the documents assembled and to provide a continuing reference source for the approvals granted and the ordinances, policies and regulations in effect on the Effective Date of this Agreement.

2.02 Vested Right to Applicable Law.

(a) During the Term of this Agreement, Developer shall have the vested right to develop the Project subject only to, and in accordance with, the Applicable Law, and during the Term of this Agreement, City shall have the right to regulate the development and use of the Project subject only to, and in accordance with, the Applicable Law.

(b) Nothing contained herein will give Developer a vested right to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

(c) Pursuant to this Agreement, the Applicable Law will be an expanding body of law, such as, for example, when Subsequent Approvals are granted by City, and/or when Developer becomes subject to a New City Law pursuant to this Agreement.

(d) The vested rights to develop the Project in accordance with Applicable Law and this Agreement shall be vested only to those residential units having an RDCS residential allotment. Nothing contained herein shall give Developer a vested right to develop the described Project absent valid RDCS residential allotments.

(e) Developer agrees that the terms and conditions of this Agreement and conditions of approval issued pursuant to this Agreement shall govern and dictate the vesting of the Developer's right to develop in lieu of any other instrument of vesting, including any vesting tentative map or any other agreement, instrument or document purporting to vest any right of development. Developer agrees to waive any vesting rights by operation of any otherwise applicable City, state or federal law.

2.03 Project Impacts and Costs.

(a) Agreement Subject to Project Mitigation Requirements. Notwithstanding any other express or implied term or condition of this Agreement (or the Approvals) to the contrary, throughout the Term of this Agreement, the full and complete mitigation of all environmental (including any mitigation measure adopted pursuant to CEQA), physical, fiscal and other impacts of the Project and the Property on the community and on the City of Morgan Hill and its services, facilities, operations and maintenance (collectively, "**Project Mitigation**") shall be borne by and shall be the sole and exclusive responsibility of the Developer. Such Project Mitigation may be conditions of any Applicable Law or Project Approval and may include a mix of different approaches, including without limitation, Developer construction of and/or financing of such services, facilities, operations and maintenance through the payment of impact fees or other fees, taxes, levies, assessments, or other financing mechanisms including without limitation, reimbursement agreements, Landscaping and Lighting Districts, Mello-Roos Districts, Community Facilities Districts, Assessment Districts, Tax-Exempt and Taxable Financing Mechanisms, Maintenance Districts, Homeowners Associations, and participation in the Statewide Communities Infrastructure Program (collectively, "**Financing Mechanisms**"). The necessary scope and extent of such Project Mitigation, and which combination of Financing Mechanisms should be employed relating to such Project Mitigation to assure success of the Project Mitigation, shall be determined by City, in its sole and exclusive discretion, pursuant to appropriate City ordinance, resolution, regulations or procedures, taking into account and guided by the pre-existing rights of others in the existing and future public services and facilities (including their operations and maintenance) that Developer may seek to use. If no Financing Mechanism is available to fund the Project Mitigation, then the Project shall not progress forward.

(f) Impact Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04 and as part of the Developer's sole and exclusive obligation to cover Project Mitigation, Developer shall pay all Impact Fees and in the amounts in legal effect at the time any such Impact Fees become due and payable as provided for in the City's Municipal Code.

(g) Processing Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04, the Project (including Developer as owner of same) shall

be responsible for the costs to City of processing any and all Developer-requested land use approvals, including without limitation, building permits, plan checks, and environmental studies required pursuant to CEQA and other similar requests for City permits and entitlements, when such costs are incurred by City. City shall impose those funding requirements needed to ensure that the processing costs to the City are fully covered by the Developer. Further, if additional, accelerated, or more frequent inspections are requested by Developer of City than would otherwise take place in City's ordinary course of business, then City may either hire additional contract inspectors, plan checkers, engineers or planners, or City may hire a full or part time employee. If City hires additional contractors, then Developer shall reimburse City, on a monthly basis in arrears, the cost to City of hiring such additional contract inspectors, plus Developer shall pay to City an additional ten percent (10%) of such cost to City on the same payment schedule. City shall use such additional 10% to defray administrative costs. If City hires a full or part time employee, then Developer shall reimburse City, on a monthly basis, in arrears, for a pro rata share of the total cost to the City of such employee, plus ten percent (10%) for administrative costs, for the period from hire to the end of the Term of this Agreement.

2.04 RDCS and Other Specific Project-Specific Requirements.

(a) The Specific Restrictions and Requirements set forth in Exhibit C are public benefit commitments (“**Commitments**”) voluntarily assumed by Developer in return for benefits derived from the City's RDCS allotment approval program. These requirements are not Project Mitigation within the meaning of Section 2.03 of this Agreement. Developer hereby agrees that these requirements are not subject to credit, refund or reimbursement or prohibition pursuant to otherwise applicable City, state or federal law and hereby waives any such right to credit, refund, reimbursement or prohibition. These Commitments are voluntarily assumed by Developer in return for benefits derived from the RDCS. Pursuant to the RDCS, awarding of residential allotments to new development is a competitive process based on a point system. Additional points can be awarded to a development proposal that voluntarily commits towards providing a public benefit contribution in addition to those already required to mitigate its impacts. The Commitments result in additional points, thereby allowing the development proposal to secure a higher score pursuant to the RDCS, which in turn may provide a high enough score for the development proposal to secure residential allotments. The Commitments set forth in Exhibit C, derived from that RDCS process, are enforced through this Agreement.

(h) Substitution of Commitments may be allowed in limited circumstances, as provided in the adopted Planning Commission Policy entitled “Changes to Approved Residential Development Control System Projects”, and Section IV. F and Table 1: “Criteria Advancing Objectives” of the RDCS Competition Manual. If the Substitution may be approved by the Director of Community Development, the Substitution shall be documented through an Administrative Amendment as provided in Section 3.05 of this Agreement. In circumstances in which Substitution within the same category is not possible, Substitution may be allowed only by resolution of the Planning Commission. No changes which would degrade the quality of the project, lower the value of commitments or lower the total point score in the RDCS evaluation, or would subject the Project to further environmental review under CEQA, shall be approved.

(i) The Developer's RDCS application – MC-14-17 (March 4, 2015) and MC-15-14 (January 12, 2016) and approval actions (as reflected in the official records, including

agendas and minutes of the City Planning Commission and City Council) shall be incorporated into this Agreement by this reference.

2.05 Construction Codes.

With respect to the development of any or all of the Project or the Property, Developer shall be subject to the California Building Code and all those other State-adopted construction, fire and other codes applicable to improvements, structures, and development, and the applicable version or revision of said codes by local City action (collectively referred to as "**Construction Codes**") in place at that time that a plan check application for a building, grading or other permit subject to such Construction Codes is submitted to City for approval, provided that such Construction Codes have been adopted by City and are in effect on a City-wide basis.

2.06 Timing of Development.

(a) Securing Building Permits and Beginning Construction. Developer is required to obtain any approvals or permits for the development of the Project in accordance with this Agreement, the Applicable Law, and the Project Approvals. However, any Subsequent Approval initiated by Property Owner which substantially changes the permitted uses or substantially increases the height, and density or floor area allowed under the Project Approvals, shall be subject to the rules, regulations, ordinances and official policies of the City then in effect. Developer agrees to secure building permits and to begin construction of the Project in accordance with the time requirements set forth in the Construction Codes and the RDCS, if applicable. In the event Developer fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the Construction Codes, Project Approvals, and RDCS, Developer shall be in default of this Agreement, and must cure said default as provided in section 4.01 of this Agreement.

(j) Progress Reports Until Construction of Project is Complete. Developer shall make reports regarding the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

(k) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of construction, off-site and landscaping contracts or documents, Developer agrees to furnish such documents to the City.

(l) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units in the Project, the City shall provide Developers with an instrument in recordable form certifying completion of the entire project.

2.07 Improvements.

In any instance where Developer is required to install improvements (including those set forth in Exhibit C), Developer shall obtain City approval of the plans and specifications and the timing and manner of the installation of improvements, and provided Developer has supplied all information required by City, City shall review and act on the application for such approval with good faith and in a reasonable manner. Where the actual cost of any improvement exceeds Developer's estimated cost or commitment, Developer shall be solely responsible for all

improvement costs in excess of those approved by City unless otherwise provided for in a reimbursement agreement.

2.08 Overcapacity, Oversizing.

(a) City may require Developer to construct on-site and off-site improvements in a manner that provides for oversizing or overcapacity so that the constructed improvement will serve other development or residents or facilities and services outside of the Project ("**Oversizing**"). Such Oversizing shall be reasonable in scope. The Parties recognize that the City shall not require any Oversizing from Developer except in connection with the Project Approvals and in accordance with provisions of the Subdivision Map Act and Applicable Law.

(m) Unless no credit or reimbursement is owed to Developer pursuant to Section 2.04 of this Agreement, Developer's right to receive credits and reimbursements for Oversizing or excessive payment or performance shall be determined and processed pursuant to the City's Municipal Code and controlling practices (relative to credits and reimbursements) on the Effective Date.

2.09 New City Laws.

(a) City may apply any New City Law to the Project that is not in conflict with this Agreement and the Applicable Law it describes. City shall not apply any New City Law to the Project that is in conflict with this Agreement and the Applicable Law it describes, nor otherwise reduces the development rights or assurances provided by this Agreement. City shall not apply to the Project nor Property any no-growth or slow-growth ordinance, measure, policy, regulation or development moratorium either adopted by City or by a vote of the electorate and whether or not by urgency ordinance, interim ordinance, initiative, referendum or any other change in the laws of the City by any method or name which would alter the Applicable Law that may stop, delay, or effect the rate, timing or sequence of development.

(n) Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, a New City Law shall be deemed to be in conflict with this Agreement or the Applicable Law or to reduce the development rights provided hereby if the application to the Project would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which affects or applies to the Project:

(4) Change any land use designation or permitted use of the Property allowed by the Applicable Law or limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the total number of residential dwelling units, square footage, floor area ratio, height of buildings, or number of proposed non-residential buildings, or other improvements;

(5) Limit or control the availability of public utilities, services, or facilities otherwise allowed by the Applicable Law;

(6) Limit or control the rate, timing, phasing or sequencing of the approval, development, or construction of all or any part of the Project in any manner, or take any action or refrain from taking any action that results in Developer having to substantially delay

construction of the Project or require the acquisition of additional permits or approvals by the City other than those required by the Applicable Law;

(7) Limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations in the Existing Approvals.

(o) If City determines that it has the right pursuant to this Agreement to impose and apply a New City Law on the Property and Project, it shall send written notice to Developer of that City determination ("**Notice of New City Law**"). Upon receipt of the Notice of New City Law, if Developer believes that such New City Law is in conflict with this Agreement, Developer may send written notice to the City of the alleged conflict within thirty (30) days of receipt of City's Notice of New Law ("**Objection to New City Law**"). Developer's Objection to New City Law shall set forth the factual and legal reasons why Developer believes City cannot apply the New City Law to the Property/Project. City shall respond to Developer's Objection to New City Law ("**City Response**") within thirty (30) days of receipt of said Developer Objection to New City Law. The City Response shall set forth the factual and legal reasons why City believes it can apply the New City Law to the Project. Thereafter, the Parties shall meet and confer within thirty (30) days of the date of Developer's receipt of the City Response (the "**Meet and Confer Period**") with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. Within fifteen (15) days of the conclusion of the Meet and Confer Period, City shall make its determination, and shall send written notice to Developer of that City determination. If City determines to "impose/apply" the New City Law to the Project, then Developer shall have a period of ninety (90) days from the date of receipt of such City determination within which to file legal action challenging such City action. In other words, a 90-day statute of limitations regarding Developer's right to judicial review of the New City Law shall commence upon Developer's receipt of City's determination following the conclusion of the Meet and Confer Period. If upon conclusion of judicial review of the New City Law (at the highest judicial level sought and granted), the reviewing court determines that Developer is not subject to the New City Law, such New City Law shall cease to be a part of the Applicable Law, and City shall return Developer to the position Developer was in prior to City's application of such New City Law (*e.g.*, City return fees, return dedications, etc.). The above-described procedure shall not be construed to interfere with City's right to adopt or apply the New City Law with regard to all other areas of City (excluding the Project).

(p) Developer in its sole and absolute discretion may elect to have applied to the Project a New City Law that is not otherwise a part of the Applicable Law, subject to the limitations set forth in this subdivision (d). In the event Developer so elects to be subject to a New City Law that is not otherwise a part of the Applicable Law, Developer shall provide notice to City of that election and thereafter such New City Law shall be part of the Applicable Law. In no event shall any New City Law become part of the Applicable Law if it would relieve Developer from, or impede Developer's compliance with, Developer's obligations pursuant to this Agreement, including without limitation Developer's obligations of full "Project Mitigation" pursuant to Section 2.03 or the "RDSCS and Other Project Specific Requirement" pursuant to Section 2.04. Further, for the purposes of this Agreement, the "New City Laws" Developer may elect to be subject to pursuant to this Section shall not mean nor include any or all individual development agreements with other developers (including without limitation such development agreements' term and conditions, exhibits, etc.) executed before or after the Effective Date of this Agreement.

(q) City shall not be precluded from adopting and applying New City Laws to the Project to the extent that such New City Laws are specifically required to be applied by State or Federal laws or regulations, and implemented through the Federal, State, regional and/or local level ("**Mandated New City Laws**"), including without limitation those provisions in the Development Agreement Statute, or that such New City Laws are necessitated by or arise from a declaration of City, local, state or federal declaration of a state of emergency.

(r) In the event that an administrative challenge and/or legal challenge (as appropriate) to a Mandated New City Laws preventing compliance with this Agreement is brought and is successful in having the Mandated New City Law determined to not apply to this Agreement, this Agreement shall remain unmodified and in full force and effect.

ARTICLE 3

PROCESSING

3.01 Processing.

(a) This Agreement does not provide Developer with any right to the approval of Subsequent Approvals nor to develop or construct the Project beyond that which is authorized in the Existing Approvals. This Agreement simply provides a process by which such Subsequent Approvals may be processed by Developer, and later added to this Agreement, if and only if such Subsequent Approvals are compliant with all controlling California law (including Planning and Zoning Law and CEQA), and are adopted/approved by City, which shall retain all lawful discretion in this regard. The public review process is ongoing, and following the City's adoption of this Agreement, that public review process shall continue. Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit the discretion of City or any of its officers or officials with regard to the Project Approvals that legally require the exercise of discretion by City. City's discretion as to the granting of Subsequent Approvals shall be the discretion afforded by the Applicable Law. The Parties agree that this Agreement does not modify, alter or change the City's obligations pursuant to CEQA and acknowledge that Subsequent Approvals may require additional environmental review pursuant to CEQA.

(b) Upon submission by Developer of any and all necessary and required applications for Subsequent Approvals and payment of any and all appropriate processing and other fees as provided in this Agreement, City shall use its best efforts to promptly commence and diligently complete all steps necessary to acting on the requested Subsequent Approvals, including, but not limited to, (i) the holding of any and all required public hearings and notice for such public hearings, and (ii) the granting of the requested approval to the extent that it is consistent with Applicable Law.

3.02 Significant Actions by Third Parties Necessary to Implement the Existing Approvals.

(a) At Developer's sole discretion, Developer shall apply for such other permits, grants of authority, agreements, and other approvals from other private and/or public and quasi-public agencies, organizations, associations or other entities ("**Other Entity**") as may be necessary to the development of, or the provision of services and facilities to, the Project ("**Other Permits**").

(c) City shall cooperate with Developer in its endeavors to obtain any Other Permits and shall, from time to time, at the request of Developer, join with Developer in the execution of such permit applications and agreements as may be required to be entered into with any such other agency.

(d) In the event that any such Other Permit is not obtained from an Other Entity within the time permitted by law for such other entity to act and such circumstance materially deprives Developer of the ability to proceed with development of the Project or any portion thereof, or materially deprives City of a bargained-for public benefit of this Agreement, then, in such case, and at the election of either party, Developer and City shall meet and confer with the objective of attempting to mutually agree on solutions that may include alternatives, Subsequent Approvals, or an amendment(s) to this Agreement to allow the development of the Project to proceed with each Party substantially realizing its bargained-for benefit therefrom.

3.03 Establishment and Extension of Residential Development Control System Building Allotments.

Allotments shall be exercised pursuant to Section 18.78.160 of the Morgan Hill Municipal Code and Section IV.J of the RDCS Competition Manual. The City may approve an extension to the date by which an allotment must be exercised only as allowed by Section 18.78.170 of the City of Morgan Hill Municipal Code and Section IV.L of the RDCS Competition Manual. Extensions shall be processed by Planning Commission resolution as provided in Section IV.H of the RDCS Competition Manual.

3.04 Amendments.

This Agreement may be amended from time to time by mutual consent in writing of the Parties to this Agreement in accordance with Government Code Section 65868. Any request by Developer for an amendment or modification to this Agreement or a Project Approval shall be subject to the applicable substantive and procedural provisions of the City's General Plan, zoning, subdivision, and other applicable land use ordinances and regulations (i.e., City review and approval) in effect when such an amendment or modification request is approved.

No amendment to this Development Agreement shall be necessary to extend the RDCS exercise of allotment date as provided in Section 3.03, nor to substitute an RDCS Commitment as provided in Section 2.04(b) of this Agreement.

3.05 Administrative Amendment

Upon the written request of, and payment of the established fee by, Developer, Substitution of Commitments within the same criteria category may be processed administratively by the Director. Any Administrative Amendment must be made in writing signed by the Director, and approved by the City Attorney, and by the Developer.

ARTICLE 4

DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT

4.01 Defaults.

(a) Any failure by City or Developer to perform any material term or provision of this Agreement, which failure continues uncured for a period of sixty (60) days (or 150 days for a Mortgagee (as that term is defined in Section 4.10(a)) following written notice of such failure from the other Party (unless such period is extended by written mutual consent) ("**Notice of Default**"), shall constitute a default pursuant to this Agreement ("**Default**"). Any Notice of Default shall specify the nature of the alleged failure and, where appropriate, the manner in which such alleged failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 60-day period (or 150 days for a Mortgagee), then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 60-day period (or 150 days for a Mortgagee). If the alleged failure is cured, then no Default shall exist and the noticing Party shall take no further action. If the alleged failure is not cured, then a Default shall exist pursuant to this Agreement and the non-defaulting Party may exercise any of the remedies available pursuant to this Article.

(b) No failure or delay in giving notice of default shall constitute a waiver of default; provided, however, that the provision of written notice and opportunity to cure shall nevertheless be a prerequisite to the enforcement or correction of any default. Waiver of a breach or default pursuant to this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

4.02 Actions During Cure Period.

(a) During any cure period and during any period prior to any delivery of notice of failure or default, the Party charged shall not be considered in default for purposes of this Agreement. If there is a dispute regarding the existence of a default, the Parties shall otherwise continue to perform their obligations hereunder to the maximum extent practicable in light of the disputed matter and pending its resolution, or formal termination of the Agreement, as provided herein.

(c) City will continue to process in good faith development applications during any cure period, but need not approve any such application if it relates to an alleged default of Developer hereunder.

4.03 Resolution of Disputes.

(a) In the event either Party is in default pursuant to the terms of this Agreement, the other Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies as provided herein; (iii) pursue judicial remedies as provided for herein; and/or (iv) terminate this Agreement.

(d) Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default by another Party to this Agreement, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation hereunder, or to seek specific performance. It is expressly understood and agreed that the sole legal remedy available to Developer for a breach or violation

of this Agreement by City shall be a legal action in mandamus, specific performance, and/or other injunctive or declaratory relief to enforce the provisions of this Agreement, and that Developer shall not be entitled to bring an action for damages including, but not limited to, lost profits, consequential damages or other economic damages. For purposes of instituting a legal action pursuant to this Agreement, any City Council determination pursuant to this Agreement shall be deemed a final agency action.

(e) If any dispute arises between or among the Parties as to interpretation or application of any of the terms of this Agreement, the Parties shall attempt to resolve the dispute in accordance with this Agreement prior to third party mediation, arbitration, or formal court action. As to any such dispute, the Parties shall first meet and confer in good faith to resolve the matter between themselves. Each Party shall make all reasonable efforts to provide to the other Party or Parties all information relevant to the dispute, to the end that all Parties will have appropriate and adequate information to resolve the dispute. Should the Parties not resolve the dispute informally, the Parties agree to meet and confer in an effort to agree on utilizing Judicial Arbitration Mediation Services ("JAMS") for Alternative Dispute Resolution ("ADR"). However, no party shall be required to use JAMS or ADR.

4.04 Periodic Review.

(a) The City shall review this Agreement at least once annually to assure compliance with the RDCS, at which time the Developer is required to demonstrate good faith compliance with the terms of this Agreement.

(f) If, as a result of such annual review, the City finds and determines, on the basis of substantial evidence, that Developer has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded pursuant to the RDCS, in addition to all other legally available remedies.

4.05 Force Majeure Delay, Extension of Times of Performance.

(a) Performance by any Party hereunder shall be excused, waived or deemed not to be in default where delays or defaults are due to acts beyond a Party's control such as war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, unexpected acts of governmental entities other than City, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, enactment of conflicting State or Federal laws or regulations, or litigation (including without limitation litigation contesting the validity, or seeking the enforcement or clarification of this Agreement whether instituted by the Developer, City, or any other person or entity) (each a "**Force Majeure Event**").

(g) Any Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay and an estimated length of delay. Upon the other Party's receipt of such notice, an extension of time shall be granted in writing for the period of the Force Majeure Event, or longer as may be mutually agreed upon by the Parties, unless the other Party objects in writing within ten (10) days after receiving the notice. In the event of such objection, the Parties shall meet and confer within thirty (30) days after the date of objection to

arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached, any Party may take action as permitted in this Agreement.

4.06 Third Party Legal Actions.

(a) In the event of any administrative, legal or equitable action or other proceeding instituted by any person, entity or organization (that is not a Party to this Agreement) challenging the validity of this Agreement, any Project Approvals, or the sufficiency of any environmental review pursuant to CEQA ("**Third-Party Challenge**"), the Parties shall cooperate with each other in good faith in the defense of any such challenge.

(h) City shall have the option to defend such Third-Party Challenge or to tender the complete defense of such Third-Party Challenge to the Developer ("**Tender**"). If City chooses to defend the Third-Party Challenge or Developer refuses City's Tender, City shall control all aspects of the defense and Developer shall pay City's attorneys' fees and costs (including related court costs).

(i) If Developer accepts City's Tender, Developer shall control all aspects of the defense and shall pay its own attorneys' fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third-Party Challenge. If City wishes to assist Developer when Developer has accepted the Tender, Developer shall accept that assistance and City shall pay City's own attorneys' fees and costs (including related court costs) ("**City Costs**"), and Developer shall pay its own attorneys' fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge (such third party fees and costs shall not include City Costs).

(j) If any part of this Agreement or any Project Approval is held by a court of competent jurisdiction to be invalid, the City shall: (1) use its best efforts to sustain and/or re-enact that part of this Agreement and/or Project Approval; and (2) take all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement, and then adopting or re-enacting such part of this Agreement and/or Project Approval as necessary or desirable to permit execution of this Agreement and/or Project Approval.

4.07 Estoppel Certificate.

(a) Any Party may, at any time, and from time to time, deliver written notice to any other Party, and/or to the Developer's lender, requesting such Party to certify in writing that, to the knowledge of the certifying Party:

(4) This Agreement has not been amended or modified either orally or in writing or if so amended, identifying the amendments.

(5) The Agreement is in effect and the requesting Party is not known to be in default of the performance of its obligations pursuant to this Agreement, or if in default, to describe therein the nature and amount of any such defaults.

(k) This written certification shall be known as an "**Estoppel Certificate.**" A Party receiving a request hereunder shall execute and return such Estoppel Certificate within ten (10) days following the receipt of the request, unless the Party, in order to determine the appropriateness of the Estoppel Certificate, promptly commences and proceeds to conclude an Annual Review. The Parties acknowledge that an Estoppel Certificate may be relied upon by Assignees and other persons having an interest in the Project, including holders of mortgages and deeds of trust. The City Manager shall be authorized to execute an Estoppel Certificate for City.

(l) If a Party fails to deliver an Estoppel Certificate within the ten (10) day period, as provided for in Section 4.07(b) above, the Party requesting the Estoppel Certificate may deliver a second notice (the "**Second Notice**") to the other Party stating that the failure to deliver the Estoppel Certificate within ten (10) working days following the receipt of the Second Notice shall constitute conclusive evidence that this Agreement is without modification and there are no unexcused defaults in the performance of the requesting Party. Failure to deliver the requested Estoppel Certificate within the ten (10) working day period shall then constitute conclusive evidence that this Agreement is in full force and effect without modification and there are no unexcused defaults in the performance of the requesting Party.

4.08 Assignment/Covenants Run with the Land.

(a) Right to Assign. Developer shall have the right to sell, assign, or transfer this Agreement with all its rights, title and interests therein to any person, firm or corporation acquiring an interest in the Project or Property (or portion thereof associated with the Project) at any time during the term of this Agreement ("**Assignee**"). Developer shall provide City with written notice of any assignment or transfer of all or a portion of the Property no later than thirty (30) days prior to such action, which notice shall include specific portions of the Project or Property to be assigned and the proposed form of assignment. Any proposed assignment shall be subject to the express written consent of City, which consent shall not be unreasonably withheld, delayed or conditioned. City's approval of a proposed assignment or transfer shall be based upon the proposed assignee's reputation, experience, financial resources and access to credit and capability to successfully carry out the development of the Property to completion. The written assignment, assumption or release of rights or obligations with respect to a portion of the Project or of the Property shall specify the portion of the Project or Property and the rights assigned and obligations assumed, and shall be approved by the City Attorney. The express written assumption by an Assignee of the obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred shall relieve Developer of such obligations so assumed. Any such assumption of Developer's obligations pursuant to this Agreement shall be deemed to be to the satisfaction of the City Attorney if executed in the form as may be approved by the City Attorney.

(m) Release Upon Assignment. Upon assignment, in whole or in part, and the express written assumption by the Assignee of such assignment, of Developer's rights and interests pursuant to this Agreement, Developer shall be released from its obligations with respect to the Property/Project (or any portion thereof), and any lot, parcel, or portion thereof so assigned to the extent arising subsequent to the effective date of such assignment. A default by any Assignee shall only affect that portion of the Property/Project owned by such Assignee and shall not cancel or diminish in any way Developer's rights or obligations hereunder with respect to the assigned portion

of the Property/Project not owned by such Assignee. The Assignee shall be responsible for the reporting and annual review requirements relating to the portion of the Property/Project owned by such Assignee, and any amendment to this Agreement between City and Assignee shall only affect the portion of the Property/Project owned by such Assignee.

(n) Covenants Run with the Land. This Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants and obligations shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Project and/or Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Civil Code Section 1468. This Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee, or any other successor of Developer acquiring a completed residential unit comprising all or part of the Project (“**Consumer**”) unless such Consumer is specifically bound by a provision of this Agreement or by a separate instrument or Agreement.

4.09 Encumbrances on the Property.

The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole and absolute discretion, from encumbering the Property, or any portion thereof or any improvements thereon with any Mortgage securing financing with respect to the construction, development, use or operation of the Project. Mortgagee may require certain modifications to this Agreement, and City shall negotiate in good faith any such request for modification or subordination.

4.10 Obligations and Rights of Mortgage Lenders.

(a) The holder of any mortgage, deed of trust or other security arrangement with respect to the Property, or any portion thereof ("**Mortgagee**"), shall not be obligated pursuant to this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement that pertain to the Property or such portion thereof in which it holds an interest.

(o) Each Mortgagee shall be entitled to receive written notice from City of results of the annual review to be done pursuant to Section 4.04 and any default by Developer pursuant to this Agreement, provided such Mortgagee has informed City of its address for notices. Each Mortgagee shall have a further right, but not an obligation, to cure such default in accordance with the default and default cure provisions in Sections 4.01, 4.02, and 4.03 of this Agreement. In the event Developer (or any permitted Assignee) becomes subject to an order for relief pursuant to any chapter of Title 11 of the United States Code (the "**Bankruptcy Code**"), the cure periods provided for a Mortgagee in Section 4.01(a) of this Agreement shall be tolled for so long as the automatic stay of Section 362 of the Bankruptcy Code remains in effect as to Developer (or any permitted Assignee); provided, however, if City obtains relief from the automatic stay pursuant to Bankruptcy Code Section 362 to declare any default by or exercise any remedies against Developer

(or any permitted Assignee), the tolling of any Mortgagee's cure period shall automatically terminate on the earlier of: (i) the date that is sixty days after entry of the order granting City relief from the automatic stay, or (ii) the date of the entry of an order granting Mortgagee relief from the automatic stay. Each Mortgagee shall be entitled to receive written notice from City of the filing of any motion by City in which City seeks relief from the automatic stay of Section 362 of the Bankruptcy Code to declare any default by or exercise any remedies against Developer (or any permitted Assignee).

(p) Any Mortgagee who comes into possession of the Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Property, or such portion thereof, subject to any pro rata claims for payments or charges against the Property, or such portion thereof, that have accrued prior to the time such holder comes into possession. In addition, any Mortgagee who comes into possession of the Property or any portion thereof, pursuant to a foreclosure of mortgage or deed of trust, or deed in lieu of such foreclosure, shall, subject to Section 4.10(a) above, be a permitted Assignee and, as such, shall succeed to all the rights, benefits and obligations of Developer pursuant to this Agreement.

(q) Nothing in this Agreement shall be deemed to be construed to permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereof, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

4.11 Termination.

This Agreement shall terminate upon the expiration of the Term, as set forth in Section 1.03(a), or at such other time as this Agreement is terminated in accordance with the terms hereof, whichever occurs first. Upon termination of this Agreement, the City shall record a notice of such termination, in a form satisfactory to the City Attorney that the Agreement has been terminated.

ARTICLE 5

GENERAL PROVISIONS

5.01 Miscellaneous.

(a) Preamble, Recitals, Exhibits. References herein to "this Agreement" shall include the Preamble, Recitals and all of the exhibits of this Agreement.

(b) Requirements of Development Agreement Statute. The permitted uses of the Property; density and/or intensity of use of the Property; the maximum height and size of proposed buildings and other structures; provisions for reservation or dedication of land for public purposes; location of public improvements; and other terms and conditions applicable to the Project shall be those set forth in the Applicable Law.

(c) Governing Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California and legal actions commenced pursuant to or pursuant to this Agreement shall be brought in Santa Clara Superior Court. Should

any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court.

(d) Project as a Private Undertaking. No partnership, joint venture, or other association of any kind between Developer, on the one hand, and City on the other hand, is formed by this Agreement. The development of the Property is a separately undertaken private development. The only relationship between City and Developer is that of a governmental entity regulating the development of private Property and the owners of such private Property.

(e) Indemnification. Developer shall hold City, its elective and appointive boards, commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's contractors, subcontractors', agents' or employees' operations on the Project, whether such operations be by Developer or by any Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors. Developer shall indemnify and defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations and Developer shall pay all reasonable attorney's fees and costs that the City may incur. City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold-harmless requirement of Developer because of the acceptance of improvements by City, or the deposit of security with City by Developer. The aforesaid hold-harmless requirement of Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this subsection, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the subdivision. Notwithstanding anything herein to the contrary, Developer's indemnification of City shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the active negligence of the City.

(f) Insurance. Developer shall, during the life of this Agreement take out and maintain insurance coverage with an insurance carrier authorized to transact business in the State of California as will protect the Developer or any Contractor or any Subcontractor or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, from claims for damages because of bodily injury, sickness, disease, or death of their employees or any person other than their employees, or for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom. The minimum limits of liability for such insurance coverage which shall include comprehensive general and automobile liability, including contractual liability assumed pursuant to this Agreement, shall be as follows:

Limit of Liability for Injury or Accidental Death:

Per Occurrence \$1,000,000

Limit of Liability for Property Damage:

Aggregate Liability for Loss \$1,000,000

Such liability insurance policies shall name the City as an additional insured, by separate endorsement, and shall agree to defend and indemnify the City against loss arising from operations performed pursuant to this agreement and before permitting any Contractor or Subcontractors to perform work pursuant to this agreement, the Developer shall require Contractor or Subcontractors to furnish satisfactory proof that insurance has been taken out and is maintained similar to that provided by the Developer as it may be applied to the Contractor's or Subcontractor's work.

(g) Interpretation/Construction. This Agreement has been reviewed and revised by legal counsel for both Developer and City, and any rule or presumption that ambiguities shall be construed against the drafting Party shall not apply to the interpretation or enforcement of this Agreement. The standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of City. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(h) Notices.

(4) All notices, demands, or other communications that this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed, via first class mail, to the respective Party at the below listed address. Notice shall be deemed effective and received five days after the date of mailing or upon personal delivery.

If to City:

City Clerk
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7259
Fax: (408) 779-3117

With a Copy To:

City Attorney
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7271
Fax: (408) 779-1592

If to Developer:

Dave Bigley
UHC 00661, LP
2000 E. Fourth Street #205
Tel: (714) 835-3955
Fax: (714) 835-3275

With a Copy To:

(5) Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to the Developer as required by this Agreement shall also be given to any lender which requests that such notice be provided. Any lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.

(i) Recordation. The Clerk of the City shall record, within ten (10) days after the Effective Date, a copy of this Agreement in the Official Records of the Recorder's Office of Santa Clara County. Developer shall be responsible for all recordation fees, if any.

(j) Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

(k) Jurisdiction. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed pursuant to the laws of the State of California.

(l) Entire Agreement. This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(m) Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement may be executed in multiple originals, each of which is deemed to be an original.

(n) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

(o) Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A Legal Description of Lot on Which Project is to be Located.

Exhibit B Description of Project.

Exhibit C RDCS Specific Restrictions and Requirements.

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first hereinabove written.

CITY OF MORGAN HILL:

DEVELOPER:

s/_____

s/_____

Christina J. Turner
City Manager

Name/Title [print]

Date: _____

*Corporate entities must provide a
second signature:*

s/_____

Attest:

s/_____

Name/Title [print]

Date: _____

Deputy City Clerk

Approved as to Form:

s/_____

Donald A. Larkin
City Attorney
Date: _____

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,
MUST BE ACKNOWLEDGED BY A NOTARY)**

EXHIBIT A**LEGAL DESCRIPTION OF THE PROPERTY ON WHICH
PROJECT IS BE LOCATED**

For APN/Parcel ID(s): 817-36-032 and 817-36-033

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:

Parcel One:

All of Remainder 'A', as shown on that certain Map entitled "Tract No. 9887 Rancho Del Pueblo-Monterey Station", which was filed in the office of the Recorder of the County of Santa Clara, State of California on June 29, 2007 in Book 815 of Maps, at Pages 41, 42, 43 and 44.

Parcel Two:

All of Remainder 'B', as shown on that certain Map entitled "Tract No. 9887 Rancho Del Pueblo-Monterey Station", which was filed in the office of the Recorder of the County of Santa Clara, State of California on June 29, 2007, in Book 815 of Maps, at Pages 41, 42, 43 and 44.

Attachment: 2270 Monterey-UHC DA (1659 : Adopt Ordinance 2270 Monterey- UHC DA)

EXHIBIT B**DESCRIPTION OF PROJECT****CROSSINGS ON MONTEREY**

MC-14-17 Monterey-UHC

FY 2016-2017: Seven (7) Building Allotments

Exercise of Allotment deadline December 30, 2018

MC-15-14 Monterey-UHC

FY2017-2018: Thirty-two (32) Building Allotments

Exercise of Allotment deadline December 30, 2018

Attachment: 2270 Monterey-UHC DA (1659 : Adopt Ordinance 2270 Monterey- UHC DA)

EXHIBIT C**SPECIFIC RESTRICTIONS AND REQUIREMENTS****(INCLUDING RDCS REQUIREMENTS)**

The following restriction and requirements apply to the Development proposed in the RDCS applications MC-14-17 and MC-15-14 Monterey-UHC and shall apply to that portion of the Property included in the said phases of the development on the Property. The following chart describes the applicable reference in the Morgan Hill Municipal Code to the requirement, a description of the commitments specific to the Project, the requirement timing of the implementation and the total estimated costs of improvement or applicable fee commitment. These commitments are IN ADDITION to any mitigation requirements pursuant to CEQA, impact fees, in-lieu fees or other requirements pursuant to federal or state laws, or the Morgan Hill Municipal Code (See Section 2.03 of the Agreement)

*Contribution estimates may require augmentation for the completion of improvements. Impact fees are subject to the provisions of Section 2.03 (b) of this Agreement.

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
	Public Schools			
B.1	Developer Fees	\$825 per unit	Prior to issuance of building permits for each unit.	\$32,175
B.4	Off-site pedestrian safety improvements			N/A
	Open Space			
B.1.a	Open space buffer (freeway/arterials)			N/A
B.1.b	Common useable open space	Private usable open space is provided with tot lot and picnic area with shade trellis.	Shall provide on improvement plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.1.c	Convenient access to amenities			N/A
B.1.d	Accessibility to parks/open space			N/A
B.1.e	Access to existing/proposed parks outside project boundaries			N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1.f	Private usable open space for 75% or 100% (single-family attached projects)			N/A
B.1.g	Dual purpose open space (storm water detention)			N/A
B.1.h	Historical sites and landmarks			N/A
B.3	Shared open space (downtown vertical mixed projects)			N/A
B.4.a	TDC for projects (<20% slope)			N/A
B.4.b	TDC for projects (>25 units)			N/A
B.4.c	TDC for projects zoned R-2 or R-3	Affordable project. Applicant commits to purchase double TDC's or in lieu of a TDC commitment, applicant agrees to pay double the Open Space fee.	Prior to the final building inspection for each unit.	\$13,880 per unit = \$541,320
	Orderly and Contiguous Development			
B.2	Fills in existing utility lines			N/A
	Public Facilities			
B.2.a	Grids water			N/A
B.2.b	Drainage concept consistent with City's storm drain system			N/A
B.2.c	Storm drain lines constructed within paved area of the street	Project storm drain lines that are to be maintained by the city will be constructed entirely within the paved area of the street, or in a location acceptable to the Director of Public Works.	Shall provide on improvement plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.2.d	No on-site detention pond or open space retention areas required			N/A
B.2.e	Provides municipal water well			N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.2.f	Excess public improvements	The project will provide public improvements at a cost of \$4,400 per unit. Public improvements shall be determined and approved by Public Works.	Shall provide on improvement plans prior to approval and complete prior to the final building inspection for the final unit.	\$171,600
B.2.g	Contribution to RDCS Capital Improvements fund	Applicant will contribute \$1,100 per unit to the RDCS Capital Improvements fund.	Prior to the final building inspection for each unit.	\$42,900
	Parks and Paths			
B.1	Park in-lieu fee (<50 units)	The project shall pay an in-lieu fee consistent with the requirements contained in Chapter 17.28 of the Municipal Code.	Prior to the final building inspection for each unit.	N/A
B.2	On-site recreational amenities	Project shall provide: a cabana or shade trellis area; a recreation hall/community room; and a tot lot with a minimum of three age appropriate activities.	Shall be shown on building permit plans and complete prior to the final building inspection for the final unit.	N/A
B.3	Bicycle/equestrian/pedestrian paths			N/A
B.4	Pedestrian connections (Downtown)			N/A
B.5	On-site/off-site neighborhood or public park (<150 units)			N/A
B.6	Additional park fees (in-lieu fee)			N/A
B.7	Additional park fees (in-lieu fee) for projects (>50 units)			N/A
B.8	Dedication of land			N/A
	Housing Needs			
B.1	15% Granny units or R-2 projects 10%-25% single family units			N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.2.a	Standard Housing Fee			N/A
B.2.b	Double Housing Fee			N/A
B.2.c	Double Housing Fee and 20% dwellings with 2 nd dwellings			N/A
B.3.a	Affordable Units for Sale or Rent	Meets criteria as a 100% affordable development. 17.95% of the units will be at Extremely Low Income. 61.55% of the units will be at Very Low Income, and 20.50% will be at low income	Shall be shown on the building permit plans and shall be verified prior to the final building inspection for the final unit.	N/A
B.3.b	Downtown overall affordability			N/A
B.3.c	Multi-family rental project (>150 units)			N/A
B.4	Joint Venture BMR units			N/A
B.5	Multi-family rental with 50% enclosed garages			N/A
	Housing Types			
B.1.a	Diversity of housing	100% rental		N/A
B.1.b	10% detached units (R-2), 10% attached units (R-1), 10% ownership (R-3)			N/A
B.2.a	Economic diversity	17.95% of the units will be at Extremely Low Income. 61.55% of the units will be at Very Low Income, and 20.50% will be at low income	Shall be shown on the building permit plans and shall be verified prior to the final building inspection for the final unit.	N/A
B.2.b	10% units affordable (>150 units)			N/A
B.3.a	Housing variation- single-family			N/A
B.3.b	Housing variation- Multi-family			N/A
B.3.c	Housing variation-Vertical mixed use			N/A
B.4	25% visitability accessible units	Ground floor - 11 units or 28% accessible. Upper floors are serviced by	Shall be shown on the building permit plans and shall be verified	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		an elevator to equal 100% of units accessible.	prior to the final building inspection for the final unit.	
	Quality of Construction Standards			
B.1.a	OSB/Plywood wrap	Yes		N/A
B.1.b	Foundations	Yes		N/A
B.1.c	Wallboard	Yes		N/A
B.1.d	Electrical raceway	Yes		N/A
B.1.e	Storm doors	No		N/A
B.1.f	90% high efficiency fan forced heating	No		N/A
B.1.g	Zoned heating and air conditioning	No		N/A
B.1.h	Multiple efficiency improvements	Yes		N/A
	Lot Layout and Orientation			
B.1.a	Complies with Zone District	Project will not require any deviations from the lot size and dimensions and setback standards of the base zoning district. The project is considered an affordable housing project under state law and can request a concession to deviate from the City's development standards. The project requests concessions for the front setback and the height requirement.	Shall be shown on the building permit plans and shall be verified prior to the final building inspection for the final unit.	N/A
B.1.b	Excess side yard setbacks	The zoning is CC-R. The minimum setback has been provided. Project does not create deep narrow lots and provides side yard setback of 30 feet, minimum required is 5 feet in CC-R	Shall be shown on the building permit plans and shall be verified prior to the final building inspection for the final unit.	NA
B.1.c	Separation of buildings	Building provides side yard setback in	Shall be shown on the building	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		excess of 20% (5 ft min, providing 30 ft)	permit plans and shall be verified prior to the final building inspection for the final unit.	
B.1.d	Avoids sound walls	Project has been designed without a sound wall along an arterial. [Monterey Road]	Shall be shown on the building permit plans and shall be verified prior to the final building inspection for the final unit.	N/A
B.1.e	Avoids driveways greater than 150 feet	Driveways less than 150, project assessable from Monterey Road and Bisceglia Avenue		N/A
B.1.f	Transition of lot sizes	Buildings in proper scale with existing improvements and similar zoning/product proposed along Monterey Road Corridor		N/A
B.1.g	Above average lot layouts	Request above average for one point		N/A
B.1.h	Project design	Single building, no repeat factor	Shall be shown on the building permit plans and shall be verified prior to the final building inspection for the final unit.	N/A
B.2.a	Continuous park/open space	Tot lot in open space area conveniently located within development	Shall be shown on building permit plans and complete prior to the final building inspection for the final unit.	N/A
B.2.b	Enhance neighborhood security	The building has four access points, each access point is visible from Public Right of Way or onsite parking lot.		N/A
B.3.a	Front setback variation			N/A
B.3.b	Rear setback variation			N/A
B.3.c	Lot width variation			N/A
B.3.d	Garage placement variation (single family and	Parking lot and carport are behind building and not seen from the Public		N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
	multi-family)	ROW (Monterey Road and Bisceglia Avenue)		
B.3.e	Garage placement variation (multi-family)	Building articulated from Public ROW (Monterey Road and Bisceglia Avenue)		N/A
B.3.f	Building articulation (multi-family)			N/A
B.3.g	Unit entries			N/A
B.3.h	Garage door width			N/A
B.4	Noise reduction	Project to install sound insulation board, AC units to be on the roof	Shall be shown on the building permit plans and shall be verified prior to the final building inspection for the final unit.	N/A
B.5	Second story articulation (Downtown/multi-family)	Multi-family project. Second story has balconies and 3 feet articulation or more	Shall be shown on building permit plans and complete prior to the final building inspection for the final unit.	N/A
B.6	Building to Building variation (Downtown/multi-family)	Building will have siding, decorative screening, and moldings around windows on all four sides	Shall be shown on building permit plans and complete prior to the final building inspection for the final unit.	N/A
B.7	Shared parking (Downtown/multi-family)	The rear parking lots not visible from Public Right of Way (Monterey Road and Bisceglia Avenue)		N/A
	Circulation Efficiency			
B.1.a	Future street extensions			N/A
B.1.b	Future drive aisle extensions			N/A
B.1.c	Eliminates stub or substandard streets			N/A
B.1.d	Avoids short blocks			N/A
B.1.e	Backout distance			N/A
B.2.a	Two access points			N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.2.b	Avoids long cul-de-sacs			N/A
B.2.c	Detached sidewalks	Project proposes detached sidewalks along Bisceglia Avenue	Shall provide on improvement plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.2.d	Facilitates emergency response	Project configuration will provide for adequate circulation for emergency response and police patrol.	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.2.e	Provides public parking in Downtown			N/A
B.3.a	Converts lighting			N/A
B.3.b	Converts lighting (Downtown and R-3)	Project zoned CC-R, with density of R3, will convert two lights per unit	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	78 lights converted
B.4	General Community Benefit	Project will contribute to improve existing streets \$2,200/unit	Prior to the final building inspection for each unit.	\$85,800
B.5.a	Mid-block pedestrian connections (Downtown)			N/A
B.5.b	Project entries (Downtown)			N/A
B.5.c	Closes gaps (Downtown)			N/A
B.5.d	Bicycle parking (Downtown)			N/A
B.6	Lighted circulation map (R-3 or mixed use)	Will provide detailed and lighted circulation map per criterion	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
	Safety and Security			
B.1.a	Fire proof safe	Project will install fire a proof safe, bolted to the floor in each unit	Prior to the final building inspection for each unit.	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1.b	First aid kit	Will provide first aid kit and poison control in kitchen of each unit	Prior to the final building inspection for each unit.	N/A
B.1.c	Fire protection device			N/A
B.1.d	Outdoor lighting	Will provide outdoor lighting on all units to meet all Police Department specifications	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.1.e	Pedestrian scale lighting (Multi-family)	Applicant commits to installing pedestrian scaled lighting along walkways and in common areas. Applicant will not utilize bollard style lighting.	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.1.f	Illuminated address numbers	Applicant commits to installing lighted address numbers on each building and illuminated unit numbers. Applicant commits to installing painted reflective curb numbers where possible.	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.1.g	Intrusion protection device			
B.1.h	Parks with lighting	Will provide lighting at 1.5 foot candles at common areas on site	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.1.i	Covered bicycle parking (Multi-family)			
B.1.j	Security Cameras	Applicant commits to installing security cameras to monitor common areas such as laundry, parking and recreational areas/halls. Applicant commits to connecting security camera to DVR to maintain recordings for a minimum of 7 days.	Prior to the final building inspection for the final unit.	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1.k	Illuminated pathways/walkways	All pathways will be illuminated to 1 candle foot	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.2	Crime Prevention through Environmental Design (CPTED)	Project designed to provide natural surveillance. Open space, courtyards are visible by surrounding and upstairs units. Managers office located next to community room and laundry room.		N/A
B.3	Lockable hardware			N/A
B.4	Central Monitoring	Project will install fire alarm system without central monitoring and no intrusion system	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.5	Neighborhood emergency preparedness	Applicant commits to establishing a Neighborhood Preparedness Program administered through the Property Management Company. Applicant will direct property manager to contact Office of Emergency Services within 180 days of first five homeowners taking occupancy to schedule a resident meeting.	Shall be verified prior to the final building inspection for each unit.	N/A
B.6	Neighborhood "Watch Program"	Property Management to enact neighborhood watch program per criterion	Shall be verified prior to the final inspection for each unit.	N/A
	Landscaping, Screening and Color			
B.1.a	Twenty-four inch box trees	Project will provide one 24" box tree for every 10 trees provided in the landscaped area	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1.b	Planting around off-street parking			N/A
B.1.c	Varied front yard landscaping	Project will provide varied landscaping installed along the project frontage in front of buildings and in the interior areas.	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.1.d	Street Tree Master Plan			N/A
B.2.a	Pervious hardscape cover	The project has committed to B.2.a by installing pervious hardscape (minimum 15% of the landscape area).	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.2.b	Low to moderate water use	Low to moderate water use plants will be using in landscaped areas	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.2.c	Existing water supply (off-site irrigation well)			N/A
B.3	Overall Landscaping			N/A
B.4	Underground retention	Project proposes pervious pavement in parking stalls to reduce storm water runoff. The soil is class B type (highly permeable) per SCVURPPP soil classification	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.5	Building color (Downtown)			N/A
	Natural and Environmental Features			
B.1	Site Grading			N/A
B.2.a	Solar Water heating	Yes	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.2.b	Solar photovoltaic panels (50%			N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.2.c	Solar photovoltaic panels (60%)			N/A
B.2.d	Solar photovoltaic panels (70%)			N/A
B.2.e	Solar photovoltaic panels (80%)			N/A
B.2.f	Solar photovoltaic panels for club house	Yes	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.2.g	Exceeds Title 24	5%	Shall be shown on building permit plans prior to approval and verified with final building inspection.	N/A
B.2.h	Build It Green	Yes	Shall be shown on building permit plans prior to approval and verified with final building inspection.	N/A
B.2.i	220 Volt outlet			N/A
B.2.j.1	Community pool solar water heater			N/A
B.2.j.2	Community pool salt-chlorinator			N/A
	Livable Communities			
B.2.a	Bus shelters, benches, street sections	Project to install bus pad at the existing bus stop per VTAs recommendation. Applicant will provide as required by VTA to fullest extent of VTA request to yield maximum points.	Shall be shown on improvement plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.2.b	School bus benches and shelter			N/A
B.4	Vertical Mixes Use			N/A
B.5	Builds to Planned Density	Project proposes to build above the density range using the density bonus provisions for affordable housing.		N/A
B.6	Architectural variation	All units have a porch or balconies.	Shall be shown on building permit	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		Provides different roof elements - dormer and gable roof ends are represented in the building architecture. Building is well articulated both vertically and horizontally to break up the massing. The shingle style architecture is consistent with a number of adjacent homes to the east. Building conforms to R3 product required per base zoning on this site. Project provides a consistent level of architectural relief and third dimensional design elements with architectural detailing, finishes, and colors which are consistent on all sides of the building. Building utilize balconies, covered porches, and dormer elements on front and rear elevations.	plans prior to approval and complete prior to the final building inspection for the final unit.	
B.7	Maximizes privacy	Project provides privacy such that windows do not face porch, patio, or balcony of adjacent unit.	Shall be shown on building permit plans prior to approval and complete prior to the final building inspection for the final unit.	N/A
B.8	Washer and dryers (Multi-family)			N/A



CITY COUNCIL STAFF REPORT

MEETING DATE: March 7, 2018

PREPARED BY: Angie Gonzalez, Council Services Assistant
APPROVED BY: City Manager

ADOPT ORDINANCE ADDING CHAPTER 8.49 (FIRE ALARM REGULATIONS) TO TITLE 8 (HEALTH AND SAFETY) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL TO REQUIRE FINES FOR NUISANCE AND EXCESSIVE FALSE FIRE ALARMS

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2271, 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
Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

2018 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

On February 21, 2018, the City Council introduced Ordinance No. 2271 New Series, by the following roll call vote: AYES: Carr, Constantine, Robinett Jachimowicz, Spring, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

The purpose of this ordinance is to reduce the number of false alarms to which firefighters must respond. One out of every ten incidents handled by the Morgan Hill Fire Department involves a false fire alarm or an alarm system malfunction. These unnecessary responses pose a severe burden in terms of personnel hours, fuel use, equipment wear and tear, risk of injury, and in extreme cases, even death. Typically, repetitive false alarms are an indication of neglected maintenance, poor system design, or faulty installation.

COMMUNITY ENGAGEMENT: Inform

This staff report will serve to inform the public of the problem and the ordinance.

ALTERNATIVE ACTIONS:

Not Applicable

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

In May 2009, Council approved revisions to the False Alarm ordinance (8.48) to encourage more responsible use of alarm systems and to reduce the number of false

alarms to which police officers must respond. This was accomplished by implementing an alarm registration process, accurately tracking false alarms instances and assessing false alarm fees.

In August 2014, Council authorized an agreement with PMAM for alarm registration and fee service. PMAM was selected for several reasons, including their proactive personal contact with alarm holders. The Morgan Hill Police Department has utilized PMAM for this service since October 2014.

FISCAL AND RESOURCE IMPACT:

1. This ordinance and the augmentation of an existing contract will not result in new expenditures.
2. PMAM retains a percentage of revenue collected.
3. Staff projects revenues from this ordinance at \$16,400 annually for the fire department. For remainder of the FY17-18, we anticipate the revenue generated to be \$5,500. These revenues will be deposited into the General Fund (010.37832).

CEQA (California Environmental Quality Act):

Not a Project

This ordinance is an administrative activity of government that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. 2271 Fire Alarm Regulations

ORDINANCE NO. 2271, NEW SERIES**AN ORDINANCE OF THE CITY OF MORGAN HILL ADDING
CHAPTER 8.49 (FIRE ALARM REGULATIONS) TO TITLE 8
(HEALTH AND SAFETY) OF THE MUNICIPAL CODE OF THE
CITY OF MORGAN HILL TO REQUIRE FINES FOR NUISANCE
AND EXCESSIVE FALSE FIRE ALARMS**

WHEREAS, the National Fire Protection Association estimates that United States fire departments respond to an estimated 2,177,000 false alarms or 45 false alarms for every 10 structure fires every year; and

WHEREAS, responses due to unintentional activations have generally been increasing since 1990; and

WHEREAS, these unnecessary responses pose a severe burden for local fire departments in terms of personnel, fuel use, equipment wear and tear, risk of injury, and in extreme cases, even death; and

WHEREAS, in the past ten years, 29 firefighter fatalities resulted from responses to false calls; and

WHEREAS, from 2013-2017, one out of every ten incidents handled by the Morgan Hill Fire Department involved a false alarm or an alarm system malfunction generated by a fire alarm system; and

WHEREAS, the average time spent on each false alarm is approximately one hour, which requires at least one engine company and 4 firefighters to respond; and

WHEREAS, responding to false alarms poses an unnecessary risk of harm to public safety and bystanders when firefighters respond to false alarms; and

WHEREAS, the City of Morgan Hill finds that a high incidence of False Fire Alarms and/or Nuisance Fire Alarms causes a significant misuse of the manpower and resources of the fire department by causing the dispatch of emergency units to the scene of a Nuisance Fire Alarm or False Fire Alarm, which renders them out of service and unavailable to respond to legitimate emergency situations; and,

WHEREAS, the City of Morgan Hill further finds that the continued high incidence of False Fire Alarms and/or Nuisance Fire Alarms are a threat to the health, safety and welfare of the citizens of the City of Morgan Hill; and,

WHEREAS, Section 7592.8 of the California Business and Professions Code allows cities to act within the exercise of police power to enact regulations governing false alarm activations and responses; and

WHEREAS, Article XI, Section 7 of the California Constitution provides that a city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and

WHEREAS, the regulation of alarm systems within the City is in the best interest of the public health, safety, and welfare; and

WHEREAS, the City Council of the City of Morgan Hill has determined that it is in the public interest and welfare to attach fines to nuisance and excessive false fire alarm calls in an effort to reduce the number of false alarms within the City to preserve fire personnel time to respond to real threats of health and safety.

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 8.49 (Fire Alarm Regulations) is hereby added to Title 9 (Health and Safety) of the Morgan Hill Municipal Code as follows:

- 8.49.010 Purpose.**
- 8.49.020 Definitions.**
- 8.49.030 Administration; Increases in Fees; Annual Evaluation.**
- 8.49.040 Notification of Fire Alarm System.**
- 8.49.050 Monitored Fire Alarm System.**
- 8.49.060 System Certification.**
- 8.49.070 Inspection, Testing and Maintenance.**
- 8.49.080 Duties of Fire Alarm Business.**
- 8.49.090 Fire Alarm Activation; Response.**
- 8.49.100 System Performance Review**
- 8.49.110 Nuisance Fire Alarms**
- 8.49.120 Enforcement**
- 8.49.130 Remedies and Penalties**
- 8.49.140 Appeals**
- 8.49.150 Reconnection of Fire Alarm System**
- 8.49.160 Confidentiality**
- 8.49.170 Government Immunity**
- 8.49.180 Severability**

Section 8.49.010 - Purpose.

- A. The purpose of this Chapter is to reduce the dangers and inefficiencies associated with False Fire Alarms and Nuisance Fire Alarms, and to encourage Alarm Owners/Entities and Fire Alarm Businesses to properly use and maintain the operational effectiveness of Fire Alarm

Systems in order to improve the reliability of Fire Alarm Systems and reduce or eliminate False Fire Alarms and Nuisance Fire Alarms.

- B. This Chapter governs Fire Alarm Systems intended to summon Fire Department personnel, requires assessment of Fines for excessive False Fire Alarms and Nuisance Fire Alarms, provides for education of Alarm Owners, provides for the severability of the parts hereof if declared invalid, and provides an effective date.

8.49.020 – Definitions.

As used in this Chapter, the following words and terms shall have the following meanings:

- A. **Adopted Code(s)** means the California Fire Code including all indices and appendices, errata and amendments thereto, as adopted by the City of Morgan Hill and that are enforced by the City of Morgan Hill Fire Department.
- B. **Alarm Initiating Device** means a device that is designed to respond either manually or automatically to smoke, fire, or activation of a fire suppression system.
- C. **Alarm Owner** means any person who owns, occupies, or controls the Premises in which a Fire Alarm System is installed.
- D. **Alarm Response Administrator** means the person or persons designated by the Fire Department to administer the provisions of this Chapter.
- E. **Alarm Response Manager (ARM)** means an individual capable of reaching and having access to the Premises, the code to the Fire Alarm System, the authority to approve repairs to the Fire Alarm System, and is the individual designated by a Fire Alarm Business to handle alarm issues for the business, or designated by the Alarm Owner to handle alarm issues for the Premises, and act as the primary point of contact for the Morgan Hill Fire Department's Alarm Response Administrator.
- F. **Building Division** means the Building Division within the Morgan Hill Community Development Department.
- G. **Business License** means a business license issued by the City of Morgan Hill to a Fire Alarm Business to conduct business in the City of Morgan Hill.
- H. **Certificate of Occupancy** means no building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the building official has issued a certificate of occupancy. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the city code or of other ordinances of the City of Morgan Hill.
- I. **Cancellation** means the termination of a Fire Department response to a Premises after a Fire Alarm Dispatch Request is made, but prior to the arrival of the Fire Department.
- J. **Conversion of Alarm Owner** means the transaction or process by which one Fire Alarm Business begins the servicing or monitoring of a previously unmonitored Fire Alarm System or a Fire Alarm System that was previously serviced or monitored by another Fire Alarm business

- K. **False Fire Alarm** means the activation of any Fire Alarm System which results in a response by the fire department and which is caused by the negligence or intentional misuse of the Fire Alarm System by the Alarm Owner, its employees, or agents; or any other activation of a Fire Alarm System not caused by heat, smoke or fire, exclusive of a Nuisance Fire Alarm.
- L. **Fee** means the assessment of a monetary charge, including fines, payable to the City of Morgan Hill authorized pursuant to this Chapter, to defray the expenses of responding to a False Fire Alarm or Nuisance Fire Alarm and the administration of this Chapter. "Fees" include any type or class of fee including late fees.
- M. **Fee Schedule** means the Fee schedule adopted by City Council applicable to this Chapter.
- N. **Fine** includes the fine payable to the city pursuant to Title 1 for violation of this Chapter, unless otherwise specified in this Chapter.
- O. **Fire Alarm Dispatch Request** means a notification to the Fire department that an alarm, either manual or automatic, has been activated at a Premises.
- P. **Fire Alarm Business** means any individual, partnership, corporation or other entity that is appropriately licensed by the California State Fire Marshal's Office that installs, causes to be installed, permits to be installed, alters, maintains, repairs, replaces, services, or monitors any Fire Alarm System.
- Q. **Fire Alarm System** means a system or portion of a combination system consisting of components and circuits arranged to monitor and/or exterior annunciate the status of a fire alarm or supervisory signal-initiating devices and to initiate the appropriate Fire Alarm Dispatch Request.
- R. **Fire Department** means the City of Morgan Hill Fire Department.
- S. **Fire Watch** means an Alarm Response Administrator or designee approved by the Morgan Hill Fire Department assigned to the Premises for the purpose of protecting the occupants from fire or similar emergencies. A Fire Watch may involve at least some special action beyond normal staffing, such as assigning a competent legal adult to walk the Premises, who has been specially trained in fire prevention, the use of fire extinguishers, notifying the Fire Department, sounding the Fire Alarm System located on the Premises, and understanding the particular fire safety situation.
- T. **Monitored System** means the process by which a Fire Alarm Business receives signals from a Fire Alarm System and notifies the Morgan Hill Fire Department.
- U. **Nuisance Fire Alarm** means the activation of any Fire Alarm System, which results in a response by the Fire Department, caused by mechanical failure, malfunction, improper installation, lack of proper maintenance, deliberate activation, or any other response for which the Fire Department personnel are unable to determine the apparent cause of the alarm activation.
- V. **Premises** means any private or public residential, commercial, or industrial land and/or building(s) located within the city, wherein a Fire Alarm System is installed.
- W. **Proprietor Alarm** means an alarm which is not serviced by a Fire Alarm Business.

- X. **Qualified Fire Alarm Technician** means any person who is licensed by the State of California Fire Marshal's Office to inspect, install, repair, or perform maintenance on Fire Alarm Systems.

8.49.030 - Administration; Increases in Fees; Annual Evaluation.

- A. Responsibility for administration of this section is vested with the Fire Chief.
- B. The Fire Chief shall designate an Alarm Response Administrator to carry out the duties and functions described in this section.
- C. The amount of the Fees and Fines shall be specified in the City Fee Schedule adopted by City Council. The Fees and Fines set forth in this Chapter may only be increased by a duly-adopted resolution of the City Council.
- D. The Alarm Response Administrator shall conduct an annual evaluation and analysis of the effectiveness of this Chapter and identify and implement system improvements as warranted.

8.49.040 - Notification of Fire Alarm System.

- A. Every Fire Alarm Business shall notify the Alarm Response Administrator of the existence of a Fire Alarm System prior to the Fire Alarm System being put into operation. It shall be the responsibility of the installing Fire Alarm Business to provide the Alarm Owner with notice of the existence of this Chapter, and a copy of the Fire Alarm System operation instructions in accordance with Adopted Codes, and the manufacturer's instructions.
- B. The Alarm Owner shall be required to notify the Alarm Response Administrator whenever there is a change in the Fire Alarm Business responsible for maintaining, servicing, and/or monitoring the Fire Alarm System.
- C. When any of the information above has changed, it shall be reported to the Alarm Response Administrator by the Alarm Owner within fifteen (15) days of the Alarm Owner becoming aware of such change; failure to comply shall result in an assessment against the Alarm Owner of a Fine for a registration violation.

8.49.050 - Monitored Fire Alarm System.

- A. All Premises that are required to have a Fire Alarm System shall have the Fire Alarm System continuously monitored by a Fire Alarm Business that holds a valid license issued by the California State Fire Marshal's Office. Violation of this section shall result in an assessment against the Alarm Owner of a Fine for failure to have the Fire Alarm System continuously monitored. An Alarm Owner ordered by the Alarm Response Administrator to disconnect or deactivate their Fire Alarm System are exempted from this section.
- B. The Fire Alarm Business shall report within five (5) days to the Alarm Response Administrator any commercial Fire Alarm System Premises that discontinues or disconnects their monitoring service for any reason.

8.49.060 - System Certification.

All newly installed or re-certified commercial Fire Alarm Systems shall be approved by the Alarm Response Administrator. The certification shall indicate that the Fire Alarm System is in

compliance with Adopted Codes. The certification shall be signed by a Qualified Fire Alarm Technician. A copy of the installation certification shall be provided to the Alarm Response Administrator after the completion of the testing of the Fire Alarm System.

8.49.070 - Inspection, Testing and Maintenance.

- A. The Alarm Owner shall ensure that all Fire Alarm Systems are inspected and tested at least once per year in accordance with Adopted Codes.
- B. The Alarm Owner shall ensure that all Fire Alarm Systems are periodically maintained per manufacturer specifications and Adopted Codes.
- C. All Fire Alarm Systems shall be inspected, tested, and maintained by a licensed Fire Alarm Business.

8.49.080 - Duties of Fire Alarm Business.

- A. Each Fire Alarm Business must designate one individual as the Alarm Response Manager (ARM) for the business. The individual designated as the ARM must be knowledgeable of the provisions of this section, as well as have the knowledge and authority to deal with False Fire Alarm issues and respond to requests from the Alarm Response Administrator. The name, contact number, and email address of the ARM must be provided to the Alarm Response Administrator.
- B. Report a fire alarm signal by using telephone numbers designated by the Alarm Response Administrator.
- C. After an Fire Alarm Dispatch Request, promptly advise the Fire Department if the Fire Alarm Business knows that the Alarm Owner or an ARM is responding to the Premises;
- D. Each Fire Alarm Business that monitors a Fire Alarm System must maintain, for a period of at least one year after the date of a Fire Alarm Dispatch Request, all records relating to the Fire Alarm Dispatch Request. Records must include the name, address and telephone number of the Alarm Owner, each Fire Alarm System zone activated, and the time of the Fire Alarm Dispatch Request. The Alarm Response Administrator may request copies of such records for any individual Alarm Owner. If the request is made within 60 days after the Fire Alarm Dispatch Request, the Fire Alarm Business shall furnish requested records within three (3) business days after receiving the request. If the records are requested between sixty (60) days and one (1) year after the Fire Alarm Dispatch Request, the Fire Alarm Business shall furnish the requested records within thirty (30) days after receiving the request.
- E. Each Fire Alarm Business shall, upon request, immediately provide the Fire Department with the names and phone numbers of the Alarm Owner's emergency contacts at the time of each Fire Alarm Dispatch Request.
- F. Existing Accounts. Within thirty (30) days prior to the first day of January of each year, a Fire Alarm Business shall provide the Alarm Response Administrator with a complete list of active Alarm Owners whose Premises are located within the City, to assist the Alarm Response Administrator with creating and maintaining tracking data. The Alarm Owner information

must be provided in a format acceptable to the Alarm Response Administrator, which includes the following:

- 1) Alarm Owner name
- 2) Alarm Owner billing address
- 3) Alarm Owner telephone number
- 4) Premises address
- 5) Fire Alarm Business State of California license number
- 6) The monitoring Fire Alarm Business State of California license number, if different

G. Conversion of Alarm Owners. A Fire Alarm Business that converts the servicing of any Fire Alarm System account from another business shall notify the Alarm Response Administrator of such conversion and shall provide to the Alarm Response Administrator, within thirty (30) days from the date of conversion, a list of the converted accounts, in a format acceptable to the Alarm Response Administrator, which includes the following:

- 1) Alarm Owner name
- 2) Alarm Owner billing address
- 3) Alarm Owner telephone number
- 4) Premise address
- 5) Fire Alarm Business State of California license number
- 6) The monitoring Fire Alarm Business State of California license number, if different.

H. It is unlawful for any Fire Alarm Business to fail to comply with any applicable requirement within this Section 8.49.080.

8.49.090 - Fire Alarm Activation; Response.

- A. The Alarm Owner shall be responsible for the activation of a Fire Alarm System.
- B. A response to the activation of a Fire Alarm System shall result when any officer or member of the Fire Department is dispatched to the Premises where the Fire Alarm System has been activated.
- C. The Alarm Owner shall be responsible for the Fire Alarm Business to report a fire alarm signal by using telephone numbers designated by the Alarm Response Administrator.
- D. The Alarm Owner shall be responsible for the Fire Alarm Business to communicate a fire alarm to the Fire Department in a manner and form determined by the Alarm Response Administrator.

8.49.100 - System Performance Review.

The Alarm Response Administrator may require that a system performance review be held with an Alarm Owner and the Fire Alarm Business responsible for repairing or monitoring of the Fire Alarm System to review the circumstances of each False or Nuisance Fire Alarm. The review meeting may be held in person or through a conference telephone call, at the Alarm Response

Administrator's discretion. It is unlawful for an Alarm Owner to fail to participate in a scheduled system performance review.

8.49.110 - Nuisance Fire Alarms.

The Fire Department may declare a Fire Alarm System at a specific Premises to be a nuisance if such Fire Alarm System activates excessive False Fire Alarms. The City Council hereby finds and determines that three (3) False Fire Alarms within a 365-day period is excessive and thereby constitutes a public nuisance. The Fire Department may not consider any False Fire Alarm in this computation of nuisance alarms if such was generated by earthquakes, high intensity winds, or unusual acts of nature. Nuisance alarms shall be those that are the result of the negligence of the Alarm Owner, the agents or employees of the Alarm Owner, or a defect in the Fire Alarm System.

8.49.120 – Enforcement.

- A. It is unlawful for any person to violate or cause or permit to be violated any provision of this Chapter.
- B. Penalties, fines, and fees shall not apply to any newly installed Fire Alarm System for a period of forty-five days (45) from the date of installation, but shall apply from and after the expiration of the initial forty-five-day (45) period following installation.
- C. A False Fire Alarm or Nuisance Fire Alarm Response Fee or Fine shall be paid to the City by the Alarm Owner upon the occurrence of four (4), and any subsequent, False or Nuisance Fire Alarms received from any one source or from any one Fire Alarm System within a 365-day Period.
- D. The Fire Alarm Business or fire sprinkler company will be subject to the Fee, Fine and penalties if the firefighter responding to the False Fire Alarm determines that the Fire Alarm Business or fire sprinkler company directly caused the False Fire Alarm. In this situation, the False Fire Alarm will not be counted against the Alarm Owner.

8.49.130 - Remedies and Penalties.

- A. The Alarm Response Administrator has the authority to order a Fire Watch in accordance with Adopted Codes, due to repetitive Nuisance Fire Alarms and/or False Fire Alarms, until corrective action is taken.
- B. Each building affected because the signal from the Fire Alarm System has been disconnected or deactivated shall be required to establish a Fire Watch until the Fire Alarm System has been returned to service. Duties of the Fire Watch may include notifying the fire department and building occupants of an emergency, preventing a fire from occurring, or extinguishing small fires.
- C. The Alarm Owner is responsible for paying all costs associated with establishing a Fire Watch.
- D. The Alarm Response Administrator has the authority to request from the Building Division a temporarily suspension of the Certificate of Occupancy of the Premises until all outstanding repairs are made on the Fire Alarm System or if the Fire Watch is not maintained to the satisfaction of the Alarm Response Administrator.

- E. The Alarm Response Administrator shall have the authority to direct the Alarm Owner or Alarm Response Manager of the Premises to silence an activated Fire Alarm System, have corrective action taken and thereafter reset the Fire Alarm System.
- F. Anyone convicted of falsifying reports as required under this Chapter is subject to maximum penalty as established by the City of Morgan Hill or as otherwise provided under State law, in addition to administrative fines.

8.49.140 – Appeals.

If the Fire Department assesses a Fee or Fine, the Fire Department shall send written notice of the action and a statement of the right to an appeal to the affected Alarm Owner or Fire Alarm Business.

8.49.150 - Reconnection of Fire Alarm System.

- A. A Fire Alarm System may be reactivated upon a finding by the Alarm Response Administrator that the Alarm Owner of the Premises has taken corrective action to remedy the cause of the False Fire Alarms or Nuisance Fire Alarms.
- B. In making a request for such a reactivation, the Alarm Owner shall have the burden of showing what corrective action has been taken.
- C. The Alarm Response Administrator shall have the right to inspect the Fire Alarm System and test it prior to approving a new order to reconnect or reactivate the Fire Alarm System.
- D. A reconnection Fee shall be assessed to the Alarm Owner before any reconnection of a Fire Alarm System may be made.
- E. The Alarm Response Administrator shall not approve a new order to reconnect or reactivate if the Alarm Owner has failed to pay any Fee or Fine pursuant to this Chapter.

8.49.160 - Confidentiality.

In the interest of public safety, all information pertaining to an Alarm Owner, contained in and gathered through, the administration of this Chapter shall be held in confidence by all employees of the Fire Department, the city, or their representatives, provided that the city may disclose any information required to be disclosed by state or federal law or by court order after a reasonable notice to the Alarm Owner.

8.49.170 - Government Immunity.

Certification of a Fire Alarm System is not intended to, nor will it, create a contract, duty or obligation, either expressed or implied, of Fire Department response. Any and all liability and/or consequential damage resulting from the failure to respond to a Fire Alarm Dispatch Request is hereby disclaimed and governmental immunity as provided by law is retained. When installing a Fire Alarm System, the Alarm Owner acknowledges that fire department response may be based on factors such as: availability of fire department units, priority of calls, weather conditions, traffic conditions, emergency conditions, staffing levels, prior alarm history and administrative actions. The City of Morgan Hill, its officers, employees and agents shall not assume any duty or responsibility for the installation, maintenance, operation, repair or effectiveness of any privately

or publicly owned Fire Alarm System. All such duties or responsibilities are solely those of the Alarm Owner.

8.49.180 - Severability

In the event any subsection, sentence, clause or phrase incorporated in this chapter is, for any reason, held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the chapter. The city council declares that it would have adopted the ordinance codified in this chapter and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Section 2. Effective Date; Posting. This ordinance shall take effect on April 7, 2018. The City Clerk is hereby directed to publish this ordinance or summary thereof pursuant to §36933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 21ST DAY OF FEBRUARY 2018, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 7TH DAY OF MARCH 2018, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

AYES:	COUNCIL MEMBERS:	Larry Carr, Rich Constantine, Rene Spring, Caitlin Robinett Jachimowicz, Steve Tate
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

APPROVED:

STEVE TATE, Mayor

ATTEST:

IRMA TORREZ, City Clerk

DATE: _____

Effective April 7, 2018

❧ 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. 2271, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the ____ day of ____ 2018.

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

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: March 7, 2018

PREPARED BY: Angie Gonzalez, Council Services Assistant
APPROVED BY: City Manager

ADOPT ORDINANCE AMENDING CHAPTER 8.48 (BURGLARY AND ROBBERY ALARM SYSTEM REGULATIONS) OF TITLE 8 (HEALTH AND SAFETY) OF THE MORGAN HILL MUNICIPAL CODE TO CLARIFY CERTAIN TERMS AND RESPONSIBILITIES OF ALARM SYSTEM OWNERS AND OPERATORS, DELETE REGISTRATION REQUIREMENTS, AND TO UPDATE ENFORCEMENT PROCEDURES

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2272, 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
Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

2018 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

On February 21, 2018, the City Council introduced Ordinance No. 2272 New Series, by the following roll call vote: AYES: Carr, Constantine, Robinett Jachimowicz, Spring, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

The purpose of the revision of this ordinance is to remove the requirement to register alarms and also to clarify its language, thus ensuring that both the Burglary and Fire Ordinances are in agreement.

COMMUNITY ENGAGEMENT: Inform

This staff report will serve to inform the public of the problem and the ordinance.

ALTERNATIVE ACTIONS:

Not Applicable

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

In May 2009, Council approved revisions to the False Alarm ordinance (8.48) to encourage more responsible use of alarm systems and to reduce the number of false alarms to which police officers must respond. This was accomplished by implementing

an alarm registration process, accurately tracking false alarms instances and assessing false alarm fees.

In August 2014, Council authorized an agreement with PMAM for alarm registration and fee service. PMAM was selected for several reasons, including their proactive personal contact with alarm holders. The Morgan Hill Police Department has utilized PMAM for this service since October 2014.

FISCAL AND RESOURCE IMPACT:

1. This ordinance and the augmentation of an existing contract will not result in new expenditures.
2. PMAM retains a percentage of revenue collected.

CEQA (California Environmental Quality Act):

Not a Project

This ordinance is an administrative activity of government that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. 2272 Burglary and Robbery Alarm Regulations

ORDINANCE NO. 2272, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL AMENDING CHAPTER 8.48 (BURGLARY AND ROBBERY ALARM SYSTEM REGULATIONS) OF TITLE 8 (HEALTH AND SAFETY) OF THE MORGAN HILL MUNICIPAL CODE TO CLARIFY CERTAIN TERMS AND RESPONSIBILITIES OF ALARM SYSTEM OWNERS AND OPERATORS, DELETE REGISTRATION REQUIREMENTS, AND TO UPDATE ENFORCEMENT PROCEDURES

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 8.48 (Burglary and Robbery Alarm Regulations) of Title 8 (Health and Safety) of the Morgan Hill Municipal Code is hereby amended to read as follows.

Chapter 8.48 - BURGLARY AND ROBBERY ALARM SYSTEM REGULATIONS

Sections:

8.48.010 - Definitions.

For the purpose of this chapter, unless the context indicates otherwise, certain words and phrases used in this chapter are defined as follows:

- A. "Alarm Dispatch Request" means a notification to the Police Department that an Alarm System, either manual or automatic, has been activated at a particular Premises.
- B. "Alarm Owner" means a Person having or maintaining an Alarm System on real property owned or controlled by such Person. "Alarm Owner" does not include an Alarm System Installation Company or Alarm System Monitoring Company.
- C. "Alarm Response Manager (ARM)" means an individual capable of reaching and having access to the Premises, the code to the Alarm System, and the authority to approve repairs to the Alarm System.
- D. "Alarm System" means any mechanical or electrical device which is designed or used for the detection of any unauthorized entry into a building, structure or facility, or upon land or for alerting others of the commission of an unlawful act within a building, structure or facility, or upon land; and which emits a sound or transmits a signal or message when actuated. Alarm Systems include, but are not limited to, Automatic Telephone Dialing devices, telephone lines or other lines used solely to report emergency circumstances from a mechanical or electrical device directly from the Premises to the police dispatch or Alarm System Monitoring Company, audible alarms and proprietor alarms. Devices which are not designed or used to register alarms that are audible, visible or perceptible outside of the protected land, building, structure or facility are not included within this definition, nor are auxiliary devices installed by the telephone company to protect

telephone company systems which might be damaged or disrupted by the use of an Alarm System.

- E. "Alarm System Installation Company" means a Person in the business of selling, providing, maintaining, servicing, repairing, altering, replacing, moving or installing an Alarm System in a Premises. This definition shall also include individuals or firms that install and service the Alarm Systems that will be used in their private or proprietary facilities. This does not include persons doing installation or repair work where such work is performed without compensation of any kind.
- F. "Alarm System Monitoring Company" means any Person, either located within or outside the City, that engages in the business, practice, or profession of monitoring Alarm Systems within the City, and which reports, directly or indirectly, any activation of such Alarm Systems to the City, its departments, divisions, officials, agents, or employees including, but not limited to, the Police Department and/or police dispatch.
- G. "Audible Alarm" means a device designed for the detection of unauthorized entry on Premises which generates an audible sound on the Premises when it is activated.
- H. "Automatic Telephone Dialing Device" means a device which is interconnected to a telephone line and is programmed to select a predetermined telephone number and transmit by voice message or digital signal an emergency message indicating a need for emergency response.
- I. "Duress Alarm" means a silent alarm signal generated by the entry of a designated code into the Alarm System to signal that the Alarm Owner is being forced to turn off the system and requires police response.
- J. "False Alarm" means an Alarm System that emits a light or sound, or transmits a signal or message, resulting in a response by the Police Department when the situation does not require such response. False Alarms caused as a result of power failure, power surges, or acts of nature not the fault of the Alarm Owner or Alarm System Installation Company shall not be considered to be a False Alarm.
- K. "False Alarm Management Company" means a company or organization who administers certain provisions of this chapter.
- L. "False Alarm Program" means the program run by the Chief of Police which administers the provisions on this chapter.
- M. "Holdup Alarm" means a silent alarm signal generated by the manual activation of a device intended to signal a robbery in progress or immediately after it has occurred.
- N. "Nuisance Alarm" means an alarm as described in Section 8.48.060 herein.
- O. "One Plus Duress Alarm" means the manual activation of a silent alarm signal by entering a code at the mechanism from which the Alarm System is turned on (armed) and off (disarmed) regularly activated by adding one to the last digit of the normal arm/disarm code.
- P. "Panic Alarm" means an audible signal generated by the manual activation of a device intended to signal a life threatening or emergency situation requiring police response.

- Q. "Person" means any individual, sole proprietorship, partnership, company, corporation, limited liability company, business or other form of association or entity.
- R. "Premises" means any private residential, commercial or industrial land and/or buildings located within the City. Premises includes land or buildings owned, rented, or leased by the federal, state or local governments, and school districts.
- S. "Proprietor Alarm" means an alarm which is not serviced by an Alarm System Installation Company or Alarm System Monitoring Company.

8.48.020 - Power of Chief of Police to regulate.

- A. The Chief of Police is empowered and authorized to regulate the use of Alarm Systems and administer the regulations and provisions of this chapter through the False Alarm Program. The Chief of Police may, in his or her discretion, suspend police response to a Nuisance Alarm as defined in Section 8.48.060 or to an alarm or Alarm Owner due to excessive False Alarms, except that the Chief of Police, in his or her discretion, may continue to respond to Duress Alarms, Holdup Alarms, or Panic Alarms.
- B. The Chief of Police shall:
 - 1. Designate the manner, form and telephone numbers for the communication of Alarm Dispatch Requests.
 - 2. Establish a procedure to accept cancellation of Alarm Dispatch Requests.
 - 3. Establish a system of recording data and maintaining records necessary to implement this chapter.
 - 4. Establish procedure for notifying Alarm Owners of False Alarms, including information regarding the date and time of police response to the False Alarm, the amount of the fine for a False Alarm and that response will be suspended to a Nuisance Alarm or for excessive False Alarms; and a description of the appeals procedure available to the Alarm Owner.
- C. If so requested by the Chief of Police, an Alarm Owner and the Alarm System Installation Company and/or Alarm System Monitoring Company responsible for the repair or monitoring of the Alarm System shall appear at an appointed time and place to meet with a representative of the City to review the circumstances of each False Alarm. For these purposes, the Alarm System Installation Company and/or Alarm System Monitoring Company must have a designated contact on record with the Chief of Police.
- D. The Chief of Police is authorized to promulgate regulations and procedures to require the removal, replacement or modification of certain types of Alarm System devices, including but not limited to any duress, panic, or holdup alarm button.
- E. The Chief of Police is authorized to delegate his or her duties under this chapter in the promulgation of the False Alarm Program.

8.48.030 - Automatic Telephone Dialing Devices prohibited except under certain limited circumstances.

It is unlawful for any Person to use, or cause to be used, any electrical or mechanical device or attachment to a telephone that automatically reports a taped or other recorded message of a

police or fire emergency direct to the Police Department, except for special conditions of certain handicapped individuals. Each such call shall be deemed a separate violation punishable as a misdemeanor.

8.48.040 - Audible Alarm System Requirements.

- A. No Alarm System shall be installed, maintained or activated which emits the sound of a siren similar to those utilized on emergency vehicles or for air raid/disaster warnings.
- B. Every Alarm System having an audible signal shall have a sign or notice posted on or near the audible device with the name and telephone number of the Alarm Owner or Person responsible for the maintenance of the system. The notice shall be posted in such a position as to be readable from the ground level outside and adjacent to the building.
- C. Every Alarm System having an audible signal installed after the adoption of the ordinance codified in this chapter shall have a timing device which automatically silences the alarm within thirty (30) minutes after the alarm is activated. Every Alarm System having an audible signal installed prior to the adoption of the ordinance codified in this chapter without such a timing device shall be required to have such a device installed if any activated alarm is not deactivated within the thirty (30) minute time limit. The Alarm Owner or Alarm System Monitoring Company shall be responsible for deactivating an alarm within thirty (30) minutes after notification that such alarm is activated and ringing, or within thirty (30) minutes after reasonable efforts have been made to provide such notification.

8.48.050 - False Alarm Fees.

- A. The Chief of Police may assess a False Alarm response fee to an Alarm Owner for each police response to a False Alarm. The amount of such fee shall be paid by the Alarm Owner as set forth by resolution of the City Council.
- B. A False Alarm response fee shall not be assessed if the Alarm System Monitoring Company or Alarm Owner promptly notifies police dispatch that a police response is not necessary, prior to the arrival of the police officer at the Premises.
- C. The Chief of Police shall notify the Alarm Owner in writing after each False Alarm. The notification shall include: the amount of the False Alarm fee assessment, the fact that police response may be suspended for excessive False Alarms, and a description of the appeals procedure available to the Alarm Owner if they think the fee assessment is in error.
- D. The Alarm Owner may request that a False Alarm fee assessment be waived by setting forth, in writing, the reasons for the waiver request within (15) business days after notice is received. This written appeal shall be sent to the False Alarm Management Company. The appeal shall be reviewed by the Chief of Police or his or her designee. The decision of the Chief of Police or his or her designee is final.

8.48.060 - Nuisance Alarms.

- A. An alarm shall be deemed a Nuisance Alarm and a public nuisance when it has been emitting sound continuously for at least one (1) hour, or intermittently for two (2) hours, and has been reported to the Police Department as an annoyance by a person in the

vicinity of the alarm, and the Alarm Owner or Alarm Response Manager(s) is not available to silence the alarm or to cause it to be silenced.

1. Any officer of the Police Department is authorized to enter on exterior private property areas, and into vehicles on private property or public streets, for the purpose of silencing a Nuisance Alarm. Forcible entry may be made into exterior alarm equipment boxes, attics, and crawlspace vents, in order to accomplish this purpose. Actions may be taken to silence vehicle alarms, including the towing of the vehicle as prescribed in the California Vehicle Code.
 2. Neither the City nor its police officers, nor any officer or employee of the City, or of a private alarm service contractor engaged by the Police Department, shall be liable for damages to the Alarm Owner whose Alarm System is emanating a Nuisance Alarm, for silencing the Nuisance Alarm, or for entry on the Alarm Owner's Premises for the purpose of silencing a Nuisance Alarm or for any damage resulting from reasonable efforts to silence the Nuisance Alarm.
- B. An Alarm System shall be deemed a Nuisance Alarm and a public nuisance if such Alarm System actuates excessive False Alarms. Five (5) or more False Alarms in a one (1) year period shall be deemed a nuisance under this section.
- C. An Alarm System shall be deemed a Nuisance Alarm and a public nuisance if such an Alarm System has been intentionally activated at least once to summon the Police Department to an incident for which the Alarm System was not intended. This may include, but not be limited to, a robbery alarm being intentionally activated for an incident which is not a robbery, or an alarm which is intentionally activated, merely to see what police response would result.
- D. An Alarm System shall be deemed a Nuisance Alarm and a public nuisance if, after a request by the Police Department of the Alarm Owner or ARM to respond to an activated alarm in a manner requested by the Police Department, the Alarm Owner or ARM refuses to respond as requested.

8.48.070 - No response status.

- A. If an Alarm System has fallen into the category of a Nuisance Alarm as defined in Section 8.48.060, the Chief of Police may, upon the next activation of that alarm, send a notice of no response to the Alarm Owner for the Nuisance Alarm. This notice shall indicate that the Police Department shall not respond to future activations of the Nuisance Alarm unless a violation of the law is personally reported to the Department by a witness at the scene of the alarm. Such notice shall be sent ten (10) days before the alarm response is to be suspended.
- B. The no response status shall remain in effect until such time that the Alarm Owner for the Nuisance Alarm has provided adequate evidence to the Chief of Police that the problems causing the alarm to become a nuisance have been satisfactorily corrected.

8.48.080 - Duties of the Alarm Owner.

- A. An Alarm Owner shall:

1. Maintain the Premises and the Alarm System in a manner that will minimize or eliminate False Alarms;
 2. Make every reasonable effort to respond, or have an ARM respond to the Alarm System's location within twenty (20) minutes when requested by the Police Department in order to:
 - a. Deactivate an Alarm System;
 - b. Provide access to the Premises; and/or
 - c. Provide alternative security for the Premises.
 3. Not activate an Alarm System for any reason other than an occurrence of an event that the Alarm System was intended to report.
- B. An Alarm Owner shall adjust the Alarm System or cause the Alarm System to be adjusted so that an audible alarm on the exterior of a Premises will sound for no longer than thirty (30) minutes after being activated.
- C. An Alarm Owner shall have a licensed Alarm System Installation Company inspect the Alarm System after two (2) False Alarms in a one (1) year period. The Chief of Police may waive a required inspection if it determines that a False Alarm could not have been related to a defect or malfunction in the Alarm System. After four (4) False Alarms within a one (1) year period, the Alarm Owner must have a licensed Alarm System Installation Company modify the Alarm System to be more False Alarm resistant and provide additional user training as appropriate.
- D. An Alarm Owner shall not use an automatic telephone dialing device.
- E. An Alarm Owner shall maintain at each Premises, a set of written operating instructions for each Alarm System.
- F. All Alarm Owners shall agree with their Alarm System Installation Company and/or Alarm System Monitoring Company to go through an acclimation period for the first seven (7) days after installation of an Alarm System during which time the Alarm System Installation Company and/or Alarm System Monitoring Company will have no obligation to respond to any alarm signal from the Premises or make Alarm Dispatch Request of the Police Department, even if the alarm signal is the result of an actual alarm event.
- G. This section applies to all Persons, who have installed and/or monitor their own Alarm System.

8.48.090 - Duties of Alarm System Installation Company.

- A. Each Alarm System Installation Company or an agent of any such company, operating or, or otherwise doing business in the City shall register its name and file a copy of its state issued identification card with the Chief of Police on a form prescribed by the Chief of Police.
- B. Every Alarm System Installation Company shall provide written and oral instructions to each of its Alarm Owners in the proper use and operation of their Alarm Systems. Such instructions will specifically include all instructions necessary to turn the Alarm System on and off and to avoid False Alarms. Alarm System Installation Companies shall ensure

that all Alarm Owners of Alarm Systems equipped with a duress, holdup, or panic alarm are given adequate training as to the proper use of the duress, holdup, or panic alarm.

- C. Alarm System Installation Companies shall not program Alarm Systems so that they are capable of sending One Plus Duress Alarms. The Alarm System Installation Company shall remove the One Plus Duress Alarm feature from Alarm Systems whenever an alarm technician is at the Premises or otherwise accessing the panel for reprogramming purposes.
- D. Alarm System Installation Companies shall not install a device to activate a Holdup Alarm, which is a single action, non-recessed button.
- E. Alarm System Installation Companies shall use only ANSI/SIA CP-01 listed alarm control panels on all new installations and panel replacements or upgrades.
- F. Alarm System Installation Companies shall not install Automatic Telephone Dialing Devices.
- G. After completion of the installation of an Alarm System, an Alarm System Installation Company employee shall review with the Alarm Owner the customer False Alarm prevention checklist or an equivalent checklist approved by Chief of Police.
- H. An Alarm System Installation Company that purchases Alarm System accounts from another person shall notify the Chief of Police of such purchase and provide details as may be reasonably requested by the Chief of Police.
- I. Each Alarm System Installation Company must designate one (1) individual as the Alarm Response Manager ("ARM") for the company who will manage alarm related issues and act as the point of contact for the Chief of Police. The appointed individual must be knowledgeable of the general provisions of the ordinance, as well as have the knowledge and authority to deal with False Alarm issues and respond to requests from the Chief of Police. The name, phone number, and email address of the designated ARM must be provided to the Chief of Police.
- J. An Alarm System Installation Company shall provide the False Alarm Management Company with a customer list in a format acceptable to the Chief of Police, upon request, to assist with creating the Police Department's tracking data, so far as allowed with respect to state or local law that protects this customer information as confidential.
- K. An Alarm System Installation Company shall provide the False Alarm Management Company with a list, in a format acceptable to the Chief of Police, of all new Alarm System installations within thirty (30) days of each new installation. This list shall include the contact information of the Alarm Owner and Alarm Response Manager(s).

8.48.100 - Duties of Alarm System Monitoring Company.

- A. Each Alarm System Monitoring Company or an agent of any such company, operating, monitoring, or otherwise doing business in the City, shall register its name and file a copy of its state issued identification card with the Chief of Police on a form prescribed by the Chief of Police.

B. Alarm System Monitoring Companies shall not make an Alarm Dispatch Request of the Police Department in response to an alarm signal, excluding panic, duress and holdup signals, during the first seven (7) days following an Alarm System installation. The Chief of Police may grant an Alarm Owner's request for an exemption from this waiting period based upon a determination that special circumstances substantiate the need for the exemption.

C. An Alarm System Monitoring Company shall:

1. Verify every alarm signal, except a duress or holdup alarm activation, before initiating an Alarm Dispatch Request;
 2. Attempt to contact the Alarm Owner or Alarm Response Manager(s) (ARM) at least twice (using at least two (2) separate contact numbers) before initiating an Alarm Dispatch Request;
 3. Communicate Alarm Dispatch Requests to the Police Department in a manner and form determined by the Chief of Police;
 4. Communicate Alarm Dispatch Request cancellations to the Police Department in a manner and form determined by the Chief of Police;
 5. Ensure that all Alarm Owners of Alarm Systems equipped with a duress, holdup or panic alarm are given adequate training as to the proper use of the duress, holdup or panic alarm;
 6. Communicate any available information about the location on all alarm signals related to the Alarm Dispatch Request;
 7. Communicate nature of alarm;
 8. After an Alarm Dispatch Request, promptly advise the Police Department if the Alarm System Monitoring Company knows whether the Alarm Owner or the ARM is on the way to the Premises;
 9. Upon the effective date of the ordinance codified in this section, Alarm System Monitoring Companies must maintain for a period of at least one (1) year from the date of the Alarm Dispatch Request, records relating to Alarm Dispatch Requests. Records must include the name, address and telephone number of the Alarm Owner, the Alarm System zone activated, the time of the Alarm Dispatch Request and evidence of an attempt to verify the Alarm Owner or ARM(s). The Chief of Police may request copies of such records for individually named Alarm Owners. If the request is made within sixty (60) days of an Alarm Dispatch Request, the Alarm System Monitoring Company shall furnish requested records within three (3) business days of receiving the request. If the records are requested between sixty (60) days to one (1) year after an Alarm Dispatch Request, the Alarm System Monitoring Company shall furnish the requested records within thirty (30) days of receiving the request.
- D. An Alarm System Monitoring Company that purchases Alarm System accounts from another Person shall notify the False Alarm Management Company of such purchase and provide details as may be reasonably requested by the Chief of Police.

- E. Each Alarm System Monitoring Company must designate one (1) individual as the Alarm Response Manager (ARM) for the company who will manage alarm related issues and act as the point of contact for the Chief of Police. The appointed individual must be knowledgeable of the general provisions of the ordinance, as well as have the knowledge and authority to deal with False Alarm issues and respond to requests from the Chief of Police. The name, phone number, and email address of the designated ARM must be provided to the Chief of Police.
- F. An Alarm System Monitoring Company shall provide the False Alarm Management Company with a customer list in a format acceptable to the Chief of Police, upon request, to assist with creating the Police Department's tracking data, so far as allowed with respect to state or local law that protects this customer information as confidential.
- G. An Alarm System Monitoring Company shall provide the False Alarm Management Company with a list, in a format acceptable to the Chief of Police, of all new alarm monitoring accounts within thirty (30) days of each new account. This list shall include the contact information of the Alarm Owner and ARM(s).

8.48.110 - Appeals.

- A. If the Chief of Police suspends response to alarms pursuant to Section 8.48.020 or Section 8.48.070, the Chief of Police shall send written notice of the action not less than ten (10) days prior to the effective date of such suspension and action and a statement of the right to an appeal to the Alarm Owner.
- B. The Alarm Owner may appeal the above-referenced suspension to the City Manager or his or her designee by setting forth in writing the reasons for the appeal within fifteen (15) business days after notice. The decision of the City Manager is final.
- C. Filing of a request for appeal shall stay the action by the Chief of Police suspending the alarm response, until the City Manager has completed his or her review.

8.48.120 - Confidentiality.

In the interest of public safety, all information pertaining to an Alarm Owner contained in and gathered through, the administration of the False Alarm Program shall be held in confidence by all employees or representatives of the City, provided that the City may disclose any information required to be disclosed by state or federal law or by court order after a reasonable notice to the Alarm Owner.

8.48.130 - Government immunity.

Administration of the False Alarm Program is not intended to, nor will it, create a contract, duty or obligation, either expressed or implied, of police response. Any and all liability and consequential damage resulting from the failure to respond to an Alarm Dispatch Request is hereby disclaimed, and governmental immunity as provided by law is retained. When making an Alarm Dispatch Request, the Alarm Owner acknowledges that police response may be influenced by factors such as: the availability of police units, priority of calls, weather conditions, traffic conditions, emergency conditions, staffing levels and prior response history.

8.48.140 - Enforcement.

- A. It is unlawful for any Person to violate or cause or permit to be violated any provision of this chapter. The assessment of a False Alarm response fee as provided for in Section 8.48.050 is in addition to all other remedies available to the City.
- B. In the event of the failure of any Person to pay the assessments or fines pursuant to the provisions of this chapter, the City may institute an action in any court of competent jurisdiction to collect any charges which may be due and payable in the same manner as any other debts owing to the City may be collected.

SECTION 2. Severability. Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

SECTION 3. Effective Date; Posting. This ordinance shall take effect on April 7, 2018. The City Clerk is hereby directed to publish this ordinance or a summary thereof pursuant to §36933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 21ST DAY OF FEBRUARY 2018, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 7TH DAY OF MARCH 2018, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

AYES:	COUNCIL MEMBERS:	Larry Carr, Rich Constantine, Rene Spring, Caitlin Robinett Jachimowicz, Steve Tate
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

APPROVED:

STEVE TATE, Mayor

ATTEST:

IRMA TORREZ, City Clerk

DATE: _____

Effective April 7, 2018

⌘ 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. 2272, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the 7th day of March 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

DRAFT



Meeting Minutes City Council

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

Wednesday, February 21, 2018 7:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

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

CALL TO ORDER

Mayor Tate called the meeting to order at 7:00 pm

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow called the roll.

Attendee Name	Title	Status	Arrived
Steve Tate	Mayor	Present	
Rich Constantine	Mayor Pro Tem	Present	
Larry Carr	Council Member	Present	
Caitlin Jachimowicz	Council Member	Present	
Rene Spring	Council Member	Present	

DECLARATION OF POSTING AGENDA

Deputy City Clerk Michelle Bigelow declared the posting of the agenda.

Minutes Acceptance: Minutes of Feb 21, 2018 7:00 PM (CONSENT CALENDAR)

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Spring shared that all the Council Members have outside assignments where they represent the City Council and the City of Morgan Hill. He, along with Council Member Carr, serve on the South County Regional Wastewater Authority (SCRWA) which manages the City's treatment of wastewater. Monthly on the first Wednesday at 8:00 am, they meet at the SCRWA offices in Gilroy and discuss all topics related to sewer treatment including the budget, any issues, and the plant expansion.

He shared that on a quarterly basis directly following the SCRWA meeting, the SCRWA members meet with the Santa Clara Valley Water District members (SCVWD) and discuss various topics related to the SCVWD. Depending on the agenda they tend to be very interesting meetings. He encouraged the community to attend both meetings.

Every other week, he serves on the Ad-Hoc Committee on South Flow Arrivals which includes elected officials from all over the peninsula. They discuss the paths that planes flying into San Jose from the south should take to cause the least amount of disturbance for the residents below.

He shared that his heart goes out to the victims of the Stoneman Douglas High School shooting that happened a week ago. He finds it heartbreaking. Something is wrong in our society and our country and we need to find a solution.

CITY MANAGER'S REPORT

City Manager Christina Turner announced the evening's supplements and presentations.

RECOGNITIONS PRESENTATION

QUARTERLY TEAMMATE RECOGNITIONS

New Hires

Joey Dinh- Associate Planner

Gabrielle Gomez- Police Records Specialist

Tyler Pecsok- Animal Services Officer

John Pipkin Jr.- Utility Worker I

Hector Marquez- Utility Worker I

Retirements

Karl Bjarke- Engineering & Utilities Director

Joni Evans- Sr. Human Resources Analyst

She announced that the American Association of University Women (AAUW) is hosting an event “Tips for Civic Engagement” at the Library on Tuesday, February 27th at 7:00 pm.

She shared that Friday, February 16th, we hosted Leadership Morgan Hill’s Local and Regional Government day. She gave the program a shout out. The Leadership Morgan Hill program has classes each year with up to 25 participants. They learn leadership skills, both hard and soft skills, about our community, and about local, regional, and state government. The purpose of the program is for the participants to learn about our community and all the ways they can get involved.

With the Chamber of Commerce, the City participated in two events. The first event was Rock the Mock. This is an event in which high school students from our three high schools participate in mock interviews with members of the community. This gives them the opportunity to prepare for interviews and to help better prepare them for their future. The second event was the Shadowing Day, where students get to job shadow in both private and public sector to experience what certain jobs are like.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin announced that last week High Speed Rail (HSR) was conducting some test boring to gather geological samples along the Monterey Road alignment. They previously gathered this information for the HWY 101 alignment through work that Caltrans had done. They assured us that they have not selected a preferred alignment. They don't anticipate announcing their preferred alignment until June.

We are currently negotiating a Cooperative Agreement with HSR regarding who will cover the costs if HSR needs to move city roads, utilities or other city infrastructure in order to accommodate the HSR project. He has notified HSR that he will not be ready to bring the agreement to the City Council until June after they announce their preferred alignment.

He shared that about two years ago, the Interim City Attorney Gary Baum, undertook a project to review and revise provisions of our Municipal Code related to enforcement. He anticipates bringing it to Council at one of the next two City Council meetings. His goal is to get that out an extra four or five days ahead of

the City Council Agenda to provide the City Council and public with enough time to review the extensive changes.

OTHER REPORTS

Council Member Carr shared his heartfelt thoughts and condolences for those impacted by the shooting in Florida last week. Last night he attended a peace vigil, along with the Mayor. He commented that the young people there were inspiring in sharing their hopes and fears and that the actions of young people across the country have been inspiring to him. He feels that the older generations have let our youth down. He wants Morgan Hill to say and do something. He recognizes that California has some of the strictest gun control laws in the country but feels that Morgan Hill can say something. He has shared a variety of resolution ideas with the City Attorney and will be asking that this be agendized for a future meeting.

Mayor Tate announced that he will be giving the State of the City Address tomorrow night at 7:00 pm in the Council Chamber. He encouraged the community to attend.

PRESENTATIONS

YAC PRESENTATION- ASSET #1 - FAMILY SUPPORT

RECOGNITIONS

Teammate Recognitions - Loving and Learning Center Pilot Program

Chiquy Mejia
Angie Gonzalez
Margarita Balagso
Erica Corona
Idalia Echegoyen
Monica Delgado

PUBLIC COMMENT

PUBLIC COMMENT SUPPLEMENT

The public comment was opened at 7:23 pm. The following people were called to speak:

Daniel Ayoub

Brian Faircloth

There being no further requests to speak, the public comment was closed.

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Rich Constantine, Mayor Pro Tem
SECONDER:	Caitlin Jachimowicz, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz, Spring

CONSENT CALENDAR

MOTION:

Approving consent calendar items 1, 3, 5, and 7 through 15.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Rich Constantine, Mayor Pro Tem
SECONDER:	Rene Spring, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz, Spring

1. STATION AREA MASTER PLAN PRIORITIZATION OF IMPROVEMENTS

Recommendation:

Accept Station Area Master Plan.

2. ITEM PULLED FOR DISCUSSION

3. RENT CONTROL ANALYSIS

Recommendation:

Receive report.

4. ITEM PULLED FOR DISCUSSION

5. RECOMMENDING LINCOLN FINANCIAL TO PROVIDE GROUP LIFE INSURANCE, DISABILITY, AND ACCIDENTAL DEATH & DISMEMBERMENT COVERAGE

Recommendation:

1. Accept report recommending Lincoln Financial to provide group insurance, disability, and accidental death and dismemberment coverage; and
2. Authorize City Manager to approve a Lincoln Financial group application with an effective date of April 1, 2018.

6. ITEM PULLED FOR DISCUSSION

7. THIRD AMENDMENT TO PROFESSIONAL SERVICE AGREEMENT WITH HARRIS & ASSOCIATES FOR LAND DEVELOPMENT REVIEW

Recommendation:

1. Approve the Third Amendment to the professional service agreement with Harris & Associates for land development review services to increase the fee by \$70,000 for a total not-to-exceed amount of \$245,000 with the term of the agreement unchanged;
2. Authorize the City Manager to execute the Third Amendment; and
3. Adopt resolution approving an amendment to the City's Fiscal Year 2017-18 budget in the Community Development Fund (Fund No. 206) to appropriate \$70,000 for the amendment to the professional service agreement with Harris & Associates.

8. ADOPT ORDINANCE AMENDING CHAPTER 8.20 ("WEED ABATEMENT") OF TITLE 8 ("HEALTH AND SAFETY") OF THE MORGAN HILL MUNICIPAL CODE

Recommendation:

Waive the reading, adopt Ordinance No. 2268, 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.

9. FIRST AMENDMENT TO NEW CINGULAR WIRELESS PCS PROPERTY USE AGREEMENT

Recommendation:

Authorize the City Manager to Execute the First Amendment to New Cingular Wireless PCS's Property Use Agreement.

10. FIRST AMENDMENT TO SPRINT'S PROPERTY USE AGREEMENT

Recommendation:

Authorize the City Manager to Execute the First Amendment to Sprint Spectrum Realty Company's Property Use Agreement.

11. SECOND AMENDMENT TO THE COUNTY COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AGREEMENT FOR GALVAN PARK FOR FY 17-18

Recommendation:

Adopt resolution authorizing the City Manager to negotiate and execute the Second Amendment to the County CDBG contract.

12. APPROVE THE JANUARY 17, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

13. APPROVE THE JANUARY 26, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

14. APPROVE THE JANUARY 27, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

15. APPROVE THE FEBRUARY 7, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

ITEMS PULLED FOR DISCUSSION

2. APPROVE CITY SPONSORSHIP OF THE AMERICAN ASSOCIATION OF UNIVERSITY WOMEN'S "FUTURE WOMEN LEADERS CONFERENCE" AT THE COMMUNITY AND CULTURAL CENTER

Minutes Acceptance: Minutes of Feb 21, 2018 7:00 PM (CONSENT CALENDAR)

Recommendation:

Authorize the City Manager to waive the rental fee for the use of the Community and Cultural Center for the Morgan Hill Branch of the American Association of University Women's Future Women Leaders Conference on April 14, 2018.

The public comment was opened at 7:30 pm. The following people were called to speak:

Lindsay Hillsland

Brian Faircloth

There being no further requests to speak, the public comment was closed.

MOTION:

Approving the recommended action.

RESULT:	AUTHORIZED [UNANIMOUS]
MOVER:	Caitlin Jachimowicz, Council Member
SECONDER:	Larry Carr, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz, Spring

4. ANIMAL SHELTER ADDITIONAL FUNDING

Recommendation:

Adopt resolution approving an amendment to the City's Fiscal Year 2017-18 budget in the General Fund to appropriate \$15,000 for animal services at the San Martin Animal Shelter.

The public comment was opened at 7:34 pm.

Ava Geddes was called to speak.

There being no further requests to speak, the public comment was closed.

MOTION:

Approving the recommended action.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Rene Spring, Council Member
SECONDER:	Caitlin Jachimowicz, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz, Spring

6. CITY SUPPORT OF REDUCING CRIME AND KEEPING CALIFORNIA SAFE ACT OF 2018

Recommendation:

Adopt resolution supporting the Reducing Crime and Keeping California Safe Act of 2018.

Council Member Carr abstained from voting on this item as he has been working on this initiative.

MOTION:

Approving the recommended action.

RESULT:	ADOPTED [4 TO 0]
MOVER:	Rich Constantine, Mayor Pro Tem
SECONDER:	Rene Spring, Council Member
AYES:	Tate, Constantine, Jachimowicz, Spring
ABSTAIN:	Carr

OTHER BUSINESS

16. CONTINUED INTERVIEWS TO FILL THREE (3) VACANCIES ON THE LIBRARY, CULTURE, AND ARTS COMMISSION AND FOUR (4) VACANCIES ON THE PARKS AND RECREATION COMMISSION

Recommendation:

1. Discuss the characteristics/traits that a successful applicant(s) would possess;
2. Conduct Interview;
3. Identify top applicant(s) and provide recommendation to the Mayor; and
4. Discuss and/or appoint applicant(s).

Mayor Tate provided the report.

The City Council interviewed Bob Benich for the Library, Culture, and Arts Commission.

The public comment was opened at 7:40 pm.

Kathy Sullivan was called to speak.

There being no further requests to speak, the public comment was closed.

Council moved to item 17 while the vote tallying was completed.

Discussion on this item resumed after the completion of item 17.

MOTION:

Appointing LaRene Green, Ron Locicero, Craig van Keulen, and Maureen Grzan-Pieracci to the Parks and Recreation Commission.

RESULT:	APPOINTED [UNANIMOUS]
MOVER:	Rene Spring, Council Member
SECONDER:	Caitlin Jachimowicz, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz, Spring

MOTION:

Appointing Bob Benich, Brigitte Crawford, and Paul Lake to the Library, Culture, and Arts Commission.

RESULT:	APPOINTED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	Caitlin Jachimowicz, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz, Spring

PUBLIC HEARING

17. ZA2017-0010, DA2017-0006: MONTEREY-UHC- AMENDMENT TO EXISTING PLANNED DEVELOPMENT AND CONSIDERATION OF A DEVELOPMENT AGREEMENT FOR PROPERTY IDENTIFIED BY ASSESSOR PARCEL NUMBERS 817-36-032 AND 817-36-033 LOCATED AT 16800-16840 MONTEREY ROAD.

Recommendation:

1. Open/close public hearing on Zoning Amendment and Development Agreement Request;
2. Waive first and second reading of Zoning Amendment Ordinance;
3. Introduce Zoning Amendment Ordinance;
4. Waive first and second reading of Development Agreement Ordinance; and,
5. Introduce Development Agreement Ordinance.

Community Development Director Jennifer Carman provided the report.

The public comment was opened at 7:48 pm.

There being no requests to speak, the public comment was closed.

MOTION:

Waiving the first and second reading of the Zoning Amendment Ordinance keeping in mind that the City Council has considered all the negative declarations and addendums.

RESULT: WAIVED [UNANIMOUS]
MOVER: Rich Constantine, Mayor Pro Tem
SECONDER: Larry Carr, Council Member
AYES: Tate, Constantine, Carr, Jachimowicz, Spring

MOTION:

Introducing the Zoning Amendment Ordinance.

RESULT: INTRODUCED [UNANIMOUS]
MOVER: Rich Constantine, Mayor Pro Tem
SECONDER: Larry Carr, Council Member
AYES: Tate, Constantine, Carr, Jachimowicz, Spring

MOTION:

Waiving the first and second reading of the Development Agreement Ordinance.

RESULT: WAIVED [UNANIMOUS]
MOVER: Rich Constantine, Mayor Pro Tem
SECONDER: Larry Carr, Council Member
AYES: Tate, Constantine, Carr, Jachimowicz, Spring

MOTION:

Introducing the Development Agreement Ordinance.

The meeting went into recess at 8:02 pm

The meeting was reconvened at 8:09 pm

RESULT: INTRODUCED [UNANIMOUS]
MOVER: Rich Constantine, Mayor Pro Tem
SECONDER: Larry Carr, Council Member
AYES: Tate, Constantine, Carr, Jachimowicz, Spring

18. RESOLUTION OF INTENT TO HOLD SPECIAL BALLOT PROCEEDING FOR SANDALWOOD SUBAREA OF MORGAN HILL LANDSCAPE ASSESSMENT DISTRICT NUMBER 1

Recommendation:

Open/Close public hearing and adopt resolution of intent.

Interim Deputy City Manager Chris Ghione provided the report.

The public comment was opened at 8:14 pm.

There being no requests to speak, the public comment was closed.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	Rene Spring, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz, Spring

OTHER BUSINESS

19. DECEMBER 2017 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

Finance Director Dat Nguyen provided the report.

The public comment was opened at 8:23 pm.

There being no requests to speak, the public comment was closed.

MOTION:

Approving the recommended action.

RESULT:	ACCEPTED [UNANIMOUS]
MOVER:	Rene Spring, Council Member
SECONDER:	Caitlin Jachimowicz, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz, Spring

20. MODIFICATION TO THE DEVELOPMENT IMPACT FEE FREEZE PROGRAM

Recommendation:

Adopt resolution amending Resolution 17-052 freezing development impact fees to Fiscal Year 16/17 schedule through Fiscal Year FY 19/20 to stimulate construction of certain qualified Economic Development job and/or revenue creating developments.

Economic Development Coordinator John Lang provided the report.

The public comment was opened at 8:35 pm.

Brian Sullivan was called to speak.

There being no further requests to speak, the public comment was closed.

MOTION:

Approving the recommended action.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Rich Constantine, Mayor Pro Tem
SECONDER: Caitlin Jachimowicz, Council Member
AYES: Tate, Constantine, Carr, Jachimowicz, Spring

21. A FIRE FALSE ALARM ORDINANCE TO ESTABLISH FIRE ALARM REGULATIONS IN A NEW CHAPTER 8.49 AND AN ORDINANCE TO REVISE THE BURGLARY AND ROBBERY ALARM REGULATIONS IN CHAPTER 8.48, AND ESTABLISH A RECONNECTION FEE FOR DISCONNECTED FIRE ALARM SYSTEMS

Recommendation:

1. Open/close public hearing on the Fire Alarm Regulations Ordinance and the Burglary and Robbery Alarm Regulations Ordinance;
2. Waive the first and second reading of the Fire Alarm Regulations Ordinance;
3. Introduce the Fire Alarm Regulations Ordinance;
4. Waive the first and second reading of the Burglary and Robbery Alarm Regulations Ordinance;
5. Introduce the Burglary and Robbery Alarm Regulations Ordinance; and
6. Adopt a resolution establishing a fire reconnection fee.

City Attorney Donald Larkin provided the report. Fire Chief Derek Witmer and Police Chief David Swing answered questions.

The public comment was opened at 8:42 pm.

Brian Faircloth was called to speak.

There being no further requests to speak, the public comment was closed.

MOTION:

Waiving the first and second reading of the Fire Alarm Regulations Ordinance.

RESULT: WAIVED [UNANIMOUS]
MOVER: Rich Constantine, Mayor Pro Tem
SECONDER: Caitlin Jachimowicz, Council Member
AYES: Tate, Constantine, Carr, Jachimowicz, Spring

MOTION:

Introducing the Fire Alarm Regulations Ordinance.

RESULT: INTRODUCED [UNANIMOUS]
MOVER: Rich Constantine, Mayor Pro Tem
SECONDER: Caitlin Jachimowicz, Council Member
AYES: Tate, Constantine, Carr, Jachimowicz, Spring

MOTION:

Waiving the first and second reading of the Burglary and Robbery Alarm Regulations Ordinance.

RESULT: WAIVED [UNANIMOUS]
MOVER: Larry Carr, Council Member
SECONDER: Caitlin Jachimowicz, Council Member
AYES: Tate, Constantine, Carr, Jachimowicz, Spring

MOTION:

Introducing the Burglary and Robbery Alarm Regulations Ordinance.

RESULT:	INTRODUCED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	Caitlin Jachimowicz, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz, Spring

MOTION:

Adopting resolution establishing a fire reconnection fee.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Caitlin Jachimowicz, Council Member
SECONDER:	Larry Carr, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz, Spring

22. 2018 SANITARY SEWER MANAGEMENT PLAN

Recommendation:

Adopt resolution approving the 2018 Sanitary Sewer Management Plan (SSMP).

Deputy Director of Utility Services Dan Repp provided the report.

The public comment was opened at 9:06 pm.

There being no requests to speak, the public comment was closed.

MOTION:

Approving the recommended action.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	Caitlin Jachimowicz, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz, Spring

23. DOWNTOWN SPECIAL EVENTS AND STREET CLOSURES

Recommendation:

Approve the proposed revised Downtown Special Events Street Closure Policy.

Interim Deputy City Manager Chris Ghione provided the report.

The public comment was opened at 9:37 pm.

Brian Faircloth was called to speak.

There being no further requests to speak, the public comment was closed.

MOTION:

Approving the proposed policy with the following changes; add language to event areas to include public parking lots that need to be kept orderly and clean, eliminate the requirement of hired security professionals to maintain the parking spots for the home owners, event organizers are required to ensure that the home owner parking spots are kept open through signage and/or volunteers, event organizers are responsible to make sure that home owners can get to the designated parking spots and if the home owner can present a medical requirement for assistance that the event organizer is required to provide that assistance, and to bring the policy back to the City Council for review after the summer.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	Caitlin Jachimowicz, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz, Spring

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Carr requested that staff bring forward an item regarding gun control.

Council Member Carr would like the City Council to consider supporting Proposition 69 which is coming up on the June ballot.

Council Member Carr would like the City Council to take an early position opposing any attempts to repeal Senate Bill 1.

CLOSED SESSION

City Attorney Donald Larkin announced the closed session.

OPPORTUNITY FOR PUBLIC COMMENT

The public comment was opened at 9:53 pm.

There being no requests to speak, the public comment was closed.

ADJOURN TO CLOSED SESSION

The meeting adjourned to closed session at 9:53 pm.

Pursuant to:	Government Code Section 54956.8
Property:	81716009, 1625 Fisher Ave.
Negotiating Parties:	Chris Ghione, City of Morgan Hill; Estate of Patricia M. Giordano, Trustee
Under Negotiation:	Price and Terms of Payment

RECONVENE

The meeting was reconvened at 10:05 pm.

CLOSED SESSION ANNOUNCEMENT

City Attorney Donald Larkin announced that there was no reportable action.

ADJOURNMENT

The meeting was adjourned at 10:05 pm.

MINUTES PREPARED BY:

Michelle Bigelow, Deputy City Clerk

Minutes Acceptance: Minutes of Feb 21, 2018 7:00 PM (CONSENT CALENDAR)



CITY COUNCIL STAFF REPORT

MEETING DATE: March 7, 2018

PREPARED BY: Gina Paolini, Interim Principal Planner
APPROVED BY: City Manager

ZA2017-0007, DA2017-0003, SD2016-0009, EA2016-0009: E. DUNNE-KYONO - ZONING AMENDMENT FOR PLANNED DEVELOPMENT, DEVELOPMENT AGREEMENT, AND NON-VESTING TENTATIVE MAP FOR PROPERTY IDENTIFIED BY ASSESSOR PARCEL NUMBER 726-02-014 LOCATED AT 505 E. DUNNE AVENUE

RECOMMENDATION(S)

Open/close the public hearing and continue the project to the April 18, 2018 City Council meeting.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Preserving and Cultivating Public Trust

2018 Strategic Priorities

Community Engagement and Messaging

REPORT NARRATIVE:

The City has requested that this project be continued to allow staff and the applicant to review project conditions and Residential Development Control System (RDCS) points. The Planning Commission will be reviewing the project on March 27, 2018; therefore, review by the City Council must be continued to April 18, 2018.



CITY COUNCIL STAFF REPORT

MEETING DATE: March 7, 2018

PREPARED BY: Donald Larkin, City Attorney
APPROVED BY: City Manager

ADOPT RESOLUTION CONDEMNING GUN VIOLENCE

RECOMMENDATION(S)

1. Adopt resolution condemning gun violence; and
2. Direct staff to return with specific actions to help prevent future gun violence.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Supporting Our Youth
Seniors
and Entire Community

2018 Strategic Priorities

Community Engagement and Messaging
Regional Initiatives

POLICY CONSIDERATIONS:

Should the City Council take specific action to help prevent gun violence?

Should the City of Morgan Hill advocate for gun violence prevention measures at all levels of government?

REPORT NARRATIVE:

On February 14, 2018, a 19 year-old gunman opened fire at Marjory Stoneman Douglas High School in Parkland, Florida, killing 14 students and 3 adults. This incident was just the latest in a growing number of horrific and senseless mass shootings that have occurred in recent years.

At the February 21, 2018 City Council meeting, Council Members Spring and Carr issued statements of support for the Parkland community and Council Member Carr further asked the City Attorney to prepare a resolution condemning gun violence and calling for specific actions to prevent further senseless deaths.

The proposed Resolution commits the City to advocate for state and federal bans on both military style assault weapons and high-capacity ammunition magazines, stronger background checks for all gun and ammunition purchases, revoking the prohibition on federally funded research on gun-related deaths, and rescinding the gun industry's immunity.

The proposed Resolution also states that the City Council will consider local actions to regulate gun and ammunition sales in the City of Morgan Hill.

In addition to the proposed Resolution, the City Attorney is seeking direction regarding other potential actions the City Council would like staff to explore. Some ideas include:

- Calling on CalPERS and other City investment funds to require any firearms manufacturer that they invest in to conduct criminal background checks for all gun transactions, and to ensure that their business partners (including gun shows and dealers) abide by the same standards.
- Require employees of businesses that sell firearms in Morgan Hill to undergo training to identify straw purchasers so that they can avoid selling guns that are likely to be used in a crime.
- Require local gun dealers to maintain detailed inventories to quickly identify stolen or missing firearms.

Based on Council direction, staff will make detailed recommendations for Council action at a future Council meeting.

COMMUNITY ENGAGEMENT: Inform

This report and the attached Resolution serve to inform the community about the problem of gun violence and the City Council's desire to take concrete action to help solve the problem.

ALTERNATIVE ACTIONS:

Council could choose not to adopt the Resolution or to modify the Resolution.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None

FISCAL AND RESOURCE IMPACT:

Fiscal:

Adoption of the Resolution will not have a fiscal impact on the City. Future Council actions in furtherance of the goals of the Resolution will be analyzed when staff makes specific recommendations.

Resource:

Depending on the direction given, staff time will be needed to evaluate and prepare specific proposals for future action. However, we do not anticipate that the additional workload will impact any other work.

CEQA (California Environmental Quality Act): Not a Project

Proposals for legislation to be enacted by the State Legislature, and organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment are not projects subject to CEQA review.

LINKS/ATTACHMENTS:

1. Reso re Gun Violence

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL CALLING FOR ACTION TO PREVENT GUN VIOLENCE

WHEREAS, the City of Morgan Hill is a safe, inclusive, socially responsible, environmentally conscious, and economically sound community; and

WHEREAS, public safety is the highest priority for the City of Morgan Hill; and

WHEREAS, the United States has the highest rate of firearms related deaths among industrialized nations; and

WHEREAS, on December 14, 2012, a 20 year old gunman killed 20 first-grade children and six adults at Sandy Hook Elementary school in Newtown, Connecticut; and

WHEREAS, on September 16, 2013, a gunman killed 12 people and injured 3 others inside the Washington Navy Yard in Washington D.C.; and

WHEREAS, on December 2, 2015, when a married couple shot and killed 14 people and injured 22 others at a training and holiday party for the San Bernardino Department of Public Health; and

WHEREAS, on June 12, 2016, a gunman killed 49 people and injured 58 others at a nightclub in Orlando, Florida; and

WHEREAS, on October 1, 2017, a gunman killed 58 people and injured 851 others during a music festival in Las Vegas, Nevada; and

WHEREAS, on February 14, 2018, a 19 year old gunman shot and killed 17 people (14 of them teenaged students) and injured 14 others at Marjory Stoneman Douglas High School in Parkland, Florida; and

WHEREAS, the above listed events are just a tiny fraction of the mass shootings and other gun violence incidents that have occurred over the past five years; and

WHEREAS, in just the first two months of 2018 there were 8,690 gun violence incidents in the United States, resulting in 2,336 deaths and 3,974 injuries, including death or injury to 536 children and teens; and

WHEREAS, gun violence incidents in 2018 include at least thirty mass shooting incidents in which four or more innocent victims were shot.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY RESOLVE AS FOLLOWS:

1. The City of Morgan Hill condemns all acts of gun violence, and calls on all levels of government to take strong action to prevent further senseless deaths from firearms.
2. The City Council will consider commonsense local measures to regulate gun and ammunition sales in the City of Morgan Hill, including business license requirements for training of employees and inventory monitoring.
3. The City Council will advocate for state and federal bans on both military style assault weapons and high-capacity ammunition magazines, stronger background checks for all gun and ammunition purchases, revoking the prohibition on federally funded research on gun-related deaths, and rescinding the gun industry's immunity.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its regular meeting held on this ____ day of _____, 201__ 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 its regular meeting held on , 201_.

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

DATE: _____

Irma Torrez, CITY CLERK

Attachment: Reso re Gun Violence (1667 : Resolution Condemning Gun Violence)



CITY COUNCIL STAFF REPORT

MEETING DATE: March 7, 2018

PREPARED BY: Edith Ramirez, Economic Development Director
APPROVED BY: City Manager

APPROPRIATE FUNDS FOR HIGH SPEED RAIL CONSULTANT AGREEMENTS

RECOMMENDATION(S)

1. Adopt resolution approving an amendment to the City's Fiscal Year 2017-18 budget appropriating \$323,019 from the Long Range Planning Fund for expenses associated with the High Speed Rail Project; and
2. Direct staff to put on hold the contract with Urban Field Studios.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

2018 Strategic Priorities

Economic Development and
Telecommunications
Infrastructure
Regional Initiatives

POLICY CONSIDERATION:

Should the Council direct staff to also proceed with the work with Urban Field Studios to develop design solutions for neighborhoods affected by the HSR project even though the alignment has not yet been chosen and this work will not be reimbursed?

REPORT NARRATIVE:

In June 2016, the City entered into a Reimbursement Agreement with the California High Speed Rail Authority (CHSRA). This Agreement was designed to help the City evaluate the High Speed Rail (HSR) project and provide adequate and timely feedback. Through this Reimbursement Agreement, staff has contracted with David J. Powers & Associates and Apex Strategies to support the review of the HSR project.

On May 24, 2017, the Morgan Hill City Council approved three technical contracts to help evaluate and advance design solutions for the California High Speed Rail project through Morgan Hill. The three contracts were with 1) Michael Baker International to peer review Highway 101 alternatives for \$64,026; 2) Kitchell CEM to update City Standards and provide additional technical support for \$255,000, and 3) Urban Field Studios to provide design guidelines for \$153,440. The total amount for all three contracts is \$472,466.

Based on conversations with CHSRA, staff was under the impression that the Michael Baker International contract and the Urban Field Studio contract were going to be

reimbursed by CHSRA through the Reimbursement Agreement between the City and CHSRA. The Kitchell CEM contract had some elements that were not reimbursable, but staff was working with CHSRA staff to explore a path forward for all three contracts. Following approval of the three contracts, staff immediately began work with Michael Baker International to evaluate the Highway 101 alternatives and with Kitchell CEM to review City Standards. However, the CHSRA has since informed the City that this work is not currently reimbursable under the existing Reimbursement Agreement. Over the last year, staff has been working with various CHSRA representatives to arrive at a solution. The CHSRA is currently reviewing \$39,637.50 of Kitchell CEM invoices for reimbursement under the existing contract. They are indicating the work with Michael Baker International and Urban Field Studios is not eligible under the Reimbursement Agreement.

The City has spent approximately \$108,000 with the three technical contracts, which only a portion of the \$39,637.50 is anticipated to be recovered through the CHSRA Reimbursement Agreement. The main purpose of this report is to reconcile the expenditures to date and to inform the Council that the work with Urban Field Studios will be placed on hold until the CHSRA can support the effort. Attached is a budget scorecard that reflects the HSR-associated expenditures in the City's Long Range Planning Fund.

Below is a more detailed report on the three contracts and expenditures to date:

#1) Contract with Michael Baker International in the amount of \$64,026. Work completed. Fully invoiced and paid.

Michael Baker International was retained to evaluate the feasibility of a freeway-only alignment. Given the limited information provided from CHSRA on the reason why a freeway option was not feasible, the City needed to be able to respond to community inquiries on the freeway options. Michael Baker provided an independent study that evaluated the feasibility of keeping the HSR system within the freeway right of way. This information is a crucial part of the understanding of the project needed to evolve the dialog in the community, especially for the residents in the neighborhood most directly impacted. The work has been completed. The City has paid Michael Baker and is seeking reimbursement for that work.

#2) Contract with Kitchell CEM in the amount of \$255,000. Invoiced \$39,637.50. Paid \$38,762.50

Kitchell CEM was retained to assist with updating City engineering and utility specs and MuniCode development standards to address HSR-related impact to construction, noise, lighting, and relocation of city facilities. The City understands updating the City Standards is not work that can or should be reimbursed by the CHSRA. The City was expecting reimbursement on other HSR-related efforts. Kitchell has been instrumental in reviewing and drafting a response for CHSRA's 15% design. They have and continue to provide assistance on evaluating impact to City facilities, roads, and utilities impacted by the project. This consultant is also assisting with revisions of the City's Municipal Code

to amend sections related to noise, lighting, construction staging and construction-related mitigations that will place the City in a better position to respond to large construction projects such as the HSR project. The City anticipates an additional \$10,000 of costs associated with the changes to the City's Municipal Code.

Additionally, the City continues to receive requests from High Speed Rail to review and respond to documents such as the request received on February 28th for the review of the Draft Preliminary Engineering for Project Definition document that begins to identify discrepancies with the City's Design Standards. Kitchell services will be instrumental in the review of this document; therefore, staff recommends securing additional funding to allow the city to complete current work underway and continue to respond to other unforeseen requests that may come over the next several months. Staff recommends appropriation of the full contract amount of \$255,000. On a parallel track, staff will continue to work with CHSRA to secure reimbursement for these project-born expenses.

#3) Contract with Urban Field Studios in the amount of \$153,440. Invoiced/Paid: \$3,991.98.

Urban Field Studios was hired to develop design solutions for impacted areas such as the Walnut Grove neighborhood which is severely impacted by the HSR project. Urban Field Studios can also help the City develop design solutions and identify appropriate mitigation for the project through Morgan Hill. Urban Field Studios attended a couple initial meetings to understand the project. They have submitted an invoice for and the City has paid \$3,991.98. This contract is currently on hold until the Reimbursement Agreement is updated and funding can be secured from CHSRA.

COMMUNITY ENGAGEMENT: Inform

The City of Morgan Hill has a HSR web page that provides basic information on the project and links to HSR staff and website for additional information.

ALTERNATIVE ACTIONS:

The Council may choose to direct staff to proceed with the work with Urban Field Studios to develop design solutions for neighborhoods affected by the HSR project.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

In June 2016, the Council approved a Reimbursement Agreement and contracts with Apex Strategies and David J. Powers to help evaluate and comment on the alternatives. On May 24, 2017, Council approved three consultant contracts to help evaluate and advance design solutions for the HSR project, including a contract with rail experts, Michael Baker International to evaluate the feasibility of a freeway-only alignment.

FISCAL AND RESOURCE IMPACT:

The City has spent approximately \$108,000 with the three technical contracts associated with the HSR project. While it is anticipated that a portion of Kitchell CEM's work (approximately \$39,000) will be reimbursed by the CHSRA, staff recommends that the entire amount spent of \$108,000 and additional anticipated expenditures in the

amount of \$215,000, totaling approximately \$323,000, be accounted for in the Long Range Planning Fund 207. Any reimbursements from CHSRA will replenish this Fund

CEQA (California Environmental Quality Act):

Not a Project

By the definition provided in the California Environmental Quality Act Guidelines Section 15378 this item does not qualify as a "project" and is therefore exempt from the California Environmental Quality Act requirements.

LINKS/ATTACHMENTS:

1. Resolution High Speed Rail
2. 030-High Speed Rail Update Fund 207

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2017-2018 BUDGET IN THE LONG RANGE PLANNING FUND (FUND NO. 207) TO APPROPRIATE \$323,019 THEREFOR

WHEREAS, the subject of, this Resolution is set forth in detail in that certain City Council Staff Report entitled "Appropriate Funds for High Speed Rail Consultant Agreements" submitted for City Council consideration at its meeting of March 7, 2018, submitted to the City Council by the City Manager (the "Staff Report"), the contents of which Staff Report are incorporated herein by this reference; and

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Budget for Fiscal Year 2017-2018, as set forth on Exhibit A to this Resolution, to appropriate the requisite funds to implement the actions authorized by this Resolution; and

WHEREAS, the 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 2017-2018 Budget, as the same has been amended to date, is hereby further amended in accordance with and as

reflected on Exhibit A attached hereto and incorporated herein by this reference;
and

- b. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Year 2017-2018 Budget of City.

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

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 7th day of March 2018 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 March 7, 2018.

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

DATE: _____

Irma Torrez, CITY CLERK

Attachment: Resolution High Speed Rail (1651 : High Speed Rail Consultant Agreements)

EXHIBIT A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2017-18

ADJUSTMENT #

030

FUND:

DEPARTMENT:

OBJECT:

207	Long Range Planning Fund
5170	Long Range Planning Fund
42231	CONTRACT SERVICES

AGENDA DATE:

AGENDA ITEM TITLE:

03/07/18
High Speed Rail Update

	07/01/17			06/30/18 PROJECTED
	BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	ENDING FUND BALANCE
ORIGINAL BUDGET	1,170,077	706,212	988,643	887,646
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION	-	-	323,019	(323,019)
RESULT OF RECOMMENDED ACTION	<u>1,170,077</u>	<u>706,212</u>	<u>1,311,662</u>	<u>564,627</u>

Attachment: 030-High Speed Rail Update Fund 207 (1651 : High Speed Rail Consultant Agreements)

COUNCIL MEMBER NOTICE

ATTENTION

PLEASE BE ADVISED THAT STAFF HAS NOTED THAT YOU OWN PROPERTY LOCATED WITHIN 500' OF AGENDA ITEM(S) LISTED BELOW:

Conflict: **City Attorney Don Larkin**

MEETING DATE: 03/07/18

AGENDA ITEM(S): 18

TITLE(S): ZA2017-0007, DA2017-0003, SD2016-0009, EA2016-0009: E. DUNNE KYONO - ZONING AMENDMENT FOR PLANNED DEVELOPMENT, DEVELOPMENT AGREEMENT, AND NON-VESTING TENTATIVE MAP FOR PROPERTY IDENTIFIED BY ASSESSOR PARCEL NUMBER 726- 02-014 LOCATED AT 505 E. DUNNE AVENUE

.....
CC: Mayor
City Manager
City Attorney
Council Services & Records Coordinator



*Morgan Hill Response to Gun Violence and
Gun Violence Prevention*

Policy Considerations

- Should the City Council take specific local action to help prevent gun violence?
- Should the City of Morgan Hill advocate for gun violence prevention measures at all levels of government?

Topics

- Second Amendment
- Local Police Power Regulations
- Resolution Condemning Gun Violence and Call for State and Federal Action to prevent future incidents

Second Amendment

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Agenda Item: Gun Violence Prevention

- There seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms.
- *District of Columbia v. Heller* (2008) 554 U.S. 570, 595

Agenda Item: Gun Violence Prevention

- Of course the right [to keep and bear arms] was not unlimited, just as the First Amendment's right of free speech was not . . . Thus, we do not read the Second Amendment to protect the right of citizens to carry arms for *any sort* of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak for *any purpose*. *District of Columbia v. Heller* (2008) 554 U.S. 570, 595
-
- “. . . [n]othing in [the Supreme Court’s] recent opinions is intended to cast doubt on the constitutionality of longstanding prohibitions traditionally understood to be outside the scope of the Second Amendment.” *Fyok v. City of Sunnyvale*, (2015) 779 F. 3d 991, 996
- “. . . longstanding prohibitions on the possession of “dangerous and unusual weapons” have uniformly been recognized as falling outside the scope of the Second Amendment.” *Id. at 997*

Police Powers

- A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.

Cal. Const., art. XI, § 7

Police Powers

- Conditional Use Permit
- Local ban on sales of assault-style weapons to anyone under 21
- Local ban on sales of high-capacity magazines
- Restrict carrying/sales of firearms on City property

Policy Considerations

- Should the City Council take specific local action to help prevent gun violence?
- Should the City of Morgan Hill advocate for gun violence prevention measures at all levels of government?



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: Carr

MEETING DATE: 03/07/18

AGENDA ITEM(S): 20

TITLE(S): APPROPRIATE FUNDS FOR HIGH SPEED RAIL CONSULTANT AGREEMENTS

.....
CC: Mayor
City Manager
City Attorney
Council Services & Records Coordinator

From: [John Lang](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Subject: FW: ADD FOR YOUR "PUBLIC COMMENT" NEXT BULLET-IN-THE-BRAIN TRAIN MEETING-----Fw: "SUPES WEIGH BALLOTS ON NEW TAXES" REQUIRES TAXPAYERS REBUTTAL ARTICLE----Fw: [transport-policy] Calif.: New bullet train business plan will show higher costs, CEO Brian Kel
Date: Monday, March 05, 2018 10:30:13 AM

Public Comment, item #20 for this week's City Council

From: Joseph Patrick Thompson <translaw@pacbell.net>
Sent: Monday, March 05, 2018 10:22 AM
To: John Lang <John.Lang@morganhill.ca.gov>; bholtzclaw@newsvmedia.com; mmoore@morganhilltimes.com; Steve Tate <Steve.Tate@morganhill.ca.gov>; City Council Members City of Gilroy <allcouncilmembers@ci.gilroy.ca.us>; Mike Wasserman <askmike@garlic.com>; Jon Coupal <jon@hjta.org>; Carl DeMaio <carl@reformcalifornia.org>
Subject: ADD FOR YOUR "PUBLIC COMMENT" NEXT BULLET-IN-THE-BRAIN TRAIN MEETING-----Fw: "SUPES WEIGH BALLOTS ON NEW TAXES" REQUIRES TAXPAYERS REBUTTAL ARTICLE----Fw: [transport-policy] Calif.: New bullet train business plan will show higher costs, CEO Brian Kell...

Dear Mr. Lang,
Please add this for public comment.
Thank you.
Joseph P. Thompson, Esq.
(408) 848-5506
e-Mail: TransLaw@PacBell.Net
Past-President (2x), Gilroy-Morgan Hill Bar Assn.
Gilroy

On Monday, March 5, 2018 7:19 AM, Joseph Patrick Thompson <translaw@pacbell.net> wrote:

Dear Editor,
Your front page Article "Supes weigh ballots on new taxes," cries out for a taxpayer-friendly rebuttal. Tax subsidies for boondoggle transit schemes play the taxpayers for fools. Well, think again. When we fill up our tanks or send registration fees to DMV we remember all the empty transit buses, all the empty Caltrain seats, and all the "other revenue" that shows up on COG's financial reports. Those "other revenues" are the subsidies that our leaders divert from motorists gas&diesel taxes. We remember that the President's Blue Ribbon Commission on transport funding, and the California Transportation Commission, our government's experts, recommended that transit should be funded by "user fees."
Treating motorists like cigarette smokers is bad public policy, unsound and unsustainable and unfair. Motorists pay about 102% of the costs of our transport including highway construction and maintenance, while transit systems' riders pay only about 1% of their costs.
We see the double standard that our leaders impose, one for us, and one for their subsidy recipients. Please

urge your readers to support repeal of the new SB-1 Gas Taxes and sign the petition being circulated to do so.

Until they end fraud, waste and abuse at their boondoggles, Bullet Train, Caltrain, BART, ACE Train, County Transit, Dial-A-Ride, "Free" Lite Rail Shuttle, Lite Rail, etc., etc., the taxpayers must oppose their calls for higher taxes&fees.

Thank you.

Joseph P. Thompson

(408) 848-5506

e-Mail: TransLaw@PacBell.Net

cc: Public Comment: Next Meeting: Regular, Special, Study Session, Public Workshop, Private Retreat, and/or non-Brown Act compliant meeting of the "Mobility Partnership"

On Monday, March 5, 2018 12:19 AM, "MichaelT Packard eyeswideopen.engineer@gmail.com [transport-policy]" <transport-policy@yahooogroups.com> wrote:

I shouldn't mention this , but there is a creative way that a local Utah Transit Authority "analyst" came up with to increase income, ridership, and investment \$'s for trains like this.

Just contract with the California Bureau of Prisons to house prisoners for the state and local cities by utilizing special rail cars as permanent mobile jails. It will likely cost less for armored rail cars/cells than building brick and mortar cells. Ridership could be inflated by tens of thousands of riders daily by shuffling the same prisoner rail cars back and forth whenever things got kinda slow.



Virus-free. www.avg.com

On Sun, Mar 4, 2018 at 11:19 PM, 'C. P. Zilliacus' CPZ@OS2BBS.COM [transport-policy] <transport-policy@yahooogroups.com> wrote:

<http://www.latimes.com/local/california/la-me-bullet-train-business-plan-20180228-story.html>

New bullet train business plan will show higher costs, CEO Brian Kelly says

By [Ralph Vartabedian](#)

Feb 28, 2018 | 4:15 PM

The California bullet train will take longer to build and cost more than previously estimated under a soon-to-be-released business plan, but plans to begin the project by linking the Bay Area to the Central Valley remain intact, according to the rail authority's new chief executive, Brian Kelly.

Kelly, who took over leadership of the project Feb. 1, said in a wide-ranging interview that he plans to make transparent the challenges facing the project in an effort to bolster confidence that it can still be successfully executed. The rail authority will issue its 2018 business plan with the new cost estimates March 9.

Kelly did not disclose the new price tag for completing the entire Los Angeles to San Francisco system, but he made clear that the \$64-billion estimate from the 2016 business plan will change.

Since the earlier estimate was unveiled, the state has confronted extended delays in buying land for a 119-mile segment in the Central Valley, encountered higher costs to build [safety barriers](#) where its tracks will run close to freight lines, sustained higher costs to [move underground utilities](#) and agreed to pay claims to construction firms whose work was delayed.

The problems led to a disclosure last month that the 119 miles [will cost \\$10.6 billion](#), up from the original estimate of about \$6 billion. When that was unveiled at a rail authority board just days after Kelly took over, the authority did not say whether it would impact the total system price.

"There will be a cost increase," Kelly said. "You cannot have that cost increase in the Central Valley without affecting the overall program cost."

The new estimate will be given in a range of costs, reflecting "too many unknowns to be specific," he added.

Under the prior plan, the rail authority said it would build a starter system, or what it calls an "initial operating segment," from San Jose to the farming town of Wasco for \$21 billion and have it operating by 2025. The plan included the construction of a 13-mile tunnel under the Pacheco Pass in the Diablo Range, at least four train stations, a heavy maintenance facility, an advanced signaling system and miles of high-voltage electrical power infrastructure.

Outside experts said that the construction of the tunnel alone made the 2025 start-up date and its budget woefully unrealistic. The Central Valley construction was supposed to be the easiest part of the system, since it did not involve a mountain crossing and the land for the right of way was largely

rural. But the authority underestimated the amount of land it would need, encountered virulent legal opposition by local authorities and found that [landowners would not easily hand over their property.](#)

How the problems in the Central Valley will affect the cost estimates for other segments of the system is still unclear. The passage through the San Gabriel and Tehachapi mountains in Southern California will require a world-class tunnel system of about 36 miles, which is difficult to price.

And the passage through urban Los Angeles is already a political minefield that has triggered demands for tunneling to avoid neighborhood impacts. Last week, a rally by an opposition group in the north San Fernando Valley, the "Save Angeles Forest for Everyone" coalition, attracted more than 500 residents to a local church. The group is demanding that local politicians, including Mayor Eric Garcetti, back their demand for an underground passage through Shadow Hills, Lakeview Terrace, Pacoima, San Fernando and other communities.

The project is already facing a funding gap, so the new business plan will have to lay out a credible path for financing the higher costs. Under the old plan, the authority had proposed to issue \$5 billion in revenue bonds that would be paid off by its 25% share of the proceeds of the state's greenhouse gas auction

system. But that plan fell apart. Kelly said that the agency is revisiting how to borrow against future revenues from the greenhouse gas fees.

But to complete the project's links to Los Angeles, it ultimately needs more federal support, he acknowledged. The Obama administration provided grants of \$3.5 billion. Since then, House leaders have said they will not approve any additional support. Southern California leaders back the project but are growing increasingly concerned that it could end up as a Northern California commuter system that, for the foreseeable future, only links Silicon Valley to the Central Valley.

Assembly Speaker Anthony Rendon (D-Paramount) said in a recent interview that he is concerned about the growing talk of the project becoming a commuter system for Northern California. "It is a concern for both sides" of the political spectrum, Rendon said in a January interview. "The south is the population center for the state."

The rail authority has told Southern California it will pour money into local transportation projects that will later be part of the bullet train, including a redesign of Union Station.

"It is important for us to lay out that we are still building a statewide system," Kelly said.

Kelly acknowledged that the higher costs that will be

disclosed in the 2018 business plan are likely to cause a furor. The challenges facing the bullet train program are multifaceted, involving political, technical, financial and operational issues, he said.

"I am preparing for a couple of tough months," he said. "We are going to get bounced around in hearings. I am going to take the punches. It is never easy to talk about cost increases."

In only four weeks since taking over the job that former CEO Jeff Morales left last June, Kelly has made a sharp change in the rail authority's approach. The authority had long disputed outside estimates, including a risk analysis by the Federal Railroad Administration in late 2016 that projected the Central Valley construction could cost \$10 billion.

The project got off to a rocky start when it issued its first construction contract to Tutor Perini before it had enough land to build anything, causing the company to [park heavy equipment](#) at staging lots for months.

"Candidly, I think the authority for good reasons moved into construction too early," Kelly said. "There were risks that were not fully known. We have to show folks that we learned something here. We won't make the same mistakes again."

Kelly, 49, who previously was secretary of the California State Transportation Agency and is a longtime political insider, said he believes the public

understands that the project will face challenges and that its cost could increase. The need for the project is undiminished, he said. As the state's economy and population grows, it will need more transportation than highways and airlines alone can provide.

"I have been doing transportation policy for 24 years; this project is the most transformative I have ever seen," he said.

ralph.vartabedian@latimes.com

Follow me on Twitter [@rvartabedian](https://twitter.com/rvartabedian)

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Posted by: MichaelT Packard <eyeswideopen.engineer@gmail.com>

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Item # 20

AGENDA DATE: 03/07/18

SUPPLEMENT # 2

From: [John Lang](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Subject: FW: PUBLIC COMMENT: NEXT MEETING, REGULAR, SPECIAL, STUDY SESSION, PUBLIC WORKSHOP, PRIVATE RETREAT, AND/OR NON-BROWN ACT COMPLIANT MEETING OF THE "MOBILITY PARTNERSHIP"-----Fw: [transport-policy] Calif.: New bullet train business plan will show higher cos
Date: Monday, March 05, 2018 10:32:55 AM

Another item for PC Item #20

From: Joseph Patrick Thompson <translaw@pacbell.net>
Sent: Monday, March 05, 2018 10:31 AM
To: John Lang <John.Lang@morganhill.ca.gov>; mmoore@morganhilltimes.com; Eric Howard <ehoward1965@gmail.com>; Gary Walton <gary@custom-1.com>; Tammy Brownlow <president@gilroyedc.org>; City Council Members City of Gilroy <allcouncilmembers@ci.gilroy.ca.us>; Senator Cannella <senator.cannella@senate.ca.gov>; Steve Tate <Steve.Tate@morganhill.ca.gov>; Shawna Freels <shawna.freels@ci.gilroy.ca.us>; bholtzclaw@newsmedia.com
Subject: PUBLIC COMMENT: NEXT MEETING, REGULAR, SPECIAL, STUDY SESSION, PUBLIC WORKSHOP, PRIVATE RETREAT, AND/OR NON-BROWN ACT COMPLIANT MEETING OF THE "MOBILITY PARTNERSHIP"-----Fw: [transport-policy] Calif.: New bullet train business plan will show higher cost...

Bad public policy compounding bad public policy, et al., etc. You don't cure cancer by taking strychnine. You don't put out a fire by pouring gasoline on it. So, why add more boondoggle public sector transit when the public sector transit we already have is plunging us deeper and deeper into budget deficits, the cure for which, according to our elected officials, is to increase taxes and fees? The sane solution is to abolish public sector transit, privatize it, and follow the advice of our government's own expert witnesses. Both the President's (Bush II) blue ribbon commission on transport funding, and the California Transportation Commission, concluded that we should fund transport with "user fees." That means the fares transit systems' riders pay. It does not mean ever-greater tax subsidies diverted from motorists gas&diesel taxes to boondoggle transit fiascoes. Leninism don't work, so why are we trying to make it work here?
Joseph P. Thompson
(408) 848-5506
e-Mail: TransLaw@PacBell.Net

On Monday, March 5, 2018 9:30 AM, "Thomas A. Rubin" tarubin@earthlink.net [transport-policy]" <transport-policy@yahooogroups.com> wrote:

TAR: I'm not quite sure of the details, but, if they are talking about going into a UTA version of private prisons, the math doesn't work.

There would be huge dollar savings to the State of California from contracting out prisons to well, just about anybody, which is why it is so difficult, because the California prison guards are an extremely power presence in Sacramento, which is why we have often tended to have such strong “put ‘em in prison and keep ‘em in prison” legislation, coupled with high compensation and benefits for the guards, and “protection” of prison guard jobs.

However, the idea of prisons in rail, as opposed to conventional stationary buildings, would be far, far more expensive.

The security and public safety concerns, to say nothing of the public relations outcry, are so numerous and huge that I don’t believe I have to even begin to mention all of them.

The way that this very strange proposal is phased sorta supports that the idea may be to increase the allocation of Federal formula transit funds to the greater Salt Lake City MPO, where a major part of the formula is revenue vehicle miles and a minor part passenger-miles. However, the operation costs of just moving the vehicles would be far more than the added revenue generated, to say nothing of totally screwing up passenger operations and track maintenance availability – and if the list of reasons not to do it needs to be any longer, I’ll be happy to keep going..

Well, one more – the complexities, and expenses, of rather routine matters such as food service and calls of nature get incredibly complex in a prisoner situation, and to then put these on steel wheels, well, beyond stupid.

Yeah, I can just see the new promo tag line – “Ride Utah rail, just like all the California prisoners do.” Brings to mind the famous underground tag line for LAPD after the Rodney King episode, “We treat everyone like a King.”

Do you have a link for the source?

Are you sure that this didn’t come from the Onion?

(Of course, to be fair, I have seen a good number of suggestions for improving governmental operations and increasing governmental revenues that could be published in the Onion without much more than minor editing.)

Tom Rubin

From: transport-policy@yahoogroups.com [<mailto:transport-policy@yahoogroups.com>]

Sent: Monday, March 05, 2018 12:19 AM

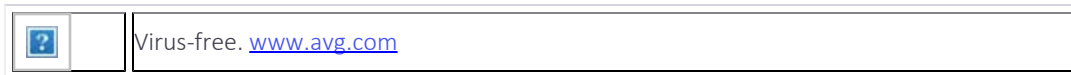
To: transport-policy@yahoogroups.com

Subject: Re: [transport-policy] Calif.: New bullet train business plan will show higher costs, CEO Brian Kelly says

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"I have been doing transportation policy for 24 years; this project is the most transformative I have ever seen," he said.

ralph.vartabedian@latimes.com

Follow me on Twitter [@rvartabedian](#)

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Posted by: "Thomas A. Rubin" <tarubin@earthlink.net>

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CITY OF MORGAN HILL

Regular Meeting Agenda

City Council

Steve Tate - Mayor

Rich Constantine - Mayor Pro Tem

Larry Carr - Council Member

Caitlin Jachimowicz - Council Member

Rene Spring - Council Member

Wednesday, March 7, 2018 7:00 pm

Council Chamber

17555 Peak Avenue, Morgan Hill, CA 95037

TELECONFERENCE

Mayor Tate will be participating in the regular meeting via teleconference as follows:

Mayor Steve Tate
4610 North 68th Street, Unit 438
Scottsdale, AZ 85251

Public comment from the Arizona location shall be allowed.

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

CALL TO ORDER

(Mayor Pro Tem Constantine)

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
(Deputy City Clerk Wilson)

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Jachimowicz

CITY MANAGER'S REPORT

CITY ATTORNEY'S REPORT

OTHER REPORTS

PROCLAMATIONS

Proclaiming the month of March 2018 as Youth Art Month

Proclaiming the month of March 2018 as American Red Cross Month

Proclaiming the week of April 5-8, 2018 as Poppy Jasper International Film Festival Days

PRESENTATIONS

Relay for Life presentation

YAC Presentation- Asset #14- Adult Role Models

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

Recommendation:

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

2. APPROVE CITY SPONSORSHIP OF 2018 MORGAN HILL COMMUNITY FOUNDATION'S PHILANTHROPY DAY EVENT AT THE COMMUNITY AND CULTURAL CENTER

Recommendation:

Authorize the City Manager to waive the rental fee for the use of the Community and Cultural Center for the Morgan Hill Community Foundation's Philanthropy Day Event on November 9, 2018.

3. RESOLUTION ADDING A PROPERTY ASSESSED CLEAN ENERGY PROVIDER

Recommendation:

Adopt resolution authorizing the California Municipal Finance Authority (CMFA) Open Property Assessed Clean Energy ("PACE") Program to operate in Morgan Hill.

4. ACCEPTANCE OF EASEMENT IN ASSOCIATION WITH WATER DISTRICT ACQUISITION OF LAKE SILVEIRA

Recommendation:

Authorize the City Manager to execute, administer, and further negotiate a conservation easement agreement and related documents for recreational use of certain areas of Lake Silveira to support the purchase of property by the Santa Clara Valley Water District.

5. COMMAND VEHICLE APPROPRIATION

Recommendation:

Adopt resolution approving an amendment to the City's Fiscal Year 2017-18 budget in the general fund appropriating \$699,186 for the purchase of a grant funded public safety command vehicle.

6. PURCHASE OF A CCTV SEWER INSPECTION TRUCK

Recommendation:

1. Authorize the City Manager to approve the purchase of a Closed Circuit Television Video (CCTV) inspection truck with RST/Subsite Electronics Inc. in the estimated amount of \$170,000;
2. Determine that a competitive bid process will not likely result in lower pricing; and
3. Adopt resolution appropriating \$129,000 from the Equipment Replacement Fund (Sewer Reserves) towards the purchase of new CCTV inspection truck.

7. PROFESSIONAL SERVICES AGREEMENT WITH CSG CONSULTANTS, INC. TO PROVIDE INSPECTION SERVICES AND PLAN CHECK/REVIEW ASSISTANCE

Recommendation:

Adopt resolution approving the following:

1. Amend the City's Fiscal Year 2017-18 budget for Building and Land Development Engineering Divisions in the Community Development Fund, to appropriate an additional \$150,000 for plan check/review services; and
2. Approve a professional services agreement with CSG Consultants, Inc. to provide Building and Land Development Engineering inspection and plan check/review services and public works inspection for 24 months in an amount not to exceed \$1,250,000.

8. APPROVAL OF IMPROVEMENT AGREEMENT WITH SUNSWEET MORGAN HILL LLC

Recommendation:

1. Approve an Improvement Agreement with Sunsweet Morgan Hill LLC;
2. Authorize the City Manager to execute the Improvement Agreement;
3. Authorize the City Manager to execute a Stormwater Best-Management-Practices (BMP) Operation and Maintenance Agreement pending review and approval by the City Attorney; and
4. Authorize the recordation of the Improvement Agreement and the Stormwater BMP Operation and Maintenance Agreement.

9. SECOND AMENDMENT TO WEST COAST ARBORIST, INC. AGREEMENT FOR CITYWIDE TREE SERVICES

Recommendation:

Approve the Second Amendment to the Maintenance Service Agreement with West Coast Arborist.

10. SECOND AMENDMENT TO AGREEMENT WITH ASSOCIATED RIGHT OF WAY SERVICES, INC. FOR THE HALE AVENUE EXTENSION PROJECT

Recommendation:

Approve and authorize the City Manager to execute a Second Amendment to agreement with Associated Right of Way Services, Inc. in the amount of \$25,000, for a total contract amount not to exceed \$170,000 to continue with property acquisition efforts for the Hale Avenue Extension Project.

11. APPROVE THIRD AMENDMENT TO BURR PLUMBING AND PUMPING, INC. AGREEMENT

Recommendation:

Approve the Third Amendment to the Maintenance Service Agreement with Burr Plumbing and Pumping, Inc.

12. GENERAL PLAN AND HOUSING ELEMENT ANNUAL PROGRESS REPORT

Recommendation:

Adopt resolution accepting the 2017 General Plan and Housing Element Annual Progress Report and directing staff to file the report with the Governor's Office of Planning and Research (OPR) and the Department of Housing and Community Development (HCD).

13. ADOPT ORDINANCE APPROVING ZONING AMENDMENT ZA2017-0010 FOR THE CC-R-(PD) PLANNED DEVELOPMENT OVERLAY DISTRICT AND PRECISE DEVELOPMENT PLAN FOR A 39-UNIT AFFORDABLE RESIDENTIAL DEVELOPMENT TO BE LOCATED ON A 1.62-ACRE SITE LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF MONTEREY ROAD AND BISCEGLIA AVENUE (APN 817-36-032 AND 817-36-033)

Recommendation:

Waive the reading, adopt Ordinance No. 2269, 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.

14. ADOPT ORDINANCE APPROVING DEVELOPMENT AGREEMENT DA2017-0006: MONTEREY-UHC FOR A 39-UNIT AFFORDABLE RESIDENTIAL DEVELOPMENT ON A 1.62-ACRE SITE LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF MONTEREY ROAD AND BISCEGLIA AVENUE. (APN 817-36-032 AND 033)

Recommendation:

Waive the reading, adopt Ordinance No. 2270, 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.

15. ADOPT ORDINANCE ADDING CHAPTER 8.49 (FIRE ALARM REGULATIONS) TO TITLE 8 (HEALTH AND SAFETY) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL TO REQUIRE FINES FOR NUISANCE AND EXCESSIVE FALSE FIRE ALARMS

Recommendation:

Waive the reading, adopt Ordinance No. 2271, 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.

16. ADOPT ORDINANCE AMENDING CHAPTER 8.48 (BURGLARY AND ROBBERY ALARM SYSTEM REGULATIONS) OF TITLE 8 (HEALTH AND SAFETY) OF THE MORGAN HILL MUNICIPAL CODE TO CLARIFY CERTAIN TERMS AND RESPONSIBILITIES OF ALARM SYSTEM OWNERS AND OPERATORS, DELETE REGISTRATION REQUIREMENTS, AND TO UPDATE ENFORCEMENT PROCEDURES

Recommendation:

Waive the reading, adopt Ordinance No. 2272, 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.

17. APPROVE THE FEBRUARY 21, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

PUBLIC HEARING

18. ZA2017-0007, DA2017-0003, SD2016-0009, EA2016-0009: E. DUNNE-KYONO - ZONING AMENDMENT FOR PLANNED DEVELOPMENT, DEVELOPMENT AGREEMENT, AND NON-VESTING TENTATIVE MAP FOR PROPERTY IDENTIFIED BY ASSESSOR PARCEL NUMBER 726-02-014 LOCATED AT 505 E. DUNNE AVENUE

Recommendation:

Open/close the public hearing and continue the project to the April 18, 2018 City Council meeting.

Estimated Time: 5 Minutes

OTHER BUSINESS

19. ADOPT RESOLUTION CONDEMNING GUN VIOLENCE

Recommendation:

1. Adopt resolution condemning gun violence; and
2. Direct staff to return with specific actions to help prevent future gun violence.

Estimated Time: 15 Minutes

20. APPROPRIATE FUNDS FOR HIGH SPEED RAIL CONSULTANT AGREEMENTS

Recommendation:

1. Adopt resolution approving an amendment to the City's Fiscal Year 2017-18 budget appropriating \$323,019 from the Long Range Planning Fund for expenses associated with the High Speed Rail Project; and
2. Direct staff to put on hold the contract with Urban Field Studios.

Estimated Time: 15 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.

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

Pursuant to: Government Code Section 54956.8

Property: 17545 Depot Street; 726-14-041

Agency Negotiators:	Leslie Little, Assistant City Manager
Negotiating Parties:	Ralph H. Bader, Trustee for Ralph H. Bader Trust
Under Negotiation:	Price and Terms of Payment

RECONVENE

CLOSED SESSION ANNOUNCEMENT

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 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 safe, inclusive, socially responsible, environmentally conscious, and economically sound community.

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 ·
Enhancing Diversity and Inclusiveness

2018 STRATEGIC PRIORITIES

Community Engagement and Messaging

Economic Development and Telecommunications

Financial Stewardship

Infrastructure

Regional Initiatives

2018 STRATEGIC PRIORITIES:



Community Engagement and Messaging

The City of Morgan Hill will tell our story through outreach and by working closely with our community in presenting our vision, priorities, and financial needs, and by engaging citizens and business owners to find affordable and sustainable solutions. The City's communications, services, public spaces, and projects will embrace all community members as partners, encouraging public participation.



Economic Development and Telecommunications

The Economic Blueprint will continue to be implemented, with a primary goal of attracting jobs and investment into our community. 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 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 with private sector partnerships. The plan will be used to signal Morgan Hill's support for business expansion.



Financial Stewardship

We will be financial stewards of the City's assets to ensure long-term fiscal sustainability. New revenue sources, including a possible tax measure, will be considered to fund increasing costs to deliver services and complete infrastructure projects. The City will closely manage its expenditures to maintain its general fund reserve. The labor contracts will be negotiated using the City's adopted Employee Compensation Guiding Principles.



Infrastructure

The City will review its streets, parks, and public facilities infrastructure needs 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 transportation projects and road maintenance. For High Speed Rail, we will strongly advocate for the route with the least impact on Morgan Hill.



Regional Initiatives

City Council and staff will focus on influencing regional decisions that benefit Morgan Hill. A regional approach will be employed to address many priorities, including but not limited to, homelessness, animal services, teen suicide, High Speed Rail, and land use (Catholic High School, Outdoor Sports Center, agricultural preservation, and city limits). This regional involvement will include partnering with the League of California Cities, Valley Transportation Authority, Caltrain, 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.

POPPY
JASPER

INTERNATIONAL
FILM FESTIVAL

A Morgan Hill Tradition with New Venues and Partners

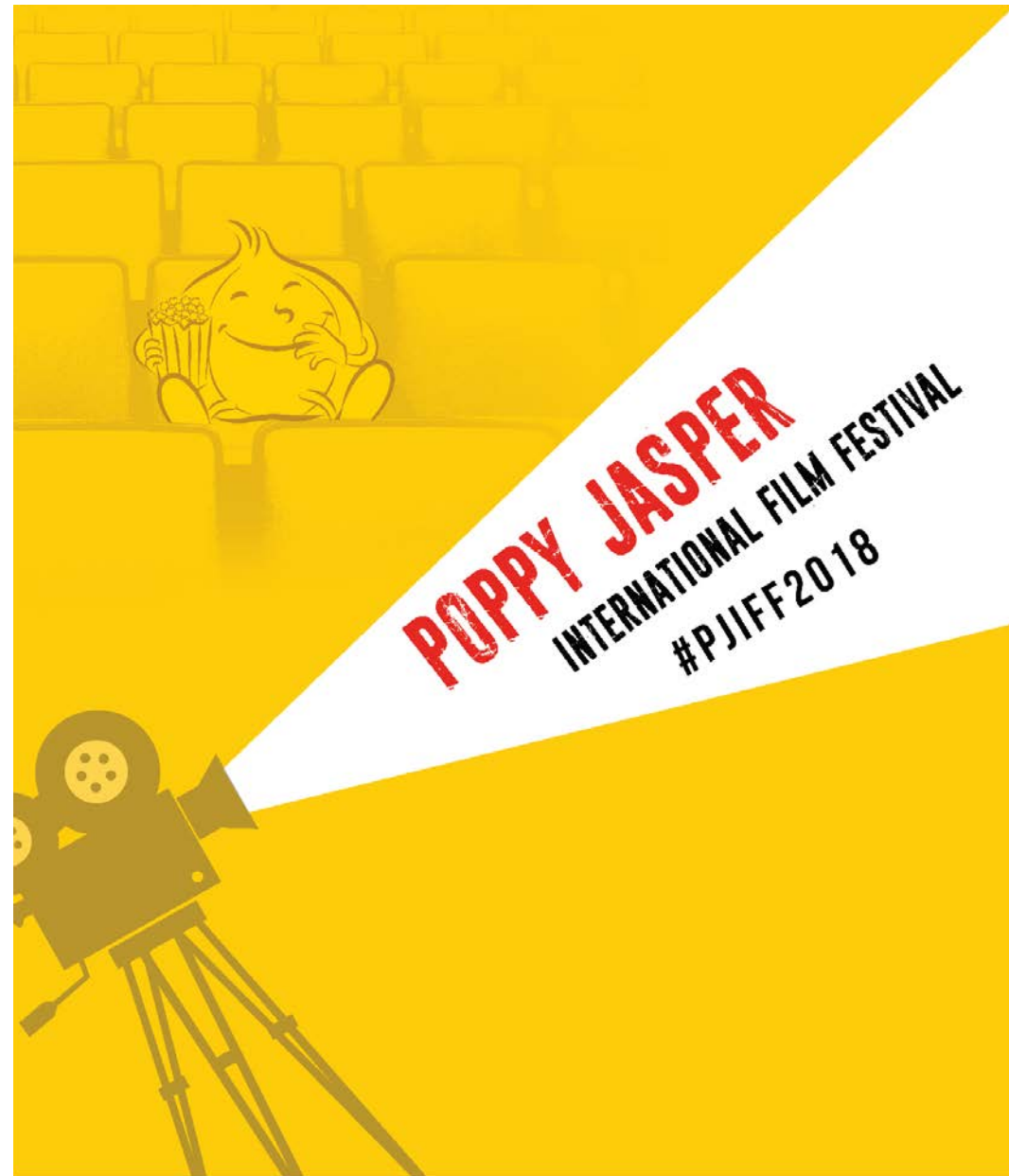
- The Granada Theater
- City of Morgan Hill/Community Playhouse
- Morgan Hill Grange
- Morgan Hill Chamber of Commerce
- Morgan Hill Downtown Association
- Morgan Hill Library
- Morgan Hill Community Foundation
- Morgan Hill Historical Society



And a New Partner City

Gilroy joins Morgan Hill in 2018, making this South County's *first and only* regional film festival.

- Old Strand Theater
- Community Media Access Partnership
- Gilroy Welcome Center
- Gilroy Chamber of Commerce
- Gilroy Downtown Business Association
- Gilroy Library



GILROY AND MORGAN HILL, CALIFORNIA | **APRIL 5-8, 2018** | PJIFF.ORG

A Juried Competition For Filmmakers

- Over 150 films submitted
- 28 countries
- 11 film categories
- Film screenings, industry panels
and mixers



And New Programs for the Community

- Young Filmmakers Workshop, Youth Film Festival
- Millennials Music Video, Live Band Performance
- 40&Up Filmmakers Workshop
- Summer Movie Series





FESTIVAL HIGHLIGHTS

PJIFF WELCOMES RANDY SPENDLOVE

**President of Motion Picture Music, Paramount Pictures
Grammy Winner, Oscar Nominee**

Festival Opening Gala Guest Speaker

April 6th – 6 to 11 pm

The Granada Theater, Morgan Hill

FESTIVAL HIGHLIGHTS

KEVIN RUBIO TAKES THE STAGE AT PJIFF

Independent writer/producer

Emmy nominee

Creator of Tag and Bink, appearing in May 2018,
"Solo: A Star Wars Story," directed by Ron Howard.



Invited Films



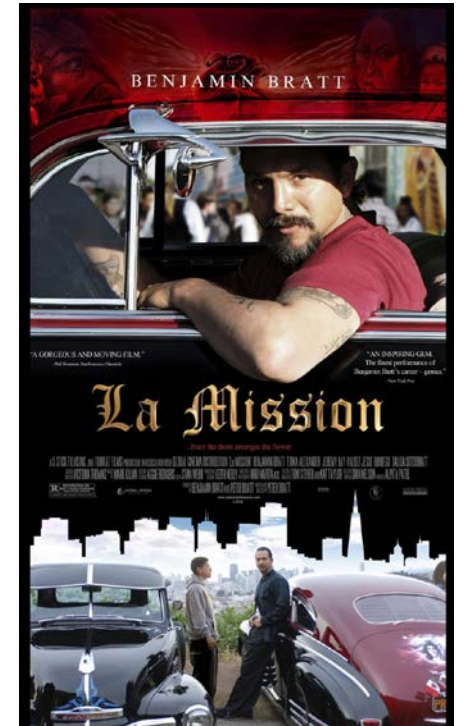
“BLACK HEAD COW”



“CESAR’S LAST FAST”



“SUE’S STORY”



“LA MISSION”

PJIFF Supports Arts & Tourism

The 2018 Poppy Jasper International Film Festival will attract locals and visitors for 4 days of film screenings, networking, and time to enjoy our region's great wineries, great restaurants, and more.



PJIFF is a Community Asset

The 2018 Poppy Jasper International Film Festival is part of Poppy Jasper, Inc., a local nonprofit. We are an all-volunteer organization and our festival wouldn't be possible without community support through giving and volunteerism.



Our Sponsors



The Lifestyle Magazine Of The South Santa Clara Valley

GRANADA
theatre

live+love+léal



AN IHG® HOTEL



Our Partners



**POPPY
JASPER**

**INTERNATIONAL
FILM FESTIVAL**

**April 5-8, 2018
Morgan Hill and Gilroy CA**

**Get Tickets Now.
PJIFF.ORG**



**American
Red Cross**

March is Red Cross Month 2018



Mission

The American Red Cross prevents and alleviates human suffering in the face of emergencies by mobilizing the power of volunteers and the generosity of donors.



**American
Red Cross**



Our Services

Down the Street. Across the Country. Around the World.®



Disaster Cycle Services



Blood Services



Preparedness, Health and Safety Services



International Services



Service to the Armed Forces

Our Work Impacts Lives Every Day

Every 60 seconds

23

people are assisted
by the American
Red Cross.



180

times a day, Red Cross
workers help a family
affected by a home fire
or other disaster.



1,000

times a day, we
provide services to
military members,
veterans and their
families.



14,000

times a day, the Red
Cross needs blood
donations.



16,000

times a day, a person
receives lifesaving
Red Cross health and
safety training.



443,000

times a day, a child
receives a measles or
rubella vaccination
from the Red Cross
and our partners.



An Unprecedented Disaster Season



Tens of millions of people have been impacted by recent U.S. hurricanes. Many saw their homes flooded, roofs blown off or windows shattered, and some lost it all—their homes were destroyed entirely.



Breaking Records



Harvey: Enough rainfall to fill the Great Salt Lake twice. Caused about \$100 billion in damage.

Irma: Cut electricity to one out of every 22 Americans. Damaged or destroyed over 195,000 homes in Florida alone.



Maria: Created the biggest humanitarian crisis in Puerto Rican history, destroying communications, electricity and water supplies for 3.5 million Americans.



A Very, Very Busy Year

In three months, from July through September, the American Red Cross provided more services nationally than we did in all of 2016!!

Red Cross in Silicon Valley



Our Local Contribution To The National Effort

- 154 volunteers deployed to the San Jose floods in February
- 55 volunteers deployed to hurricanes Harvey, Irma, and Maria
- 78 volunteers deployed to the Napa County and Sonoma County wildfires
- 8 volunteers deployed to the Ventura County and Santa Barbara County wildfires

Sound The Alarm – Our Major Preparedness Effort

- Nationally and locally, the American Red Cross is putting great effort into the installation of smoke alarms. **Home fires on a daily basis cause more damage and more fatalities than all other disasters combined.**
- In Santa Clara County we install smoke alarms in specific neighborhoods on a monthly basis in collaboration with local authorities and local fire departments.
- Sound The Alarm is a special effort, when during three dates we will install over 1000 smoke alarms. We need as much help as possible and would love to work with volunteers from your city.

Sound The Alarm – The Schedule

In Santa Clara County, Sound The Alarm will be implemented on three dates:

- April 28 in Milpitas
- May 5 in San Jose (Berryessa)
- May 12 in San Jose (Edenvale)
- Sign up and get more information at www.soundthealarm.org/norcalcoastal

Thank You



WE > ME

more participants = more funding for breakthrough research

Relay For Life of South County

MORGAN HILL CITY COUNCIL MEETING

MARCH 7, 2018



**SAT, MAY 19TH -
SUN, MAY 20TH**

10 a.m. - 10 a.m.

[MORE DETAILS ►](#)



**MORGAN HILL
COMMUNITY PARK**

171 W Edmundson Ave
Morgan Hill, CA

[MAP IT ►](#)

Welcome (back) to Relay For Life!



- ▶ Relay For Life is the signature fundraiser for the American Cancer Society and helps raise over \$400 Million dollars for life-saving cancer research and free patient services **every year**
- ▶ Relay is staffed and coordinated by volunteers in more than 5,200 communities and 20 countries worldwide
- ▶ Relay is a team fundraising event where team members take turns walking around a track
- ▶ Each team sets up a themed campsite at the event and continues their fundraising efforts by collecting donations for goods, games, and activities

New Year, New Merge, New Opportunities!

- ▶ We are so excited for Morgan Hill and Gilroy to be joining forces to create Relay for Life of South County!
- ▶ This allows us to reduce expenses and increase the percentage of each dollar that goes to research and services, combine participants, and raise even MORE money towards the battle against cancer!
- ▶ Combined event will be held in Morgan Hill at the Community Park



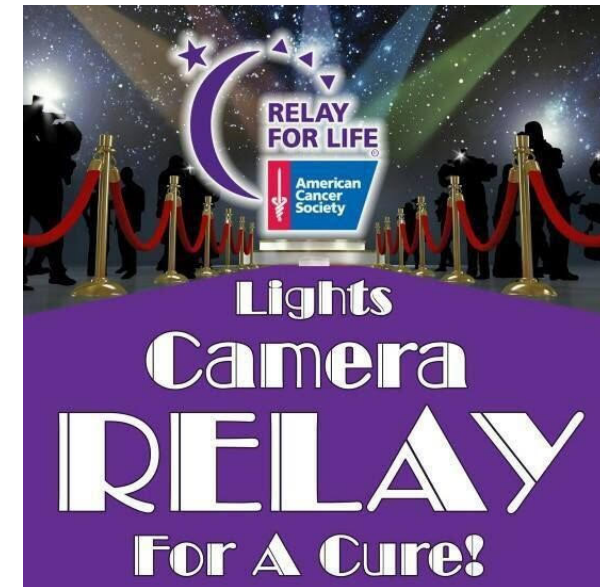
Mission Statement & Theme

Relay For Life Mission Statement

- ▶ The American Cancer Society's mission is to SAVE LIVES, CELEBRATE LIVES, and LEAD THE FIGHT for a world without cancer.

2018 Relay for Life South County Theme

- ▶ This year's theme is Lights! Camera! RELAY for a Cure!
- ▶ Each team can select a movie for their theme





Spread the Word!

- ▶ Help spread the word about Relay For Life of South County
 - ▶ Follow us on Facebook
 - ▶ Share social media posts
- ▶ Teams are forming now and we are doing many fundraisers throughout the community!



Relay for Life Contacts



**Relay for Life of South County
May 19-20, 2018
Morgan Hill Community Park**

For more information:

Nikki Underhill
2018 Relay Event Co-Lead
408.375.3089
nikkiunderhill@gmail.com

Kelly Carmichael
2018 Relay Event Co-Lead
925.520.5314
kellysue102003@yahoo.com



March

Developmental Asset

Asset #14

Adult Role Models

Parents and other adults model positive,
responsible behavior.

How This Applies to Morgan Hill

YMCA

- Teaching kids teamwork through sports and activities

City of Morgan Hill Afterschool Program at Park Place

- Helping kids with homework to improve their education.
- Playing recreational games to improve their social skills.

Chill Out with Dori Prado

- Providing a safe environment for teens



March Complementary Developmental Asset Asset #26 Caring

Young person places high value on helping
other people.

Personal Experiences

Gissele Vera

- Mrs. Knofler from El Toro School

Gisselle Rodriguez

- Dori Prado from Chill Out

Carlos Martinez

- Ashley Munday from CRC Teen Center



DO YOU CONSIDER
YOURSELF AN ADULT
ROLE MODEL?
